

PRINCIPLE OF DELIMITATION OF CONTINENTAL SHELF AREAS BETWEEN STATES

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I. INTRODUCTION

A continental shelf is a term that refers to the ledges that protrude from the continental land mass into the ocean. This is enveloped with a comparatively shallow zone of water (approximately 150-200 metres deep). This eventually mixes into the depths of the ocean which is around thousands of metres deep. These shelves occupy around eight percent of the total area of ocean water and their size varies relatively from place to place. It is the extended boundaries of every continent and the adjoining coastal plain. This was a component of the continent during glacial periods, but remains below the sea during interglacial periods.² The continental shelves are loaded with oil and natural gas resources and quite frequently are a host to huge scale grounds for fishing.

Article 1 of the Convention on the Continental Shelf, 1958³ defined the shelf based on its exploitability instead of depending upon the conventional geological definition, which referred to the seabed and subsoil of the submarine zones next to the coast but not within the territorial sea that extends to a depth of 200 metres or '*beyond that limit to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas*'.⁴

This provision has caused certain limitations, given that technology is developing steadily. There is mechanism which can be used to mine resources from the ocean bed which could be from a depth exceeding 200 metres. This essentially means that the external boundaries of the ledge, in accordance with the jurisdiction of the coastal state, were as a result very ambiguous. Article 1 therefore is considered as customary international law by the Court in the *North Sea Continental shelf case*.⁵ The Court emphasized this and declared that:

*"The submarine areas concerned may be deemed to be actually part of the territory over which the coastal state already has dominion in the sense that although covered with water, they are a prolongation or continuation of that territory, an extension of it under the sea."*⁶

A. Natural prolongation

In the North Sea Continental shelf cases,⁷ the Court held that the rights and privileges of the

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² Ian Brownlie, *Principles of Public International Law*, Oxford University Press, 6th edn., 2003, p. 206

³ Convention on the Continental Shelf 1958, viewed on 6 December 2012, <http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_1_1958_continental_shelf.pdf>

⁴ Ibid

⁵ ICJ Reports, 1969, pp. 3, 39; 41 ILR, pp. 29, 68.

⁶ Ibid.

⁷ Ibid.

coastal state with respect to the area of the continental shelf that forms a natural prolongation of its territory merges into the sea exist ipso facto and ab initio. This happens by virtue of its autonomy over the land and also as an addition to it, in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. The development of the notion of the exclusive economic zone (EEZ) has to a certain extent confused the issue. This is because under Article 56 of the Convention of 1982, the coastal state has territorial rights over all the natural resources of its EEZ, including the resources present in the seabed. Accordingly, states have two sources of rights and privileges with regard to the seabed⁸ although claims with respect to the economic zone, need to be specifically made. It is also possible, that the geographical extent of the ledge may be different from that of the 200-mile EEZ.

B. Distance criterion

This approach has been modified under Article 76(1) of the United Nations Convention On The Law Of The Sea, 1982 which provides the scope of the outer limit of the continental shelf and states that:

“the continental shelf of a coastal state comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of continental margin does not extend up to that distance”

Where the continental boundaries actually extend beyond 200 miles, geographical conditions are to be taken into consideration while establishing the outer limits, which under no circumstance should exceed either 350 miles from the baseline or one hundred miles from the 2,500-metre isobath. In cases where the shelf does not exceed beyond 200 miles from the coast, natural prolongation is supplemented as a guiding principle. Article 4 of Annexure II to the Convention provides that a coastal state which is intending to create an outer limit to its continental shelf exceeding 200 nautical miles, has to submit details of such limits to the Commission along with supporting scientific documents and technical data at the earliest but under any circumstance within a decade of the entry into force of the Convention for that country.¹⁰

C. Rights over continental shelf under the 1982 Convention

The state sharing coastal boundaries may exercise their ‘sovereign rights’ over the region of their continental shelf for exploring and exploiting the natural resources under article 77 of the 1982

⁸ International Court In the Libya/Malta Continental Shelf case, ICJ Reports, 1985, pp. 13,33;8 1 ILR, pp. 238,265, stated that the two concepts were linked together in modern law’

⁹ United Nations Convention On The Law Of The Sea, 1982, viewed on 7 December 2012, <http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm>

¹⁰ Ibid.

Convention. These rights are such that no other state may conduct such activities without the consent of the coastal state. These sovereign rights are independent of occupation or express proclamation.¹¹

The Convention expressly defines that the rights of the coastal state do not influence the status of the adjacent waters as high seas or the airspace above the territorial waters.¹² Subject to its right to take reasonable measures for exploration and exploitation of the continental ledge, the coastal state may not obstruct the laying or maintenance of cables or pipelines on the shelf. In addition, such exploration must not produce any unjustified interference with navigational activities, fishing or the conservation of the flora and fauna of the sea.¹³

D. Where the continental shelf of a state may extend beyond 200 miles

Article 82 of the 1982 Convention provides that the coastal state is compelled to make contributions in cash or kind with respect to the exploitation of the inorganic resources of the continental shelf exceeding the 200-mile boundary. The disbursements are to be made every year after the first five years of production at the location in question on a descending scale up to the twelfth year, after which they are to stay stagnated at seven percent. These monetary contributions are to be paid to the International Seabed Authority, which shall re-allocate them to state parties on the basis of 'equitable sharing criteria, taking into account the needs of developing nations especially the landlocked nation.'¹⁴

II. NORTH SEA CONTINENTAL SHELF CASES AND NATURAL PROLONGATION

The equidistance principle does not signify the general rule of international law as held in the North Sea Continental Shelf cases.¹⁵ After this ruling and reasonable jurisprudence, applicable rules of customary international law have taken the shape of 'equitable principles' as discussed in the course of the judgments of the International Court and other tribunals.

III. PRINCIPLES DERIVED FROM THE CASE

The principles that are derived from the North Sea Continental Shelf cases¹⁶ may be summarized up as follows:-

- a. The exercise of equidistance method of delimitation is not obligatory between the parties.

¹¹ Article 77(4) of the 1982 Convention and article 2(4) of the 1958 Continental Shelf Convention

¹² Article 78 of the 1982 Convention and article 3 of the 1958 Continental Shelf Convention. The reference to 'high seas' in the latter is omitted in the former for reasons related to the new concept of the exclusive economic zone.

¹³ Articles 78 and 79 of the 1982 Convention and Articles 4 and 5 of the 1958 Continental Shelf Convention.

¹⁴ *Supra* n. 1 at 210.

¹⁵ ICJ Reports (1969), 3 ILR 41, 29.

¹⁶ *Ibid.*

- b. The use of single method of delimitation, since there is no other method, is in all circumstances obligatory.
- c. The principles of international law as applicable to the rule of delimitation between the contesting parties of the regions of the continental shelf around the North Sea which concern the parties beyond the partial boundary was determined by the agreements of 1 December 1964 and 9 June 1965 respectively. Some of them are as follows:
 - 1. Delimitation is to be effected by mutual agreement consistent with equitable principles, in such a manner so as to leave a possibility to an individual party for all those sections of the continental shelf that make up a natural prolongation of its landmass into the area under the sea.
 - 2. If the above principle is applied, the delimitation essentially leaves to the parties with areas that overlap. Such areas are to be divided amongst them in an agreed proportion or failing agreement, equally, unless they choose to adopt a regime of common jurisdiction, or exploration of the zones that overlap.
- d. In the course of discussions between nations, the following factors are to be taken into account:-
 - 1. General configuration, which means a proper outline of coasts of contesting parties, as well as existence of any unusual features.
 - 2. So far as easily ascertainable, the physical, geographical and geological structure, and undersea natural resources, of the continental shelf zone involved.
 - 3. Factor of reasonable level of proportionality, which a delimitation when carried out in consonance with equitable principles ought to conclude between the nature and extent of the continental shelf areas pertaining to the coastal State (the state in question) and the size of its coast measured in the common direction of the coastline, while also taking into consideration, of the effects, which may be actual or prospective, of any other continental shelf delimitation between adjacent States in same area.

IV. TUNISIA/LIBYA CONTINENTAL SHELF CASE AND EQUITABLE PRINCIPLES

In this case¹⁷ the international court ruled a major shift from the natural prolongation principle to the principles of equity. It also did not dismiss the conception given in the former for deciding this case.

¹⁷ ICJ Reports, 1982, p. 18; 67 ILR, p. 4.

V. PRINCIPLES DERIVED FROM THE TUNISIA-LIBYA CASE

The Tunisia-Libya case primarily concerned the delimitation of the continental shelf. The general guidelines stated by the Court and its manner of scrutiny appear to adapt the delimitation of the EEZ and of the unitary maritime boundaries outlining the continental shelf. In this relation, the following significant points stand out¹⁸:

- a. The commonly accepted principle that delimitation is to be applied in consonance with equitable principles is a basic guideline that can be applied to almost every maritime delimitation. Even if this formula is vague and general in itself, the Court has provided other indications of the ideologies and situations that are applicable to maritime delimitation.
- b. Delimitation in consonance with equitable principles will respect the natural prolongation of the coastal boundaries of the nations into and under the sea. This delimitation will correspond to the general geological and geographic association of the coasts of the nations, and therefore will not give such an effect to significant features. This will result in a strip that detaches the coast of a party from the maritime zones located in front of that coast. The rule of non encroachment appears to be relevant equally to the shelf and to the adjoining waters.
- c. The equitable nature of delimitation will be testified by the principle of proportionality as outlined by the Court in the North Sea cases.¹⁹
- d. Finally, the Court will give relative importance to the previous conduct of the parties where such conduct portrays that both parties established the same line as a boundary/limit for significant reasons over a relatively long period of time.

VI. EVOLUTION POST TUNISIA/LIBYA CONTINENTAL SHELF CASE

In the Anglo-French Continental shelf case²⁰, it was reiterated that the correctness of the equidistance method or any other accepted method for the reason of effecting an equitable delimitation is a function of the geographical circumstances of each individual case. The methodological aspect here is noteworthy because it is based upon the requisite geographical structure. A meticulous approach is less apparent in the Tunisia/Libya case, but the prominence upon the solution, was reflected in recent cases. Article 83 of the 1982 Convention, indeed, provides that delimitation 'shall be effected by agreement on the basis of international law in order to achieve an equitable solution'.

In the Gulf of Maine case,²¹ which focussed on the delimitation of both the continental shelf

¹⁸ Ibid.

¹⁹ Malcolm N. Shaw, *International Law*, Cambridge University Press, 5th edn., 2003, p. 530.

²⁰ 54 ILR, p. 6.

²¹ ICJ Reports, 1984, p. 246; 71 ILR, p. 74

and fishing zones of Canada and the United States of America²², the bench of the ICJ provided a couple of principles which spoke about what common international law prescribes in most cases of maritime delimitation. They are elaborated as follows:-

- a. There is no possibility of unilateral delimitations. These had to be managed and effected by mutual agreement between the parties or, if and where necessary, with the help of third parties.
- b. Secondly, the Court held that the principle of delimitation is to be used by the application of equitable criteria and by the use of rational methods capable of ensuring, with respect to the geographic design of the area, an equitable result.²³

VII. CONCLUSION

Each maritime boundary dispute is unique or monotypic and has fundamental importance in any consideration of the law of maritime boundary delimitation. The emergence of numerous new states, with the consequent increase in maritime boundaries, has served to highlight the significance of this idea.

This has rendered inadequate the application of a global or general rule such as is embodied in the principle of equidistance as is evident from the case laws as well. This fact has militated against the reception of the principle of equidistance in both the conventional and the customary law of maritime boundary delimitation. A corrective role for equity is thus effectively ruled out. Equity cannot be viewed as correcting the application of a rule of law of equidistance where that rule would lead to hardship on either of the parties. Emphasis has to be laid on achievement of an equitable solution in the particular situation by applying all relevant principles.

The variety of maritime situations also prevented the Third United Nations Conference on the Law of the Sea from producing any definitive rules on maritime boundary delimitation, investing tribunals dealing with such disputes with wide powers of discretion.

The task of the judge is to produce an equitable and just result in the particular case. To reach such a result, the judge has to take into account the relevant circumstances and the governing principles which would do justice to both the parties. This can be achieved not only by balancing the various circumstances, but also, by balancing the interests of the conflicting parties so as to serve their cause.

²² In this case a 'single maritime boundary' was requested by the parties, ICJ Reports, 1984, pp. 246, 253; 71 ILR, 17. 80

²³ Thomas J. Trendl, Maritime Delimitation And The Gulf Of Maine Case: A Guide For The Future Or Merely 'Slicing The Pie?'; 12 S. Ill. U. L.J. 599