

## DECLARATION OF JUDGE EVENSEN

The United Nations Convention on the Law of the Sea signed at Montego Bay, Jamaica, on 10 December 1982 endeavours to formulate in its text of 320 Articles, 9 Annexes and a Final Act the prevailing (to some extent emerging) principles of the modern law of the sea. Article 308, paragraph 1, of the Convention provides:

“This Convention shall enter into force 12 months after the date of deposit of the sixtieth instrument of ratification or accession.”

The Convention has not yet entered into force. Some 54 States have at present (ratified) acceded to the Convention. However, a number of the main principles laid down in this instrument must presumably be accepted as established principles of the modern law of nations.

The Convention upholds the substantive distinction between islands and rocks. With regard to the régime of islands Article 121, paragraph 2, of the Convention provides that islands shall in principle be dealt with under the same legal régime as other land territories. Article 121, paragraph 2, of the Convention states:

“the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory”.

However, in this respect a clear distinction has been made in the Convention between islands and rocks. Article 121, paragraph 3, provides with regard to rocks:

“Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.”

Throughout their pleadings both Parties have referred to and qualified Jan Mayen as an island. In the written pleadings it has been stated that the length of the island is 53.6 kilometres and that the breadth varies between 2.5 and 16 kilometres forming a total area of 380 square kilometres. For comparison, it has been mentioned that “the total area of the Republic of Malta is 316 square kilometres” (Counter-Memorial of Norway, Vol. I, p. 23, para. 78). In this relation, it is also of interest to note that the mountain of Beerenberg with an altitude of 2,277 metres above sea level is the second or third highest mountain of the Kingdom of Norway.

Jan Mayen must obviously be taken into consideration in delimiting the maritime areas concerned. However, it should also be recognized that

Greenland — of the size of a continent — is facing a rather small island, Jan Mayen. But it was emphasized in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* that in principle “there can be no question of distributive justice” in such delimitation cases (*I.C.J. Reports 1985*, p. 40, para. 46), although application of the median line (equi-distance line) approach in the circumstances of the present case might possibly lead to inequitable results.

As stated in paragraph 90 of this Judgment, it lies within the Court’s measure of discretion in order to arrive at an equitable result to make proper provisions for establishing a system for equitable access to the fisheries resources in the “area of overlapping claims”. In paragraphs 91-92 and on sketch-map 2, the Judgment has outlined the detailed division between the two countries of the fishery zones in the area, giving the coordinates of the relevant basepoints and baselines concerned. I endorse these findings.

(Signed) Jens EVENSEN.

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