

## 8 Maritime Delimitation Disputes and the 1982 Law of the Sea Convention

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### 1) Introduction

For the purposes of the Manual, maritime delimitation disputes can be divided into three areas: those concerning

- the territorial sea and the contiguous zone;
- the exclusive economic zone;
- the continental shelf.

These areas are dealt with in the 1982 United Nations Convention on the Law of the Sea (UNCLOS III). It will be recalled that in an earlier chapter it was suggested that there were three international treaties that have a particular relevance to maritime disputes, international investment disputes and international trade disputes generally: UNCLOS III, the International Convention on the Settlement of Investment Disputes (ICSID Convention) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

As in the case of territorial boundary disputes, the international dispute settlement bodies dealing with maritime boundary disputes are likely to include the International Court of Justice (ICJ) and the Permanent Court of Arbitration (PCA), both in The Hague. In addition, UNCLOS III set up a third international body dealing specifically with maritime disputes: the International Tribunal for the Law of the Sea (ITLOS).

While the concept of the freedom of the high seas is accepted internationally, it is similarly accepted that coastal states have rights in relation to the seas off their coasts and that the resources in the seas and on the seabed need to be exploited. This can lead to disputes concerning the delimitation of the territorial sea between States with opposite or adjacent coasts, disputes concerning the delimitation of the continental shelf and disputes concerning exclusive economic zones. What may well lie behind a maritime delimitation dispute, as with a land dispute, is the existence – or suspected existence – of an oil and/or gas field.

Various conferences have been held that sought to deal with these potentially conflicting areas of interest. These conferences led to the 1958 Conventions on the territorial sea and contiguous zone; the high seas; the continental shelf; and fishing and conservation of the living resources of the high seas, and then subsequently to UNCLOS III. The Preamble to the 1982 Convention sets the scene (see Box 5).

### Box 5: Preamble to the 1982 United Nations Convention on the Law of the Sea

The States Parties to this Convention:

***Prompted** by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea and aware of the historic significance of this Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world,*

***Noting** that developments since the United Nations Conferences on the Law of the Sea held at Geneva in 1958 and 1960 have accentuated the need for a new and generally acceptable Convention on the law of the sea,*

***Conscious** that the problems of ocean space are closely interrelated and need to be considered as a whole,*

***Recognizing** the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment,*

***Bearing in mind** that the achievement of these goals will contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked,*

***Desiring** by this Convention to develop the principles embodied in resolution 2749 (XXV) of 17 December 1970 in which the General Assembly of the United Nations solemnly declared inter alia that the area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States,*

***Believing** that the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and will promote the economic and social advancement of all peoples of the world, in accordance with the Purposes and Principles of the United Nations as set forth in the Charter,*

***Affirming** that matters not regulated by this Convention continue to be governed by the rules and principles of general international law,*

*Have agreed as follows...*"

UNCLOS III deals with, among other things, the rights over – and the methods of prescribing the limits of – the three areas mentioned above: the territorial sea and contiguous zone, the exclusive economic zone and the continental shelf (and other areas such as islands, bays and archipelagic States). It provides various methods for settling disputes, with detailed and complex dispute resolution provisions contained in Part XV and various Annexes of the Convention.

### ***The development of claims***

While it has long been accepted that coastal States have a right to regard an ‘adjacent belt of sea’ as part of their territorial waters, a less certain question was how far that belt of sea around the coastline extended into the high seas.

At one time the breadth of a coastal State’s territorial waters was taken to be 3 miles: the distance of a cannon-shot. The limit is now accepted as 12 miles, measured from a baseline, which is the State’s low-water mark (inland waters sited on the landward side of the baseline are deemed to be part of the internal waters of a State). When the coastline of a State is deeply indented, or where there are bays or where islands run parallel to the coast, the positioning of the baseline may raise difficulties. In the case of a bay, for example, should the baseline be taken from the low-water mark on the coast or should a ‘straight baseline’ drawn across the mouth of the bay be used?

Islands are capable of having a territorial sea (and an exclusive economic zone and a continental shelf). Attempts have sometimes been made in the case of archipelagic States comprising a number of islands to argue that the straight baseline method can be used to define their outer limits.

A coastal State may be entitled to exercise rights beyond the 12-mile limit of its territorial sea. For example, in a zone of the high seas contiguous to its territorial sea, a coastal State may lay claim to exercise control for the purposes of preventing the infringement of its customs regulations or in order to protect its immigration or sanitary laws and regulations. Additionally, a coastal State may be entitled to enjoy rights in relation to continental shelves and exclusive economic zones. Both are considered in the following sections and both may extend jurisdiction beyond the limit of the territorial sea.

### ***The scheme of the 1982 Convention on the Law of the Sea (UNCLOS III)***

UNCLOS III comprises 320 Articles and is divided into 17 Parts.

- Part I: Introduction
- Part II: Territorial Sea and Contiguous Zone
- Part III: Straits used for International Navigation
- Part IV: Archipelagic States
- Part V: Exclusive Economic Zone
- Part VI: Continental Shelf
- Part VII: High Seas
- Part VIII: Regime of Islands

Part IX: Enclosed or Semi-Enclosed Seas

Part X: Right of Access of Land-Locked States to and from the Sea and Freedom of Transit

Part XI: The Area (this Part of the Convention is concerned with the 'common heritage of mankind' and with seabed resources and contains provisions relating to the Seabed Disputes Chamber of ITLOS)

Part XII: Protection and Preservation of the Marine Environment

Part XIII: Marine Scientific Research

Part XIV: Development and Transfer of Marine Technology

Part XV: Settlement of Disputes

Part XVI: General Provisions

Part XVII: Final Provisions

There are nine Annexes, which include:

Annex V – Conciliation

Annex VI – Statute of ITLOS

Annex VII – Arbitration

Annex VIII – Special Arbitration

Part XV of the Convention, dealing with the settlement of disputes – and Annexes V, VI, VII and VIII containing provisions dealing with methods and processes of dispute resolution – are relevant to the later part of the Manual dealing with supranational dispute resolution bodies.

The remainder of this chapter considers Part II: Territorial Sea and the Contiguous Zone (section 2), Part V: Exclusive Economic Zone (section 3) and Part VI: Continental Shelf (section 4). Since delimitation disputes are likely to arise in relation to all three areas, it also looks at delimitation (section 5) and considers some of the cases concerning delimitation that have come before supranational dispute resolution bodies such as the ICJ and the PCA (section 6).

## 2) Territorial Sea and Contiguous Zone

### ***Territorial sea***

A baseline divides the inland territories of a coastal State from its territorial sea. The inland territories may include rivers and other inland waters, and "*internal waters*" are dealt with in Article 8 of the Convention. As noted above, the baseline is generally measured from the low-water mark of the coastal State, although a different baseline may apply. Article 2 of the Law of the Sea Convention defines the territorial sea as a coastal State's "*adjacent belt of sea*". It deals with the legal status of the territorial sea, the air space over that sea, and the seabed and its subsoil:

*"1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.*

2. *This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.*
3. *The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law."*

Articles 3, 4 and 5 deal with the breadth of the territorial sea. Article 3 provides: "Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention." Article 4 states that: "The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea." Article 5 provides that the normal baseline for measuring the breadth of territorial sea is "the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State".

Different baseline provisions apply in the case of reefs. Article 6 states that: "In the case of islands situated on atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on charts officially recognized by the coastal State."

Article 7 of the Convention deals with 'straight baselines' and the problem of deltas and other unstable coastlines: "In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured...".

Waters on the landward side of the baseline of the territorial sea "form part of the internal waters of the State" (Article 8). Article 9 states that if a river flows directly into the sea "the baseline shall be a straight line across the mouth of the river between points on the low-water line of its banks".

In the case of bays, the coast of which belongs to a single State, Article 10 contains provisions that determine whether the waters of a bay are internal waters. Article 10 (4) states that "If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 nautical miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters." However, where the distance exceeds 24 nautical miles, "a straight baseline of 24 nautical miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length" (Article 10 (5)).

Provisions are set out in Articles 11 and 12 that deal with ports and roadsteads. Article 13 contains provisions dealing with low-tide elevations:

1. *A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.*

2. *Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.*"

Article 14 states that a combination of methods may be used for determining baselines: *"The coastal State may determine baselines in turn by any of the methods provided for in the foregoing articles to suit different conditions."* Article 15 contains provisions dealing with the delimitation of the territorial sea between States with opposite or adjacent coasts. Those provisions are considered later.

Article 16 deals with charts and lists of geographical coordinates for the purposes of lines of delimitation:

- "1. The baselines for measuring the breadth of the territorial sea determined in accordance with articles 7, 9 and 10, or the limits derived therefrom, and the lines of delimitation drawn in accordance with articles 12 and 15 shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, a list of geographical coordinates of points, specifying the geodetic datum, may be substituted.*
- 2. The coastal State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations."*

Articles 17 to 32 of Part II of the 1982 Convention contain provisions dealing with the right of innocent passage in the territorial sea and provisions relating to merchant ships, government ships operating for commercial purposes, and warships and other government ships operating for non-commercial purposes.

### ***Contiguous zone***

Article 33 contains provisions relating to the contiguous zone:

- "1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:*
  - (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;*
  - (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.*
- 2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured."*

Part IV of the Convention in Articles 47 to 54 contains provisions relating to archipelagic States, including provisions dealing with the measurement of the breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf.

### 3) Exclusive Economic Zone

As seen in the last section, the contiguous zone – a zone bordering on the territorial sea – extends the jurisdiction of a coastal State to 24 miles. Some coastal states have sought to extend the limit of their jurisdiction yet further. Where an exclusive economic zone can be claimed by a coastal State, that jurisdiction reaches a limit of 200 miles. Many of the claims have been based on exclusive rights in relation to fisheries. Claims may now be based on rights in relation to natural resources in the 200-mile zone.

The right to claim an exclusive economic zone may exist in customary international law, and is in any event a right recognised by UNCLOS III. Part V (articles 55 to 75) contains detailed provisions.

Article 55 defines an exclusive economic zone as *“an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention”*.

Article 56 deals with the rights, jurisdiction and duties of the coastal State in relation to the exclusive economic zone. The coastal state has the following rights and duties:

1. *“(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;*  
*(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:*
  - (i) the establishment and use of artificial islands, installations and structures;*
  - (ii) marine scientific research;*
  - (iii) the protection and preservation of the marine environment;**(c) other rights and duties provided for in this Convention.*
2. *In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.*
3. *The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.”*

Article 57 provides that the breadth of the exclusive economic zone *“shall not extend beyond 200 hundred nautical miles from the baselines from which the breadth of territorial sea is measured”*. Article 58 deals with the rights and duties of other States in the exclusive economic zone.

Article 59 sets out provisions for the resolution of conflicts in relation to the attribution of rights and jurisdiction in and use of the exclusive economic zone. The article provides that, in cases where the Convention does not attribute rights or jurisdiction to the coastal State

or to other States within the zone, and “... a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole”.

Article 60 deals with the rights referred to in Article 56 in relation to the coastal State's rights in the exclusive economic zone to construct artificial islands and other installations and structures. Article 60 (1) and (2) provides that the coastal State shall have the exclusive right “... to construct and to authorize and regulate the construction, operation and use of:

- (a) artificial islands;
- (b) installations and structures for the purposes provided for in article 56 and other economic purposes;
- (c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.”

Article 60 (2) states that “The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.” Article 60 (8) makes it clear that “Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.”

Articles 61-72 make provisions in relation to living resources, including the rights of land-locked States (Article 69) and of geographically disadvantaged States (Article 70).

Article 73 provides for the enforcement in the exclusive economic zone of the coastal State's sovereign rights to explore, exploit and conserve and manage the living resources in the zone. The measures taken may include boarding, inspection, arrest and judicial proceedings.

Articles 74 and 75 deal with the delimitation of the exclusive economic zone and the settlement of disputes. The dispute resolution provisions of the Convention are considered in Part III of the Manual.

Article 74 provides that:

- “1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into

*provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.*

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

The outer limit lines of the exclusive economic zone and the lines of delimitation drawn in accordance with Article 74 "... shall be shown on charts of a scale or scales adequate for ascertaining their position. Where appropriate, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation." The coastal State is to give due publicity to those charts or lists of geographical coordinates, and is to deposit a copy of each with the UN Secretary-General.

The rights given to coastal States by Part V of the 1982 Convention in relation to the exploitation of natural resources in an exclusive economic zone are of great significance. Article 56 (3) of Part V provides that rights in relation to the seabed and subsoil are to be exercised in accordance with Part VI of the Convention. That Part deals with the continental shelf and governs rights concerning the seabed and the subsoil. Much may be at stake in delimitation disputes concerning continental shelves and exclusive economic zones.

## **4) Continental Shelf**

### ***i) The US Submerged Lands Act***

'Continental shelf' is a geological term referring to a ledge or shelf that projects from the landmass of a coastal State and that is covered by only a shallow layer of water. For example, the United States Submerged Lands Act [43 USC s. 1301-1315] refers to "*lands beneath navigable waters*", which the Act defines as meaning:

- "(1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and water thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;*
- (2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles...."*

Continental shelves may carry deposits of oil and gas (for the purposes of the Submerged Lands Act, the term 'natural resources' includes oil, gas and all other minerals). To state the obvious, a coastal State will be anxious to secure control of such valuable resources.

## ii) **The Truman Declaration**

The Truman Declaration – Presidential Proclamation No. 2667 issued on 20 September 1945 – set out the policy of the United States with respect to the natural resources of the subsoil and sea bed of the continental shelf.

A preamble to the Proclamation stated that:

*“Whereas the Government of the United States of America, aware of the long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and*

*“Whereas its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at any early date; and*

*“Whereas recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and*

*“Whereas it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from shore, since the continental shelf may be regarded as an extension of the land mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of their nature necessary for utilization of these resources. . . .”*

The proclamation then went on to set out the US policy:

*“Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed 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. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. 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.”*

The approach taken by the United States has been followed by other countries. Part VI of UNCLOS III contains provisions along the lines of the Truman Declaration, and customary international law follows a similar line – as demonstrated by various decisions of the ICJ.<sup>31</sup>

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<sup>31</sup> The Truman Declaration is referred to by the ICJ in the *North Sea Continental Shelf Cases*, mentioned later in this chapter.

### iii) Provisions of UNCLOS III

Article 76 of UNCLOS III contains significant provisions defining “continental shelf”:

1. *The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 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.*
2. *The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.*
3. *The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.*
4. *(a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea 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.*

*(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.*
5. *The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.*
6. *Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.*
7. *The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.”*

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

Article 77 contains important provisions dealing with the rights of a coastal State over the continental shelf:

- "1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.*
- 2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.*
- 3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.*
- 4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil."*

Article 78 deals with the legal status of the superjacent waters and air space and with the rights and freedoms of other States. The rights of other States to lay submarine cables and pipelines are dealt with in Article 79. (An example of an agreement between coastal states in relation to the laying of submarine pipelines – the Framework Agreement between Britain and Norway – is given later in this chapter.) Article 80 applies the Article 60 provisions in relation to artificial islands, installations and structures on the continental shelf: the coastal State is therefore to have the right to construct, etc, artificial islands and the like.

Significant provisions are contained in Article 81 in relation to oil and gas deposits. The coastal State is to have the exclusive right to authorise and regulate drilling on the continental shelf for all purposes. Article 82 makes provisions in relation to payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles.

Given the number of disputes relating to delimitation of continental shelves, the provisions of Article 83 of the 1982 Convention are of great importance. The Article deals with the delimitation of the continental shelf between States with opposite or adjacent coasts and makes provision for the resolution of any disputes by use of the dispute resolution procedures contained in Part XV of the Convention. Article 83 will be considered in the next section of this chapter.

Article 84 states that the outer limit lines of the continental shelf, and the lines of delimitation drawn in accordance with Article 83, are to be shown on charts of adequate scale. Those charts, and any lists of geographical coordinates of points, are to be given due publicity and copies are to be deposited with the UN Secretary-General. Finally, Article 85 states that Part VI is not to prejudice the right of the coastal State to exploit the subsoil by means of tunnelling "... irrespective of the depth of water above the subsoil".

## 5) Delimitation

UNCLOS III contains various provisions dealing with methods of prescribing the limits of the different maritime areas over which coastal and other States may lay claim: territorial seas and contiguous zones, exclusive economic zones and continental shelves. Provisions are made for the width and extent of these. Basic rules are laid down for delimitation based on measurement from low-water baselines and for measurement using straight baselines. Rules provide for difficulties that arise in relation to bays, islands, reefs and archipelagic States.

Specific provisions are made in relation to problems that arise in relation to delimitation of the territorial sea between States with opposite or adjacent coasts. Problems may also arise in relation to delimitation of the continental shelves and exclusive economic zones between adjacent or opposite States.

Two broad maritime delimitation principles can be said to have emerged from a combination of sources, including customary international law and treaties (in particular the provisions of UNCLOS III) and decisions of international dispute settlement tribunals. One is based on, or at any rate is evidenced by, the provisions of Article 15 of the Convention: the *"equidistance / special circumstances rule"*. Delimitation should be based on the drawing of an equidistance line, which is regarded as likely to provide an equitable resolution to maritime delimitation disputes. However, special circumstances may indicate any change that should be made to this line.

The second principle is the *"equitable principles / relevant circumstances method"*. This method is very similar to the first rule and involves drawing the equidistance line and then considering whether there are circumstances that need to be taken into account that may result in redrawing it so as to produce an 'equitable' result.

The specific provisions of UNCLOS III are set out below.

### **Article 15**

Article 15 of Part II of the Convention deals with the delimitation of the territorial sea between States with opposite or adjacent coasts:

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

### **Article 74**

Article 74 in Part V contains provisions covering delimitation of the exclusive economic zone between States with opposite or adjacent coasts:

*"1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law,*

*as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.*

2. *If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.*
3. *Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.*
4. *Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement."*

The provisions of Article 74 (1) require agreement "on the basis of international law" as set out in Article 38 of the Statute of the ICJ. This Article, which is of significance to the Convention, was referred to earlier in the chapter on international law.

Where no agreement is reached, Article 74 (2) requires the parties to use the dispute settlement provisions contained in Part XV of the Convention. These are considered in detail in the later section of the Manual dealing with supranational dispute resolution bodies. Put shortly, the parties are required to seek to agree, failing which detailed provisions are made for disputes to be resolved by ITLOS, by the ICJ or by arbitration or special arbitration under the systems set out in Annexes VII and VIII of the Convention.

### **Article 83**

Article 83 in Part VI sets out the provisions for delimitation in the case of a continental shelf between States with opposite or adjacent coasts. The provisions are similar to those contained in Article 74 dealing with exclusive economic zones. References are again made to agreement on the basis of international law, as set out in Article 38 of the ICJ Statute, and to the dispute resolution provisions contained in Part XV of the 1982 Convention.

## **6) Two Cases Illustrating Maritime Delimitation**

By way of illustration, this section contains brief references to two maritime delimitation decisions: one by the ICJ and the other by the PCA. One predates the 1982 Convention; the other is dated some 15 years after the Convention was open for signature.

### **North Sea Continental Shelf Cases**

The first example is a judgement given by the ICJ in February 1969 in the *North Sea Continental Shelf Cases*. The dispute related to the delimitation of the continental shelf (i) between the Federal Republic of Germany and Denmark and (ii) between the Federal Republic of Germany and the Netherlands. The Parties asked the Court to state the principles and rules of international law applicable, undertaking to carry out the 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. The Court held:

- 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.

The Court also rejected the contentions of the Federal Republic seeking acceptance of the principle of an apportionment of the continental shelf into just and equitable shares. It held that each Party had an original right to those areas of the continental shelf that constituted the natural prolongation of its land territory into and under the sea. It was not a question of apportioning or sharing out those areas, but of delimiting them.

The Court found that the boundary lines in question were to be drawn by agreement between the Parties and in accordance with equitable principles, and it indicated certain factors to be taken into consideration for that purpose. It was now for the Parties to negotiate on the basis of such principles, as they had agreed. The Court stated that:

*“... the basic principles in the matter of delimitation, deriving from the Truman Proclamation, were that it must be the object of agreement between the States concerned and that such agreement must be arrived at in accordance with equitable principles. 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 negotiation as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement; they were so to conduct themselves that the negotiations were meaningful, which would not be the case when one of them insisted upon its own position without contemplating any modification of it. This obligation was merely a special application of a principle underlying all international relations, which was moreover recognized in Article 33 of the Charter of the United Nations as one of the methods for the peaceful settlement of international disputes.”*

The Court found in each case that:

*“The use of the equidistance method of delimitation was not obligatory as between the Parties; that no other single method of delimitation was in all circumstances obligatory; that delimitation was to be effected by agreement in accordance with equitable principles and taking account of all relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constituted a natural prolongation of its land territory, without encroachment on the natural prolongation of the land territory of the other; and that, if such delimitation produced overlapping areas, they were to be divided between the Parties in agreed proportions, or, failing agreement, equally, unless they decided on a régime of joint jurisdiction, user, or exploitation.”*

The Court stated that, in the course of negotiations that would take place between the parties, the factors to be taken into account by them in those negotiations were to include:

*“the general configuration of the coasts of the Parties, as well as the presence of any special or unusual features; so far as known or readily ascertainable, the physical and geological structure and natural resources of the continental shelf areas involved, the element of a reasonable degree of proportionality between the extent of the continental shelf areas appertaining to each State and the length of its coast measured in the general direction of the coastline, taking into account the effects, actual or prospective, of any other continental shelf delimitations in the same region.”*<sup>32</sup>

### **Arbitration between the Governments of Eritrea and Yemen**

The second case is an award of the PCA given in October 1996 in the maritime delimitation phase of an arbitration between the *Government of the State of Eritrea and the Government of the Republic of Yemen*. The members of the Arbitral Tribunal were Professor Sir Robert Y Jennings (President), Judge Stephen M Schwebel, Dr Ahmed Sadek El-Kosheri, Mr Keith Highet and Judge Rosalyn Higgins.

Article 2 of the relevant Arbitration Agreement provided that:

- “1. The Tribunal is requested to provide rulings in accordance with international law, in two stages.*
- 2. The first stage shall result in an award on territorial sovereignty and on the definition of the scope of the dispute between Eritrea and Yemen....*
- 3. The second stage shall result in an award delimiting maritime boundaries. The Tribunal shall decide taking into account the opinion that it will have formed on questions of territorial sovereignty, the United Nations Convention on the Law of the Sea, and any other pertinent factor.”*

In the course of its award dealing with delimitation, the Arbitral Tribunal stated at paragraphs 131-133 that:

- “131. It is a generally accepted view, as is evidenced in both the writings of commentators and in the jurisprudence, that between coasts that are opposite to each other the median or equidistance line normally provides an equitable boundary in accordance with the requirements of the Convention, and in particular those of its Articles 74 and 83 which respectively provide for the equitable delimitation of the EEZ and of the continental shelf between States with opposite or adjacent coasts. Indeed both Parties to the present case have claimed a boundary constructed on the equidistance method, although based on different points of departure and resulting in very different lines.*
- “132. The Tribunal has decided, after careful consideration of all the cogent and skilful arguments put before them by both Parties, that the international boundary shall be a single all-purpose boundary which is a median line and that it should, as far as practicable, be a median line between the opposite mainland coastlines. This solution is not only in accord with practice and precedent in the like situations but*

*is also one that is already familiar to both Parties. As the Tribunal had occasion to observe in its Award on Sovereignty (paragraph 438), the offshore petroleum contracts entered into by Yemen, and by Ethiopia and by Eritrea, 'lend a measure of support to a median line between the opposite coasts of Eritrea and Yemen, drawn without regard to the islands, dividing the respective jurisdiction of the Parties'. In the present stage the Tribunal has to determine a boundary not merely for the purposes of petroleum concessions and agreements, but a single international boundary for all purposes. For such a boundary the presence of islands requires careful consideration of their possible effect upon the boundary line; and this is done in the explanation which follows. Even so it will be found that the final solution is that the international maritime boundary line remains for the greater part a median line between the mainland coasts of the Parties.*

"133. *The median line is in any event some sort of coastal line by its very definition, for it is defined as a line 'every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured' (Article 15 of the Convention), although the same definition will be found in many maritime boundary treaties and also in expert writings. The 'normal' baseline of the territorial sea as stated in Article 5 of the Convention – and this again accords with long practice and with the well established customary rule of the law of the sea – is 'the low-water line along the coast as marked on large scale charts officially recognized by the coastal State'. There do arise some questions about what is to be regarded as the 'coast' for these purposes, especially where islands are involved; and these questions, on which the Parties differ markedly, require decisions by the Tribunal.*"<sup>33</sup>

## **7) The Framework Agreement between Britain and Norway Relating to the Laying of Inter-Connecting Submarine Pipelines**

An example of co-operation between coastal States under UNCLOS III is the Agreement made between the Governments of Britain and Norway in relation to the laying of submarine pipelines under the seas between the British and Norwegian coasts.

The rights of other States to lay submarine cables and pipelines are dealt with in Article 79 of the Convention, which provides that:

- "1. All States are entitled to lay submarine cables and pipelines on the continental shelf, in accordance with the provisions of this article.*
- 2. Subject to its right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines, the coastal State may not impede the laying or maintenance of such cables or pipelines.*
- 3. The delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal State.*

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33 A report of the decision in *Government of the State of Eritrea and the Government of the Republic of Yemen* case is on the PCA website.

4. *Nothing in this Part affects the right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea, or its jurisdiction over cables and pipelines constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.*
5. *When laying submarine cables or pipelines, States shall have due regard to cables or pipelines already in position. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced."*

The Framework Agreement between the Governments of the United Kingdom of Great Britain and the Kingdom of Norway relating to the Laying of Inter-connecting Submarine Pipelines, in force in June 2000, recites that the Governments are:

*"Mindful of the High Seas Convention of 1958, the Continental Shelf Convention of 1958 and the United Nations Convention on the Law of the Sea of 1982;*

*Recalling that Articles 58, 79, 86 and 87 of the United Nations Convention on the Law of the Sea of 1982 define the legal regime of submarine pipelines in the context of that Convention as a whole, and that Article 79 of that Convention is at the core of the existing regime covering pipelines on the continental shelf...."*

Article 17 of the Framework Agreement deals with arbitration:

*"1. Any dispute about the interpretation or application of this Agreement, or any other matter referred to the Governments for settlement under the agreements between the owner of an inter-connecting pipeline and between such owner and the owner of an infrastructure, shall be resolved by negotiation between the two Governments.*

2. *If any dispute cannot be resolved in this manner or by any other procedure agreed to by the two Governments, the dispute shall be submitted, at the request of either Government, to an Arbitral Tribunal composed as follows:*

*Each Government shall designate one arbitrator, and the two arbitrators so designated shall elect a third, who shall be the Chairman and who shall not be a national of or habitually reside in the United Kingdom or in the Kingdom of Norway. If either Government fails to designate an arbitrator within three months of a request to do so, either Government may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within one month of the designation or appointment of the second arbitrator, the third arbitrator has not been elected. The Tribunal shall determine its own procedure, save that all decisions shall be taken, in the absence of unanimity, by a majority vote of the members of the Tribunal. The decisions of the Tribunal shall be binding upon the two Governments and shall, for the purpose of this Agreement, be regarded as agreements between the two Governments."*

The effect of that last sentence is evidently intended to elevate any arbitral award to an international obligation between the Governments of the United Kingdom and Norway.