

- (1) the general configuration of the coasts of the Parties, as well as the presence of any special or unusual features;
- (2) so far as known or readily ascertainable, the physical and geological structure, and natural resources, of the continental shelf areas involved;
- (3) the element of a reasonable degree of proportionality, which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas appertaining to the coastal State and the length of its coast measured in the general direction of the coastline, account being taken for this purpose of the effects, actual or prospective, of any other continental shelf delimitations between adjacent States in the same region.

Done in English and in French, the English text being authoritative at the Peace Palace, The Hague, this twentieth day of February, one thousand nine hundred and sixty-nine, in four copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Federal Republic of Germany, to the Government of the Kingdom of Denmark and to the Government of the Kingdom of the Netherlands, respectively.

(Signed) J. L. BUSTAMANTE R.,
President.

(Signed) S. AQUARONE,
Registrar.

Judge Sir Muhammad ZAFRULLA KHAN makes the following declaration:

I am in agreement with the Judgment throughout but would wish to add the following observations.

The essence of the dispute between the Parties is that the two Kingdoms claim that the delimitation effected between them under the Agreement of 31 March 1966 is binding upon the Federal Republic and that the Federal Republic is bound to accept the situation resulting therefrom, which would confine its continental shelf to the triangle formed by lines A-B-E and C-D-E in Map 3. The Federal Republic stoutly resists that claim.

Not only is Article 6 of the Geneva Convention of 1958 not opposable to the Federal Republic but the delimitation effected under the Agreement of 31 March 1966 does not derive from the provisions of that Article as Denmark and the Netherlands are neither States "whose coasts are opposite each other" within the meaning of the first paragraph of that Article nor are they "two adjacent States" within the meaning of the

second paragraph of that Article. The situation resulting from that delimitation, so far as it affects the Federal Republic is not, therefore, brought about by the application of the principle set out in either of the paragraphs of Article 6 of the Convention.

Had paragraph 2 of Article 6 been applicable to the delimitation of the continental shelf between the Parties to the dispute, a boundary line, determined by the application of the principle of equidistance, would have had to allow for the configuration of the coastline of the Federal Republic as a "special circumstance".

In the course of the oral pleadings the contention that the principle of equidistance *cum* special circumstances had crystallized into a rule of customary international law was not advanced on behalf of the two Kingdoms as an alternative to the claim that that principle was inherent in the very concept of the continental shelf. The Judgment has, in fairness, dealt with these two contentions as if they had been put forward in the alternative and were thus consistent with each other, and has rejected each of them on the merits. I am in agreement with the reasoning of the Judgment on both these points. But, I consider, it is worth mentioning that Counsel for the two Kingdoms summed up their position in regard to the effect of the 1958 Convention as follows:

“. . . They have not maintained that the Convention embodied already received rules of customary law in the sense that the Convention was merely declaratory of existing rules. Their position is rather that the doctrine of the coastal State's exclusive rights over the adjacent continental shelf was in process of formation between 1945 and 1958; that the State practice prior to 1958 showed fundamental variations in the nature and scope of the rights claimed; that, in consequence, in State practice the emerging doctrine was wholly lacking in any definition of these crucial elements as it was also of the legal régime applicable to the coastal State with respect to the continental shelf; that the process of the definition and consolidation of the emerging customary law took place through the work of the International Law Commission, the reaction of governments to that work and the proceedings of the Geneva Conference; that the emerging customary law, now become more defined, both as to the rights of the coastal State and the applicable régime, crystallized in the adoption of the Continental Shelf Convention by the Conference; and that the numerous signatures and ratifications of the Convention and the other State practice based on the principles set out in the Convention had the effect of consolidating those principles as customary law.”

If it were correct that the doctrine of the coastal State's exclusive rights over the adjacent continental shelf was in process of formation

between 1945 and 1958 and that in State practice prior to 1958 it was wholly lacking in any definition of crucial elements as it was also of the legal régime applicable to the coastal State with respect to the continental shelf, then it would seem to follow conclusively that the principle of equidistance was not inherent in the concept of the continental shelf.

Judge BENGZON makes the following declaration:

I regret my inability to concur with the main conclusions of the majority of the Court. I agree with my colleagues who maintain the view that Article 6 of the Geneva Convention is the applicable international law and that as between these Parties equidistance is the rule for delimitation, which rule may even be derived from the general principles of law.

President BUSTAMANTE Y RIVERO, Judges JESSUP, PADILLA NERVO and AMMOUN append Separate Opinions to the Judgment of the Court.

Vice-President KORETSKY, Judges TANAKA, MORELLI, LACHS and Judge *ad hoc* SØRENSEN append Dissenting Opinions to the Judgment of the Court.

(Initialed) J. L. B.-R.

(Initialed) S. A.
