Universität Zürich[UZH]

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Nordsee-Festlandsockel-Fall

North Sea Continental Shelf (FRG v. Denmark/Netherlands), I.C.J. Reports 1969, p. 3

Zwischen der Bundesrepublik Deutschland einerseits und Dänemark und den Niederlanden andererseits entstanden in den 1960er-Jahren Meinungsverschiedenheiten über die seitliche Abgrenzung des Festlandsockels in der Nordsee. Die drei Staaten unterbreiteten 1967 den Streitfall dem IGH. Dänemark und die Niederlande waren Parteien des Genfer Abkommens von 1958 über den Festlandsockel, das in Art. 6 Abs. 2 für die seitliche Abgrenzung das sog. Äquidistanzprinzip vorsieht (gleiche Entfernung von den nächstgelegenen Punkten der Ausgangslinie), unter Vorbehalt abweichender Vereinbarungen der beteiligten Staaten. Die BRD hatte das Genfer Abkommen zwar unterzeichnet, aber nicht ratifiziert. Dänemark und die Niederlande machten geltend, der Grundsatz des Art. 6 des Genfer Abkommens sei infolge des Einflusses des Abkommens und der Staatenpraxis seit 1958 Gewohnheitsrecht geworden, so dass auch Nichtvertragsstaaten wie die BRD daran gebunden seien. Der IGH bejahte die Möglichkeit einer solchen Entwicklung.

Auszüge aus dem Urteil

"43. […] it might be that, even without the passage of any considerable point of time, a very widespread and representative participation in the convention might suffice of itself, provided it included that of States whose interests wee specially affected. In the present case however, the Court notes that, even if allowance is made for the existence of a number of States to whom participation in the Geneva Convention is not open, or by which reason for instance of being land-locked States, would have no interest in becoming parties to it, the number of ratifications and accessions so far secured is, though respectable, hardly sufficient [35 State Parties]. That non-ratification may sometimes be due to factors other than active disapproval of the convention concerned can hardly constitute a basis on which positive acceptance of its principles can be implied: the reasons are speculative, but the facts remain."

"71. […] there is no doubt that this process is a perfectly possible one and does from time to time occur: it constitutes indeed one of the recognized methods by which new rules of customary international law may be formed. At the same time this result is not lightly to be regarded as having been attained. […]"

"73. With respect to the other elements usually regarded as necessary before a conventional rule can be considered to have become a general rule of international law, it might be that, even without the passage of any considerable period of time, a very widespread and representative participation in the convention might suffice of itself, provided it included that of States whose interests were specially affected. In the present case however, the Court notes that, even if allowance is made for the existence of a number of States to whom participation in the Geneva Convention is not open, or which, by reason for instance of being land-locked States, would have no interest in becoming parties to it, the number of ratifications and accessions so far secured is, though respectable, hardly sufficient. That non-ratification may sometimes be due to factors other than active disapproval of the convention concerned can hardly constitute a basis on which positive acceptance of its principles can be implied: the reasons are speculative, but the facts remain.

74. As regards the time element, the Court notes that it is over ten years since the Convention was signed, but that it is even now less than five since it came into force in June 1964, and that when the present proceedings were brought it was less than three years, while less than one had elapsed at the time when the respective negotiations between the Federal Republic and the other two Parties for a complete delimitation broke down on the question of

the application of the equidistance principle. Although the passage of only a short period of time is not necessarily, or of itself, a bar to the formation of a new rule of customary international law on the basis of what bras originally a purely conventional rule, an indispensable requirement would be that within the period in question, short though it might be, State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked - and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved."

"77. The essential point in this connection-and it seems necessary to stress it-is that even if these instances of action by non-parties to the Convention were much more numerous than they in fact are, they would not, even in the aggregate, suffice in themselves to constitute the opinion juris; - for, in order to achieve this result, two conditions must be fulfilled. Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it. The need for such a belief, i.e., the existence of a subjective element, is implicit in the very notion of the opinio juris sive necessitatis. The States concerned must therefore feel that they are conforming to what amounts to a legal obligation. The frequency, or even habitual character of the acts is not in itself enough. There are many international acts, e.g., in the field of ceremonial and protocol, which are performed almost invariably, but which are motivated only by considerations of courtesy, convenience or tradition, and not by any sense of legal duty."

"78. […] the position is simply that in certain cases - not a great number - the States concerned agreed to draw or did draw the boundaries concerned according to the principle of equidistance. There is no evidence that they so acted because they felt legally compelled to draw them in this way by reason of a rule of customary law obliging them to do so-especially considering that they might have been motivated by other obvious factors."