IN THE NAME OF GOD

CONTINENTAL SHELF DELIMITATON

IN THE PERSIAN GULF

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Abstract

Much of the exploration and exploitation of the marine natural resources is centred on the continental shelf. The continental shelf is extremely rich in various resources, among them oil and gas is on critical significance for the world economy. Maritime boundary delimitation, especially continental shelf delimitation and delineation, is one of those subjects of international law which has been gaining in importance during the last decades. Among the marine areas, the Persian Gulf is one of the most important.

The political, economic and strategic importance of the Persian Gulf has been recognized by many nations throughout history. As there are huge Hydrocarbon reserves in the Persian Gulf, maritime delimitation and delimitating the marine boundaries between the littoral States are necessary precondition for exploitation of these resources. But, lack of defined boundaries, presence of numerous islands, reefs and shoals and existence of trans-boundary oil-deposits makes the delimitation process very complicated.

The maritime boundaries of the Islamic Republic of Iran, as the only littoral State in the north of the Persian Gulf facing with all of the other 7 littoral States (only with Iraq does it have a land border), need to be delimited. The core purpose of this paper is to evaluate the continental shelf delimitation of the Islamic Republic of Iran in the Persian Gulf.

To reach this goal, the first chapter will consider general background of the continental shelf concept.

Chapter two is a consideration of the principles and methods of continental shelf delimitation and evaluating International Court of Justice and other international tribunals' awards in this regard.

In chapter three, littoral States' (except Iran) practice and legislation regarding maritime delimitations in the Persian Gulf and continental shelf delimitation agreements between them will be discussed.

The last chapter will examined Iran's legislation concerning maritime delimitation, continental shelf delimitation agreements of Iran, undetermined Iran's continental shelf boundaries and some tri-points between Iran and its neighbouring States.

In the conclusion we will suggest some solution for the problems facing delimitation of the continental shelf in the region of the Persian Gulf.

Acronyms

CLCS	Commission on the Limits of Continental Shelf
EEZ	Exclusive Economic Zone
First Conference	First United Nations Conference on the Law of the Sea (1958)
ICJ	International Court of Justice
ICNT	Informal Composite Negotiation
ILC	International Law Commission
NG7	Negotiation Group 7
NIOC	National Iran Oil Company
RSNT	Revised Single Negotiation Text
Third Conference	Third United Nations Conference on the Law of the Sea (1973-1982)
UAE	United Arab Emirates
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
USA	United States of America

Dedication

For My Family and

Acknowledgements

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Introduction

> No arm of the sea has been, or is of greater interest, alike to the geologist and archaeologist, the historian and the geographer, the merchant, the Statesman, and the student of strategy than the inland water known as the PERSIAN GULF.[1]
>
> Sir Arnold T. Wilson

1. Legal and General Context of the Project

Maritime boundary delimitation, especially continental shelf delimitation, is one of those subjects of international law which has been gaining in importance during the last decades. Since1942, more than one hundred maritime delimitation agreements have been entered into between States.[2] These agreements deal primarily with the continental shelf, although some refer simply to the delimitation of marine areas between the States concerned.

Historically, States rarely delimited their maritime boundaries with other States. This situation changed in the second half of the past century. Ocean resource development has led States to define their maritime boundaries more exactly. One of the primarily forces behind the move to establish these boundaries has been the development of technology to recover highly valuable hydrocarbons and other non-living resources of the seabed and subsoil.[3] Much of the exploration and exploitation of the marine natural resources is centred on the continental shelf. The continental shelf is extremely rich in various resources, among them oil and gas is on critical significance for the world economy. The commercial exploitation of these resources often requires that defined areas be allocated among operators.

The law on maritime boundary delimitation, especially continental shelf delimitation, is one of the most complicated topics of maritime law which is crystallized in the United Nations Convention on the Law of the Sea (hereinafter UNCLOS)[4]. UNCLOS, which marks the be-

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[1] Wilson, Arnold T, *The Persian Gulf*, Oxford University Press, London, 1928, p. 1.
[2] Bundy, Rodman R, State Practice in Maritime Delimitation, In *World Boundaries, Vol. 5*, Maritime Boundaries, Edited by Gerald H, Balke, Routledge Publication, London/New York, 1994, p. 18.
[3] Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries, Vol. I*, Martinus Ninjhoff Publishers, Dordrekht/Boston/London, 1993, p. xxiii.
[4] Adpted 10 December 1982, entry into force 16 Nowember 1994, United Nations, *Treaty Series*, Vol. 1833, p. 3.

ginning of a new era in the law of the sea, regulates the principal aspects of international ocean affairs.

UNCLOS establishes and fixes the limits of marine zones, provides for the rights and duties of States in these zones, establishes the law applicable in the international seabed area on the basis of the principle of common heritage of mankind, imposes obligations on States to protect the marine environment, and provides for the means of dispute settlement.[5]

The delimitation of maritime boundaries, in particular delimitation of the seabed and subsoil, in conformity with international law, as it is reflected in UNCLOS, may create overlapping claims requiring maritime boundary delimitation. These delimitations have not proceeded at a healthy pace in areas where natural resources mainly petroleum developments was underway or expected.

The Persian Gulf is among such regions in which the presence of so much oil and gas reserves makes the delimitation process very difficult.

2. Geographical Context

The Persian Gulf, which has 8 littoral States, is located at the northwest corner of the Indian Ocean. On its northern coast lies Iran, with the short coastline of Iraq at its head. The western shore comprises the coasts of Kuwait. The coasts of Saudi Arabia, Bahrain (the only island State in the region), Qatar and the United Arab Emirates (hereinafter: UAE) lie on the southern shores of the Persian Gulf. Oman sits at its eastern entrance. The length of the Persian Gulf from the mouth of Shat Al-Arab to the Strait of Hormuz is 615 miles (989 kilometres). Its maximum width is 210 miles (336 kilometres), and its narrowest point, the Strait of Hormuz, is some 35 miles wide. The waters of the Persian Gulf are comparatively shallow, rarely exceeding 300 feet (90 metres). There are areas of deeper water, in the Strait, and in the south eastern part of the Persian Gulf.[6] (See figure 1)

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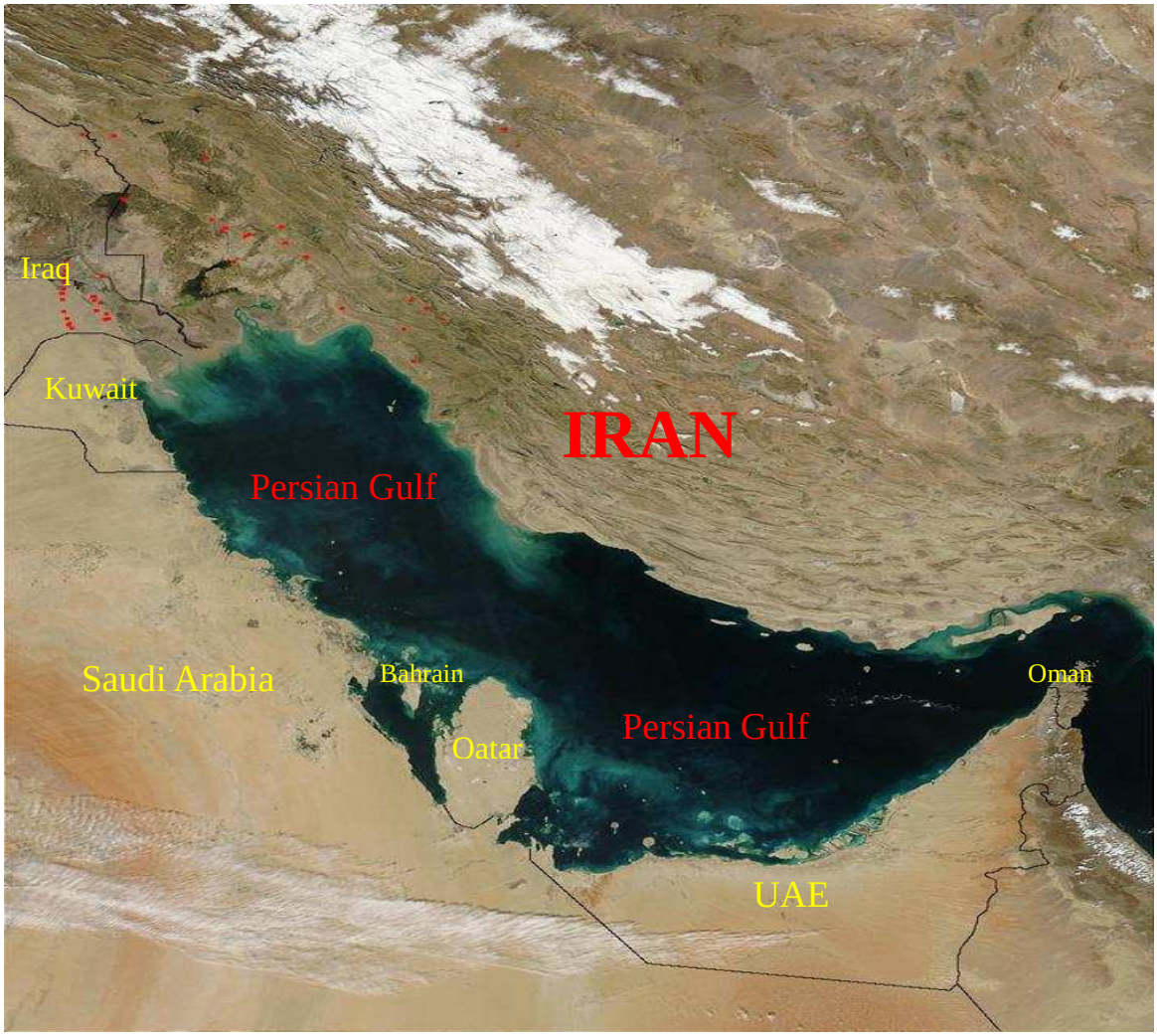
[5] Suvarez, Suzette V, *The Outer limits of the Continental Shelf; Legal Aspects of Their Establishment*, Springer Publication, Berlin/Heidelberg/New York, 2008, p. 1.

[6] Townsend-Gault, Ian, *Maritime Boundaries in the Persian Gulf*, In Schofield, Clive; Newman, David; Drysdale, Alsdair and Brown. Allison (Eds), *The Razor's Edge: International Boundaries and Political Geography*, Kluwer Law International, London/The Hague/New York, 2002, p. 225.

Figure 1. Persian Gulf Region



Source: Modified by Author from http://www.truecolorearth.com/tce-Persian-Gulf.jpg

One of the legal consequences flow from the physical facts mentioned above is that all marine and submarine areas in the Persian Gulf come within national jurisdiction. In other words, due to the width of the Persian Gulf that in its most extended area is less than 400 nautical miles, the littoral States share a common continental shelf. It is worth mentioning that the non-existence of the isobath points which separate the continental shelf of the Persian Gulf from other parts of the sea in correspondence with the geological definition which provides the drop-off edge between two parts of the seabed as characteristic criterion for the continental shelf, some believed that there was no continental shelf in the Persian Gulf. Today, however

there is no doubt that, the Persian Gulf's seabed and subsoil is the natural prolongation of the coastal States' land territory and constitutes the continental shelf.

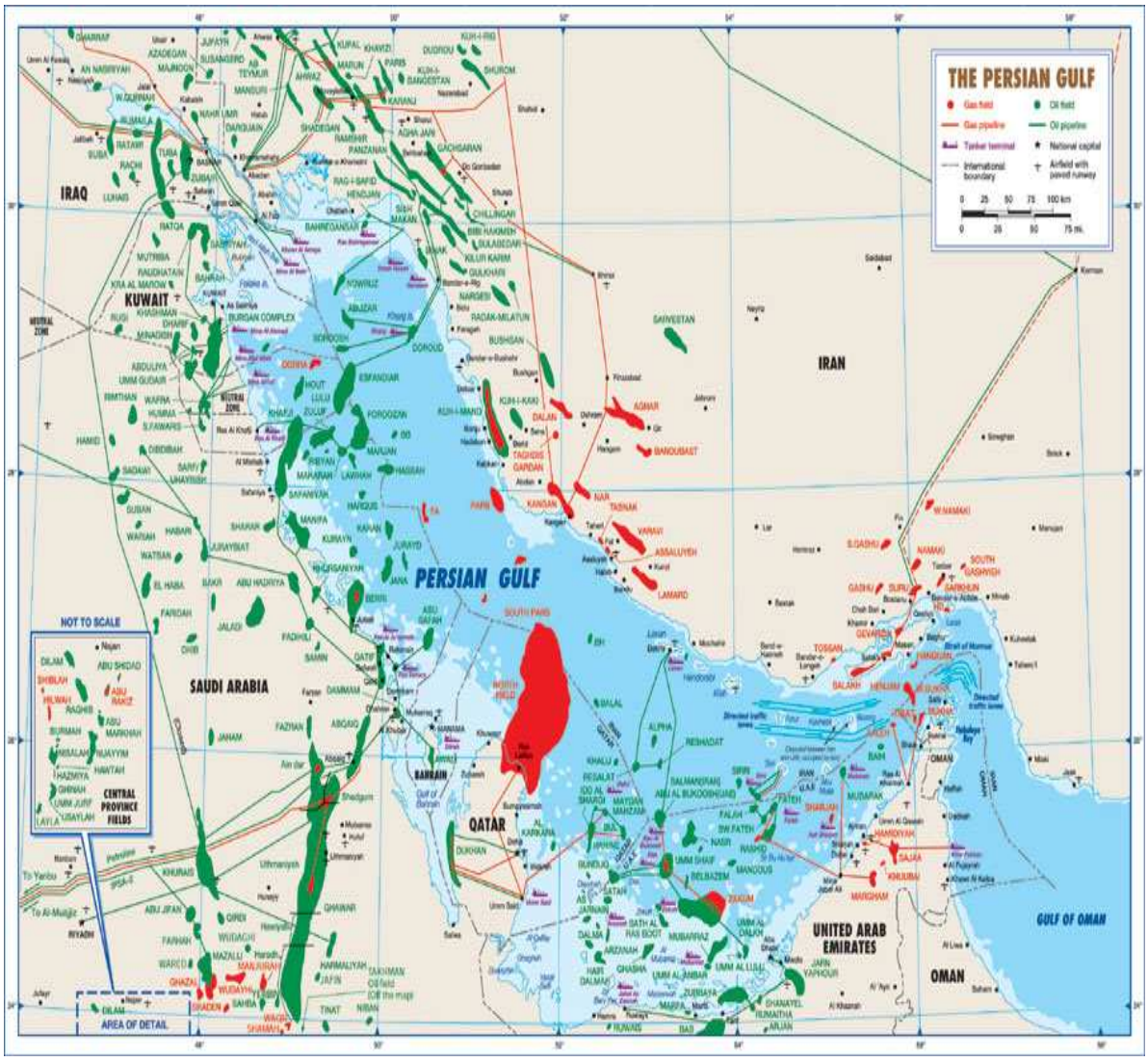
Scattered throughout the Persian Gulf are numerous islands. These islands contribute to an irregular configuration of the coastline and complicate efforts at establishing offshore boundaries and prevent any State from enjoying its full continental shelf and Exclusive Economic Zone (hereinafter EEZ). Maritime boundary delimitation in the Persian Gulf is one of the most important factors in the interregional relations between concerned States. Every State abutting the Persian Gulf faces a dual delimitation situation: first with its adjacent neighbours, and second with the States lying opposite.

Apart from its physical dimensions, the Persian Gulf has been important for its oil and gas recourses. The Persian Gulf and its coastal areas are the world's single largest source of crude oil and related industries dominate the region. Al-Safaniya, the world's largest offshore oilfield, is located in the Persian Gulf. Large gas finds have also been made with Qatar and Iran sharing a giant field across their maritime boarder. (See figure 2)

There are no landlocked States in the Persian Gulf region. All States have at least two maritime neighbours and some more. There is a considerable variety in the nature of ocean spaces to which these States have rights, ranging from the semi-closed waters of the Persian Gulf itself, to the narrow and highly strategic Strait of Hormuz and the broader reaches of the Indian Ocean. For the most part, the countries of the region face on another, or are situated adjacent to each other on the littorals of comparatively compact marine areas.

Among the Persian Gulf States, Iran has the most extended coast, lying in the north shores of the Persian Gulf. Iran, which faces 7 other littoral States, needs to delimit its continental shelf boundary, as a primarily step for the exploitation and exploration of its hydrocarbon resources in the seabed and subsoil of the Persian Gulf. Iran started negotiations with its littoral neighbours regarding the continental shelf delimitation in the 1960s, and could delimit most parts of its maritime boundaries in the central part of the Persian Gulf, but Iran's maritime boarder in the northern and southern parts are still to be delimited.

Figure 2. Oil and Gas Fields in the Persian Gulf



Source:http://www.worldoil.com/magazine/magazine_link.asp?ART_LINK=03-08_outlook_MiddleEast_fig2.htm

3. Objective and Scope

The scope of this research is the development of continental shelf delimitation submission in the Persian Gulf with particular attention to Iran's maritime boarders (both delimited and undetermined). It has to be stated clearly that this research is based on review of law relating

to continental shelf delimitation and delimitation agreements in the Persian Gulf, in particularly Iran's, and this from a legal not technical point of view.

The main objective of this research is to evaluate the continental shelf delimitation of the Islamic Republic of Iran in the Persian Gulf by way of reviewing the existing delimitation agreements and analyzing undetermined maritime boarders of Iran and the problems it faces in this regard. Wherever possible, this is also intended to provide possible solutions for identified problems.

4. Overview of Report

To reach the above mentioned purpose, the present paper consists of four chapters, each addressing a different but interrelated topic.

Chapter one: after evaluating the legal and geographical definition of the continental shelf, will survey the development of the delimitation criteria applicable to the continental shelf. Emphasis is placed upon the trend towards the legal regimes regarding continental shelf delimitation since the Truman Proclamation up to UNCLOS.

Chapter 2 considers the fundamental principles and methods of continental shelf delimitation: the principle of equity, the concept of proportionality, the equidistance principle or the median line method, perpendicular, parallels and meridians and enclaving by consideration of awards of International Court of Justice (hereinafter: ICJ) and other international tribunals. Furthermore, the role of geographical elements and especially the role of the islands in the delimitation process and international awards in this regard will be examined.

In the chapter 3, the Persian Gulf States' (except Iran) legislations and practices regarding the different maritime zones since the 1940s up to present time will be reviewed. The second section of chapter 3 will focus on the ICJ award concerning the maritime delimitation and territorial questions between Qatar and Bahrain (2001) (hereinafter: *Qatar and Bahrain Case*). Then, the delimitation agreements in the Persian Gulf between the Arab littoral States will be outlined.

Chapter 4 encompasses case of Iran's continental shelf delimitation. This chapter consists of four sections. The first section is a review of Iran's legislation relating to maritime zones. In the second section, Iran's delimitation agreements with its neighboring States will be consid-

ered. The next section is related to undetermined maritime boundaries of Iran in the Persian Gulf. The last section will consider some tri-points between Iran and its neighbors.

In the conclusion, and after providing a summary of the report's findings, the future work regarding Iran's continental shelf will be outlined and the author will propose some solutions and methods concerning the remaining problems.

Chapter1. The Concept of Continental Shelf and its General Background

Introduction

The provisions of UNCLOS - Articles 15, 74(1) and 83(1) - form today the primary legal reference in maritime delimitation. In nature, the conceptualisation of here in attempted must adequately consider these Articles. It should be observed, nevertheless, that the legal regime of maritime delimitation, as most regimes in international law, appears as a result of *continuum.* Unpredicted shifting - developments, although existent, were a rare occurrence. When they seem to have happened, close scrutiny leads to conclude that they were less marked than they seemed at first glance. These and other elements of the wider legal context do indeed shape the understanding of UNCLOS provisions on delimitation.

Seeking to provide an evaluation of the aspects relevant for the interpretation of these provisions, Chapter 1 examines the concept of the continental shelf and three decades of evolution of maritime delimitation law prior to the advent of UNCLOS. After consideration of the legal and geographical concepts of the continental shelf, especially Article 76 of UNCLOS, the initial developments will be reviewed from the Truman Proclamation and the preparatory works undertaken by the International Law Commission (hereinafter: ILC) in the early 1950s to the 1958 Geneva Conventions. In the next section the work and outcome of the Third United Nations Conference on Law of the Sea (hereinafter: Third Conference) is examined with respect to the concept of the continental shelf.

1.1. The Consideration of Legal and Geographical Concept of the Continental Shelf from 1945 to UNCLOS

Up to the 20th Century, the seabed was generally regarded as an international area. No distinction was made between the continental shelf and the deep ocean floor, and coastal States had only sovereign rights over the seabed within their three nautical mile territorial sea.

In the first decades of that century, however, States started declaring sovereign rights for the exploitation of sedentary species on the continental shelf, or even asserting rights of control over specific areas of the shelf. With technical advances, the interest in having control over the shelf's resources beyond the territorial sea increased.[7]

On 28 September 1945, President Harry S. Truman of the United States of America (hereinafter: USA) issued a proclamation declaring that the natural resources of the subsoil and the seabed of the continental shelf beneath the high seas but contiguous to the costs of the USA as appertaining to the USA, subject to its jurisdiction and control.[8]

The Truman Proclamation was followed by similar claims of many other States. These, however, were not necessarily the same in scope and content as the proclamation, especially with respect to the character of the superjacent waters as high seas. Within a decade, a consistent and general State practice had developed in this field. This is a classic example of the formation of a new rule of customary law.

Continental shelf in the traditional scientific sense is the platform on which the land lies. As a matter of fact, it is a definition of continental shelf in a narrow sense.[9] The term "continental shelf" is used by geologists generally to mean that part of the continental margin which is between the shoreline and the shelf break, or where there is no noticeable slope, between the shoreline and the point where the depth of the superjacent water is approximately between 100 or 200 meters.[10]

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[7] Chrchile, R.R and Lowe. A.V, *The Law of the Sea*, Manchester University Press, 3rd edition, 1999, pp. 142-143.

[8] *Truman Proclamation*, Para. 6. To read full text of this proclamation, see: *New Direction in the Law of the Sea*, Documents, Vol. 1, 1973, pp. 106-107.

[9] Tomas H. Heidar, *Legal aspects of continental shelf limits*, IN Mayer H. Nordquist, John Norton Moore and Tomas Heidar, *Legal and scientific aspects of continental shelf*, Martinius Nijhoff Publishers, Boston, 2004, p. 19.

[10] Peter J. Cook and Chris M. Carleton, *Continental shelf limits; the scientific and legal interface*, Oxford University Press, 2000, p. 10.

From the legal point of view, the 1958 United Nations Conference on the Law of the Sea attempted to formulate an agreed legal definition of continental shelf, and adopted the following in Article 1 of the Convention on Continental Shelf:

> For the purpose of these articles, the term of 'continental shelf' is used as referring to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitations of the natural resources of the said areas.

This definition contained the criteria of adjacency to the coast and of "exploitability", which were soon questioned in view of their imprecise and open-ended nature.[11] The concept was adopted by 1958 UN Conference on the Law of the Sea, where there are a preoccupation to address situations where there was no geological continental shelf; reliance was thus placed on the criteria of adjacency and exploitability in 1958 Convention on the Continental Shelf.[12]

In other words, the inner limit of the continental shelf was defined in the 1958 Geneva Convention on the Continental Shelf as the outer limit of the territorial sea. The outer limit of continental shelf was defined by two different criteria. The sovereign rights of the coastal States should extend to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters permits the exploitation of the natural resources of the shelf. This latter criteria was called the *exploitability criterion*.[13]

In the *North Sea Continental Shelf cases* of 1696 (hereinafter: *North Sea Case*), the ICJ placed much stress on the continental shelf being the natural prolongation of the coastal State's land mass: "More fundamental than the notion of proximity appears to be the principle of the natural prolongation or continuation of the land territory".[14] This conclusion of the ICJ was to have a big influence on the development of this issue at the Third Conference.

The need to establish clear outer limits to continental shelf jurisdiction was felt when the General Assembly of the UN adopted in 1970 the historic Declaration of Principle Governing the Seabed and Ocean Floor, and the Subsoil Thereof, beyond the Limit of National Jurisdiction (Resolution 2749(XXV), in which the Assembly declared, *inter alia*, that "the seabed and

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[11] *The Law of the Sea, Definition of the Continental shelf*, United Nations Publications, Sales No. E.93.V.16, (1993) p. 1.
[12] Peter J. Cook and Chris M. Carleton, *Op cit*, p. 10.
[13] Tomas H. Heidar, *Op cit*, p. 22.
[14] *North Sea Case*, Para. 40.

ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction [...] as well as the resources of the area, are the common heritage of mankind."[15]

On the other hand, the exploitability criterion stipulated in the 1958 Geneva Convention to define the outer limit of the continental shelf was subject to a lot of criticism. Under this definition, the outer limits of the continental shelf could expand as technological advances bring exploitation to deeper waters.[16] This criterion was considered too imprecise and unclear. It became obvious to States that if it was to be maintained, new technology would push the limit further and further from the shore and that, eventually, costal States' continental shelf claims would cover the entire ocean floor.

The need for a new internationally agreed definition of the outer limit of the continental shelf was stressed at the meeting of the Committee on the Peaceful Uses of the Seabed and Ocean Floor beyond the limits of National Jurisdiction (the Seabed Committee) and at the Third Conference. It was generally agreed that the establishment of an international regime for the deep seabed and the necessity to eliminate the ambiguities and uncertainties of the definition in the 1958 Geneva Convention on the Continental Shelf inevitably required the precise definition of the outer limits of the continental shelf.

The first negotiation text of the Third Conference circulated in 1975, the Informal Single Negotiating Text, contained the following new definition for the continental shelf:

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

The above paragraph tells us that the continental shelf covers the seabed area beyond coastal States' territorial sea (beyond 12 miles from the baselines) up to the edge of its continental margin. The other important point in this context is that the continental shelf should be the natural prolongation of the landmass of the coastal State. In case the continental margin

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[15] *The Law of the Sea, Definition of the Continental Shelf*, (United Nations Publications, Sales No. E.93.V.16,1993, p. 1.
[16] Peter J. Cook and Chris M. Carleton, *Op cit*, p. 18.

does not reach a distance of 200 miles, then the coastal State is entitled to a 200 miles continental shelf measured from its baselines.

This provision eventually became Article 76, paragraph 1, of UNCLOS without change. This paragraph establishes the right of a coastal State to determine the outer limit of its continental shelf by means of two criteria based on either the natural prolongation or distance. The latter provides a minimum breadth of continental shelf of 200 nautical miles. It applies in cases where the natural prolongation does not reach that limit.

Article 76 of UNCLOS provides a legal definition of the continental shelf. The article consists of 10 paragraphs dealing with the definition of the legal continental shelf and the procedures by which its outer limits may be delineated. The provisions of Article 76 could be generally summarized as follows:

(I) Definition and terminology, paragraphs 1, 2 and 3;

(II) Application of terms and methods for establishing the outer limits of the legal continental shelf (margin) beyond 200 miles from the baselines , paragraphs 4, 5, 6 and 7;

(III) Role of the Commission on the Limits of the Continental Shelf (hereinafter: CLCS), paragraph 8;

(IV) Depository function of the Secretary-General on the UN in respect of charts and other information on the outer limits of the continental shelf , paragraph 9; and

(V) A saving clause concerning delimitation of continental shelf between States, paragraph 10.

Article 76 refers to “continental shelf” as a special juridical and not a geomorphological-term which applies to the area of the seabed, beyond the territorial sea, falling under the sovereign rights of the coastal State for the purpose of exploring it and exploiting its natural resources.

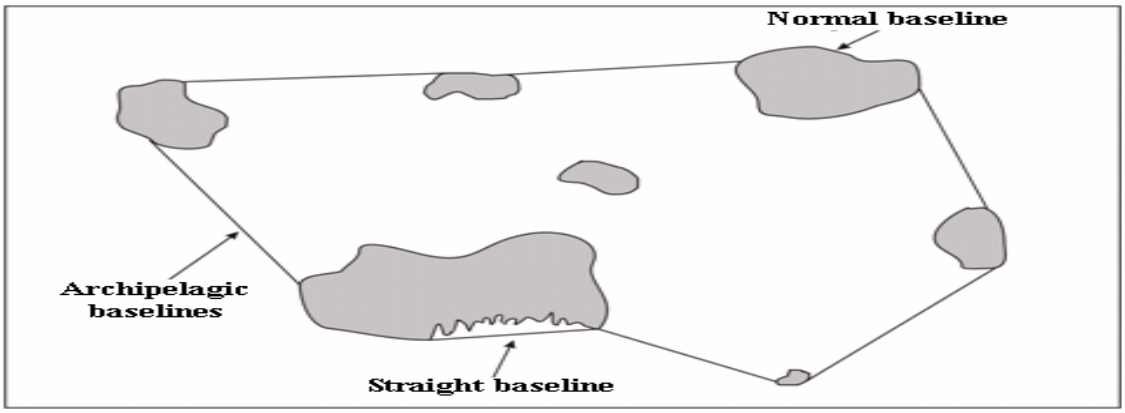
Paragraph 1states that a costal State’s “continental shelf” is

> the natural prolongation of its land to the outer edge of the continental margin or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

Thus, the “baseline” and “margin” become the key words.

Baselines are the starting point from which the territorial sea and other maritime zones of jurisdiction – contiguous zone, EEZ and continental shelf– are measured. UNCLOS defines five different kinds of baselines: normal, straight, archipelagic baselines and other types of baselines such as for the mouth of a river. Normal baselines are the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.[17] Straight baselines are used in locations where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity.[18] An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.[19] A forth type of the baseline is the closing line which may be drawn across the mouth of the bay, between the law water marks.[20] The last type of the baseline is used where a river flows directly into the sea and the baseline shall be a straight line across the mouth of the said river between points on the low-water line of its banks.[21] (See figure 3)

Figure 3. Different types of baselines



Source: Arsana, I M. *International Maritime Boundaries – A Technical and Legal Perspective*, Gadjah Mada University Press, p. 204.

[17] UNCLOS, Article 5.
[18] UNCLOS, Article 7, Para. 1.
[19] UNCLOS, Article 47, Para. 1.
[20] UNCLOS, Article 10.
[21] UNCLOS, Article. 9.

UNCLOS uses the term "continental margin" in its geomorphological sense. The *continental margin* consists of the seabed and subsoil of the *shelf*, the *slope* and the *rise*.[22] In this area, particularly the rise, there are typically sediments that have washed down from the continents through the ages. Beyond the continental margin is the *deep ocean floor*. UNCLOS adopted this broader meaning of the term continental shelf, but it provides important limitations to the breadth of the continental shelf. The so-called *foot to the slope* plays a very important role in this respect. As a general rule, the foot of the slope shall be determined as the point of maximum change in the gradient at the base of the slope.[23]

Paragraph 3 of Article 76 defines the "continental margin" as comprising the submerged prolongation of the land mass of a coastal State and consisting of the seabed and subsoil of the continental shelf (in the physical sense), the continental slope and the continental rise, but does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.[24] This Paragraph confirms parts of the seabed that form the continental margin. It enlightens the geomorphological structure of the continental shelf, as well as the fact that the continental shelf excludes ocean floor with its oceanic ridges or subsoil thereof.

Typically, most continental margins consist of three elements: the shelf, the slope, and the rise. The continental shelf is that part of the seabed adjacent to the continent which forms a kind of large submerged terrace, the average surface of which generally dips gently seaward. The breadth of the shelf depends on the geological evolution of the adjacent continent. The continental shelf extends seaward to the continental slope, which is characterized by a gradient. The foot of the continental slope, the junction with the continental rise, is defined on a typical margin by a marked decrease in the slope. The continental rise is underlain by a succession of sediments, primarily derived from the land. [25](See figure 4)

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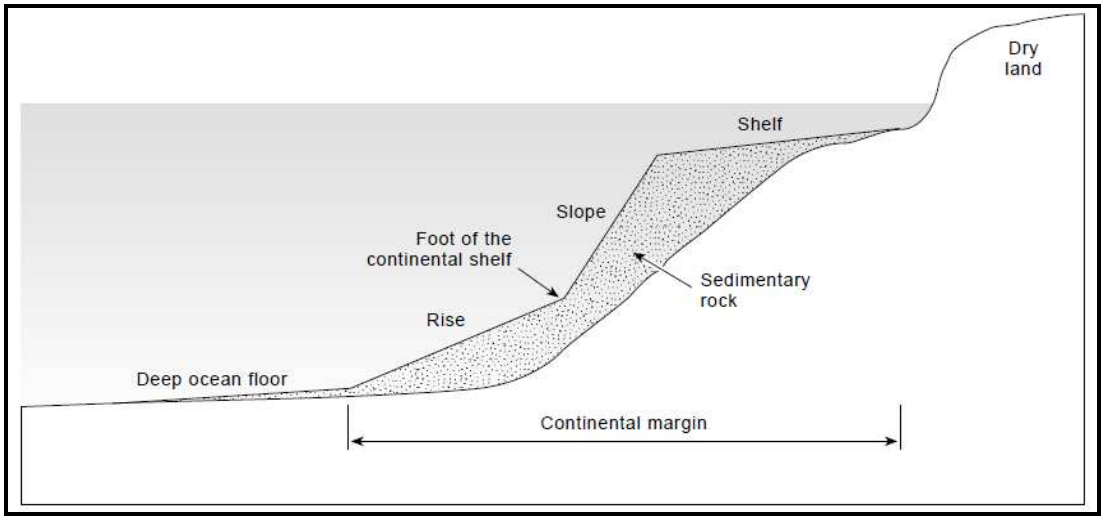
[22] UNCLOS, Article. 76, Para. 3.
[23] Peter J. Cook and Chris M. Carleton, *Op cit*, p. 20.
[24] To read more about the concept of continental margin see: Thor Gudlaugsson, Steinar, Natural Prolongation and the Concept of the Continental Margin for the Purpose of Article 76, In: Tomas H. Heidar, *Legal aspects of continental shelf limits*, IN Mayer H. Nordquist, John Norton Moore and Tomas Heidar, *Legal and scientific aspects of continental shelf*, Martinius Nijhoff Publishers, Boston, 2004, pp. 61-90.
[25] *Ibid*, pp. 10-11.

Figure 4. Continental Margin



Source: Carleton, Chris and Clive Schofield, Developments in the Technical Determination of Maritime Space: Charts, Datums, Baselines and Maritime Zones, *Maritime Briefing*, Vol. 3, No. 3, 2001, p. 63.

While Paragraph 1 defines the term continental shelf and Paragraph 3 lists the components of the continental margin, Paragraphs 4 to 6 provide the precise legal meaning of the outer edge of the continental margin and the methods for its determination.

Paragraph 4(a) suggests the formulation in order to entitle a coastal State to extend the outer limits of the continental shelf beyond the limit set by the 200 miles distance criterion wherever the continental margin extends beyond 200 nautical miles from the baselines. In such situations, the outer edge of the continental margin is measured by either:

(I) A line delineated in accordance with Paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or

(II) A line delineated in accordance with Paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

The first step in applying the two mentioned formulas in Paragraph 4 is to identify the foot of the slope. According to Paragraph 4(b), in the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base. According to the Scientific and Technical Guidelines of the CLCS, as a general rule the foot of the slope shall be determined as a point of maximum change in the gradient at its base. This implies that morphological and bathymetric evidence shall be applied whenever

possible.[26] Normally, the maximum change in gradient at the base of the continental slope occurs either at the point where the rise and slope join, or where a trench exist, along the axis of such a trench.[27] (See figure 5)

According to Paragraph 5 of Article 76, the fixed points drawn in accordance with Paragraph 4(a)(i) and (ii), shall either not exceed 350 miles from the baseline of the territorial sea or shall not exceed 100 miles from the 2500 metre isobath which is a line connecting the depth of 2500 metres. Thus, it sets clear cut off points for the outer limits of a continental shelf. (See also figure 5)

By virtue of Paragraph 6, the 100 miles from the 2500 metres isobaths constraint may not been used on submarine ridges. In other words, the maximum limit on such ridges is fixed at 350 miles. This exception does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs. Paragraph 6 does not apply to submarine elevations that are natural components of the continental margin, such as plateaux, rises, caps, banks and spurs.

Paragraph 7 of Article 76 prescribes that:

> The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 M from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

Two important points to note from this paragraph are the requirements of maximum length of straight line segments depicting the outer limits of the continental shelf, and the need to express the fixed points constructing the outer limit in coordinates of latitude and longitude.

Paragraph 7 somewhat simplifies the task of defining the outer limits of the continental shelf by allowing the use of straight lines as long as 60 miles. This may help some coastal States by permitting them to bridge natural indentations either in the bathymetry or sediment

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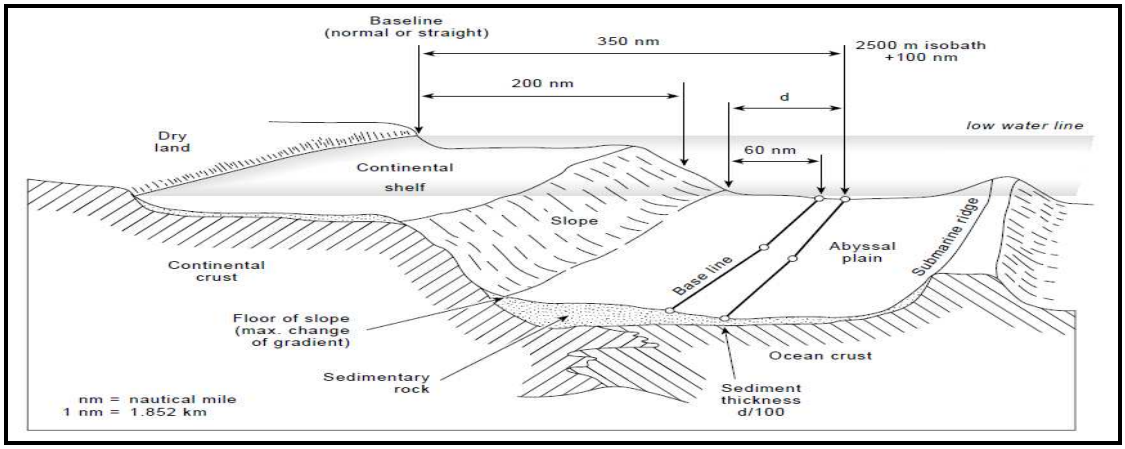
[26] *Scientific and Technical Guidelines of the Commission on the limits of the Continental Shelf,* UN Doc. CLCS/11, adopted on 13 May 1999, pp. 37-42.
[27] The Law of the Sea, Definition of the Continental Shelf, *Op cit,* p. 13.

thickness rather than follow the sometimes meandering path of the precisely measured features.[28] (See figure 5)

The coastal States, according to Paragraph 8, shall submit information on the limits of the continental shelf beyond 200 nautical miles from the baselines to the CLCS and according paragraph 9 shall deposit charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf with the Secretary General of the UN.

Paragraph 10 states that the provisions of Article 76 are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

Figure 5. Continental Shelf



Source: Carleton, Chris and Clive Schofield, Developments in the Technical Determination of Maritime Space: Charts, Datums, Baselines and Maritime Zones, *Maritime Briefing*, Vol. 3, No. 3, 2001, p. 23.

.After reviewing and analysing the legal definition of the continental shelf, the next section will review the development of maritime delimitation law from 1945 (Truman Proclamation) up to UNCLOS.

[28] The Law of the Sea, Definition of the Continental Shelf, *Op cit*, p. 23.

1.2. The Truman Proclamation

It is axiomatic that any study of matters appertaining to the continental shelf should emphasize the primacy of the Truman Proclamation of 1945 as the starting point of the positive law on the subject. By means of the Proclamation, the USA claimed that:

> […] the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control.[29]

It provided the impetus for a spate of other declarations concerning claims to offshore zones and acted as a catalyst in the formation of the legal notion of the continental shelf as a part of international law.[30]

Concerning the question of delimiting the extension of the shelf between States, the Proclamation stated that: "in cases where the continental shelf extends to the shores of other 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".[31] Of course the proclamation added that "the character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected". That problems of the delimitation between States would arise was clearly foreseen, but the proclamation did not seek to give any specific guidance concerning how such disputes might be resolved. Instead, it indicated a process, bilateral agreement, and referred to *equitable principles*.

The meaning attributed to this term goes to the very heart of the consideration of continental shelf delimitation. For the present, it is sufficient to note that the Truman Proclamation gave no indication of what that meaning might be.[32]

One explanation of the restriction of the claim to jurisdiction over resources rather than over the seabed itself, may be that the submarine claims previously recognised under international law have been claims to exclusive rights to particular resources and the Truman Proclamation may have been framed as an extension of the same principle.

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[29] *Truman Proclamation*, Para. 6.
[30] Malcolme D. Evans, *Relevant Circumstances and Maritime Delimitation*, Clarendon Press, Oxford, 1989, p. 7.
[31] *Truman Proclamation*, Para. 6.
[32] *North Sea case*, Paras. 47-54.

A more probable explanation is that for reasons of domestic policies, is was preferred to make a claim by Presidential Proclamation rather than by an Act of Congress, as under the USA Constitution the formal acquisition of new territory without the assent of Congress would have raised constitutional issues.[33]

1.3. International Law Commission (1950- 1956) and the First United Nations Conference on the Law of the Sea (Geneva 1958)

Within the framework of the UN General Assembly, and under its auspices, the ILC is responsible for the codification of international law and for its progressive development.

Several events explain the need for codification of the law of the sea at the time. After the failed attempt at codification during the 1930 Hague Conference, the subsequent period, characterize by the collapse of the League of Nations and the outbreak of World War II, was far from being propitious for cooperation at the international level. The creation of the UN in the aftermath of World War II, the Truman Proclamation of 1945 concerning the "jurisdiction over natural resources of the subsoil and sea bed of the continental shelf", and the reaction of States around the world to this declaration, sparked for a second time a debate on the law of the sea issues.[34]

At an early stage, the ILC recognised the importance of an effort to codify the international law of the sea. The regimes of the high seas and of the territorial waters were amongst the provisionally selected topics of international law whose codification was considered by the ILC as "necessary and desirable".[35] Mr. Francois was elected Special Rapporteur, considering that "the regime of high seas and the regime of the territorial water, closely related". The General Assembly of the UN recommended the inclusion of the later in the study to be carried out by the ILC.[36] The recommendation was accepted by the ILC in 1950 and the study of the regime of territorial waters in parallel with that of high seas in 1951. The process started by the ILC eventually led to the First Conference and to the 1958 Geneva Conventions.

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[33] Anninos, P .C .L, *The Continental Shelf and Public International Law*, Imprimerie H.P.DE Swart, Hague 1953, p. 21.
[34] Antunes, Nuno Marques, *Toward the Conceptualisation of Maritime Delimitation*, Martinius Nijhoff Publishers, 2003, p. 15.
[35] *ILC Yearbook* (1949), pp. 280-281.
[36] UN Doc. GA Res. 374(IV), 6 December 1949.

At its first session, the ILC drafted a provisional list which included the regime of the high seas which then included the continental shelf. The ILC established a Committee of Experts on technical question relating to the maritime delimitation of the territorial sea. According to the ILC, these experts should keep in mind that the proposed guidelines would be equally valid and appropriate for the delimitation of the continental shelf.[37]

It appears that despite the totally different character of the two regimes, the ILC discussed the topic of the delimitation of the continental shelf on the basis of the report prepared by non-legal experts on technical methods which may be used for the demarcation of the territorial sea.[38]

In 1950, during the second session of the ILC, the Special Rapporteur presented his first report on the regime of the high seas. When discussing the continental shelf, the report offered a survey of State practice which led Mr. Francois to conclude that, even in relation to the very notion of the continental shelf, "*la plus grand incertitude*" subsisted.[39] According to him, that uncertainty extended to the criteria for delimitation between States. Observing that the only guidance offered by State practice was that delimitation should be effected by agreement between the States involved, he considered it advisable to ask Governments their views on how delimitation was to be effected in cases of overlapping claims.[40] But at the time there was no clear legal definition of the continental shelf. During the discussion of the points raised by Mr. Francois' first report, recognising that there was no definition on continental shelf, Mr. Yepes observe that "such definition could be given only by geologist and geographers, not only by the ILC, which did not have the requisite knowledge", and added that "if scientist provided a definition they would know what rights over the continental shelf could be vested in States".[41] This seems to make clear that the quest of the ILC was centred not only on the delimitation standards, but also on the juridical notion of the continental shelf. That a right to claim a submerged area adjacent to the land territory had emerged since 1945 is an acceptable idea. By

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[37] *ILC Yearbook* (1951-I), p. 185.
[38] Tanja, Gerard J, *The legal determination of international maritime boundaries.* Kluwer Law and Taxation Publisher, Boston, 1990, p. 25.
[39] *ILC Yearbook* (1950-II), pp. 49-51.
[40] *Ibid.*
[41] *ILC Yearbook* (1950-I), p. 228.

contrast, to assert that in the early 1950's the legal concept of continental shelf was part of customary law is highly questionable.[42]

Not surprisingly, the opinion of the ILC members also reflected uncertainty as regards to continental shelf delimitation. Alluding to the conclusions obtained in the Report of the 44th Conference of the International Law Association, Mr. Hudson observed that "custom and theory gave no enlightenment on the subject, and in his view the question should therefore be set aside". He argued that the same rule would apply where continental shelves overlapped.[43] Mr. Hudson raised serious objections to this view, emphasising the idea conveyed by the said ILC reports as to "*the need to study and develop delimitation criteria*". In his opinion, no rules or opinion of delimitation existed. Clearly, only one idea can clarify consensus within the Commission: "*if required, delimitation had to be effected by agreement*". As to the desirability of delimitation criteria, opinions remained divided.[44] Therefore, any attempt to demonstrate that delimitation standard existed in customary law, by the early 1950s, is equally questionable.

The debates in the third session of the ILC (1951) were based upon the second report of the Special Rapporteur. As to the continental shelf delimitation, various points deserve attention. The legal definition of the continental shelf proposed therein *"comprised the seabed and subsoil of territorial waters"*[45]. This seemed the straightforward transposition of the geomorphological concept, thus reinforcing the idea that the legal concept of continental shelf was far from being clear. The juridical notion of continental shelf was not clear even within the State that had first claimed vaster rights over the sea bed and subsoil.

The basis of the discussion suggested by the Special Rapporteur distinguished between situation of adjacency and of oppositeness. The median line was proposed for the latter case, on the basis of an analogy with delimitation in straits. For adjacency situations, the proposed solution was the recourse to the prolongation of the territorial sea boundary.

The role of the agreement was repeatedly reaffirmed.[46] It was Mr. Amado who, quoting an article that analysed the Truman Proclamation raised the idea that boundaries were to be delimited by agreement on the basis of the equitable principle.[47] To him, however, this

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[42] Antunes, Nuno Marques, *Op cit*, p. 19.
[43] *Ibid*, p. 19.
[44] *ILC Yearbook* (1950-I), pp. 232-234.
[45] *ILC Yearbook* (1951-II), p. 102.
[46] *ILC Yearbook* (1951-I), pp. 286-288- 290.
[47] *Ibid*, p. 285.

expression meant solely that a mutually acceptance agreement was required.[48] No further reference was specially made to equitable principles during the debate.

When examining the various potential delimitation standards, references were made to the general direction of the coast, the prolongation of the territorial waters boundary and to the land boundary, and the use of an equidistance-line.[49] In the commentary, nonetheless, inclusion was made to the use of median line in cases of adjacency.

The equally important aspects of delimitation had finally surfaced. On the one hand, its intrinsic geography-related character became axiomatic. On the other hand, it was acknowledged that delimitation should lead to reasonable boundaries. It must be emphasised that, although almost subliminally, the need to consider *geography* and *fairness* surfaced early in the ILC work. Whatever the solution adopted in the end, it must be seen as having definitely taken into account this equilibrium. By the end of the 1951 session, this issue of delimitation standards remained unclear.

The Committee of Experts met in Hague in 1953, and adopted certain guidelines. The Committee had made clear in its report that it favoured the use of a median line in an opposite situation, but also indicated that special reasons such as navigation interests and fishing rights might call for the use of a different method. A lateral boundary should be drawn by making use of the principle of equidistance from the respective coastlines.[50]

The recommendations of the Committee of Experts were welcomed by the majority of ILC members as being helpful to the drafting process and Mr. Francois, who had repeatedly indicated his preference for a median line rule, submitted a new draft article at the 201st meeting of ILC in 1953. Despite the exceptions indicated by the Committee, it referred to "a median line" and "the principle of equidistance"[51]. The ILC members used this method both for territorial sea and continental shelf. Some members insisted on the preference and general use of the equidistance/median line, but other members were unable to support the rather rigid formula for lateral as well as opposite situations, stressing that it was not possible to provide

[48] *Ibid*, p. 293.
[49] *Ibid*, pp. 286-288.
[50] *Ibid*, p. 293, Para. 37.
[51] Tanja, Gerard J, *Op cit*, p 28.

a general rule to cover all cases although they recognised the practical advantage of the method.[52]

At the same time, the ILC seemed to be of the opinion that the existence of numerous exceptions and special circumstances legally justified a departure from the equidistance rule. It was therefore felt that the provisions should contain a reference to such special circumstances. It was Mr. Spiropoulos who, with the help of Mr. Sandstrom, provided the solution to break the deadlock by suggesting to replace "as a rule" by the formula "*unless special circumstances justify another delimitation*." according to Mr. Spiropoulos, such a formula would "leave it to the arbitration to assess the special circumstances" and made his formula "perfectly clear that only in cases where the application of the rule would lead to manifest unfairness would it have to be waived".[53]

Finally, the ILC seemed to be of the opinion that the existence of numerous exceptions and special circumstances legally justified a departure from the median/equidistance rule and they included in the draft report the formula "unless special circumstances justify another boundary"[54]. It seems that ILC considered equidistance to have a residual character, the application method was considered mandatory unless States agreed otherwise and, once it was established, that special circumstances were absent.[55]

After finishing the drafting process, the ILC called upon the General Assembly to convene a diplomatic conference on the international law of the sea (the First United Nation Conference on the Law of the Sea). The conference was convened in accordance with General Assembly resolution N1009 (XI) of 21 February 1957.

The proposals concerning the continental shelf, contained in the final report of the ILC, were considered at the First Conference. The Yugoslav delegation sought to remove the special circumstances exception on the grounds that it was both vague and arbitrary and likely to give rise to misunderstandings and disagreements.[56] This attempt failed in the fourth committee, but was again proposed to the Plenary Session of the Conference, with an attached commentary asking rhetorically "where and in what manual on international law are such

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[52] *ILC Yearbook* (1953-I), p. 106.
[53] Gerard J. Tanja, *Op cit*, p-p. 29-30.
[54] Jagota, S. P, *Maritime Boundary*, Matinus Ninjhoff Publishers, Dordrekht/Boston/Landcaster, 1985, p. 55.
[55] *ILC Yearbook* (1952-II), p. 216.
[56] A/CONF. 13/c.4/L.16. and Add. 1.

circumstances enumerated?"[57] It was again rejected, the Iranian delegation noting that "every law which was too strictly worded was inevitably broken."[58]

In the forth committee, Venezuela argued that failing to provide for special circumstances imposed by geography would result in unfair solutions and proposed excluding equidistance.[59] Uncertainty of application was, however, a countervailing concern. The Italians presented a proposal the effect of which would be to ignore islands when drawing the median line unless it was agreed to the contrary.[60] The Iranians presented a similar proposal seeking further clarification and to remove potential difficulties.[61] None of these proposals were adopted. Consequently, the First Conference adopted the respective conventions with little modifications to the ILC draft articles. For continental shelf delimitation, they left the two provisions for opposite and adjacent coasts.[62]

During the conference, the predominant feeling of the delegations was that a reference to special circumstances was legally necessary because it was considered an inherent element of the delimitation rule to be adopted. The essence of the draft provisions of the ILC could be preserved, but the legal reasoning behind the ratio of this provision had changed. An equidistance rule based on the general principle of equidistance which allowed for some exceptions had been replaced by what was later called a combined equidistance/special circumstances rule.[63]

Apart from the Yugoslav and Venezuelan proposals, oppositions to special circumstances as a factor affecting a delimitation based upon a general principle of equidistance was negligible. The result of these deliberations was Article 6 of the 1958 Geneva Convention on the Continental Shelf which provides:

> 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 is justified by special circumstances, the boundary is the median line, every point of which is equidistance from the nearest points

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[57] A/CONF. 13/c.4/L.15.
[58] 9th Plenary Meeting, Para.6, In Evans, Malcolm D, *Op cit*, p. 12.
[59] A/CONF. 13/c.4/L.32.
[60] A/CONF. 13/c.4/L. 25/ Rev. 1.
[61] A/CONF. 13/c.4/L. 60.
[62] Jagota, S. P, *Op cit*. p. 56.
[63] Gerard J. Tanja, *Op cit.* p. 42.

> of the baselines from which the breadth of the territorial sea of each states 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 paragraphs 1 and 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.

Under Article 6, the delimitation of the continental shelf has to be effected by agreement. In the case of no agreement, two solutions are offered:

(I) Between two or more States with opposite coasts and unless another boundary is justified by special circumstances, the boundary is the median line; and

(II) Between the two or more States with adjacent coasts and unless another boundary is justified by special circumstances, the boundary shall be determined by the application of the principle of equidistance from the nearest point of the baselines from which the breadth of the territorial sea of each states is measured.

Article 6 introduces the notion of "special circumstances" in order to mitigate the possible inequitable results that strict equidistance could lead to. The Anglo-French Arbitral Tribunal mentioned the notion in the famous passage of its Award of 30 June 1977 regarding Anglo-French continental shelf delimitation:

> In short, the role of *special circumstances* condition in article 6 is to ensure an equitable delimitation, and the combined equidistance/special circumstance rule, in effect, gives particular expression to a general norm that, failing agreement. The boundary between states abutting on the same continental shelf is to be determined on *equitable principle*.[64]

To date, more than 60 agreements dealing with the delimitation of the continental shelf have been concluded, particularly between 1965 and 1974, after the entry into force on 10 June 1964 of the 1958 Geneva Convention on the Continental Shelf. Some agreements were adopted after a long and arduous phase, such as the Agreement between Germany and Nether-

[64] *Case concerning the delimitation of continental shelf between the UK of Great Britain and Northern Ireland, and the French Republic, Decision of 30 June 1977,* UNRIAA, vol. XVIII, p. 45, Para . 70.

lands (1971) and between Germany and Denmark (1971) after the ICJ judgment in *North Sea* case (1969).[65]

1.4. The Third United Nations Conference on the Law of the Sea (1973-1982)

The Third Conference led to the adoption of the most comprehensive convention on the law of the sea. UNCLOS (as outcome of the conference), which was signed in Jamaica in 1982 and entered into force in 1994, made significant contributions to the development of maritime delimitation law. UNCLOS recognised a 12-nautical mile limit for the territorial sea, archipelagic waters zone, where the requirements set out in the convention are met, the 200-nautical mile EEZ and continental shelf limit and the possibility of an extended continental shelf beyond 200-nautical miles up to 350-nautical miles from the baselines of the coastal States concerned. The new or extended zones greatly extended the potential maritime jurisdiction of coastal States and ushered in an era of growth in the conclusion of delimitation treaties unprecedented in maritime boundary making.

The Third Conference was not only important for the development of the international law of the sea, it can also be considered as a landmark in the history of the politico-diplomatic negotiating system, and was the most innovative international law-making project ever undertaken.

One of the reasons for the convening of the conference was the growing number of young States as a result of the decolonization process in the 1950's and 1960's. Most of the new States had not been involved in the treaty-making process of the First Conference. Compared to 86 States participating in 1958, 165 States participated in Third Conference.[66]

Prior to the Third Conference, the Sea-Bed Committee was established by the General Assembly in 1968. This Committee was considered a preparatory committee for the new law of the sea. The Sea-Bed Committee became overburdened with official statements, working papers and Government proposals for draft articles on a great variety of issues. Between 1971 and 1973, the various proposals for draft articles were included in the list merely to serve as points of reference for negotiations and consultations to be conducted within a future confer-

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[65] *Handbook on the Delimitation of Maritime Boundaries,* United Nations Publication, Sales No. E.01. V.2, 1997, p.14.

[66] The official text of the 1982 UN LOS Convention with annexes and index is repr, In UN Sales Publ. No.E.83.V.5, (1983).

ence. The Sea-Bed Committee was under no pressure to try to reach agreement on the various proposals, since it was obvious that a comprehensive law of the sea conference would be held shortly.

Due to this, the Sea-Bed Committee could not complete its preparatory work and the Third Conference was convened in December 1973.

The contradiction between the so called pro-equidistance States (Equidistance Group) and States favoring a concept of equity (Equitable Principle Group) seriously hampered the negotiations and became a hard issue on the agenda of the Third Conference. The former argued for the combined equidistance-special circumstances rule, whereas the latter favored the idea of delimitation in accordance with equitable principles. The first attempt to reconcile the 1958 rule and the *North Sea* Case (1969) judgment appears in the Informal Single Negotiating Text (ISNT, 1975). Articles 61(1) and 70(1) replicated the relevant part of the *dipositif* of that decision, adding a reference to equidistance.[67] This formula was kept in the Revised Single Negotiation Text (RSNT, 1976) and in the Informal Composite Negotiation Text (ICNT, 1977). It provided that delimitation:

> Be affected by agreement in accordance with equitable principle, employing, where appropriate, the median line or equidistance-line, and taking account of all the relevant circumstances.[68]

Neither group was however willing to accept this wording. The delimitation issue was eventually considered as one of the unresolved hard-core issues, and was referred to Negotiating Group 7 (hereinafter NG7). The group negotiations started in 1978, and were predicated on the proposals put forward by each of the delimitation groups. The "Equidistance Group" considered that the delimitation should employ "as a general principle, the median or equidistance-line taking in to account any special circumstances where this is justified"[69].

Differently, the final proposal of the "Equitable Principle Group" suggested that delimitation should be effected "in accordance with equitable principles, taking into account all relevant circumstances and employing any methods, where appropriate, to lead to an equitable solution".[70]

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[67] UNCLOS III, Official Records, Vol. IV, pp. 162-163.
[68] UNCLOS III, Official Records, Vol. V, pp. 164-165.
[69] Document NG7/2 (20 April 1978), Platzoder Documents (IX) pp. 392-393.
[70] Document NG7/4 (21 April 1978), Platzoder Documents (IX) pp. 397 and 402.

The proposals helped somewhat to calm the waters. Unsurprisingly, the necessarily consensual nature of delimitation was undisputed. It became also clear that the difficulties were centered on the operative criteria to apply in the absence of an agreement: either the "equidistance-special circumstances rule" or the recourse to "equitable principles". In the proposals of the "Equidistance Group" (for example: Denmark, Norway, United Kingdom, Canada, Greece, Italy, Japan), equidistance was attributed the status of "general principle". This idea followed the notion of a "general rule" that had been mentioned during the ILC debates, and argued for the advantages of adopting such terminology. Although referring to equidistance as a "principle", this proposal kept the balance between objectivity (equidistance) and subjectivity (special circumstances) struck in 1958. By contrast, the proposal put forward by the "Equitable Principle Group" (for example: France, Turkey, Ireland, Kenya, Liberia, Libyan Arab Jamahiriya, Poland, Romania) argued the equidistance was a mere method. The striking feature thereof is that it did not present any objective standards for determining the course of boundary. All standards included therein objective (equitable principle, relevant circumstances), and it confers unbound discretion through the explicit reference to "any methods". The ambiguity conveyed by these terms is clearly not counterbalanced by any measure of objectivity. Following clearly in the footsteps of the *North Sea* case (1969) Judgment, this formula may be criticized on exactly the same grounds.[71]

The negotiations in NG7 were characterized by a series of proposals that, for one reason or another, where nor accepted. In March 1980, the Report of the Chairman of NG7 advanced another proposal for the delimitation articles, which again attempted to combine equidistance and equitable principle.[72] Although with caution, the "Equidistance Group" reacted positively. The "Equitable Principle Group", on the contrary, rejected it "even as a basis of negotiation".[73] Notwithstanding this objection, the proposal was incorporated in the second revision of the ICNT (1980). Subsequently the States of the "Equitable Principle Group" addressed a letter to the president of the conference formally rejecting the text.[74]

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[71] *Ibid*, p. 85.
[72] UNCLOS III, Official Records, Vol. XIII, pp. 77-78.
[73] Statements by Spain (Equidistance Group), and by Ireland (Equitable Principles Group), Official Records, 1973-1982, Vol. XIII, pp. 13-15.
[74] UNCLOS III, Official Records, Vol. XIV, p. 8.

Further negotiations did not succeed in bringing together the views of the two sides. Insofar as it would be possible to pair many States (one from each group) with ongoing or potential maritime delimitations disputes, the uncompromising stance of both groups is unsurprising. When the situation seemed like a deadlock and no progress was possible, the President of the Conference decided to engage himself directly so as to attempt to bring together the views of the two groups. By 1981, after meeting with the two States representing the delimitation groups (Spain and Ireland) the President of the Conference put forward a new proposal.[75] The text made favored neither to equitable principle nor to equidistance. This formula was eventually accepted by Ireland and Spain on behalf of the delimitation groups.[76]

The representative of Ireland, Chairman of the "Equity Group", said that he could confirm that the proposal did indeed enjoy widespread and substantial support in the group. Similarly, the representative of Spain, Chairman of the "Equidistance Group", reported that he now fully supported the comments made by the representative of Ireland and that there was indeed general support in his group for the President's proposal.[77]

Finally, the proposal of the President of the Third Conference was incorporated without changes as articles 74(1) and 83(1) of UNCLOS, relating the delimitation of EZZ and continental shelf.

UNCLOS contains identical provisions for the delimitation of the EEZ (Article 74) and the delimitation of the continental shelf (Article 83), although those two zones are different by nature:

1. The delimitation of the EEZ and 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 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 Article 83(1), the States concerned in a spirit of understanding and cooperation, shall make every effort to enter in to provisional arrangements of a practical nature and, during this transitional period, not to jeopardize

[75] Document A/Conf.62/WP.11 (27 August 1981), Platzoder Documents (IX), p. 474.
[76] UNCLOS III, Official Records, Vol. XV, pp. 39-40.
[77] S.P. Jagota, *Op cit*. p. 242.

or hamper the reaching to 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 delimitations of EEZ and continental shelf shall be determined in accordance with provisions of that agreement.

Under articles 74 and 83, the delimitation of the EEZ or continental shelf:

1. Shall be effected by agreement on the basis of international law, as referred to Article 38 of Statute of the International Court of Justice, including treaties applicable between parties,
2. An equitable solution shall be reached; and
3. In case of absence of an agreement, The States concerned are requested to make every effort to enter in to provisional arrangements of a practical nature and not to jeopardize or hamper the reaching of the final agreement.

The differences between the regimes established by the 1958 Geneva Convention and UNCLOS are quite important although both are based on fundamental rule that delimitation should be first effected by agreement, which is the cornerstone of maritime boundary delimitation.[78]

As the ICJ Stated:

> […] any delimitation must be effected by agreement between the States concerned either by the conclusion of a direct agreement or, if need be, by some alternative method, which must, however, be based on consent.[79]

In conformity with this rule, States have "the duty to negotiate […] in good faith, with a genuine intention to achieve a positive result".[80] Therefore, it is incumbent upon the parties to enter into negotiations, but also to pursue them as far as possible, with a view to concluding agreements.

The ICJ confirmed that the parties were under an obligation to enter into negotiations with a view to arriving at an agreement and not merely to go through a formal process of negotia-

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[78] Handbook on the Delimitation of Maritime Boundaries, *Op cit*, V.2, p.16.
[79] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, judgment*, I.C.J Reports, 1984, p.292, Para .89.
[80] *Ibid*, Para . 87.

tion as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of an agreement.

As a consequence, unilateral delimitation of maritime spaces is not binding on third States. In this respect, the ICJ declared in *its 1951 Fisheries case* that:

> […] the delimitation of the sea areas has always an international aspect, it cannot be depend merely upon the will of the coastal State as expressed in municipal law [...] the validity of the determination with regard to other States depends upon international law.[81]

However, the most important consequence of the fundamental rule that maritime boundary delimitation should be effected by agreement is that the parties are free to adopt whatever delimitations line they wish, whether that line is based on political, economical, geographic or any other kind consideration. It should be stressed that delimitation by agreement is above all a political operation dependent first and foremost on the existence of political will.

The goal of achieving an equitable result when establishing the delimitation of a maritime zone also appeared in the Truman Proclamation and has since become customary law applicable to all maritime boundary delimitation. It is a principle that stems from the jurisprudence of *ad hoc* arbitral tribunals and was again confirmed by the ICJ in the *Jan Mayen* case (1993): "That statement of an 'equitable solution' as the aim of any delimitation process reflects the requirements of customary law as regards the delimitation both of continental shelf and of EEZ".[82]

The question concerning the interim solution in the absence of agreement is addressed in the 1958 Geneva Convention and the UNCLOS, as follows:

1. Article 6 of 1958 Geneva Convention on the continental shelf establishes that, failing agreement, the continental shelf boundary shall be the equidistance line unless another line is justified by special circumstances; and
2. Article 83 of the UNCLOS proposes that States should enter into provisional agreements.[83]

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[81] *Fisheries case, Judgment of December 18th, 1951*: I.C.J Reports 1951, p. 132.
[82] Maritime Delimitation in the Area between Greenland and Jan Mayen, Judgment, ICJ Reports 1993, p.59, Para . 48.
[83] Handbook on the Delimitation of Maritime Boundaries, *Op cit*, p.17.

1.5. Concluding Remarks

The Truman Proclamation regarding the USA's continental shelf was immediately followed by the same claim by other States, while at the time there was no precise definition regarding the concept of this term or the methods for delimitation of overlapping continental shelf.

After the 1958 Geneva Convention on the continental shelf, acceptance of this concept as a law was longer in doubt. Despite all the different contributory factors that led to its swift acceptance by the international community, the concept itself remained unclear. The lack of the clearly defined outer limits to the continental shelf under Article 1 of the Geneva Convention on Continental Shelf was understood by some to be evidence of the concept's flexibility. Thus, it was faced with many challenges.

But during the Third Conference, delegations from more than 149 countries tried to find a new solution for maritime affaires, and among them the continental shelf was one of the most important. The outcome of the delegates' work which was finally completed in 1982 marked a new era in the law of the sea. The definition, composition and outer limits of the continental shelf as contained in Article 76 of the UNCLOS, were among the most important issues during the conference and are results of very complicated rounds of negotiation.

The continental shelf, although a legal and political invention, grew as a concept in part thanks to the development of ocean sciences, including geology, geomorphology and geography and likewise to advances in ocean technology.[84]

Furthermore the definition of the continental shelf, the delimitation provisions of UNCLOS must be seen as a result of three decades development in international law. The consideration of Articles 74(1) and 83(1) leads to the conclusion that the boundary must be non-inequitable.

After review of the definition and developments regarding the notion of 'continental shelf', the next chapter will examine the principles and methods of continental shelf delimitation and review ICJ and Arbitral awards in this regard.

[84] Suarez, Suzette V, *Op cit*, p. 74.

Chapter 2: The Principles and Methods of Continental Shelf Delimitation: Evaluate the ICJ and Arbitral Awards in this Regard

Introduction

With the purpose to understand the continental shelf delimitation process, and after evaluating the concept of the continental shelf and its general background in the first chapter, the present chapter will examine the principles and most used methods for continental shelf delimitation concentrating on ICJ and other international tribunal awards as well as State practice in this regard.

The equitable delimitation of a boundary is the purpose of all delimitation agreements. Countries which are sharing a common continental shelf can draw their boundary line based on different methods to reach an equitable boundary line. Furthermore the equitable principle, the concept of proportionality plays a vital role in the delimitation of a boundary. First, the role of these two concepts in delimitation will be reviewed.

On the subject of the method of delimitation, it must be noted that several methods have been utilised in treaties delimiting maritime boundaries and also by the ICJ in its awards. The most used methods of delimitation are: (a) the equidistance method or median line, (b) perpendicular line to the general direction of the coasts, (c) use of a parallel of latitude or meridian longitude; and (d) enclaving.

In continuation, the role of the geographical elements and also the islands in the delimitation process and their role in ICJ awards will be evaluated.

2.1. The Principles Applicable to Continental Shelf Delimitation

2.1.1. Equity and Equitable Principle

It is generally accepted that maritime boundaries must be determined by the application of the equitable principle, taking into account all relevant circumstances so as to achieve an equitable result.[85] In another words, the final element in the delimitation process is the requirement that the result is equitable. This is confirmed in Article 83 of UNCLOS which provides that delimitation shall be effected "by agreement on basis of international law […] in order to achieve an equitable solution".

The notion of *equity* is at the heart of the delimitation of the continental shelf and entered into the delimitation process with the 1945 Proclamation of US President Truman, concerning the delimitation of the continental shelf between the US and adjacent States. President Truman proclaimed that:

> In cases where the continental shelf extends to the shores of another States, 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.[86]

The non-existence and the need to develop criteria for the delimitation of overlapping continental shelves was noted during the 1950s ILC meetings. Since then, it has become clear that a major concern was to guarantee that the delimitation did not yield an inequitable boundary. But, at the end, there was no reference to the equity principle in the 1958 Geneva Convention on the Continental Shelf.

The most important period in the development of the recourse to equity in maritime delimitation started with the *North Sea* case (1969), when the ICJ stated that "delimitation is to be effected by agreement in accordance with equitable principles, and taking into account all the relevant circumstances."[87]

The problem with the idea of equity is that it does not provide any precise principle or criteria for the achievement of an equitable result. With respect to the delimitation of the EEZ and the continental shelf, UNCLOS sets only a goal which must be achieved and stipulates nothing

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[85] *Gulf of Main case*, 1984, ICJ Rep, p. 295, Para. 99.
[86] Truman Proclamation, Para. 6.
[87] *1969 North Sea Case*, Para. 101.

on how to achieve the result. This vagueness gives some scholars the possibility to assert that there is a loss of normativity in the idea of equity and this idea allows the level of normativity to rise and fall.[88]

In the *Tunisia/Libya* case (1982), the ICJ tried to determine the concept of equity:

> Equity as a legal concept is a direct emanation of the idea of Justice. The Court is bound to apply equitable equity as a part of general international law. When applying positive international law, a court may choose among several possible interpretations of the law the one which appears, in the light of the circumstances of the case, to be closest to the requirements of justice.[89]

The meaning of equitable principles is strongly related to the idea of *unicum,* which means that geographical features of each delimitation case varied so seriously that it is difficult, if not impossible, to conceive any fixed principles applicable for the establishment of maritime boundaries between States. The idea of the uniqueness of each boundary finds significant support in the jurisprudence of the ICJ and Arbitral Tribunals dealing with maritime boundary disputes.

The idea of *unicum* and that it is not possible to define an equitable principle for all maritime boundary delimitation cases was reiterated and expressed more clearly in subsequent ICJ cases and Arbitral awards. In the *Gulf of Maine* case (1984), the Chamber stated:

> That each specific case, in the final analysis, different from all the others, that it is monotypic […] most appropriate criteria (principle) can only be determined in relation to each particular case.[90]

In the *Guinea/Guinea-Bissau* arbitration (1985), the Tribunal expressed the same idea:

> The factors [the equitable principles] and methods result from the legal rules, however none of them is obligatory for the Tribunal since each of delimitation is *unicum*.[91]

It seems that there is no equitable principle in maritime delimitation which is applicable for all cases, but rather an equitable result must be sought for each case. During the debates of the *Tunisia/Libya* case (1982), Judge Jimenes de Arechaga noted that "the judicial application of

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[88] Kolb, Robert, *Case law on equitable maritime delimitation*, Kluwer Law International Publisher, 2003, p. 171.
[89] *1982 Tunisia/Libya case*, Para. 71.
[90] *1984 Gulf of Maine case*, Par. 81.
[91] *1985 Guinea/Guinea-Bissau case*, Para. 89.

equitable principles means that a court should render justice in the concrete case."[92] The search for universally applicable principles becomes otiose the particularity of each case effectively impedes the formation of such principles. Judge Waldock also made this point quite clearly in stating that "the difficulty is that the problem of delimiting continental shelf is apt to vary from case to case in response to an almost infinite variety of geographical circumstances."[93]

With respect to the idea that there is a lack of normativity regarding the concept of equity, the continuing series of judgments and awards may progressively refine the legal rules and principles, and refinements in the application of law may improve the normative situation. The improved situation, in turn, should produce results that are relatively consistent, fair and responsive to the variety of circumstances in which maritime boundaries must be delimited. It should also encourage the settlement of maritime boundaries.[94]

The equitable principles that the ICJ felt obliged to apply in the *Tunisia/Libya* case (1982) were subordinated to an equitable result. They were equitable not in abstract but only as a function of satisfactory result that they enabled the ICJ to reach. Consequently, the equitable principles had to be evaluated in the circumstances of the particular case, and all generalizations were to be avoided:

> It is the result, which is predominant; the principles are subordinate the goal. The equitableness of a principle must be assessed in the light of its usefulness for the purpose of arriving at an equitable result. Each continental shelf case […] should be considered and judged on its own merits […] no attempts should be made here to over conceptualize the application of the principles.[95]

Even the use of those principles is not obligatory for the ICJ and Arbitral Tribunals, because of their highly variable adaptability to each specific case.[96]

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[92]Seperate opinion of the Judge Jimenes de Arechaga, *1982 Tunisia/Libya case*, Para. 24.
[93]Nelson L.D.M. *Op cit*. p. 839.
[94] Jonathan I. Charney, Progress in international maritime boundary delimitation law, *American Journal of International Law*, 88(2) April, 1994. p. 233.
[95] *1982 Tunisia/Libya case*. Paras. 70 and 72.
[96] *1984 Gulf of Maine case*. Para. 157.

But it is a reality that in some cases, the ICJ in its reliance on equitable principle, was saddling the parties with a settlement on an *ex aequo et bono*[97] basis, without giving them an indication of the applicable legal rules going beyond considerations of pure convenience.[98]

Concerning the equity and equitable principles, one may conclude that at present it is not possible to produce a structured system of equity and a clear body of equitable principles. The choice of, and weight to be attributed to, any equitable principle are too dependent upon the vagaries of geography to allow any systematic body of such principles to be developed.

With respect of the equitable principle, the *Libya/Malta* case (1985) is of particular significance. The ICJ accepted that the delimitation must be effected by the application of equitable principles.[99] However, rather than continue by saying that the agreement must "take account of all relevant circumstances",[100] it said that the equitable principle must be applied "in all the relevant circumstances" in order to achieve an equitable result.[101] It then listed examples of equitable principles. Yet those principles listed are merely part of the litany that surrounds continental shelf delimitation:

1. No refashioning of geography.
2. No encroachment on the natural prolongation of another state.
3. Giving due respect to all the relevant circumstances.
4. That 'equity' does not necessarily mean equality; and
5. That there is no question of 'distributive justice'.[102]

2.1.2. The Concept of Proportionality

From the past subsection (equity and equitable principle), it is concluded that the concept of equity always asked for the application of the equitable principle of taking into account all

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[97] *Ex aequo et bono:* latin for "according to the right and good" or "from equity and conscience" is a legal term of art. In the context of arbitration, it refers to the power of the arbitrators to dispense with consideration of the law and consider solely what they consider to be fair and equitable in the case at hand.
[98] Kolb, Robert, *Op cit*, p. 65
[99] *Libya/Malta* case, Para. 45.
[100] *Ibid*, Para. 133.
[101] *Ibid*, Para . 45.
[102] *Ibid*, Para. 46.

relevant circumstances, in order to arrive at an equitable result. According to this construction, the equitable principle of taking account of all relevant circumstances is then an example of a legal norm which, however, does not exclude the operation of another equitable principle under the concept of equity. Proportionality was mentioned as a possible candidate for such a principle.[103]

The concept of proportionality plays an important role in various domains of international law, such as self-defense, international responsibility, treaty law, human rights and humanitarian law. The law of maritime delimitations is also one such domain where proportionality is important.

According to that concept, maritime delimitation should be effected taking into account the ratio between the areas of the continental shelf attributed to each party and the lengths of their respective coastlines. The concept of proportionality so defined has a particular importance as a relevant circumstance that should be taken into account in the law of maritime delimitation. This result stems from the fact that this concept has been taken into consideration in judgments relating to maritime delimitation. Furthermore, the role of the proportionality has been enlarged by international Courts and Tribunals.[104]

Its emergence as the principle instrument to contain the potential inequitable results of equidistance in making the final cuts of the pie of the continental shelf and EEZ, reflects not so much the application of the principle as the recognition that a substantive factor other than distance from a coast on the water, namely the length of such coast, should also be taken in to consideration. In other words, it is not the commitment to proportionality but the recognition of the relevance of the coastal length that explains this development.[105]

The concept of proportionality in maritime delimitations was originally formulated by the Federal Republic of Germany in the *North Sea* cases (1969). The Federal Republic of Germany contented that each State concerned should have a "just and equitable share" of the available continental shelf, proportionate to the length of the coastline or sea frontage.[106] Ac-

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[103] Tanja, Gerald J, *Op cit*, p. 201.
[104] Youshofumi, Tanaka , *Op cit*, p-p. 433,434.
[105] Koziyris, Phaedon John, Lifting the veils of equity in maritime entitlements, *The Denver Journal if International Law and Policy*, 1998, Vol. 26, p. 351.
[106] *1969 ICJ Reports*, p. 20, Para.15.

cording to Germany, "the breadth of the costal front of each state facing the North Sea is an appropriate objective standard of evaluation with respect to the equitableness of a proposed boundary".[107] Although the ICJ rejected the idea of a "just and equitable share", it did accept the concept of proportionality as a final factor to be taken into account:

> A final factor to be taken into account is the element of a reasonable degree of proportionality which a delimitation effected according to equitable principles ought to bring about between the extent of the continental shelf appertaining to the States concerned and the lengths of their respective coastlines – these being be measured according to their general direction in order to establish the necessary balance between states with straight, and those with markedly concave or convex coasts or to reduce very irregular coastline to their truer proportions.[108]

The ICJ suggested three geographical features which justified the recourse to proportionality:

1. The coasts of the States concerned are adjacent to each other;
2. The coastlines of the Germany are concave; and
3. The coastlines of the States abutting on the North Sea are comparable in length.[109]

In this connection, it should be noted that the ICJ regarded proportionality not as a distinct principle of delimitation, but as one of the factors ensuring delimitation in accordance with equitable principles.[110] (See figure 16)

The need to avoid unreasonable disprortionality was instrumental in configuring the outcomes reached in the cases after the *North Sea* case (1969). In the *Anglo-French* case (1977), the Court stressed that:

> Proportionality [....] is clearly inherent in the notion of delimitation in accordance with equitable principles. While proportionality may not be relevant in all contexts, and is not an independent source of rights, the disproportionate effects of a considerable projection of an attenuated proportionality of the coast must be abated.[111]

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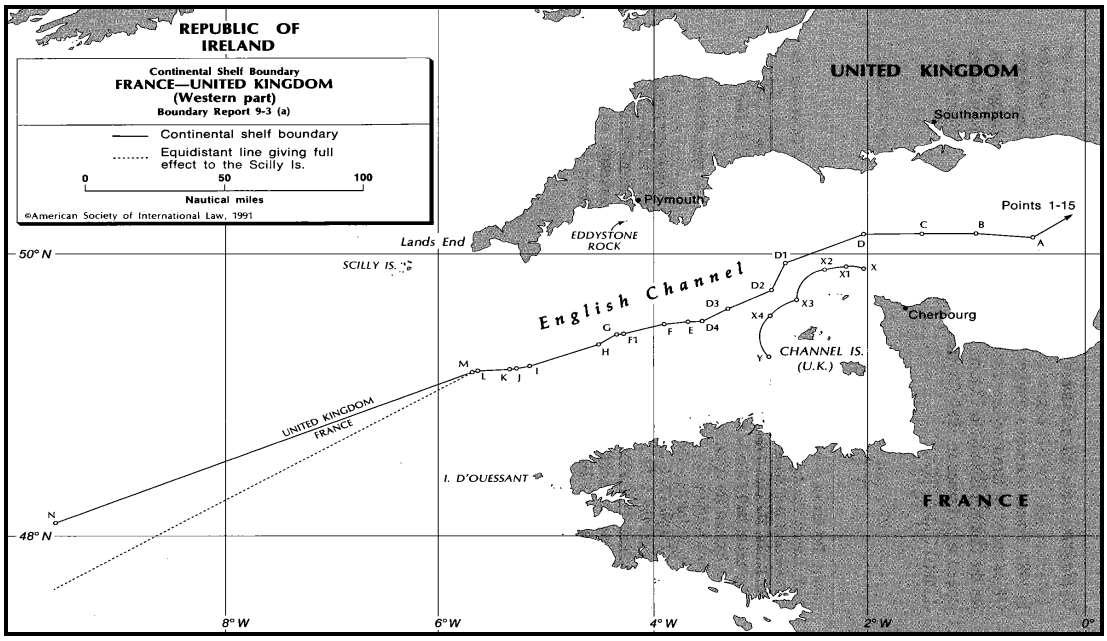
[107] Youshofumi, Tanaka, *Op cit*, p. 434.
[108] *1969 ICJ Reports*, p.52, Para. 98.
[109] *Ibid*, p. 50, Para. 91.
[110] Higgins, R, *Problems and Process: International Law and How We Use It*, Oxford, Clarendon Press, 1994, p. 229.
[111] Koziyris, Phaedon John, *Op cit*, p.352.

In this case, regarding the geographical circumstances that would justify resources to proportionality, the Court of Arbitration asserted that:

> In particular, this Court does not consider that the adoption in the *North Sea Continental Shelves* cases of the criterion of a reasonable degree of proportionality between the areas of continental shelf and the length of the coastlines means that this criterion is for application in all cases. On the contrary, it was *the particular geographical situation of three adjoining States situated on the concave coast* which gave relevance to that criterion in those cases.[112]

It seems that the Court have limited resources to proportionality to particular geographical situations such as that of the North Sea coast. In other words, Court could not find enough geographical circumstances to put stress on the concept of proportionality in drawing delimitation boundary. (See figure 6)

Figure 6. Anglo- French Arbitration Case (1977)



Source: Charney, Jonathan M and Alexander, Lewis M, *International Maritime Boundaries, Vol. II*, p.1746.

A change relating to the concept of proportionality was perceptible in the *Tunisia/Libya* case (1982). In this case, both parties referred to a "reasonable degree of proportionality […]

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[112] *The Anglo- French Continental Shelf case*, United Nations, Reports of International Arbitral Awards, Vol. 18, p. 57, Para. 99.

between […] shelf […] and length of […] coast."[113] Considering the concept of proportionality, the ICJ stated that: "The Court considered that, that element [of proportionality] is indeed required by the fundamental principle of ensuring an equitable delimitation between the States concerned."[114]

The ICJ saw the role of proportionality as an *ex posto facto* to check the equidistance of a delimitation line. To this extent, the dictum of the earlier cases was confirmed. In applying the test of proportionality, the ICJ made a sophisticated calculation. On the one hand, it held that the ratio between the relevant coastline of Libya and Tunisia was approximately 31 to 69. The ratio between the coastal fronts of Libya, represented by a straight line drawn from Ras Tajoura to Ras Ajdir, and that of Tunisia represented by straight lines connecting Ras Kaboudia to the most westerly point of the Gulf of Gabes and from that point to Ras Ajdir, was about 34 to 66. On the other hand, the areas of the continental shelf below the low water mark appertaining to Libya and to Tunisia stood in a proportion of approximately 40 to 60. The ICJ, accordingly, found that the result met the requirements of the test of proportionality.[115]

As in the instances relating to continental shelf delimitation, proportionality played an important role in the context of the single maritime boundaries. In the *Gulf of Maine* case (1984), the chamber of ICJ took proportionality into account for the second segment, where the situation was of opposite coasts by stating that:

> [A] maritime delimitation can certainly not be established by a direct division of the area in dispute proportional to the respective lengths of the coasts belonging to the parties in the relevant area, but is equally certain that a substantial disproportion to the lengths of those coasts that resulted from delimitation effected on a different basis would constitute a circumstance calling for an appropriate correction. In the Chamber's opinion, the need to take this aspect in too account constitutes a valid ground for correction.[116]

The Chamber calculated, for the second segment, the difference in the length of the coasts facing each other, gave half-effect to Seal Island off Nova Scotia (Canada) and the median line initially traced was transposed following the proportion estimated from this calculation.[117]

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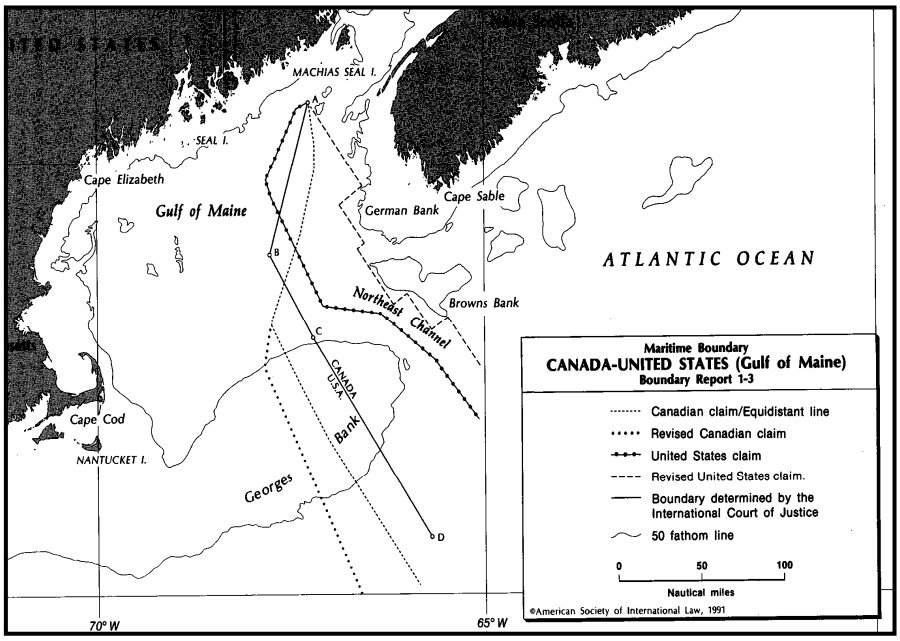
[113] *1982 Tunisia-Libya case*, p. 18, Para. 37.
[114] *Ibid*, Para. 103.
[115] Youshofumi, Tanaka, *Op cit*, pp. 438-439.
[116] *The Gulf of Maine Case 1984*, p. 323, Para. 185.
[117] *Ibid.* Paras. 221-223.

This was a pure and simple application of proportionality. It is not used here as a test of equity, but as a criterion of equity, even of decisive value for drawing the delimitation line and verifying the latter's equitableness. However, the subject of calculation and comparison was only the length of the coast, and was not a question of referring to the extent of the area, at least not in numbers. As the second sector constituted a quadrangle, the ratio in question reflected automatically the size of the maritime space of each party.

In the *Gulf of Maine* case (1984), the Chamber enlarged the concept of proportionality in both its geographical and functional aspects. First, regarding the geographical conditions, the Chamber made no attention of special geographical circumstances that would justify the consideration of proportionality. Contrary to the original geographical conditions for justifying recourse to proportionality, the Chamber here resorted to proportionality in delimitation between States with opposite coasts. Secondly, always in respect of the role of proportionality, the Chamber reaffirmed the earlier ICJ's doctrine according to which proportionality was not a direct basis for delimitations but a means for verifying the latter's equitableness. In reality, however, proportionality was equally considered during the delimitation process.[118] (See figure 7).

Figure 7. Gulf of Maine Case (1984)



Source: Charney, Jonathan M and Alexander, Lewis M, *International Maritime Boundaries, Vol. I*, p. 411.

[118] Tanaka Youshofumi, *Op cit*, pp. 444-445.

In the *Jan Mayen* case (1993), proportionality played an important role. An important feature of this case is that there was no agreement on a single maritime boundary. While Denmark asked the ICJ for "a single of delimitation of fishery zone and continental shelf"[119], Norway contented that the median line constituted the boundary for delimitation of the continental shelf and also for the fishery zone.[120] The important point is that, in Norway's view, the two lines would coincide, but the two boundaries would remain conceptually distinct.

Nevertheless, the ICJ established, for the first time in case law, a single 'coincident' maritime boundary for a fishery zone and the continental shelf, despite the lack of agreement on a single maritime boundary. In drawing such a "coincident maritime boundary", proportionality played an essential role. Considering the disparity of disproportion between the lengths of the relevant coasts, the ICJ held that "the differences in lengths of the coasts of the parties are so significant that this feature must be taken into consideration already during the delimitation operation".[121] It thus concluded that the disparity between the lengths of coasts constituted, for the continental shelf delimitation, a "special circumstance" under Article 6 of the 1958 Geneva Convention on the Continental Shelf, and for the delimitation of a fishery zone, a "relevant circumstance" under customary law.[122] In the light of proportionality, thus, the ICJ adjusted the median line in the two northern zones in such a way as to effect delimitation closer to the coast of Jan Mayen.

In the *Eritrea/Yemen* case (1999) before the *ad hoc* Arbitral Tribunal formed by agreement between the two countries (Second Phase), both parties had recourse to proportionality by relying on the *dictum* regarding that concept found in the *North Sea* cases (1969). Following the *Anglo-French* case (1977), they agreed that the role of proportionality was a test of equitableness and not a method of delimitation, and that manifest disproportionality must be avoided. Thus, there was little difference between the parties regarding the role of proportionality.[123] The dictum was also confirmed by the Tribunal itself.[124]

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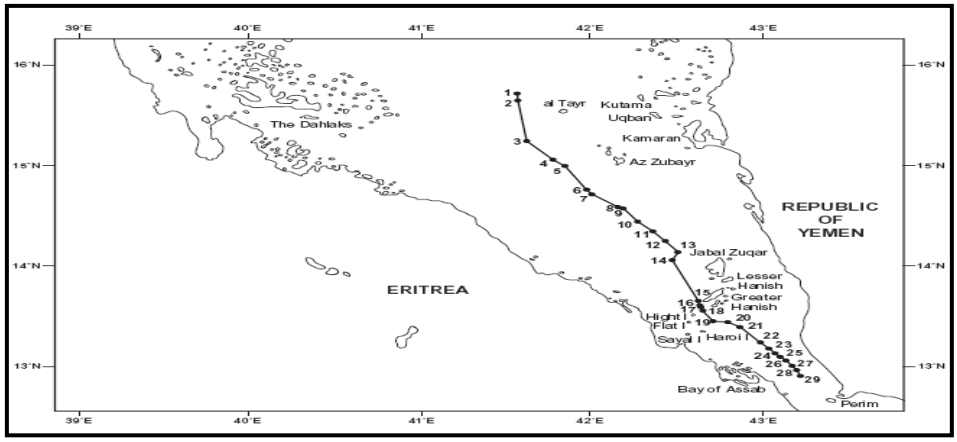
[119] *Greenland/Jon Mayen case 1993*,Para. 9.
[120] *Ibid*, Para. 9.
[121] *Ibid*, Para. 68.
[122] *Ibid*, Para. 68.
[123] *Eritrea/Yemen case 1999*,Para. 39.
[124] *Ibid*, Para. 165.

Nevertheless, there was strong disagreement about how to measure the length of the respective coasts and the significance of that operation once executed.[125] On the one hand, Yemen suggested that a line dividing the areas concerned into almost equal parts correctly reflected the proportion between the lengths of the respective coasts. On the other hand, Eritrea alleged that its own historic median line between the main land coasts would produce areas favouring Eritrea by a proportion of 3 to 2. In Eritrea's view, this reflected accurately the proportion of the lengths of the coasts.[126]

The strong dispute between the parties over the calculation of the lengths of the coastlines revealed the main disadvantages of the proportionality theory envisaged here: *the lack of the objective criterion to determine the relevant coasts.* On this point, the Tribunal explained the result of its calculation in some detail. The Tribunal's solution is not, however, free from difficulties. First, the Tribunal did not, in its award, specify the general direction of Yemen's coast. As a general direction of the coast may change depending on whether a micro or a macro geographical viewpoint is taken, the extent of marine areas to be calculated may be different, depending on the interpretation of the general direction. Secondly, the marine boundary indicated by the Tribunal stops at points that are well short of areas where claims of the third States might intervene. Accordingly, as in the *Tunisia/Libya* case (1982) the result of proportionality might be different depending on the delimitation with third States.[127] (See figure 8)

Figure 8. Eritrea and Yemen Case (1999)



Source: Tanaka, Youshofumi, Reflection on the Concept of Proportionality in the Law of Maritime Delimitation, *the International Journal of Marine and Coastal Law*, V. 16, 2001, pp 451.

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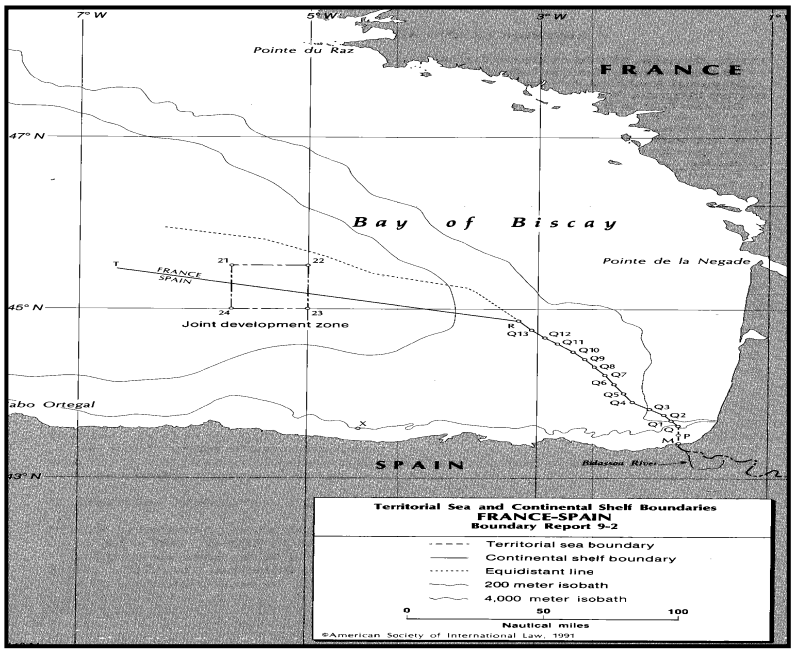
[125] *Ibid*, Para. 39.
[126] *Ibid*, Para. 42.
[127] Youshofumi. Tanaka, *Op cit*, pp. 450-452.

Proportionality also found its place in State practice with respect to delimitation. Regarding the boundaries of the continental shelf, a typical example is the 1974 Agreement between France and Spain in the Bay of Biscay.[128] In drawing the continental shelf boundary, proportionality was taken into account. In order to establish the relevant area, a "box" was created by construction lines. The parties drew a starting line, and then a closing line was drawn between points chosen by the States. For the calculation of the length of the coasts, the States also drew lines between agreed points which created "artificial coastlines." In other words, those lines were the fruit of negotiations. After that, the States calculated the ratio of the respective coasts; the length of the French coastal length between two points was 213 miles, while the Spanish coast was 138 miles long, so the ratio between coasts was 1.54 to 1 in favor of France and the ratio of the maritime spaces allocated was approximately 1.63 to 1. The requirement of proportionality was satisfactory for the States. This example represents an interesting application of proportionality, as the coasts and areas to be considered for calculating proportionality were determined by agreement rather than by an objective criterion. (See figure 9)

Figure 9. France and Spain Agreement (1974)



Source: Charney, Jonathan I and Alwxander, Lewis M, *International Maritime Boundaries, Vol. II*, p. 1719.

Regarding single maritime boundaries, the instances where proportionality affected the location of the maritime boundaries. The first instance is the 1978 Boundary Delimitation Treaty between Venezuela and the Netherlands.[129] Another example is the 1986 Agreement between Burma and India which allegedly considered proportionality as one of the reasons for expanding Burma's maritime domain beyond the strictly equidistance line.[130] Finally, it is reported that the 1997 Treaty between Thailand and Vietnam on the delimitation of the maritime boundary in the Gulf of Thailand also took proportionality into account although the precise ratio between the relevant coasts and areas is unclear.[131]

In general, it is possible to say that the concept of proportionality is a sound test to ensure that the delimitation results are equitable. One can thus conclude that for the use of proportionality it is reasonable to define the relevant coasts of States and it is not necessary to take into account the whole of the coast. It seems better to exclude from the evaluation of proportionality those segments of the coastline which are not within the overlapping maritime areas. In respect to those areas, it would be reasonable to exclude the internal waters and territorial seas from the calculation of proportionality for the purpose of the delimitation of continental shelf and single maritime boundaries, since the continental shelf and EEZ are areas that extend beyond territorial waters. It would not meet the requirements of equity to shift the delimitation line and give more maritime areas to the State with a longer coastline without calculating and comparing the ratio of the attributed areas to the relevant coasts. It is true that a State with a long coast will normally have an area of maritime jurisdiction greater than if it had a short coastline.

Finally, it has to be mentioned that there are some problems regarding the proportionality in case law:

1. The most serious problem, is that there is no objective criterion to define the relevant coasts and areas and too conclude their lengths and surfaces;
2. The problem relating to the subjectivity of the concept in its application. Both the existence of a disproportion between coastal lengths and the extent of the adjustment of the provisional line are decided by judges in a discretionary manner;

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[129] Charney, Jonathan I and Alwxander, Lewis M, *International Maritime Boundaries, Vol. I*, pp. 615-629.
[130] *Ibid*, Vol. II, p. 1329.
[131] Youshofumi, Tanaka, *Op cit*, pp. 453-457.

3. With respect to delimitations between States with opposite coasts, the applicability of proportionality is doubtful;
4. Regarding the role of proportionality, some have considered it a mere test, while others have taken it into account as a corrective factor during the delimitation process; and
5. Finally, there are two essentials limits to the theory of proportionality. First, since the number of lines capable of producing the same proportion is limitless, proportionality will not determine any concrete delimitation line. Secondly, the concept of proportionality contradicts the rejection of the idea of an apportionment in maritime delimitation.[132]

2.2. Methods Applicable to Continental Shelf Delimitation

There are different methods which are applicable to draw continental shelf delimitation boundaries between adjacent or opposite coasts. In the following subsections, four of the most used methods in this regard will be outlined.

2.2.1: Equidistance and Special Circumstances

The 1958 Geneva Convention on Territorial Sea and Contiguous Zone defines equidistance as "the line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each of the two States is measured."[133] The 1958 Geneva Convention on the Continental Shelf contains a similar definition, which differentiates between States with adjacent coasts and States with opposite coasts, for which it uses the "median line" although, technically speaking such a line is also an equidistance line. According to the 1958 Conventions, the use of the equidistance method was obligatory in the absence of an agreement, historical titles or special circumstances.[134]

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[132] *Ibid*, pp. 458-459.
[133] *1958 Geneva Convention on the Territorial Sea and Contiguous Zone*, Article 12.
[134] *1958 Geneva Convention on the Continental Shelf*, Article 6.

In any event, the recourse to equidistance was devised as a *general rule*, i.e. a *starting point* for the delimitation, to which *reasonable modifications* were to be introduced where special circumstances so warranted.[135]

The emergence of the equidistance principle in early treaty law, such as in the 1958 Conventions, may be explained by the fact that this principle struck a certain balance between predictability and flexibility, objectivity and discretion. Moreover, the combined rule generally respected the principle of equal division of the area of converging or overlapping claims, in the absence of inequities resulting from aberrant coastal features or major differences in coastal lengths. Finally, it took account of adjacency or proximity to the coast as the legal basis of title for the territorial sea and as an integral part of the basis of title for the continental shelf.[136]

There are some applications of the equidistance method:

1. A strict equidistant line, which would take in to account all coastal base points permitted under international law, would result, in a vast majority of cases, in a complex and unpractical line made of a multiplicity of turning points and short straight-line segments. One of the very few examples of a delimitation agreement based on strict equidistance is the agreement concluded between Spain and Italy (1974) on the delimitation of the continental shelf.

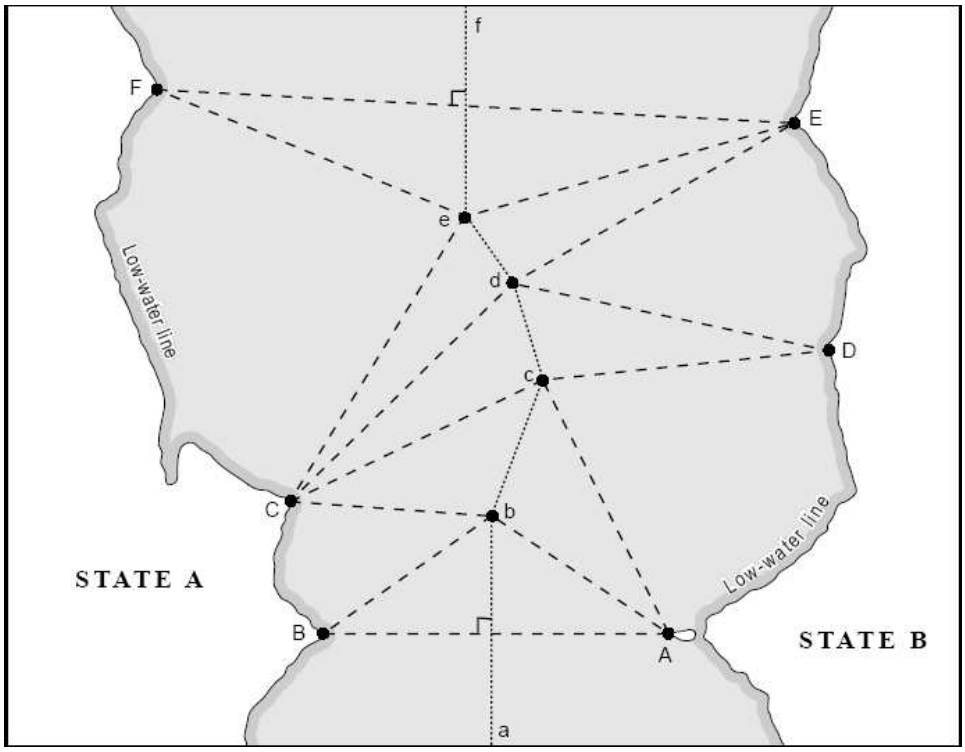
2. Rather than using a strict equidistance line, States, when applying the equidistance method, usually resort to a simplified equidistant line by simply reducing the number of base points or turning points (once the line is drawn) to be taken into consideration. Typically, these simplified lines of equidistance do not result in any significant difference regarding the net area of maritime space attributed to each State involved in the delimitation. For example, the Agreement between Mexico and the USA (1978).

3. The third application of the equidistance method is “adjacent or modified equidistance”. A modified equidistant line is an equidistant line, whether strict or simplified, in which certain relevant geographical features have not been accorded their full po-

[135] - *ILC Yearbook* (1953 II) p. 216.
[136]Legault L. and Hankey B. Method, oppositeness and adjacency, and proportionality in maritime boundary delimitation, In Jonathan I. Charney and Lewis M. Alexander, *International maritime boundaries, Vol. I*, p. 204.

tential effect in accordance with their legal entitlement. The purpose of the modified equidistance line is not to simplify the line while keeping roughly the same distribution of net maritime space between the States concerned, but rather to modify the effect of some geographical features, in certain situations, based on considerations of equity or on other considerations. This method may be applied to different geographical features such as relevant base points, low-tide elevations, rocks and islands, and will result in practice in according no effect or partial effect to any of those features in proportions which may wary. Typically examples of modified equidistance are provided by those delimitation cases involving islands located on the "wrong side" of the equidistance line.[137]

Figure 10. Equidistance line between opposite coasts

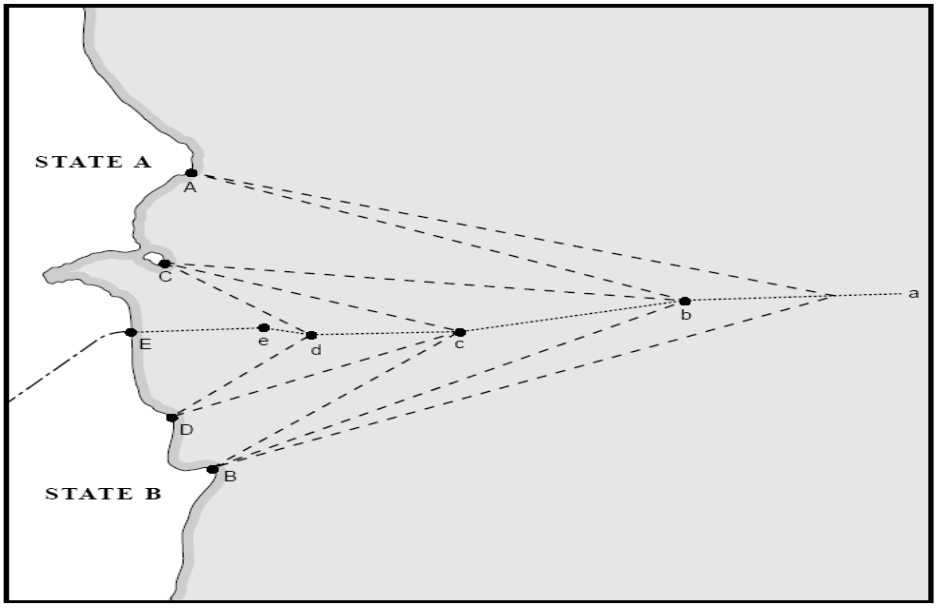


Source: Carleton, Chris and Clive Schofield, Developments in the Technical Determination of Maritime Space: Charts, Datums, Baselines and Maritime Zones, *Maritime Briefing*, Vol. 3, No. 3, 2001, p. 7.

[137] Handbook on the delimitation of maritime boundaries, *Op cit*, pp. 48-58.

The emergence of the principle of distance gives pertinence in normal situations to the equitable method of the equidistance/median line. However, notwithstanding the recognition of the principle of distance as the basis of entitlement to both the EEZ and the continental shelf within 200 nautical miles, the privileged role of equidistance was strongly objected by the ICJ and dissenting judges. The privileged status of the equidistance method was diminished by the ICJ and arbitral tribunals, it was considered as a method which in some cases may lead to inequitable and unreasonable results. In the majority of cases, it was declared that equidistance was not a binding rule of law, but merely one method among others and it was not regarded as part of customary international law which plays the major role in the delimitation process. "The ICJ and arbitral tribunals held that the equidistance principle (or method) was not a mandatory rule of international law and that it did not enjoy any priority or preferential status."[138] The demolishing and toning down of equidistance went so far that the terms "equidistance" and "median line" have disappeared from the text of Article 74 and 83 of UNCLOS.

Figure 11. Equidistance line between adjacent coasts



Source: Carleton, Chris and Clive Schofield, Developments in the Technical Determination of Maritime Space: Charts, Datums, Baselines and Maritime Zones, *Maritime Briefing*, Vol. 3, No. 3, 2001, p. 9.

[138] Nelson L.D.M. The roles of equity in the delimitation of maritime boundaries, *American journal of International law*, 84 (4), 1990, p. 843.

As it is well known, the ICJ in the *North Sea* Cases (1969) demoted the equidistance principle. In these cases, the parties asked the Court to state the principles and rules of international law applicable, and undertook thereafter to carry out delimitations on that basis. The Court rejected the contention of Denmark and the Netherlands to the effect that the delimitations in question had to be carried out in accordance with the principle of equidistance as defined in Article 6 of the 1958 Geneva Convention on the Continental Shelf, holding:

> That the Federal Republic, which had not ratified the Convention, was not legally bound by the provisions of Article 6; That the equidistance principle was not a necessary consequence of the general concept of continental shelf rights, and was not a rule of customary international law.[139]

The ICJ found the use of the equidistance line inappropriate, because of the particular coastal configuration of States was taken into account. The coasts of Denmark and the Netherlands were convex, while that of the Federal Republic of Germany was concave. In such a case, the use of equidistance left Germany an extremely small part of the North Sea continental shelf and the delimitation process would not achieve an equitable result.

The ICJ thought that the use of equidistance could be equitable in certain situations, but it felt "whether under customary law or article 6 it is never a question of complete freedom or of no freedom of choice as a method".[140] That is to say, in the application of equitable principles it is not the case that there is a particular method that must be used, or that one can choose whatever method one likes. Equidistance principles require that a particular method is adopted and applied, but what that method is, will vary from case to case. This is unambiguously stated by ICJ when it stated:

> The appropriateness of the equidistance method or any other method for the purposes of effecting an equitable delimitation is a function or reflection of the geographical and other relevant circumstances of each case. The choice of the method or methods of delimitation in any given case, whether under the 1958 Convention or customary law, has therefore to be determined in the light of those circumstances and of the fundamental norm that the delimitation must be in accordance with equitable principle.[141]

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[139] *1969 North Sea case*, Merits of Judgment of 20 February 1969, Preamble, Para .3.
[140] Evans. Malcome D, *Op cit*, p. 80.
[141] *Ibid*, pp. 80-81.

The differing perspectives in which the ICJ viewed equidistance coloured its views concerning its applicability as a rule of law or as an equitable principle. The ICJ said that a strict method of equidistance can be used in compliance with the equitable principle[142] but also that international law permitted resort to various principles or methods provided that, by the application of the equitable principle, a reasonable result was arrived at.[143]

In the *Tunisia/Libya* case (1982), the ICJ at first reviewed the developments since the *North Sea* Case (1969) involving adjacent States and noted that: "treaty practice, as well as the history of Article 83 of the draft Convention on the Law of the Sea, leads to the conclusion that equidistance may be applied if it leads to an equitable solution; if not, other methods should be employed".[144]

Then, the ICJ dispelled any lingering doubts about the role of equidistance. It did not consider that it was

> [...] required as a first step, to examine the effects of a delimitation by application of the equidistance method, and to reject that method in favour of some other only if it considers the result of an equidistance line to be inequitable... since equidistance is not, in the view of the Court, either a mandatory legal principle, or a method having some privileged status in relation to other methods.[145]

In the *Libya/Malta* case (1985), Malta had put forward in clear terms the propositions that an equidistance line should be considered as a primarily delimitation – "as starting the delimitations process" – to be adjusted as necessary in the light of all relevant circumstances.[146] The ICJ however refused to accord equidistance any such special status, and observed that it was

> [...] unable to accept that, even as a preliminary and provisional step towards the drawing of a delimitation line, the equidistance method is one which must be used, or that the Court is "required, as a first step, to examine the effects of a delimitation by application of the equidistance method"[...] such a rule would come near to an espousal of the idea of "absolute proximity", which was rejected by the Court in 1969[...], and

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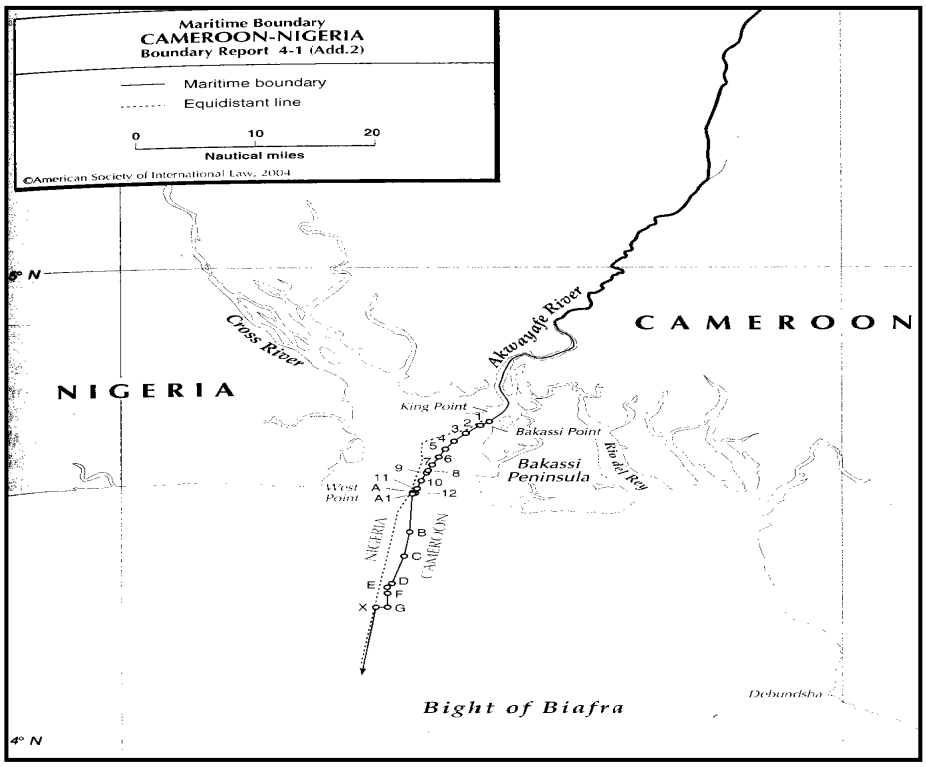
[142] *1969 North Sea case*, Paras. 89-90.
[143] *Ibid*, Para. 90.
[144] *ICJ Reports (1982)*, pp. 77-79.
[145] *ICJ Reports (1982)*, p. 79, Para. 110.
[146] Counter Memorial submitted by Republic of Malta, Para. 146.

> which has since, moreover, failed of acceptance at the Third United Nations Conference on the Law of the Sea.[147]

In the *Gulf of Maine* case (1984), the ICJ also took into account the view expressed in the *1969 North Sea* case (1969), that equidistance was not a principle of customary international law[148], thus not a method to be given priority, and later added that it has no "intrinsic merits which could make it preferable to another in the abstract."[149]

The *Cameroon/Nigeria* case (2002) was the first case between adjacent States in which the ICJ applied the equidistance line without modification.[150] (See figure 12)

Figure 12. Cameroon/Nigeria case (2002)



Source: Colson, David A and Smith, Robert W, International *Maritime Boundaries, Vol. V*, p. 3617.

[147] Nelson L.D.M, *Op cit*, p. 844.
[148] *1984 Gulf of Maine case*, Par. 107.
[149] *Ibid.* Para. 162.
[150] *Cameroon/Nigeria case*, ICJ Award, Section (c). In this regard see Colson, David A and Smith, Robert W, International maritime Boundaries, Vol. V, pp- 3605-3620.

On the other hand, since the ICJ considered that equidistance was not an advantaged method, it applied the modified equidistance line in the second sector as a measure of equity. It seems that the ICJ realized that in the case of opposite coasts, the use of equidistance in combination with relevant circumstances could lead to an equitable result.[151]

After reviewing relevant ICJ cases and arbitral awards concerning maritime delimitation between adjacent States, it is possible to conclude that the equidistance method is not a general rule of customary international law and not a privileged method among others. This view was expressed not only in the cases between adjacent States, but also between States with opposite coasts. In cases with opposite States, the Court found it convenient to use the equidistance method as a starting point, and in the 1977 Arbitration between the United Kingdom (hereinafter UK) and the France, the Court of Arbitration pointed out that the equidistance-special circumstances methods have the same goal as the general rules of customary law to achieve an equitable result.[152]

Regardless, the withdrawing character of equidistance in ICJ and Tribunals Awards, it found its way into State practice. The majority of bilateral treaties on maritime delimitation still use a line based on simplified or modified equidistance. In many cases, Governments begin the negotiations by considering an equidistance line, while subsequently at liberty to modify it. Even in most ICJ cases and Arbitral awards, Judges found it convenient to use the equidistance line as the starting point in the delimitation process. As Judge Jimenes De Arechaga declared, "naturally, in all cases the decision-maker looks at the line of equidistance, even if none of the parties has invoked it."[153] Therefore, the point of departure should be the line of equidistance, and this line should be distorted only if it is found to produce inequitable results.

The situation concerning the use of the equidistance method is different in State practice. States found a practical advantage, simplicity and convenience of the equidistance method and thus it was given a privileged status as the starting step during negotiations on maritime delimitation, with the possibility to modify it subsequently. State practice supports the

[151] *Ibid*, pp. 3614-3615.
[152] Decision of 30 June 1977 Judicial and Similar Proceedings: France-United Kingdom: Arbitration on the delimitation of the Continental shelf, Para , 70. Repr.18, International Legal Materials, 1979.
[153] *Tunisia/Libyan Arab Jamahiriya case 1982*, Separate opinion of Judge Jimenes de Arechaga, Par. 18, p. 105.

conclusion that the applicable principles and rules of maritime delimitation between States should be settled by agreement with equitable principles and that the proper use of the equidistance method would generally lead to an equitable solution.

On 17 July 1985, Poland and the Soviet Union signed an agreement on the delimitation of the territorial sea, the economic zone, the fishery zone and the continental shelf in the Baltic Sea.[154] An all-purpose and single maritime boundary is established by this agreement between the adjacent States and it is an equidistance line, although this is not explicitly specified in the Agreement itself.[155]

Another example of a treaty between adjacent States was in the Black Sea region between Turkey and Bulgaria.[156] The two respective States agreed on 4 December 1997 to delimit the boundary in the mouth area of the Mutlidere/Rezovska River and the maritime areas in the Black Sea. The Agreement concerning the delimitation of the maritime areas between the two adjacent States is based on a simplified equidistance line to produce an equitable and just delimitation.[157]

Two treaties were signed on 24 October 1997 by Lithuania and Russia.[158] One concerns the delimitation of the State border, which also establishes a territorial sea boundary.[159] The Agreement on the State border establishes the territorial sea boundary between the parties by means of a single segment and is based on the method of equidistance.[160] The second treaty delimits the EEZ and the continental shelf between these two States in the Baltic Sea.[161] The delimitation was guided by the equidistance method. The presence of oil deposits lie at the heart of the Agreement. Because the Russian Federation was primarily interested in the rapid exploitation of the oil field located close to the coast, the delimitation of the first segment of the boundary was guided by the method of drawing a line perpendicular to the general direction of the coast. The second segment is a hypothetical equidistance line.[162]

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[154] Charney, Jonathan I and Robert W. Smith, *International Maritime Boundaries, Vol. II*, p. 2039.
[155] *Ibid*, p. 2040.
[156] *Ibid*,. Vol. IV, p. 2871.
[157] *Ibid*, Vol. IV, p. 2876.
[158] *Ibid*, pp. 3057-3088.
[159] *Ibid*, pp. 3085-3088.
[160] *Ibid*, p. 3082.
[161] *Ibid*, pp. 3073-3075.
[162] *Ibid*, p. 3069.

On 12 July 1996, Estonia and Latvia also concluded a treaty on maritime delimitation in the Gulf of Riga, the Strait of Irbe and the Baltic Sea.[163] The boundary begins between adjacent coasts, but quickly turns into a situation of opposite coasts inside the Gulf. Outside the Gulf, the coasts once again become adjacent. Thus, the delimitation line is a combination of methods and the equidistance line is applied inside the Gulf of Riga, except for a short segment at its entrance.[164]

According to an analysis made by the Italian scholar Umberto Leanza, the majority of the delimitation treaties in this region "are based on the criterion of equidistance or a median line, modified to take into consideration the presence of island or the curvature of the coastline."[165]

S.P. Jagota, after evaluating State practice, concludes that in 100 agreements between 59 States, the equidistance method, whether true or modifying was privileged.[166]

2.2.2: Perpendicular

This method of delimitation consists of drawing a perpendicular line to the coast or to the general direction on the coast. In this sense, it is very simplified version of the equidistance method that can be used in combination with other methods or on its own. It is important that the parties agree precisely on the sector of the coast to be considered in this process. One may expect that its length would normally vary in relation with the expected extension of the delimitation line itself: the farther from the coast its ending point, the longer coastline to be taken into account.[167]

This method was used by the ICJ and has also found its place in State practice. The use of the perpendicular line is more frequent in the case of adjacent States which present coasts that are more or less straight. A lateral delimitation based on a perpendicular line, however, will only lead to a mutually acceptable result when the coast at the point of termination of the land frontier is relatively straight and the general direction of the coastline rather easy to determine.

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[163] *Ibid*, pp. 3014-3017.
[164] *Ibid*, p. 2996.
[165] Umberto, Leanza, The delimitation of the continental shelf of the Mediterranean Sea, *International Journal of Marine and Coastal Law*, 8 (3) August 1993, p. 385.
[166] S.P. Jagota, *Op cit.* p. 122.
[167] Handbook on the Delimitation of Maritime Boundaries, *Op cit*, p. 56.

For such delimitation, the locations of the baselines are important in determining the general direction.[168]

Unless the use of a straight baseline system is accepted by the two adjacent States, application of a perpendicular line rule will be difficult to conceive when concave or convex coastlines are at issue, or when various islands are situated in front of the coast of the States. The use of the perpendicular method is debatable in the case of a coast which is not altogether straight, for it presupposes a preliminary decision on the general direction of the coast between two points which have to be chosen. This is a difficult issue, and it is easy to understand why the Committee of Experts consulted by the ILC preferred the equidistance method to the perpendicular one.

In the case of the Arbitral Award in the *Guinea/Guinea Bissau* case (1985), the method of perpendicularity was applied to the large seaward segment of the maritime boundary. In this case, the tribunal adopted the line which was "grosso modo perpendicular to the line joining Almadies point and Cape Shilling. This would give just one straight line bearing 236 degrees."[169] This line which joined these two points was used by the Court, since it better reflected the general configuration of the coastline and would reduce the risk of enclavement to a minimum.[170] (See figure 13)

Another example of the application of the perpendicular line method in ICJ delimitations was the *Tunisia/Libya* case(1982). For the determination line in the first sector, closest to the coast, the ICJ was conscious that the continental shelf should start from the outer limits of the territorial sea.[171] For this segment, the Court found that, in principle, a line perpendicular to the coast could serve as an equitable boundary taking into account the rather uniform conduct of the parties in the past and the line established by this conduct was also roughly perpendicular to the coast.[172]

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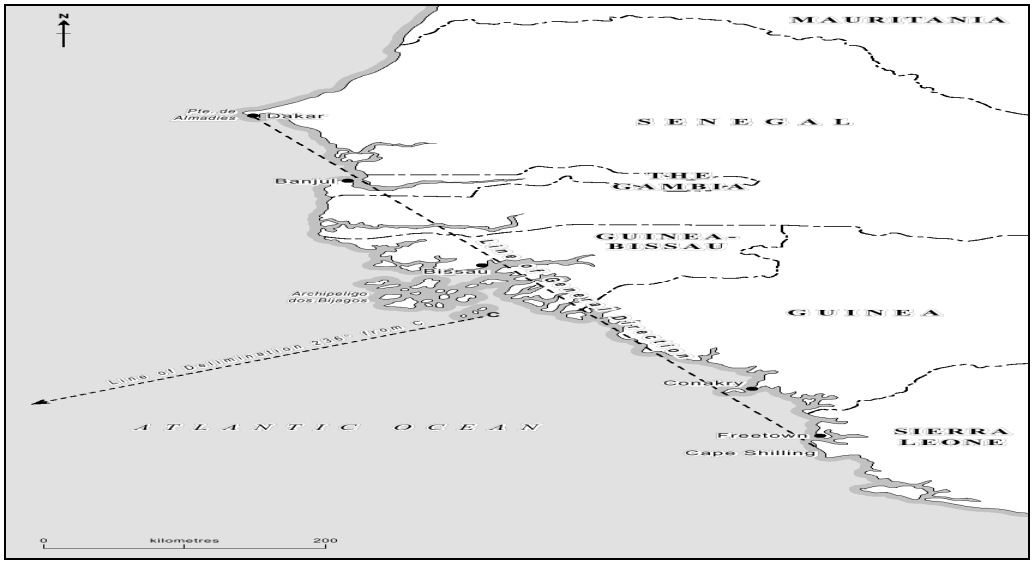
[168] Alexander, Lewis M, Baseline delimitations and maritime boundaries, *Virginia Journal of International Law*. 1983, Vol. 23, p. 532.
[169] *1985 Guinea/Guinea-Bissau case*, Para. 111.
[170] *Ibid.* Par. 111.
[171] *1982 Tunisia/Libya case*, Par. 116.
[172] *Ibid*, Paras. 119-120.

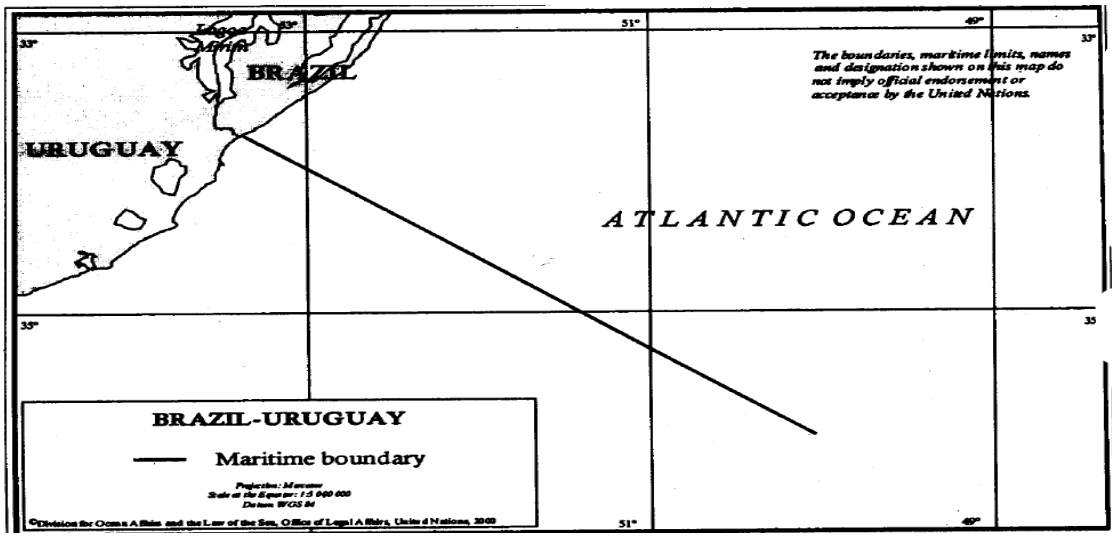
Figure 13. Guinea/ Guinea Bissau Arbitration Case (1985)



Source: Carleton, Chris and Clive Schofield, Developments in the Technical Determination of Maritime Space: Charts, Datums, Baselines and Maritime Zones, *Maritime Briefing*, Vol. 3, No. 3, 2001, p. 22.

A good example of the application of this method is provided by the Agreement on the delimitation of maritime areas between Uruguay and Brazil (1972) with an almost straight coastline leaving no room for disagreement as to its general direction.[173] (See figure 14)

Figure 14. Uruguay and Brazil Agreement (1972)



Source: *Handbook on the Delimitation of Maritime Boundaries*, United Nations Publication, 2000, p. 56.

[173] Jonathan, Charney M and Akexander, Lewis M, *International Maritime Boundaries, Vol. I*, pp. 785-791.

In the Baltic Sea, there are some agreements between adjacent States which make use of the perpendicular line. For example, in the 1996 Agreement between Estonia and Latvia,[174] the perpendicular line was applied outside the Gulf of Riga. Inside the Gulf, a historical consideration prevailed and the delimitation line is a negotiated one.[175]

In the 1999 Agreement between Latvia and Lithuania on the delimitation of the territorial sea, EEZ and continental shelf, the perpendicular line was also applied for the delimitation of the EEZ and continental shelf. The parties agreed that this line represents the general direction of their coasts. Moreover, the latter seems to have been arrived at in such a manner that Lithuania secured an area of maximum reach, extending to Sweden's EEZ, while at the same time taking into account Latvia's interests in the non-living resources of the area.

Finally, it is possible to observe that the perpendicular line can also, in certain cases, be useful for the delimitation of maritime zones between adjacent States. This line seems to be close to the equidistance line. A line of equidistance between two points is, by definition, the perpendicular bisecting the straight line between those two points. Thus, the line of equidistance method is simply a series of perpendiculars. It would scarcely be an exaggeration to say that the equidistance method is the scientific development of the perpendicular line.

2.2.3. Meridians and Parallels

In addition to the equidistance and perpendicular lines to draw maritime boundaries, there is another method which makes use of parallels of latitude and meridians of longitude to draw the delimitation line.

Between the adjacent States, this method sometimes takes the form of a parallel or meridian drawn from the point where the frontier reaches the sea. In the case of adjacent States, the use of meridians or parallel method can avoid cut-off that might result from the use of equidistance boundaries on concave or convex coastlines or in areas where islands or rocks are present.

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[174]Jonathan I, Charney and Smith, Robert W. *International Maritime Boundaries, Vol. IV*, pp. 3014-3017.
[175] *Ibid*, p. 3008.

This method provides many advantages, such as simplicity and avoidance of the cut-off phenomenon in some instances. Nevertheless, it is not widely used owning to that fact that, in many cases, such advantages do not sufficiently outweigh to disadvantages of producing inequitable results.[176]

This method can be combined with other methods of delimitation such as equidistance. One of the examples in which States have followed the equidistance line in the areas closer to the coasts and then continued along a parallel or meridian to complete the delimitation line is the Colombia-Panama Treaty (1976)[177], in which the Caribbean part of the maritime boundary followed the parallels and meridians.

2.2.4. Enclaving

Enclaving is another method of delimitation which is used when no effect or partial effect are given to an island. This method might be used independently or in combination with some other method of delimitation. In such situations, though, as the maritime jurisdiction of such island cannot be denied, a maritime belt of a certain breadth is drawn around that island by means of a line made of arcs of circles drawn from the most seaward basepoints.

The enclaving method can produce either a full enclave, where the maritime belt accord to the island is wholly separated from the offshore zone of the mainland coast of the State to which the island belongs, or, alternatively, a semi-enclave, where the maritime zone appertaining to the island merges with the maritime zone of the main land coasts. The semi-enclave effect occurs when the island is situated on or close to the equidistance line.[178]

A good example of a full enclave is found in the Australia-Papua New Guinea Agreement (1987).[179] In this Agreement, 12 Australian islands lying close to the coast of Papua New Guinea were accorded 3 miles territorial sea enclaves. (See figure 15)

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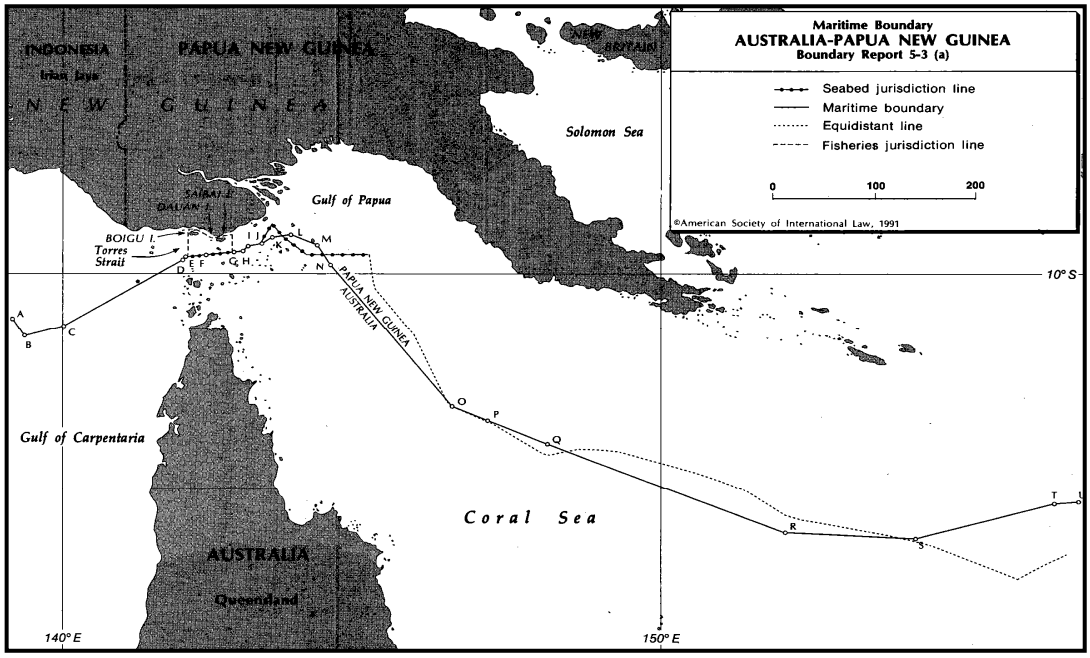
[176] Handbook on the Delimitation of Maritime Boundaries, *Op cit*, p. 57.
[177] *The Law of the Sea; Maritime Boundary Agreements (1970-1984)*, United Nations Publication, Sales No. E.87.V.12, 1987, pp. 158-163.
[178] Legault, Leonard and Hankey, Blair, *Op cit*, p. 212.
[179] *The Law of the Sea; Maritime Boundary Agreements (1985-1991)*, United Nations Publication, Sales No. E.92.V.2, 1992, pp. 51-92.

Figure 15. Australia-Papua New Guinea Agreement (1987)



Source: Jonathan, Charney M and Akexander, Lewis M, *International Maritime Boundaries, Vol. I*, p. 935.

One of the delimitation agreements resulting in a semi-enclave is the Iran-Saudi Arabia Agreement (1968)[180], in which the Iranian island of Farsi and the Saudi Arabian island of Al'Arabia were each accorded a 12 nautical mile belt.

2.3. The Evaluation of Geographical Elements in Continental Shelf Delimitation

A number of geographical, historical, political, economic, security or other factors may be taken into account during the maritime boundary delimitation (including the continental shelf). It is the rights of littoral States to use as many factors as they deem appropriate for their maritime boundary delimitation.

State practice makes it clear that geographical considerations are, in most cases, the main factors taken into account by States when concluding their maritime boundary delimitation agreements. Even when other elements, such as economic, political and security factors, are

[180] This agreement will be reviewed in details in chapter 4.

taken into account, they are normally used as a way to refine a previous line constructed on the basis of geographical considerations.

There are some geographical elements that could be considered in the maritime boundary delimitation, among them the configuration of the coasts and the presence of islands and rocks, which will be reviewed below.

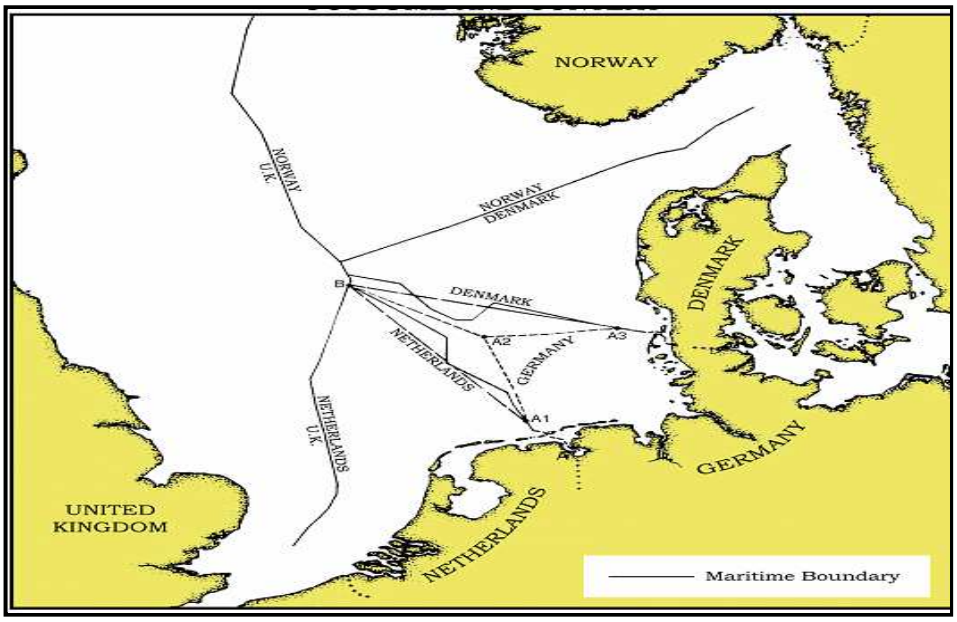
2.3.1. Physical Geography or Configuration of the Coasts

With respect to geographical characteristics, the first factor to be considered is the configuration of coasts. The coastal geography is at the centre of any maritime delimitation, since the starting point of the delimitation operation is the coast of each of the two States. "The land dominates the sea and it dominates it by the intermediary of the coastal front".[181] As the ICJ has commented, "the delimitation line to be drawn in a given area will depend upon the coastal configuration".[182] The coastal geography is regarded as the leading factor in maritime delimitation and the costal fronts and the physical configuration of the coast are the principle parameters in this regard.

Geographical circumstances, and especially coastal configuration, play an important role in State practice as well. The 1971 Agreements concluded between the Federal Republic of Germany and Denmark, and between the Federal Republic of Germany and the Netherlands following the 1969 Judgment of the ICJ constitute the most profound examples of treaties where the configuration of the coastlines were taken into account. (See figure 16)

[181] *Ibid*, p. 51.
[182] *ICJ Reports 1984*, p. 330, Para. 205.

Figure 16. North Sea case (1969)



Source: Antunes. Nuno Marques, *Towards the Conceptualization of Maritime Delimitation,* Martinus Nijhoff Publishers, Boston, 2003, p. 444.

In the *North Sea* case (1969), the ICJ considered the general configuration of the coasts of the parties as the relevant circumstances necessary to take into account.

> It is necessary to examine closely the geographical configuration of the coastline of the countries […] since the land is the legal source of power which may exercise over territorial extensions to seaward, it must first be clearly established what features do in fact constitute such extension.[183] The general direction of the coasts [...] as well as the presence of any special or unusual features must be taken into account in delimitating continental shelf boundaries.[184]

The ICJ found that the coasts of Denmark and the Netherlands were both convex, while that of the Federal Republic of Germany was concave. In such a case, the use of equidistance left Germany an exceptionally small part of the North Sea continental shelf and the goal of the delimitation process, to achieve an equitable result, would not being satisfied.

The configuration of the coasts played an important role in the 1971 treaty between the UK and the Federal Republic of Germany[185] which was concluded after the decision of the ICJ in *North Sea* cases (1969). Necessarily the treaty was heavily based on the 1969 decision where

[183] *1969 North Sea Case*, Para. 96.
[184] *Ibid*, Para. 101.
[185] Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries, Vol. II*, pp. 1856-1858.

the taking into account of the configuration of the complete German North Sea coastline was considered an *equitable principle*. The configuration of German coastline did, therefore, not only influence the continental shelf boundaries between Germany and Denmark and Germany and Netherlands, but indirectly also the opposite boundary between the UK and Germany.[186]

The general configuration of the parties' coasts had also been considered a relevant circumstance in the *Tunisia/Libya* case (1982). The ICJ found that the marked change in the direction of the Tunisian coastline modified the lateral relationship of the two States and should be taken into account in balancing-up process and was justified and legally sound.[187]

In the *Gulf of Maine* case (1984), geography and geographical circumstances were undoubtedly leading considerations and were implicitly regarded as having a preferential status. The ICJ considered geographical criteria as excellent examples of neutral circumstances, suitable for a multi-purpose delimitation. It mentioned first the geographical configuration of the area and then other relevant circumstances.[188] (See *supra* figure 7)

The importance of the coastline, or rather the costal front, has been underlined by the ICJ: "it is by means of the maritime of this landmass, in other words by its coastal opening, that this territorial sovereignty brings its continental shelf rights in to effect."[189] "[...] the attribution of marine areas to the territory of the State, which, by its nature, is destined to be permanent, is a legal process based solely on the possession by the territory concerned of the coastline."[190]

The coast with its own characteristics plays an important role. The two coasts may be of different lengths, concave or convex, or even have other special features. In the *Gulf of Maine* case (1984), the ICJ stressed that "[...] the facts of geography are not product of human action amenable to positive or negative judgment, but the result of natural phenomena, so that they can only be taken as they are."[191] All this does not mean that the delimitation process based on the configuration of a coast is an objective operation.

Various interpretations and positions in this regard may be adopted as so:

- The general direction of the coast line;
- Any changes of its direction;

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[186] Tanja, Gerard J, *Op cit*, pp. 51-52.
[187] *1982 Tunisia and Libya case*, Para. 122.
[188] *1984 Gulf of Main case*, Para. 112.
[189] *ICJ Reports 1985*, pp. 40-41, Para. 49.
[190] *ICJ Reports1993*, pp. 73-74, Para. 80.
[191] *ICJ Reports1984*, p.271, Para. 37.

- Whether to take minor features in to account, and what constitutes a "minor" or "major" feature for this purpose;
- The existence of one or more coastal fronts;
- The regular or irregular indentation of the coast;
- Its degree of concavity or convexity;
- The calculation of the length of each coast or segment of coast;
- The proportionality between their length; and
- The adjacent or opposite situation of the coast.[192]

Among the abovementioned positions of the general configuration of the coastline, four of them are more important and play vital roles in drawing maritime boundaries. These positions will be evaluated below:

2.3.1.1. Adjacent or opposite coasts

The geographical configuration of the relevant coasts most frequently taken into account in maritime boundary delimitation is that of adjacency or oppositeness. The ICJ and International Tribunals have attached great importance to the distinction between opposite and adjacent when evaluating the equidistance method. Due to its nature, the equidistance method may be applied in both situations, as the practice of States and international jurisprudence show, although it seems more appropriate in the case of opposite coasts. In the case of adjacent coasts, the potential inequitable results produced by equidistance are much more important due to a number of factors, such as the irregularity of the coastline itself or the presence of islands.

In the 1958 Geneva Convention on the Continental shelf, there are 2 different criteria for opposite and adjacent coasts:

1. Between two or more States with *opposite coasts* and unless another boundary is justified by special circumstances, the boundary is the *median line*;[193] and
2. Between two or more States with *adjacent coasts* and unless another boundary is justified by special circumstances, the boundary shall be determined by the *application of*

[192] Handbook on the Delimitation of Maritime Boundaries, *Op cit*, pp. 27-28.
[193] *1958 Geneva Convention on the Continental Shelf,* Article. 6, Para. 1.

the principle of equidistance from the nearest point of the baselines from which the breadth of the territorial sea of each states is measured.[194]

Many delimitation cases show situations of mixed oppositeness/adjacency. From a cartographic point of view, the equidistance method may highlight where precisely the delimitation cases to be between "adjacent" coasts to become one between "opposite" coasts and vice-versa, which may be important when using the proportionality criteria.[195]

Nevertheless, this dichotomy is not always free from difficulties. First, in some cases, the distinction between opposite or adjacent coasts is not obvious. Rather, as confirmed in international decisions, the relation between coasts, in reality, is often hybrid. In the *Anglo-French* case (1977) award, for instance, the Court of Arbitration regarded the Atlantic region as a situation of adjacent coasts, while the English Channel region was considered to be a relation of opposite coasts.[196]

In the *Tunisia- Libya* case (1982), the Tunisian coast transformed the relation between Libya and Tunisia from one of adjacency to one of oppositeness.[197]

In the *Gulf of Maine* case (1984), the configuration of the coasts presented a hybrid nature on adjacent (the first and third sectors) and opposite (the second sector) coasts.[198]

Second, the coasts of a State may comprise a segment which is adjacent to its neighbouring State's coast, and another segment which is opposite another neighbour's coasts which are in use for drawing delimitation line. Accordingly, in following the above dichotomy, different approaches toward equitable principles will be applicable to the same State according to the sections of its coasts.

The ICJ, in the *Jan Mayen* case (1993), appears to follow that line of argument, by stating:

> In the particular case of maritime delimitation, international law does not prescribe, with a view of reaching an equitable solution, the adoption of a single method for the delimitation of maritime spaces on all sides of an island, or for the whole coastal front of a particular State, rather than, if desired, varying system of delimitation for the various parts of the coasts.[199]

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[194] *Ibid*, Article 6, Para. 2.
[195] *Ibid*, p. 28.
[196] Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries, Vol. II*, pp. 1740-1741.
[197] *Ibid*, pp. 1670-1671.
[198] *Gulf of Maine Case*, Paras. 209-218.
[199] Yoshifumiv, Tanka, *Predictability and flexibility in the law on maritime delimitation*, Hart Publishing, 2006, pp. 153-154.

In the delimitation area between Estonia and Lithuania, the geographical configuration of the coast is rather complex, as there is a change in the geographic relationship between the coasts. Inside the Gulf of Riga, both coasts start as adjacent, but later become opposite. Outside the closing line, the coasts once again turn to an adjacent configuration. Furthermore, some segments of the Estonian mainland coast are irregular. These factors had a small affect on the delimitation process. The most decisive circumstances in the 1996 Agreement between these States were historical and economical circumstances.[200]

In this regard, State practice tends to distinguish between opposite or adjacent coasts. The oppositeness or adjacency of the coasts has had an important bearing upon the choice of the method of delimitation. The distinction between oppositeness and adjacency is, however, a matter of degree. On this point, as in the case in law, there is room for doubting whether, in concluding an agreement regarding maritime delimitation, the dichotomy in question will always provide an adequate criterion for determining the method of delimitation.

2.3.1.2. General Direction of the Coast

The direction of the coast is relevant in delimitations, mainly between adjacent coasts, in which the method of perpendicularity or a simplified from of equidistance is used. Here, clearly, it is very important that the parties agree precisely on the sector of a coast which is to be taken into account in this process of defining its general direction. The length of such sector would normally vary also in relation with the expected extension of the delimitation line itself; the farther from the coast its ending point, the lengthier should be the coastline to be taken into account.

The most dramatic impact of the general direction of the coast may be found in the *Guinea/Guinea-Bissau* case (1985). In that case, the Court of Arbitration drew a line *grosso modo* perpendicular to the general direction of the coastline joining Pointe de Almadies (Senegal) and Cape Schiling (Sierra Leone), arguing that the overall configuration of the West Africa coastline should be taken into account. The Court of Arbitration indicated that:

> In order for the delimitation between the two Guineas to be suitable for equitable integration in to the existing delimitations of the West African region, as well as into future delimitations which would be reasonable to

[200] Charney, Jonathan I and Robert, Smith W, *International Maritime Boundaries. Vol. IV*, pp. 3004-3005.

> imagine from a consideration of equitable principle and the most likely assumption, it is necessary to consider how all these delimitations fit in with the general configuration of the West African coastline, and what deductions should be drawn from this in relation to the precise area concerned in the present delimitation.[201]

In the *Tunisia/Libya* case (1982), the ICJ ruled that a line perpendicular to the coast was relevant for determining the location of the delimitation line. It considered that any margin of disagreement relating to the perpendicularity to the 'general direction' of the coast would centre around the 26 degree *de facto* line. Yet no specific line of the general direction of the coast was identified.[202]

In the *Gulf of Maine* case (1984), the USA proposed the 'adjusted perpendicular' method. The core of the US argument was the idea of representing the general direction of the coasts by a continuous horizontal line formed by the coasts designated as the principal coasts of Maine (USA) and New Brunswick (Canada). According to US, first, the line perpendicular to the general direction of the coast should be drawn at point A. Next, the line would be adjusted in order to grant Canada the two fishing banks (German Bank and Browns Bank) and to award Georges Bank to the US.[203]

On the one hand, the Chamber discarded this proposal. In its view, an essential condition for using the proposed method was the territories of the two States form a more or less rectilinear.[204] Yet, in the present case, this condition was absent, as the starting point of the line was situated in one of the angels of the rectangle in which the delimitation was to be effected. The Chamber found that such a situation could not be remedied by the abstract concept of the 'general direction' of the coast, since "the real geographical configuration differs so markedly from such general direction".[205]

On the other hand, the Chamber established, in the third segment of the single maritime boundary, a line perpendicular to the closing line the Gulf of Maine. In so doing, the Chamber pointed out:

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[201] *The Guinea/Guinea-Bissau case*, p. 289, Para, 111.
[202] Yoshifumiv, Tanka, *Op cit*, p. 158.
[203] *Gulf of Maine case 1984*, pp. 318-319, Paras. 170-172.
[204] *Ibid*, p. 320, Para. 176.
[205] *Ibid*.

> The direction of the closing line of the Gulf, with which that line would form a right angle, corresponds generally to the direction of the coastline at the back of the Gulf, and it will be recalled the USA had proposed [...], a perpendicular to the direction of the coast.[206]
>
> Nonetheless, the revival of the idea of the general direction of the coast is hard to reconcile with the preceding rejection of the argument on the USA.[207]

In State practice, there are a few agreements creating lines perpendicular to the general direction of the coast.

In the 1997 Protocol between Georgia and Turkey on the confirmation of the maritime boundaries between them in the Black Sea[208], which is the treaty concluded between the Soviet Union and Turkey during the period 1973-1987[209], the coastal configuration does not constitute relevant circumstance for the adjustment of the delimitation line. The coasts of the States are not concave or irregular and there are no promontories on the coasts. With slight simplification, the boundary line follows the general direction and is equidistant from the nearest points on the territory of the parties. For the territorial sea, the parties established the 2900 azimuth and it has been suggested that this method probably relies on an approximate prolongation of the general direction of the last part of the land frontier. The chosen method departs slightly from an equidistance line.[210]

2.3.1.3. Comparative Lengths of the Relevant Coastlines

The length of the parties' coast is a function of the relevant area. The comparative length of the relevant coastline has become one of the most important factors in maritime boundary delimitations in order to apply the factor or test of proportionality based on equitable considerations. We have seen that the 'relevant coasts' form an element of the relevant area but there are difficulties in identifying precisely what they are. Here also, the parties must agree upon the method used to compute the length on the coastlines, especially when they would deem appropriate to simplify, even drastically, its configuration for this purpose.

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[206] *Ibid*, p. 338, Para. 225.
[207] Yoshifumi, Tanka, *Op cit*, pp. 158-159.
[208] Charney, Jonathan I and Robert, Smith W, *International Maritime Boundaries*. Vol. IV, pp. 2867-2868.
[209] *Ibid*, pp. 2865-2866.
[210] Alex G.O, Elferink. *The law of maritime delimitation: A case study of the Russian Federation.* Springe Publisher,1994, p. 293.

This factor can influence the choice of the method of delimitation. In the *North Sea* cases (1969), a primarily element in the court's reasoning was that "there are three states whose coastline are in fact comparable in the length".[211] In the *Anglo-French* case (1977) the fact that 'the coastlines of the parties' main land face each other across the Chanel in a relation of approximate equality' was of cardinal importance in establishing the applicability of equidistance. In both these cases, coastal length, as an element of the 'general geographical relationship', influenced the choice of method.[212]

The ICJ was scrupulous in distinguishing the role of the coastal length from its function as a part of the test of proportionately. It states that:

> Attention should be drawn to an important distinction [...] between the relevance of coastal lengths as a pertinent circumstance for delimitation, and the use of those lengths in assessing ratios of proportionately. Thus, we shall look at the costal length again in the context of proportionately, but at this stage it is necessary to underline that coastal length plays a role independent of proportionately within the delimitation process. [213]

2.3.1.4. Concave or Convex Shape

The relevance of the convexity or concavity of the relevant coastline was highlighted by the ICJ in the *North Sea* cases(1969).

The Court found that the coasts of Denmark and the Netherlands were both convex, while that of the Germany was concave. In such a case, the use of median line left Germany an exceptionally small division of the North Sea continental shelf and the purpose of the delimitation process, to attain an equitable result, would not being fulfilled. (See *supra* figure 16)

The ICJ requested the parties to negotiate the delimitation of their respective continental shelves applying the equitable principle in such a way as to avoid the cut-off effect of equidistance in the case.

Since the *North Sea* cases (1969), it has been argued that the concavity or convexity of coasts constitutes a relevant circumstance. In those cases, the ICJ has regarded the equidis-

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[211] *North Sea cases 1969*, Para. 91.
[212] Malcolme D. Evans, *Op cit*, p. 152.
[213] *Ibid*, p. 53.

tance method as inequitable where coasts are concave on account of the distorting effect produced by that method. It stated that:

> Where to such lines are drawn at different points on a concave coast, they will, if the curvature is pronounced, inevitably meet at a relatively short distance from the coast, thus causing the continental shelf they enclose to take the from approximately of a triangle with its apex to seaward and, as it was put on behalf of Federal Republic, 'cutting off' the coastal State from the further areas of the continental shelf outside of and beyond this triangle.[214]

In the *Libya/Malta* case (1985), the ICJ echoed this view by stating that the equidistance line "may yield a disproportionate result where a coast is markedly irregular or markedly concave or convex".[215]

In the *Guinea/Guinea-Bissau* case (1985), the concavity or convexity of the coast played an important role. The Tribunal observed that if taken together, the coasts of the two States were rather concave despite the convex form of the Guinea-Bissau coastline. The concave form of the coastlines of the parties as such, however, was considered a relevant circumstance, but the Tribunal arrived at this observation after it had ruled that it should take account of the overall shape of the West African coastline which was undoubtedly convex. In such a situation the Tribunal concluded:

> If Sierra Leone is taken into consideration - there are three adjacent States along a concave coastline the equidistance method has the other drawback of resulting in the middle country being enclaved by the other two and thus prevented to form extending its maritime territories far as international law permits.[216]

But in the 1999 Agreement between the Republic of Latvia and the Republic of Lithuania, coastal configuration was not a decisive factor. The coasts of both States in the area being delimited are adjacent and rather smooth. In a symmetrical manner, the mainland coasts start out as concave in the area near the terminal point of the land boundary, but each appear to be convex in their entirety when viewed from a boarder perspective. The only special feature in the

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[214] *ICJ Report 1969*, p.17, Para. 8.
[215] *Libya/Malta case 1985*, p.44, Para. 56.
[216] *1984 Gulf of Main case*, Para. 104.

area is a promontory, which is not connected to the Lithuanian mainland and does not affect the delimitation line.[217]

In State practice, it is difficult to evaluate the effect of the concavity or convexity of coasts upon delimitation process. In fact, there are only some instances in which this factor was explicitly considered. As a relatively clear example we can refer to the Agreement between France and Dominica (1987)[218], establishing a single maritime boundary. Two other Agreements are France and Monaco (1984)[219] and Gambia and Senegal (1975)[220] which have sought other solutions to avoid the potential cut-off effect produced by equidistance. Solutions to avoid the cut-off effect may consist in ensuring that the party affected may extend its jurisdiction up to its maximum seaward limit, e.g. 200 nautical miles. It may happen, thought, that even in this case, a situation of "enclave" would be created.[221]

2.3.2: Islands and Rocks

In addition to the role if islands as part of the baseline system, their entitlement under UNCLOS to all maritime areas, including a continental shelf,[222] as well as the entitlement of "rocks" to a territorial sea only,[223] contributed to the dramatic increase in the number and difficulty of potential delimitations.

Article 121 of UNCLOS contains the following provisions related to islands and rocks:

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 EEZ 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 EEZ or continental shelf.

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[217] Charney, Jonathan I and Robert, Smith W, *International Maritime Boundaries, Vol. IV*, p. 3116.
[218] Handbook on the Delimitation of Maritime Boundaries, *Op cit*, p. 31. See also Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries*, Vol. I, pp. 705-715.
[219] *Ibid*. See also Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries, Vol. I I*, pp. 1581-1590
[220] *Ibid*. See also Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries, Vol. I*, pp. 849-855.
[221] *Ibid*, pp. 31-32.
[222] UNCLOS, Article 121, Para. 2.
[223] *Ibid*, Para. 3.

It is quite clear that an island can generate the full suite of maritime zones as provided for by UNCLOS unless the "island" comes under the provisions of Article 121(3). The term "rock" is not defined and the wording of this paragraph implies that it does not necessarily cover all "rocks". The precise meaning of "human habitation" and "economic life" is unclear. Rocks that come under the provision of Paragraph 3 will probably have less effect than islands that come under Paragraph 1.[224]

The existence of an island or islands in the delimitation area may have a distortion effect on the delimitation line. In State practice, different considerations have been taken into account in the way islands have been treated. Their presence constitutes a relevant circumstance, and needs to be taken into account fully, partly or be ignored by States or the Court. Moreover, the need for achieving an equitable result has influenced many of the maritime boundary delimitation agreements which were concluded in reducing the effect given to islands.

In State practice, as in legal theory, the effect given to islands for delimitation purposes differs from one island to another. Depending on circumstances, the island may be given full or partial effect. In certain cases, it may even be ignored. In others, it may be enclaved, which means that the delimitation may be carried out between the mainland as if the island did not exist, and the island may then be given its own maritime space around its coasts.

Different issues may be taken into account when dealing with islands:

1. Whether the delimitation involves only islands or islands against mainland coast; or
2. Whether the islands are the sole unit of entitlement or are entitled in conjunction with a mainland territory under the same sovereignty.[225]

The ICJ applies the theory of special geographical features to islands. If the island appears as an integral part of the general coastal configuration, it is treated for the purpose of delimitation on the same footing as the mainland and given full effect. If, on the other hand, it seems to be an aberrant geographical feature in relation to the general configuration, or an insignificant feature, it is given partial effect or ignored. Also, the size, population and economy of island are important factors in the delimitation process, as well as its position relative to the equidistance/median line.

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[224] Lagoni, Rainer and Vignes, Daniel, *Maritime Delimitation*, Martinus Nijhoff Publishers / Brill Academic, 2006, p. 155.
[225] *Ibid*, p. 33.

In general, as the practice of States shows, it is in the case of delimitation between islands only, where full weight is given to them (Sao Tome and Principe and Equatorial Guinea (1999)).[226] There are also many examples in State practice in which islands have been given full weight as against mainland coasts, such as Denmark (Faroe Islands)-Norway (1979)[227] and Cuba-USA (1977).[228] In all this cases, the geographical situation is that of oppositeness and the equidistance method was particularly appropriate.[229]

When other factors, such as the size of the islands and distance, come in to apply, as in the delimitation between Australia and Papua New Guinea (1987),[230] islands can be given a reduced effect in a negotiated delimitation based on equidistance.

In some situations, no effect has been granted to an island. For instance, the UK agreed in giving no effect to Rockall in its delimitation of the continental shelf with Ireland because of the huge disproportion it would have created.[231] This situation of small islands has been underscored by the doctrinal writing: "Generally, however, islands are discounted; the small of feature more limited a role (if any) it will play in the delimitation."[232]

In the *Tunisia/Libya* case (1982), the ICJ attributed a half-effect to the Kerkennah Islands because of "their size and position."[233] Despite its size and population, the island of Jerba, in contrast, had no influence on the delimitation line because the conduct of parties indicated a result which obviated the need for it to be considered as a relevant circumstance.[234] (See figure 17)

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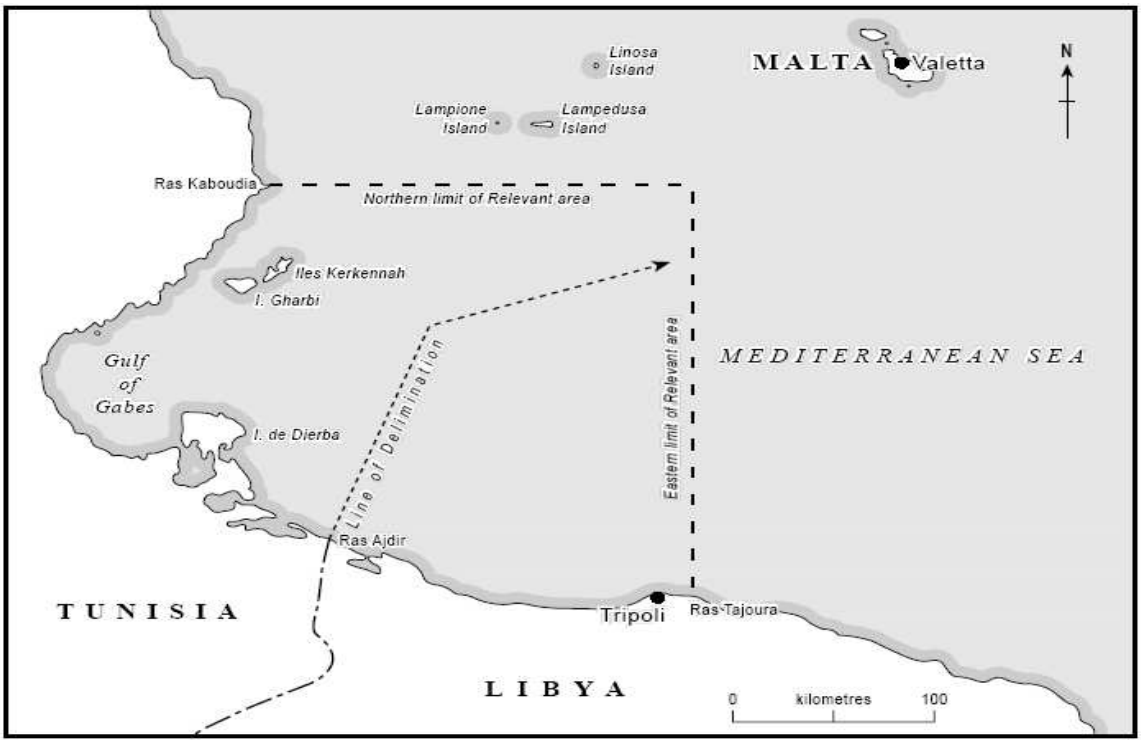
[226] Charney, Jonathan I and Smith, Robert M, *International Maritime Boundaries, Vol. IV*, p. 2649.
[227] Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries, Vol. II*, pp.1711- 1718.
[228] *Ibid*, Vol. I, pp. 417-425.
[229] Lagoni, Rainer and Vignes, Daniel ,*Op cit*, pp. 33-34.
[230] Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries, Vol. I*, pp. 929-975.
[231] *Ibid*, Vol. II, p. 1770.
[232] Charney, Jonatan, "Rocks that cannot sustain human habitation", *The American Journal of International Law*, vol. 93, No. 4 (October 1999), p. 867.
[233] *1982 Tunisia/Libya case*, Par. 128.
[234] *Ibid*, Paras.120-129.

Figure 17. Tunisia- Libya case (1982)



Source: Carleton, Chris and Clive Schofield, Developments in the Technical Determination of Maritime Space: Charts, Datums, Baselines and Maritime Zones, *Maritime Briefing*, Vol. 3, No. 3, 2001, p. 25.

In the *Guinea/Guinea-Bissau* case (1985), the ICJ made a distinction between three categories of islands:

1. The coastal islands, which are separated from the continent by narrow sea channels or narrow watercourses and are often joined to it at low tide;
2. The Bijagos islands; and
3. The more southerly islands scattered over shallow areas.[235]

With respect to the first category of islands, the ICJ observed that they should be considered as forming an integral part of the continent. The second group, the Bijagos archipelago, was taken into account when determining the coastal configuration. For example, the coast of Guinea-Bissau could only be described by the Tribunal as convex because the Bijagos islands were included. [236] As for the scattered islands further to the south, these were simply ignored when it was a question of determining the shape of the shoreline and measuring its length.

[235] *1985 Guinea/Guinea-Bissau case*, Par. 95.
[236] *Ibid.* Par. 103.

However, one of them, the island of Alcatraz, played a more important role in defining the line than the larger Bijagos islands most of which were inhabited.[237]

In some other situations, no effect has been granted to an island because its sovereignty was disputed. In other cases, the delimitation agreement attributed sovereignty over a disputed island to one of the parties, which then paid only partial effect in the final delimitation, as in the agreement between Cuba and Haiti (1977).[238]

In the *Gulf of Maine* case (1984), the Chamber decided to discount certain minor geographical features, in particular "tiny island, uninhabited rocks or law-tide elevations, sometimes lying at a considerable distance from terra firma".[239] On the other hand, it considered that it could not discount Seal Island "by reason both of its dimensions and, more particularly, of its geographical position", as well as the fact that it is "inhabited all the year round." It was therefore given half-effect.[240] (See *supra* figure 7)

Islands have also been ignored in some instances because of the method of delimitation used. In general, the effect the islands is diminished when a method other than equidistance is utilized, such as in the Kenya-Tanzania (1975-1976) delimitation Agreement.[241] These cases generally concern adjacent States, illustrating the greater potential for distortion of equidistance in situations of adjacency.

In the three different delimitation agreements concluded by Venezuela with the USA (1978),[242] France (1980)[243] and the Netherlands (1978),[244] respectively, full effect was given to the "Isla Aves", thus considering it as an island, legally speaking.

In State practice, the situation concerning islands is mostly the same as in case law. Small coastal islands and islets have been ignored in a number of boundary determinations. In the India-Sri Lanka maritime boundary agreement, for example, the small Adams Bridge islands on both sides of the boundary were disregarded for delimitation purposes. A number of small

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[237] *Ibid*, Para. 107.
[238] Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries, Vol. I*, p. 555.
[239] *1984 Gulf of Maine case*, Par. 201
[240] *Ibid.* Para. 222.
[241] Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries, Vol. I*, p. 878.
[242] *Ibid*, p. 695.
[243] *Ibid*, p. 607.
[244] *Ibid*, p. 623.

islands were ignored in the delimitation of the Iran-Qatar boundary, and the somewhat larger island of Ven was ignored in the boundary settlement between Denmark and Sweden.[245]

2.4. Concluding Remarks

The second chapter reviewed the most important principles and methods regarding continental shelf delimitation. Principles must still dictate methods of delimitation, and equity never be reduced to a matter of geography or the methods applied. The concept of proportionality also plays a very important role in drawing boarder line. It has often been a decisive factor in judicially determined boundaries and is therefore an important element in the law of maritime delimitation.

Equidistance is the most widely used method especially in situation of oppositeness, which in some cases is modified by existence of some geographical factors. This method abandoned in favour of some other method when irregularities in the geography are perceived as creating inequitable results.

Other non equidistance methods (perpendicular, meridians and parallels and enclaving of islands) have been used in some cases but do not appear to have found general acceptance.

Geographical elements such as general configuration of the coastline have been taken into consideration in many of the delimitation agreements. The relation of the coasts (oppositeness, adjacent or mixed) is a vital factor in determining the choice of delimitation method.

Furthermore, the presence of islands and rocks are complicating factors in delimitation. In most of the delimitation line in areas in which some islands are situated, some full or half effect has been given to islands. Thus, the islands are a factor in delimitation that is very difficult to be ignored.

After reviewing the general background on the continental shelf and the principles and methods applicable to continental shelf delimitation, the following chapters will concentrate on continental shelf delimitation and other related maritime issues in the Persian Gulf.

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[245] Alexander, Lewis M, "Baseline delimitations and maritime boundaries", *Virginia Journal of International Law*, Vol. 23, 1983, p. 524.

Chapter Three: Maritime Delimitation in the Persian Gulf: States' Practice and the ICJ Award Regarding Qatar and Bahrain Case

Introduction

Under the UNCLOS provisions, the littoral States have a right to a 200 nautical miles EEZ and at least a 200 nautical miles continental shelf where geography permits. In the Persian Gulf, not only are the mainland coasts of Iran and the Arab littoral States separated by much less than 400 nautical miles, but the presence of islands further complicates the picture and prevents any State from its full complement of continental shelf or EEZ. Every State abutting the Persian Gulf faces a dual delimitation situation: first with its adjacent neighbours and, second with States lying opposite. This factor has potentially important implications since the law of the maritime delimitations, as developed by ICJ, has tended to arrive at different results depending on whether the boundary is being drawn between opposite or adjacent States.

With the discovery and development of the offshore hydrocarbons in the1950s and 1960s, the need for fixed boundaries became more pressing. The Persian Gulf States started to delimit their maritime boundaries from 1958 by Agreement between Saudi Arabia and Bahrain. But up to date, there are some unresolved issues regarding maritime delimitation in the Persian Gulf. In this chapter, in order to reach a comprehensive understanding relating to maritime delimitation in the region, first, Persian Gulf States' practice and their legislation relating maritime zones from 1940s to the present time will be introduced. Then, the *Qatar/Bahrain* case will be examined in detail as one of the most complicated delimitation cases in the southern part of the Persian Gulf which was finally solved by ICJ in 2001. The last section will provide an evaluation of the maritime delimitation agreements between littoral States in the Persian Gulf, except Iran which will be addressed separately in the next chapter.

3.2. States' Practice and Legislation Regarding Maritime Zones in the Persian Gulf

3.2.1. Saudi Arabia

Saudi Arabia was the second State in the Persian Gulf (Iran was the first) to define its initial claim over the territorial sea and off-shore areas adjacent to its mainland. On 10 October 1948 an off-shore concession was granted to the Aramco Company and following this concession the Company requested the Saudi Authorities to define Saudi Arabia's area of jurisdiction. On 28 May 1949, King Al Faisal Al Saud promulgated Decree No. 6/4/5/3711 concerning the delimitation of the territorial waters of Saudi Arabia.[246] This Decree, which is considered to be a major development in the field of international law, was prepared mainly with the help and advice of two American international law experts, namely Judge M.O Hudson and Richard Young who were in close touch with recent developments in the Law of the Sea. In this connection Young, in a comment on above mentioned Decree, states:

> The Decree on territorial waters, which applies to all of Saudi Arabia's coasts on the Gulf of Aqaba, The Persian Gulf, and the Red Sea, establishes a six-mile belt of coastal sea. Following, in this respect regional precedents se by Ottoman Empire in 1914, by Syria and Lebanon in 1921, and by Iran in 1943.[247]

Under Article 5 of the Decree, the breadth of Saudi Arabia's territorial sea was fixed at 6 nautical miles beyond its land waters. Article 6 dealt with the drawing of baselines which were explained with detailed provisions concerning the measurement of baselines from inland waters, bays, shoals, islands, etc. The use of straight baselines was a method of delimitation which was on line with that of Iran and was adopted because of the irregularities of the Persian Gulf costal line. Article 5 of the Decree reflected regional practice in the Persian Gulf and provided "The coastal sea of Saudi Arabia lies outside the inland waters of the Kingdom and extends seaward for a distance 6 nautical miles."

In addition to the 6-mile territorial waters, Article 9 of the Decree established a further distance of 6 nautical miles with a view to applying the Kingdom's Customs Rules in the adjacent waters.

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[246] For the English Version of This Decree see: *The American Journal of International Law*, Vol. 43, No. 3, Supplement: Official Documents (Jul., 1949), pp. 154-157

[247] Young, R, Saudi Arabia Offshore Legislation, *American Journal of International Law*, Vol. 43, No. 3, July 1949, p. 530.

Just eight days before the start of the 1958 UN Conference on the Law of the Sea, on 16 February 1958, Royal Decree No 33, which replaced the previous Decree, extended the Saudi territorial waters to a distance of 12 nautical miles from the baselines.[248] In this connection, Article 4 of the Decree provides "The territorial sea of the Kingdom of Saudi Arabia lies outside the inland waters of the Kingdom and extends seaward, for a distance of 12 nautical miles."

In this Decree, the term 'territorial waters' was replaced by a new term: 'territorial sea'. Also, in addition to a belt of 12 nautical miles, under Article 8 of the Decree, a further 6 nautical miles was delimited for maritime surveillance and, as a result, the contiguous zone of Saudi Arabia was increased to a distance of 18 miles. This extension of Saudi Arabia's territorial sea was in harmony with the policy of other Arab States concerning the Gulf of Aqaba on the eve of the 1958 Conference.

Saudi Arabia participated in UNCLOS I and was among the States which tried to find a solution to the problem of defining the breadth of the territorial sea, but its position was dominated by its security interests and its policy remained mostly unchanged from that of before the Conference. At this Conference, Saudi Arabia, in line with its Decree of 1958, supported the proposal concerning the 12-mile breadth of the territorial sea and refused the recognize the right of innocent passage under Article 14(4) of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone. It is interesting to note that the same limit was recommended by the Council of the League of Arab States at the League's Thirty-First Session in Cairo on 26 March 1959.[249] Saudi Arabia refused to be a party to any of the Conventions which were adopted by the 1958 Conference.

The Second United Nations Conference on the Law of the Sea was held from 17 March to 26 May 1960 to reconsider the questions concerning the breadth of territorial sea and fishery limits. Saudi Arabia participated but its position with respect to the breadth of the territorial sea remained unchanged. At this Conference, Saudi Arabia strongly challenged those States, including the USA and the UK, which opposed the 12 mile territorial sea and, along with nine other countries, proposed a draft Resolution which fixed the breadth of the territorial sea at the

[248] For the English text of this Decree see:
http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/SAU_1958_Decree.pdf
[249] El-Hakim, Ali, *The Middle Eastern States and the Law of the Sea*, Manchester University Press, England, 1979, p. 6.

maximum of 12 miles.[250] However, this Resolution, like others, was rejected by the Conference.

The Third Conference marked the beginning of a major transition in the law of sea. Unlike the previous Conferences, the Third Conference undertook to establish a comprehensive law of the sea treaty by codifying, revising, and creating acceptable rules and regulations on the law of the sea. The policy of Saudi Arabia in this regard remained unchanged and its' delegate supported the argument in favour of a 12-mile limit of the territorial sea. The representative of Saudi Arabia stated that "Saudi Arabia had set a 12 mile limit for its territorial waters [...]"[251] At last, the 12 nautical miles was accepted by the Conference as the breadth of the territorial sea from the baseline of the costal State. Saudi Arabia signed the 1982 Convention on 7 December 1984, but it has not ratified the Convention.

Saudi Arabia was the first country in the Persian Gulf which used the notion of the "contiguous zone" in its 1949 Decree relating the territorial waters. In this Decree, Saudi Arabia, in addition to the 6-mile territorial water, considered a further 6-mile belt beyond the territorial sea as a contiguous zone which has been established for specific purposes such as security, navigation, fiscal matters and maritime surveillance. Later, under the 1958 Royal Decree which amended the former Decree, the contiguous zone was extended to 18 miles by extending the territorial sea to 12 miles. In the latter Decree, in addition to jurisdiction over security, navigation and fiscal matters, the jurisdiction over sanitary matters was also added.[252]

Regarding the continental shelf, on 28 May 1949 Saudi Arabia issued a Royal Pronouncement attached to Decree No. 6/4/5/3711, claiming that the sea-bed and subsoil areas in the Persian Gulf contiguous to its coasts are subject to its jurisdiction and control. This claim was mainly motivated by the discovery of large resources of oil and gas located under the sea-bed of the Persian Gulf. Saudi Arabia in its pronouncement did not use the concept of the continental shelf, which in her view does not exist in the Persian Gulf due to the shallowness of this body of water and lack of the sudden drop in its sea-bed. Instead, Saudi Arabia, 'aware of the need for the greater utilization of the world's natural resources' and of 'the desirability of giving encouragement to the efforts to discover and make available such resources', 'appertaining

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[250] UNCLOS II, Official Records, Vol. II, Annexes, Document A/CONF.13/L.56.
[251] UNCLOS III, Official Records, Vol. I, 35th Meeting, 10 July 1974, p. 144.
[252] Razavi, Ahmad, *Continental Shelf Delimitation and Related Maritime Issues in the Persian Gulf*, Martinus Nijhoff Publishers, The Hague/Boston/London, 1997, pp. 78-79.

that recognized jurisdiction over such resources is required in the interest of their conversation and prudent utilization' and 'deeming that the exercise of jurisdiction over such resources by the contiguous nation is reasonable and just', declared that:

> The subsoil and the sea-bed of those areas of the Persian Gulf seaward from the coastal sea of Saudi Arabia but contiguous to its coasts, are declared to appertain to the Kingdom of Saudi Arabia and to be subject to its jurisdiction and control.[253]

Saudi Arabia based its claim on the principle of contiguity. Although not precisely defined, this principle is clearly expressed in the premise that "the exercise of jurisdiction over such resources by the contiguous nation is reasonable and just". Saudi Arabia indicated that the jurisdiction exercised by 'various other nations' over 'the subsoil and the seabed in areas contiguous to their coasts' was a consideration but did not use the term "continental shelf".[254]

Where the coasts of Saudi Arabia were opposite or adjacent to coasts of other States, the pronouncement suggest the "equitable principle" for delimitation of such maritime borders. This law is silent about the outer limit of the sea-bed of Saudi Arabia.

By comparing the provisions of the Truman Proclamation on the continental shelf with those of Saudi Arabia, it is clear that the Saudi claim was based on the Truman Proclamation and in many instances even used the precise wording. However, the most obvious difference between the two claims is that the Saudi Arabia avoided the use of the term 'continental shelf'.

In its subsequent claim to resources in the Red Sea through Royal Decree No M-27 of 7 September 1968, Saudi Arabia not only used the term "continental shelf" which was not mentioned in the Seabed Proclamation of 1949, but also went further to extend its control to "the Red Sea-bed adjacent to the Saudi continental shelf".[255]

Saudi Arabia has participated in all of the conferences on the Law of the Sea, but only signed the 1982 Convention. The Delegate of Saudi Arabia during the General Debates at the Third Conference refused to comment on the concept of continental shelf rather supported the idea of an EEZ.[256] It seems that this country prefers the idea of an EEZ to that of the continental shelf, which could cover its interests in the Persian Gulf as well as in the Red Sea.

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[253] MacDonald, Chrles G, *Iran, Saudi Arabia, and Law of the Sea*, Greenwood Press, London, 1980, p. 118.
[254] *Ibid*, p. 119.
[255] For the English text of this Decree see:
http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/SAU_1968_Decree.pdf
[256] UNCLOS III, Official Records, Vol. I, p. 144, Para. 452.

However, Saudi Arabia at the beginning refused the use the term of continental shelf. Instead, it based its claim on the EEZ concept which was vital for its economy. In this connection, the Royal Pronouncement of 1949 partly provides: "fishing rights in such waters and the additional freedom of pearling by the people of the Persian Gulf, are in no way effected". At Third Conference, the Delegate of Saudi Arabia supported the idea of a 200 nautical mile EZZ.[257] On 30 April 1974, Saudi Arabia issued a declaration concerning the limits of the exclusive fishing zone in the Persian Gulf and the Red Sea. This declaration does not suggest any certain limitation for the fishery zone. Article 1 only provides that in the case of overlap the fishery zone with other neighbouring States would be the limit of a median line for such delimitation.[258]

3.2.2. Bahrain

Bahrain is the only island State in the Persian Gulf, consisting of about 33 small islands. Under the treaties of 1880 and 1892 between Bahrain and Great Britain,[259] the latter country had been responsible for Bahrain's defence and foreign relations. Accordingly, from ancient times and in accordance with British policy, the breadth of territorial sea of Bahrain had been 3 nautical miles. After its independence in 1970s, Bahrain took part in Third Conference as an independent State. At the 14th Plenary Meeting of the Conference, the representative of Bahrain, in connection with Bahrain's policy concerning the breadth of territorial sea, stated that: "His delegation had no noted with satisfaction the desire of the majority of the States to extend the breadth of their territorial waters to a maximum of 12 miles."[260]

Given the position of the Delegation of Bahrain towards the 12-mile limit and the recommendation of the Arab League to its Members to fix their territorial sea at a 12-mile limit, it persuaded Bahrain to increase its territorial sea from 3 miles to 12 miles.[261] On 20 April 1993, Bahrain issued Decree Law No. 8 in this regard.[262] Article 1 of mentioned Decree stated that: "The breadth of the territorial sea of the State of Bahrain shall be twelve nautical miles, meas-

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[257] *Ibid*, p. 141, Para. 29.
[258] Razavi, Ahmad, Op cit, pp. 111-112.
[259] Tuson, Penelpoe and Quick, Emma, *Arabian Treaties; 1600-1960; Bahrain, Qatar and United Arab Emirates*, Archive International Group, England, 1992, pp. 63-66.
[260] UNCLOS III, Official Records, Vol. I, First Session, pp. 174-175.
[261] Razavi, Ahmad, *Op cit*, p. 25.
[262] For the English Text of this Decree see:
http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/BHR_1993_Decree.pdf

ured from baselines drawn in accordance with the United Nations Convention on the Law of the Sea, 1982".

During the Third Conference, Bahrain was among those countries which strongly argued for maintaining a contiguous zone. On 19 July 1974, during the debate over the contiguous zone, the Bahrain Delegate made a distinction between contiguous zone on the one hand, and the territorial sea and EEZ on the other:

> The contiguous zone had a specific purpose in relation to national security, fiscal and customs control and sanitation and immigration regulations, and the concept was not incompatible with the concepts of a territorial sea or an economic zone.[263]

He finally suggested that the breadth of the contiguous zone should be extended to a distance of 12-nautical miles beyond the territorial waters of the coastal States. Article 2 of Decree 1993 states: "The breadth of the contiguous zone shall be twenty-four nautical miles, measured from the baselines referred to in article 1 of this Law."

Relating to EEZ, during the Third Conference, the Bahrain delegation supported the 200 nautical mile for the limit of EEZ of coastal States, subject to the freedom of navigation, overflight, and lying of submarine cables and pipelines.[264]

Bahrain is ranked among the geographically disadvantage countries which cannot extend its EEZ to a distance of 200 nautical miles as provide for by UNCLOS.

The continental shelf has played an important role in Bahrain's maritime legislation since the 1940s. Following Saudi Arabia's Royal Pronouncement of 1949, the other protected Sheikhdoms in the Persian Gulf, under British auspices, issued similar Proclamations concerning the sea-bed and subsoil of waters adjacent to their coasts.

On 5 June 1949, Bahrain issued a Proclamation concerning the sea-bed and the subsoil of the high seas of the Persian Gulf,[265] declared that:

> The sea-bed and the subsoil of the high sea of the Persian Gulf bordering on the territorial waters of Bahrain and extending seaward as far as limits that after consultation with the neighbouring governments, shall determine more accurately in accordance with the principles of justice, when

[263] UNCLOS III, *Op cit*, Footnote 1, p. 122, Para. 19.
[264] UNCLOS III, Official Records, Vol. I, p. 174, Para. 27.
[265] For English Version of this Proclamation see: *The American Journal of International Law*, Vol. 43, No. 4, Supplement: Official Documents (Oct., 1949), pp. 185-186.

> the occasion so requires, belong to the country of Bahrain and are subject to its absolute authority and jurisdiction.

In Bahrain's Proclamation, nothing had been mentioned regarding the specific limits of its claim. In addition, it avoids the use of term 'continental shelf'.

At Third Conference, during the general debate, Bahrain's delegate referred to the above Proclamation and used the term 'continental shelf', whilst Arab States ignored its existence in the Persian Gulf. In this regard, he argued: "As early as 1949, the Government of Bahrain had issued a proclamation asserting its right over its continental shelf, the exploitation of which was of great importance for Bahrain because of its limited land resources."[266]

Bahrain is a narrow-shelf State, which is considered as a geographically disadvantaged State and relies on the criterion of equidistance with respect to delimitation of the continental shelf among neighbouring States.

3.2.3. Qatar

Prior to Qatar's independence on 3 September 1971, it was subject to UK's policy in accordance with the Agreement signed in 1892.[267] Accordingly, Qatar was not able to participate in UNCLOS I and II, and it was assumed that the breadth of Qatar's territorial sea was in line with that of the UK, which was fixed at 3 nautical miles.

The First Proclamation concerning Qatar's claim to its ownership and jurisdiction over the submarine areas contiguous to its coasts in the Persian Gulf was released by the UK on behalf of Qatar in 1949. But after its independence, Qatar's Ministry of Foreign Affairs issued a Declaration concerning the exclusive sovereign rights of Qatar in the zones adjacent to its territorial sea on 2 June 1974.[268] The breadth of territorial sea was not mentioned in this Declaration.

Qatar singed UNCLOS, and in order to settle its maritime borders with its other littoral States in the Persian Gulf and taking into consideration the Recommendation of Arab League concerning the 12-mile territorial sea, on 16 April 1992 Qatar issued Decree No. 40 fixing its

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[266] UNCLOS III, Official Records, Vol. I, p. 174, Para. 26.
[267] Razavi, Ahmad, *Op cit*, p. 32.
[268] For English Version of this Proclamation see:
http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/QAT_1974_Declaration.pdf

territorial sea at 12-nautical miles.[269] Article 1 of the Decree stated: "The breadth of the territorial sea of the State of Qatar is twelve nautical miles measured from the baselines determined in accordance with the rules of international law."

With respect to the Contiguous Zone, there was no declaration or legislation by the State of Qatar until the 16 April 1992. At this date, under Decree No. 40 concerning the Breadth of the Territorial Sea and the Contiguous Zone, Qatar extended its contiguous zone to 12-nautical miles measured from the outer limit of the territorial sea. Article 3 of the Decree is about contiguous zone: "The State of Qatar has a contiguous zone with a breadth of twelve nautical miles measured from the outer limit of the territorial sea, over which the State exercises all rights and powers provided for in international law."

Qatar in its 1974 Declaration claimed the exclusive sovereign rights in zones contiguous to its territorial sea which include sovereign rights over fisheries in the areas contiguous to the territorial sea of the coasts of the mainland and its islands.[270] Paragraph 2 of Article 1 of the Declaration defines the methods for delimitation of the outer limit of the concerned zone:

> The outer limits of these areas shall be in accordance with bilateral agreements which have been, or shall be, concluded. In the absence of any particular agreement, the outer limits of the continental prolongation of the State of Qatar, or the median line in which every point is equidistant from the baseline from which the territorial sea of the State of Qatar and of other States concerned is measured, shall be regarded as the determining factor in accordance with the principles of international law.

It is understood from the Declaration that natural resources of the submarine areas and the living resources of the superjacent waters of Qatar's continental shelf constitute its EEZ. Qatar which is located in the middle of the Persian Gulf is a peninsula with good access to these waters and could provide a powerful fishing industry in the region.

Like other Sheikhdoms in the Persian Gulf, Qatar issued its first Declaration concerning the exercise of its sovereignty over the natural resources of the submarine areas contiguous to the territorial waters of Qatar on 8 June 1949.[271] This Declaration is a general statement and does not deal with the definition of Qatar's different limitations including the concept of the conti-

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[269] For English Version of this Decree see:
http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/QAT_1992_Decree.pdf
[270] *Declaration by the Ministry of Foreign Affairs of Qatar of 2 June 1974*, Article 1.
[271] El-Hakim, Ali, *Op cit*, p. 83.

nental shelf. Qatar is claiming ownership over some islands, reefs and submarine areas which surrounded the Qatar Peninsula.

Qatar once again in its Declaration issued by the Ministry of Foreign Affairs in 1974 claimed its exclusive and absolute rights over natural and marine resources contiguous to Qatar's territorial sea, but does not mentioned any criteria distance for the different zones. [272]

3.2.4. Kuwait

In 1914 UK recognized the Kuwaiti Government as an independence Government under UK protection. In fact, Kuwait did have the status of an independent State until its independence on 19 June 1961. Thus, before its independence, the breadth of its territorial waters coincided with that of the UK practice extending to the 3-mile limit.

In October 1955, through the Agreement between the Kuwait Government and Kuwait Oil Company, the breadth of Kuwait's territorial waters was extended to 6-nautical miles from the low-water mark. In another Oil Concession Agreement on 15 January 1961, the breadth of Kuwait's territorial sea was confirmed to 6-nautical miles.[273]

On 17 December 1967, Kuwait issued a Decree regarding the Delimitation of the Breadth of the Territorial Sea of the State of Kuwait.[274] Article 1 of the Decree stated: "the territorial sea of the State of Kuwait extends seaward for a distance of twelve nautical miles from the baselines of the mainland and of Kuwaiti islands as hereinafter defined in article 2 of this Decree."

Article 4 refers to the Article 12 of the 1958 Geneva Convention on Territorial Sea in connection with overlapping problems between States. It provides:

> If the territorial sea of Kuwait measured in accordance with the provisions of this Decree overlaps the territorial sea of another State or of the Zone partitioned by the Agreement relating to the Partition of the Neutral Zone dated 7 July 1965, the boundary shall be determined in conformity with the provisions of article 12 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, referred to in the Preamble of this Decree.

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[272] Razavi, Ahmad, *Op cit*, p. 96.
[273] *Ibid*, pp. 28-29.
[274] For the English text of this Decree see:
http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/KWT_1967_Decree.pdf

During the Third Conference, the Kuwaiti Delegation supported the 12-mile limit for the territorial sea.[275]

In Article 6 of the Decree 1967, Kuwait for the first time expressly served the right to claim a contiguous zone beyond its territorial sea. This Article provides:

> Nothing in the provisions of this Decree shall prejudice the rights of the State of Kuwait to an area contiguous to its territorial sea to be delimited later on, or to the exploitation of fish resources.

In the Third Conference, the Kuwaiti Delegate supported this concept and opposed the deletion of this item from the agenda.[276]

But Kuwait was among those countries which were in agreement to a form of preferential rights for the littoral States during the Third Conference and, on the whole, did not favour the EEZ concept. During the debates of the Third Conference, the Delegate of Kuwait stated the following regarding the EEZ: "All States should be allowed to satisfy their animal protein requirements from all resources available in the sea and they had an equal interest."[277]

In connection with the fishing in enclosed and semi-closed seas, he added: "His delegation welcomed the suggestion that fisheries commissions should be established in enclosed and semi-closed seas to serve the interests of all the coastal States in the particular region."[278]

To date, there is no Declaration or legislation concerning the EEZ of Kuwait and its fishing zone.

In respect of the continental shelf, Kuwait along with other protected Sheikhdoms, issued its First Proclamation on 12 June 1949 with respect to the sea-bed and subsoil of the high seas of the Persian Gulf.[279] In this Proclamation, the Ruler of Kuwait declared that:

> The sea-bed and sub-soil lying beneath the high seas of the Persian Gulf contiguous to the territorial waters of the State of Kuwait and extending seaward to boundaries to be determined more precisely as occasion may arise on equitable principles by the Ruler of Kuwait after consulting neighboring States, appertain to the State of Kuwait and are subject to its exclusive jurisdiction and control.

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[275] UNCLOS III, Official Records, Vol. I, p. 152.
[276] *Ibid*, Vol. II, p. 122. Para. 21.
[277] UNCLOS III, Official Records, Vol. II, p. 156, Para. 36.
[278] *Ibid*.
[279] For the English text of this Proclamation see:
http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/KWT_1949_Proclamation.pdf

However, it made no specific reference to the concept of continental shelf or to the outer limit of Kuwaiti's maritime borders.

During the Third Conference debate concerning the continental shelf, the Kuwaiti delegate supported the 1958 Geneva Convention on the Continental Shelf, but criticized the exploitability criterion.[280] In connection with the delimitation of the continental shelf between adjacent States, he also cited the Article 6 of aforementioned Convention and stated: "Kuwait upheld the provisions of Article 6 of the convention of the continental shelf with regard to the delimitation of the continental shelf between adjacent States."[281]

Kuwait is not a party to the 1958 Geneva Convention on the continental shelf, but on 2 May 1986 ratified UNCLOS.

3.2.5. United Arab Emirates

UAE which gained its independence on 2 December 1971 consists of 7 States which are located along the Persian Gulf and the Sheikhdom of Fujayrah which is located in the Gulf of Oman.

In June 1949, in a series of Proclamations by the UK on behalf of the States, UAE claimed the submarine areas adjacent to their coasts. But the breadth of territorial waters was not defined. During the Third Conference, UAE implicitly supported the argument for extending the breadth of territorial sea to a distance of 12-nautical miles.[282]

UAE has signed UNCLOS, but has not ratified it. On 17 October 1993, UAE issued a Federal Law No. 19 of 1993 in respect of the delimitation of the maritime zones and extended its territorial sea to 12-nautical miles.[283] Article 4 of that Law stipulates that:

> The territorial sea of the State [UAE] means the belt of sea waters beyond its land territory and internal waters and adjacent to its coast. It extends towards the sea with a breadth of 12 nautical miles.

Article 11 of the 1993 Federal Law, concerning the contiguous zone further stipulates: "The breadth of the contiguous zone […] shall be 12 nautical miles measured from the outer limits of the territorial sea of the State."

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[280] UNCLOS III, Official Records, Vol. I, p. 156, Para .33.
[281] *Ibid*,Para. 34.
[282] *Ibid*, p. 41.
[283] For the English Version of this Federal Law see:
http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/ARE_1993_Law.pdf

The EEZ is a vital factor for the economy of UAE which mainly depends on oil and living resources. Because of this, during the debate at the Third Conference, the delegate of the UAE, supported the idea of the concept of EEZ and stated:

> Each coastal States had the right to establish an economic zone beyond the territorial sea, and to exercise therein sovereignty in regard the exploration and exploitation of natural resources in its waters, its seabed and its subsoil.[284]

He suggested the median line for delimitation, unless there be an agreement between the two States.[285]

UEA issued a Declaration on 25 July 1980 concerning the EEZ and its delimitation defined its EEZ in the Persian Gulf and Oman Sea.[286] Article 1 of the Declaration Declares: "The United Arab Emirates possesses an exclusive economic zone adjacent to its main coasts and to the coasts of its islands in the Persian Gulf and in the Sea of Oman."

Under Article 2, the EEZ of UAE shall be measured from the baselines from which the territorial sea of the main coasts of the UAE and of the coasts of its islands is measured.

The UAE, under Article 12 of its recent Marine Law of 1993, has expanded its EEZ to a distance of 200-nautical miles from the baseline.

In relation to the continental shelf, following the Declaration in the Persian Gulf, UAE in June 1949 issued a Declaration claiming jurisdiction over the sea-bed and subsoil of the high seas areas contiguous to their territorial seas. Because this declaration is similar to others, it is not necessary to cite again. In 1980 Declaration concerning the EEZ and its delimitation, there was no reference to the continental shelf except in Article 3 regarding the outer limit of the EEZ which provides:

> The outer limit of the economic zone of the UEA shall be determined in accordance with the provisions of the agreements concluded by the Emirates members of the Union in connection with their continental shelf.

However, on 17 October 1993, the UAE in its Maritime Law, extend its continental shelf 200-nautical miles from the baseline.

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[284] - UNCLOS III, Official Records, Vol. I, p.141, Para. 29.
[285] *Ibid.*
[286] For the English Version of this Declaration see:
http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/ARE_1980_Declaration.pdf

3.2.6. Oman

On July 1972, Oman, in a Royal Decree, for the first time defined its territorial sea and extended it to 12-nautical miles from the baseline. This Decree was amended by Royal Decree No 44/77 issued on 16 June 1977 which, in addition to establishing the 12-nautical mile territorial sea, extended the fishing zone of Oman to a distance of 200-nautical miles from the baselines. Finally, through the Royal Decree concerning the Territorial Sea, Continental Shelf and EEZ, dated 10 February 1981, Oman declared its comprehensive position toward the law of the sea.[287] Article 1 of the Decree is concerned with the territorial sea and declares:

> The Sultanate of Oman exercises full sovereignty over the territorial sea of the Sultanate and over the airspace, and the sea-bed and the subsoil beneath the territorial sea of the Sultanate, in harmony with the principle of innocent passage of ships and planes of other States through international straits, and laws and regulations of the Sultanate relating thereto.

Under Article 2, the breadth of the territorial sea was fixed at 12-nautical miles: "The territorial sea of the Sultanate extends 12 nautical miles (22,224 meters) seaward, measured according to the following standards and regulation."[288]

Oman singed UNCLOS on 1 July 1983 and ratified it on 17 August 1989.

Until recently, Oman did not have any specific claims regarding the contiguous zone, but on 17 August 1989 upon ratification of UNCLOS declares a limit of 12-nautical miles beyond its territorial sea as a contiguous zone. In fact, this decision was made based on Article 33 of UNCLOS which permits States to establish a 24-nautical mile contiguous zone measured from the baseline.[289]

Because of its coasts on the Indian Ocean, Oman always supported the doctrine of a 200-mile zone for the EEZ. Through the 1972 Decree, Oman established a distance of 38-nautical miles seaward for its EEZ, measured from the outer limits of the territorial sea. Later through the 1977 Decree, Oman extended its EEZ to 200-nautical miles seaward and under the Royal Decree 1981 declared its sovereign rights over the living and nonliving resources of the EEZ.[290]

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[287] For the English Version of this Decree see:
http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/OMN_1981_Decree.pdf

[288] Razavi, Ahmad, o*p cit*, pp. 30-31.

[289] *Ibid*, pp. 77-78.

[290] *Oman Royal Decree concerning the territorial sea, continental shelf and exclusive economic zone*, 10 February 1981, Article 4.

Oman is the only State among the Persian Gulf States which enjoys a complete continental shelf in the Indian Ocean. It is for this reason that Oman supported the argument of 200-nautical mile continental shelf. Articles 3 and 4 of the Decree 1972 dealt with the concept of the continental shelf. Under Article 3, Oman exercises sovereign rights over its continental shelf in order to explore and exploit its natural resources. Following the Third Conference, Oman changed some provisions of the Royal Decree 1972 under Royal Decree 1981. Article 6 of the 1981 Decree provides that: "The Sultanate of Oman exercises sovereign rights over its continental shelf for the purposes of exploring and exploiting its natural resources."

Article 7, without any definition for the continental shelf, declared that "The Sultanate of Oman will be issuing a declaration for delimiting the span of its continental shelf". But up date, this declaration has not been issued.

3.2.7. Iraq

Iraq is a geographically disadvantaged State because the Iraqi coast-line is concave and extends for about 10 miles, and the triangular relationship between Iran, Iraq and Kuwait increases the problem of maritime delimitation between these States.

Iraq, for the first time, claimed a territorial sea under Official Proclamation of 23 November 1957.[291] However there was no reference to the breadth of territorial sea. But, in November 1958, Iraq issued Law No 71 which fixed its territorial sea at 12-nautical miles from the low-water tide.[292] Article 2 of this Law declares:

> The Iraqi territorial sea extends twelve nautical miles (a nautical mile is equivalent to 1,852 meters) in the direction of the high sea, measured from the low-water mark following the sinuosities of the Iraqi coast.

In the case that the territorial sea of another State overlaps with the Iraqi territorial sea, Article 3 of the Law stipulates that limits between the two territorial seas shall be determined by agreement with the State concerned in accordance with the recognized rules of international law or with such understanding as may be reached between the two States.

Iraq signed and deposits its instrument regarding Ratification of UNCLOS on 30 July 1985.

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[291] For the English text of this Proclamation see:
http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/IRQ_1957_Proclamation.pdf

[292] For the English text of this Law see:
http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/IRQ_1958_Law.pdf

Iraq has no legislation to define the breadth of the contiguous zone, but Article 4 of the abovementioned Law indicates that: "No provisions in this Law shall infringe Iraq's other internationally recognized rights in the two maritime belts known as the contiguous zone … in the direction of the high sea."

So far, Iraq has not passed any legislation or official declaration concerning the EEZ or the fishery zone. Because of its disadvantaged geography, the 200-nautical mile extension for EEZs is contrary to Iraq's interests.

At the Third Conference, during the general debate, the Iraqi delegate supported the aspiration of coastal States to establish their own EEZ, but at the same time he laid emphasis on taking into account the interest of land-locked and the geographically disadvantaged countries.[293]

Iraq, along with some other countries who considered themselves as land-locked or geographical disadvantaged States, submitted a seven article draft to the Conference concerning the exploration and exploitation of living and non-living resources in the area beyond the territorial sea, but this Draft was rejected by Third Conference.[294]

Iraq has the shortest coastline among the Persian Gulf States. Thus, Iraq could not be considered as geographically advantaged country. On the subject of the continental shelf, Iraq in its 1957 Proclamation declared its exclusive jurisdiction over the maritime zone contiguous to Iraqi territorial sea. In its 1958 aforementioned law, Iraq officially refers to the concept of the continental shelf. Article 4 of the law states:

> No provisions in this Law shall infringe Iraq's other internationally recognized rights in the two maritime belts known as the contiguous zone and the continental shelf following the Iraqi territorial sea in the direction of the high sea.

In this Article, Iraq did not mention any limit for the continental shelf due to its difficulties regarding the continental shelf in the northern part of the Persian Gulf.

At the Third Conference, the Iraqi delegate, without mentioning any distance for the continental shelf, dealt with the delimitation of the continental shelf between States. With rejecting the 2 criteria embodied for the delimitation of the continental shelf in the 1958 Convention on the Continental Shelf, the delegate proposed that the Convention should take into considera-

[293] Razavi, Ahmad, *op cit*, p. 107.
[294] *Ibid*, p. 108.

tion the special circumstances of different area and the equity principle in connection with the delimitation of the continental shelf between opposite or adjacent States.

Up to date, there is no legislation or official declaration which defines Iraq's continental shelf and its extension.[295]

3.2. The ICJ Award Regarding the Maritime Delimitation and Territorial Question Between Bahrain and Qatar

After nearly 10 years of proceedings before the ICJ, on March 2001 the Court rendered its decision concerning the maritime delimitation and territorial questions between Bahrain and Qatar.[296] The area to be delimited was in the Persian Gulf, between Saudi Arabia and UAE. The sea featured numerous islands, islets, rocks, reefs and law tide elevations.

On 8 July 1991, Qatar instituted proceedings before the ICJ against Bahrain regarding certain disputes between the two States relating to "sovereignty over the Havar islands, sovereign rights over the shoals of Dibal and Qui'at Jaradah, and the delimitation of the maritime areas of the two States."[297] The application was based on two 'agreements' between Qatar and Bahrain dated December 1987 and 'minutes' of December 1990.

An important feature of this case is that the dispute concerned both territorial questions and the maritime delimitation. On one hand, Qatar asked the ICJ to adjudge and declare in accordance with international law:

A. (1) That the State of Qatar has sovereignty over the Havar islands;

   (2) That the Dibal and Qui'at Jaradah shoals are low-tide elevations which are under Qatar sovereignty;

B. (1) That the State of Bahrain has no sovereignty over the island of Janan;

   (2) That the State of Bahrain has no sovereignty over Zubarah;

   (3) That any Claim by Bahrain concerning baselines and areas of fishing for pearls and swimming fish would be irrelevant for the purpose of maritime delimitation in the present case.[298]

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[295] *Ibid*, pp. 92-93.
[296] The process started at 8 July 1991 and lead to the ICJ Award at 16 March 2001. To read the whole process of proceeding see: http://www.icj-cij.org/docket/index.php?p1=3andp2=3andcode=qbandcase=87andk=61
[297] To read the application instituting proceeding by Qatar Government in this regard see: http://www.icj-cij.org/docket/files/87/7021.pdf.
[298] The *Qatar and Bahrain* case, ICJ Reports 2001, p. 50, Para. 33.

Furthermore, Qatar asked the ICJ to draw a single maritime boundary between the maritime areas to the State of Qatar and the State of Bahrain by following points indicated by Qatar on the basis that the Hawar Islands and the island of Janan belonged to Qatar.

On the other hand, Bahrain asked the ICJ to adjudge and declar that: Bahrain was sovereign over Zubarah, the Hawar islands, including Janan and Had Janan. In view of Bahrain's sovereignty over all insular and other features, including Fasht ad Dibal and Qit'at Jarradah, compromising the Bahrain archipelago, the maritime boundary between Bahrain and Qatar was to be that described in Part Two of Bahrain's Memorial, Part Two of Bahrain's Counter Memorial and in its reply.[299]

At the time that this case was open before ICJ neither Bahrain nor Qatar was a party to the 1958 Geneva Conventions on the Law of the Sea. As far as UNCLOS, Bahrain had ratified, but Qatar had not (although it had signed). Consequently UNCLOS was not applicable between the parties. Thus, it was customary law which was applicable in this case.

The ICJ's task was not merely to indicate the applicable principle and rules but to draw a line that was both single and concrete. As in the *Eritrea/Yemen* case (1999), the ICJ was not requested to state the principles and rules. Its task was thus purely "dispositive". The position was similar to that taken in the *Anglo/French* case (1977) and the *Eritrea/Yemen* case (1999).[300]

In the present case, a single all-purpose boundary was sought to delimit exclusively the territorial seas in the southern sector of the delimitation area, where the coasts of Qatar and Bahrain are opposite to each other and the distance between these coasts does not exceed 24 miles, and where the 12-mile territorial sea proclaimed by each State, the whole area was thus subjected to their territorial – partially overlapping sovereignty over the sea and the superjacent waters and air column.[301] Whereas along with the 12-mile territorial sea, both parties proclaimed only a 24-mile contiguous zone, a single boundary was south to delimit also areas of the continental shelf and EEZ subjected to their sovereign rights and functional jurisdiction in the northern sector, where the coasts of the parties are no longer exclusively opposite to each other but rather comparable to adjacent coasts.[302]

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[299] *Ibid*.
[300] Kolb, Robert, *Op cit*, p. 534.
[301] The *Qatar and Bahrain* case, Para.169, pp. 171- 172.
[302] *Ibid*, Para. 170.

Accordingly, the single Qatar/Bahrain maritime equidistant (median) boundary was constructed by ICJ in two sectors:

1. The southern sector of partially overlapping territorial sea; and
2. The northern sector of partially overlapping continental shelf and EEZ.

3.2.1. Sothern Part of the Boundary Line

The first task of the ICJ was to identify the customary law governing the delimitation of the territorial sea. The parties agreed that Article 12 of the 1958 Convention on the Territorial Sea and Contiguous Zone was part of customary law. The Court agreed that the provision, which is virtually identical to Article 12(1) of 1958 Convention on the Territorial Sea and Contiguous Zone, was to be regarded as customary in practice. Hence it concluded that:

> The most logical and widely practised approach is first to draw provisionally an equidistance line and then to consider whether that line must be adjusted in the light of the existence of special circumstances.[303]

Consequently, the territorial sea boundary is determined in two steps: An equidistance line is drawn as the first step; subsequently and if necessary, the provision line is then adjusted taking special circumstances into account.[304]

In drawing a provisional equidistance line as the first stage of the delimitation, it is necessary to identify the baselines. However, neither party had specified the baselines to be used for the delimitation of the breadth of the territorial sea, nor did they produce official maps or charts reflecting such baselines.[305] Accordingly, the ICJ had to first determine the relevant coastlines which it would determine the location of baselines and the pertinent basepoits generating an equidistance line.[306]

At the first stage, the ICJ rejected Bahrain's claim to its status as a *de facto* archipelagic State entitled to draw straight archipelagic baselines meeting the required water to land ratio between 1:1 and 9:1 in accordance with Part IV of UNCLOS.[307] Bahrain contented that it has asserted its archipelagic status in its diplomatic correspondence with other States and during

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[303] *Ibid*, Para. 176.
[304] Yoshifumi, Tanaka, Reflections on Maritime Delimitation in the case of Qatar/Bahrain, *International and Comparative Law Quarterly*, 2003, V. 52, p. 57.
[305] The Qatar and Bahrain case, *op cit*, Para. 177.
[306] *Ibid*, Para. 178.
[307] *Ibid*, Paras. 180-182.

multilateral negotiations over the course of the last century. It further asserted that it has been prepared to declare itself an archipelagic State but has been constrained from doing so by the undertaken not to modify the *status quo* given in the framework of King Fahd's Arbitration[308] and that will lapse only with the judgment on the ICJ. However, the ICJ considered that as Bahrain has not made this claim in one of its formal submission, the ICJ was not requested to take a position on this issue, and that it could carry out its task of drawing a single maritime boundary only by applying those rules and principles of customary law which are pertinent under the prevailing circumstances. It also found it appropriate to hold that:

> The Judgments of the Court will have binding force between the parties, in accordance with article 59 of the Statue of the Court, and consequently could not be put in issue by the unilateral action of either of Parties, and in particular, by any decision of Bahrain to declare itself an archipelagic State.[309]

Qatar argued that the mainland-to-mainland method should be applied in order to draw such a line. Furthermore, Qatar stated that on several occasions, the case-law in the field of maritime delimitation did not rely on the baselines used for measuring the breadth of the territorial sea in applying the equidistance method. Bahrain contended that, as a multiple-island State characterised by a cluster of islands off the coast of its main island, it was entitled to draw a line connecting the outermost islands and low-tide elevations.[310]

Prior to the delimitation of the relevant coastline from which the breadth of the territorial seas of the parties is measured, the ICJ recalled the basic rule of low-water line (normal baseline) codified in Article 5 of the UNCLOS, as well as the principles that "the land dominate the sea" and that island, regardless of their size, enjoy in pursuance of article 121(2) the same status, and therefore generate the same maritime rights, as other land territory.[311]

Consequently, Qatar's claim for using the high-water line could not be accepted. Secondly, since maritime rights derived from the costal State's sovereignty over the land, the ICJ had to decide which islands came under Bahrain or Qatar sovereignty. On this point, the ICJ con-

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[308] To see the text of this Arbitration go the following link, pp. 44-49: http://www.icj-cij.org/docket/files/87/7021.pdf

[309] Kwiatkowska, Barbara, *Maritime Briefing; The Qatar v Bahrain Maritime Delimitation and Territorial Questions Case*, University of Durham, UK, 2003, Vol. 3, No. 6, pp. 27-29.

[310] In this regard see: Kolb, Robert, *Case law on equitable maritime delimitation*, Kluwer Law International Publisher, 2003, pp. 540-545.

[311] The Qatar and Bahrain case, *op cit*, Para. 185.

cluded that the Hawar Islands belonged to Bahrain and that Janan belonged to Qatar. Moreover, Qatar did not accept that Bahrain had sovereignty over the Jazirat Mashtam and Umm Jalid Islands in the southern sector. Nevertheless, the Parties were divided regarding other islands of low-tide elevations as follows.

Apart from the Hawar Island and Janan Island, determined by the ICJ to be subject to the territorial sovereignty of Bahrain and Qatar respectively, other islands which were relevant for delimitation process in the southern sector were the Bahrain islands of Jazirat Mashtam, Umm Jalid, Sitrah and Fashtal Azm. With respect to the latter island, the parties differed on whether it formed – as Bahrain claimed part of the Sitrah Island or was – as Qatar argued – a separate low tide elevation, separated from Sitrah by a natural channel which was navigable even at low-tide and was filled during the 1982 construction works of Bahraini petrochemical plant. The Court was unable to determine whether a permanent passage separating Sitrah Island from Fasht al Azm existed before the reclamation works of 1982 were undertaken.[312] At the same time, it held that it was able to undertaken the requested delimitation in this sector without determining the status of Fasht al Azm.[313]

Another issue was whether Qit'at Jarradah, a maritime feature situated northeast of Fash al Azm, was as island or a low-tide elevation. By referring to a number eyewitness reports, Bahrain contented that there were strong indications Qit'at Jarradah was an island that remained dry at high tide. Qatar maintained that Qit'at Jarradah was always reflected on nautical charts as a low-tide elevation. Having carefully analysed the evidence submitted by the Parties and the conclusions of experts, the ICJ concluded that Qit'at Jarradah was an island which should be considered in drawing of an equidistance line. At the same time, taking into account the smallness of the island, the Court ruled that the activities carried out by Bahrain on that island must be considered sufficient to support Bahrain's claim that it has sovereignty over it.[314]

The third question considered by the ICJ was whether Fasht ad Dibal may be used as a basepoint. Fasht ad Dibal is situated in the overlapping area of the territorial seas of the Parties, which both agreed that it was a low tide elevation. According to the ICJ, in such a situation, both States are entitled to use their low-water line for measuring of the breadth of their territorial sea. That is so even if the low-tide elevation is nearer to the coast of one State

[312] Kwiatkowska, Barbara, *Op cit*, pp. 20-30.
[313] The Qatar and Bahrain case, *op cit*, Para. 190.
[314] *Ibid*, Paras. 192-197.

than to the other, or nearer to an island belonging to one Party than to the mainland coasts of the other. However, the Court did hold that: "For delimitation purposes the competing rights derived by both coastal States from the relevant provisions of the law of the sea would by necessity seem to neutralize each other."[315]

It thus concluded that for the purposes of drawing the equidistance line, such low-tide elevations must be disregarded.[316] Then the ICJ turned its attention to the consideration of the method of straight baselines applied by Bahrain as a multiple-island State. However, as was the case with Bahrain's claim to archipelagic regime, the Court was of the view that Bahrain did not meet conditions for straight baselines either. The Court's view on this subject may be worthy of note:

> The method of straight baselines, which is an exception to the normal rules for the determination of baselines, may only be applied if a number of conditions are met. This method must be applied restrictively. Such conditions are primarily that either the coastline is deeply intended and cut into, or that there is a fringe of islands along the coast in its immediate vicinity.[317]

In the instant case, contrary to the rules codified in Article 7 of UNCLOS and the corresponding Article 4 of the 1958 Territorial Sea and Contiguous Zone Convention, the coasts of Bahrain's main islands do not form a "*a deeply intended*" coast, nor do the maritime features east of those islands qualify "*as a fringe of islands*" along the Bahraini coast. The ICJ admitted that Bahrain could apply archipelagic baselines, but restated that Bahrain did not declare itself to be an archipelagic State.[318]

In the second stage of its decision-making process, the ICJ considered whether there were special circumstances which required adjustment of the equidistance line as provisionally drawn in order to obtain an equitable single boundary. With respect to the Fasht al Azm, the Judgment pointed out that on either of the two hypotheses of its forming part of the Sitrah Island and its being a separate low-tide elevation, there was thus special circumstances which justified choosing a delimitation line passing between Fasht al Azm and Qit'at Sharjah. With respect to tiny, uninhabited Qit'at Sharjah, which was determined to be an island and to come

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[315] *Ibid*, Para. 202.
[316] *Ibid*, Para. 209.
[317] *Ibid*, Para. 212.
[318] *Ibid*, Para. 214.

under Bahrain sovereignty, the Court based itself on previous instances of eliminating the disproportionate effect of small islands and chose the line passing immediately to the east of Qit'at Jaradah. It is at this point that by giving no effect to this small island and by testing two equidistance lines corresponding to treatment of Fasht al Azm as a part of Sitrah and as low tide elevation, the ICJ chose for drawing the boundary between Qit'at Jaradah and Fasht al Dibal and for awarding sovereignty on the latter to Qatar. In accordance with common practice, the ICJ also considered it appropriate to take into account of interests of Saudi Arabia at the southern most point, and to simplify what would otherwise be a very complex delimitation line in the region of the Hawar Island.[319]

According to the delimitation line drawn by the ICJ, Qatar's maritime zones situated to the south of the Hawar Islands and those situated to the north of those islands are connected only by the channel separating the Hawar Islands from the Qatar peninsula. As this channel is narrow and shallow, it is unsuitable for navigation. Hence, the Court held, unanimously, that the waters lying between the Hawar Islands and the other Bahraini islands are not Bahrain's internal waters, but her territorial sea, which means that Qatari vessels shall enjoy in these waters the right of innocent passage accorded by customary international law.[320]

3.2.2. Northern Part of the Boundary Line

In the modern law of the sea, the link between the continental shelf and the EEZ has led the Court, while caring out delimitations, to give privileged treatment to elements common to both. It was for this reason that distance from the coast had become ever more important. The idea of equidistance gave good expression to this distance concept. The Court therefore would follow its prior jurisprudence in *Libya/Malta* (1985) and *Jon Mayen* (1993), adopting a provisional equidistance line, and subsequently adjusting it in light of special circumstances. The equidistance/special circumstances rule was, moreover, closely linked to the general rule of equitable principles/relevant circumstances.

The ICJ followed the same approach in the present case. For the delimitation of the maritime zones beyond the 12-mile limit, it first provisionally drew an equidistance line and then consider whether there were circumstances which must lead to an adjustment of that line.

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[319] *Ibid*, Paras. 217-220.
[320] *Ibid*, Para. 223.

The ICJ further noted that the equidistance/special circumstances rule, which is applicable to the delimitation of the territorial sea, and the equitable principles/relevant circumstances rule, as it has been developed since 1958 in case-law and State practice with regard to the delimitation of the continental shelf and the EEZ, are closely interrelated.[321]

The Judgment continued its reliance on the *Gulf of Maine* case (1984) holding in support of the single line as permitting to avoid the disadvantages inherent in a plurality of delimitation and to use "criteria that, because of their more neutral character, are best suited for use in multipurpose delimitation".[322] It affirmed that as the two institutions of the continental shelf and the EEZ are linked together in modern law, "greater importance must be attributed to elements such as distance from the coast, which are common on both concepts".[323] Moreover, the Judgment reaffirmed that it is in accordance with customary law, as it has developed through case-law of the ICJ and arbitral jurisprudence, and through the work of the Third Conference, to begin the continental shelf/EEZ delimitation with a provisionally drawn equidistance line and to examine those circumstances which might suggest its adjustment with a view of achieving an equitable principle.

In other words, in the northern part of the delimitation of the overlapping continental shelf and EEZ, the ICJ followed again, "*the most logical and widely practised*" two staged approach of:

1. Drawing first provisionally an equidistance line, and then
2. Considering whether there are circumstances which must lead to an adjustment of that line.[324]

In this part, there were four factors or circumstances to be examined: (a) pearling; (b) the 1947 line described by a British decision; (c) proportionality (The difference in the lengths of the coasts); and (d) Fasht al Jarim.

3.2.2.1. Pearling (Historic rights)

Bahrain relied on certain pearl fisheries that had belonged to it for a long time. However the exploitation of those fisheries had ceased more than half a century previously. Moreover their

[321] Kolb, Robert, O*p cit*, pp. 547-548.
[322] *Ibid*, Para. 225.
[323] *Ibid*, Para. 226.
[324] The Qatar and Bahrain case, *Op cit*, Paras. 176, 224, 232 and 232.

exploitation had traditionally been conceived of as a right exercised in common by the populations of the two coasts, not as an exclusive right. A displacement of the equidistance line was therefore not justified by this factor.

Bahrain had claimed that there was a significant number of pearling banks, many of which are situated to the north of the Qatar peninsula, which have belonged to Bahrain since time immemorial and they constitute a special circumstance which must be taken into consideration in carrying out the delimitation.[325] According to Bahrain, its historic rights over these banks were relevant to the delimitation of the maritime boundary in accordance with the equitable principle.[326]

The ICJ first took note that the pearling industry effectively ceased to exist a considerable time ago. It further observed that, from the evidence submitted to it, it is clear that pearl diving in the [Persian] Gulf area traditionally was considered as a right which was common to the coastal populations. The ICJ, therefore, did not consider the existence of pearling banks, though predominantly exploited in the past by Bahrain fishermen, as forming a circumstance which would justify an eastward shifting of the equidistance line as requested by Bahrain.

3.2.2.2. The 1947 Line Described by a British Decision

The relevance of a line dividing the seabed of the two States, described in a British decision dated 23 December 1947, created a sharp dispute between the Parties. The British decision had been adopted within the context of the emerging legal continental shelf doctrine.[327]

In its application of 1991, Qatar request the ICJ to draw the single maritime boundary with due regard to the line dividing the seabed of the two States as described in the British decision of 23 December 1947. According to Qatar, the 1947 line in itself constitutes a special circumstance insofar as it was drawn in order to permit each of the interested States to actually exercise their respective inherent right over the seabed.[328]

The ICJ held that the 1947 line could not be considered to be of direct relevance for the present delimitation process for two reasons: First, neither Party had accepted it as a binding

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[325] *Memorial submitted bay Bahrain*, p. 257; argument by Professor Reisman, counsel of Bahrain, Verbatim records, CR 2000/15, Paras, 55-58.
[326] *Ibid*, Para. 274.
[327] *Memorial submitted by Qatar*, Para. 215.
[328] *Ibid*, pp. 247-262.

decision and they invoked only parts of it to support their arguments; secondly, while the British decision only concerned the division of the seabed between the parties, the operation to be effected in the present case was mainly a combined delimitation of the continental shelf and the EEZ.[329] Thus, the 1947 line cannot be considered to have direct relevance for the present delimitation process.

3.2.2.3. Proportionality (The difference in the lengths of the coasts)

Qatar had recourse to proportionality as a test of the equitableness of the delimitation line. According to Qatar, the ratio of its mainland coasts to that of Bahrain's principal islands was 1.59 to 1 and such a significant disparity between the coastal lengths of the parties constituted a special or relevant circumstance calling for an appropriate correction of an equidistance line provisionally drawn.[330] In applying the proportionality test to the single maritime boundary proposed by Qatar in the northern sector, the ratio between the sizes of the maritime areas on either side of the boundary would have been 1.68 to 1 in favour of Qatar. It was thus argued that the proportionality test was sufficient to conclude that the boundary advocated by Qatar was equitable.

By contrast, Bahrain contented that the above calculation relied on the assumption that the Hawar Islands were under Qatar's sovereignty. If these islands were considered as appertaining to Bahrain, the relevant coasts would be almost equal.[331]

However, having decided that the Hawar Islands were under the sovereignty of Bahrain, the ICJ concluded that in consequence the difference in coastal length was further reduced and did not call for a correction of the equidistance line. Taking in to account that Hawar Islands belonged to Bahrain, the ICJ held that "the disparity in the lengths of the coastal fronts of the parties cannot be considered such as to necessitate as adjustment of the equidistance line."[332]

3.2.2.4. Fasht al Jarim

The only circumstances which the ICJ found as necessitating an adjustment was the location of the Fash al Jarim, a sizeable maritime feature, which is party situated in Bahrain's

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[329] *Qatar and Bahrain case*, Paras. 239-240.
[330] *Ibid*, Para. 241.
[331] *Ibid*, Paras. 241-242.
[332] *Ibid*, Para. 243.

territorial sea, of which at most a minute part is above water at high tide, and the legal nature of which was disputed by the Parties. In this respect, the ICJ recalled the *Libya/Malta* case (1985) in which it had stated that: "the equitableness of an equidistance line depends on whether the precaution is taken of eliminating the disproportionate effect of certain islets, rocks and minor coastal projections", to use the language of the ICJ in its 1969 Judgment.[333]

Having noted the geographical situation of the related area, the ICJ considered that if full effect were given to Fash al Jarim it would "distort the boundary and have disproportionate effects", to quote the *Anglo-French* case (1977) award.[334] Thus the ICJ held that Fash al Jarim should have no effect in determining the boundary line in the northern sector.[335]

Consequently, the ICJ rejected three circumstances (A, B and C) and accepted one (D).

As a result, the single maritime boundary in the northern sector was formed in the first place by the line which, from a point situated to the north-west of the Fash al Dibal, meets the equidistance line as adjusted to take account of the absence of effect given to Fash al Jarim. The boundary then follows this adjusted equidistance line until it meets the delimitation line between the respective maritime zones of Iran on the one hand and of Bahrain and Qatar on the other. (See figure 18).

It should be noted that the northern turning point of the boundary line has been left undefined in order to deal with the presence of Iran and only the direction of the boundary line has been referred to.[336]

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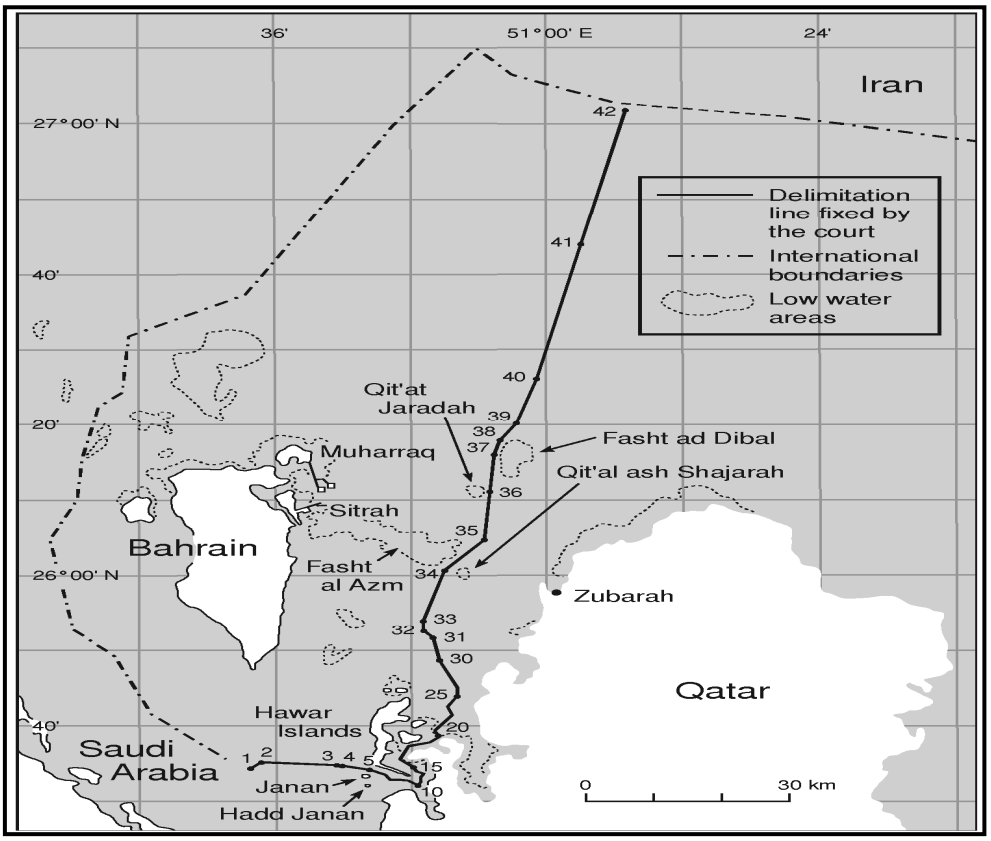
[333] *Ibid*, Para . 246. The *Libya/Malta* case, *ICJ Reports 1985*, Para. 64.
[334] Kolb, Robert, *Op cit*, p. 551.
[335] *Ibid*, Paras. 247-248.
[336] *Qatar and Bahrain Case*, Para. 250.

Figure 18. Qatar and Bahrain Case (2001)



Source: Kwiatkoswka, Barbara, The Qatar v. Bahrain Maritime Delimitation and Territorial Questions Case, *Ocean Development and International Law*, 2002, Volume. 33, Issues 3-4, p. 262.

3.2.3. Evaluation of the Judgment

ICJ in the judgment regarding to *Maritime delimitation and territorial questions between Qatar and Bahrain* first reviewed the history of the case and the dispute and the general history of the region. Then, for each of the issues of the dispute, the Court reviewed the logic and pleading of both Parties; followed by its reasoning and its decision on that issue.[337] The significance and problems of the *Qatar/Bahrain* judgment may be summarised as follows:

Firstly, the ICJ peacefully resolved a dispute relating to both territorial disputes and maritime delimitation. In that sense, the decision in the present case will provide an important precedent resolving a complex problem concerning both territorial and maritime domains.

Secondly, the dual nature of this case gave rise to the question of the interrelation between the two types of disputes. As 'the land dominates the sea' is a fundamental principle, territorial

[337] Al-Arayed, Jawad Salim, *A Line in the Sea*, North Atlantic Books, Berkley, California, 2003, p. 397.

sovereignty shall be determined before drawing maritime boundaries. In the present case, however, the Parties were divided regarding the territoriality of low-tide elevations. Having held that, low-tide elevations could not be fully assimilated to islands or other land territory, the Court determined sovereignty over the low-tide elevation of Fash al Dibal on the basis of the maritime boundary. Consequently, the appurtenance of the low-tide elevation was determined by reference to marine criteria, ie, the position of the maritime boundary.

Thirdly, the ICJ in the *Qatar/Bahrain* case expressly applied, for the first time in its practice, the equidistance method to a delimitation relating to adjacent coasts under customary law. Considering that international courts and tribunals have been less favourable to the equidistance method in the context of delimitations between States with adjacent coasts, this may be a landmark in case law regarding maritime delimitation. In this respect, the *Qatar/Bahrain* judgment marks an important step enhancing the predictability of the law of maritime delimitation. The ICJ's views are also significant for unifying the approaches to equitable principles in the framework of corrective equity.

Finally, the *Qatar/Bahrain* case, once again, draws attention to the obscurity of the criteria for measuring disproportionate effects. It would appear that in the present case the only criteria for evaluating disproportionate effects was the distance between the delimitation line and each coast. That is a subjective test, however. Accordingly, the quest for the objective criteria for appertaining disproportionate effects is of particular importance to the law of the maritime delimitation.[338]

3.3. Maritime Delimitation Agreements in the Persian Gulf

After evaluating the *Qatar/Bahrain* case, and in order to reach a comprehensive understanding of the Arab littoral States' ocean policy, especially delimitation policy in the Persian Gulf region, the bilateral maritime delimitation agreements between these States in the Persian Gulf will be outlined in the following pages.

3.3.1. Saudi Arabia and Bahrain Agreement

Bahrain and Saudi Arabia delimited the first maritime boundary in the Persian Gulf, and incidentally one of the first continental shelf boundaries worldwide, when they signed a

[338] Tanaka, Yoshifumi, Reflections on Maritime Delimitation in the case of Qatar/Bahrain, *Op cit*, p. 80.

continental shelf agreement on 22 February 1958.[339] The Agreement provided for the establishment of a central boundary line to delimit the submarine areas of the two States and also delimited a hexagonal area to be under Saudi jurisdiction, with revenue received from the exploitation of petroleum resources in the area to be shared equally by Saudi Arabia and Bahrain.

Under the First Clause, the Agreement provided for a "boundary line between the Kingdom of Saudi Arabia and the Government of Bahrain on the basis of median line".[340] However, the boundary line only approximates a median line in that it is based on "predetermined landmarks" as did not strictly follow the configuration of the coast nor give consideration to certain small islands.[341] The boundary so defined extends for 98.5 nautical miles and is defined by 14 points. Points 1-11, or approximately two-thirds of the delimitation, constitute an equidistance-based line, although neither the type of line used to connect the turning points nor the datum is specified, and coordinates of the turning points are not supplied in the agreement. Instead, the turning points are generally defined as being located at the 'mid-points' of lines connecting specified points on the Parties' coasts.[342]

Although the Agreement is based on the median line, there are some deviations concerning the median line. For instance, some islands close to both coasts were ignored and the two island of Al Baina Al Saghir and Al Baina Al Kabir -in dispute for many years- were left to Bahrain and Saudi Arabia respectively.[343] These two islands, which are almost equidistant from the coasts of the States concerned, carried no territorial waters and were put on either side of the dividing line.

The Second Clause of the Agreement dealt with the irregular, hexagonal zone of the Abu-Safa Oil field, which under the First Clause is located to the left of the median line. Since the application of the median line would have crossed the oil field and presumably influenced by the principle of the "unity of the deposit" which was a popular opinion of the 1950s, Parties agreed to locate Fasht Abu Safa in a special zone under the sovereignty of Saudi Arabia with the oil revenue to be divided equally between the two States. This solution was the most im-

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[339] For the English text of this Agreement see: *The Law of the Sea: Maritime Boundary Agreement (1942-1969)*, United Nations Publication, New York, 1991, Sales No. E.91.V.11, pp. 68-70.
[340] *Bahrain-Saudi Arabia boundary agreement 22 February 1958*, First clause, article 1.
[341] Chrles G MacDonald, *op cit*, p. 126.
[342] Prescott, Victor and Schofield, Clive, *the Maritime Political Boundaries of the World*, Martinus Nijhoff Publishers, Boston, Second Edition, 2005, p. 500.
[343] *Bahrain-Saudi Arabia boundary agreement 22 February 1958*, First clause, articles 8-9.

portant part of the Agreement because it solved the question of the Fasht Abu Safa, which was a conflicting claim between the two Parties for years.[344] (See figure 22).

3.3.2. Saudi Arabia and Kuwait Agreements

Maritime delimitation between Saudi Arabia and Kuwait was complicated by the existence of a sovereignty dispute over the islands of Qaru and Umm al-Maradin, and the existence of the Kuwait-Saudi Arabia Neutral Zone.

The Saudi Arabia – Kuwait Agreement of 7 July 1965 was elaborated for the purpose of partitioning the Neutral Zone, but included provisions for offshore resources. The Agreement provided for each State to annex an equal part of the Neutral Zone but with joint ownership of the mineral rights for the entire zone remaining unaffected. Concerning the delimitation of offshore areas, Article 7 provided for each State to consider the waters adjoining the part of the Partitioned Zone annexed to its territory to be its littoral waters, except that "for the purpose of exploiting the natural resources in the Partitioned Zone, not more than six marine miles of the sea-bed and subsoil adjoining the Partitioned Zone shall be annexed to the mainland of the Partitioned Zone. Furthermore, Article 8 provided that: "The two Contracting Parties shall exercise their equal rights in the sub-merged area beyond the aforesaid six-mail limit mentioned, by means of joint exploitation, unless the two Parties agreed otherwise."

Thus, between Saudi Arabia and Kuwait "equitable principle" provided for the joint exploitation of the given area.[345]

Kuwait and Saudi Arabia signed a maritime boundary agreement on 2 July 2000 concerning the submerged area adjacent to the divided zone.[346] This Agreement resolved the islands' sovereignty disputes, confirming the islands of Qaru and Umm al-Maradin as belonging to Kuwait. The islands were ignored in the construction of an equitable-based boundary line.

The northern and the southern limits of a joint development zone, offshore the former Kuwaiti-Saudi Neutral Zone, which was referred as 'Partitioned Zone' in the 1965 Agreement, where also defined. However, the seaward extent of all three of the lines defined in the treaty,

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[344] Razavi, Ahmad, *Op cit*, pp. 124-125.
[345] Chrles G, MacDonald, *Op cit*, p. 128.
[346] For the English Text of this Agreement see:
http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/SAU-KWT2000SA.PDF

the maritime delimitation line and the limits of the joint zone will require negotiations with the opposite State, Iran, in order to define the tri-points.

3.3.3. Saudi Arabia and Qatar Agreements

On 4 December 1965, Saudi Arabia and Qatar singed a delimitation agreement dealing with both their land and maritime boundaries.[347] According to Article 1 of the Agreement, their maritime boundary is established by the equidistance method. It stated: "Dawhat Salwa shall be divided equally between the two countries on the basis of equidistance from the two coasts. As regards indentations, a straight median line shall be adopted to the extent possible."

Saudi-Qatari mapping indicates that eight turning points were defined but the coordinates of these are unknown.

In March 2001, following the ICJ's ruling in the *Qatar and Bahrain* case (2001), Qatar and Saudi Arabia announced that they had signed an agreement settling long-standing land and maritime boundary issues between the two countries. Another Agreement from the previous year to "divide between them the potentially oil rich [...] Dowhat Salwa" was also reported.[348] Details of these Agreements have yet to come to light however.

Even if the 2000 and 2001 Agreements do definitively settle the Qatar-Saudi Arabia maritime delimitation in the Dowhat Salwa, further negotiations will probably be required to link the Qatar-Saudi Arabia Agreement to the earlier Bahrain and Saudi Arabia delimitation as well as the southern terminus of the ICJ-defined Bahrain- Qatar boundary.[349]

3.3.4. Abu Dhabi and Dubai Agreement

On 18 February 1968, Abu Dhabi and Dubai singed an Agreement on the redefinition of their maritime boundaries.[350] However, as both become part of the UAE in 1971, the boundary between them is no longer an international boundary. The coasts of these two Emirates are adjacent to each other. Parties under the provisions of this Agreement settled the dispute over the

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[347] For the English Text of this Agreement see: http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/SAU-QAT1965OB.PDF

[348] El-Hakim, Ali, *Op cit*, p. 99.

[349] Prescott ,Victor and Schofield, Clive, *op cit*, p.500.

[350] El-Hakim, Ali, *Op cit*, p. 99.

Fateh oil field, which is situated about 100 kilometres offshore, toward the middle of the Persian Gulf.

The boundary was delimited in 1965 in an agreement reached through British mediation between the ruler of Abu Dhabi and the ruler of Dubai. But in 1966, following the discovery by Continental Oil of Dubai of oil the area of the Fateh wells, this Emirate questioned the validity of the 1965 Agreement and laid claim to the area.[351]

However, the new Agreement confirms Dubai's sovereignty over the Fateh wells, further annexes to Dubai an area of the sea forming a parallelogram and lying to the west of the Fateh wells, by adjusting the coastal point of departure of the old boundary line ten kilometres to the west.

3.3.5. Qatar and UAE (Abu Dhabi*)* Agreement

This Agreement was concluded between Qatar and Abu Dhabi on 30 March 1969.[352] Because the Abu Dhabi Sheikhdoms became a member of the Confederation of the UAE composed of seven small sheikhdoms, it can no longer be treated as an independence State. Accordingly, we consider its example under the title of the UAE.

This Agreement included a delimitation area between adjacent States. It was not based on a line drawn perpendicular, or 'normal', to the general direction of the coast.

First of all, the Agreement confirmed that the island of Daiyianah formed part of the Abu Dhabi, while the island of al-Ashat and Shuraiwah belonged to Qatar. Thereafter, the delimitation line was defied by a series of geographical co-ordinates passing through four turning points.

Point A coincides with point 6, the easternmost point on the Iran-Qatar boundary, and point 1 on the Iran-Abu Dhabi boundary. It thus represents another tri-point roughly equidistant from all three States.

Point B is specified as coinciding with the location of well No.1 in the Bunduq oilfield. Articles 6 and 7 of the Agreement stipulate that the field is to be equally shared by the Parties even though the Abu Dhabi Marine Areas Company retains full authority to develop the resources in accordance with a pre-existing concession granted by the Ruler of Abu Dhabi.

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[351] *Ibid.*

[352] For English Version of this Agreement see: *The Law of the Sea; Maritime Boundary Agreement (1942-1969)*, United Nations Publication, New York, 1991, Sales No. E.91.V.11, p. 82.

While the Agreement thereafter provides that the boundary will be the straight line between points B and C, such a line would pass almost directly over the Daiyianah Island. Since at the time both Qatar and Abu Dhabi claimed 3-mile territorial seas, a 3-mile arc has been drawn around the island.

The final point, Point D, lies at the mouth of the Khawr al-Udaid outlet. Because of the presence of small islands on both sides of the line, it is difficult to identify the principles upon which the line was agreed. This highlights one of the shortcomings of trying to draw broad-reaching legal conclusions from State practice. In the final analysis, such agreements are the product of negotiation and it is not always possible to identify the considerations that underlay the particular boundary. Nonetheless, this Agreement is significant to the extent that it illustrates another way in which States deal with boundaries that pass through areas rich in natural resources.[353] Therefore, this Agreement has been cited as another example of the application of the "unity of deposit" concept.

3.3.6. Iraq and Kuwait (Demarcation of the International Boundary by the UN)

The history of the border between Iraq and Kuwait is long and complex. Iraq's claim to sovereignty over the whole of Kuwait has been pursued periodically since 1938 and it has made frequent attempts to gain control over the strategic islands of Bubiyan and Warbah.

Following Iraq's invasion of Kuwait in 1990 and its defeat by the forces of a coalition of States acting pursuant to Security Council Resolution No. 678 (1990), the UN established a border demarcation commission which completed its work in May 1993. This process included a partial delimitation of the Iraq-Kuwait maritime boundary. Kuwait formally accepted the boundary almost immediately and Iraq did so in November 1994.[354]

The UN divided the maritime section of the boundary into two sub-sections: from the former Iraqi naval facility at Umm Qasr to the junction of the *khowrs* (channels) Khowr az Zubair, Khowr Shityanah and Khowr'Abd Allah. The first section follows the spring low water line of the southern bank of the Khowr az Zubayr, then runs northwards to the junction of

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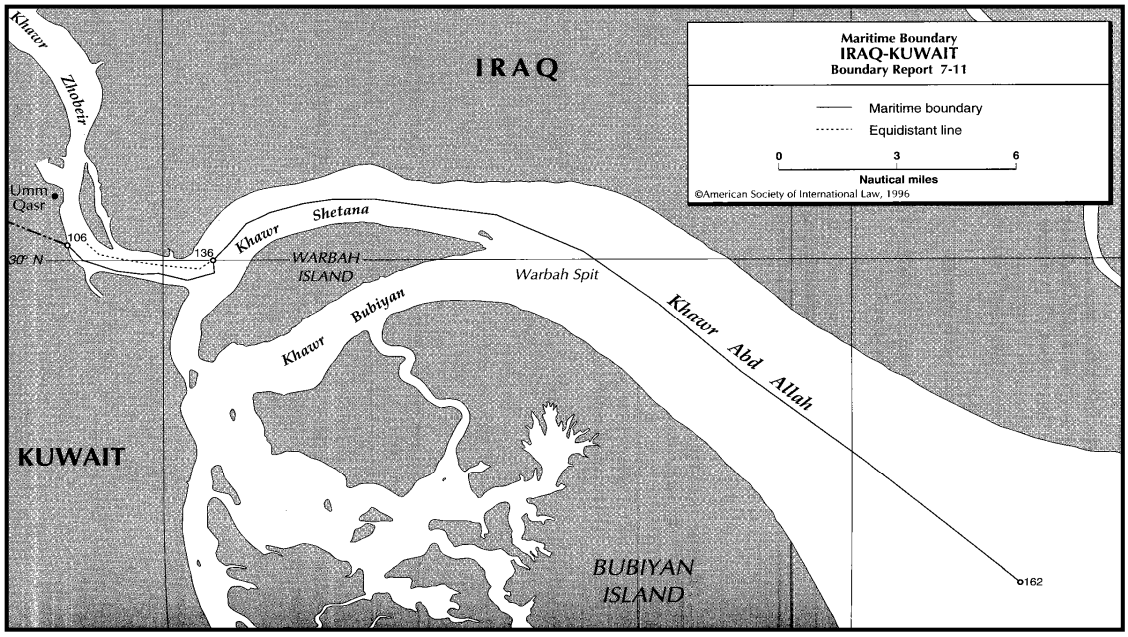
[353] Schofield, Richard, *Territorial Foundation of the Gulf States*, University College London Press, England, 1994, p. 181. (It should be noted that the correct historical designation for the sea area lying between Iran and the Arabian Peninsula is the "Persian Gulf").

[354] for the English Version of the Report of the Demarcation Commission See: http://daccessdds.un.org/doc/UNDOC/GEN/N93/295/64/IMG/N9329564.pdf?OpenElement

the Khowrs. The second section follows a median line running through first Khowr Shityanah and then Khowr 'Abd Allah. The choice of the median line in preference to the alternative *thalweg* boundary, although used as a navigable channel, reflected the manner in which the boundary had been depicted in many earlier maps and charts; it is also generally consistent with the other maritime boundaries in the Persian Gulf. The term *thalweg*, has been defined as a median line of the main navigable channel of the water course.[355]

The outermost point of the boundary in the Khowr'Abd Alla falls short of what would be a three nautical mile territorial sea limit. Since both countries claim 12 nautical miles of territorial sea, bilateral negotiations will be required to extend the boundary. The reference system of the coordinates is the Iraq-Kuwait boundary is datum 1992.[356] (See figure 19)

Figure 19. Iraq-Kuwait maritime boundary demarcation by the UN



Source: Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries, Vol. III*, p. 2432.

In addition to the aforementioned agreements, Oman and the UAE singed a delimitation treaty on 22 June 2002, but the details of this Agreement have yet not to be made public. Thus,

[355] Prescott, Victor and Schofield, Clive, *Op cit*, p. 501.

[356] For more details regarding the UN demarcation of the Iraq and Kuwait border see: Bulloch, John, *United Nations Demarcation of the Iraq-Kuwait border*, Gulf centre for strategic studies, London, 1993.

it was not possible for the author to review the Agreement and evaluate it with respect to the methodology of delimitation used.

3.4. Concluding Remarks

In addition to Iran, there are seven Arab littoral States in the Persian Gulf region. The Practice of the Persian Gulf Arab States concerning the adoption of marine rules is based on the evolutions in this field of international law. While, traditionally, most of these States had been subject to UK marine policies, they subsequently claimed the same limit for their marine zones, in the last years they revised their regulations and adapted them to the recent international norms in this area.

The maritime boarders of these States had to be delimited by six agreements. Four of these delimitation agreements are bilateral agreement (Saudi Arabia-Bahrain, Saudi Arabia-Kuwait, Saudi Arabia-Qatar, Qatar-UAE and UAE-Oman), one is a demarcation by UN Commission (Iraq-Kuwait) and the last one delimited by the ICJ in its award regarding *Bahrain and Qatar* case (2001). Thus, there are no undetermined maritime zones between Arab States in the Persian Gulf, except some parts of the Iraq and Kuwait in the northern part of the Persian Gulf.

One of the reasons which motivated the States in the region to delimit their continental shelf boundary was the presence of huge oil fields in the seabed and subsoil of the Persian Gulf. Delimitation agreements between the Arab States of the Persian Gulf started with the Saudi Arabia-Bahrain agreement and it was followed by other agreements in the region.

In most of these delimitation agreements, the equidistance method is used, which is modified in some cases under some situation such as the existence of islands or oil fields to reach a mutually acceptable agreement. In other words, the major special circumstances in the Persian Gulf are the presence of islands and oil or gas deposits. In some of these agreements, Parties solved longstanding disputes relating the sovereignty over some islands. The ICJ in its award concerning the *Qatar and Bahrain* case (2001) solved one of these enduring sovereignty disputes over islands between Parties.

From geographically point of view, all Arab States of the Persian Gulf are opposing Iran except Iraq which id adjacent. Thus, all of them need to delimit their continental shelf with Iran. These agreements and other Iran’s marine policy in the Persian Gulf are the focus of the next chapter.

Chapter Four: Continental Shelf Delimitation of the Islamic Republic of Iran in the Persian Gulf

Introduction

The Islamic Republic of Iran, as the only littoral State in the north of the Persian Gulf facing the other seven littoral States in the west and south of the Persian Gulf. Among these States, Iran has a land border with only Iraq.

The northeastern shore of the Persian Gulf is bounded in its entirety by Iran from the Strait of Hormuz to the boundary with Iraq on the Shat Al'Arab River in the north. The Iranian coast of the Persian Gulf is fringed with islands from the vicinity of the Strait of Hormuz to about 55° 51' N, 53°08' E. Hence, its coast is relatively smooth, with occasional promontories and the offshore island of Kharg, until it reaches the northern end, which is very low lying and contains the delta of the Shat Al'Arab and the marsh lands of Khuzestan.

Iran's coastline in the Persian Gulf measures about 1400 Kilometres.

Chapter 4, which is the main concentration of this research project contains of 4 sections. First Iran's legislation regarding the maritime zones in the Persian Gulf since 1930s up to the present Iranian Marine Area Act will be examined. Then, Iran's continental shelf agreement with its neighbouring States will be reviewed. In the next section, undetermined marine boarders of Iran in the Persian Gulf will be considered. The last section examines some tri-points between Iran and its littoral neighbouring States in the Persian Gulf.

The main object of the present chapter is to reach a comprehensive understanding toward Iran's marine policy regarding continental shelf delimitation in the Persian Gulf and clarify the pending continental shelf boundaries of Iran in order to find solution for them.

4.1. Iran's Legislation Concerning Maritime Zones

Based on the international norms, every littoral State has right to establish national legislation regarding the marine issues and maritime zones in the marine areas around its mainland.[357] The marine legislation of most littoral States has been provided based on the international trends in the recent decades especially UNCLOS. The review of the national marine legislation can be a great help to understand the marine policy of a State. In the following pages, the evolution of Iran's national legislation in the 20th century regarding the maritime zones in the Persian Gulf will be reviewed.

4.1.1. Territorial Sea

Iran was the first Persian Gulf State to deal with the problem of its territorial sea. On 19 July 1934, it enacted legislation, entitled "Act relating to the breadth of the territorial waters and the zone of supervision", in which the breadth of Iran's territorial sea was fixed at 6 nautical miles from the low water mark.[358] Article 1 of the Act provided:

> The waters adjoining the Iranian coast to a distance of six nautical miles from the parallel to the shore at low water mark are hereby declared Iranian territorial water and form part of the national property together with the sea-bed and subsoil thereunder and the air above. [359]

In addition to the 6-mile territorial sea, the Iranian Government, in order to ensure the operation of certain laws and agreements concerning the security and protection of the safety of navigation, declared a belt of 12 miles from the low water mark and the "zone of marine supervision".[360]

At the First Conference, Iran was not as keen as two Arab Persian Gulf States on the 12-mile breadth of the territorial sea. In the Plenary Session, Iran voted for the USA proposal of a 6-mile limit, but after the rejection of the USA's proposal, Iran voted in favour of a 12-mile limit which was proposed by Saudi Arabia and some other countries. Following the failure of the Conference to reach an agreement on the breadth of the territorial sea and the adoption of a

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[357] These marine zones include territorial sea, contiguous zone, EEZ and continental shelf.
[358] For English translation of this 1934 Act See: *UN Legislative Series, Laws Regulations on the Regime of the High Seas*, UN Doc. ST/LEG/SER.B/1, 1951, p. 81.
[359] *United Nations legislation series, Laws and Regulations on the Regime of the Territorial Sea*, December 1956 (ST/LEG/SER/B.6), pp. 24-25.
[360] *Ibid*, p. 25.

12-mile limit by Saudi Arabia and Iraq, Iran amended its initial Act on 12 April 1959.[361] In this new Act, which consists of 8 Articles, the phrase "territorial waters" was replaced by the concept of "territorial sea" and under Article 3, the breadth of the territorial sea was extended to 12-nautical miles. A zone of marine "supervision" or the contiguous zone was not mentioned in this Act.

During the 23rd Plenary Meeting of the Third Conference, the Delegate of Iran, speaking in support of a 12-mile limit, stated that: "There seemed to be an increasing tendency to accept the limit of 12 miles for territorial sea. His own country had fixed such a limit by the Law of 12 April 1959." [362]

On 29 April 1993, Iran issued its comprehensive Law regarding the maritime issues "Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea",[363] which contains 23 Articles.

Article 2 of Act 1993 concerning the territorial sea states:

> The breadth of the territorial sea is 12 nautical miles, measured from the baseline. Each nautical mile is equal to 1,852 metres.
> The islands belonging to Iran, whether situated within or outside its territorial sea, have, in accordance with this Act, their own territorial sea.

Article 4, regarding the delimitation of the territorial sea when it overlaps with other States' territorial sea declares:

> Wherever the territorial sea of Iran overlaps the territorial seas of the States with opposite or adjacent coasts, the dividing line between the territorial seas of Iran and those States shall be, unless otherwise agreed between the two parties, the median line every point of which is equidistant from the nearest point on the baseline of both States.

The language of Article 4 replaces Article 4 of the 1959 Act, and is unobjectionable. While Article 4 reiterates only the first sentence of Article 15 of UNCLOS, and therefore does not address the "special circumstances" exceptions to the equidistance rule, the inclusion of Article 15's language, "unless otherwise agreed between the two parties" mitigates this concern.

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[361] For the English Text of this Act See: United Nations Legislative Series, National Legislation and Treaties Relating to the Law of the Sea, UN Doc. ST/LEG/SER.B/16, 1974, pp. 10-11.
[362] *UCLOS III*, Official Records, Vol. I, First Session, p. 71.
[363] For English Text of this Act see:
http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/IRN_1993_Act.pdf

4.1.2. Contiguous Zone

In its Act of 19 July 1934, which was based on the general trend towards the Law of the Sea which discussed during the 1930 Hague Conference, Iran claimed a 12 mile "zone of marine supervision" instead of the concept contiguous zone, which was measured from the law-water mark. Article 1 of the Act provides:

> With a view to ensuring the operation of certain laws and conventions concerning the security and protection of the country and its interest or safety of navigation, a second zone known as the zone of marine supervision, over which the State exercise a right of supervision, shall extend to a distance of 12 nautical miles from the shore measured in the same manner as aforesaid (in Paragraph 1).

Under the Act of 12 April 1959, Iran amended the Act of 1934 and extended its territorial sea to 12 nautical miles, but this Act did not mention anything concerning the contiguous zone or its "zone of marine supervision". However, in the Act of 1993, Iran extended its contiguous zone to 24-nautical miles from the baseline. Article 12 of the Act regarding the definition of the contiguous zone declared: "The contiguous zone is an area adjacent to the territorial sea, the outer limit of which is 24 nautical miles from the baseline."

Article 13 sets forth Iran's jurisdiction in its contiguous zone as follows:

> The Government of the Islamic Republic of Iran my adopt measures necessary to prevent the infringement of laws and regulations in the contiguous zone, including security, customs, maritime, fiscal, immigration, sanitary and environmental laws and regulations and investigation and punishment of offenders.

This Article is in accordance with international law as reflected in Article 24 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone and Article 33(l) of UNCLOS which permits a coastal State to exercise the necessary control to prevent or punish infringement of only four categories of offenses: violations of customs, fiscal, immigration, and sanitary (health and quarantine) laws and regulations.

4.1.3. Exclusive Economic Zone

In its Act of 12 April 1959 concerning the territorial sea, Iran for the first time legally declared its right over the fishery resources beyond the territorial sea. Article 7 of the Act

provides: “Fishing and other rights of Iran beyond the limits of its territorial sea shall remain unaffected.”

The Act does not deal with the exact details of the problem of the fishery beyond the territorial waters. It seems that the uncertainty regarding the delimitation of the continental shelf with neighbouring States persuaded Iran to adopt this general position.[364]

On 30 October 1973, Iran issued a Proclamation concerning the outer limit of the Exclusive Fishing Zone in the Persian Gulf and the Sea of Oman.[365] On the basis of this Proclamation Iran established the limit of its Exclusive Fishery Zone over the waters superjacent to the Iranian continental shelf in the Persian Gulf. The First Paragraph of Article 1 of the Proclamation provides: “The outer limits of the exclusive fishing zone of Iran in the Persian Gulf shall be outer limits of the superjacent waters of the continental shelf on Iran.”

According to Article 1(a) concerning areas which have been delimited under bilateral agreements, the limits of the Exclusive Fishery Zone coincide with the outer limits of the delimited continental shelf recognized in those agreements. If the limits of the superjacent waters of the continental shelf have not been delimited, the median line from the baselines of the Parties is the limit of the Exclusive Fishing Zone (Paragraph b).

Through Article 14 of the 1993 Marine Act, Iran extended its EEZ beyond the territorial sea without mentioning any specific distance:

> Beyond its territorial sea which is called the exclusive economic zone, the Islamic Republic of Iran exercises its sovereign rights and jurisdiction with regard to:
> (a) Exploration, exploitation, conservation and management of all natural resources, whether living or non-living, of the seabed and subsoil thereof and its superjacent waters, and with regard to other economic activities for the production of energy from water, currents and winds. These rights are exclusive;
> (b) Adoption and enforcement of appropriate laws and regulations, especially for the following activities:
> (i) The establishment and use of artificial islands and other installations and structures, lying of submarine cables and pipelines and the establishment of relevant security and safety zones;
> (ii) Any kind of research;
> (iii) The protection and preservation of the marine environment;
> (c) Such sovereign rights as granted by regional or international treaties.

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[364] Razavi, Ahmad, *Op cit*, p. 104.

[365] For the English Text of this Proclamation see: *The Law of the Sea; National Legislation on the EEZ, the Economic Zone and the Exclusive Fishery Zone*, United Nations Publications, New York , 1986, p. 156.

By Article 14, Iran became the 88th State to claim an EEZ. While Article 14 largely complies with Article 56 of UNCLOS, the USA does not accept Iran's declaration, filed upon signing the Convention, that the "notion of the exclusive economic zone" was new and available only to States Party to the Convention. The ICJ has consistently ruled, since the *Gulf of Maine* case (1984), that the exclusive economic zone is established customary law.[366]

Article 19 of the 1993 Act regarding the delimitation of EEZ stipulates:

> The limits of the exclusive economic zone [...] of the Islamic Republic of Iran, unless otherwise determined in accordance with bilateral agreements, shall be a line every point of which is equidistant from the nearest point on the baselines of two States.

4.1.4: Continental Shelf

Following the Truman Proclamation and other countries' practices, on 19 May 1949 Iran submitted to its Parliament a Bill defining the continental shelf of the Persian Gulf contiguous to its coast. However, due to a dispute regarding the nationalisation of the Anglo-Iranian Oil Company, Iran delayed the ratification of the Bill until 18 June 1955.[367] In fact, the Iranian Draft Legislation was the first attempt in the Persian Gulf relating to the appropriation of the sub-sea resources of the area.

Article 1 of this Act defines the term "Falate Ghareh" which is a translation of the term "Continental Shelf" in English and "Plateau Continental" In French. The use of this term by Iran raised a lot of questions regarding the existence of a continental shelf in the Persian Gulf. Some, due to the shallowness of the water in the Persian Gulf and the lack of sudden drops in its sea-bed, believed that there is no continental shelf in the Persian Gulf. However, after the Judgment of the *North Sea* Cases (1969), especially Paragraph 40 in which the ICJ declares that "More fundamental than the notion of proximity appears to be the principle of the natural prolongation or continuation of the land territory" and also by the provisions of UNCLOS which define the continental shelf as the seabed and subsoil of the submarine areas of the coastal State that extend beyond its territorial sea through the natural prolongation of its land

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366 *Gulf of Maine (Canada/United States), Case* (1984) I.C.J. Rep. 246, 294, Para. 94.

367 For the English Text of this Act see: *The Law of the Sea; National Legislation on the Continental Shelf, United Nations Publications*, New York, 1989, Sales No. E.89.V.5, p. 134.

territory,[368] there is no longer any doubt about the existence of a continental shelf in the Persian Gulf.

Article 2 of the 1955 Act considers the submarine areas as well as natural resources of the continental shelf as belonging to Iran and provides:

> The (submarine) areas as well as the natural resources of the sea-bed and the subsoil thereof, up to the limit of the continental shelf adjacent to the Iranian coast and to the coast of Iranian islands in the Persian Gulf and the Sea of Oman have belonged and shall continue to belong to Iran and shall remain under its sovereignty.

Iran, when signing the 1958 Geneva Convention on the Continental Shelf, made a reservation regarding the laying of submarine cables on the continental shelf but never ratified the Convention.

At the Third Conference, the Iranian Delegate supported the limits of the continental shelf codified by the 1958 Convention on the Continental Shelf and remarked: "However, it considered the limits of the continental shelf established in the 1958 Convention to be an absolute minimum." [369]

On the question of the continental shelf delimitation among Persian Gulf States, he relied upon the 1958 Convention and the difficulties concerning the special geographical and geological situation in the Persian Gulf and added: "His country had already agreed on the delimitation of its continental shelf with several coastal States of the Persian Gulf and it hoped to conclude similar agreements with the other coastal States." [370]

Regarding the proposals concerning the sharing of revenues derived from the exploitation of the resources of the continental shelf which were put forward by the land-locked States, the Iranian Delegate strongly reacted and expressed the view that: "However, his delegation maintained its view that the coastal State held exclusive and inalienable rights over its continental shelf and that they could not be fundamentally modified."[371]

During discussions over the Introduction of the Draft Proposals, further emphasis was laid by the Iranian Delegate on the sovereign rights of the coastal State over its continental shelf and stated: "It stipulated that the sovereign rights of the coastal States over its continental shelf

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[368] UNCLOS, Article 76, Para. 1.
[369] *UNCLOS III*, Official Records, Vol. I, p. 72, Para. 59.
[370] *Ibid*.
[371] *UNCLOS III*, Official Records, Vol. II, p. 243, Para. 21.

were exclusive and that revenues derived from the exploitation of the natural resources of the continental shelf should not be subject to any revenue-sharing."[372]

Finally, Iran supported the present Draft of the Convention and accepted the rules regarding to the continental shelf as a single package, and in its Declaration upon signing UNCLOS, in spite some reservations with respect to other Articles, it did not make any reservation concerning the continental shelf.[373]

Under Article 15 of its Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea (1993), Iran extended its continental shelf beyond the territorial sea as follows:

> The provisions of article 14 shall apply mutatis mutandis to the sovereign rights and jurisdiction of the Islamic Republic of Iran in its continental shelf, which comprises the seabed and subsoil of the marine areas that extend beyond the territorial sea throughout the natural prolongation of the land territory.

Article 15 purports to apply the same rules in the EEZ to the continental shelf. Since Iran is shelf- and EEZ-locked, because boundaries required with neighbouring States prevent Iran from claiming a maximum breadth of EEZ or continental shelf.

Article 19 regarding the delimitation of the continental shelf stipulates that:

> The limits of […] the continental shelf of the Islamic Republic of Iran, unless otherwise determined in accordance with bilateral agreements, shall be a line every point of which is equidistant from the nearest point on the baselines of two States.

The language in Article 19, "unless otherwise agreed between the two parties," takes into account the fact that Iran has to negotiate continental shelf boundaries with neighbouring States. This Article is unobjectionable in practical result, and as it refers to bilateral agreements, it is consistent with Articles 74 and 83 of UNCLOS.

4.2: Iran's Delimitation Agreements

Iran, which faces all Arab States in the Persian Gulf region, felt the necessity to delimit its continental shelf boundary in the 1960s as the first step in the exploration of the hydrocarbon

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[372] *Ibid*, p. 296, Para. 1.
[373] Razavi, Ahmad, *Op cit*, pp. 90-91.

resources in the seabed and the subsoil of the Persian Gulf. This section will outline Iran's continental shelf delimitation chronologically.

4.2.1: Iran-Saudi Arabia Agreement (1968)

The Agreement concerning the sovereignty over the islands of Farsi and Al'Arabiyah and the delimitation of the boundary line separating submarine areas between Iran and Saudi Arabia (20 October 1968)[374] is the longest continental shelf delimitation in the Persian Gulf region and covers an area of about 120 miles in length and between 95-135 nautical miles in width with the maximum depth of about 75 meters. Ratifications were exchanged on 29 January 1969, at which time the Agreement came into force. At the time, neither country was a party to the 1958 Geneva Convention on the Continental Shelf. This Agreement includes a Preamble and five Articles with a map in annex.

Like the Persian Gulf as a whole, the area is clearly continental shelf in the legal sense and appertains to the coastal States. Delimitation of this area was complicated by the presence of a number of islands, of which three were especially significant during the negotiations. The first of these, Kharg, is a relatively large Iranian island about 16 miles from the Iranian mainland. The other two, Farsi and Al'Arabiyah, are small and normally uninhabited islets, about 13 miles apart, lying well toward the middle of the Persian Gulf. Sovereignty over these islets had been in dispute between the two States for a number of years prior to the negotiations.[375]

In the Preamble of the Agreement, reference is made to "a just and accurate manner", based on "the principle of the law and particular circumstances".[376] In fact, the use of the concept of the "special circumstances" was a justification for the departure from the median line concept which could not be exactly followed in the Persian Gulf.

From the beginning of negotiations, it was understood on both sides that the general basis for the discussions should be the concept of a median line. The delimited area was divided in to three geographical segments:

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[374] For the English Text of this Agreement see: *The Law of the Sea: Maritime Boundary Agreements (1942-1969)*, United Nations Publications, New York, 1991, Sales No. E.91.V.11, pp. 74-81.

[375] Young, Richard, Equitable Solutions for Offshore Boundaries: The 1968 Saudi Arabia-Iran Agreement, *the American Journal of International Law*, Vol. 64, No. 1, (Jan., 1970), p. 152.

[376] The Agreement concerning the sovereignty over the islands of Farsi and Al'Arabiyah and the delimitation of the boundary line separating submarine areas between Iran and Saudi Arabia (20 October 1968), preamble.

The first part, running from the southern terminus (a point intersecting the Saudi Arabia-Bahrain boundary Agreement) up to the vicinity of Al'Arabiyah Island (which contains line connecting Points 1, 2 and 3) caused no great difficulty. The delimitation line in this sector is essentially an equidistance line between the mainland coasts of the two States.

The second segment was surrounding the islands of Farsi and Al'Arabiya, the sovereignty of which was in dispute for several years. These islands are located in the middle of the Persia Gulf between the two States' opposing mainland coastlines and had the potential to significantly influence the course of an equidistance-based boundary line. Under Article 1, the Parties recognized Iran's sovereignty over Farsi and Saudi Arabia's over Al'Arabiya. Furthermore, it was recognized that each island was entitled to a belt of territorial sea. Since both States claim a 12-mile limit, this meant that each belt would not only overlap the other but would also extend across the median line between the two mainlands, in the direction of the other State. In the meantime, the two Parties agreed that a local median line was drawn between the two islands which are about 13 miles apart from each other, separating their respective territorial seas. The result was an agreement that the boundary line approaching from the south should turn, at the point where the main median line intersected the territorial sea limit of Al'Arabiya, and follow that limit on the side facing Iran until it intersected the territorial sea limit of Farsi; thence it should follow the local median line between the two islands to the point where the overlap ended; and then it should follow the limit of Farsi territorial sea on the side facing Saudi Arabia until that limit intersected the main median line. The resulting S-shaped segment was thus a line which not only divided the seabed between the two States but also at various stages marked off territorial sea from high sea and two territorial seas from each other.[377] This part of the Agreement is significant in maritime boundary delimitation largely because of its innovation treatment of islands located in the area to be delimited between the opposite mainland coasts.

The third segment (northern part) of the boundary was the most difficult to delimit. The Iranian island of Kharg and the Marjan-fereydoon oil field are located in this part and their existence complicated the application of the median line concept. Iran proposed a median line using Kharg as a part of the Iranian baselines (give full effect to the Kharg Island), while Saudi Arabia followed the median line between the two opposite mainlands (no effect to the

[377] Young, Richard, *Op cit*, pp. 153-154.

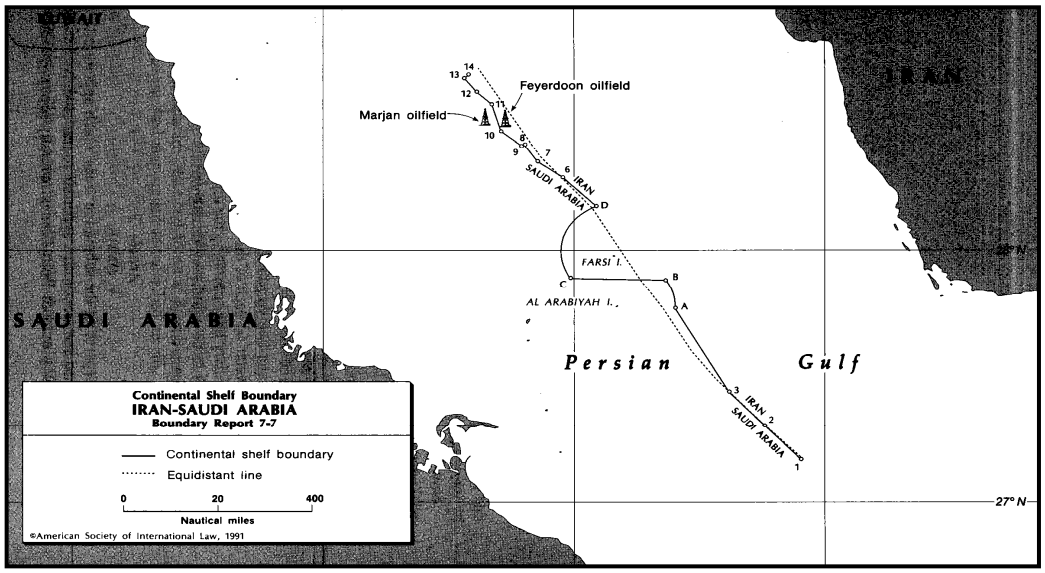
Kharg Island). The differences between the two lines averaged about six miles, a substantial amount of potentially rich sea bed area. To avoid an unsatisfactory situation, the parties agreed to give half effect to Kharg by dividing in half the dispute zone located between the median line drawn by Iran, giving full effect to Kharg and the proposed line by Saudi Arabia giving no effect to the Kharg. But this settlement never formally singed or ratified, because of the subsequent discovery by the Iranian concessionaire of important deposits which lay mostly on the Arabian side of the proposed line. When a final Agreement was eventually reached, it was based on an adjustment of the boundary line in the northern segment to divide the known oil deposits equitably. In other words, the Parties drew a new line which divided the oil field equally based on "the concept of an equitable division of the oil in the place". To draw such a line, Kharg Island was given half-effect. This delimitation line represents an excellent example of the extent to which the "equitable principle" could be carried and reflects the multiplicity of factors involved.

Article 4 provides that "within two months of the entry into force of this Agreement, there shall be established a joint technical commission of four members […] which shall be charged with defining the boundary herein agreed upon, in terms of a series of geographical co-ordinates[…]" The line fixed by the joint commission shall, if approved by the two Governments "constitute the final and binding definition of the boundary, unless either Government makes objection thereto within one month after its submission."[378]

In this Agreement, the islands were treated differently. For example, the island of Nakhilu on the Iranian side and the island of Abu Ali on the Saudi Arabian side were given partial effect, while Kharg Island was given half-effect for drawing the dividing line and some small islands on the both sides were totally ignored. In the meantime the islands of Farsi and Al'Arabiya were given a 12-mile limit territorial sea deviating the median line.[379](See figure 20).

[378] Albaharna, Husain M, *The Legal States of the Gulf States*, Manchester University Press, 1968, p. 311. (It should be noted that the correct historical designation for the sea area lying between Iran and the Arabian Peninsula is the "Persian Gulf").
[379] Razavi, Ahmad, *Op cit*, p. 135.

Figure 20 .Iran-Saudi Arabia Agreement



Source; Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries, Vol. II*, p. 1525.

In this Agreement no reference is made to the concept "continental shelf", because Saudi Arabia traditionally avoided the use of such a term,[380] by referring to the general term of "the submarine areas" between the two countries.

Under international law, the Iran-Saudi Arabia Agreement is *res inter alios acta*, meaning that is legally binding only between those two States but not opposable to others. Nonetheless, the ICJ and Arbitral Tribunal did not hesitate to refer to this Agreement as precedent for according islands a partial or "half-effect" in other situations.

In *Anglo-French* case (1977), for example, the Tribunal granted only half-effect to the Scilly Island in constructing a median line between the two countries in the Atlantic portion of the boundary. The Tribunal justified this treatment in the following way:

> A number of examples are to be found in State practice of delimitations in which only partial effect has been given to offshore islands situated outside the territorial sea of the main land […] in one instance, at least, the method employed was to give half, instead of full, effect to the offshore island in delimiting the equidistance line.[381]

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[380] For the details regarding Saudi Arabia's avoidance of use the term continental shelf, see chapter 3, section 2.

[381] *The Anglo- French Continental Shelf case,* United Nations, Reports of International Arbitral Awards, Vol. 18, p. 117, Para . 251.

Almost certainly the example referred to by the Arbitral Tribunal was the Iran-Saudi Arabia Agreement. Undoubtedly, the ICJ also had this Agreement in mind when it decided the *Libya/Tunisia* case (1982). In that case, the Kerkennah islands laying off the Tunisian coast were also given a half-effect in the delimitation, in words that echoed those of the *Anglo-French* case (1977), the Court stated: "The Court would recall … that a number of examples are to be found in State practice of delimitations in which only partial effect has been given to islands situated close to the coast."[382]

4.2.2. Iran-Qatar Agreement (1969)

The Governments of Iran and Qatar signed an Agreement on 20 September 1969, dividing their respective continental shelves in the Persian Gulf.[383] Instruments of ratification were exchanged and the Agreement came into force on 10 May 1970.

Neither country is a Party to the 1958 Geneva Convention on the Continental Shelf. However, the two countries have adopted the principle of limited national jurisdiction over the offshore domain of submerged land in general proclamations which give no precise definition to the shelf.

This Agreement has a Preamble and five Articles. Unlike the Iran-Saudi Arabia Agreement, the term "continental shelf" is used.

The delimited portion of the Iran-Qatar continental shelf has a length of 131 nautical miles, with an average distance between 5 demarcated points of 32.75 nautical miles.

In the Preamble, two Parties expressed their desire to delimit their borders "in accordance with international law and the law of sovereignty in a just, equitable and exact manner".[384]

Parties under Article 1 agreed to delimit the boarder line by fixed 6 turning points which are connected by "geodesic lines" based on geographical co-ordinates. The westernmost point of the boundary, point 1, was left undefined pending conclusion of the delimitation agreement between Bahrain and Qatar. The other points appear to be approximately equidistant from the mainland coasts of each Party, including point 6, which form a tri-point between Iran, Qatar

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[382] ICJ Report 1982, *Libya and Tunisia* case, p. 89, Para. 251.

[383] For the English Text of this Agreement see: *The Law of the Sea: Maritime Boundary Agreements (1970-1984)*, United Nations Publications, New York, 1987, Sales No. E.87.V.12, pp. 251-253.

[384] *Agreement concerning the boundary line dividing the continental shelf between Iran and Qatar*, 20 September 1969, Preamble.

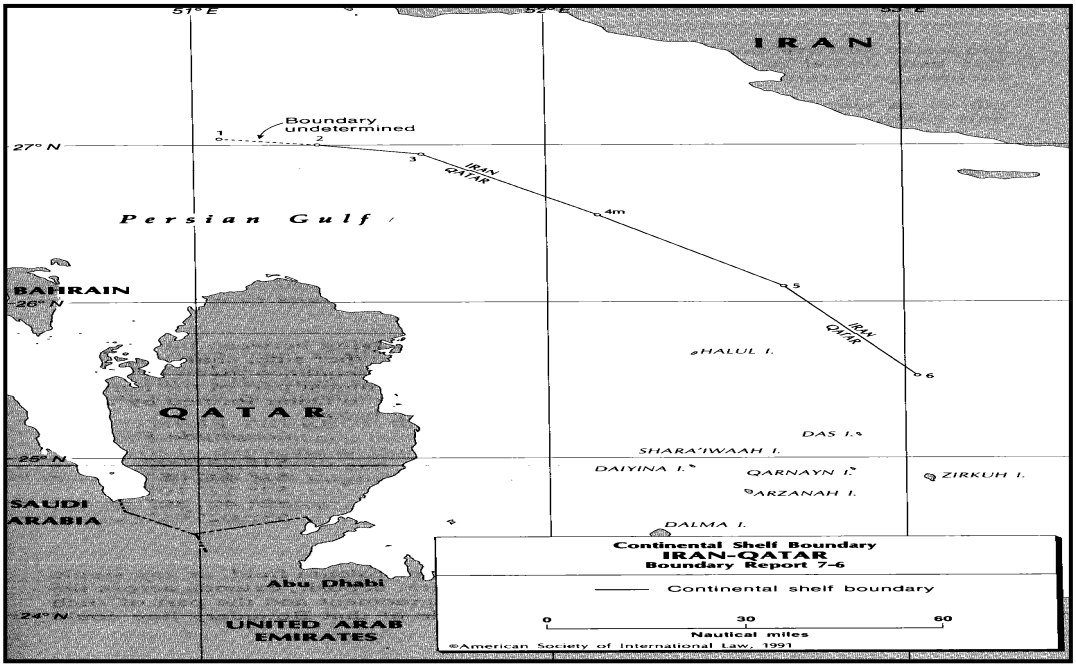
and Abu Dhabi. Despite the application of the equidistance principle, there is no reference to this.

Article 2 of the Agreement is concerning the presence of any single geological petroleum structure or petroleum field, or any single geological structure or field of any other mineral deposit, extends across the Boundary line. The Agreement provides that in absence of agreement, neither Party will place the producing section of any well closer than 125 meters to the boundary. In the event that development of the oil resources takes place, the Parties undertake to endeavour to reach agreement on how operations can be co-ordinated.[385]

The boundary was illustrated on British Admiralty Charts No. 2837, copies of which were signed by representatives of both States and annexed to the Agreement.

The Iran-Qatar continental shelf boundary is based on the equidistance principle with the exception that the presence of all islands in the Persian Gulf was disregarded. The turning points on the continental shelf boundary are all equidistant from the mainland of the two countries.[386] (See figure 21).

Figure 21. Iran-Qatar Agreement



Source: Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries, Vol. II*, p. 1515.

[385] *Ibid*, Article 2.
[386] Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries, Volume II*, p. 1513.

Ignoring some Iranian islands such as Kish, Lavan and Hendorabi in drawing the median line between the two mainlands (despite their size, population and economic importance) proved that the Parties tried to take into account a number of political and economic factors rather than the legal and geographical elements in order to reach an equitable solution.

4.2.3. Iran-Bahrain Agreement (1971)

Iran extended its maritime boundaries in the Persian Gulf in 1971 with the signature of the Agreement concerning the Delimitation of the Continental Shelf between Iran and Bahrain (17 June 197).[387] Ratifications were exchanged and the Agreement entered into force on 14 May 1972. Neither Bahrain nor Iran is a party to the 1958 Geneva Convention on the Continental Shelf.

The Agreement provides for a 28.28 nautical mile boundary in the central Persian Gulf, defined by four points. It seems to be based on equidistance principle, with the westernmost point forming a tri-point between Iran, Saudi Arabia and Bahrain and the easternmost point left undefined pending resolution of the Qatar/Bahrain boundary dispute. In other respects, the language of the Iran-Bahrain Agreement is virtually identical to that of the Iran-Qatar Agreement.

The Agreement includes a Preamble and five Articles. The Parties in Preamble referred to the concepts of "just, equitable and precise manner" for delimitation of their continental shelf. But no reference was made to "the equidistance" or the "median line" which are normally used in the Agreement.

Point 1 of the delimitation line starts with terminal point of the Iran-Qatar Agreement, which is indefinite due to the boundary dispute between Bahrain and Qatar. Points 2 and 3 are equidistant from the island of Bahrain on the Bahrain side and from the islands of Nakhilu and Jabrin on the Iranian side.

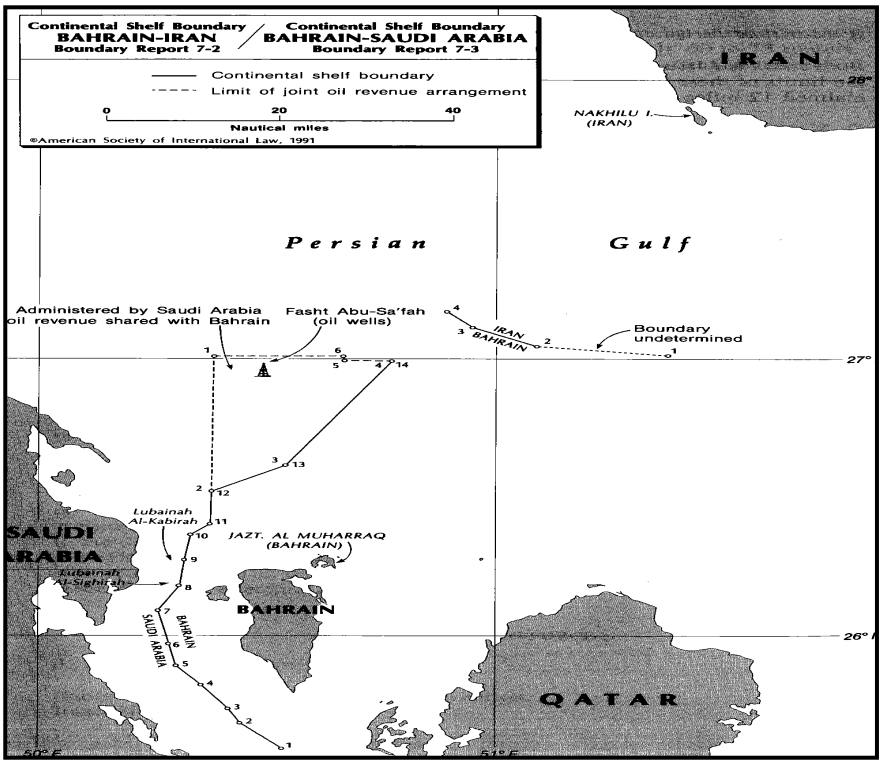
It has been observed, however, that according to the Agreement Muharag, the second biggest Bahrain island, which is connected to the mainland by a causeway, has been ignored in

[387] For the English Text of this Agreement see: *The Law of the Sea: Maritime Boundary Agreements (1970-1984)*, United Nations Publications, New York, 1987, Sales No. E.87.V.12, pp. 248-250.

drawing the median line; at the same time full effect has been given to the Iranian island of Nakhilu and Jabrin, that is, they were considered as being within the Iranian baseline.[388]

Point 4 of the boundary line coincides with the terminus point of the Iran-Saudi Arabia Agreement. (See figure 22).

Figure 22. Iran-Bahrain Agreement



Source: Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries*, *Vol. II*, p. 1494.

With respect to transbounday deposits, the Agreement provides that if a petroleum structure extends across the boundary and could be exploited by directional drilling from the other side of the boundary, then (1) there shall be no subsurface well completion within 125 meters of the boundary without the mutual consent of the Parties; and (2) the parties shall attempt to agree on coordination or utilization of operations with respect to such structure.[389]

The Agreement states that the boundary line has been illustrated on the British Admiralty Chart No. 2847 (scale 1:750,000) which is annexed to the Agreement.

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[388] El-Hakim, Ali, *Op cit*, p. 103.
[389] Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries*, *Vol. II*, p. 1453.

The primarily consideration in establishing the boundary appears to have been to fill the short gap between Iran's existing boundaries with Qatar and Saudi Arabia.

The parties used equidistance to the extent possible to delimit the boundary in question. The location of the end points was constrained by Iran's existing boundaries with Qatar and Saudi Arabia. Those boundaries are also based primarily on the equidistance principle, reflecting the oppositeness of the coasts involved.[390]

4.2.4. Iran- Oman Agreement (1974)

Continental shelf delimitation in cases of States lying on opposite sides of straits is comparatively uncomplicated. In those cases, where a narrow water space separates the two States, two existing rules of international law can be applied: the 'thalweg' or the median line.[391] While the 'thalweg' is most common and best applied in navigable waters and especially in rivers and channels, the median line is the best solution in the case of continental shelf delimitation. The median line, therefore, should be applied under customary international law for the delimitation of the respective continental shelf of Iran and Oman, since these two States lie on the opposite sides of the narrow Strait of Hormuz.

The two States had already acknowledged their adherence to the median line principle in their previous continental shelf Agreements. Since both Iran and Oman claim a 12-mail territorial sea measured from their baselines, the application of the median line was accepted as most equitable. The precise direction of the median line, however, was subject to the difference of opinion between Iran and Oman due to the presence of several islands on both sides.[392]

The two States entered into direct negotiations concerning their offshore boundaries in 1971 and signed an Agreement on 25 July 1974 concerning the delimitation of their continental shelf boundary.[393] The Agreement was ratified by both States and the instruments of ratification were exchanged at Muscat on 28 May 1975.

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[390] *Ibid*, p. 1484.
[391] Anninos, Peter. C. L, *Op cit*, pp. 94-95.
[392] Amin, S. H, *International and Legal Problems of the Gulf States*, Middle East and North African Studies Press Limited, London, 1981, p. 112. (It should be noted that the correct historical designation for the sea area lying between Iran and the Arabian Peninsula is the "Persian Gulf").
[393] For the English Test of the Agreement See: *The Law of the Sea: Maritime Boundary Agreements (1970-1984)*, United Nations Publications, New York, 1987, Sales No. E.87.V.12, pp. 245-247.

The boundary extends for a distance of 124.85 nautical miles and has 22 terminal or turning points. The distance between points ranges from 1.80 nautical miles (between points 7 and 8) to 16.30 nautical miles (between points 3 and 4). The shelf boundary extends from the eastern section of the Persian Gulf through the Strait of Hormuz to the Gulf of Oman. The 2 terminal points remain to be established pending the delimitation of boundaries between Oman and UAE in the Persian Gulf and Oman Sea.

The existence of several islands, present on both sides of the Strait of Hormuz, was the source of disagreement between Parties concerning the determination of the base-line employed in lying down the median line.

The Agreement contains a Preamble and five Articles. In the Preamble, Parties express their wish for "[...] establishing in a just, equitable and precise manner the boundary line between the respective areas of the continental shelf over which they have sovereign rights in accordance with international law".

The geodesic line, between the points specified in Article 1, defined the line dividing the continental shelf lying between two Countries.

Although it has been stated in the Agreement, but the in the Iranian side the islands of Qeshm and Hengam have been regarded as connected to the Iranian mainland and the Iranian island of Larak was given a 12 mile territorial sea which deviates the median line toward Oman between points 9 and 10 to coincide with the territorial sea of Larak. On the Omani side a straight baseline connects the close inshore Omani islands of Al-Ghanam,Quin Gap Musandam, Al-Fayyarin and Lima as a part of the mainland for drawing the median line.[394]

From the 22 turning points, 7 points are equidistance from both mainlands (points 3, 4, 9, 10, 14, 15 and 16). Three of these points are between 2.70 to 3.78 nautical miles closer to the Iranian side, and point 21 is 4.4 nautical miles closer to the Omani side while points 9 and 10 coincide with the territorial sea belt of Larak Isalnd deviating the median line towards Oman.[395] (See figure 23).

Article 2 of the Agreement adopted provisions regarding mineral structures which extend across the boundary line. It forbade any drilling in an area extending 125 meters from each side, in circumstances where any single mineral situated on one side of the boundary line

[394] El-Hakim, Ali.A, *Op cit*, p. 105.
[395] Razav, Ahmad i, *Op cit*, p. 160.

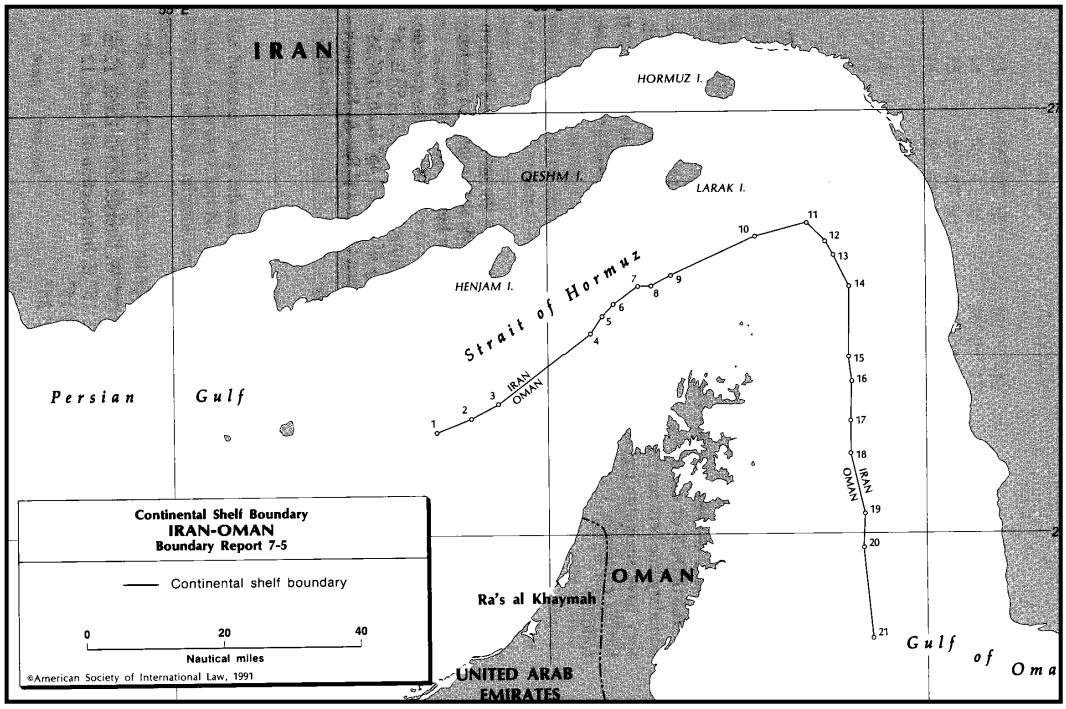
could be exploited wholly or in part by directional drilling from the other side. It further called for an agreement between the two States to be reached as to the manner in which the operation on the both sides of the boundary could be co-ordinated or utilize.

According to Article 4, the Agreement involves the continental shelf only, and expressly excludes the superjacent waters or air space.

The boundary was illustrated on British Admiralty Charts No. 2888 of 1962, edition with small corrections through 1974, which was signed by both Parties' representatives.

In the Agreement concerning Delimitation of the Continental Shelf between Iran and Oman, the Parties used the principle of equidistance as the basis for delimitation but took into consideration other factors such as the presence of islands and the boundary makes minor deviations from the strict equidistance line in various places.

Figure 23. Iran-Oman Agreement



Source: Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries*, *Vol. II*, p. 1507.

4.2.5. Iran- United Arab Emirates (Dubai) Agreement (1974)

Iran and UAE (Dubai) signed an Agreement on 31 August 1974, regarding the delimitation of their continental shelf boundary.[396] The Agreement was ratified by Iran on 15 March 1975, but it has yet to be ratified by the UAE. It should first be clear that the agreed boundary line delimits only some parts of the continental shelf between these two States, namely the area between Iran and the offshore lateral limits or boundaries of the Emirate of Dubai.

The Agreement contains of 1 Preamble and 5 Articles. Like other Iranian Maritime Delimitations Agreements, in the Preamble, Parties express their desire to establish "in a just, equitable and precise manner the boundary line between the respective areas of continental shelf over which they have sovereign rights in accordance with international law".

The boundary extends for a distance of 39.25 nautical miles and it has 5 turning or terminal points. The Agreement does not state whether the principle of equidistance was utilised in determining the boundary line. It would appear, however, that the median line between the two mainland coasts of Iran and Dubai has basically been followed within the exception that is vicinity of the Iranian island of Sirri which median line has been displaced so as to coincide with the southern 12 mile limit of the territorial sea of Sirri (line between points 3 and 4). This treatment of the island of Sirri was similar to the methods applied to the islands of Farsi and Al'Arabiya in 1968 Iran-Saudi Arabia Agreement. (See figure 24).

Article 4 notes that nothing in this Agreement shall affect the status of the superajacent [*sic*] waters or airspace above any party of the continental shelf.

The Agreement stipulates that the boundary line is illustrated on the British Admiralty Chart No. 2837.

In Agreement between Iran and UAE, islands, rocks, reefs and low tide elevations did not affect the boundary line, except the sector that boundary follows the 12 mile arc about Sirri Island.[397]

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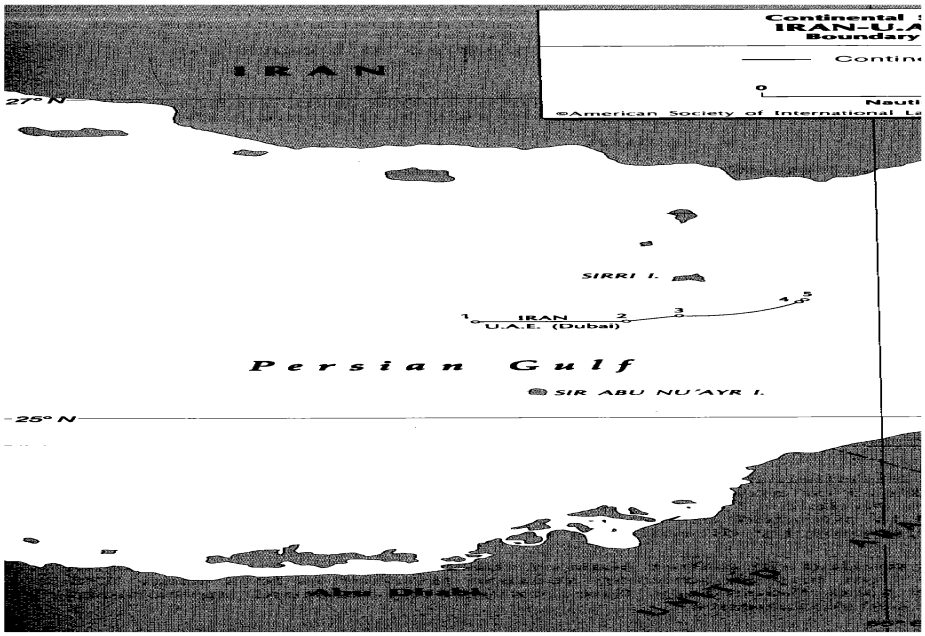
[396] For the English Text of this Agreement See: Jonathan I. Charney and Lewis M. Alexander, *International Maritime Boundaries*, *Vol. II*, pp. 1538-1539.
[397] *Ibid*, p. 1535.

Figure 24. Iran-UAE (Dubai) Agreement



Source: Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries, Vol. I*, p. 1537.

4.3. Iran's Undetermined Marine Boarders in the Persian Gulf

Although, Iran has delimited most of its maritime boarders in the Persian Gulf, there are still some segments of its continental shelf which remain to be delimited. These segments include the continental shelf boundary with Iraq, Kuwait and UAE. In the following pages, these undetermined boarders will be examined.

4.3.1. Iran-Iraq

At the northern part of the Persian Gulf there is a triangular area between Iran, Iraq and Kuwait still waiting for delimitation. Iraq's situation in this area is similar to Germany's status in the North Sea.[398] Iraq, with its limited access to the sea is marked among the geographically disadvantaged States.[399] Iraq with its limited and sharply curved coastline is adjacent to both Kuwait and Iran; while the coast of Iran and Kuwait are opposite each other. In such situation,

[398] Momtaz, Djamshid, *Law of the Sea*, Centre for International Studies Publication, Tehran, 1976, p. 32. (in Persian)
[399] To read the rules regarding disadvantaged States see: UNCLOS, Article 70.

the application of the equidistance principle would not acquire for Iraq its real share of the continental shelf of the Persian Gulf.

The Iran-Iraq boundary, some 45.5 nautical miles (assuming equidistance),[400] will have to be extended from the termination of the land boundary at the mouth of the Shatt Al-Arab south eastward to the tri-point with Kuwait.

The main obstacle between Iran and Iraq regarding the delimitation of their continental shelf was the differences over the entrance of Shatt Al-Arab River to the Persian Gulf, which covers a substantial area of the continental shelf between the two Parties.

The background of the Iran-Iraq disagreement, over the delimitation of their continental shelf boundary dates back to the 1950s when the National Iranian Oil Company (hereinafter NIOC) signed an Agreement with Agip-Mineraria on 24 August 1957.[401] Article 3 of this Agreement defines the concession in "a zone of the continental shelf located in the northern part of the Persian Gulf measuring approximately 5600 sq. Kilometres". Whereas this area was not delimited between Iran, Iraq, Kuwait and Saudi Arabia, these States contested this Agreement. Iraq, in reaction to this Agreement, in November 1957, issued its first Official Proclamation concerning Iraq's right over the natural resources of its seabed "contiguous to the Iraqi territorial sea".[402] In a further Proclamation dated 10 April 1958, Iraq, while reaffirming its previous Proclamation without any reference to Iran stated:

> The Government of Iraq declares also its non-recognition of any proclamation, declaration, legislation or planning pertaining to territorial waters or the contiguous waters issued by the neighbouring country in contradiction with the contents of this Proclamation.[403]

In this Proclamation, Iraq referred to the principle of equidistance which in case of application due to the concavity of its coasts in comparison with that of its neighbours, Iran and Kuwait, could damage its interests.[404]

On 1 April 1963 NIOC issued another Pronouncement and declared that two areas of the continental shelf – adjacent to the Iranian mainland – are open for bidding[405]. This action met with Iraq protest. Iraq, in a protest dated may 1, 1963, stated that:

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[400] Colson, David A and Smith, Robert W, *International maritime boundaries, Vol. V*, p. 3475.
[401] For English text of this Agreement see: *The Petroleum Times*, supplement to Vol. LXI, No. 1572, 8 November 1957, pp. 1-8.
[402] For more information about this Proclamation see the section 2 of the third chapter of the present paper.
[403] Razavi, Ahmad, *Op cit*, p. 197.
[404] *Ibid*.

> Since most of the areas declared open (for bidding) are exclusively Iraqi territorial waters, it will not recognize, nor permit, any concession granted to any party whatsoever for oil exploration in these areas [...] all the Parties concerned must ascertain the ownership of these areas before seeking to grant or acquire any oil exploration concession in them.[406]

Despite its protest to the Iranian Pronouncement, Iraq was not invited to several meetings held by Iran, Saudi Arabia and Kuwait in Copenhagen, London, and Kuwait regarding the delimitation of the Persian Gulf continental shelf.[407]

These events made it clear that the two countries had to undertake negotiations to reach an agreement regarding their continental shelf. The representatives of Iraq joined the Iran, Saudi Arabia and Kuwait meeting held in Geneva in October 1963 during which all four States agreed to settle their offshore boundary disputes.[408] Between 1963 and 1967, two countries reached agreements concerning the joint exploration of the oil in the disputed area and the demarcation of the continental shelf by a joint committee. But no progress has been made in this area.[409]

Following the Iran-Kuwait joint communiqué on 13 January 1968, the Iraqi Ministry of Foreign Affairs issued a Statement concerning the Sovereignty over Iraq in the area, and the interjacence of its territorial waters and continental shelf with those of the neighbouring States, under which it maintained its full sovereignty over Iraq's territorial waters, and air space above it, continental shelf and the subsoil thereof. Iraq also affirmed that all works and installations already undertaken, or which might be undertaken in the said area were subject to Iraqi sovereignty. The communiqué emphasized Iraq's full adherence to the rules and principles of international law.[410]

On 13 June 1957 the Iran - Iraq Treaty on International Borders and Good Neighbourly Relations and three Protocols were signed in Baghdad.[411] Two Parties under this Treaty settled

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[405] For the English text of this Announcement see: *Middle East Economy Survey*, No. 27, 10 May 1963.
[406] Albaharna, Hossain.M, *Op cit*, pp. 292-295.
[407] Amin, S.H. the Iran-Iraq Conflict: legal implications, *International and Comparative Law Quarterly*, January 1982, Vol. 31, p. 182.
[408] Jafari Veldani, Asghar, Continental Shelf Delimitation in the Northern Part of the Persian Gulf, *Foreign Policy Quarterly*, Winter 1999, No. 4, pp. 861-862. (in Persian)
[409] Amin, S.H, *Op cit*, p. 182.
[410] *UN Legislation Series; National Legislation and Treaties Relating to the Law of t he Sea*, 1976 (ST/LEG/SER/B/18), p. 26.
[411] For the English Translation of this Agreement see: Ramazani, Rouhollah, *The Persian Gulf and the Strait of Hormoz*, Sijthof and Noordhoof Publications, Netherlands, 1979, pp. 142-152.

their long standing dispute regarding the borderline in the Shat-Al Arab River based on *thal-weg*[412] line. In fact, settlement of the dispute over Shat-Al Arab is a key factor for delimitation of the continental shelf between the two States, because of the undelimited area covered by river in its entrance to the Persian Gulf. However the Iraq's imposed war against Iran demolished all desires.

As it mentioned above, there are some similarities between the geographical configuration of the coastlines of Iraq in the Persian Gulf and Germany in North Sea. This comparison is apparently made on the grounds of the length and outline of the Iraqi coastline. Like Germany, Iraq's continental shelf is narrow. Furthermore, Iraq has a sharply curved irregular coastline. But in contrast with Germany, the length of Iraq's coastline is too short.

Iran and Iraq are in agreement regarding the application of the equidistance principle for continental shelf delimitation in their declarations and practices. Iran, in its other maritime delimitation agreements with neighbouring countries always applied the equidistance line (in some cases modified by taking into account some special circumstances)[413], and Iraq in its Declaration 9 April 1958 considered that the equidistance principle would govern the delimitation of its continental shelf in the absence of an agreement or of special circumstances justifying another boundary.[414] But the ICJ, in its judgment concerning the *North Sea* case (1969), which was more or less similar to the current situation in the northern part of the Persian Gulf, undermined the legal character of the equidistance principle[415] and proposed the natural prolongation of the land territory,[416] because the application of the equidistance line would not lead to an equitable result in such a situation and the State with a concave coastline will acquire only a small part of the continental shelf. In this connection, the main question is that the concept of natural prolongation could bring an equitable solution to the problem of the continental shelf delimitation between Iran and Iraq? The answer is negative. Where the continental shelf of a country is stretched beyond 200-nautical miles (extended continental shelf) without overlapping the continental shelf of another country, the concept of natural prolongation is considerable, but in cases where the continental shelf of a State encroaches on the

[412] Thalweg line means the median line of the main navigable channel at the lowest level of navigability.
[413] Agreements with Saudi Arabia, Qatar, Bahrain and Oman.
[414] For more information about this Declaration see the section 2 of the third chapter of the present paper.
[415] *North Sea Case*, Paras. 55 and 85.
[416] *Ibid*, Paras. 43, 57 and 58.

continental shelf of another State (like Iran and Iraq continental shelf) the concept of natural prolongation would not be considered as a determining factor to the problem of continental shelf delimitation.[417] Furthermore, in *Tunisia/Libya* case (1982), both Parties relied on the concept of natural prolongation, but in different directions.[418] The ICJ rejected arguments based on natural prolongation, because the whole area relevant to the delimitation constituted a single continental shelf (like continental shelf between Iran and Iraq).[419] In other words, by virtue of the principle of natural prolongation, there is no undivided submarine area between Iran and Iraq to be shared. To draw a continental shelf boundary line does not mean to award an equitable share to adjacent States, but merely to identifying line between areas which already appertain to either Iran and Iraq. The established principle of natural prolongation requires that the continental shelf of any State must not encroach upon what is the natural prolongation of the territory of another State.[420]

Likewise natural prolongation, Iraq may argue for a larger share of the Persian Gulf's continental shelf based on security and military grounds. In the *Anglo-French* Case (1977) the same argument was put forward by the Parties. The Tribunal, without completely rejecting these factors, indicated that:

> Security and defence interests can't be regarded by the Court as exercising a decisive influence on the delimitation of boundary in the present case. They may support and strengthen, but they can not negate any conclusions that are already indicated by the geographical, political and legal circumstances of the region.[421]

Furthermore, the Court stated that in the case of *Channel Islands*, security interest should not have a decisive influence on continental shelf delimitation.[422] In the case of Iraq, the situation is different because there is no major island off the coast of Iraq which could increase its share of the continental shelf. It seems that from the legal point of view, emphasis on the security factors can not strengthen Iraq's position in the negotiation concerning the continental shelf with Iran (especially after its wars against Iran and Kuwait).

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[417] In North Sea case, the ICJ put forward the concept of the natural prolongation but, in practice this concept did not play a major role in the delimitation between the States concerned. In this regard see the paragraph 101 of the judgment.
[418] *Tunisia/Libya case*, Paras. 51-61
[419] *Ibid*, Para. 48.
[420] Amin, S.H, *Op cit*, pp. 184-185.
[421] *Anglo-French case*, Para. 188.
[422] *Ibid*, Paras, 197-198.

The short length of the Iraqi coastline which is about 10 nautical miles prohibits this State to follow the principle of proportionality and configuration of the coastline, because it might lead to equitable principle but would not satisfy Iraq's desires.

Additionally, Iraq argues that the record of, and the opinions expressed at, the ILC, State practice, the intention of the Parties to both 1958 Geneva Convention on Continental Shelf and UNCLOS and international adjudications, provide strong evidence to the effect that the delimitation of the continental shelf between Iran, Iraq and Kuwait has to be settled in the light of "equitable principle". Thus, Iraq claims that in the delimitation of the continental shelf between Iran, Iraq and Kuwait, the area of the countries concerned, their population and population density must be taken into account.[423]

It sounds that the ultimate rule which could be applied in the delimitation of the continental shelf between Iran and Iraq is the equidistance/median line which, of course, is further open to modification based on some relevant circumstances such as natural prolongation, the length of the coasts and general configuration of the coastline whenever its application my produce inequitable results as stipulated in Article 83(1) of UNCLOS.

It must be added that any future continental shelf delimitation between Iran and Iraq should take into account oil and gas deposits across the marine borders and Parties should determine the exact location of these field across the delimiting area before any demarcation.

4.3.2. Iran-Kuwait

As it was outlined in the previous subsection, there is a triangular marine area between Iran, Kuwait and Iraq in the northwest part of the Persian Gulf. Kuwaiti mainland and its islands are situated opposite to the Iranian coast in this area.

The problems regarding the continental shelf delimitation between Iran and Kuwait arose for the first time in 1957-1958, when the concession areas for a set of offshore agreements granted by Iran and Kuwait overlapped.[424] The problem resurfaced in 1961 when Kuwait granted an offshore concession to the Kuwaiti Shell Company. Iran protested the concession

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[423] Amin, S.H, *Political and Strategic Issues in the Gulf*, Royston Limited Publication, Scotland, 1984, p. 113. (It should be noted that the correct historical designation for the sea area lying between Iran and the Arabian Peninsula is the "Persian Gulf").

[424] These concessions were the Iranian Pan-American Oil Company concession of 1958 and the Arabian Oil Company concession of 1957 in respect of the Kuwaiti-Saudi Arabia Neutral Zone.

and asserted that the Kuwaiti Shell concession area had very greatly overlapped with concessions granted by Iran in 1957 and 1958.[425] A further aggravation of the Iran-Kuwait offshore boundary dispute occurred in 1963 when NIOC announced two areas of the continental shelf of the Persian Gulf open for international bidding.[426] In June 1963, Kuwait protested Iran's action by issuing a statement. The Statement asserted that NIOC concession violated Kuwaiti's territorial sovereignty and constituted an infringement on the continental shelf of Kuwait.[427]

A beginning in the way of seeking settlement of the offshore dispute between Iran and Kuwait was made in October 1963, when the representatives from Iran, Kuwait, Iraq and Saudi Arabia, meeting in Geneva, all expressed their agreement on working together to reach an equitable settlement of their dispute. Later, it was announced in April 1964 that Iran was to begin talks with both Kuwait and Saudi Arabia regarding the determination of its offshore boundaries with them.[428] Subsequently, the problem referred to in a joint communiqué singed by the Foreign Ministers of Iran and Kuwait. The communiqué announced the agreement to establish a joint committee of experts whose task was to study, on an equitable basis, the problems of the division of the continental shelf between two States.[429]

During negotiations which started in the 1969s, the Parties agreed to ignore all of the small islands and low tide elevations which could complicate the delimitation. But, as to the boundary line between Iran and Kuwait, one main difficulty had been the treatment that should be given to the Iranian island of Kharg[430] and the Kuwaiti island of Failaka. Due to their importance and closeness to the coasts, these two islands could not be ignored for the purpose of delimitation. Another problem regarding the continental shelf delimitation between Iran and

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[425] Amin, S.H, *Supra note 392*, p. 118.
[426] See footnote 310.
[427] *Middle East Economy Survey*, No. 31, 7 June 1963.
[428] Al-Baharna. Hossian. M, *Op cit*, p. 294. Also see the *Middle East Economy Survey*, No. 21, 21 March 1964.
[429] Amin, S.H, *Supra note 392*, p. 119.
[430] Kharg Island is situated 16 miles off the coast of Iran in the middle of the Persian Gulf. Since 1960, Kharg has been connected by a pipeline to an oil producing field on the mainland. It is the world's largest oil terminal.

Kuwait is the presence of the Soroosh oil field which is almost in the middle of the Persian Gulf between the two States.[431]

The basic dispute over the Iran and Kuwait continental shelf boundary was centred on the selection of mutually agreed base-points on both sides. In other words, the dispute between Iran and Kuwait does not concern their continental shelf boundary, but rather about the method and the base-points for the measurement of a median line.

During negotiations, Iran supported the equidistance line giving full effect to the Kharg Island as the base-point for determining the boundary line due to its link to the Iran's mainland by pipeline. This could guarantee Iran's control over the soroosh oil field.

On the other hand, Kuwait insisted that Failaka must be considered as a part of Kuwaiti's coastline and, thus in possession of territorial sea and continental shelf. But Iran rejected the idea that the Iran-Kuwait continental shelf boundary should be measured from the outer limit of the Failaka.

Subsequently, Kuwait accepted Iran's posistion regarding the Kharg Island on the condition that the same treatment be offered to the Kuwaiti island of Failaka.[432]

In summation, the status of the two islands was the main issue in the delimitation negotiation between Iran and Kuwait. Furthermore, the continental shelf delimitation between Iran and Kuwait remained undetermined due to lack of the continental shelf delimitation between Kuwait and its neighbours.

In July 1970 Iran and Kuwait arrived at a solution and agreed that both Kharg and Failaka should be considered as being within the baselines of Iran and Kuwait respectively. However, the final continental shelf delimitation has remained suspended in view of Kuwait's boundary dispute with Iraq on the one hand and problems between Iran and Kuwait-Saudi Arabia Neutral Zone on the other.

It seems that the best solution regarding the continental shelf delimitation dispute between Iran and Kuwait is the boundary line based on an equidistance line, measured from the coasts of the two mainlands with some modifications around Kharg and Failaka.

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[431] As it was mentioned before, in the Agreement between Iran and Saudi Arabia, the island of Kharg was given half effect and as a result the Marjan-Forozan oil field was divided between the Parties. For more informatiom see the present chapter, section two.

[432] Jafari Voldani. Asghar, *Relations between Iraq and Kuwait*, Institute for Political and International Studies, Tehran, 1990, p. 170. (In Farsi).

It should be mentioned that any delimitation agreement between Iran and Kuwait which does not take into account Iraq's situation, will be challenged and condemned by the Iraqi Government. Thus, it is better for the three Parties to submit the case to a common committee of experts and ask them to draw a borderline with taking into consideration all geographical, legal, technical and other related factors.

4.3.3. Iran-UAE

Delimitation of the Persian Gulf continental shelf boundary between Iran and UAE has been complicated by the continuing baseless claims of UAE regarding the sovereignty of the Iranian islands of Abu Musa, Greater Tunb and Lesser Tunb, which are strategically situated at the entrance to the Persian Gulf opposite to the Strait of Hormuz.[433]

As it was outlined above, on 31 August 1974 a partial Agreement concerning the delimitation of the segment of the continental shelf was signed between Iran and Dubai[434], one of the Emirates of the UAE. This Agreement, due to UAE's misunderstanding and its unjustifiable claims concerning the abovementioned islands, did not come in force. Whereas other parts of the marine boarders of the two countries still are waiting for delimitation. In other words, no delimitation agreement between Iran and UAE will be signed that the latter confirms the former's sovereignty over these islands.

Iran firmly believes that all of the historical, legal and geographical facts confirm its sovereignty over the islands since time immemorial. It was only in the second part of the 19th century that the UK occupied them due to weakness of the Iran's Central Government and its interests. Iran repeatedly declared its readiness to start bilateral negotiations with the purpose to eliminate UAE's misunderstanding in this regard.

UAE might argue that if the equidistance line were to be considered as the border line dividing the continental shelf between Iran and UAE, the island of Abu Musa would be situated on the southern side of the median line. However, under customary international law and State practice, the abutting of an island on the continental shelf of the country solely, without taking into account other relevant factors cannot establish the sovereignty of a country over an island. For example the ICJ in its award concerning maritime delimitation and territorial

[433] Degenhardt, Henry W, *Maritime Affairs – A world Handbook*, A Keesing's Reference Publication, London, 1985, p. 200.
[434] To read more about this Agreement see the section 4.2.5 of the present paper.

questions between *Bahrain and Qatar* case (2001) after taken into account all factors concluded that Hawar Island belonged to Bahrain, while this island is situated about 1.5 nautical miles off the coasts of Qatar. Another example is the Chanel Islands which are lie just 6.6 nautical miles off of the French coast[435], but are under the sovereignty of the UK.

4.4. Some Tri-points Between Iran and Its Neighbouring States

One of the Iran's remaining problems regarding the continental shelf delimitation in the Persian Gulf is determining tri-points with other littoral States in the region. Tri-point issues arise in maritime boundary delimitation where the marine areas of three coastal States converge and overlap.[436] Where two adjacent coastal States face toward areas of open seas, unimpeded by a third State's territory or maritime claims, a tri-point relationships do not arise. However, in areas with constricted coastal relationships like in the Persian Gulf or North Sea, the marine areas of most coastal States overlap the claims of at least two other coastal States and thus tri-point relationships abound. Approximately one half of all maritime boundary delimitations worldwide involve a tri-point issue[437].

David Colson identified five techniques used by delimiting Parties to deal with tri-point issues:

1. Creating an endpoint without explicit intent of future extension,
2. Creating and endpoint on a final line segment,
3. Creating and endpoint on an azimuth,
4. Creating an endpoint without prejudice to future extension; and
5. Creating an endpoint through a negotiated trilateral agreement.[438]

Due to the geographical situation, the continental shelf of Iran in the Persian Gulf contains some tri-points with its neighbouring States. The following pages will introduce and evaluate these tri-points.

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[435] Bowet, Dereck W, *The Legal regime of Island in International Law*, Oceana Publication, New York, 1978, p. 195.
[436] Lathrope, Coalter G, *Tri-point Issues in Maritime Boundary Delimitation*, In Colson, David A and Smith, Robert W, *International Maritime Boundaries, Vol. V*, p. 3305.
[437] Handbook on the Delimitation of Maritime Boundaries, *Op cit*, p. 45.
[438] Colson, David, *The Legal Regime Of Maritime Boundary Agreements*, In Charney, Jonathan I and Alexander, Lewis M, *International Maritime Boundaries, Vol. I*, pp. 61-63.

4.4.1. Iran-Qatar-Bahrain Tri-point

One of the Iran's undetermined tri-points in the Persian Gulf is the tri-point between Iran, Bahrain and Qatar. Iran and Bahrain, in their Agreement concerning delimitation of the continental shelf (1971) use the second abovementioned technique regarding this tri-point. Article 1 stated:

> Point (1) is the Eastern-most point on the Eastern-most part of the Northern boundary line of the continental shelf appertaining to Bahrain as formed by the intersection of a line starting from the point having the latitude of 27 degrees, 00 minutes, 35 seconds North and longitude 51 degrees, 23 minutes, 00 seconds East, and having a geodetic azimuth of 278 degrees, 14 minutes, 27 seconds, with a boundary line dividing the continental shelf appertaining to Bahrain and Qatar, thence" point 2 [penultimate turning point].

The range point and azimuth are identical to the penultimate turning point and azimuth in the neighbouring Iran-Qatar boundary Agreement concluded two years previously in 1969. Article 1 of the Iran-Qatar agreement states:

> Point (1) is the westernmost point on the westernmost part of the northern boundary line of the continental shelf appertaining to Qatar formed by a line of geodetic azimuth 278 degrees 14 minutes 27 seconds west from Point 2 below [...].

In both of those maritime boundary agreements, that line which separates Iran on the one hand from Qatar and/or Bahrain on the other is defined as a geodetic azimuth of 278 degrees 14 minutes 27 seconds from a given point. In other words, the eastern point of the Iran-Bahrain boundary is described as lying in the western terminus of Iran-Qatar boundary, but has been left undetermined pending delimitation of a boundary between Qatar and Bahrain.

Furthermore, in its award regarding *Qatar and Bahrain* case (2001), the ICJ delimited a boundary based on equidistance. In order to deal with the presence of Iran, the ICJ defined a penultimate northern turning point (Point 42) and then provided an azimuth to continue the boundary beyond Point 42. Specifically, the ICJ stated:

> Beyond point 42, the single maritime boundary shall fallow, in a north – north-easterly direction, a loxodrome having an azimuth of 12 degrees, 15 minutes and 12 seconds, until it meets the delimitation line between the respective maritime zones of Iran on the one hand and of Bahrain and Qatar on the other.[439]

[439] *Qatar and Bahrain Case*, Para. 250.

The Qatar and Bahrain maritime boundary line therefore will intersect a line that is already determined and set forth in both the Iran-Bahrain and Iran-Qatar boundary Agreements. The point of intersection of the Qatar-Bahrain maritime boundary with the line established in the Iran-Bahrain and Iran-Qatar agreements will thus automatically establish the Iran-Qatar-Bahrain tri-point by virtue of these prior agreements when combined with the ICJ's judgment.

With the ICJ's azimuth solution combined with the two preceding bilateral agreements, leaves only minor technical issues to be resolved by the Parties if they choose to conclude a trilateral tri-point agreement.

4.4.2. Iran-Saudi Arabia-Bahrain Tri-point

Another tri-point is that between Iran, Saudi Arabia and Bahrain. When Iran and Bahrain decided to delimit their continental shelf, Iran had already delimited its continental shelf with Saudi Arabia to the west. Saudi Arabia and Bahrain in their frontier agreement (22 February 1958) in paragraph 15 of the first clause regarding the tri-point between Iran-Saudi Arabia-Bahrain specified that the line will extend from point 14 (north latitude: 26°59.30' and east longitude: 50°46.24') in a north-easterly direction.

Moreover, the terminal point of the Iran-Saudi Arabia boundary was approximately equi-distant from Iran, Saudi Arabia and Bahrain. This point was defined in Article 3 of the Iran-Saudi Arabia Agreement as point 1 (north latitude: 27°10.0' and east longitude: 50°54.0'). Therefore, this same point was used by Iran and Bahrain as a western terminus of their boundary line. It was mentioned it Article 1 as point 4 of the Iran and Bahrain continental shelf boundary line. Subsequently, no problem concerning the tri-point was raised between three States.

4.4.3. Iran-Iraq-Kuwait Tri-point

In the northern part of the Persian Gulf there are two tri-points concerning Iran's maritime boarders still to be delimited. One of them is the tri-point between Iran, Kuwait and Iraq, which is pending due to the lack of delimitation agreements between Iran and Kuwait and Iran and Iraq.

4.4.4. Iran-Saudi Arabia-Kuwait Tri-point

The second undetermined tri-point in the northern part of the Persian Gulf is the tri-point between Iran, Saudi Arabia and Kuwait. The northern terminus point of the Iran and Saudi Arabia boarder line is point 14 which is defined as north latitude: 28°41.3' and east longitude: 49°34.3'. This point must lie in the tri-point between the abovementioned States. Furthermore, the Saudi Arabia-Kuwait Agreement concerning the submerged area adjacent to the divided zone (2 July 2000), in Article 1 defied point 4 of the border line as north latitude: 28°56.06' and east longitude: 49°26.42' and continues: “From point 4 [northern terminus point], the line dividing the submerged area adjacent to the divided zone continues in an easterly direction (to reach tri-point between Iran, Kuwait and agreement).”

But since there is no signed delimitation agreement between Iran and Kuwait, the Iran-Saudi Arabia-Kuwait tri-point is pending further developments.

4.4.5. Iran-Qatar-UAE Tri-point

Another undetermined tri-point in the Persian Gulf is the tri-point between Iran, Qatar and UAE. Point 6 of the Iran-Qatar continental shelf boundary (southern terminus point) is defined at coordinate north latitude: 25°31.50' and east longitude: 53°02.05'. Furthermore, Point A of the Qatar and UAE maritime boundary, as defined in Article 4 of the Agreement between Qatar and Abu Dhabi (one of the Emirates of the UAE) on the settlement of maritime boundaries and ownership of islands (20 March 1969), exactly lies exactly at the same coordinates. Thus, this point will be the first point of the future boundary line between Iran and UAE and will constitute the tri-point between Iran-Qatar and UAE.

4.4.6. Iran-Oman-UAE Tri-point

The last and most eastern tri-point of Iran in the Persian Gulf is the Iran-Oman-UAE tri-point. In this regard Article 1 of the Iran-Oman Agreement concerning continental shelf delimitation stated that:

> Point (1) is the most western point which is the intersection of the geodetic line drawn between point (0) having the coordinates of 55°42'15" E 26°14'45" N and point (2) having the coordinates of 55°47'45" E 26°16'35" N with the lateral offshore boundary line between Oman and Ras Al Khaimah.

In other words, this point remains to be established pending the delimitation of boundaries between Oman and UAE in the Persian Gulf. These two States delimited their boundary in recent years, but the detail of their agreement has not been published yet. On the other hand, Iran only delimited its maritime boarder with Dubai (one of the Emirates of the UAE)[440], and other parts of the Iran-UAE boarder are still undetermined. Thus, the tri-point between Iran, Oman and UAE should be determined based on future negotiations between Parties in this regard.

4.4. Concluding Remarks

Iran was the first country in the Persian Gulf region to address issues regarding maritime zones. Since the 1930s, Iran regulated its maritime rules with several Acts and Decrees and updated its rules with attention to international law developments concerning maritime delimitation. These regulations lead to the Iran Marine Areas Act which was adopted in 1993 and replaced all previous rules. Under the provision of this Act, Iran applied the straight baseline as the baseline to measure its territorial sea and other maritime zones, claimed a 12 nautical mile territorial sea and 24 nautical mile limit for its contiguous zone. In this Act no specific limits were codified for the EEZ and the continental shelf, but it stated that the EEZ and continental shelf limits of Iran (in absence of agreement) shall be a line every point of which is equidistant from the nearest point on the baselines of two States. All these rules are according to international norms as codified in UNCLOS.

Despite the difficulties involved in the problem of continental shelf boundary delimitation in the Persian Gulf, the offshore boundary agreements reached so far between Iran and its neighbours in the region have achieved their aim of “just” and “equitable” solutions. Like other delimitation agreements in the region, the equidistance line is the most used method in reaching agreement between Iran and its neighbours. The presence of island played an important role in Iran’s delimitation agreement, especially the Kharg Island.

Despite the above, Iran still has undetermined maritime boarders in the Persian Gulf waiting for delimitation. Iran has not delimited its borders with Iraq, Kuwait and UAE. The problems between Iran, Iraq and Kuwait seem to be resolvable through technical negotiations,

[440] This agreement has not yet been ratified by UAE.

but with UAE, it depends on UAE’s desistance from its baseless claim regarding three Iranian Islands.

Tri-points are another issues concerning Iran’s maritime delimitation in the Persian Gulf. The determination of the tri-point issues seems to be solved by trilateral agreements easily and causes no disputes between Parties.

Conclusion and Recommendations

The law regarding continental shelf delimitation (in general view maritime delimitation) is a result of an evolution of international maritime law since 1940 up to UNCLOS. The outcome of ILC debates in the late 1940s and beginning of the 1950s are embodied in the 1958 Geneva Conventions. The provisions of the 1958 Geneva Convention on the Continental Shelf presented challenges with respect to the outer limits of the continental shelf as codified in Article 1. The exploitability criterion in the definition of the outer limit of the continental shelf raised the apprehension that with the development of the requisite technology concerning the recovery of oil and gas from the continental shelf situated in the deep ocean floor, developed States could claim sovereignty over most of the seabed and subsoil of the oceans and seas. Article 6 of this Convention offered equidistance/special circumstances method as the most equitable way to reach equity in continental shelf delimitation.

The weakness and incomprehensive provisions of the 1958 Geneva Conventions motivated the international community to seek a new and inclusive convention in law of the sea. The Third Conference which took placed between 1973 and 1982 was one of the longest international conferences in the history. The question of the delimitation of maritime boundary between States with opposite or adjacent coasts became an intensely controversial one at the Conference, particularly concerning the EEZ and continental shelf. UNCLOS was the outcome of this long-lasting Conference which was adopted in 1982 and entered into force in 1994.

The entry in to force of UNCLOS has improved the situation concerning the law of the sea in general, and thereby also the legal framework for maritime delimitation. Articles 74 and 83 contain four similar paragraphs, over the course of which several principles from the UN Charter are applied. The principle of the non-use of force entails that boundaries may not be imposed unilaterally, whether by force or by making national claims. This principle finds particular expression in Articles 74(1) and 83(1) which prescribes the delimitation is to be effected by agreement. The principle of good faith means that where a boundary has been established by a treaty, any issues that may arise regarding the boundary subsequently have to be determined by reference to, and in accordance with, the particular treaty, a principle reflected in Paragraph 4 of both Articles. The key test is found in Paragraph 1 of Articles 74 and 83 which prescribes the “equitable solution”. The Charter principle of the sovereign equality

of States means, in the particular context of the law of the sea, that coastal States are juridically equal before the law. Their coasts are evaluated in accordance with the same rules and carry the same intrinsic weighting. However, where relevant coasts or coastal figures display dissimilar characteristics in some material respect, such as their overall lengths or configuration in the relevant area, they should not be given equal weight. The two relevant coasts should be evaluated on a board, overall basis and basepoint by basepoint. It is only like things that should receive like treatment. This principle underpins Articles 74(1) and 83(1) where it refers to an "equitable solution".[441] These provisions can now be seen to bring positive advantage in State practice. It might be concluded that the provision of UNCLOS regarding maritime delimitation are based on State practice and the jurisprudence of the ICJ and international tribunals.

Article 76 which is dedicated to the continental shelf definition and limits, embodies the outer limit of the continental shelf where these exceed 200 nautical miles from the appropriate baselines as follows:

1. The alternative of the foot of the slope and 60 nautical miles beyond a the 2500 metre isobaths and 100 nautical miles beyond;
2. The alternative of the sedimentary thickness formula with a limit of 350 nautical miles from the appropriate baseline; and
3. The exclusion of mid-oceanic ridges and the applicability of the 350 nautical mile limit to submarine ridges with the exclusion of the natural submarine elevations.

Article 76 also indicates that the manner in which the outer limits shall be delineated by joining geographical points not more than 60 miles apart.

UNCLOS puts forth only the final goal of delimitation: equitable solution and declares nothing about the principles and methods for the achievement of equitable result. Also according to international customary law, the delimitation should be based on equitable principles, but taking into account all relevant circumstances. In addition to equitable principles, the concept of proportionality should be considered in drawing a maritime boundary line.

With review of maritime delimitation agreements and judicial awards regarding delimitation, it has been concluded that case law and especially State practice in most cases are based

[441] Anderson, David, Developments in Maritime Boundary Law and Practice, In Colson, David A and Smith, Robert W, *International Maritime Boundaries, Vol. V*, p. 3221.

on the equidistance/relevant circumstances rule and show that primacy must be accorded to the geographical factors in delimiting maritime boundaries because each case is *unicum*. But the equidistance method cannot be applicable in all cases and other facts must be accomodated including geographical factors such as general configuration of the coastline and especially the existence of islands in the delimitation area.

After the adoption of UNCLOS most of the countries promulgated their maritime laws and regulations based on the rules of this Convention. In other words, there was a profound understanding among the States concerning the necessity of the establishment of some rules applicable to their maritime border delimitation.

The States of the Persian Gulf were among the first group of States which tried to establish and update maritime laws and regulations on the latest trend of the international community towards the law of the sea.

In view of the fact that from the geological and geographical points of view the definition of the continental shelf under the 1958 Geneva Convention on the Continental Shelf was indistinct, most of the scholars were of the view that there is no continental shelf in the Persian Gulf.[442] Due to this reason, all of the Arab Persian Gulf States and Sheikhdoms rebuffed to use the concept of continental shelf in their proclamations concerning their claims over the offshore areas of the Persian Gulf. On the other hand, Iran, in its Law of 19 June 1955 used the term "continental shelf" in all of its offshore claims in the Persian Gulf and Sea of Oman. However, from the legal point of view and within the definition of Article 76 of UNCLOS, the entire Persian Gulf with its breadth of less than 200 nautical miles is a continuation or natural prolongation of the landmass surrounding it. Accordingly, the whole seabed should be delimited among littoral States based on the equitable principle which are embodied in the provisions of UNCLOS.

The most important feature of the Persian Gulf is the presence of huge oil and gas deposits under the seabed of its shallow waters. For this reason, the littoral States of this area were among the first States to extend their jurisdiction over their adjacent waters. However, due to close proximity of these countries and the presence of numerous islands which are uninhabited and barren in most cases, these extensions created obstacles toward delimitation. Most of

[442] For example see: Young, R, the Legal Status of Submarine Areas beneath the High Seas, *American Journal of International Law*, Vol. 45, 1951, p. 236. Also see: Lauterpacht, H, Sovereignty over Submarine Areas, *British Yearbook of International Law*, Vol. 27, 1951, p. 384.

the claims regarding the continental shelf overlapped with each other. Hence, the presence of oil and gas deposits and many islands were the most important special circumstances in the region that had to be taken into account in drawing boundary lines.

Persian Gulf States began to delimit their offshore boundaries as of the late 1950s. Although none of them are Parties to the 1958 Geneva Convention of the Law of the Sea, their practice on the subject of continental shelf delimitation is based on Article 6 of the 1958 Geneva Convention on the Continental Shelf. In all agreements, the equidistance line was regarded as a provisional line that then had to be justified or modified based on the circumstances in order to reach an equitable delimitation. All of the offshore proclamations and legislation in the Persian Gulf provide that in case their respective continental shelves overlap with those of other States, the problem will be determined on the basis of equity and justice.

The maritime boundaries in the Persian Gulf might be thought of in terms of three areas. First, near the head of the Persian Gulf, the Iran-Saudi Arabia line terminates some 90 nautical miles from the northern coasts occupied by Iraq. Here exists a triangular area situated between Iran, Iraq and Kuwait. In this area, some parts of the Kuwait-Iraq border line delimited by the UN Demarcation Commission and some part of it still waiting to be delimited, but Iran's maritime boarder with these two countries have not been delimited.

In the central sector, there is a fairly extensive network of settled boundaries, all by bilateral agreement except one that was delimited by the ICJ (*Qatar and Bahrain* case(2001). It should be noted that not all tri-points have been agreed in this part.

In the southern sector, no boundary exists between Iran and UAE, except for the Iran-Dubai Agreement which is not in force owning largely to the misunderstanding and baseless claims of the UAE about three Iranian islands in the region.

All of the boundaries in the Persian Gulf are continental shelf delimitations, and reflect the pressures for securing seabed areas for oil exploitation. No revisions of the agreements have been made to separate EEZ from each other. In the absence of evidence to the contrary, it may be assumed that these continental shelf boundaries are now considered to be all purpose boundary lines.

Delimitation of the continental shelf for Iran, like other countries in the region, was essential and vital for its economy. Iran, which is opposite all Arab States of the Persian Gulf (except Iraq which is adjacent), had to delimit its offshore boundaries from its border with

Iraq to its coasts in the Strait of Hormuz with Oman. Iran delimited its continental shelf with Saudi Arabia, Qatar, Oman, Bahrain and Dubai (one of the emirates of UAE) through mutual agreement. All of these agreements have been signed between 1968 and 1974.

Reviewing of Iran's delimitation agreements, the following results can be noted:

1. In the preambles of all agreements referred to the concepts of "just, equitable and precise manner" for the delimitation of their continental shelf between Iran and the concerned Party. It proved that Parties tried to reach an equitable result in drawing boundary line;
2. The most significant character of the agreements between Iran and its neighbouring States in the Persian Gulf is the pragmatic application of equidistance or median line method which is modified under special circumstances to arrive at an equitable result. In should be noted that in the continental shelf agreement between Iran and Saudi Arabia, parties applied the enclaving method regarding the Farsi and Al'Arabiya islands;
3. Iran enacted legislation establishing a system of straight baselines, but this claim in all continental shelf agreements have been ignored and the median line has been drawn with regard to the mainland Parties or some islands;
4. The islands were treated differently in agreements. In some cases such as Iran-Qatar and Iran-Dubai Agreements, islands were ignored for the purpose of delimitation. In other cases like Iran-Bahrain, full effect has been given to the Iranian island of Nakhilu and Jabrin. In the Iran-Saudi Arabia Agreement, the islands played very important role. In this Agreement the Farsi and Al'Arabiya Islands were given a territorial sea of 12 nautical miles and Kharg Island, despite its 17 nautical miles distance from Iran's mainland, was given half effect. Later, this precedent was followed by the Court in *Anglo-French* Case (1977), in which the Tribunal gave half effect to UK's Scilly Islands;
5. In addition to the presence of islands, another special circumstance which effected Iran's continental shelf delimitation was the existence of oil deposits in the delimitation area. Certainly, given half effect to Kharg Island was not solely because of its importance, rather the main motive was the presence of the Marjan-Fereydoon oil fields located across the border closer to Saudi Arabia's mainland. It may be said that

the practice of Iran and in general Persian Gulf States concerning trans-boundary natural resources is in harmony with international trends and conventional law providing that the maritime boundaries should be determined by the application of the equitable principle;

6. Another good precedent in Iran's delimitation agreements is the establishment of a non-drilling operation zone within a certain specified distances across the boundary which varies from the 250 meters to 500 meters. Within this zone, Parties are not allowed to engage in drill operations without the other Parties' consent;
7. Neither geology nor geomorphology played a role in the continental shelf boundary delimitation of Iran in the Persian Gulf. In delimited areas the seabed is relatively flat and devoid of any distinguishing geomorphology features;
8. Due to the existence of huge hydrocarbon resources in the seabed and subsoil of the Persian Gulf, delimitation agreements between Iran and its neighbours were motivated by economic considerations, but these considerations did not affect the boundary lines; and
9. Although Iran is neither Party to the 1985 Geneva Convention on the Continental Shelf nor UNCLOS, but delimited its boundaries with mutual agreements in accordance to Article 6 (1) of the 1958 Convention and Article 83 (1) of UNCLOS.

With respect to Iran's unsettled boundary lines in the region, the most complicated case is its boundaries with Iraq and Kuwait. Iraq, in comparison with its neighbouring States, has a short coastline. While Iran and Kuwait rely on the equidistance principle by taking into account the relevant circumstances, Iraq is opposed to the application of an equidistance line and is insisting on the delimitation based on the equitable principle.

Regarding the undetermined maritime boarders in this area, Iran, Iraq and Kuwait can reach an equitable resolution through the application of the equidistance/median line method which, of course, is further open to modification based on some relevant circumstances such as natural prolongation, the length of the coasts and general configuration of the coastline.

Iran and UAE is another undetermined maritime boundary in the region. There is no disagreement between the Parties regarding the methods and principles of delimitation, but the problem is the unjustified sovereignty claims of the UAE over three Iranian islands in the Persian Gulf. Due to this groundless position, the continental shelf delimitation between the two

Parties faces a deadlock. The only solution to this deadlock is that first UAE should relinguish its baseless claims regarding the Iranian Islands, and then the Parties can enter into mutual negotiations in order to delimit their continental shelf boundary.

Finally, it must be noted that useful guidance with the aim of resolving unsettled problems may be obtained from precedents delimitation agreements in the region and also from international awards by the ICJ and other international tribunals.

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