

# Maritime Zones Subject to Boundary Delimitation Under International Law

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## Abstract

Territorial sea, contiguous zone, exclusive economic zone, and continental shelf are the maritime zones that, in the majority of circumstances, would be subject to boundary delimitation. States may occasionally need to define the boundaries of additional maritime areas, including the internal waterways. Before 1945, delimitation between States with opposite or near coasts was explained in this article. The International Law Commission began its work in 1949 by giving precedence to the high seas regime, which encompassed the continental shelf, and concentrating when UNCLOS was formed.

## INTRODUCTION

### Historical background of maritime law

The territorial rights of states in the sea take on different forms in maritime history. In the 18th century, the territorial waters of states were defined as being a cannon shot from land, however, later defined as three nautical miles (n.m). (ANAND, 1983)

In The Hague 1930, The League of Nations attempted to codify international law concerning the oceans, but never managed to reach an agreement. (Friedheim, negotiating the new ocean regime, 1993)

Then, in 1945, US President Truman declared that the natural resources of the continental shelf were under the exclusive jurisdiction of the coastal state. (Brown, 2001)

This rapidly advanced discussions on what rights states have beyond a limited (3 n.m.) territorial sea. This was later ordered in the 1958 Geneva Convention on the Continental Shelf, which preserved the prospect of exclusive coastal state jurisdiction over offshore seabed resources. (Boyle, 2005).

In this regard, some states started expanding their territorial seas from three to twelve n.m., as negotiations of international management for the oceans were ongoing. This led to conflict around adjacent and overlapping maritime spaces. (Elsevier, 2020)

In 1956–1958 and 1960, Law of the Sea Conferences was held without reaching final agreement on the extent of the territorial sea or the extension of State rights and jurisdiction extending further offshore, beyond the territorial sea. (Østhagen, 2022)

UNCLOS provided the legal rationale for states to implement new maritime zones in addition to the 12-n.m. territorial sea, with a 200-n.m. resource or fisheries zone as called the Exclusive Economic Zone – EEZ, driven largely by growing awareness of the possibilities for marine natural resource extraction (hydrocarbons, fisheries, minerals) and the desire of states to secure potential future gains. (Friedheim, 1993)

Following various claims by various coastal states to resource areas, including exclusive fishing zones, the international community has agreed on a comprehensive legal framework for the EEZ as defined under Part V of UNCLOS. (United Nation, 1982) As states began to expand their maritime zones, the concept of straight baselines also emerged. It is the line drawn along the coast from which the seaward limits are measured. (the fletcher school, tufts university, 2021). Furthermore, with UNCLOS, it is concluded that States have sovereign rights to continental shelves up to 200 nautical miles wide and, if possible, beyond 200 nautical miles. Where the continental shelf is a continuation of the coastal state's land mass by submitting such boundary information to the Commission on the Limits of the Continental Shelf (CLCS) the limit of these claims has been determined to be up to 350 nautical miles. From a country's baseline, or not to exceed 100 n.m. beyond the point where the seabed is 2500 m deep. (Riesenberg, 2014) UNCLOS is now part of a larger framework of international politics and law with 168 ratifications by 2022. (Curtis, Mallet-Prevost, Colt & Mosle LLP., 2022).

### **Maritime zones subject to boundary delimitation**

The maritime zones which would be in most cases subject to boundary delimitation are the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf. In some rare cases, States may need to delimit other maritime zones, such as the internal waters. The seaward limits of the different maritime zones, as provided for in the 1982 Convention, are 12 nautical miles for the territorial sea, 24 nautical miles for the contiguous zone, and 200 nautical miles for the exclusive economic zone. The continental shelf extends to the outer edge of the continental margin, or to a distance of 200 nautical miles whereas the outer edge of the continental margin does not extend up to that distance. When the margin extends beyond 200 nm, the outer limits of the continental shelf are determined by a complex formula contained in article 76, paragraphs 4 to 6, of the 1982 Convention. The provisions of the 1982 Convention concerning the maritime zones as well as the empowerment of archipelagic States to draw under certain conditions straight baselines have all enhanced the importance of baselines since it is from them that the outer limits of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf are measured. Despite that, though, it has to be noted that the baselines are not necessarily always used as basepoints for a maritime boundary delimitation. (United Nation, 2000)

### **BASELINES**

Article 5 of the 1982 Convention states what constitutes a normal baseline: and articles 6, 7 and 9 to 13 deal with particular geographical situations or other factors justifying a departure from the rule of the normal baseline. Article 14, on the other hand, states that the coastal State may determine baselines by any of the methods provided for in the 1982 Convention to suit different situations. (Rothwell, Elferink, Scott, & Stephens, 2015)

A baseline, as defined by the United Nations Convention on the Law of the Sea, is the line along the coast from which the seaward limits of a state's territorial sea and certain other maritime zones of jurisdiction

are measured, such as a state's exclusive economic zone. Normally, a sea baseline follows the low-water line of a coastal state. The significance of baselines lies in the fact that a state's rights to maritime jurisdiction are measured from such baselines, the outer limits of the various territorial, economic and fishing zones being at a specified distance from the baseline. The establishment of baselines is a necessary step for a state to be able to claim zones of maritime jurisdiction, as it is essential to determine the points from which the breadth of such zones are measured. An understanding of a state's baselines is thus fundamental to the assessment of its maritime claim. The rules for determining the baseline are determined by The United Nations Convention on the Law of the Sea (UNCLOS). As a line that marks the inner limit of the territorial sea and the outer limit of internal waters, the normal baseline for measuring these limits is the low-water line along the coast as marked on largescale charts officially recognized by the coastal state. One of the most important facts to recognize is that the baseline and all of the zones are ambulatory. They are subject to change due to accretion and erosion of the shore. Most countries measure their normal baseline on the basis of bathymetric information published by a Hydrographic Office (HO), which is sometimes part of the Navy. Paper charts have mainly been used in the past, and nowadays Electronic Navigational Charts (ENCs) are used as well. (Aguilar & Verlaan, 2018)

### **Normal baselines**

Article 5 of the 1982 Convention defines normal baselines, and articles 6 and 13 deal with particular cases of normal baselines associated with islands situated on atolls or islands having fringing reefs, and with low-tide elevations.

Normal baselines are defined as "the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State" (art. 5). The term "chart" means a nautical chart intended for use by mariners as an aid to navigation. The scale to be chosen for such special baseline charts will depend on the scale of the charts available (or, if not available, land maps) and the complexity of the low-water line. It is recommended that in general the scale should be within the range of 1:50,000 to 1:200,000. A decision should be made on the number of charts needed to accommodate the area and the scale of such charts. The smaller the number of charts needed to depict the baseline adequately the better. (Chan V. , 2017)

### **Low waterline**

The low waterline is the intersection of the plane of low water with the shore. The low-water mark on a chart is the line depicting the level of the chart datum. The level used as the chart datum is usually a plane so low that the tide will not frequently fall below it. In practice, this will be close to the lowest tidal level. The low waterlines along the coast are a fact irrespective of their representation on charts. The maritime zones claimed by the coastal State exist even if no particular low water line has been selected or if no charts have been officially recognized. The scale of a chart is an expression of the relationship between a distance measured on the earth's surface and the length that represents it on the chart. Thus, a scale of 1:50,000 means that one unit on the map represents 50,000 units on the ground. That means that a chart with a scale of 1:50,000 is of a larger scale than a chart of scale 1:100,000. The large-scale charts allow more detail to be shown and are usually kept up to date for minor changes than small-scale charts. Article 5 of the 1982 Convention refers to "large-scale charts". In general, it is sufficient to refer to the appropriate published charts in order to obtain details of the "normal baseline". (Handbook on the Delimitation of Maritime Boundaries , 2000)

### **Reefs**

The two terms to be considered in article 6 (Reefs) of the 1982 Convention are "islands situated on atolls" and "islands having fringing reefs". Oceanic atolls have localized foundations, usually of volcanic origin, at depths of at least 550 meters. These are most common in the western Pacific Ocean. Shelf atolls are found on the continental shelf and usually have foundations shallower than 550 meters. Finally, compound atolls consist of recent structures surrounding the remains of former atolls. (Kawaley, 1992)

### **Low tide elevations**

Pursuant to article 13 of the 1982 Convention, a low-tide elevation is "a natural/y formed area of land which is surrounded by and above water at low tide but submerged at high tide". It may be used as the baseline only if all or part of that elevation lies within the breadth of the territorial sea measured from the mainland or an island. If the low-tide elevation lies wholly outside the breadth of the territorial sea measured from the mainland or an island, it may not be used as part of the baseline. Therefore, scrutiny will be necessary to determine if a feature on a chart is a naturally formed low-tide elevation that can be used as part of the territorial sea baselines. As regards archipelagic baselines, they may be drawn to low-tide elevations only if either they meet the criterion of distance (as for normal baselines) or they have a lighthouse or similar installation permanently above water built on them. (The University of Oslo, 2022)

### **Straight baselines**

Article 7 allows a coastal State to draw straight baselines in place of or in combination with normal baselines, provided that "the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity". The 1982 Convention does not define what constitutes a coastline which is "deeply indented and cut into", "fringe of islands" or "immediate vicinity". The straight baselines must be drawn to satisfy several requirements: they must not depart from the general direction of the coast, the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters, they shall not be drawn to and from low-tide elevations, and they shall not cut off the territorial sea of another state from the high seas or an exclusive economic zone. (Office of Ocean and Polar Affairs, 2014)

## **SPECIAL LOCAL APPLICATIONS**

### **Mouths of rivers**

In accordance with article 9 of the 1982 Convention, if a river flows directly into the sea, the baseline is "a straight line across the mouth of the river between points on the low-water line of its banks". Article 9 gives no guidance on the selection of the basepoints of the closing line except the requirement that they must be on the low-water line of the river's banks. Although there is a reference to the mouth of the river, this is a zone that can be difficult to define in some cases, i.e., especially along a long coast with a large tidal range. There cannot be any precise answer which will apply to every type of river mouth and this probably explains the general nature of article 9. Closing lines for rivers should either be shown on charts or the coordinates of the ends of the lines should be listed (art. 16). (Prescott & Schofield, 2005)

### **Bays**

The issue of bays is dealt with in article 10 of the 1982 Convention. However, it has to be noted that the provisions of that article do not cover three classes of bays. The first paragraph of article 10 excludes bays that belong to more than one state. Its last paragraph excludes historic bays and bays converted to internal

waters by straight baselines under article 7. The second paragraph provides a subjective description and an objective test by which juridical bays can be identified. The description employs four phrases. The phrases "a well-marked indentation", "more than a mere curvature of the coast", the references to "penetration [which] is in such proportion to the width of its mouth" and "land-locked waters" describe a configuration so that the bay is surrounded on all sides but one. The second paragraph deals with the technical problem of comparing the area of the bay with the area of the appropriate semicircle. Quite clearly the diameter of the semicircle is equivalent to the width of the mouth or, if there are islands near its mouths, to the combined widths of the various mouths. Furthermore, it is explicit that the water area of the bay is deemed to include islands within the bay. 3 7. Paragraphs 4 and 5 of article 10 specify that the maximum length of any closing line or Lines is 24 nm. If the mouth of the bay exceeds that distance, the closing line may be drawn anywhere within the bay so as to enclose the maximum area of water possible while maintaining the 24 nautical miles closing line criterion. Article 16 requires that coastal States give "due publicity" to the location of closing lines for bays and deposit copies of charts and lists of geographical coordinates with the Secretary-General of the United Nations (see paras. 63 - 67). (Historic Bays: Memorandum by the Secretariat of the United Nations, 2009)

### **Ports**

Under Article 11, "the outermost permanent harbour works which form an integral part of the harbour systems" are regarded as forming part of the coast. This would include features such as detached breakwaters, which form an integral part of the harbour system. On the other hand, offshore installations and artificial islands are not to be considered permanent harbour works. (Sharma & Sharma, 2010)

### **Roadsteads**

Article 12 corresponds to article 9 in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, except that the 1958 requirement to show the boundaries of roadsteads on charts has been transferred to article 16 of the 1982 Convention. Article 12 does not deal with baselines but with the outer limit of the territorial sea. It seems likely that in 1958 when many states still claimed 3-nautical-mile territorial seas, there were a number of XQ which lay outside the territorial seas. With a 12-nautical-mile territorial sea, the number of roadsteads still outside the territorial seas has been considerably reduced. (Schofield C. C., 2001)

### **Archipelagic baselines**

Article 47 contains nine paragraphs which deal with the rules for drawing archipelagic baselines and the recording and publication of archipelagic baselines. The first three paragraphs set out several requirements that the archipelagic baselines must satisfy:

- The archipelagic baselines must include the main islands.
- The archipelagic baselines must enclose an area of sea at least as large as the area of enclosed land but not more than nine times that of the land area.
- No archipelagic baseline may exceed 100 nautical miles in length; except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles; and

- The archipelagic baselines must not depart to any appreciable extent from the general configuration of the archipelago.

Each of these requirements must be examined in turn. The expression "main islands" could be interpreted in a variety of ways. Depending on the interest of the State, "main islands" might mean:

- The largest islands.
- The most populous islands.
- The most economically productive islands; or
- The islands which are pre-eminent in a historical or cultural sense.

Since there is no restriction on the number of segments a state can draw and since the more segments used the closer the system is likely to be to the general configuration of the archipelago, it will usually be possible to adjust the number of segments to secure the necessary number of very long baselines. The requirement that the baselines should not depart to any appreciable extent from the general configuration of the archipelago is similar to the requirement in article 7 that baselines should conform to the general direction of the coast. As with the method of straight baselines, archipelagic baselines must not be drawn in a manner which would cut off the territorial sea of a neighboring state from the high seas or the exclusive economic zone. The last two paragraphs in article 47 deal with the recording and publication of archipelagic baselines and their deposit with the Secretary-General of the United Nations (see paras. 63-67). (Handbook on The Delimitation of Maritime Boundaries, 2000)

### **Maritime zones**

The maritime zones recognized under international law include internal waters, the territorial sea, the contiguous zone, the exclusive economic zone (EEZ), the continental shelf, the high seas and the Area. The breadth of the territorial sea, contiguous zone, and EEZ (and in some cases the continental shelf) is measured from the baseline determined in accordance with customary international law as reflected in the 1982 Law of the Sea Convention [off site link](#). The limits of these zones are officially depicted on NOAA nautical charts. The limits shown on the most recent chart edition take precedence. The boundaries of these maritime zones between coastal States are established through international agreements entered into by those nations. (Fletcher Maritime, 2022)

### **Internal Waters**

Internal (or inland) waters are the waters on the landward side of the baseline from which the breadth of the territorial sea is measured. The coastal State has full sovereignty over its internal waters as if they were part of its land territory. The coastal State may exclude foreign flag vessels from its internal waters subject to the right of entry of vessels in distress. The right of innocent passage does not apply in internal waters. Examples of internal waters include rivers, canals, and lakes, including The Great Lakes. (National Oceanic and Atmospheric Administration, 2022)

### **Territorial Sea**

Each coastal State may claim a territorial sea that extends seaward up to 12 nautical miles (nm) from its baselines. The coastal State exercises sovereignty over its territorial sea, the airspace above it, and the seabed and subsoil beneath it. Foreign flag ships enjoy the right of innocent passage while transiting the territorial sea subject to laws and regulations adopted by the coastal State that are in conformity with the Law of the Sea Convention and other rules of international law relating to such passage. The U.S. claimed a 12 nm territorial sea in 1988 (Presidential Proclamation No. 5928, December 27, 1988). (United Nations, 2019)

### **Contiguous Zone**

Each coastal State may claim a contiguous zone adjacent to and beyond its territorial sea that extends seaward up to 24 nm from its baselines. In its contiguous zone, a coastal State may exercise the control necessary to prevent the infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea and punish infringement of those laws and regulations committed within its territory or territorial sea. Additionally, in order to control trafficking in archaeological and historical objects found at sea, a coastal State may presume that their removal from the seabed of the contiguous zone without its consent is unlawful.

In 1972, the U.S. proclaimed a contiguous zone extending from 3 to 12 miles offshore (Department of State Public Notice 358, 37 Fed. Reg. 11906 (June 15, 1972), consistent with the 1958 UN Convention on the Territorial Sea and Contiguous Zone. In 1999, eleven years after President Reagan extended the U.S. territorial sea to 12 miles, President Clinton proclaimed a contiguous zone extending from 12 to 24 nm offshore (Presidential Proclamation No. 7219, August 2, 1999), consistent with Article 33 of the Law of the Sea Convention. (Roach & Smith, 2012)

### **Exclusive Economic Zone**

Each coastal State may claim an Exclusive Economic Zone (EEZ) beyond and adjacent to its territorial sea that extends seaward up to 200 nm from its baselines (or out to a maritime boundary with another coastal State). Within its EEZ, a coastal State has: (a) sovereign rights for the purpose of exploring, exploiting, conserving, and managing natural resources, whether living or nonliving, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents, and winds; (b) jurisdiction as provided for in international law with regard to the establishment and use of artificial islands, installations, and structures, marine scientific research, and the protection and preservation of the marine environment, and (c) other rights and duties provided for under international law. (World Seas, 2019).

### **Continental Shelf**

The continental shelf of a coastal State is comprised of 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 nm from its baselines where the outer edge of the

continental margin does not extend up to that distance. (The extent of the continental shelf can also be limited by a maritime boundary with another coastal State.)

Where the outer edge of a coastal State's continental margin extends beyond 200 nm from its baselines, the outer limits of its continental shelf are determined in accordance with Article 76 of the Law of the Sea Convention. The portion of a coastal State's continental shelf that lies beyond the 200 nm limit is often called the extended continental shelf. A coastal State has sovereign rights and exclusive jurisdiction over its continental shelf for the purpose of exploring it and exploiting its natural resources, as well as for other purposes specified in the UN Convention on the Law of the Sea. The natural resources of the continental shelf consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil. (Pinto, 2020)

### **High Seas**

The high seas are comprised of all parts of the sea that are not included in the exclusive economic zone, the territorial sea or the internal waters of a State, or in the archipelagic waters of an archipelagic State. (Attard, Fitzmaurice, & Gutiérrez, 2014)

### **Area**

The Area is comprised of the seabed and subsoil beyond the limits of national jurisdiction. It does not include superjacent waters (*i.e.*, the water column) or the air space above those waters. The Area and its resources are the common heritage of mankind, and no State may claim or exercise sovereignty or sovereign rights over any part of the Area or its resources. LOSC. arts. 1(1), 135-137. (National Oceanic and Atmospheric Administration, 2022)

### **Delimitation between states with opposite or adjacent coasts**

#### **Pre-international law commission**

Prior to 1945, the delimitation between States with opposite or adjacent coasts had been restricted to the territorial sea and to straits, gulfs, bays and lakes, except the Agreement of February 26, 1942, between the United Kingdom and Venezuela concerning the boundary in the Gulf of Paria. In a comprehensive study of the subject between 1648 and 1939, Sang-Myon Rhee has reached the broad conclusion that the boundary in the lakes, straits, gulfs, bays and the territorial sea between States with opposite coasts had generally, but not always, followed the median line, but that between the States with adjacent coasts, the boundary line had been varied and had followed a perpendicular line from the terminal point of the land boundary at sea, or a perpendicular to the general direction of the coastline, or a latitude or a longitude, or an equidistance line modified to remove the distorting effect of small islands or coastal projections. In the latter case, he concluded that "Indeed, there is no basis to suppose that the equidistance method should have been adopted as a general rule of delimitation. The Hague Codification Conference of 1930 had not dealt with the question of delimitation between States with opposite or adjacent coasts. It was concerned mainly with the questions relating to the territorial sea, including the breadth of the territorial sea and the measurement thereof, and the question of the contiguous zone. In the Proclamation concerning the continental shelf issued by the President of the United States, Harry S. Truman, on September 28, 1945,



the delimitation criteria referred to the equitable principles as follows: In cases where the continental shelf extends to the shores of another State or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. In an article published in 1951, S. Whittemore Boggs explained at some length the principles and techniques concerning the median or equidistance line as the boundary between the States with opposite or adjacent coasts and expressed the view that these were of 'universal applicability' and independent of the width of the belts of waters claimed, including the contiguous zones and the continental shelf. the principles and techniques concerning the median or equidistance line as the boundary between the States with opposite or adjacent coasts and expressed the view that these were of 'universal applicability' and independent of the width of the belts of waters claimed, including the contiguous zones and the continental shelf.

### **International Law Commission: 1949-1956**

The International Law Commission started its work in 1949 by giving priority to the regime of the high seas, which included the continental shelf. In 1951, the Commission, pursuant to a recommendation by the United Nations General Assembly, decided to initiate work on the regime of the territorial sea. The Special Rapporteur for both these items was J.P.A. Francois of the Netherlands. In the Draft Articles on the Continental Shelf and Related Subjects, adopted by the Commission in 1951, it was suggested that the continental shelf boundary should be established by agreement between the parties, failing which by reference to arbitration *ex aequo et bono*. Article 7 of these Draft Articles and the Commentary thereto read as follows:

#### **Article 7**

Two or more States to whose territories the same continental shelf is contiguous should establish boundaries around the continental shelf by agreement. Failing agreement, the parties are under the obligation to have the boundaries fixed by arbitration.

1. Where the same continental shelf is contiguous to the territories of two or more adjacent States, the drawing of boundaries may be necessary around the continental shelf. Such boundaries should be fixed by agreement among the States concerned. It is not feasible to lay down any general rule which States should follow; and it is not unlikely that difficulties may arise. For example, no boundary may have been fixed between the respective territorial waters of the interested States, and no general rule exists for such boundaries. It is proposed therefore that if agreement cannot be reached and a prompt solution is needed, the interested States should be under an obligation to submit to arbitration *ex aequo et bono*. The term 'arbitration' is used in the widest sense and includes possible recourse to the International Court of Justice.

2. Where the territories of two States are separated by an arm of the sea, the boundary between their continental shelves would generally coincide with some median line between the two coasts. However, in such cases the configuration of the coast might give rise to difficulties in drawing any median line, and such difficulties should be referred to arbitration.<sup>50</sup> In 1952, the Special Rapporteur in his first report on the regime of the territorial sea drafted an article on the delimitation of the territorial sea of the two adjacent States which would generally apply the median line. The Commission however, decided to consult the States about their practice and suggested that the Special Rapporteur might consult some experts for clarification of certain technical aspects of the problem. The Special Rapporteur accordingly re-served the provision on the territorial sea delimitation in his Second Report on the subject. It was against this

background that the Special Rapporteur presided over a meeting of the Committee of Experts held at The Hague between April 14 and 16, 1953, who were consulted in their personal capacity on the technical aspects of territorial sea delimitation between States with opposite or adjacent coasts. The questions posed to the Committee of Experts and their answers there to as embodied in their Report were as follows:

How should the international boundary be drawn between two countries, the coasts of which are opposite each other at a distance of less than 2T miles? To what extent have islands and shallow waters to be accounted for?

An international boundary between countries the coasts of which are opposite each other at a distance less than 2 T miles should as a general rule be the median line, every point of which is equidistant from the baselines of the States concerned. Unless otherwise agreed between the adjacent States, all islands should be taken into consideration in drawing the median line. Likewise, drying rocks and shoals within T miles of only one State should be considered, but similar elevations of undetermined sovereignty, that are within T miles of both States, should be disregarded in laying down the median line. There may, however, be special reasons, such as navigation and fishing rights, which may divert the boundary from the median line. The line should be laid down on charts of the largest scale available, especially if any part of the body of water is narrow and relatively tortuous. How should the (lateral) boundary line be drawn through the adjoining territorial sea of two adjacent States? Should this be done A. by continuing the land frontier? B. by a perpendicular line on the coast at the intersection of the land frontier and the coastline? C. by a line drawn vertically on the general direction of the coastline? D. by a median line? If so, how should this line be drawn? To what extent should islands, shallow waters, and navigation channels be accounted for? 1. After thoroughly discussing different methods the Committee decided that the (lateral) boundary through the territorial sea - if not already fixed otherwise - should be drawn according to the principle of equidistance from the respective coastlines. 2. In a number of cases this may not lead to an equitable solution, which should be then arrived at by negotiation. Remark regarding the answers to VI and VII: The Committee considered it important to find a formula for drawing the international boundaries in the territorial waters of States, which could also be used for the delimitation of the respective continental shelves of two States bordering the same continental shelf. The Commission decided to be guided by the recommendations by the Committee of Experts concerning the territorial sea boundary but embodied them first in Article 7 on the continental shelf boundary in 1953 in a simpler and elastic manner as follows:

#### Article 7

1. Where the same continental shelf is contiguous to the territories of two or more States whose coasts are opposite to each other, the boundary of the continental shelf appertaining to such States is, in the absence of agreement between those States or unless another boundary line is justified by special circumstances, the median line every point of which is equidistant from the base lines from which the width of the territorial sea of each country is measured.

2. Where the same continental shelf is contiguous to the territories of two adjacent States, the boundary of the continental shelf appertaining to such States is, in the absence of agreement between those States or unless another boundary line is justified by special circumstances, determined by application of the principle of equidistance from the base lines from which the width of the territorial sea of each of the two countries is measured. In 1954, the Commission adopted two separate Articles, namely, Articles 15 and

16, on the territorial sea boundary between States with opposite or adjacent coasts, respectively, guided by the recommendations of the Committee of Experts. These articles read as follows:

#### Article 15

Delimitation of the territorial sea of two States the coasts of which are opposite each other

The boundary of the territorial sea between two States the coasts of which are opposite each other at a distance less than twice the breadth of the territorial sea is, in the absence of agreement of those States, or unless another boundary line is justified by special circumstances, the median line every point of which is equidistant from the base lines from which the width of the territorial sea of each country is measured.

#### Article 16

Delimitation of the territorial sea of two adjacent States

The boundary of the territorial sea between two adjacent States is drawn, in the absence of agreement between those States or unless another boundary line is justified by special circumstances, by application of the principle of equidistance from the baselines from which the width of the territorial sea of each of the two countries is measured.<sup>2</sup> After further consideration, and in the light of the comments of States, the Commission decided to combine the Articles on the boundary in straits and the territorial sea boundary between States with opposite coasts into a single Article, which thus also dealt with the assimilation of small resulting enclaves. However, two separate Articles on the territorial sea boundary between States with opposite and with adjacent coasts respectively were maintained. The drafting was also similar to the Article on the continental shelf boundary, which stated that the boundary, in the absence of agreement between those States or unless another boundary line was justified by special circumstances, is the median line in the case of States with opposite coasts or is drawn "by the application of the principle of equidistance in the case of States with adjacent coasts. By 1956, the Commission completed its study of the law of the sea and prepared a set of 73 Articles with commentaries and recommended that these be now considered by a plenipotentiary international conference. The Articles dealing with the maritime boundary concerning the territorial sea and the continental shelf between States with opposite or adjacent coasts read as follows:

#### **Delimitation of the territorial sea in straits and off other opposite coasts Article 12**

1. The boundary of the territorial sea between two States, the coasts of which are opposite each other at a distance less than the extent of the belts of territorial sea adjacent to the two coasts, shall be fixed by agreement between those States. Failing such agreement and unless another boundary line is justified by special circumstances, the boundary line is the median line every point of which is equidistant from the nearest points on the baselines from which the breadths of the territorial seas of the two States are measured.

2. If the distance between the two States exceeds the extent of the two belts of territorial sea, the waters lying between the two belts shall form part of the high seas. Nevertheless, if, as a consequence of this delimitation, an area of the sea not more than two miles in breadth should be entirely enclosed within the

territorial sea, that area may, by agreement between the coastal States, be deemed to be part of the territorial sea.

3. The first sentence of the preceding paragraph shall be applicable to cases where both coasts belong to the same coastal State. If, as a consequence of this delimitation, an area of the sea not more than two miles in breadth should be entirely enclosed within the territorial sea, that area may be declared by the coastal State to form part of its territorial sea.

4. The line of demarcation shall be marked on the officially recognized large-scale charts.

#### **Delimitation of the territorial sea of two adjacent states Article 14.**

1. The boundary of the territorial sea between two adjacent States shall be determined by agreement between them. The absence of such agreement, and unless another boundary line is justified by special circumstances, the boundary is drawn by application of the principle of equidistance from the nearest points of the baseline from which the breadth of the territorial sea of each country is measured.

2. The boundary line shall be marked on the officially recognized large-scale charts.

#### **Article 72**

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite to each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the baselines from which the breadth of the territorial sea of each country is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the baselines from which the breadth of the territorial sea of each of the Two countries is measured.

In its commentary to Article 12 above, the Commission recognised that special circumstances would probably necessitate frequent departures from the mathematical median line, but "it thought it advisable to adopt, as a general rule, the system of the median line as the basis for delimitation".\* In its commentary to Article 14, it referred to the other possible lines of delimitation, such as the extension of the land frontier out to the sea as far as the outer limits of the territorial sea, a line at right angles to the coast at the land frontier point, a geographical parallel, or a line at right angles to the general direction of the coastline, and agreed with the Committee of Experts of 1953 in disapproving of them, and in upholding the equidistance line. However, it considered 'that this rule should be very flexibly applied', In its commentary to Article 72, the Commission said that it had adopted the same principles for the continental shelf delimitation as for the territorial sea in Articles 12 and 14 and added the following: As in the case of the boundaries of the territorial sea, provision must be made for departures necessitated by an exceptional configuration of the coast, as well as the presence of islands or of navigable channels. This case may arise fairly often so

that the rule adopted is fairly elastic. No separate provisions were made by the International Law Commission for the delimitation of the contiguous zone between the States concerned.

### **The 1958 Conference and the Geneva Conventions**

The First United Nations Conference on the Law of the Sea, 1958, accepted the draft Articles proposed by the International Law Commission, with small changes. It combined them into a single Article for the territorial sea boundary, deleted the reference to straits and enclaves, drafted the median line negatively as a residual rule, and added a reference to "historic title" in addition to 'special circumstances' for varying the application of the median line. It also added a separate Article on the delimitation of the contiguous zone boundary. It kept the Article on the continental shelf boundary with separate paragraphs dealing with the States with opposite and those adjacent coasts. As to the continental shelf boundary, several amendments were proposed, including one by Iran to ignore the islands located within an enclosed sea between States with opposite coasts and to delimit the continental shelf boundary with reference to the coastlines of the States concerned, another by Yugoslavia to delete references to special circumstances, and a third by Venezuela suggesting that the boundary between the States concerned may be settled by agreement or by other means recognised in international law. None of these amendments was accepted. The following provisions on delimitation were included in the 1958 Conventions: Regarding the delimitation of the territorial sea, Article 112 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958, provided as follows:

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reasons of historic title or other special circumstances to delimit the territorial sea of the two States in any way which is at variance with the provision.

2. The line of delimitation between the territorial seas of the two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognised by the coastal States.

Regarding the contiguous zone delimitation, Article 24 of the same Convention provided as follows:

3. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured. No reference was made here to historic title or other special circumstances.

Regarding the delimitation of the continental shelf, Article 6 of the Geneva Convention on the Continental Shelf, 1958, provided as follows:

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial seas of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraph 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land. Although there was an element of nuance between the delimitation criteria for the territorial sea and the continental shelf, and in the latter case separate paragraphs made reference to States with opposite coasts and States with adjacent coasts, the basic criterion for the maritime boundary embodied in the 1958 Convention was the median or equidistance line unless another boundary line was justified by special circumstances. There was not much controversy about the general application of the provisions of the 1958 Convention on the Territorial Sea and the Contiguous Zone on the delimitation of the territorial sea boundary, and these were by and large accepted and applied in State practice as well as in UNCLOS and have been embodied in the United Nations Convention on the Law of the Sea, 1982. Whether the rule embodied in Article 6 of the 1958 Convention on the Continental Shelf was a conventional rule, or a rule of customary international law applicable to all States whether or not parties to the Convention, became a matter of contention before the International Court of Justice and other tribunals as well as a subject of intensive controversy and negotiations at the UNCLOS since December 1973. These aspects will be dealt with in Parts Three and Four respectively.

### **The UNCLOS and the 1982 Convention**

The question of the delimitation of the maritime boundary between States with opposite or adjacent coasts became an intensely controversial one at the UNCLOS between 1974 and 1982, particularly concerning the exclusive economic zone and the continental shelf. The principal controversy was concentrated on the delimitation criteria. A large group of delegations supported the delimitation criteria as embodied in the 1958 Conventions, giving a pride of place to the principle of the median or the equidistance line. Another large group of delegations supported the view expressed by the International Court of Justice in the North Sea Continental Shelf cases, 1969, and gave pride of place to the equitable principles in settling the delimitation of the maritime boundary. Various attempts were made to combine the two criteria, particularly in Negotiating Group on maritime boundaries between 1978 and 1980, but without much success. Ultimately, a solution was arrived at in August 1981 which was supported by both the equity group and the equidistance group of delegations at UNCLOS and embodied in the Draft Convention on the Law of the Sea, which was adopted at UNCLOS by a vote in April 1982 and opened for signature and ratification in December 1982. The solution was, however, strongly objected to by some States, including Turkey and Venezuela who voted against the Draft Convention in April 1982 and did not sign the Convention in December 1982. As mentioned above, there was not much controversy about the delimitation criteria for the territorial sea boundary, and by and large, the provisions of the 1958 Convention on the Territorial Sea and the Contiguous Zone were followed. No provision was made concerning the delimitation of the contiguous zone boundary. Regarding the delimitation of the exclusive economic zone and the continental shelf boundary, no distinction was made between the two concerning

the delimitation criteria. Nor was any distinction made between States with opposite or adjacent coasts. Apart from the delimitation criteria, the questions of the provisional or inter-in arrangements pending the conclusion of a delimitation agreement, and of the settlement of delimitation disputes, were also discussed extensively at UNCLOS, and solutions were arrived at. (Jagota, 1985)

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