

Maritime Delimitation and International Adjudication

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Introduction

Japan acceded to the United Nations Convention on the Law of the Sea (UNCLOS) in 1996 and enacted legislative measures concerning the territorial sea (TS), the exclusive economic zone (EEZ), and the continental shelf (CS) in accordance with the maritime regimes established under UNCLOS¹. Additionally, following the recommendations of the Commission on the Limits of the Continental Shelf (CLCS) in 2012, Japan adopted a Cabinet Order designating the continental shelf beyond 200 nautical miles as part of Japan's continental shelf.²

In the maritime areas surrounding Japan, territorial sovereignty disputes over the Northern Territories and Takeshima remain unresolved. Furthermore, China and Taiwan claim sovereignty over the Senkaku Islands, which are Japan's inherent territory. Against this backdrop, this paper examines the role that international courts and tribunals have played in settling disputes related to maritime delimitation (MD).

1 Meaning of Maritime Delimitation (MD)

UNCLOS recognizes the sovereignty of coastal states over the territorial sea (TS) (Article 2), as well as their sovereign rights and exclusive jurisdiction over the exclusive economic zone (EEZ) (Article 55) and the continental shelf (CS) (Article 76). It affirms the entitlement of coastal states to these maritime areas. The breadth of TS is limited to 12 nautical miles (Article 3), while the EEZ extends up to 200 nautical miles (Article 57). A coastal state's sovereign rights and exclusive jurisdiction over the EEZ extend not only to the water column but also to the seabed and its subsoil (Article 56).

The CS is defined by two key elements: a distance of 200 nautical miles and the "natural prolongation of the land territory" (Article 76, paragraph 1). Under certain conditions, the CS may extend beyond 200 nautical miles (paragraphs 2–6 of the same article). Coastal states may submit information regarding the limits of their continental shelf beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf (CLCS) and, following the Commission's recommendations, establish the outer

limits of their continental shelf under domestic legislation (paragraphs 7 and 8 of the same article).

Maritime delimitation (MD) refers to the process of determining boundaries in maritime areas where the entitlements of two or more states overlap. Due to the significant expansion of maritime entitlements under UNCLOS, overlapping claims frequently arise between states with adjacent or opposite coasts.³

Article 15 of UNCLOS addresses the delimitation of the territorial sea, stipulating that, in the absence of a special agreement between the states concerned, neither state may extend its territorial sea beyond the median line between them. This provision explicitly refers distance. Articles 74 (on EEZ MD) and 83 (on CS MD) contain nearly identical provisions. Both provisions prioritize settlement through mutual agreement between the parties (paragraph 1). However, if no agreement can be reached within a reasonable period of time, it is subject to dispute settlement procedures provided in Part XV of UNCLOS. Additionally, paragraph 4 of both articles emphasizes the need to respect any agreements in force between the states concerned regarding maritime delimitation.

During the drafting process of UNCLOS, states failed to reach agreement on specific standards and methods for maritime delimitation. Consequently, paragraph 1 of Articles 74 and 83 does not prescribe explicit delimitation rules but instead refers only to the "achievement of an equitable solution."

2 MD Disputes and International Courts and Tribunals

(1) Dispute Settlement Mechanism of Part XV of UNCLOS

(i) Conditions for Recourse to the Compulsory Procedures

Entailing Binding Decisions under Section 2 of Part XV

A key feature of the dispute settlement system under UNCLOS is the compulsory procedures entailing binding decisions, as provided in Section 2 of Part XV. Article 286 sets out three conditions for referring a dispute to this mechanism: 1) There exist a dispute concerning the interpretation or application of UNCLOS; 2) No settlement has been reached by recourse to section 1; and 3) The dispute does not fall within the limitations

1 Act on Territorial Waters and Contiguous Waters (Act No. 73 of 1996) and Act on the Exclusive Economic Zone and the Continental Shelf (Act No. 74 of 1996).

2 The Shikoku Basin area was designated as part of Japan's continental shelf by the 2014 Cabinet Order, which established the maritime area defined in Article 2, Item 2 of the Act on the Exclusive Economic Zone and the Continental Shelf. The Ogasawara Plateau area was subsequently designated as part of Japan's continental shelf by the 2024 Cabinet Order, which amended part of the previous designation. Discussions with the United States regarding the Ogasawara Plateau area and the South Iwo Island area are ongoing (Cabinet Office, "Continental Shelf," [in Japanese] <https://www8.cao.go.jp/ocean/policies/tairikudana/tairikudana.html>).

3 V. Lowe and A. Sander, *The Law of the Sea*, Fourth Ed. (2022), pp. 300–302, and Y. Tanaka, *International Law of the Sea*, Fourth ed. (2023), p. 258.

and exceptions provided in section 3.⁴

Under Article 287, paragraph 1, a State Party to UNCLOS may declare its choice for one or more of the following dispute settlement procedures: (a) the International Tribunal for the Law of the Sea (ITLOS); (b) the International Court of Justice (ICJ); (c) an arbitral tribunal constituted in accordance with Annex VII; and (d) a special arbitral tribunal constituted in accordance with Annex VIII.

If both disputing parties have accepted the same procedure, the dispute shall be referred exclusively to the chosen forum unless otherwise agreed; however, if 1) the dispute is not covered by a declaration in force, 2) the parties have not accepted the same procedure, or 3) one or both parties have not made a declaration, the dispute shall be subject to the compulsory jurisdiction of an arbitral tribunal constituted in accordance with Annex VII (Article 287, paragraphs 3, 4, and 5).⁵

(ii) Existence of a Dispute Concerning the Interpretation or Application of UNCLOS (First Condition)

A "dispute concerning the interpretation or application of a treaty" refers to a disagreement on a law or fact, a conflict of legal view or interests between the parties regarding the interpretation or application of specific treaty provision/provisions. A dispute concerning MD itself may constitute a dispute concerning the interpretation or application of Articles 15, 74, or 83 of UNCLOS and may fulfill the first condition under Article 286. However, disputes concerning MD often involve territorial disputes as their underlying issue, making them mixed disputes. When determining jurisdiction over mixed disputes, international tribunals have adopted two different approaches: one approach separates territorial disputes from maritime delimitation disputes, allowing courts and tribunals to exercise jurisdiction over maritime issues alone (e.g., *South China Sea* case⁶), while the other approach holds that jurisdiction is not excluded if the principal subject of the dispute concerns the interpretation or application of UNCLOS, even if a minor territorial dispute is involved (e.g., *Chagos Marine Protected Area* case⁷ and *Kerch Strait* case⁸).⁹

(iii) Respect for the Settlement of Disputes by Means of Parties Own Choice (Second Condition)

The second condition under Article 286 ensures respect for the freedom of the parties to a dispute to settle the dispute by the

means of their own choice, as provided in Articles 281 and 282. Before referring a dispute to the compulsory adjudication procedures under Section 2, the parties are also under an obligation to exchange views on the means for the settlement of the dispute (Article 283).¹⁰

In the *Southern Bluefin Tuna* case, the tribunal ruled that the final sentence of Article 281 means that even if the treaty between the disputing parties does not contain an explicit provision excluding the compulsory dispute settlement procedure under UNCLOS, such procedure is excluded if it is possible to confirm the intent of the parties for that purpose by interpreting the relevant treaty provisions.¹¹ However, in the *South China Sea* case, the tribunal ruled that UNCLOS would not be excluded from compulsory adjudication unless there is an explicit provision stating so.¹² The majority of legal scholars support the position taken in the *South China Sea* case.¹³

(iv) Subject to Limitations and Optional Exceptions (Third Condition)

The third condition is that a dispute does not fall under the limitations set out in Article 297 or the optional exceptions provided in Article 298 under Section 3. Since reservations and exclusions are not permitted under UNCLOS to ensure the treaty's integrity (Article 309), concerns arose that some states might hesitate to become parties to UNCLOS due to the compulsory dispute settlement procedures in Section 2. To address these concerns, Section 3 was established to provide certain limitations and exceptions. Article 297 applies to all state parties, while Article 298 applies only to parties that have made a declaration under this provision. Disputes relating to MD, or those involving historic bays or titles fall within the scope of one of the optional exceptions, and a declaration excluding them would require acceptance of compulsory conciliation under Section 2 of Annex V (Article 298, paragraph 1(a)(i)).¹⁴

(2) Dispute Settlement Mechanism under Part XV of UNCLOS and the ICJ

Following the entry into force of UNCLOS, the ICJ has assumed two functions: jurisdiction under Article 36 of the ICJ Statute and jurisdiction as one of the options within the compulsory dispute settlement system under Part XV, Section 2 of UNCLOS.

For disputes between states that have accepted compulsory

4 T. Treves, "Article 286," in A. Proelss (ed.), *United Nations Convention on the Law of the Sea: A Commentary* (2017), pp. 1844-1849, N. Klein, *Dispute Settlement in the UN Convention on the Law of the Sea* (2005), pp. 31-52.

5 T. Treves, "Article 287," in Proelss, *supra* note 4, pp. 1849-1857.

6 *South China Sea Arbitration (Philippines v. China)*, Award of 2015, para. 157, 170, and 204.

7 *Chagos Marine Protected Area (Mauritius v. United Kingdom)*, Award of 18 March 2015, paras. 220-221.

8 *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. Russia)* Award of 21 February 2020, paras. 157-161.

9 Y. Tanaka, "Arbitration - The Chagos Marine Protected Area Case," in K. Morikawa et al. (eds.), *100 Cases of Public International Law*, 3rd ed. (2021), p. 181, T. Treves, *supra* note 4, pp. 1847-1848, B. Oxman, "Courts and Tribunals: The ICJ, ITLOS, and Arbitral Tribunals," in D. Rothwell et al. (eds.), *The Oxford Handbook of the Law of the Sea* (2016), p. 400, K. Kittichaisaree, *The International Tribunal for the Law of the Sea* (2021), pp. 94-99.

10 A. Serdy, "Article 281," "Article 282," and "Article 283," in Proelss, *supra* note 4, pp. 1820-1838.

11 *Southern Bluefin Tuna Arbitration (New Zealand v. Japan; Australia v. Japan)*, 4 August 2000, para. 57.

12 *South China Sea*, *supra* note 6, para. 223.

13 T. Treves, *supra* note 4, pp. 1848-1849.

14 *Ibid.*, pp. 1848, Oxman, *supra* note 9, pp. 403-408, A. Serdy, "Article 297," and "Article 298," in Proelss, *supra* note 4, pp. 1906-1932, Klein, *supra* note 4, pp. 125-315 (in particular, on maritime delimitation and historic title disputes, pp. 228-279).

jurisdiction under Article 36, paragraph 2 of the ICJ Statute, Applicants may choose between the two compulsory adjudication mechanisms. In Japan's 2015 declaration recognizing the jurisdiction of the ICJ as compulsory, a reservation was added regarding "disputes arising from, relating to, or connected with the investigation, conservation, management, or exploitation of living marine resources," explicitly limiting such disputes to settlement through compulsory dispute settlement procedures under Part XV of UNCLOS.

It should be noted that when a dispute is submitted under Article 36 of the ICJ Statute, the ICJ has jurisdiction over both territorial disputes and maritime delimitation (MD) disputes, meaning that the issue of mixed disputes—which arises in the compulsory adjudication system under Part XV, Section 2 of UNCLOS—does not come into question.¹⁵

3 Development and Clarification of the Rules and Methods of International Law on MD through the Precedents of the International Courts and Tribunals

The precedents established in numerous international cases concerning maritime delimitation (MD) have contributed to the formulation of certain rules and methods for "achieving an equitable solution" as required under Articles 74(1) and 83(1) of UNCLOS in the context of EEZ and CS delimitation.

(1) Importance of Distance as the common element of CS and EEZ MDs in the MD under UNCLOS

The ICJ's 1969 judgment in the *North Sea Continental Shelf* cases, the first precedent concerning continental shelf (CS) maritime delimitation (MD), had a significant impact on the drafting process of Articles 74 and 83 of UNCLOS. This case established key legal principles, including the ruling that Article 6 of the Geneva Shelf Convention did not constitute customary

international law,¹⁶ as well as a detailed discussion of the methodologies and factors relevant to CS MD.¹⁷ Moreover, the Court's judgment that "land dominates the sea"¹⁸ has been repeatedly cited in subsequent international cases.¹⁹

In the *Tunisia/Libya and Libya/Malta* cases, disputes over CS MD were referred to the ICJ while UNCLOS was being drafted and adopted.²⁰ In the latter case, the ICJ rendered its judgment in 1985, after the adoption of UNCLOS, and made explicit reference to its provisions. The ICJ recognized that UNCLOS's EEZ regime had become customary international law and confirmed that the case only concerned CS MD. However, the Court found that admitting that UNCLOS provides for two different but linked institutions of EEZ and CS, "greater importance must be attributed to elements, such as distance from the coast, which are common to both concepts." It further stated that "the institution of the exclusive economic zone, with its rule on entitlement by reason of distance, is shown by the practice of States to have become a part of customary law."²¹

(2) Single Maritime Boundary (SMB)

Another factor that has increased the significance of distance criteria in UNCLOS maritime delimitation (MD) jurisprudence is the growing number of cases in which determination of a single maritime boundary (SMB) has been requested. Under UNCLOS, the EEZ (Part V) and the CS (Part VI) are distinct regimes, and in theory, separate delimitations are possible. However, from a practical standpoint, having different boundaries for the EEZ and CS is not feasible for effective maritime area utilization. As more cases involve requests for SMB determinations, the importance of distance as a common element in EEZ and CS entitlements appears to have increased.²²

In early SMB cases, SMB was employed by the agreement of the disputing states.²³ In the *Jan Mayen* case, the parties had diverging views on the question whether MD was effected by SMB of CS and the fishery zones,²⁴ leading the ICJ to consider the delimitations separately; however, it effected these two boundary lines by the same method.²⁵ In this context, the ICJ

15 The ICJ rendered the judgments both on territorial and MD disputes in the following cases: *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, Judgment of 11 September 1992, I. C. J. Reports 1992, p. 351, *Land and Maritime Boundary between A and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, I. C. J. Reports 2002, p. 303, *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I. C. J. Reports 2007, p. 659, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I. C. J. Reports 2012, p. 624, and *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, Judgment, I.C.J. Reports 2018, p. 139. It should be noted that in the *El Salvador/Honduras* case, the Court was not requested to determine maritime delimitation but rather to assess the legal situation of the maritime spaces in question (*El Salvador/Honduras*, in this note, pp. 586-609, paras. 381-420, and pp. 616-617, para. 432 (1)).

16 *North Sea Continental Shelf*, Judgment, I. C. J. Reports 1969, p. 45, para. 81.

17 *Ibid.*, pp. 46-53, paras. 83-100.

18 *Ibid.*, p. 51, para. 96.

19 For example, the ICJ formulated the methodology for MD in *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I. C. J. Reports 2009, p. 89, paras. 77.

20 *Continental Shelf (Tunisia/ Libyan Arab Jamahiriya)*, Judgment, I. C. J. Reports 1982, p. 18, and *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I. C. J. Reports 1985, p. 3.

21 *Ibid.*, p. 33, para. 33-34.

22 M. Kawano, "International Courts and Tribunals and the Development of the Rules and Methods Concerning Maritime Delimitation," *The Journal of International Law and Diplomacy*, Vol. 112, No. 3 (2013), pp. 9-13.

23 Delimitation of the Maritime Boundary in the Gulf of Maine, Judgment, I.C.J. Reports 1984, p. 246, *Affaire de la délimitation de la frontière maritime entre la Guinée et la Guinée-Bissau* Sentence du 14 février 1985, Reports of International Arbitral Awards, Vol. 19, p. 166, para. 42, and *Affaire de la délimitation des espaces maritimes entre le Canada et la République française* Décision du 10 juin 1992, Reports of International Arbitral Awards, Vol. 21, p. 1152, para. 1.

24 *Maritime Delimitation in the Area between Greenland and Jan Mayen*, Judgment, I. C. J. Reports 1993, pp. 56-58, paras. 41-44.

noted that distance had been emphasized as a common factor between EEZ and CS in the *Libya/Malta* case.²⁶

In the *Qatar v. Bahrain* case, the ICJ determined the SMB for the territorial sea (TS), EEZ, and CS based on the fact that both parties had explicitly requested a SMB. In this case, due to geographical characteristics, the ICJ distinguished between the delimitation of the TS in the south and the delimitation of the EEZ and CS in the north. The Court also noted that the concept of a SMB “does not stem from multilateral treaty law but from State practice, and that it finds its explanation in the wish of States to establish one uninterrupted boundary line.”²⁷

Since then, there has been a rise in unilateral referrals, where the Respondent did not contest the plaintiff's request for an SMB determination applicable to both EEZ and CS.²⁸ In cases involving TS delimitation, a distinction has been made between TS MD and EEZ/CS MD its determination of the SMB.²⁹ The ICJ has acknowledged the legal differences between TS delimitation under Article 15 and EEZ/CS delimitation under Articles 74 and 83.³⁰

(3) Methods of MD

Various methods of maritime delimitation (MD) exist,³¹ but in the precedents of international courts and tribunals, either the angle bisector method (A/B method), which determines the boundary based on the general direction of the coast, or the equidistance/relevant circumstances (E/RC) method, which adjusts or shift a provisional equidistant or median line according to relevant circumstances, has been applied.³²

In early cases, the A/B method was adopted in the

Guinea/Guinea-Bissau Maritime Delimitation case and the *Gulf of Maine* case.³³ However, in subsequent cases, except in the *Nicaragua v. Honduras* case,³⁴ where the ICJ adopted the A/B method due to special circumstances in which the coastline could not be clearly identified, the E/RC method has been consistently applied as the preferred approach for “achieving an equitable solution.”³⁵ Even in cases where one party advocated for the A/B method, such arguments were not accepted by the Court.³⁶

4 Development of International Law on MD through Precedents of International Courts and Tribunals

(1) Agreements on MD

Articles 74(1) and 83(1) of UNCLOS stipulate that MD may be effected primarily by agreement between the parties, emphasizing respect for such settlements and if no settlement can be reached, the States may resort to international adjudication. The existence of MD agreements has also been a key issue in several international court cases.

In the cases of *Cameroon v. Nigeria*, *Romania v. Ukraine*, and *Peru v. Chile*, the ICJ recognized that an agreement existed between the parties concerning MD up to a certain distance from the coast.³⁷ Conversely, in the cases of *Nicaragua v. Honduras*, *Bangladesh v. Myanmar*, and *Ghana/Côte d'Ivoire*, the Court found no such agreement.³⁸

25 *Ibid.*, pp. 59-77, paras. 49-87.

26 *Ibid.*, p. 59, para. 46.

27 *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Merits, Judgment*, I. C. J. Reports 2001, pp. 91-94, para. 168-177, particularly para. 173.

28 *Cameroon v. Nigeria*, *supra* note 15, pp. 440-441, para. 286. In the *Costa Rica v. Nicaragua* case, the ICJ distinguished between the territorial sea (TS) boundary and the SMB for the EEZ and CS, *Costa Rica v. Nicaragua*, *supra* note 15, p. 171, para. 79. As examples of arbitration cases under Part XV of UNCLOS, see *Barbados v. Trinidad and Tobago, Award of the Arbitral Tribunal*, 11 April 2006, pp. 71-72, paras. 234-335; and *Guyana v. Suriname, Award of the Arbitral Tribunal*, 17 September 2007, p. 108, para. 334.

29 *Nicaragua v. Honduras*, *supra* note 15, pp. 738-745, paras. 262-282, *Black Sea*, *supra* note 19, p. 70, para. 17, *Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar, Judgment*, 14 March 2012, paras. 177-181, *Bay of Bengal Maritime Boundary Arbitration (The People's Republic of Bangladesh and The Republic of India), Award*, 7 July 2014, paras 178-181. In the *Nicaragua v. Colombia* case, Nicaragua requested judgment on EEZ and CS SMB in its Application, but it amended this to request in its Reply and, in the final submission, it called upon the ICJ to effect a delimitation between maritime entitlements of the Colombian islands and CS and EEZ of Nicaragua (*Nicaragua v. Colombia*, *supra* note 15, pp. 670-671, paras. 133-136).

30 *Nicaragua v. Honduras*, *supra* note 15, pp. 742-745, paras. 277-282, *Bangladesh v. Myanmar* *supra* note 29, para. 150, and *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Judgment*, I. C. J. Reports 2021, pp. 248-249, para. 120. Klein's book also distinguishes between TS MD and EEZ and CS MD (Klein, *supra* note 4, pp 241-248).

31 In the *North Sea Continental Shelf* cases, the ICJ recognized that the E/RC method was practical, but noted that there were a variety of other methods and that the E/RC method was not the only one required by the rules of international law, *North Sea Continental Shelf*, *supra* note 16, p. 23, para. 23, p. 34, paras. 51-52, pp. 35-36, para. 55, p. 45-46, para. 82, p. 47, para. 85, and p. 49, para. 90.

32 In the *Saint-Pierre and Michelon* case, the arbitral tribunal emphasized the importance of an equitable solution and closely examined the geographical features of the maritime area concerned, *St. Pierre and Miquelon*, *supra* note 23, , pp. 1169-1171, paras. 66-74.

33 *Guinea/Guinea-Bissau*, *supra* note 23, pp. 181-194, paras. 86-125.

34 *Nicaragua v. Honduras*, *supra* note 15, pp. 242-244, paras. 277-280, and pp. 745-749, paras. 283-298.

35 See Chapter IV, Section 2.

36 *Bangladesh v. Myanmar*, *supra* note 29, paras. 238-240, *Bangladesh v. India*, *supra* note 29, paras. 340-346, and *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte D'Ivoire in the Atlantic Ocean (Ghana/Côte D'Ivoire), Judgment*, 23 September 2017, paras. 289-325.

37 *Cameroon v. Nigeria*, *supra* note 15, pp. 441-442, para. 287-289, *Black Sea*, *supra* note 19, pp. 82-89, paras. 55-76, and *Maritime Dispute (Peru v. Chile), Judgment*, I.C.J. Reports 2014, pp. 57-58, paras. 149-151.

38 *Nicaragua v. Honduras*, *supra* note 15, p 737, para. 258, *Bangladesh v. Myanmar*, *supra* note 29, paras. 98 and 118, and *Ghana/Côte D'Ivoire*, *supra* note 37, para. 228.

(2) Three-Stage Approach of the E/RC Method

The accumulation of precedents in which the E/RC method has been adopted to “achieve an equitable solution” has led to the formulation of a structured and sophisticated approach to its application. In particular, the ICJ Judgment in the *Black Sea* case played a significant role in this development. In that case, the ICJ reviewed precedents and concluded that the E/RC method constitutes the general approach to MD. The ICJ further stated that the E/RC method involves a three stage approach: 1) determining a provisional equidistant or median line, 2) adjusting or shifting this provisional line based on an examination of relevant circumstances, and 3) verifying that the resulting delimitation achieves an equitable solution.³⁹

Prior to the first stage, the coastlines of the party are identified as the basis for determining the equidistant or median line and one of the factors to be considered as relevant circumstances in the second stage, and the maritime area subject to delimitation is also identified.⁴⁰

In the second stage, priority is typically given to geographical factors, such as differences in coastline length between the parties,⁴¹ coastal topography, and the cut-off effect, which restricts a coastal state's access to the sea.⁴² Although disputing parties have frequently took up other factors—such as the location of resource deposits and the exercise of authority by the coastal state, including resource utilization and patrol activities—the acceptance of such arguments has been limited. There are few precedents in which these non-geographical factors have been admitted as the relevant circumstances in MD cases.⁴³ The Special Chamber of the ITLOS noted that “international courts and tribunals have been consistent in their reluctance to consider oil concessions and oil activities as relevant circumstances justifying the adjustment of the provisional delimitation line,”⁴⁴

5 MD of CS beyond 200 Nautical Miles before International Courts and Tribunals

(1) System of CS Extension under Article 76 of UNCLOS

When a coastal state submits information on CS limits beyond 200 nautical miles to the CLCS under Article 76 of UNCLOS, other states may express their positions. In such cases, since the CLCS is composed of scientists and does not have the competence to adjudicate issues concerning the interpretation or application of UNCLOS, it does not take action until the matters concerned have been settled.

For example, in response to Japan's submission of information on the CS beyond 200 nautical miles, China and South Korea expressed their positions. Consequently, in its 2012 recommendation, the CLCS decided not to take action until the matters referred to in the note verbales of China and South Korea have been settled.⁴⁵

(2) MD of CS beyond 200 Nautical Miles before International Courts and Tribunals

MD is required for CS areas extending beyond 200 nautical miles when the entitlements of more than two coastal states overlap. The ICJ has generally not been proactive in addressing requests for MD of CS beyond 200 nautical miles,⁴⁶ and the *Bangladesh v. Myanmar* case was the first precedent to address such an issue. Although the judgment was rendered before the CLCS made its recommendation, the ITLOS ruled that determining entitlement to a continental shelf is distinct from determining its outer limits and held that MD of CS beyond 200 nautical miles can be adjudicated when the entitlements of more than two coastal states overlap. In this case, the question of entitlement to CS beyond 200 nautical miles was primarily a

39 *Black Sea*, *supra* note 19, pp. 101-103, paras. 115-122. In the following cases, the Judgment of the *Black Sea* case is explicitly referred to: *Nicaragua v. Colombia*, *supra* note 15, pp. 695-696, paras. 190-193, *Peru v. Chile*, *supra* note 38, p. 65, para. 180, *Bangladesh v. Myanmar*, *supra* note 29, paras. 336-346, *Ghana/Côte D'Ivoire*, *supra* note 37, paras. 360, *Costa Rica v. Nicaragua*, *supra* note 15, pp. 190-203, paras. 135-166 and pp. 176-224, paras. 208-204, and *Delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, Judgment, 28 April 2023, paras. 95-98.

40 *Cameroon v. Nigeria*, *supra* note 15, pp. 443-444, para. 291, *Black Sea*, *supra* note 19, p. 93, para. 88, pp. 96-98, paras. 98-105, and pp. 99-100, paras. 110-114, *Bangladesh v. Myanmar*, *supra* note 29, paras. 185-205, *Nicaragua v. Colombia*, *supra* note 15, pp. 675-686, paras. 143-166, *Somalia v. Kenya*, *supra* note 30, pp. 252-257, paras. 132-141, *Costa Rica v. Nicaragua*, *supra* note 15, pp. 181-187, paras. 108-122 and pp. 210-214, paras. 179-185, *Ghana/Côte D'Ivoire*, *supra* note 37, paras. 361-386, and *Mauritius/Maldives*, *supra* note 40, paras. 108-111.

41 *Cameroon v. Nigeria*, *supra* note 15, pp. 446-447, para. 301, *Black Sea*, *supra* note 19, pp. 116-118, paras. 163-168, and *Nicaragua v. Colombia*, *supra* note 15, p. 702, paras. 209-211.

42 *Cameroon v. Nigeria*, *supra* note 15, pp. 442-443, para. 291, *Black Sea*, *supra* note 19, pp. 119-120, paras. 174-178, pp. 122-123, paras. 185-188, and p. 127, para. 201, *Bangladesh v. Myanmar*, *supra* note 29, paras. 290-297, 316-319, 322, and *Nicaragua v. Colombia*, *supra* note 15, pp. 703-704, paras. 214-216, *Bangladesh v. India*, *supra* note 29, paras. 399-421, and 437, *Somalia v. Kenya*, *supra* note 30, pp. 264-270, paras. 161-174, *Costa Rica v. Nicaragua*, *supra* note 15, pp. 196-198, paras. 153-158, and pp. 218-221, paras. 192-201, *Ghana/Côte D'Ivoire*, *supra* note 37, paras. 421-426 and paras. 434-436, and *Mauritius/Maldives*, *supra* note 40, paras. 243-247.

43 Since the turn of the century, international courts and tribunals have not admitted the arguments of the parties concerning their activities as relevant circumstances. In the *Nicaragua v. Colombia* case, the ICJ considered the parties' arguments regarding their conduct in the relevant maritime areas (regulation of fishing activities, scientific exploration and naval patrols), security and law enforcement considerations, and equitable access to natural resources, but decided to bear in mind only security and law enforcement considerations (*Nicaragua v. Colombia*, *supra* note 15, pp. 704-706, paras. 217-223). In all other cases, oil resources and fisheries have not been recognized as relevant circumstances, see *Cameroon v. Nigeria*, *supra* note 15, pp. 442-443, para. 291, and pp. 447-448, para. 304; *Qatar v. Bahrain*, *supra* note 27, pp. 109-110, paras. 222-223, pp. 112-113, para. 236, and pp. 114-115, paras. 247-249; *Black Sea*, *supra* note 19, pp. 125-126, paras. 197-198, and p. 128, para. 204; *Bangladesh v. India*, *supra* note 29, paras. 422-424; ; *Ghana/Côte D'Ivoire*, *supra* note 37, paras. 450-455, and paras. 467-479, and *Somalia v. Kenya*, *supra* note 30, pp. 262-264, paras. 154-160.

44 *Ibid.*, para. 476.

45 Commission on the Limits of the Continental Shelf, Summary of Recommendations of the Commission on the Limits of the Continental Shelf in Regard to the Submission Made by Japan on 12 November 2008, 19 April 2012.

46 Kawano, *supra* note 22, p. 24.

legal issue, and the ITLOS recognized the existence and overlap of both parties' entitlements,⁴⁷ subsequently determining MD based on the E/RC method.⁴⁸

In the *Bangladesh v. India* case, the Arbitral Tribunal also applied the E/RC method for MD.⁴⁹ In the cases of the *Somalia v. Kenya* and *Ghana/Côte d'Ivoire*, the ICJ and the Special Chamber of the ITLOS respectively held that the boundary of the CS beyond 200 nautical miles was an extension of the EEZ and CS SMB within 200 nautical miles, and that the outer limits shall be determined based on the CLCS recommendation.⁵⁰ It is possible to point out that in cases concerning MD of CS beyond 200 nautical miles, international courts have consistently emphasized the coherency with the MD within 200 nautical miles and applied the E/RC method.

In the *Mauritius/Maldives* case, Mauritius requested the Special Chamber of the ITLOS to determine the MD of CS beyond 200 nautical miles. Two aspects of the judgment in this case are particularly noteworthy.

The first concerns the treatment of MD in cases where one state's entitlement to CS beyond 200 nautical miles overlaps with another state's entitlement to CS within 200 nautical miles. The Special Chamber held that the MD of CS and EEZ within 200 nautical miles rendered the issue of overlap between one state's entitlement to CS beyond 200 nautical miles and another state's entitlement to CS within 200 nautical miles moot.⁵¹ In that context it may also be noted that in the *Nicaragua v. Colombia* case, concerning CS delimitation beyond 200 nautical miles, the ICJ ruled that under customary international law, a state cannot claim entitlement to a CS beyond 200 nautical miles in areas overlapping with another state's EEZ within 200 nautical miles which is decided by the Special Chamber in this judgment.⁵²

The second key point is that the Special Chamber declined to determine MD due to "significant uncertainty" regarding the entitlements of Mauritius to CS beyond 200 nautical miles while there was no difference of view concerning that of Maldives.⁵³

The Special Chamber stated that the criterion of "significant uncertainty" was applied to minimize the risk of inconsistency between its ruling and any subsequent CLCS recommendation regarding entitlement to CS beyond 200 nautical miles.⁵⁴ Additionally, it was noted that "in maritime delimitation cases, international courts and tribunals refrain from delimiting areas where the rights of other coastal States may be affected." Furthermore, the application of the "significant uncertainty" criterion was considered to be in the interest of the international community, particularly regarding the deep seabed, which is regarded as the common heritage of humankind. The Special Chamber emphasized that "the exercise of caution is called for in the circumstances of the present case, where there may be a risk of prejudice to the interests of the international community in the Area and the common heritage principle."⁵⁵

(3) Gray Area

In the *Bangladesh v. Myanmar* case, during the delimitation of the CS beyond 200 nautical miles, the ICJ determined that the area where Bangladesh's CS beyond 200 nautical miles overlaps with Myanmar's EEZ constitutes a "gray area." The Court concluded that in such areas, MD must be exercised with due regard for each state's rights and obligations, in accordance with the relevant provisions of UNCLOS, and that bilateral agreements could be used to establish settlement and cooperation mechanisms.⁵⁶ A similar determination was made in the *Bangladesh v. India* case.⁵⁷

In the *Somalia v. Kenya* case, where no delimitation was made for the CS beyond 200 nautical miles, the Court noted that a gray area would arise if such a boundary were determined in the future.⁵⁸

The principal issues in the precedents concerning the MD of the CS beyond 200 nautical miles reflect the limits of the competence of international courts and tribunals for the purposes of that MD before the recommendation of the CLCS.

47 *Bangladesh v. Myanmar*, *supra* note 29, paras. 397-449.

48 *Ibid.*, paras. 461-462.

49 *Bangladesh v. India*, *supra* note 29, paras. 456-497.

50 *Somalia v. Kenya*, *supra* note 30, pp. 276-277, paras. 194-196, and *Ghana/Côte d'Ivoire*, *supra* note 37, para. 527.

51 *Mauritius/Maldives*, *supra* note 40, paras. 274-275.

52 *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Judgment 13 July 2023, paras. 69-79.

53 *Mauritius/Maldives*, *supra* note 40, paras. 434-451 and para. 466(4).

54 *Ibid.*, para. 433.

55 *Ibid.*, paras. 452-453.

56 *Bangladesh v. Myanmar*, *supra* note 29, paras. 463-464, and 471-476.

57 *Bangladesh v. India*, *supra* note 29, paras. 503-508.

58 *Somalia v. Kenya*, *supra* note 30, para. 197.

Conclusion

An examination of cases in which MD disputes have been referred to international courts and tribunals leads to the conclusion that, since the adoption of UNCLOS, they have tried to formulate the rules and method for the achievement of an equitable solution set out by UNCLOS and that the practical application of the single maritime boundary (SMB) method has frequently been required for the delimitation of TS, EEZs and CS. Furthermore, unless exceptional circumstances exist, MD based on the /RC method, including the delimitation of CS beyond 200 nautical miles, has become an established practice except the cases with very exceptional circumstances and has influenced the formulation of the rules and method of MD.

Additionally, in many cases, geographical factors, such as coastline length and shape, have been considered principal relevant circumstances, while factors such as economic activities related to resource utilization and law enforcement actions have been less frequently taken into account. By considering these factors, international courts and tribunals may achieve an equitable solution from an objective viewpoint. Given that international courts and tribunals are expected to adjudicate disputes with a focus on achieving equitable outcomes in accordance with international law, it can be said that they have prioritized factors that can be assessed objectively, even when considering relevant circumstances.