

SETTLEMENT OF MARITIME DELIMITATION DISPUTES WITHIN COMPLEX GEOGRAPHICAL SETTINGS

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I. INTRODUCTION

The topic of this Panel is a relevant issue, which is continually a subject of growing interest in the international community. The ever-existing need for clear maritime boundaries has become even more urgent. The prospects of exploiting newly accessible natural resources are the result of recent technological development.

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This article focuses on recent case law, particularly the latest three international judgments, and provides a brief comment on various critical aspects of these decisions. These aspects include: The impact of islands on maritime delimitation; selection of base points; determination of relevant coasts; determination of relevant maritime area; and the delimitation methodology followed by adjudicating bodies. Further points are made in the latter section on how the current state of delimitation law may apply to some existing controversies.

II. MARITIME DELIMITATION: PROGRESS AND THE CASE LAW IN LIGHT OF THE MOST RECENT JUDGMENTS

The progress of maritime delimitation has been achieved over some decades, mainly through case law. Advancement in this particular field of international law was born out of the difficult negotiation history of relevant international legal instruments. Notably, Articles 74 and 83 of the Law of the Sea Convention (LOSC) make no reference to a specific delimitation method, except requiring the parties to achieve an equitable result.¹ Article 15 on the delimitation of territorial sea, on the other hand, refers to equidistance method, balanced with special circumstances and historic title, none of which are clearly defined.² Particularly, negotiations concerning the delimitation of the continental shelf and exclusive economic zone (EEZ) during the Third Conference on the Law of the Sea made it clear that the two camps, the supporters of the equidistance method and those arguing for equitable principles, would never come to an agreement on the delimitation method.³ Therefore, the resulting arrangement, which has come forward at a rather late stage of negotiations, was more of a framework instead of a substantial solution.

This identical framework contained in Articles 74 and 83, called by some an “empty shell,” lacked any clear directive as to the method to be used in the delimitation of the continental shelf and EEZ.⁴ The provisions call for an agreement in the first place “in order to achieve an equitable

1. U.N. Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force Nov. 16, 1994), *available at* http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf (last visited Feb. 16, 2014) [hereinafter LOSC].

2. For the negotiation history of Article 15, *see* UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY 135 (Myron H. Nordquist et al. eds., vol. 2, 1993).

3. *See* LOSC, *supra* note 1, arts. 74, 83.

4. *Id.*

solution.”⁵ If such an agreement is not reached, the dispute settlement procedures will come into play. Confronted with these somehow unsatisfactory references to the “international law” and “equitable solution,” international courts and tribunals had to develop a law of maritime delimitation through cautious steps taken over time. Although one may hardly find every aspect of case law in this field developed in the right direction, or judgments perfectly consistent, the efforts made by international adjudication thus far have put forward a body of normative rules and methods for delimitation. Thus, those international bodies deserve credit.

Customarily, the North Sea Continental Shelf Cases are taken as the starting point for the case law on maritime delimitation, although there are several previous relevant cases in legal history. Here, the most recent three cases will be focused on: The *Black Sea Case*, the *Case of Bay of Bengal*, and the *Case Between Nicaragua and Colombia*, with a particular focus on the impact of islands. The judgments rendered in these cases by the International Court of Justice (ICJ) and the International Tribunal on the Laws of the Sea (ITLOS) represent the current state of case law, and as such, they may provide a useful framework for discussion.

Before moving on to the specifics of each case, some of their commonalities should be highlighted with respect to geographical settings, issues raised and the methodology followed. In all three cases, there was some degree of island involvement, which prompted a discussion on their effect on the ultimate delimitation line. In all of these cases, the ICJ or the ITLOS followed a three-step methodology in addressing the dispute. These steps involved:

- 1) Establishing a provisional equidistance line;
- 2) Evaluating the presence and effects of relevant circumstances, and whether any adjustment is needed on the provisional equidistance line; and finally, and
- 3) Applying a disproportionality test to the (modified) equidistance line.

Additionally, base points, relevant coasts, and relevant areas have been issues under dispute in all cases. Finally, there was a significant degree of concavity of coastline, at least in two of these cases, which called for further discussion as to whether the equidistance line produced a cut off effect to the detriment of one side.

5. L. D. M. Nelson, *The Roles of Equity in the Delimitation of Maritime Boundaries*, 84 AM. J. INT'L L. 837, 844–45 (1990) (indicating that reference to equidistance was not agreed upon during the negotiations on Articles 74 and 83).

A. *Black Sea Case (Romania v. Ukraine)*

In *Romania v. Ukraine*, the parties have asked the ICJ to determine the delimitation line between them in the northwestern part of the Black Sea. Given the concave nature of the overall coastline, it was critical for the Court to determine relevant coasts and base points to establish the provisional equidistance line. The presence of gulfs and firths was particularly problematic. The Court decided not to take into consideration the coasts of Karkinitzka Gulf, which is part of Ukraine, when calculating the length of each side's relevant coasts.

The more controversial issue, however, was determining the degree of impact the Ukrainian island of Serpents had on the overall delimitation line.⁶ Having heard conflicting views of the parties, the Court neither took the islet into account when establishing the provisional equidistance line, nor considered it as a relevant circumstance calling for an adjustment of that line. On this point, the Court relied on its own precedent where it "decide[d] not to take account of very small islands or decide[d] not to give them their full potential entitlement to maritime zones, should such an approach have a disproportionate effect on the delimitation line."⁷ Having considered the arguments of parties on relevant circumstances and having applied the disproportionality test, the Court found no basis to make adjustments on the delimitation line it had established.⁸

B. *Delimitation in the Bay of Bengal (Bangladesh v. Myanmar)*

The *Dispute Concerning Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal*, was noteworthy for being the first delimitation case heard by ITLOS.⁹ This case was further known for the Tribunal exercising its jurisdiction to delimit the continental shelf beyond 200 nautical miles.¹⁰

The subject island in this dispute was the Bangladeshi St. Martin's Island, which is located off the endpoint of Bangladesh-Myanmar land

6. Maritime Delimitation in the Black Sea (Rom. v. Ukr.), Judgment, 2009 I.C.J. 62, ¶¶ 186–88 (Feb. 3), available at <http://www.icj-cij.org/docket/files/132/14987.pdf> (last visited Feb. 16, 2014).

7. *Id.* ¶ 185 (recognizing the twelve-mile territorial sea of the islet since there was already an agreement on this point between the two sides).

8. *Id.* ¶ 187.

9. Dispute Concerning Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal (No. 16) (Bangl. v. Myan.), Case No. 16, Judgment of Mar. 14, 2012, available at http://www.itlos.org/fileadmin/itlos/documents/cases/case_no_16/1-C16_Judgment_14_02_2012.pdf (last visited Feb. 16, 2014).

10. *Id.* ¶¶ 450–62.

border.¹¹ Despite Myanmar's arguments to the contrary, the Tribunal accorded full effect to the Island in the delimitation of the territorial sea by taking into account the size, population, and economic activities over the island.¹² The Tribunal also took note of the assurances given by Bangladesh to Myanmar with respect to unimpeded use of the right of passage of the latter's ships through Bangladeshi territorial sea.¹³ However, when it came to determining base points for the purpose of establishing the provisional equidistance line, the Tribunal excluded St. Martin's Island as a source of base points.¹⁴ Furthermore, because it would have resulted in "blocking the seaward projection from Myanmar's coast," the Tribunal did not give any effect to St. Martin's Island in drawing the delimitation line, the EEZ, and the continental shelf.¹⁵

Taking into account the concavity of the Bangladeshi coastline and the potential for a cut-off effect, the Tribunal exercised a certain adjustment on the equidistance line, and decided a single maritime boundary.¹⁶ It also decided that the same line should continue beyond the two hundred nautical miles in order to mark the lateral boundary of the extended continental shelves of the two parties.¹⁷

C. *Territorial and Maritime Dispute (Nicaragua v. Colombia)*

The ICJ settled the third case under analysis in this article, the *Territorial and Maritime Dispute Between Nicaragua and Colombia* in November 2012. The significant issue in this case involved the presence of remote Colombian islands, which were separate from their own mainland and facing the Nicaraguan mainland. After settling the sovereignty dispute over certain islands and islets, the Court turned to the delimitation issue. It was critical to determine the relevant coasts and the applicable maritime area. This was because Colombia had aimed at limiting the dispute to the area between the Nicaraguan mainland and the area westward of the Colombian islands. However, due to the fact that overlapping claims have extended 200 miles from the Nicaraguan coasts, the Tribunal decided that

11. *Id.* ¶ 131.

12. *Id.* ¶ 153.

13. *Id.* ¶¶ 174–76.

14. *Dispute Concerning Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal*, Case No. 16, ¶ 265.

15. *Id.* ¶¶ 318–19.

16. *Id.* ¶ 323.

17. *Id.* ¶ 462.

the entire maritime space within that distance, including the area east of the Colombian islands, would form the relevant area.¹⁸

The Court has essentially adopted the Colombian approach on two issues. It first acknowledged that the Colombian islands should have a twelve mile territorial sea because there was no overlap with the Nicaraguan territorial sea. Secondly, it rejected the Nicaraguan arguments for enclaving the Colombian islands.¹⁹ On this basis, the Court selected base points on the Nicaraguan islands off the mainland and on relatively the more significant Colombian islands, disregarding small uninhabitable features.²⁰ It went on establishing a provisional delimitation line by taking reference of these base points.²¹ Then, taking into account the disparity on coastal lengths, it adjusted this provisional line by giving three times more weight to Nicaraguan base points than Colombian base points.²² On the other hand, the Court has applied enclave solution for two remote islets, and did not grant any maritime zone beyond a twelve mile territorial sea to “rocks” within the scope of LOSC Article 121(3).²³

III. SOME OBSERVATIONS ON CRITICAL ISSUES REFERRED TO IN CASE LAW

A. *Equidistance Method—Three-Stage Delimitation Methodology*

These most recent ICJ and ITLOS judgments have been decided unanimously (with the exception of one judge dissenting in *Bay of Bengal*),²⁴ which suggests a growing unified understanding in the application of delimitation methodology. This three-stage delimitation methodology, however, should be taken into consideration with some caution, particularly when it comes to more complex geographical settings. Having in mind that the ICJ applied “angle-bisector method” in the

18. Territorial and Maritime Dispute (Nicar. v. Colom.), Judgment, 2012 I.C.J. 124, ¶ 159 (Nov. 19), available at <http://www.icj-cij.org/docket/files/124/17164.pdf> (last visited Feb. 16, 2014).

19. *Id.* ¶ 230 (positing that creating enclaves for Colombian islands would adversely affect “orderly management of maritime resources, policing and the public order of the oceans, which would be better served by a simpler and more coherent diversion of the relevant area”).

20. *See generally id.* ¶ 238.

21. *Id.* ¶ 234.

22. *Id.*

23. *Territorial and Maritime Dispute*, 2012 I.C.J. ¶ 238.

24. *See Dispute Concerning Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal*, Case No. 16, ¶ 506(4)–(5) (the part of the judgment regarding the single maritime boundary).

Nicaragua versus Honduras case,²⁵ there may be a need for applying other methods of delimitation, depending on the geographical context. The truth is that the equidistance method *per se* has never been endorsed, as the leading method either in treaty law or in case law. Its use may prove to be more convenient in simple geographical contexts, but it is the geography and other circumstances of each case that determine the applicable method.²⁶ The ultimate goal is always to achieve an equitable result.

B. *Single Delimitation Boundary*

There is a growing tendency to use a single delimitation line for both the continental shelf and EEZ. The Courts, however, while seeking a single maritime boundary solution, have so far exercised extreme caution concerning the mandate given to them by the parties to the dispute in this regard.

C. *The Selection of Base Points*

Although the selection of base points and baselines is basically an issue within the discretion of the respective coastal state (LOSC Articles 5 to 16), the ICJ or ITLOS settling a dispute does not consider itself bound by these selections of the coastal state.²⁷ The Court selects the base points for the purpose of delimitation by taking into account all relevant factors and the principles of equity.²⁸

D. *Islands*

1. Selection of Islands as Base Points

At a different level, the selection of base points also comes forward as a matter of mitigating the extreme outcomes that may result from a strict application of equidistance method.²⁹ Base points should reflect the physical geography of the relevant coasts.³⁰ In seeking to avoid an

25. Territorial and Maritime Dispute in the Caribbean Sea (Nicar. v. Hond.), Judgment, 2007 I.C.J. 659, ¶ 83 (Oct. 8), available at <http://www.icj-cij.org/docket/files/120/14075.pdf> (last visited Feb. 16, 2014).

26. See also *Dispute Concerning Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal*, Case No. 16, ¶ 235.

27. See generally *Maritime Delimitation in the Black Sea*, 2009 I.C.J. ¶ 137; *Territorial and Maritime Dispute*, 2012 I.C.J. ¶ 200.

28. *Maritime Delimitation in the Black Sea*, 2009 I.C.J. ¶ 185.

29. *Id.* ¶ 144.

30. *Id.* ¶ 137.

“unwarranted distortion of the delimitation line,” international courts and tribunals may disregard islands when selecting a base point. Even an island, which is granted a full territorial sea, may be discounted for the purposes of the delimitation of the continental shelf and EEZ. Examples include the Serpents Island in the Black Sea and St. Martin’s Island in the Bay of Bengal.³¹

2. “Rocks Which Cannot Sustain Human Habitation or Economic Life of Their Own”³²

After a gradual progression of the ICJ decisions on declaring the customary law nature of the paragraphs of Article 121, the Court finally found Paragraph 3 of the said Article to reflect customary international law.³³ One may argue that the impact of this statement is rather limited as far as the overall delimitation law is concerned since entitlement and delimitation are related, yet separate issues. In the case between Nicaragua and Colombia, however, it is significant that the Court adopted an enclave solution for remote and minor islets.³⁴ This may be a precedent particularly with respect to minor insular features, which are close to another state’s mainland.

3. Whether and To What Extent Islands May Generate Continental Shelf and EEZ in a Particular Context

LOSC Article 121, Paragraph 2 recognizes that islands are entitled to territorial sea, contiguous zone, continental shelf, and EEZ,³⁵ just as other land territory. This provision, however, needs to be effectuated by taking into account the specificities of each individual case in the process of maritime delimitation. In situations where islands create a cut-off effect to the detriment of one side, these islands often have limited or no effect on

31. *Id.* ¶ 149.

32. *Territorial and Maritime Dispute*, 2012 I.C.J. ¶ 139.

33. *Id.* It should be recalled that the Court has previously refrained from qualifying Article 121(3) as a rule of customary international law. See *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bahr.)*, Judgment, 2001 I.C.J. 87, ¶ 185 (Mar. 16), available at <http://www.icj-cij.org/docket/files/87/7027.pdf> (last visited Feb. 16, 2014).

34. *Territorial and Maritime Dispute*, 2012 I.C.J. ¶ 238.

35. *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain*, 2001 I.C.J. ¶ 185.

the delimitation line.³⁶ This point is well established in earlier case law and in state practice. The recent aforementioned judgments reiterate this point.

Neither Serpents Island in the Black Sea, nor St. Martin's Island in the Bay of Bengal, were given any effect on the single maritime boundary.³⁷ Although certain Colombian islands were granted continental shelf and EEZ in the Caribbean Sea, the base points selected on these islands were nevertheless given a one-third reduced effect.³⁸ Furthermore, in cases of concave coasts, the cut-off effect against the mainland might become more acute, calling for an adjustment of the provisional line, as ITLOS did in *Bay of Bengal*.³⁹ Hence, a cut-off effect, which may result from islands on the wrong side or coastal configuration, is a major consideration in all delimitation cases, prompting the Court to take action to eliminate such negative effects.⁴⁰

E. Extent of the Territorial Sea Islands May Generate—A Critique Concerning the Judgment in Nicaragua v. Colombia

A point of criticism concerning the judgment in *Nicaragua v. Colombia* is the way the ICJ regarded the territorial sea of islands. The Court stated the power of a coastal state to declare the full twelve mile territorial sea in a rather categorical way. It referred to only two possible grounds for limiting their territorial sea to a lesser breadth: 1) an overlap between territorial sea entitlements of states, or 2) the presence of a historic or agreed boundary.⁴¹ However, this statement, which is suggestive of a rather absolute application of a twelve mile territorial sea, is open to questioning *vis-à-vis* the historical evolution of the breadth of territorial sea, the letter of LOSC Article 3, and relevant state practice.⁴² The issue of the breadth of the territorial sea was the reason states convened at the Second Geneva Conference on the Law of the Sea in 1960.⁴³ The Conference

36. See generally *Dispute Concerning Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal*, Case No. 16, ¶ 292; see generally *Territorial and Maritime Dispute*, 2012 I.C.J. ¶¶ 186, 215.

37. *Dispute Concerning Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal*, Case No. 16, ¶ 319; *Maritime Delimitation in the Black Sea*, 2009 I.C.J. ¶¶ 187–88.

38. *Territorial and Maritime Dispute*, 2012 I.C.J. ¶ 234.

39. *Dispute Concerning Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal*, Case No. 16, ¶¶ 325–26.

40. *Id.* ¶¶ 319, 324–25.

41. *Territorial and Maritime Dispute*, 2012 I.C.J. ¶ 179.

42. *Id.* ¶¶ 177–79.

43. G.A. Res. 1307 (XIII), U.N. Doc. No. A/4034 (Dec. 10, 1958) (The breadth of territorial sea and the extent of fishing rights of coastal states were the two issues the Second Conference had the

ended without agreement on this basic issue.⁴⁴ When Article 3 of the LOSC was drafted later at the Third Conference on the Law of the Sea in the 1970s, it was formulated so as to indicate the maximum breadth of the territorial sea.⁴⁵ This formulation was aimed at indicating what is permissible at maximum if there are no other circumstances that require a narrower breadth.⁴⁶ State practice supports the view that a narrower breadth of territorial sea for islands may be established, due to navigation or security considerations in limited marine space.⁴⁷

Such state practices of opting for a limited maritime zone less than the maximum breadth allowed in the LOSC include the Belize legislation. Belize adopted its breadth of territorial sea as twelve miles from the baselines, but determined a three-mile territorial sea at a specific area, from the mouth of Sarstoon River to Ranguana Caye.⁴⁸ The reason for the differentiation of its territorial seas is clearly indicated in the same legislation as “to provide a framework for the negotiation of a definitive agreement on territorial differences with the Republic of Guatemala.”⁴⁹

Another example is the Finnish legislation on its territorial seas. Finland declared a twelve mile territorial sea in principle, but stated that “[i]n the Gulf of Finland, the outer limit of the territorial sea at no place be closer to the midline than three nautical miles.”⁵⁰ Japanese legislation on the territorial sea is another example of self-imposed restriction on the breadth of its own territorial sea. As in the previous examples, Japan also declared a twelve mile territorial sea, but indicated that a three-mile territorial sea would apply to the so-called “designated areas,” including

mandate to tackle.); see also Arthur H. Dean, *The Second Geneva Conference on the Law of the Sea: The Fight for Freedom of the Seas*, 54 AM. J. INT’L L. 751, 752 (1960); AARON LOUIS SHALOWITZ & MICHAEL W. REED, SHORE AND SEA BOUNDARIES 269 (2000), available at http://www.nauticalcharts.noaa.gov/hsd/docs/CSE_library_shalowitz_v1p3ch2.pdf (last visited Feb. 16, 2014).

44. SHALOWITZ & REED, *supra* note 43, at 275.

45. See generally LOSC, *supra* note 1, art. 3.

46. See *id.*

47. See *Territorial and Maritime Dispute*, 2012 I.C.J. ¶¶ 221–22.

48. Office of Legal Affairs, U.N. Div. for Ocean Affairs & the Law of the Sea, *Law of the Sea Bulletin No. 21*, 3 (1992).

49. *Id.*

50. Office of Legal Affairs, U.N. Div. for Ocean Affairs & the Law of the Sea, *Law of the Sea Bulletin No. 29*, 56 (1995) (Van Dyke indicates that the reason for this declaration of limited territorial sea in the Gulf of Finland was to provide uninterrupted passage for Russia, which maintains the Port of Kaliningrad.); Jon M. Van Dyke, *The Aegean Sea 2000, Proceedings of the International Symposium on the Aegean Sea*, in MARITIME DELIMITATION IN THE AEGEAN SEA 165, 167 (2000).

certain sounds and channels.⁵¹ Such legislation was aimed at ensuring an unimpeded passage to the Korean Strait and Tsugaru Strait.⁵² The common rationale behind this move for a self-restriction was to avoid conflict with neighbors and to give opportunity to conciliation with them.

In light of the above examples of state practice and the formulation of Article 3 of the LOSC, one may argue that ICJ acted too categorically in its judgment in *Nicaragua v. Colombia* when it stated that islands would generate a twelve mile territorial sea. This statement is likely to create difficulties particularly in areas where a group of islands might create a cut-off effect against another coastal state if they were given a twelve-mile territorial sea.

Although the ICJ or the ITLOS in these recent cases granted a full twelve-mile territorial sea to islands, it should be underscored that the disputes involved geographical circumstances where rather large marine spaces were available to the respective parties.⁵³ In other words, the geography has allowed a full territorial sea for islands.⁵⁴ However, in other geographies with limited marine space, it would be foreseeable to grant a more narrow territorial sea. Depending on the particularities of the region, state practice indicates the necessity for a narrow territorial sea for some islands.⁵⁵

IV. CERTAIN PENDING DISPUTES AND THE WAY AHEAD

In light of the recent judgments of the ICJ and the Tribunal, it would be helpful to reconsider several unsettled delimitation disputes worldwide. These disputes involve islands that may be classified as complex due to their geographical setting. A geographically complex area is the Caribbean Sea, where twenty-two sovereign states and seventeen overseas territories of other countries are present.⁵⁶ There is rather limited access of the sea to wider oceans due to the location of various chains of islands, and consequently, the Caribbean is regarded as a semi-enclosed sea.⁵⁷ Given

51. Office of Legal Affairs, U.N. Div. for Ocean Affairs & the Law of the Sea, *Law of the Sea Bulletin No. 35*, 71 (1997).

52. See SHALOWITZ & REED, *supra* note 43, at 272 (The designated areas include the Soya Kaikyo, the Tugaru Kaikyo, the Tusima Kaikyo Higasi Suido, the Tusima Kaikyo Nisi Suido, and the Osumi Kaikyo.).

53. See *Territorial and Maritime Dispute*, 2012 I.C.J. ¶ 231.

54. *Id.* ¶ 176.

55. See generally *id.* ¶¶ 176–77.

56. Chris Carleton, *Maritime Delimitation in Complex Island Situations: A Case Study on the Caribbean Sea*, in *MARITIME DELIMITATION* 153, 166 (Rainer Lagoni & Daniel Vignes eds., 2006).

57. *Id.*

this geographical complexity, the determination of delimitation lines has extended over some decades among countries, either through negotiation or through third party dispute settlement.⁵⁸

Adopting the median line in negotiated agreements has been a common approach in this region, since the relatively even positioning of the Leeward and Windward Islands have made it possible to take the median line as a basis.⁵⁹ When it came to the more difficult task of dealing with islands closer to another state's mainland, adopting the equidistance line was insufficient to solve the dispute. This point particularly concerns Colombia and Venezuela, both of which have islands remote from their respective mainlands. In *Nicaragua v. Colombia*, the Court did not adopt Nicaragua's argument for a limited territorial sea for Colombian islands. However, the resulting delimitation line did not cut Nicaragua completely off from access to high seas, due to the availability of marine space.⁶⁰ On the other hand, it is often stressed that Venezuela's tiny Aves Island is a likely source of problems for delimitation.⁶¹ In situations with more limited marine space, islands may hardly receive the full extent of maritime zones.

In the South China Sea, the claim raised by the People's Republic of China for a "U-shaped line," which covers considerable marine areas on the basis of claimed sovereignty over islands and historic title, is disputed by the countries in the region.⁶² The conflicting claims in this region largely depend on arguments for sovereignty over islands. Hence the rules of evidence regarding *effectivités*, critical dates, evidentiary values of maps, and the existence of prior agreements, as referred to in *Nicaragua v. Colombia*, will be relevant in this context. The Declaration on the Conduct of Parties in the South China Sea of 2002 was an important step in terms of moving ahead in a peaceful manner.⁶³ It is critical that states in the region

58. *Id.* at 170–83.

59. *Id.* at 186.

60. *See generally Territorial and Maritime Dispute*, 2012 I.C.J. ¶¶ 215–16.

61. 5 INTERNATIONAL MARITIME BOUNDARIES 3410–11 (David A. Colson et al. eds., 2005); NUNO SÉRGIO MARQUES ANTUNES, TOWARDS THE CONCEPTUALISATION OF MARITIME DELIMITATION: LEGAL AND TECHNICAL ASPECTS OF A POLITICAL PROCESS 297 (2003).

62. Letter from Ban Ki-Moon, U.N. Secretary-General (May 7, 2009), available at http://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf (last visited Feb. 2, 2014) (The map of the People's Republic of China position is available as an attachment to the Communication dated May 7, 2009 by the People's Republic of China to the U.N. Commission on the Limits of the Continental Shelf with regard to the joint submission by Malaysia and Vietnam to the Commission on May 6, 2009.).

63. *Declaration of the Conduct of Parties in South China Sea*, ASSOCIATION OF SOUTHEAST ASIAN NATIONS (Nov. 4, 2002), <http://www.asean.org/asean/external-relations/china/item/declaration-on-the-conduct-of-parties-in-the-south-china-sea> (last visited Oct. 22, 2013).

avoid furthering excessive claims that may jeopardize the peaceful relations.

There are also a number of controversies going on in the Eastern Mediterranean. While the Aegean dispute remains unsettled, the differences concerning the area around the island of Cyprus has been calling attention with the increasing prospects of exploiting hydrocarbon reserves.⁶⁴ The parties of the islands and their views differ significantly regarding maritime delimitation. While the Aegean dispute involves two coastal states, Turkey and Greece, the latter case involves a number of coastal countries, some of which have already signed bilateral agreements between themselves.⁶⁵

Regarding the discord on the area surrounding Cyprus, a number of initiatives have been taken in recent years by the Greek Cypriot Administration to delimit its maritime boundaries through bilateral agreements.⁶⁶ The prospect of exploring hydrocarbon deposits has prompted reaction on part of both the Turkish Cypriot Government and Turkey.⁶⁷ A number of steps taken by the Greek Cypriot side to this end include: Declaring an EEZ, signing bilateral agreements with three

64. See generally Office of Legal Affairs, U.N. Div. for Ocean Affairs & the Law of the Sea, *Law of the Sea Bulletin No. 54*, 127 (2004); Office of Legal Affairs, U.N. Div. for Ocean Affairs & the Law of the Sea, *Law of the Sea Bulletin No. 59*, 34 (2005).

65. See TULLIO SCOVAZZI, THE GERMAN MARSHALL FUND OF THE U.S., MARITIME BOUNDARIES IN THE EASTERN MEDITERRANEAN SEA 6 (2012), available at http://www.gmfus.org/wp-content/blogs.dir/1/files_mf/1339504227Scovazzi_MaritimeBoundaries_Jun12.pdf (last visited May 7, 2014). For a Turkish perspective on this issue, see generally SERTAÇ HAMI BAŞEREN, DOĞU AKDENİZ DENİZ YETKİ ALANLARI UYUŞMAZLIĞI [DISPUTES OVER EASTERN MEDITERRANEAN MARITIME JURISDICTION AREAS] (2011), available at http://vizyon21yy.com/documan/genel_konular/Milli%20Güvenlik/Kibris_Ege/Dogu_Akdeniz_Deniz_Yetki_Alanlari_Uyusmazligi.pdf (Two sets of disputes in the Aegean and in the area involving Cyprus may also merge in a peculiar way to the detriment of Turkey, if Greek Cypriot Administration insists on extending maritime zones westward of the Island to the maximum, and if Greece also espouses similar claims with respect to the small islet of Meis (Megisti or Castellorizo), in the Mediterranean, which is very close to the Turkish mainland. The cumulative effect of such claims would be to deny any substantial maritime zone to Turkey beyond its territorial sea in the Mediterranean. Had it ever been a basis for consideration, this situation would have served as a perfect example of an inequitable result arising from disproportionate effect of islands to cut off a coastal state in this case Turkey, from access to high seas.).

66. Earlier official communications made by Turkey in this regard are published in *Law of the Sea Bulletin No. 54*, supra note 64, at 127; *Law of the Sea Bulletin No. 59*, supra note 64, at 34 (Turkey has made particular reference to its rights on the area west of the longitude 32° 16' 18." This line is crucial due to the fact that it marks a critical point the west of where the southward projection of southern coasts of Turkey is no more curtailed by Cypriot landmass); Greek Cypriot Administration's recent statement of position is found in Office of Legal Affairs, U.N. Div. for Ocean Affairs & the Law of the Sea, *Law of the Sea Bulletin No. 79*, 63 (2013).

67. *Id.*

neighboring countries in the south and southeast of the Island, and granting exploration permits to private companies.⁶⁸ These moves were met with protest and caused some countermoves from the Turkish side, as a result to their prejudice to Turkish rights existing in the same geographical area.⁶⁹

Turkish reaction mainly encompasses two points: The Greek Cypriot Administration is not in a position to represent Cyprus as a whole, and that any action taken by the said authority should not prejudice the rights of Turkey or Turkish Republic of Northern Cyprus.⁷⁰ It may be concluded that a plausible and viable delimitation process therein to provide a solution at the regional level is conditioned upon the settlement of the Cyprus problem. Evidently, in the Eastern Mediterranean region, it is critical not to infringe upon the rights of third party states in two situations: When signing bilateral agreements with other countries in the region, or while entering into deals with private companies.⁷¹ Any act to the contrary prompts reaction from those countries whose rights are infringed upon or prejudiced.

V. CONCLUSION

What the aforementioned case law suggests is that islands may have limited or no maritime zones, depending on the specific features of any given case. It has never been sanctioned by international law on maritime delimitation to cut-off a coastal state from its access to the high seas. This point becomes even more relevant in situations where islands are located close to the mainland of another country. In the latter instance, islands either generate a lesser degree of maritime zone or no zone at all beyond their territorial sea.

The three-stage delimitation methodology has been consistently used in recent cases involving maritime disputes. However, this trend does not diminish the importance of other methods. Geographical factors and other circumstances of each case will determine the applicable delimitation method. Whichever delimitation method is pursued, the selection of base points remains a crucial point. Considerations of proportionality will come

68. *See generally* SCOVAZZI, *supra* note 65, at 6–8.

69. *Id.* A comprehensive recount of recent events and the legal analysis of the relevant parties' positions can be found in SERTAÇ HAMI BAŞEREN, DOĞU AKDENİZ DENİZ YETKİ ALANLARI SINIRLANDIRMASI SORUNU: TARAFLARIN GÖRÜŞLERİ, ULUSLARARASI HUKUK KURALLARINA GÖRE ÇÖZÜM VE SONDAJ KRİZİ [DELIMITATION OF MARITIME JURISDICTION ZONES IN THE EASTERN MEDITERRANEAN: VIEWS OF PARTIES, SOLUTION ACCORDING TO THE INTERNATIONAL LAW, AND THE DRILLING CRISIS] 253–305 (2013).

70. *Id.*

71. *See generally* SCOVAZZI, *supra* note 65, at 10.

into play as a test for the equitableness of the delimitation line is established. Achieving an equitable solution for all parties concerned is the ultimate goal of all delimitation processes.

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EDITOR'S NOTE

The *ILSA Journal of International and Comparative Law* strives to promote and provide awareness, information, and study of issues in international law, this bilingual edition is dedicated to promoting awareness and study of the issues currently facing the Spanish-speaking community from Spain to Latin America. This edition examines a wide range of issues including the problems facing broadcast media in the United States and Argentina; the issues arising out of the denunciation of the International Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID Convention), and lastly issues in Spain ranging from the recent laws regulating electronic procurement and issues facing Catalonia in its quest for independence.

The article by Alessandra M. Villaraos examines the issues facing domestic and international media in the wake of broadcast media law reform in the United States and Argentina. The author does a comparative analysis between the FCC in the United States and the comparable body in Argentina, and the measures that each body takes in analyzing broadcast content; the author also analyzes the effectiveness of such measures and their effect upon the broadcast media company and its users. The author concludes that without clear guidelines, companies cannot properly conform their conduct to the current laws and as such, will continue to violate and only learn by committing errors.

The article by Victorino Tejera highlights the issues surrounding a country's denunciation of the ICSID Convention, with the recent denunciation of the Convention by Bolivia, Ecuador, and Venezuela, the author examines the different forms of interpretation of articles 71 and 72 of the convention, as their language, at first glance, may appear to be at odds. The author concludes that there is an interpretation that harmonizes both articles, such that a nation (or a national thereof) would still be subject to arbitration under the Convention, even after denunciation, for a period of six months after receipt of the denunciation by the depositary.

The article by Immaculada Barral Vinals examines contract law in the context of mass electronic procurement. The author analyzes the current European, and Spanish law in the field of electronic procurement and contract law, and examines the elements of contract law as they pertain to electronic procurement. Further, the author explains the issues that arise,

as well as the confusion that may be present in this new medium of contracting as compared to traditional contracts.

Lastly, the article by Marta Garcia Barcia examines the independence movement in Catalonia, analyzing the effects of independence on Catalonia and the Spanish State. The author provides a background on the independence movement as well as an examination into the motives behind the movement. Further, the author analyzes the political, economic, and cultural effect of the secession of Catalonia on the Catalonian people and on Spain.

This edition is made possible only through the hard work of the Bilingual Team and the entire ILSA Journal of International and Comparative Law. I would like to take this opportunity to thank each of the Bilingual Team staff this year, Stephanie Chocron, Marta Garcia Barcia, Antonio Nieves-Mesa, and Alessandra Villaraos, without whom this edition would not be possible. I would like to offer my gratitude for their hard work and dedication to the Journal and especially to the Bilingual Team. I would also like to offer my sincerest gratitude to our Associate Bilingual Editor, Yelina Angulo, who worked such long hours and always had a smile on her face and was always there to support all of us and offer a hand when needed.

I would also like to offer thanks to our Executive and Editorial Boards and most of all, to our Editor-in-Chief, Kevin Koushel, who worked tirelessly to make sure the Journal was on track, and helped us immensely in completing this edition. Lastly, thanks to my husband and family for supporting me during the long hours and always. This edition is dedicated to all those scholars and journalists who continue to strive for truth, and especially to those who fight continually against censorship.

Nicole M. Bagdadi

Bilingual Editor, 2013-2014

NOTA DEL EDITOR

La revista *ILSA Journal of International and Comparative Law* se esfuerza por promover y proveer información y el estudio del derecho internacional. Esta edición bilingüe está dedicada a promover el conocimiento y estudio de los problemas que actualmente enfrentan los países hispanohablantes desde España a América Latina. Esta edición examina una gran variedad de temas, incluyendo los problemas que enfrentan los medios de comunicación en Argentina y Estados Unidos; los asuntos que resultan por la denuncia del Convenio sobre Arreglo de Diferencias Relativas a Inversiones entre Estados y Nacionales de Otros Estados (CIADI) y por último, los problemas en España desde los asuntos en las nuevas leyes que regulan la contratación electrónica en masa hasta aquellos problemas a los que se enfrenta Cataluña en su búsqueda de su independencia.

El artículo por Alessandra M. Villaraos, examina los problemas que enfrentan los medios de comunicación domésticos e internacionales en vista de los desarrollos en ese ámbito del derecho en Estados Unidos y Argentina. La autora realiza un estudio comparativo entre la FCC de los Estados Unidos y el cuerpo equivalente en Argentina, y las medidas que cada cuerpo toma al analizar el contenido transmitido por los medios de comunicación; la autora también analiza la eficacia de estas medidas y su efecto a los medios de comunicación y a los televidentes. La autora concluye que sin directrices claras, los medios no pueden conformar su comportamiento a las leyes actuales y por lo tanto, tendrán que seguir violando las leyes aprendiendo únicamente después de cometer los errores.

El artículo por Victorino Tejera ilumina los problemas que rodean la denuncia del Convenio por un país, en vista de la denuncia reciente por Bolivia, Ecuador y Venezuela, el autor examina las diferentes formas de interpretación de los artículos 71 y 72 del Convenio, ya que el lenguaje de estos, a simple vista, puede que se contradiga. El autor concluye que hay una interpretación la cual armoniza ambos artículos, lo cual indica que el país que denuncia, y sus ciudadanos, aun permanecen bajo la jurisdicción del Convenio, por un periodo de seis meses, luego que el depositario reciba la denuncia.

El artículo de Immaculada Barral Vinals examina la ley de contratación en el contexto de contratación electrónica en masa. La autora

analiza las leyes actuales en España, y Europa en el ámbito de contratación electrónica y contratación tradicional y examina los elementos de contratación tradicional y su aplicación a la contratación electrónica en masa. Además, la autora explica los asuntos que resultan y la confusión que puede presentarse en este nuevo medio de contratación en comparación a la contratación tradicional.

Por ultimo, el artículo de Marta García Barcia examina el movimiento independentista en Cataluña, analizando los efectos de la independencia en Cataluña y al Estado Español. La autora provee un marco informativo acerca del movimiento de secesión también como una examinación de los motivos detrás del movimiento. Además, la autora analiza los efectos políticos, económicos, y culturales de la secesión de Cataluña a la gente catalana y en España.

Esta edición fue posible únicamente por la ardua labor del Equipo Bilingüe y la revista ILSA por completo. Quisiera tomar esta oportunidad para agradecerle a todos los miembros del Equipo Bilingüe, Stephanie Chocron, Marta Garcia Barcia, Antonio Nieves-Mesa, and Alessandra Villaraos, ya que sin ellos esta edición nunca fuese sido posible. Quiero ofrecerles mi gratitud por su trabajo y dedicación a la revista ILSA y en especial su dedicación al Equipo Bilingüe. Además, quiero ofrecerle mi sincero agradecimiento a nuestra Asociada de la Editora Bilingüe, Yelina Angulo, quien trabajo largas horas y siempre nos recibió con una sonrisa y nos brindó apoyo y ayuda cuando lo necesitamos.

Quiero agradecerle también al Comité Editorial y Ejecutivo y sobre todo, a nuestro Editor en Jefe, Kevin Koushel, quien se esforzó incansablemente por asegurar que la revista funcionara de la mejor manera y quien nos ayudo inmensamente a completar esta edición. Por ultimo, le agradezco a mi esposo y mi familia por apoyarme durante esta labor y siempre. Esta edición está dedicada a todos aquellos eruditos y periodistas que continúan esforzándose por la verdad y en especial a aquellos que continúan luchando contra la censura.

Nicole M. Bagdadi

Editora Bilingüe, 2013-2014