

THE PRINCIPLE OF EQUIDISTANCE AND RELEVANT CIRCUMSTANCES IN THE DELIMITATION OF THE CONTINENTAL SHELF: AN ANALYSIS OF THE LIBYA AND MALTA CASE

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Abstract

This study examines the delimitation of the continental shelf between Libya and Malta in the Mediterranean Sea based on the International Court of Justice (ICJ) judgment. The study focuses on the legal principles applied by the Court, Italy's intervention, and the use of equity and proportionality in determining the maritime boundary. Using normative legal research with case and statutory approaches, this study analyzes the ICJ judgments and relevant international legal instruments. The findings show that the ICJ rejected Italy's intervention because it could introduce a dispute involving a third state without the consent of the parties. In the main judgment, the Court emphasized the distance principle and considered geological and geophysical factors irrelevant within 200 nautical miles. The Court rejected both the rift-zone approach and the mandatory application of equidistance. Instead, it used a provisional median line and adjusted it according to relevant circumstances, particularly the significant disparity in the coastal lengths of Libya and Malta, to achieve an equitable and proportionate result.

Keywords: *Continental Shelf, Maritime Delimitation, Equity.*

A. BACKGROUND

The ocean and maritime territory have been an important arena in relations between countries since centuries ago. The strategic, economic, and security interests inherent in maritime areas encourage countries to establish the boundaries of their maritime territories in a firm and equitable manner. International maritime law, as the branch of international law that regulates the use and management of maritime space, has developed significantly since the mid-20th century and continues to be enriched through various international court rulings.¹ One of the fundamental concepts in maritime law is the *continental shelf*, which is the seabed and the land below it which is a natural continuation of the land of a coastal country. Coastal states have *sovereign rights* to the continental shelf for the purpose of exploration and exploitation of the natural resources contained therein. These rights are inherent and apply *ipso jure* from the beginning, without requiring any proclamation or declaration from the coastal state.²

The development of the law of the continental shelf began with the Truman Proclamation of the United States in 1945. This step was followed by many countries and led to the first codification through the Geneva Convention on the Continental Shelf in 1958. Further developments were reflected in the United Nations *Convention on the Law of the Sea* (UNCLOS 1982) which introduced the criterion of 200 nautical miles as the basis for the minimum right to the continental shelf, as well as integrating it with the concept of the Exclusive Economic Zone (EEZ) which further strengthened the *distance principle* in international maritime law.³

When two or more coastal states face each other or side by side, the determination of the boundary of the continental shelf between them becomes a complex legal issue. It is not uncommon for disputes

¹Mochtar Kusumaatmadja, *International Law of the Sea*, Bandung: Binacipta, 1986, p. 3.

²Malcolm N. Shaw, *International Law*, 9th Edition, Cambridge: Cambridge University Press, 2021, p. 511.

³Robin Rolf Churchill and A.V. Lowe, *The Law of the Sea*, 3rd Edition, Manchester: Manchester University Press, 1999, pp. 141-143.

to arise over the proper method of delimitation, the applicable legal principles, and the special circumstances that must be taken into account in order to achieve a fair result. The development of ICJ jurisprudence in this area has become the main guideline for countries in resolving their maritime delimitation disputes.⁴ One important precedent is the *Continental Shelf case (Libyan Arab Jamahiriya/Malta)* which was submitted to the ICJ in 1982 under the *Special Agreement* between Libya and Malta.

This case presents a fundamental debate between two approaches: Libya postulates *natural prolongation* in a physical-geological sense and puts forward the *rift zone* argument as a delimitation criterion, while Malta puts forward the *distance principle* and the primacy of the equidistan method. This debate reflects the tension between two different approaches in international maritime law that was developing at the time.⁵ In addition to the substantive debate, this case also presents an important procedural issue in the form of an application for Italian intervention under Article 62 of the ICJ Statute. Italy claims to have a legal interest in the continental shelf in the Central Mediterranean that overlaps with the claims of Libya and Malta.

This appeal resulted in the ICJ's first ruling of 21 March 1984 rejecting Italian intervention by a vote of 11 to 5, while affirming the important limitations of the mechanism of third-party intervention in the ICJ's judicial system.⁶ The main ruling of 3 June 1985 then established the principles and rules of international law applicable to the delimitation of the continental shelf between Libya and Malta. The Court affirmed that in situations where the distance between two countries is less than 400 nautical miles, geological and geophysical factors are irrelevant as delimitation criteria. The Court applied an adjusted median line to the north of 18 minutes of latitude to

⁴Yoshifumi Tanaka, *The International Law of the Sea*, 3rd Edition, Cambridge: Cambridge University Press, 2019, p. 205.

⁵ICJ, *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 13, paras. 14-16.

⁶Barbara Kwiatkowska, "The Libya/Malta Continental Shelf Case: Refinishing Equitable Principles", *International Journal of Marine and Coastal Law*, Vol. 1, No. 1, 1986, p. 40.

accommodate the very significant difference in coastline length between Libya (192 nautical miles) and Malta (24 nautical miles).⁷ Both ICJ decisions made important contributions to the development of international maritime law. First, consolidating the transition in continental shelf law from a geology-based approach to a distance-based approach. Second, enriching understanding of the application of equity principles in maritime delimitation, including the use of the median line as *a provisional starting point* and its adjustment based on relevant circumstances. Third, affirming the limitations of third-party intervention mechanisms within the ICJ's consensual jurisdiction. On that basis, an in-depth study of this case is highly relevant in the study of international maritime law.⁸

B. RESULTS AND DISCUSSION

1. The Evolution of the Concept of the Continental Shelf in International Law

The concept of *continental shelf* in international law has undergone significant evolution. Geologically, the continental shelf refers to the seafloor platform that surrounds the continent before descending to the depths of the ocean. However, the juridical concept does not always correspond exactly to geological reality. In the first phase of its development (1945-1969), the law of the continental shelf was greatly influenced by the concept of *natural prolongation*, which is the idea that the continental shelf is a natural continuation from the mainland of a country to the underseas.⁹ The ICJ in the *North Sea Continental Shelf Cases* (1969) elaborated this concept systematically, affirming that every coastal state has the right to the continental shelf which is the natural continuation of its land area. The determination of the boundary must be done in such a way that each party gets all the areas of the continental shelf which are the

⁷ICJ, *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Application by Italy for Leave to Intervene, Judgment, I.C.J. Reports 1984, p. 3, para. 47.

⁸ICJ Reports 1985, *op.cit.*, paras. 68, 73.

⁹Jonathan I. Charney, "Progress in International Maritime Boundary Delimitation Law", *American Journal of International Law*, Vol. 88, No. 2, 1994, p. 229.

natural continuation of its land area, without going beyond the area which is the natural continuation of the land area of the other party.¹⁰

In the second phase (1969-1985), there was an important transition. The emergence of the EEZ, codified in UNCLOS 1982, introduced the *distance principle* as the basis for the right to marine space. Each coastal state has the right to a sea zone up to 200 nautical miles from its baseline, regardless of the geological or geomorphological conditions of the seabed. UNCLOS 1982 Article 76 integrates both approaches: each coastal state is entitled to at least a continental shelf of up to 200 nautical miles based on the distance criterion, but can claim a wider continental shelf if the physical natural continuation of its land area exceeds that boundary.¹¹

2. The Principle of Equity in Maritime Delimitation

The principle of equity is at the heart of maritime delimitation law. The ICJ in its various decisions has consistently affirmed that the main purpose of delimitation is the achievement of an *equitable result* through the application of the principles of equity to all relevant circumstances. The principle of equity in this context does not mean arithmetic equality, but substantive justice that considers all relevant circumstances proportionately.¹² Some of the principles of equity that have been recognized in ICJ jurisprudence include: (a) no refashioning of *geography*; (b) the principle of non-encroachment, i.e. the delimitation line must not cut off areas that are a natural continuation of neighboring countries unnaturally; (c) equity *does not necessarily imply equality*; and (d) there is no *question of distributive justice*, so delimitation is not designed to compensate for economic imbalances between the parties.¹³

¹⁰ICJ, *North Sea Continental Shelf Cases*, Judgment, I.C.J. Reports 1969, p. 3, paras. 43, 85.

¹¹ICJ, *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 18, paras. 44, 70.

¹²Malcolm D. Evans, "Delimitation and the Common Maritime Boundary", *British Yearbook of International Law*, Vol. 64, 1993, p. 283.

¹³Yoshifumi Tanaka, "Reflections on the Concept of Proportionality in the Law of Maritime Delimitation", *International Journal of Marine and Coastal Law*, Vol. 16, No. 3, 2001, p. 433.

Article 62 of the ICJ Statute provides a mechanism for a third country to participate in a case if it considers that it has an *interest of a legal nature* that may be affected by the judgment. This mechanism is intended as a means of protecting the legal interests of a third country, not as an entry point to bring new claims or expand the jurisdiction of the Court.¹⁴ Article 59 of the ICJ Statute affirms that the Court's decision is only binding on the parties to the case in question. In practice, the intervention mechanism under Article 62 has a limited history in ICJ jurisprudence, and most applications for intervention submitted end in rejection by the Court because the applicant is unable to demonstrate a legal interest that may be directly and tangibly affected by the judgment to be rendered.¹⁵

3. International Legal Arrangements

First, the *Convention on the Continental Shelf* (1958 Geneva Convention). Article 1 of the Convention defines the continental shelf as the seabed and land beneath it adjacent to the coast of a country, outside the territorial marine area, to a depth of 200 metres or further to the extent that the depth of the water above it still permits the exploitation of natural resources. Article 6 provides that the boundary between two adjacent or adjacent countries is determined on the principle of equidistance, unless there are *special circumstances* that justify the other boundary line. Malta is a party to this Convention, while Libya is not.¹⁶

Second, UNCLOS 1982. Although at the time of this case, UNCLOS 1982 had not yet entered into force as the law of an agreement between the parties, the ICJ recognized some of its provisions as a reflection of customary international law. Article 76 of UNCLOS defines the continental shelf by integrating the criteria of distance (200 nautical miles as a minimum right) and physical

¹⁴Jiuyong Shi, "Maritime Delimitation in the Jurisprudence of the International Court of Justice", *Chinese Journal of International Law*, Vol. 9, No. 2, 2010, p. 271.

¹⁵Statute of the International Court of Justice, Articles 38, 59, and 62.

¹⁶Convention on the Continental Shelf, Geneva, 29 April 1958, Articles 1 and 6.

criteria (for claims beyond 200 miles). Article 83 of the UNCLOS stipulates that the delimitation of the continental shelf between adjacent or opposite countries is carried out based on international law in order to achieve a just solution.¹⁷ Third, the ICJ Statute. Article 38 defines the sources of international law on which the Court's decisions are based, namely international treaties, customary international law, general law principles, and jurisprudence and doctrine as complementary sources. Article 59 confirms that the Court's decision is only binding on the parties and applies only to the case in question. Article 62 regulates the mechanism of third-party intervention.¹⁸

Fourth, the relevant ICJ jurisprudence: (a) the decision in the *North Sea Continental Shelf Cases* (1969) which for the first time elaborated the principle of *natural prolongation* and the principle of equity in the delimitation of the continental shelf; and (b) the decision in the *Continental Shelf case (Tunisia/Libyan Arab Jamahiriya)* (1982) which enriched the legal treasure of maritime delimitation through an in-depth discussion of the relevant circumstances and the development of the proportionality test.¹⁹ Fifth, the *Rules of Court* of the ICJ of 1978, in particular Articles 81 and 83 which regulate the formal requirements for applications for intervention. Such conditions include the obligation to state: (a) the legal interests that may be affected; (b) the appropriate object of the intervention; and (c) the basis of the jurisdiction claimed to exist between the intervening applicant state and the parties to the case.²⁰

On 24 October 1983, Italy submitted an application for formal intervention under Article 62 of the ICJ Statute. Italy based its application on a claim of legal interests in the form of *sovereign rights* over certain areas of the continental shelf in the Central Mediterranean which Italy claimed overlap with those claimed by Libya and Malta. Italy asserts that its legal interest is a sovereign right

¹⁷UNCLOS 1982, Articles 76 and 83; ICJ Reports 1985, *Op.Cit.* , paras. 26-27.

²⁰Rules of Court of the International Court of Justice 1978, Article 81 paragraph (2).

to the continental shelf for the purpose of exploration and exploitation of natural resources recognized by customary international law and explicitly in the 1958 Geneva Conventions and the 1982 UNCLOS.²¹ The object of Italy's intervention is to ensure that the Court, in carrying out its duties under the Libya-Malta *Special Agreement*, takes into account Italy's interests so that the principles of international law established as applicable in the delimitation between Malta and Libya are not established without awareness of Italy's interests. Italy expressly states that it does not ask the Court to establish its own continental shelf boundary with Libya or Malta.²²

The ICJ, in its decision of 21 March 1984, rejected Italy's application by a vote of 11 to 5. First, the Court affirmed that its duty under Article 62 paragraph (2) of the ICJ Statute is to determine whether or not an application for intervention is acceptable on the basis of the relevant provisions of the Statute, not on the basis of mere considerations of general discretion.²³ Second, the Court analyzed the object of Italian intervention substantively and concluded that although Italy did not formally claim that the Court should establish the boundaries of its continental shelf, practically the inevitable effect of the intervention requested was that the Court would be called upon to make findings on Italian rights. If Italy is allowed to intervene and present substantive arguments in favour of the recognition of its rights, then the Court's decision cannot but contain a decision on those Italian rights, either in the form of recognition or rejection.²⁴

Third, the Court affirms the basic principle that its jurisdiction depends on the agreement of the parties to a dispute (*principle of consent*). Allowing intervention in the form requested by Italy means that the Court will decide the dispute between Italy on the one hand and Libya and Malta on the other, without the consent of those countries. This is a departure from the principle of consensuality that

²¹ICJ Reports 1984, *op.cit.*, para. 10.

²²*Ibid.*, para. 12.

²³*Ibid.*, para. 32.

²⁴*Ibid.*, paras. 34-35.

is fundamental in the ICJ's system of jurisdiction.²⁵ Fourth, despite refusing to intervene, the Court affirms that Italian rights are still protected. First, through Article 59 of the ICJ Statute which limits the binding power of judgment only to the parties. Second, the Court states that it will consider the existence of Italy's claim as a fact in its final decision. Third, the Court will limit the geographical scope of its decision only to the area where there is no claim from Italy, i.e. the area between the meridians of 13°50' E and 15°10' E.²⁶

In its main decision dated 3 June 1985, the Court began its analysis by affirming that the applicable law is customary international law. This is because Malta is a party to the 1958 Geneva Convention while Libya is not, so the Convention cannot be applied directly; and UNCLOS 1982 has not yet entered into force as treaty law. Nevertheless, the Court affirms that UNCLOS 1982 cannot be ignored because some of its provisions are expressions of generally applicable customary international law.²⁷ The Court specifically examines the relationship between the concept of the continental shelf and the institution of the EEZ in the development of modern maritime law. Since rights to the seabed in the EEZ are defined on the basis of the continental shelf regime, and since the EEZ cannot exist without the continental shelf corresponding to it, the distance criterion must also be juridically and practically applicable to the continental shelf.

In other words, the concept of *natural prolongation* and the concept of distance are not two contradictory things, but complement each other as essential elements in the juridical concept of the continental shelf.²⁸ Furthermore, the Court affirms that the institution of the EEZ with its distance criterion has become part of the customary international law through the practice of a broad country. Therefore, the distance criterion must also apply to the continental shelf, at least within 200 nautical miles of the coast. The consequence is that the geological and geomorphological factors that were originally relevant in the old continental shelf legal regime become

²⁵*Ibid.*, paras. 38-41.

²⁶*Ibid.*, para. 43.

²⁷ICJ Reports 1985, *Op.Cit.* , para. 18.

²⁸*Ibid.*, para. 26.

irrelevant for areas within 200 nautical miles of the coasts of the two disputed countries.²⁹

4. Rejection of Libya's Rift Zone Argument

Libya's main argument is the existence of a *rift zone* or crack zone on the seabed around the Malta Islands. Libya postulates that in the area there is a series of deep-sea basins that form a fundamental discontinuity in the seabed, separating Libya's natural continuation from Malta's natural continuity. The rift zone in question includes a series of deep troughs called the Malta Trough, Pantelleria Trough, and Linosa Trough. Based on this argument, Libya is of the view that the delimitation boundary should follow the general line of the rift zone.³⁰ The court rejected the Libyan *rift zone* argument with layered arguments. From a juridical perspective, since the distance between Libya and Malta is less than 400 nautical miles, no geophysical feature can be more than 200 miles away from each coast. Therefore, the *rift zone* cannot be used as a natural boundary separating the continental shelf of the two countries.

Factors irrelevant to the determination of rights cannot suddenly become relevant for delimitation among competing rights over the same area.³¹ From a factual perspective, the Court stated that it could not draw a convincing conclusion from the scientific evidence presented as to the existence or absence of the "fundamental discontinuity" on which the Libyan argument is based. Libyan experts asserted the existence of secondary tectonic plate boundaries in the rift zone, while Maltese experts disputed this as mere hypothesis without adequate scientific evidence. A delimitation criterion that relies on such scientific judgment is clearly inappropriate as a general rule of law delimitation.³²

Malta argues that the *distance principle* underlying the right to the continental shelf logically implies the primacy of the equidistance method in the delimitation between the opposite coasts. Malta's

²⁹*Ibid.*, paras. 33-34.

³⁰*Ibid.*, paras. 36-38.

³¹*Ibid.*, paras. 39-41.

³²*Ibid.*, paras. 42-44.

argument is: since each coastal country is entitled to the continental shelf based on the distance from its coast, and since the two countries have overlapping rights in the area between them, it is natural that the line dividing the overlapping area must be the equidistan line. The court rejected Malta's argument by asserting that the rights derived from the *distance principle* do not logically demand the equidistan method as the only proper method of delimitation, even as a mandatory first step. Such a rule is almost identical to the doctrine of "*absolute proximity*" that was rejected by the Court in 1969. The right of coastal states to the continental shelf based on the criteria of distance and the method of equidistan are two different things: the first is about rights, the second is about the method of delimitation.³³

After establishing the legal framework, the Court proceeded with the gradual delimitation process. The Court stated that in a situation where the parties have a coastline facing a clean sea area between them, drawing the median line as a first step is the most appropriate way to begin the delimitation process. This step is consistent with the legal criteria that determine the right to the continental shelf, i.e. the distance criterion. In constructing the initial median line, the Court made one important adjustment: it did not take into account Malta's small island of Filfla as the starting point. Filfla is a small, uninhabited island located a few kilometres southwest of Malta. Including Filfla would have a disproportionate effect on the position of the median line. The Court affirmed that in determining the equivalence of an equidistant line, it was necessary to take precautions to eliminate the disproportionate effects of "small islands, coral rocks, and minor beach protrusions".³⁴

Having established the provisional median line, the Court identified relevant circumstances that might require adjustment. The first relevant circumstance was a very significant difference in the length of the coastline of the two parties. The Libyan coast from Ras Ajdir to Ras Zarruq was 192 nautical miles long, while the coast of Malta from Ras il-Wardiġa to Delimara Point was 24 nautical miles. The ratio of this difference was about 8:1, a difference so large that

³³*Ibid.*, paras. 61-64.

³⁴*Ibid.*, para. 64.

the Court viewed it as a relevant circumstance that should be reflected in the determination of the final delimitation line.³⁵ The second relevant circumstance was the general geographical context of the region. The Court observed that this delimitation was essentially a delimitation between part of the southern coast and part of the northern coast of the Central Mediterranean. In a broader geographical context, the Maltese Islands appear to be a relatively small feature of the northern coast of the region, which is located substantially further south than the general direction of the region's northern coast. A third relevant circumstance is the considerable distance between the two coasts, which is about 195 minutes latitude, which leaves room for significant adjustments.³⁶

Instead, the Court rejected several factors as irrelevant. The Court rejected Libya's argument that *landmass* should be taken into account, as land mass has never been used as the basis for the right to the continental shelf in international law. Similarly, the Court rejected Malta's argument that economic considerations such as the absence of energy resources and Malta's status as a developing country could affect the delimitation, as the applicable law did not allow for the economic development considerations of the parties in determining the boundaries of the continental shelf.³⁷ Based on consideration of the relevant circumstances, the Court ruled that the provisional median line needed to be adjusted northwards closer to the coast of Malta.

The Court first established the extreme limit of the northward shift using a hypothetical median line between Libya and Italy which had no effect whatsoever on Malta.³⁸ Based on the available information, the hypothetical Libya-Italy median line using the Italian base line in Sicily intersected with the meridian of 15°10' E at about latitude 34°36' N. Meanwhile, the median line of Libya-Malta (without Filfla) intersected with the same meridian at about latitude 34°12' N. The distance between the two intersections was about 24

³⁵*Ibid.*, para. 68.

³⁶*Ibid.*, para. 69.

³⁷*Ibid.*, paras. 49-50.

³⁸*Ibid.*, para. 72.

minutes of latitude, which is the extreme limit of the northward shift.³⁹ Having established these parameters, the Court concluded that a shift of about 18 minutes of latitude (about three-quarters of a minute of 24 minutes) would produce a fair result in all the circumstances. The final delimitation line is a line produced by shifting the median line (without Filfla) to the north for 18 minutes of latitude, so that it intersects with the meridian of 15°10' E at about latitude 34°30' N.⁴⁰

After establishing the delimitation line, the Court considered the proportionality test as a final verification. The Court recognized the practical difficulties in applying the formal proportionality test because: (a) the geographical scope of the judgment limited by the Italian claim made the calculation of the area unrepresentative; and (b) the determination of "relevant coastline" and "relevant area" contained considerable ambiguity that could result in very different ratios depending on the variation chosen.⁴¹

However, based on a *broad assessment*, the Court concluded that there was no real disproportionality in the area of the continental shelf attributed to each party. The requirement of the proportionality test as an aspect of equity was considered to be met. The Court emphasized that the purpose of delimitation was not to achieve a certain arithmetic ratio, but to produce a line that did not create an unjustifiable imbalance between the rights granted to each party.⁴²

C. CONCLUSION

Thus, the dispute over the delimitation of the continental shelf between Libya and Malta reflects the development of international law in determining the boundaries of maritime territory. The International Court of Justice rejected Italy's intervention because it was related to the interests of third countries that did not obtain the consent of the parties. In determining the boundaries of the continental shelf, the Court considered that geological and geophysical factors did not have a major role in an area of up to 200

³⁹*Ibid.*, para. 73.

⁴¹*Ibid.*, paras. 74-75.

⁴²*Ibid.*, paras. 76-78.

nautical miles. The equidistance method was also not seen as a provision that should be applied absolutely. The Court established a temporary median line and made adjustments taking into account the relevant circumstances, in particular the difference in the length of the coastlines of Libya and Malta. The adjustment aimed to result in a fair and proportionate division of territory. This ruling shows that the delimitation of the continental shelf needs to take into account the principles of justice, proportionality, and relevant geographical circumstances in accordance with international law.

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