

Clarification And Refinement Of The Rules And Methods For Maritime Delimitation Through The Precedents Of International Courts And Tribunals

As far as the multilateral nature of disputes concerning maritime delimitation, the international community may be required to examine its means for settling those disputes.

In its Judgment in the *Black Sea* case, the International Court of Justice, hereafter referred to as the “Court,” stated that the three-stage approach had been specified with precision as the delimitation method. The Court explained these stages as follows: the first stage is the establishment of a “provisional delimitation line, employing methods that are geometrically objective and also appropriate for the geography of the area”; the second is the examination of the factors calling for the adjustment or shifting of the provisional line in order to achieve an equitable result; the third stage is the verification of the result. The Court emphasized the importance of the “median line” and “equidistance line” in the first stage when determining a provisional line that is geometrically objective and appropriate for the geography of the area. In fact, international courts and tribunals have supported the three-stage approach since the Court rendered the Judgment in the *Black Sea* case.

In this paper, I review the process in which international courts and tribunals have contributed to the precision of the three-stage approach and discuss the tasks of international courts and tribunals in the settlement of disputes concerning maritime delimitation.

Maritime Delimitation before the Adoption of UNCLOS: Delimitation of the Continental Shelf

To examine the rules and methods for maritime delimitation, it is necessary to refer to the Court's findings in the *North Sea Continental Shelf* cases, because they contributed to the formulation of the basic notion of the continental shelf, hereafter referred to as CS, and influenced its subsequent development.

The Court identified three ideas which have underlain the development of the legal régime of the CS: first, the obligation of the Parties to enter into meaningful negotiations; second, the obligation of the Parties to act in such a way that equitable principles are applied; and third, the nature of the CS as the natural prolongation of the land territory. In regard to the third point, the Court further noted the principle that "land dominates the sea" and "the land is the legal source of the power which a State may exercise over territorial extensions to seaward." In response to the Parties' arguments based on the notion of natural prolongation in the *Tunisia/Libya* case, the Court concluded that the notion of natural prolongation provided no practical criterion for the delimitation because of the single unity of the CS at issue in this case. Consequently, it applied equitable principles to the delimitation and examined various factors as relevant circumstances.

UNCLOS and Maritime Delimitation

(1) Coexistence of the Two Institutions of EEZ and CS in UNCLOS

UNCLOS' drafters included two institutions beyond the territorial waters, exclusive economic zone, hereafter referred to as EEZ and the CS. These two institutions are distinct in nature but closely related. While the CS, as the Court found in its Judgment in the *North Sea Continental Shelf* cases, had been considered an institution of customary international law and the notion of "natural prolongation" constituted a part of the definition of the CS in Article 76, paragraph 1, Article 55 provides that EEZ is a new institution introduced by this Convention and its definition is based only on the distance from the coast in Article 57. Each coastal State is entitled to exercise

its sovereign rights within the maritime area covered by these definitions. Thus, these provisions constitute the bases for the entitlement of the coastal states with regard to the maritime areas beyond their territorial seas.

(2) Need for the Harmonization of the Rules and Methods for the Delimitation of EEZ and CS
Although the drafters attempted to clarify the rules and methods for the delimitation of the respective institutions, they were unsuccessful in reaching the agreement. As a compromise of various views, an identical expression is admitted in Articles 74 and 83, which lack concrete rules and methods for delimitation. Because of the remaining ambiguity in the rules and methods for delimitation in those provisions, it has been left for international courts and tribunals to interpret and apply the common expression of the delimitation to “achieve an equitable solution” in cases where the Parties cannot settle their dispute by mutual agreement. In particular, when the dispute concerning maritime delimitation relates to the EEZ and CS, international courts and tribunals are required to consider the harmonization of the rules and methods for the delimitation of these different institutions.

(i) *Libya/Malta* Case (Judgment of 1985)

The Court has already considered this issue in its Judgment in the *Libya/Malta* case. Although the subject before it related only to the delimitation of the CS, the Court considered the effects of the co-existence of these two institutions and admitted the close link between EEZ and CS explaining as follows:

“This does not mean that the concept of the continental shelf has been absorbed by that of the exclusive economic zone; it does however signify that greater importance must be attributed to elements, such as distance from the coast, which are common to both concepts.”

As a result of the emphasis on the criteria of distance, the Court first determined the provisional

median line and adjusted it by taking into consideration all the relevant circumstances in order to achieve an equitable result.

(ii) Cases Subsequent to the *Libya/Malta* Case

In cases following the *Libya/Malta* case, international courts and tribunals have faced the delimitation of territorial seas, EEZ and CS. Thus, the criterion of distance has become even more important to “achieve an equitable solution.” In the *Qatar v. Bahrain* case, the Court followed the approach taken in previous cases and found that “the equidistance/special circumstances rule, which is applicable in particular to the delimitation of the territorial sea, and the equitable principles/relevant circumstances rule, as it has been developed since 1958 in case-law and State practice with regard to the delimitation of the continental shelf and the exclusive economic zone, are closely interrelated.”

In the *Cameroon v. Nigeria*, the Court stated as follows:

“The Court has on various occasions made it clear what the applicable criteria, principles and rules of delimitation are when a line covering several zones of coincident jurisdiction is to be determined. They are expressed in the so-called equitable principles/relevant circumstances method. This method, which is very similar to the equidistance/special circumstances method to be employed in the delimitation of the territorial sea, involves first drawing an equidistance line, then considering whether there are factors calling for the adjustment or shifting of that line in order to achieve an ‘equitable result.’”

The method for determining the provisional equidistance line and its shifting or adjustment was employed by the Arbitral Tribunals pursuant to compulsory arbitration under Part XV of the UNCLOS in the cases of *Barbados/Trinidad and Tobago* and *Guyana v. Suriname*.

International courts and tribunals have generally employed the method of provisional equidistance and its shifting or adjustment by taking into consideration the relevant circumstances as far as

there is no compelling reason. For example, in the *Caribbean Sea* case, the Court stated that the equidistance/relevant circumstances method did not automatically have priority over other methods and there may be factors that make its application inappropriate. Because of the special geographical and geological features of the coasts involved, it could not identify base points and construct a provisional equidistance line for the SMB delimiting maritime areas off the Parties' mainland coasts and decided to employ the angle-bisector method.

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