



AN ANALYSIS OF INTERNATIONAL LEGAL FRAMEWORKS ON MARITIME BOUNDARY DELIMITATION: JUDICIAL CASE EXAMPLES

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Abstract

This study explores the historical evolution and complexities of maritime boundary delineation, focusing on relevant international legal frameworks. It highlights modern developments in maritime boundary law, detailing key methods like the Median and Thalweg Lines. The research examines pivotal

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legal documents, such as the 1958 Geneva Conventions and the United Nations Convention on the Law of the Sea (UNCLOS). Additionally, it discusses reliable approaches to boundary delimitation, including jurisprudence constante, the equidistance method, and the role of relevant circumstances. The study emphasizes predictability, legal stability, and equitable solutions, stressing the importance of geographical factors. Judicial decisions from international courts, including the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS), are analyzed. Landmark cases like the North Sea Continental Shelf and Bangladesh vs. Myanmar are explored, revealing the challenges of applying delimitation principles. The study concludes with recommendations to improve maritime boundary delimitation.

Keywords

• Maritime Boundary • Equidistance Principle • UNCLOS • ITLOS • Judicial Case Decisions

DENİZ ALANLARININ BELİRLENMESİNE İLİŞKİN ULUSLARARASI HUKUKİ ÇERÇEVELERİN ANALİZİ: ADLİ DAVA ÖRNEKLERİ

Öz

Bu çalışma, deniz sınırlarının belirlenmesinin tarihsel gelişimi ve karmaşıklıklarını uluslararası hukuk çerçevesinde ele almaktadır. Orta Hat ve Talveg çizgisi gibi yöntemlerle deniz sınırı belirleme süreçlerini ve modern hukuki gelişmeleri incelemektedir. Özellikle 1958 Cenevre Sözleşmeleri ve Birleşmiş Milletler Deniz Hukuku Sözleşmesi (UNCLOS) gibi önemli belgelerin katkılarını tartışmaktadır. Çalışma, deniz sınırı belirleme yöntemlerini, eşit uzaklık ve jurisprudence constante uygulamalarını vurgularken, öngörülebilirlik ve hukuki istikrarın önemine dikkat çekmektedir. Ayrıca, Uluslararası Adalet Divanı (ICJ) ve Uluslararası Deniz Hukuku Mahkemesi'nin (ITLOS) kararlarını analiz etmekte, Kuzey Denizi Kıta Sahaneliği ve Bangladeş-Myanmar davaları gibi önemli örnekler üzerinden deniz sınırı belirlemedeki zorlukları ortaya koymaktadır. Sonuç olarak, adil çözümler sunma ve deniz sınırlarının belirlenme süreçlerinin iyileştirilmesine yönelik öneriler getirmektedir.

Anahtar Kelimeler

• Deniz Sınırı • Eşit Uzaklık İlkesi • UNCLOS • ITLOS • Adli Dava Kararları

INTRODUCTION

The delimitation of maritime boundaries is a critical aspect of international law, significantly influencing global geopolitics, economic interests, and environmental conservation. Historically, maritime delimitation has been contentious, as highlighted by the renowned author Higgins¹, who emphasizes the importance of equitable marine resource allocation over mere claim validation. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) introduced additional complexities, particularly concerning Exclusive Economic Zones (EEZs) and Continental Shelf (CS) claims.

The evolution of maritime boundary delimitation traces practices from early state methods, such as median and thalweg lines, to formal frameworks like the 1958 Geneva Conventions and UNCLOS. This transition in legal thought has moved from equity-based principles to normativity, illustrated by key cases such as the North Sea Continental Shelf (NSCS) and maritime disputes involving Bangladesh, India, and Myanmar.² Notably in Bangladesh related cases, Bangladesh's preference for meridian-based boundaries extending to the continental margin beyond 200 miles contrasts with the equidistance principle.³ Bangladesh has addressed these disputes through international legal platforms, with significant cases resolved by UNCLOS-related tribunals, including the International Tribunal for the Law of the Sea (ITLOS)'s 2012 ruling on the Bangladesh-Myanmar boundary⁴ and the 2014 arbitral tribunal decision on the Bangladesh-India boundary.

This comprehensive assessment, focusing on judicial case decisions, offers valuable insights into the intricacies and challenges of

¹ HIGGINS, R., "Problems and process: international law and how we use it." Oxford University Press, 1995. 28(3): p. 129.

² ANDERSON, D.H., "Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar)." American Journal of International Law, 2012. 106(4): p. 824.

³ HASAN, M.M., et al., "Protracted maritime boundary disputes and maritime laws." Journal of International Maritime Safety, Environmental Affairs, and Shipping, 2019. 2(2): p. 90.

⁴ SHAH, R., "Bangladesh-Myanmar ITLOS Verdict: Precedence for India?" Strategic Analysis, 2013. 37(2): p. 178.

establishing maritime boundaries in accordance with international law. The article adopts a multidisciplinary research methodology, blending legal analysis, historical case studies, and geopolitical insights to thoroughly explore maritime boundary delimitation. The structure navigates from the historical evolution of maritime boundary principles to modern legal frameworks, examining key legal instruments such as the Geneva Conventions and UNCLOS. It includes an analysis of international cases and specific disputes, highlighting their geopolitical implications, and concludes with a summary of findings and strategic recommendations for future maritime boundary disputes and policy development.

I. HISTORICAL APPROACHES TO MARITIME BOUNDARY DELINEATION

The practice of determining maritime boundaries, with origins dating back to the 11th century, has undergone significant evolution, especially since the 1800s. This change is characterized by a shift from traditional techniques such as the thalweg line, perpendicular line, and extension of land boundaries, to the now more commonly used median line principle.

A. Median Line

The median line method, creating equally distant boundaries from nearby mainlands or islands of respective states, has been key in maritime boundary setting. Notably, the 1924 Finland-Norway Convention applied this in dividing waters between Finmark and Petsamo Territory.⁵ Other examples include the 1809 Sweden-Russia treaty for the Gulf of Bothnia and Aaland Sea, and the 1925 Maine, USA-New Brunswick, Canada maritime boundary.⁶ This principle was often

⁵ BRAVENDER-COYLE, P., "The emerging legal principles and equitable criteria governing the delimitation of maritime boundaries between states." *Ocean Development & International Law*, 1988. 19(3): p. 219.

⁶ RHEE, S.-M., "Sea Boundary Delimitation Between States Before World War II." *American Journal of International Law*, 1982. 76(3): p. 562.

integrated with the thalweg line in state practices, demonstrating its flexibility and adaptability.

Fisher⁷ highlights the median line's prominence in the last centuries, noting its role in balancing legal, geographic, and non-geographical factors to achieve fair outcomes. This principle played a critical role in resolving the East China Sea dispute, as detailed by Kim⁸, where it provided a basis for negotiation and compromise in oil and gas development. The Aegean Sea dispute further illustrates the median line's adaptability. The Aegean Sea dispute exemplifies the median line's versatility, where, according to Dyke⁹ it was adapted to the region's unique geography, factoring in coastlines and island influences. These examples underscore the median line's significance as both a legal framework and a negotiable tool in resolving maritime disputes, marking its evolution from a historical practice to a contemporary standard in maritime boundary delimitation.

B. Thalweg Line

In river law, defining the thalweg deepest part of a river or navigation channel, is important in river law for fairly dividing waterways between nations. Not as common as the median line in maritime boundaries, it has been crucial in historical cases like the 1903 Alaska Boundary Arbitration between the U.S. and Britain.¹⁰

In the realm of maritime law, it's sometimes merged with the median line, as seen in the 1846 U.S.-Britain treaty for the Oregon

⁷ FISHER, M.H., *An environmental history of India: from earliest times to the twenty-first century*. Vol. 18. 2018: Cambridge University Press. p. 280.

⁸ KIM, S.K., "China and Japan Maritime Disputes in the East China Sea: A Note on Recent Developments." *Ocean Development and International Law - OCEAN DEV INT LAW*, 2012. 43: p. 297.

⁹ DYKE, J.M.V., "The Role of Islands in Delimiting Maritime Zones: The Case of the Aegean Sea." *Ocean Yearbook Online*, 1989. 8(1): p. 54.

¹⁰ BOURNE, G.B. and D.M. McRae, "Maritime Jurisdiction in the Dixon Entrance: The Alaska Boundary Re-Examined." *Canadian Yearbook of international Law/Annuaire canadien de droit international*, 1977. 14: p. 179.

boundary and the 1912 France-Germany agreement for Dahomey and Togo.¹¹

The integration of median and thalweg lines in maritime law led to the “Equidistance/Special Circumstances rule.” This acknowledges that simply using the median line might not be fair due to unique geographical or historical factors. Thus, combining median and thalweg lines addresses these complexities and has influenced international maritime boundary laws.¹² Furthermore, Sir Creek dispute¹³ exemplifies the varied interpretations and applications of the thalweg principle in international boundary issues.¹⁴

II. DEVELOPMENT OF MARITIME BOUNDARY LEGISLATION

The development of maritime boundary laws began with the Hague Conference, 1930, but was initially unsuccessful due to the complexities involved and the onset of World War II. Post-war, the

¹¹ **STEINER**, Z.S. and K. Neilson, “Britain, Germany and France, 1912–14: Flexibility and Constraint, in *Britain and the Origins of the First World War.*” 2003, Macmillan Education UK: London. p. 101.

¹² **VINATA**, R.T., M.T. Kumala, and C. YustisiaSerfiyani, “Climate change and reconstruction of Indonesia’s geographic basepoints: Reconfiguration of baselines and Indonesian Archipelagic Sea lanes.” *Marine Policy*, 2023. 148: p. 2.

¹³ The Sir Creek dispute is a territorial conflict between India and Pakistan over a 96 km strip of water in the marshes of the Rann of Kutch, Gujarat, which opens into the Arabian Sea. The disagreement centers on differing interpretations of the maritime boundary line between the two countries. India claims the boundary should follow the mid-channel, based on the Thalweg Principle of international law, while Pakistan asserts that the entire creek belongs to it, citing a 1914 resolution. The dispute dates back to 1908 and remains unresolved, despite attempts at dialogue and joint surveys. Sir Creek is strategically important due to its rich fishing grounds, potential oil and gas reserves, and ecological significance. The unresolved status often leads to the arrest of fishermen who inadvertently cross the perceived border. You can see: Misra, A., “The Sir Creek Dispute: A Case of Compromise Driven by Common Interests. In: *India-Pakistan*” Palgrave Series in Asian Governance, Palgrave Macmillan, New York, 2010. PP. 139-155.;also, <https://byjus.com/free-ias-prep/sir-creek-dispute-between-india-and-pakistan/>

¹⁴ **MISHRA**, R., “The ‘Sir Creek’ Dispute: Contours, Implications and the Way Ahead. *Strategic Analysis*, 2015. 39(2): p. 190.

United Nations and declarations like the Truman Proclamation prompted the need for clear legal guidelines, leading to the pivotal 1958 Geneva Conventions that established basic principles for maritime boundaries.¹⁵ The Geneva Conventions represented a key development in transitioning from an ad-hoc approach to a more formalized and legally recognized framework for maritime boundary delimitation. This codification process, though not exhaustive, laid the groundwork for future developments and negotiations in maritime law.

A. The Geneva Conventions, 1958: Equidistance/Special Circumstances

This convention resulting from the 1st UN Conference on the Law of the Sea, laid foundational rules for maritime boundary delimitation. Key aspects are found in the Convention on the TS and the Convention on the CS, particularly focusing on the "Equidistance/Special Circumstances rule." This rule, outlined in Article 12 (TS) and Article 6 (CS), establishes that maritime boundaries should typically follow a median line, but allows adjustments for unique geographical features or historical rights.

The dual approach to this rule, adopted during the drafting process, emphasized starting with an equidistant line and then adapting for special conditions. This approach, reflecting the work of the International Law Commission, considered equidistance as a general rule, with exceptions for extraordinary circumstances.

The rule has been key in international legal discourse, with cases like the Gulf of Maine highlighting its application in considering geographical and historical nuances. The Geneva Conventions thus significantly advanced maritime delimitation law, setting a precedent

¹⁵ **SCOVAZZI, T.**, R. Barnes, and R. Long, "Frontiers in International Environmental Law: Oceans and Climate Challenges: Essays in Honour of David Freestone, in Chapter 8 The Frontier in the Historical Development of the International Law of the Sea." 2021, Brill | Nijhoff. p. 229.

for equidistance as a norm but allowing for equitable adjustments, a concept later refined in the UNCLOS framework.¹⁶

B. The UNCLOS: Equidistance v. Equity

UNCLOS significantly advanced maritime boundary laws, addressing limitations of the Geneva Conventions, 1958, and earlier UNCLOS versions. It focused on refining TS dimensions and fishing limits and introduced regulations for international seabed exploitation. Critical debates during this period, especially within Negotiating Group 7, were influenced by prior case laws like the NSCS case and new technological capabilities for seabed resource utilization. While UNCLOS upheld the Equidistance principle from the Geneva Conventions for TS boundaries in Article 15, it faced challenges in applying it to EEZ and CS delimitations. Articles 74 and 83, responsible for EEZ and CS boundaries, emphasized equitable solutions through agreements grounded in international law, yet lacked a definitive delimitation method, instead referring to the broader framework of international laws as per Article 38 of the ICJ Statute.

During the final stages of UNCLOS, Articles 74 and 83 were crafted with general language to bridge differences between the two groups. Twenty-two states pushed for the “Equidistance/Special Circumstances rule”, suggesting delimitation should typically follow a median line, adjustable for unique cases. Meanwhile, twenty-nine states favored an approach centered on equity and relevant circumstances, advocating for a flexible, fairness-oriented delimitation method.¹⁷ This division underscored the persistent debate in maritime law over balancing equidistance with equity principles in determining maritime boundaries. The conference concluded with these differing views

¹⁶ EVANS, M.D., “Less Than an Ocean Apart: The St Pierre and Miquelon and Jan Mayen Islands and the Delimitation of Maritime Zones.” *International and Comparative Law Quarterly*, 1994. 43(3): p. 690.

¹⁷ COTTIER, T., “Equitable principles of maritime boundary delimitation.” 2015: Cambridge University Press. p. 518

unresolved, signifying the ongoing evolution and complexities in maritime boundary law.¹⁸

C. Progression of Equitable Principles in Maritime Law

The role of equity in maritime boundary decisions has significantly advanced through influential court rulings and international agreements. The concept was first established as a customary rule in maritime law by the ICJ in the NSCS case, drawing inspiration from the Truman Proclamation, 1945. This case highlighted the importance of equitable principles in delimitation, focusing on specific circumstances like land continuity, avoidance of encroachment, and balance. Subsequent cases, such as the Tunisia-Libya Continental Shelf case¹⁹, further emphasized equity as a core principle of international law. Key rulings in cases like the Gulf of Maine (1984), Libya/Malta (1985), Guinea/Guinea Bissau (1985), and St Pierre and Miquelon (1992) continued to reinforce and evolve these principles, though they faced some decline and critique in the early 1990s.²⁰

D. Transition to Norm-Based Maritime Delimitation

Since the 1990s, there's been a notable shift in maritime delimitation from equity-focused to norm-based approaches. This change was significantly influenced by the 1977 Anglo-French Continental Shelf case. Here, the Court of Arbitration's interpretation of Article 6 of the 1958 Continental Shelf Convention marked the "equidistance-special circumstances rule" as a broader normative principle, prioritizing equitable delimitation in the absence of bilateral

¹⁸ ØSTRENG, W., et al., "Ocean Law Debates: The 50-Year Legacy and Emerging Issues for the Years Ahead, in Chapter 7 Small States in the Decision-Making Process of UNCLOS." 2018, Brill | Nijhoff. p. 216.

¹⁹ BROWN, E.D., "The Tunisia-Libya continental shelf case: A missed opportunity." *Marine Policy*, 1983. 7(3): p. 142.

²⁰ OUDE ELFERINK, A.G. and A.G.O. Elferink, "The Law of Maritime Boundary Delimitation: A Case Study of the Russian Federation." Chapter II The Case Law concerning Maritime Delimitation. 2021: Brill | Nijhoff. p. 50.

agreements.²¹ Subsequent key rulings by the ICJ and the Permanent Court of Arbitration in cases like Greenland/Jan Mayen (1993), Qatar/Bahrain (2001), Romania/Ukraine (2009), Eritrea/Yemen (1999), and Barbados/Trinidad and Tobago (2006) and Guyana/Suriname (2007), further cemented this trend towards the Equidistance/Relevant Circumstances principle.²² These decisions reflect a growing preference for codified rules and predictability in setting maritime boundaries.

The Anglo-French Continental Shelf case marked a significant shift in maritime delimitation, transitioning from a focus on equity in specific cases to an emphasis on applying codified rules for fairness and predictability in maritime boundary disputes. This shift is reflected in the decisions of the aforementioned cases, marking a significant evolution in the principles governing maritime delimitation.²³

III. MARITIME BOUNDARY DELIMITATION: EQUIDISTANCE/RELEVANT CIRCUMSTANCES PRINCIPLE

The “Equidistance/Relevant Circumstances Principle” is a dependable method for determining maritime boundaries, consistently yielding equitable and stable results in line with legal standards. This principle, emphasized in the 2006 Barbados/Trinidad and Tobago case and examined by Kwiatkowska²⁴, balances fairness, practicality, and legal stability in boundary delineation.²⁵ Its effectiveness is bolstered by

²¹ **BOYLE**, A.E., “The Law of Treaties and the Anglo-French Continental Shelf Arbitration.” *International and Comparative Law Quarterly*, 1980. 29(2-3): p. 502.

²² **TANAKA**, Y., “Reflections on Maritime Delimitation in the Romania/Ukraine Case Before the International Court of Justice.” *Netherlands International Law Review*, 2009. 56(3): p. 403.

²³ **GARCÍA** Ch, M.C. and J. Gupta, “Environmental and sociocultural claims within maritime boundary disputes.” *Marine Policy*, 2022. 139: p. 2.

²⁴ **KWIATKOWSKA**, B., “The 2006 Barbados/Trinidad and Tobago Award: A Landmark in Compulsory Jurisdiction and Equitable Maritime Boundary Delimitation.” *The International Journal of Marine and Coastal Law*, 2007. 22(1): p. 12.

²⁵ **KWIATKOWSKA**, B., “Barbados/Trinidad and Tobago. Award on Jurisdiction and Merits.” *The American Journal of International Law*, 2007. 101(1): p. 152.

broad judicial endorsement, the predictability inherent in the Equidistance method, and the legal framework surrounding “relevant circumstances.”

This principle aims to achieve a fair and equitable division of ocean space by considering an equal distance from the nearest points on the coasts of the respective states involved. Relevant circumstances, such as geographical features, economic interests, and historical usage, are also taken into account to ensure that the division does not disproportionately favor one state over another. By integrating both equidistance and relevant circumstances, the principle seeks to balance legal precision with practical fairness in maritime boundary disputes.

International courts have increasingly applied the “Equidistance/Relevant Circumstances rule” in maritime boundaries, reflecting the *Jurisprudence Constante* doctrine. Recognized in cases like *Eritrea/Yemen* (1998) and *Barbados/Trinidad and Tobago* (2006), this approach has become a standard in maritime law.²⁶ Its regular use, also seen in *Guyana/Suriname* (2007) and *Romania/Ukraine* (2008), demonstrates a consistent legal trend, aligning with established treaties like the Geneva Convention, 1958, and UNCLOS. This trend indicates a predictable application of the “Equidistance/Relevant Circumstances Principle” in resolving maritime disputes.

The equidistance principle is notable for its precision in maritime boundary setting due to its mathematical basis. The ICJ in the *Nicaragua/Honduras* case (2007) highlighted its scientific and practical nature.²⁷ In the *Barbados/Trinidad and Tobago* (2006) and *Romania/Ukraine* (2009) cases, it was emphasized as a fundamental and

²⁶ ANTUNES, N.S.M., “The 1999 Eritrea–Yemen Maritime Delimitation Award and The Development of International Law.” *International and Comparative Law Quarterly*, 2001. 50(2): p. 304.

²⁷ PATEL, B.N. and B. Patel, “The World Court Reference Guide and Case-Law Digest: Judgments, Advisory Opinions and Orders of the International Court of Justice (2001-2010) and Case-Law Digest (1992-2010), in *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*.” 2014, Brill | Nijhoff. p. 412.

objective method in delimitation processes.²⁸ Legal perspectives, like Kolb²⁹, acknowledge its necessity due to the emphasis on geographical factors, making equidistance a logical and predictable approach in maritime boundary delimitation.

The evolution of the “Equidistance/Relevant Circumstances Principle” has led to its recognition for providing certainty and predictability in line with established legal frameworks, particularly under UNCLOS Articles 74 and 83. This principle is now viewed as the primary approach in maritime delimitation. It involves a two-stage process used by international courts: initially drawing an equidistance line, followed by a thorough assessment of relevant circumstances to ensure a fair boundary determination. These circumstances cover a range of geographical and non-geographical factors, forming a part of a detailed yet non-exhaustive analysis. The approach seeks to balance the equidistance line with the need for equity, ensuring that the final boundary is fair and just. This process illustrates the dynamic nature of maritime delimitation, where a variety of factors are meticulously considered to uphold the principles of international maritime law.

Geographical factors are essential in maritime delimitation, guided primarily by the “Equidistance/Relevant Circumstances” principle, which has brought predictability to this domain, especially in judicial and arbitral settings. This principle emphasizes considering the actual geographical situation, such as whether coasts are opposite or adjacent, rather than their general direction. Typically, a provisional median line is established between opposite coasts, while an equidistance line is drawn for adjacent coasts, with deviations only in exceptional cases. Regarding small islands, as per Article 121 of the UNCLOS, they can generate their own TS, EEZ, and CS, but rocks not supporting human habitation or economic activities are excluded. Islands are typically not included as baselines during the initial phase of

²⁸ MIRON, A., “A Practitioner’s Guide to Maritime Boundary Delimitation Maritime Boundary Delimitation: The Case Law. Is It Consistent and Predictable?” *European Journal of International Law*, 2020. 31(1): p. 374.

²⁹ KOLB, R., “Selected Problems in the Theory of Customary International Law.” *Netherlands International Law Review*, 2003. 50(2): p. 125.

delimitation unless they are integral to the coastal configuration. Their impact might be minimized or ignored if their presence results in unbalanced delimitation lines. Additionally, the proportionality principle, stemming from the NSCS case (1969)³⁰, dictates that delimitation should take into account the relationship between the maritime areas assigned to each party and the length of their respective coastlines. This principle, initially a final check for equity, has evolved to be considered during the delimitation process, especially in situations with significant disparities in coast lengths, thereby ensuring fair and equitable delimitation outcomes.

Non-geographical elements are key in the “Equidistance/Relevant Circumstances” approach for maritime boundary setting, as demonstrated in numerous international legal decisions. Factors such as reliance on natural resources, poverty rates, and access to resources like fish and oil are often considered. However, their impact as relevant circumstances in boundary delimitation can vary. The ICJ, in cases such as Tunisia/Libya (1982) and Libya/Malta (1985), has generally not considered economic development factors as altering the delimitation line, viewing them more as economic and political processes.³¹ In maritime delimitation, the treatment of natural resource access, particularly for fisheries and oil, is varied. Some rulings, like Greenland/Jan Mayen (1993), recognize its importance, while others, give it less emphasis. The behavior of involved parties, especially regarding resource utilization and agreements, can influence boundary adjustments, as seen in the Cameroon/Nigeria (2002) and Barbados/Trinidad and Tobago (2006) cases, where oil activities affected the delimitation. Additionally, the role of third States is significant, often impacting the delimitation’s endpoint, as in Eritrea/Yemen (1998) and Romania/Ukraine (2009), where third-party agreements played a part. These instances highlight the critical role of non-geographical factors in maritime boundary setting under the “Equidistance/Relevant

³⁰ MARSTON, G., “North Sea Continental Shelf Cases.” *Federal Law Review*, 1969. 3(2): p. 285.

³¹ CIARLI, S. and K. McLachlan, “A Bibliographic Review: Studies of Libya’s International Borders.” *Libyan Studies*, 1996. 27: p. 90.

Circumstances Principle,” contributing to the development of more predictable guidelines in international maritime law.

IV. SOME JUDICIAL DECISIONS AND CASE EXAMPLES

A. North Sea Continental Shelf Case

The NSCS Case in 1969, adjudicated by the ICJ, was a landmark moment in maritime delimitation, involving Denmark, the Netherlands, and the Federal Republic of Germany. This case significantly altered the application of the equidistance principle in international maritime law. The dispute required the ICJ to provide guidance on the principles and rules of international law relevant to maritime delimitation.³² Denmark and the Netherlands favored delimitations based on the equidistance principle, as stated in Article 6 of the 1958 Geneva Convention. However, the ICJ found that Germany, not being a signatory to this Convention, was not bound by Article 6. Furthermore, the Court concluded that the equidistance principle was neither an intrinsic part of CS rights nor a rule of customary international law.

ICJ observed that the equidistance principle in the 1958 Geneva Convention’s Article 6 was not a developing rule of customary international law, noting the allowance for reservations in contrast to other core articles. The Court considered the distinct coastal shapes of the involved states, highlighting the disparity between Denmark and the Netherlands’ convex coasts and Germany’s concave coast. It concluded that using the equidistance line would unfairly limit Germany’s share of the NSCS, leading to an inequitable outcome. The ICJ recognized the equidistance method’s practicality and reliability but did not make it a mandatory principle in maritime delimitation.³³ This decision shifted focus from strict equidistance application to a more flexible and fair

³² NELSON, L.D.M., “The North Sea Continental Shelf Cases and Law-Making Conventions.” *The Modern Law Review*, 1972. 35(1): p. 53.

³³ THIRLWAY, H., “The Law and Procedure of the International Court of Justice 1960-1989: Part Seven.” *The British Yearbook of International Law*, 1996. 66(1): p. 50.

approach, emphasizing the importance of unique geographic and equitable factors in maritime boundary decisions.

B. Tunisia and Libyan Arab Jamahiriya Continental Shelf Delimitation Case

In the 1982 CS case between Tunisia and the Libyan Arab Jamahiriya, the ICJ addressed vital international maritime law principles for delimiting the CS between neighboring states. The key issue was defining the CS boundaries between the two nations. They sought the ICJ's guidance to apply equitable principles and relevant circumstances under UNCLOS for boundary demarcation.³⁴ Building on insights from the 1969 NSCS Case, the ICJ noted that while the equidistance method could be used for fairness, it wasn't obligatory if it resulted in inequity. Both countries had reservations about the strict use of equidistance due to potential unfair outcomes but remained open to its use if equitable.

In this case, the ICJ modified the equidistance line in the area's second sector to achieve a fairer division of maritime space between the states involved. This illustrates the Court's commitment to a contextual approach that balances strict legal rules with fairness, making adjustments when necessary to account for the unique aspects of each case. This method involves drawing an equidistance line between the coastlines of the disputing states as a starting point. However, instead of strictly adhering to this line, the ICJ adjusts it based on relevant circumstances to ensure an equitable outcome. These circumstances can include factors like the length of the coastlines, the presence of islands, the economic interests of the states, and other geographical or socio-economic considerations. This method has since become a guiding framework in international maritime law, setting a precedent for how territorial disputes between adjacent states should be resolved, especially when opposite coasts are involved.

C. Bangladesh vs. Myanmar Maritime Delimitation Case (2012)

³⁴ NALDI, G.J., "Case Concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad)." *International and Comparative Law Quarterly*, 1995. 44(3): p. 685.

On March 14, 2012, the ITLOS delivered a key judgment on the maritime boundary dispute between Bangladesh and Myanmar in the Bay of Bengal. This case, significant for being ITLOS's first venture into maritime boundary delimitation, involved defining three boundaries: the territorial sea, a combined EEZs and the continental shelf boundary beyond 200 nautical miles. This ruling set important precedents in international law for maritime boundary delimitation and introduced the concept of "grey zones" - areas beyond one state's 200-mile limit but within another's.³⁵³⁶ The decision has been pivotal in shaping the complex field of maritime law.

In the northeastern Bay of Bengal, Bangladesh's concave coastline raised potential maritime conflicts with India and Myanmar.³⁷ Despite negotiations since the 1970s, no clear maritime boundaries were established by 2009. Tensions escalated when Bangladesh leased hydrocarbon-rich areas to foreign companies, leading to territorial disputes. Seeking resolution, Bangladesh pursued legal arbitration under the UNCLOS. In 2009, they initiated proceedings against both India and Myanmar to delineate TS, EEZ, and CS boundaries. Myanmar agreed to resolve its dispute with Bangladesh at the ITLOS, while the Bangladesh-India issue proceeded under an Annex VII tribunal, expected to deliver a verdict by 2013 or 2014.³⁸ The ITLOS decision in the

³⁵ **CHURCHILL**, R., "Bangladesh/Myanmar Case: Continuity and Novelty in the Law of Maritime Boundary Delimitation." *Cambridge Journal of International and Comparative Law*, 2012. 1: p. 137.

³⁶ **TAN**, K.Y. and A.A. Faruque, "Asian Yearbook of International Law, Volume 18 (2012). Judgment in Maritime Boundary Dispute between Bangladesh and Myanmar: Significance and Implications under International Law." 2016: Brill | Nijhoff. 70.

³⁷ **ISLAM MS**, "Maritime Diplomacy and Regional Cooperation Mechanisms: Insights from the Black Sea and Bay of Bengal." *Millennial Asia*, 2024, (0): p. 15

³⁸ **KALDUŃSKI**, M. and T. Wasilewski, "The International Tribunal for the Law of the Sea on Maritime Delimitation: The Bangladesh v. Myanmar Case." *Ocean Development & International Law*, 2014. 45(2): p. 130.

Bangladesh/Myanmar case was set to inform the ongoing Bangladesh/India tribunal.³⁹

The dispute centered around the end of their land border at the “Naaf River” mouth. Here, the coasts of both countries are relatively straight, and nearby lies St. Martin’s Island, a part of Bangladesh’s territory. The ITLOS examined Bangladesh’s claim that a TS boundary was already established in the 1974 Agreed Minutes, a record of past discussions between the two countries. However, ITLOS ruled these minutes as a conditional understanding, not a legally binding agreement. This decision was based on factors like the lack of proper authority by the Myanmar delegation head under the Vienna Convention on the Law of Treaties and the absence of constitutional processes for such international agreements. Additionally, ITLOS found insufficient evidence to support Bangladesh’s claim of an implicit agreement based on the two nations’ conduct over three decades.⁴⁰ Furthermore, ITLOS did not find Bangladesh’s argument of *estoppel* (preventing Myanmar from denying a previously agreed territorial sea boundary) compelling, as the necessary conditions for *estoppel* in international law were not met.⁴¹

In the absence of an agreement between the states, ITLOS, guided by UNCLOS Article 15, rejected Myanmar’s claim that St. Martin’s Island was a special circumstance affecting the equidistance line. ITLOS decided on a boundary based on equidistance from both countries’ coasts, starting at the Naaf River mouth and running

³⁹ **KALDUŃSKI**, M. and T. Wasilewski, “The International Tribunal for the Law of the Sea on Maritime Delimitation: The Bangladesh v. Myanmar Case.” *Ocean Development & International Law*, 2014. 45(2): p. 130.

⁴⁰ **RIESENBERG**, D.P., “International Tribunal for the Law of the Sea: Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar).” *International Legal Materials*, 2012. 51(4): p. 850.

⁴¹ **PAN**, K., “A Re-Examination of Estoppel in International Jurisprudence.” *Chinese Journal of International Law*, 2018. 16(4): p. 761.

southwest and then southeast, aligning closely with the 1974 Agreed Minutes.⁴²

In this case, ITLOS followed the “equidistance/relevant circumstances” method for setting the single maritime boundary. The process involved creating a provisional equidistance line, then adjusting it if necessary for fairness, and ensuring proportional maritime area allocation. The proportional maritime area allocation refers to coastal length. ITLOS chose base points for the equidistance line, excluding St. Martin’s Island to prevent bias. The tribunal adjusted the boundary only for Bangladesh’s concave coastline, disregarding arguments about St. Martin’s Island and the Bengal depositional system, emphasizing geographical factors.

Adjusting the line, ITLOS selected a starting point where the initial equidistance line unfairly restricted Bangladesh’s maritime projection. The Tribunal followed an azimuth of 215° from this point, coincidentally similar to Bangladesh’s proposed angle-bisector method, ensuring equitable access to maritime zones for both states. In the final stage, ITLOS postponed the proportionality assessment to after delimiting the continental shelf beyond 200 miles, focusing on comparing area ratios allocated to each state with their respective coast lengths. The defined “relevant area” for this assessment included regions beyond 200 miles and was calculated to be 283,471 km. Despite the parties’ differing estimates, ITLOS found that the division of the area was proportionate, with no significant disparities necessitating further adjustments to the boundary.

ITLOS addressed the CS boundary beyond 200 nautical miles, tackling its jurisdiction over this area and deciding to exercise it. ITLOS affirmed its authority over the entire shelf, both within and beyond 200 miles. Although UNCLOS requires states with CS claims beyond 200 miles to submit to the CLCS, ambiguity arises when overlapping claims exist. With both Bangladesh and Myanmar having submitted their

⁴² CHURCHILL, R., “Bangladesh/Myanmar Case: Continuity and Novelty in the Law of Maritime Boundary Delimitation.” *Cambridge Journal of International and Comparative Law*, 2012. 1: p. 137.

claims but lacking mutual consent for CLCS consideration, ITLOS deemed it necessary to proceed with delimitation to avoid jurisdictional stalemates and clarify uncertainties. ITLOS confirmed that both countries had valid claims to the shelf beyond 200 miles based on Article 76(4) of UNCLOS, focusing on geological criteria rather than natural prolongation arguments.⁴³ For the delimitation, ITLOS applied the “equidistance/relevant circumstances approach” uniformly, not differentiating between areas within and beyond 200 miles. The tribunal prioritized geographical features, particularly Bangladesh’s concave coastline, over geological and geomorphological factors.⁴⁴ Thus, the final boundary was established as an extension of the single maritime boundary, ensuring it did not infringe upon the rights of third parties like India.

ITLOS’s decision in this case to delimit the CS beyond 200 miles, while carefully reasoned, suggests that future international courts might need to approach similar situations with caution. In cases where entitlements and overlaps are less apparent, courts could face challenges in making judgments on complex geological facts. Nonetheless, the resolution of this case before ITLOS has cleared the way for the CLCS to consider the individual submissions of Bangladesh and Myanmar, effectively circumventing the potential “jurisdictional black hole” described by Bangladesh.

ITLOS made a significant clarification regarding the concept of a “grey zone” in maritime law. This concept arises when an area falls outside 200 nautical miles from one state but within the same distance from another, creating potential jurisdictional overlap. Specifically, ITLOS’s ruling resulted in a grey zone on the Bangladesh side of the boundary, pertaining only to the continental shelf and not overlapping with Myanmar’s EEZ. ITLOS emphasized that both nations should

⁴³ **VEGA-BARBOSA, G.**, “The Admissibility of Outer Continental Shelf Delimitation Claims Before the ICJ Absent a Recommendation by the CLCS.” *Ocean Development & International Law*, 2018. 49(2): p. 111.

⁴⁴ **QIU, W.** and **W. Gullett**, “Quantitative analysis for maritime delimitation: Reassessing the Bay of Bengal delimitation between Bangladesh and Myanmar.” *Marine Policy*, 2017. 78: p. 49.

exercise their rights and responsibilities in this grey zone in accordance with the UNCLOS, particularly Articles 56, 58, 78, and 79. These articles highlight the need for states to consider each other's rights and duties in overlapping maritime areas. This decision by the Tribunal is unprecedented in international maritime law and brings about a complex scenario for both Bangladesh and Myanmar. Each country must now carefully balance their rights over the continental shelf and the EEZ, adhering to international law and respecting each other's maritime claims.⁴⁵⁴⁶

The practical implications of this grey zone are considerable. It necessitates that both Bangladesh and Myanmar prudently manage activities such as resource exploration or fishing in the water column and activities on the seabed. Such actions must be conducted in a manner that respects the entitlements of both nations, adhering to UNCLOS principles. This grey zone scenario, relatively rare in maritime delimitation cases, presents a complex situation for the involved states. The ITLOS⁴⁷ ruling sets an important precedent in international maritime law for handling such unique jurisdictional overlaps, emphasizing the need for cooperation and mutual respect between nations in managing their maritime spaces.

D. Bangladesh vs. India Maritime Delimitation Case (2014)

On July 7, 2014, the Arbitration Tribunal under Annex VII of UNCLOS resolved the maritime boundary dispute between Bangladesh and India in the Bay of Bengal. Initiated by Bangladesh in 2009, the tribunal's decision marked the conclusion of a long-standing disagreement. The case focused on defining the territorial sea, exclusive

⁴⁵ **NDIAYE**, T.M., "The judge, maritime delimitation and the grey areas." *Indian Journal of International Law*, 2015. 55(4): p. 495.

⁴⁶ **NORDQUIST**, M.H., et al., "Legal Order in the World's Oceans: UN Convention on the Law of the Sea. Chapter 8 ITLOS at Twenty: Reflections on Its Contribution to Dispute Settlement and the Rule of Law at Sea." 2017: Brill | Nijhoff. 190.

⁴⁷ **ISLAM MS**, "Maritime Security in a Technological Era: Addressing Challenges in Balancing Technology and Ethics." *Mersin University Journal of Maritime Faculty*, 2024, 6(1): p. 5.

economic zone, and continental shelf boundaries. Notably, this ruling was the second instance of a tribunal addressing the continental shelf delimitation beyond 200 nautical miles, contributing significantly to the evolution of international maritime boundary law.⁴⁸

The Arbitral Tribunal confirmed its jurisdiction based on UNCLOS provisions, with no objections from either country. Given the absence of any declarations in line with Article 287(3) of the UNCLOS, and no written exclusions of dispute types as per Article 298 UNCLOS, the Tribunal unanimously affirmed its jurisdiction. It was noted by the Tribunal that submissions by both countries regarding the outer limits of the CS beyond 200 nautical miles were under consideration by the CLCS in accordance with Article 76 UNCLOS.⁴⁹ The Tribunal's decision followed the precedent set in the Bangladesh/Myanmar case, emphasizing that UNCLOS allows for delineation of the CS and dispute resolution to proceed concurrently. This approach clarified that the delineation process is not a prerequisite for delimitation under international law.

The Arbitral Tribunal undertook the task of delineating a unified boundary line that would encompass the TS, EEZ, and the CS. This process was divided into three distinct phases, each tailored to the specific legal considerations relevant to these different maritime zones. The Tribunal's approach involved first delimiting the TS, then the EEZ and CS within 200 nautical miles, and finally, addressing the CS extension beyond 200 nautical miles. The decision on the delimitation line, while largely agreed upon, included a partial dissent by one of the Tribunal members, Rao.⁵⁰

⁴⁸ **KALDUŃSKI, M.**, "A Commentary on Maritime Boundary Arbitration between Bangladesh and India Concerning the Bay of Bengal." *Leiden Journal of International Law*, 2015. 28(4): p. 828.

⁴⁹ **JAFARI, a.**, A. Shaheydar, and s. rasoulpourNalkiyashary, "Maritime Delimitation zones in the Light of Judicial and Arbitratory Awards (Case Study of Bengal Bay)." *The Quarterly Journal of Judicial Law Views*, 2023. 25(90): p. 59.

⁵⁰ **SUAREZ, S.V.**, "The Arbitral award in the Bangladesh/India Maritime Delimitation in the Bay of Bengal and Its Contribution to International Maritime Boundary Law: A Case Commentary." *Maritime Safety and Security Law Journal*, 2016(2): p. 83.

The Arbitral Tribunal conducted a thorough delimitation of the TS, EEZ, and the CS up to and beyond 200 nautical miles, in line with UNCLOS standards. For the TS, the Tribunal employed the “median/equidistance principle,” as outlined in Article 15 of UNCLOS. The provisional equidistance line was drawn using key points from both Bangladesh and India, with adjustments made for special circumstances, such as the alignment with the Radcliffe Award’s land boundary terminus.⁵¹

For the EEZ and continental shelf within 200 nautical miles, the Arbitral Tribunal applied the “equidistance/relevant circumstances method” as per UNCLOS, adjusting the provisional equidistance line for geographical and socio-economic factors. This addressed Bangladesh's concerns about its concave coastline and fishing dependence. The same method was extended to the CS beyond 200 nautical miles, again adjusting for the coastline’s concavity to ensure equitable maritime boundaries for both Bangladesh and India. In all stages of the delimitation, the Tribunal conducted a thorough examination of geographical, legal, and socio-economic aspects, ensuring an equitable distribution of maritime spaces between Bangladesh and India, while also setting a precedent in maritime delimitation jurisprudence. This case was a rare opportunity to refine legal guidelines for such delimitations. However, the Tribunal’s approach didn’t fully explore the issue. It missed clarifying the overlap of entitlements to the extended shelf, a crucial aspect of delimitation. The claim for a shelf beyond 200 nautical miles requires geological evidence, as per UNCLOS Article 76(4), but the Tribunal relied on the mutual recognition of claims by the countries, simplifying the process. This approach left key legal and geological aspects of extended continental shelf claims underexplored, not fully utilizing the opportunity to set a precedent in international maritime law.

⁵¹ FARHANA, F., “Consistency and Predictability in International Tribunals Decision on Maritime Delimitation Cases From 2009 to 2019.” Indonesian Journal of International Law., 2020. 18: p. 23.

The Tribunal created a “grey area” beyond 200 nautical miles from Bangladesh but within India's 200-mile limit. This led to a unique arrangement where Bangladesh has rights over the CS resources, while India controls the EEZ above. The countries were directed to collaboratively manage this overlap. This scenario mirrors a similar “grey area” in the Bangladesh/Myanmar case, allowing Bangladesh CS access beneath its neighbors' EEZs. The Tribunal's decision reflects the evolving complexities in maritime boundary delimitation, especially given environmental changes like rising sea levels. Notably, the Tribunal chose not to consider low-tide elevations or potential future coastal changes in their decision-making. This alignment with the ITLOS ruling in the Bangladesh/Myanmar case demonstrates a consistent judicial approach to outer continental shelf delimitation in international law.

CONCLUSION

Maritime delimitation is a complex and multifaceted issue. Analyzing it reveals important legal, geopolitical, and geographical aspects of international maritime law. The study covers the history of maritime boundary demarcation, emphasizing the shift from traditional methods to modern legal frameworks, mainly under UNCLOS. Initially grounded in practices like the median and thalweg line principles, maritime boundary demarcation has undergone a significant transformation. This evolution is evident in the codification processes of the 1958 Geneva Conventions and the 1982 UNCLOS, which introduced and refined principles like Equidistance/Special Circumstances and Equitable Principles. The research highlights a significant jurisprudential shift from equitable principles to a normativity approach in maritime delimitation. This shift is marked by a growing preference for the Equidistance/Relevant Circumstances principle, seeking a balance between predictability and fairness. The study underscores the role of geographical and non-geographical factors in maritime delimitation. Factors like the general configuration of coasts, the presence of small islands, and proportionality play critical roles in shaping maritime boundaries.

Several case decisions are addressed in this article. The complexities and challenges associated with the application of delimitation principles and strategies to resolve international conflicts are exemplified by these cases. The resolutions achieved under ITLOS, and the Annex VII Arbitral Tribunal underscore the effective application of international law in resolving boundary conflicts.

The findings from this study reveal the criticality of a rule-based approach in international maritime law, particularly emphasizing the Equidistance/Relevant Circumstances principle. This principle, while ensuring predictability and fairness, also accommodates the unique geographical and non-geographical aspects of each maritime boundary dispute. Furthermore, the Bangladesh maritime boundary disputes with India and Myanmar highlight the effective application of international law in resolving complex geopolitical conflicts. These disputes demonstrate the importance of international legal platforms, such as ITLOS and the Annex VII Arbitral Tribunal, in achieving equitable resolutions based on the principles of international maritime law.

The transition from equitable principles to a more normative approach in maritime delimitation underscores the evolving nature of international maritime law. This shift, favoring predictability and stability, reflects a balancing act between adherence to established legal norms and the unique circumstances of each delimitation case. The study also underscores the importance of incorporating scientific methods and technical expertise in the delimitation process. This approach is vital for an objective determination of relevant coastlines and ensuring proportionality in maritime boundary demarcation. Based on the case discussions presented, it is evident that actionable steps are necessary for future maritime disputes and policy-making. These steps should prioritize the clear and consistent interpretation of UNCLOS principles, alongside the integration of scientific methods to objectively determine relevant coastlines and ensure proportionality. International tribunals, in particular, should aim for greater uniformity in applying UNCLOS, especially in cases involving intricate maritime boundaries. Additionally, there is a pressing need for specific legal frameworks to manage overlapping jurisdictions in "grey areas" beyond 200 nautical

miles. The delimitation processes should strike a balance between legal principles and the geopolitical context to arrive at feasible solutions. Furthermore, non-geographical factors such as economic needs and historical usage should be given greater consideration in these processes. Finally, it is essential to establish mechanisms for the regular review and updating of maritime boundaries to accommodate changes in geography and international law.

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