

## **Legal Analysis Of The International Court Of Justice 1969 Decision Concerning Continental Shelf Of The North Sea Between West Germany, Denmark, And The Netherlands**

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### **Abstract**

Geographically the north sea separates several countries namely England, Norway, Denmark, the Netherlands, and West Germany. Actually, continental shelf countries around the North Sea have entered into international agreements for the use of the North Sea so that the exploitation of natural resources in the North Sea does not cause conflict. In resolving this case the three countries did not agree on what method was used to delimit the continental shelf. The Netherlands and Denmark prefer the principle of equidistance line while West Germany prefers the principle of fairer delimitation. Because there was no agreement in the negotiations of the three countries, they agreed to settle a dispute between them through the international court. The method of settlement of continental shelf disputes introduced in the decisions of the International Court of Justice greatly influences the method of dispute resolution contained in Article 83 of the United Nations Convention on the Law of the Sea 1982.

**Keywords:** continental shelf, international court of justice, legal analysis, north sea.

### **Introduction**

Mutual Benefit Principle in relations between countries requires that the subjects of international law (especially the state) in carrying out international relations be based on good faith so as to benefit all parties.<sup>1</sup> Disputes between countries about the sea so far have been one of the disputes that often colors relations between countries. This is because the sea today is one of the main sources of meeting human needs, especially in relation to the need for oil and gas. The sea in the Landmark as part of the earth that holds many mineral resources. That's why countries are competing to get mineral resources. One part of the sea that stores a

lot of mineral resources in the continental shelf.<sup>2</sup> Such conditions make the continental shelf a seizure territory seizure of countries that sometimes cause disputes between countries. One of the most influential cases in the development of international sea law relating to continental shelf is the dispute between West Germany, Denmark, and the Netherlands over the north sea. This case is interesting to study because it greatly influences the development of the concept of continental shelf in international maritime law, especially relating to the acceptance of the concept as one of the legal regimes accepted in the two international conventions, namely the 1958 Geneva Convention on Continental Shelf and the 1982 Law of the Sea. The method of settlement of continental shelf disputes introduced in the decisions of the International Court of Justice greatly influences the method of dispute resolution contained in Article 83 of the United Nations Convention on the Law of the Sea (UNCLOS) 1982.

Geographically the north sea separates several countries namely England, Norway, Denmark, the Netherlands, and West Germany. In terms of depth, the north sea only has a depth that is only about 200 meters with the exception of sea areas close to Norway which have deeper depth characters than most of the total north sea area. From the wide side of the north sea area is a fairly wide and very important part of the sea for navigation, fisheries and other vital human needs. The North Sea from the geological site has a lot of mineral resources that make the surrounding countries become very interested in controlling the sea.

Actually, the continental shelf countries around the North Sea have entered into an international agreement for the use of the North Sea so that the exploitation of natural resources in the North Sea does not cause conflict. In the period 1963 and 1966 between England, Norway and the Netherlands agreed to establish a boundary line (delimitation) of the continental shelf using the principle of equidistance. The boundary lines are lines that are outlined above sea level and each line has the same distance from the point closest to the coast of the adjoining state. All state claims on the continental shelf can finally be settled properly between them. Between the Netherlands and West Germany and Denmark and West Germany finally reached an agreement on a small portion of the continental shelf area of 25 to 30 miles from their coasts.<sup>3</sup> Because the northern sea area is so large, it still leaves problems for the three countries to resolve the delimitation of the remaining continental shelf. When these three countries begin to discuss the remaining continental shelf that has not been resolved, then there arises an inaccuracy between the three countries regarding the division of the continental shelf.

In resolving this case the three countries did not agree on what method was used to delimit the continental shelf. The Netherlands and Denmark prefer the principle of equidistance line while West Germany prefers the principle of fairer delimitation. Because there was no agreement in the negotiations of the three countries, they agreed to settle a dispute between them through the international court through a special agreement. From the background description and position case regarding the case of the international court decision on the continental shelf

between West Germany, Denmark and the Netherlands above, it raises its own legal problems in the study of international maritime law, namely what legal principles are used by judges in resolving continental shelf disputes between countries? and how the influence of the legal principles contained in the decision of the international court in the development of international sea law, in particular, the problem of the continental shelf?

## **Discussion**

### **Legal Principles Used by Judges**

The international law of the sea provides an important contribution in determining the continental shelf boundaries between countries, especially in the implementation of negotiations and the signing of agreements or agreements between countries. Seeing the various problems in fighting over the territorial territories of each country, international sea law issues fundamental regulations regarding the measurement of the sea width of each country and the determination of continental shelf boundaries between the country's territories.<sup>4</sup>

Regarding the Continental Shelf, the first concern for the seabed and the ground beneath it began to emerge in 1918, when the Americans succeeded in exploiting oil some 40 miles from the Gulf Coast of Mexico. However, important legal developments took place only with the signing of an agreement between the United Kingdom and Venezuela in 1942 to determine the boundaries of the respective seabed in the Gulf of Paria to enable exploration of oil resources in the bay. An important development in the concept of the Continental Shelf in the Law of the Sea was the release of the Truman President's Proclamation on September 28, 1945, which was the first proclamation on the Continental Shelf. At that time President Truman had not yet determined the criteria for what he called the "continental shelf" did not affect the status of the water on the continental shelf as the high seas.<sup>5</sup>

The Continental Shelf Law Regime in the study of international sea law has been known since the 1958 Geneva Convention on the Continental Shelf. Based on article 1, what is meant by continental shelf is "continental shelf is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of territorial sea, to depth of 200 metres or, beyond that limit to where the superjacent waters admits of exploitation of natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of island' the provisions of the article indicate that the seabed and the land beneath it are 200 meters away from where the state is given the authority to exploit these natural resources. The concept of continental shelf actually originated from the proclamation of President Truman in 1945<sup>6</sup> which claims that the natural resources contained in the land and seabed are continental shelf<sup>7</sup> which is under the authority of the United States government.<sup>8</sup> The rationale for this concept is that there is a desire of the United States to utilize natural resources outside its territory but still

close to the territorial sea.<sup>9</sup> The practice of claiming natural resources on the continental shelf is then followed by other countries, especially Latin American countries.<sup>10</sup>

The important role of the sea from both a political, security and economic point of view requires a strong foundation in determining maritime boundaries between countries. A country cannot claim a sea area unilaterally. A country's sea area is determined and determined based on mutual agreement between two or more countries. The legal basis used by countries in establishing maritime boundaries is the UN decree in the 1958 Geneva Sea Law (Law of the Sea I) which was updated with the United Nations Convention on the Law of the Sea 1982.<sup>11</sup> In the 1982 Law of the Sea, the concept of the continental shelf was recognized as one of the legal regimes of the sea. Article 76 paragraph (1) of UNCLOS determines that what is meant by continental shelf “is the seabed and the underlying land from the area below the sea surface located outside the territorial sea along the natural continuation of the land until the outer edge of the continental edge, or up to a distance of 200 miles the sea from the baseline from which the width of the territorial sea is measured, in the case that the outer rim of the continental edge does not reach that distance”. The limitation on the continental shelf in Article 76 above shows the development of the concept of continental shelf based on international court decisions and practices carried out by countries.

In this case, the International Court of Justice ruled as follows:

1. The Court rejected West Germany’s opinion regarding the division of the continental shelf based on the principle of fairer distribution offered by West Germany. The Court is of the opinion that each coastal state already has its original right over its continental shelf which extends naturally along its plateau. The Court insisted that it was not the Court's duty to be able to divide the continental shelf portions of these countries but only gave instructions in determining the delimitation of the continental shelf.
2. The Court also rejects the opinion of the founding of Denmark and the Netherlands which states that the delimitation of the northern sea continental shelf should be based on the principle of equidistance line principle recognized in Article 6 of the 1959 Geneva Convention on the Continental Shelf on the grounds that: First, West Germany does not ratify the Geneva Conventions and are not legally bound by the conventions. Second, the Court is of the opinion that the principle of equidistance line is not a result of the general concept of continental shelf rights. The principle of equidistance line has not yet been accepted as an international customary law norm.

In making a decision in this case, the court is based on the following legal considerations:

1. The equidistance line principle for delimitation of the continental shelf is not an obligation to be accepted by the parties to the dispute.

2. The Court is of the opinion that there are no principles accepted by countries in the practice of continental shelf delimitation, thus the court does not stipulate any principle in the delimitation of the continental shelf.
3. The delimitation method applied in continental shelf disputes can only be carried out based on an agreement in a negotiation between the disputing countries based on a fair principle.

In negotiations on the continental shelf, countries must pay attention to the beach form factor, the geographic and geological composition of the continental shelf and natural resources in the continental shelf area.

### **The Effect of Legal Principles in International Court of Justice Decisions on the Development of International Law of the Sea**

At first the development of borders between countries in the sea area using artificial boundary determination methods with the assumption that the sea area is part of empire power and position. Then an idea or concept emerged to regulate the concept of territorial sea or better known as the territorial sea. At that time the concept of territorial sea was a new thing, as the discovery of cannon weaponry technology, which in accordance with the range of the cannon as far as 3 nautical miles, then a distance of 3 nautical miles was declared as a legitimate claim on the sea area by the coastal state. However, in practice, the 1958 Law of the Sea Convention failed to agree on this issue, but only mentioned the application of the principle of equidistance and the median line in the context of setting boundary territorial sea boundaries while the maximum width of international sea claims justified under international law was not stated at all. The debate over territorial sea width is an insoluble issue in the 1985 Law of the Sea Convention, in addition to that this convention also does not provide clear and firm limits but hangs on exploitation factors, this certainly has an unfavorable impact, especially for countries that newly independent. Apart from the failure of the 1956 convention on the two main issues above, the 1958 convention made an important contribution related to the recognition of the principles of international law governing maritime boundaries between countries. This is reflected in the case decided by the International Court of Justice.<sup>12</sup>

In the 1982 Law of the Sea, the issue of continental shelf has its own place, namely in Chapter VI Articles 78-75. In this convention, the outer boundaries of the Continent are quite clear. This means that there is legal certainty about the extent to which the state has exclusive rights to the natural resources of the continental shelf. According to Article 76 clause 1, the continental shelf of a coastal country includes the seabed and the underlying land from areas below sea level that lie outside the territorial sea along the natural continuation of the land area until the outer rim of the continent, or up to a distance of 200 nautical miles from the baseline territorial sea is measured, in the event that the outer edge of the continental edge

does not reach a certain distance.<sup>13</sup> We need to know that legal relations between countries fall within the scope of international law. At the end of 1982, the international community succeeded in completing its task in developing a new set of marine laws to regulate all forms of use and utilization of the natural wealth contained therein. The 1982 Law of the Sea produced a new formulation of the legal regime for the continental shelf, with a minimum claim limit of 200 nautical miles and a maximum claim of 350 nautical miles for coastal states with certain criteria. Based on the new formulation, the relationship between geomorphological and geophysical factors with the plains of a coastal country is only related to the maximum claim of the continental shelf.<sup>14</sup>

The 1958 Geneva Convention on the Continental shelf establishes the width of the Continental Shelf based on criteria for depth or exploitation capability, the 1982 Convention bases on various criteria such as:<sup>15</sup>

- a. A distance of up to 200 nautical miles if the outer edge of the continent does not reach the distance of 200 nautical miles;
- b. The natural continuation of the land area under the sea to the outer edge of the continent whose width must not exceed 350 nautical miles measured from the territorial seafloor if there are still more than 200 nautical seafloor areas which are a natural continuation of the land area and if they meet the specified sedimentation depth criteria in convention or
- c. Must not exceed 100 nautical miles from 2500 meters depth line (isobath).

In this regard, the formulation contained in the 1982 convention provided an original legal certainty for all parties. With regard to agreements between countries bordering maritime territories, the 1982 Law of the Sea refers to the achievement of the agreements of the parties made under public international law. Thus the 1982 Law of the Sea gave great freedom to the parties to look for legal principles that could be mutually acceptable to the state parties as a basis for determining borders in the sea area. The 1982 Law of the Sea is an important milestone, namely as a form of international recognition of the legal concept of the archipelago insight that was conceived by the government of the Republic of Indonesia since 1957. In determining the Continental Shelf Boundary between the countries concerned, there are also differences in principles between the 1982 Law of the Sea with the 1958 Law of the Sea Convention. In Article 6 of the 1958 Law of the Sea the determination or determination of continental shelf boundaries explicitly uses the principle of median line or equidistance principle provided that there are no specific cases which cause or allow boundaries to be determined with unequal distances.<sup>16</sup>

According to Donillo in several cases concerning the Continental Shelf, the International Court of Justice interprets the boundary line outside or deviates from the midline or median line, especially if it is related to the determination of a fair

decision for all parties so that it will give birth to a principle known as equitable principles, however in cases certain cases of the International Court of Justice still refer to the median line approach in determining the Continental Shelf Boundary. Meanwhile, according to the 1982 Law of the Sea, the determination of the Continental Shelf Limits only refers to the achievement of all parties' agreements made under the provisions of public international law. This shows that the 1982 Law of the Sea gives great freedom to the parties to look for legal principles that can be mutually acceptable as the basis for determining continental boundaries, in other words through the 1982 Law of the Sea, the state is given the freedom to determine its own contents about continental shelf boundaries.<sup>17</sup>

The legal principles used by the judge in resolving continental shelf disputes between countries In his decision on the case above the Court actually does not determine who wins and loses in this case. The Court only determines that in determining the continental shelf there are several legal principles in relation to the continental shelf legal regime. First, that the continental shelf is a natural prolongation of the land of a coastal state to which it is given authority to exploit the natural resources contained therein, namely the sea-bed and subsoil resources. Second, that in the settlement of delimitation disputes the continental shelf between countries the court determines that it can be done through negotiations that give birth to a fair settlement for the disputing countries.

The influence of the legal principles contained in the decision of the international court in the development of international law of the sea, in particular, the problem of the continental shelf. Northern sea continental shelf dispute involving countries in solving cases in the International Court of Justice is the first dispute related to the continental shelf. Therefore this case in the development of international maritime law is quite a significant influence in the development of the concept of the continental shelf, that is:

First, the concept of the continental shelf as a natural prolongation of the coastal state. This concept in the development of international maritime law in UNCLOS 1982 was later confirmed as a concept that became the main nature of the continental shelf.

Secondly, regarding the width of the continental shelf undergoing change, the continental shelf at the 1958 Geneva convention was only 200 meters while in the 1982 law of the sea it was recognized 200 miles and,

Third, the concept of continental shelf dispute resolution. In the above case, it is determined that the settlement of the continental shelf delimitation case must be based on the agreement of the countries. This concept is then accepted in Article 83 of UNCLOS which stipulates that in the delimitation of the continental shelf boundaries between countries that face or side by side. Article 83 Paragraph (1) provides that continental shelf delimitation must be carried out based on inter-state agreements based on international law as stated in Article 38 of the Statute of the International Court of Justice to achieve a fair and fair settlement.

In an effort to strengthen the friendship between neighboring countries, especially between bordering countries, an agreement is needed to create cooperation both bilaterally and multilaterally. Cooperation is intended to safeguard the interests of fellow coastal countries so that each country can carry out its obligations.<sup>18</sup> The appointment of Article 38 as the basis for settlement of continental shelf delimitation refers to that settlement of continental shelf disputes must be based on international agreements, international customs, general legal principles and additional legal sources, namely doctrines and court decisions that can be used as a reference for countries in resolving delimitation of continental shelf.

### Conclusion

There are two legal principles that were born from the International Court of Justice's ruling on the north sea, namely, the principle of the continental shelf as a natural continuation of the coastal state and the principle of a fair settlement of delimitation. The International Court's decision turned out to have an influence on the development of the concept of continental shelf in international sea law contained in UNCLOS 1982, namely the concept of natural continuation, continental shelf width of 200 miles, and methods of settlement of delimitation of continental shelves between contiguous countries based on international law and settlement fair.\*\*\*

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