



The Law of the Sea

**Maritime Boundary Agreements
(1970-1984)**



**Office for Ocean Affairs and the Law of the Sea
United Nations**

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INTRODUCTION

The Office for Ocean Affairs and the Law of the Sea is currently engaged in preparing publications dealing with the practice of States in relation to subject-matters covered by the United Nations Convention on the Law of the Sea adopted in 1982. It is essential, especially at a time when the Convention has not yet entered into force (as of 30 September 1987, there were 34 ratifications), to observe such a practice and gather all information in relation to it, particularly in the field of national legislation or bilateral agreements.

The delimitation of maritime boundaries, although not a new phenomenon, has certainly become an important element of the practice of States in the modern law of the sea. During the last ten years numerous agreements have been adopted, and it is estimated that over one hundred boundary-delimitation issues around the world await some form of resolution.

The reason for such an increase in pending boundary-delimitation issues is to be found in the provisions of the 1982 Convention on the Law of the Sea relating to the extension of zones under national jurisdiction, namely the right to establish the breadth of the territorial sea up to 12 miles (art. 3), the adoption of the concept of an exclusive economic zone which may extend up to 200 miles (art. 57) and the definition of the continental shelf which may, in some cases, extend up to 350 miles or 100 miles from the 2,500 metre isobath (art. 76).

The coastal State will enjoy a variety of sovereign rights and jurisdiction over these areas which translate into important economic and political interests.

The adoption of new limits for areas under national jurisdiction, which in some cases may have created overlapping claims, has forced States to seek agreement with their neighbours with a view to establishing precise boundaries and to define clearly the zones in which they are entitled to exercise their sovereignty in the case of the territorial sea or their sovereign rights or jurisdiction in the case of the continental shelf or the exclusive economic zone.

In the United Nations Law of the Sea Convention, the applicable provisions are contained in articles 15, 74 and 83 dealing respectively with the delimitation of the territorial sea between States with opposite or adjacent coasts, the delimitation of the exclusive economic zone and the delimitation of the continental shelf.

In the case of the territorial sea, the median line is the method to be used, unless an agreement stipulates otherwise. Such procedure does not apply in cases of historic titles or other special circumstances. This provision closely corresponds to article 12 of the Geneva Convention of 1958 on the Territorial Sea and the Contiguous Zone.

Article 15 reads as follows:

"Article 15
Delimitation of the territorial sea between States with
opposite or adjacent coasts

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 above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith."

In the case of the delimitation of the continental shelf or the exclusive economic zone, three elements are contained in articles 74 and 83 dealing with this question, namely:

- (a) The delimitation should be effected by agreement;
- (b) Such agreement shall be reached on the basis of international law;
- (c) An equitable solution should be achieved.

These provisions depart from article 6 of the Geneva Convention of 1958 on the Continental Shelf whereby the principle of equidistance applies in the absence of an agreement, unless another boundary line is justified by special circumstances.

As the wording of article 74 is identical to that of article 83, with the exception that the words exclusive economic zone are substituted for continental shelf, only article 83 is reproduced below.

"Article 83
Delimitation of the continental shelf between States
with opposite or adjacent coasts

1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement."

Article 121 dealing with the régime of islands also has to be mentioned in relation to the question of delimitation since it can have an effect on the establishment of boundaries. It reads as follows:

"Article 121
Régime of islands

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.

3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

Finally, one additional, very important aspect of the field of delimitation is the role played by the judicial decisions rendered either by the International Court of Justice or by an arbitral tribunal. Although defined as a subsidiary means by article 38 of the Statute of the International Court of Justice, these decisions have contributed and still contribute to clarification of the elements which can be applicable in the search for an equitable solution.

Since 1982, the Court has rendered five Judgments in relation to three boundary disputes:

(a) 24 February 1982: Case concerning the continental shelf (Tunisia/Libyan Arab Jamahiriya);

(b) 10 December 1985: Judgment on the Application for Revision and Interpretation of 24 February 1982 in the case concerning the continental shelf (Tunisa/Libyan Arab Jamahiriya);

(c) 21 March 1984: Judgment of the International Court of Justice in respect of Italy's application for permission to intervene in the case concerning the continental shelf between Libya and Malta;

(d) 3 June 1985: Judgment of the International Court of Justice on the continental shelf (Libyan Arab Jamahiriya/Malta);

