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International Law and Negotiated and Adjudicated Maritime Boundaries: A Complex Relationship

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ABSTRACT: This article looks at the role negotiations and adjudication have been playing in settling maritime boundaries between neighbouring States and the role international law plays in both processes. As regards the former issue, the complementarity of the two modes of dispute settlement is highlighted. A review of the mode of submission of delimitation disputes to the judiciary points out that unilateral submissions have increased significantly over time. The article considers the implications of that trend. The availability of compulsory dispute settlement may provide States with an effective mechanism to break the deadlock in negotiations with neighbouring States. International law plays a significant role in negotiations and adjudication. The article demonstrates that the application of the law by the judiciary continues to be characterised by inconsistencies and departures from the avowed general approach to delimitation, notwithstanding assertions to the contrary. Assessing the impact of international law on negotiations is much more difficult to gauge. However, as the article sets out, States in negotiating maritime boundaries are operating in the context of a detailed set of legal rules. This implies that political bargaining takes place in a legal framework that puts limits on what States can credibly claim.

KEYWORDS: Adjudication, Negotiations, Maritime Boundaries, Unilateral Applications

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I. Introduction

Although negotiations remain the main avenue for settling disputes over maritime boundaries between neighbouring States, courts and tribunals have dealt with a considerable number of cases and have to a large extent shaped the applicable law.[1]

This article looks at the role negotiations and adjudication[2] have been playing in settling maritime boundaries between neighbouring States and the role international law plays in both processes. The former issue is discussed in section II. and first looks at the place of both modes of dispute settlement in this field of the law. Next, section II. looks at some of the reasons for States preferring either negotiations or adjudication and considers the nature of the complementarity of both modes. The role international law plays in both modes of dispute settlement is discussed in section III. While section III. A. sketches the impact of international law on negotiations in their broader setting, section III. B. primarily investigates the claim that the more recent case law on maritime boundaries is characterised by predictability. Section IV. contains conclusions. Due to constraints of space, the article in this connection of necessity does not provide a review of all negotiated and adjudicated boundaries, but instead focusses on a number of salient examples.

[1] At the time of writing of this article, 29 delimitation disputes had been submitted to courts and tribunals (see Table 1 at the end of this article). The focus of the present article will be on a comparison of negotiated and adjudicated settlements. While it is acknowledged that other modes of third-party involvement, such as mediation and conciliation, have also played a role in this respect, that role is much more limited than that of third-party compulsory settlement. While conciliation and mediation have the advantage that they, like direct negotiations, allow taking into account a broad range of considerations (see also *Elliot L. Richardson*, Jan Mayen in Perspective, American Journal of International Law (AJIL) 82 (1988), 443, 457–458), they do not allow national decision makers to sell the outcome of the case as easily as 'dictated by the law' as is the case of a judgment or award (see further below). This makes these modes of settlement less attractive on that count than third-party compulsory settlement (see also *David L. VanderZwaag*, The Gulf of Maine Boundary Dispute and Transboundary Management Challenges: Lessons to Be Learned, Ocean and Coastal Law Journal 15 (2) (2010), 241, 245). Finally, it should be noted that other modes of third-party settlement may play a role either prior to or following adjudication. A case in point is the Holy See mediating between Argentina and Chile following the *Beagle Channel* arbitration (see *e.g. Eduardo Jiménez de Aréchaga*, Argentina-Chile, in: Jonathan I. Charney/Lewis M. Alexander (eds.), International Maritime Boundaries, Vol. I (1991), 719, 720–721). The agreement between Croatia and Slovenia to submit their land and maritime dispute to arbitration was concluded with the facilitation of the European Union (see the Preamble of the Arbitration Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia, 4 November 2009, available at: http://www.assidmer.net/doc/Arbitration_Agreement_Croatia_Slovenia.pdf (accessed on 27 October 2015)).

[2] Any reference to adjudication in this article concerns both standing courts and arbitral tribunals.

II. The Role of Negotiations and the Judiciary in Settling Maritime Boundaries

A. Clauses Contained in Multilateral Conventions

It is axiomatic that direct negotiations are the most important means to manage inter-State relations, and maritime boundary delimitation is no exception. At the same time, the inclusion of a reference to third-party dispute settlement in the general rules for maritime delimitation has a long pedigree. During one of the first discussions of the International Law Commission (ILC) on its draft articles on the regime of the continental shelf, which would eventually result in the Convention on the Continental Shelf,[3] *Scelle* referred to the possibility that direct negotiations between the interested States would not result in a solution. This led him to suggest that:

> the Commission should state that, if two governments could not reach agreement as to the partition of the continental shelf, neither State was entitled to exploit it. They must either maintain the status quo or they would be under an obligation to refer the question to the International Court of Justice.[4]

Scelle's proposition led to the adoption of a draft article providing for arbitration where States could not agree on the delimitation of their continental shelf.[5] Subsequently, the scope of this provision was extended to the continental shelf regime as a whole.[6] The 1956 ILC draft articles that formed the basis of discussion at the 1958 United Nations Conference on the Law of the Sea provided for referral to the International Court of Justice (ICJ).[7] The Conference rejected the possibility of compulsory dispute settlement in relation to the regime of the continental shelf. This did not imply that the delimitation of the continental shelf was altogether beyond the reach of compulsory dispute settlement for prospective parties to the Convention on the Continental Shelf. The 1958 Conference itself adopted the Optional Protocol of

[3] Convention on the Continental Shelf, 29 April 1958, UNTS 499, 311.

[4] International Law Commission (ILC), Yearbook of the International Law Commission, Vol. I (1951), 288, para. 5; see also *ibid*,. 292, para. 65.

[5] See *ibid.*, 293–294, paras. 100–101.

[6] See *id.*, Yearbook of the International Law Commission, Vol. II (1953), 213 and 216–217.

[7] See *id.*, Yearbook of the International Law Commission, Vol. II (1956), 300.

Signature concerning the Compulsory Settlement of Disputes.[8] Other instruments, such as the Statute of the International Court of Justice (ICJ Statute)[9] with its optional clause jurisdiction, the Pact of Bogotá,[10] and bilateral treaties on dispute settlement, may also enable unilateral recourse to third-party settlement.

The possibility of judicial settlement of maritime boundaries where negotiations would fail to achieve an agreement was again considered at the Third United Nations Conference on the Law of the Sea (1973–1982). The drafting of a delimitation provision for the continental shelf and the exclusive economic zone was one of the controversial issues at the Conference. It was considered that the content of the substantive delimitation provision was closely related to the regime of compulsory dispute settlement and that they should be treated as one package.[11] The outcome of the negotiations as contained in Articles 74 and 83 United Nations Convention on the Law of the Sea (UNCLOS)[12] explicitly recognises that negotiations may not lead to an agreement. Common paragraph 2 provides that "[i]f no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV."[13]

[8] Optional Protocol of Signature concerning the Compulsory Settlement of Disputes, 29 April 1958, UNTS 450, 169.

[9] Statute of the International Court of Justice, 26 June 1945, UNCIO 15, 355 (ICJ Statute).

[10] American Treaty on Pacific Settlement, 30 April 1948, UNTS 30, 449 (Pact of Bogotá).

[11] See further *Alex G. Oude Elferink*, The Law of Maritime Boundary Delimitation: A Case Study of the Russian Federation (1994), 27–28.

[12] United Nations Convention on the Law of the Sea, 10 December 1982, UNTS 396, 1833 (UNCLOS).

[13] The general reference to Part XV not only concerns the compulsory mechanisms contained in section 2 (and the limitations and exceptions to that section contained in section 3), but also covers the general provisions of Part XV contained in its section 1. However, in view of the specific formulation of common paragraph 2, certain provisions of section 1 do not apply unabridged. This concerns among others the obligation to exchange views when a dispute arises that is provided for in Art. 283 (1) UNCLOS. As the Tribunal in *Barbados v. Trinidad* concluded: "Article 283(1) cannot reasonably be interpreted to require that, when several years of negotiations have already failed to resolve a dispute, the Parties should embark upon further and separate exchanges of views regarding its settlement by negotiation. The requirement of Article 283(1) for settlement by negotiation is, in relation to Articles 74 and 83, subsumed within the negotiations which those Articles require to have already taken place", *In the Matter of an Arbitration between Barbados and the Republic of Trinidad and Tobago* (Barbados, Republic of Trinidad and Tobago), Arbitral Award of 11 April 2006, Reports of International Arbitral Awards (RIAA) XXVII, 147, para. 202. The Tribunal also held that there was no obligation to exchange views on other peaceful means of settlement (*ibid.*, para. 202). The Tribunal reached a similar conclusion in respect of Art. 283 (2) UNCLOS (see *ibid.*, para. 205; see also *ibid.*, para. 206). For a recent and detailed discussion on the implications of Art. 283 UNCLOS see *The Matter of the Chagos Marine Protected Area Arbitration* (Republic of Mauritius, United Kingdom of Great Britain and Northern Ireland), Arbitral Award of 18 March 2015, paras. 351–386, available at: http://www.pca-cpa.org/MU-UK%20 20150318%20Awardd4b1.pdf?fil_id=2899 (accessed on 12 October 2015).

B. Incidence of Negotiations and Adjudication

Unilateral reference of a dispute concerning the delimitation of maritime boundaries to a court or tribunal is possible under Part XV UNCLOS, unless a State party has made use of the option to exclude such disputes from the reach of section 2 of Part XV UNCLOS.[14] Only 25 of the 167 parties to the UNCLOS currently have used this option.[15] However, the reach of these declarations is much broader than the 25 States concerned, as it also affects their neighbours. Interestingly, more than half (thirteen) of the declarations presently in force have been made subsequent to the State concerned becoming a party to the Convention.[16] Possibly, some of these subsequent declarations may have been triggered by the way in which courts and tribunals have been dealing with the interpretation and application of Articles 74 and 83 UNCLOS.[17]

[14] The question could be raised what issues exactly are covered by the exception included in Art. 298 (1)(a)(i) UNCLOS. This provision explicitly refers to "disputes concerning the interpretation or application of Articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles". This explicit reference to specific provisions of the UNCLOS and historic bays and titles indicates that other provisions of the Convention, such as those concerned with entitlement to maritime zones, were not intended to be covered by Art. 298 (1)(a)(i) UNCLOS (see also International Tribunal on the Law of the Sea (ITLOS), *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal* (Bangladesh/Myanmar), Judgment of 14 March 2012, para. 398, available at: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_16/C 16_Judgment_14_03_2012_rev.pdf (accessed on 12 October 2015)).

[15] This figure is based on the information contained on the relevant page of the website of the Treaty Section of the Office of Legal Affairs of the United Nations available at: https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&lang=en#18 (accessed on 27 July 2015). In addition, a limited number of States have indicated that they only accept a specific means of compulsory dispute settlement for these types of disputes (*ibid.*).

[16] *Ibid.* In addition, Ghana had made a declaration to this effect on 15 December 2009, but subsequently withdrew that declaration on 22 September 2014 (*ibid.*, footnote 18).

[17] Although at first sight it would seem to be difficult to imagine, another explanation might be that some States in becoming a party to the Convention did not consider the implications of sections 2 and 3 of Part XV UNCLOS in detail. For instance, upon ratifying the Convention China declared that it "will effect, through consultations, the delimitation of the boundary of the maritime jurisdiction with the States with coasts opposite or adjacent to China respectively on the basis of international law and in accordance with the principle of equitability" (*ibid.*). This declaration clearly expresses a preference for not resorting to section 2 of Part XV UNCLOS. However, China only subsequently made a declaration in which it explicitly relied on Art. 298 (1)(a)(i) UNCLOS (*ibid.*).

Since the entry into force of the UNCLOS in 1994, five maritime delimitation cases have been brought unilaterally under Part XV UNCLOS.[18] During this same period, nine cases were submitted jointly or unilaterally under other instruments. Thus, the new avenue for settling delimitation disputes created by the UNCLOS can be said to have contributed significantly to the use of compulsory dispute settlement.[19] Recourse to the option of unilateral submission of delimitation disputes under the UNCLOS reflects a broader trend. While until 1988 there had only been one – unsuccessful – attempt by Greece to settle its continental shelf boundaries with Turkey by unilateral recourse to the ICJ, since 1988 fourteen maritime delimitation cases have been started unilaterally.[20] By way of comparison, for the same periods the figures for joint submissions are ten and four respectively.[21] Whether this trend will continue will depend on whether or not States will close the possibilities of recourse to this avenue for their neighbours by for instance making a declaration under Article 298 (1)(a)(i) UNCLOS[22] or withdrawing or varying their optional clause declaration under Article 36 (2) ICJ Statute.[23]

Notwithstanding the continued use of compulsory dispute settlement mechanisms, negotiations remain the primary mode for dealing with the delimitation of

[18] See Table 1 at the end of to this article.

[19] A drawback of the UNCLOS in this respect as compared to these other instruments is that it does not allow the concurrent litigation of disputes concerning sovereignty over territory, while such other instruments may allow this, as the UNCLOS does not address issues concerning title to territory. Admittedly, different views exist over the question to what extent a court or tribunal could deal with all aspects of a mixed dispute that is submitted under the UNCLOS (for an overview see *e.g. Irina Buga*, Territorial Sovereignty Issues in Maritime Disputes: A Jurisdictional Dilemma for Law of the Sea Tribunals, International Journal of Marine and Coastal Law 27 (2012), 59). It would seem that a court or tribunal in any case would be excluded from dealing with matters concerning the sovereignty over territory to the extent this would imply a ruling on a claim that does not arise directly under the UNCLOS (see also ITLOS, *Dispute Concerning the MOX Plant, International Movements of Radioactive Materials, and the Protection of the Marine Environment of the Irish Sea* (Ireland *v.* United Kingdom), Order No. 3 of 24 June 2003, para. 19, available at: http://www.pca-cpa.org/MOX%20Order%20no3a614.pdf?fil_id=81 (accessed on 15 October 2015)).

[20] A further impact of the possibility that a State may unilaterally submit a dispute to a court or tribunal is that it may induce States to seek to agree to joint submission (for an example see *Alex G. Oude Elferink*, The Delimitation of the Continental Shelf between Denmark, Germany and the Netherlands: Arguing Law, Practicing Politics? (2013), 175).

[21] See Table 1 at the end of this article.

[22] On this point see *supra*, text at notes 14 *et seq.* and *infra*, note 123.

[23] For a further discussion of some of the implications of the unilateral submission of a dispute to a court or tribunal see *infra*, text at notes 41 *et seq.*

maritime boundaries between neighbouring States. A review of the period 2003–2011 identified 36 agreements related to the delimitation of maritime zones.[24] By way of comparison, in the same period seven cases were submitted to compulsory dispute settlement procedures. Still, a comparison with earlier figures suggests an increased role for third-party settlement. A study from 1990 lists 154 maritime boundaries that had been settled between 1925 and 1990.[25] Ten boundaries, or some 6.5% of this total, had been settled by adjudication. For the period 2003–2011 the share of adjudicated boundaries in the total is 16.3%.[26]

C. Perceived Advantages of Negotiations

Negotiations have been viewed as the preferred option for reaching agreement on maritime boundaries. For instance, *Anderson* lists the following advantages of a negotiated settlement: control of the parties over the outcome as regards the course of the boundary, its definition, and the presentation of the results to the public.[27] In addition, negotiations allow the parties to put together 'packages'.[28] On the other hand, "litigation always carries risks for the parties, and the range of legal findings available to a court or tribunal is more restricted than the options open to negotia-

[24] Based on a review of Law of the Sea Bulletins Nos. 53–80 and David A. Colson/Robert W. Smith (eds.), International Maritime Boundaries, Vols. V and VI (2005 and 2011). Due to the fact that some delimitation agreements are not in the public domain immediately after their conclusion, it should not be ruled out that the actual figure is higher than 36. The 36 agreements concerned also include two agreements on a joint zone and a number of agreements determining tripoints or transforming a continental shelf boundary into a single maritime boundary.

[25] Robert W. Smith (ed.), Maritime Boundaries of the World (Limits in the Seas No. 108) (1990), 3 and 5, available at: http://www.state.gov/documents/organization/58379.pdf (accessed on 27 October 2015).

[26] Based on the number of cases that were submitted to a court or tribunal in this period (see Table 1 at the end of this article).

[27] *David H. Anderson*, Negotiating Maritime Boundaries: A Personal View, in: Rainer Lagoni/Daniel Vignes (eds.), Maritime Delimitation (2006), 121, 122–123; *id.*, Maritime Dispute Settlement and the Practitioner, Ocean Yearbook 24 (2010), 51, 65; see also *David R. Robinson*, The Convergence of Law and Diplomacy in United States-Canada Relations: The Precedent of the Gulf of Maine Case, Canada United States Law Journal 26 (2000), 37, 40.

[28] *Anderson*, Negotiating (note 27), 122–123. For a further discussion of this point see also *Thomas Cottier*, Equitable Principles of Maritime Boundary Delimitation: The Quest for Distributive Justice in International Law (2015), 266–270.

tors."[29] *Burmester,* in discussing the Torres Strait Treaty[30] between Australia and Papua New Guinea stresses the multidimensional nature of this boundary situation. The treaty was designed to offer separate solutions regarding: "(1) the people, (2) maritime jurisdiction, (3) the islands, (4) fisheries resources, and (5) navigation".[31] A solution to such a complex problem is "more likely to result from agreement between the parties concerned than from judicial or arbitral decisions".[32] Interestingly, *Burmester* then adds that negotiations oftentimes also fall short of an optimum outcome:

> Too often, maritime delimitation disputes are seen simply as a process of drawing a single line on a map. Through failure to have proper regard to all the surrounding circumstances, negotiations often become protracted and fruitless and no durable solution results.[33]

A similar point is made by *VanderZwaag* in his discussion of the maritime boundary in the Gulf of Maine between Canada and the United States. While he first submits that "a negotiated settlement of an ocean boundary dispute is generally preferable to international litigation for cost, creativity, and control reasons",[34] his subsequent analysis indicates that direct negotiations have failed to achieve wholly effective transboundary cooperation:

> Nearly twenty five years after the ICJ Chamber drew a line across Georges Bank, Canada and the United States have yet to develop comprehensive transboundary management arrangements for the Georges Bank and Gulf of Maine region, and a fragmented array of cooperative arrangements, mostly informal, have evolved.[35]

Although an in-depth analysis of the transboundary management regimes set up in connection with negotiated maritime boundaries is beyond the scope of this article, a cursory review of existing boundary agreements indicates that they seldomly set up a comprehensive transboundary management regime. A number of factors may explain

[29] *Anderson,* Negotiating (note 27), 123.

[30] Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the Area between the Two Countries, including the Area Known as Torres Strait, and Related Matters, 18 December 1978, available at: http://www.austlii.edu.au/au/other/dfat/treaties/1985/4.html (accessed on 26 October 2015).

[31] *Henry Burmester,* The Torres Strait Treaty: Ocean Boundary Delimitation by Agreement, AJIL 76 (1982), 321, 322–323.

[32] *Ibid.*, 322.

[33] *Ibid.*

[34] *VanderZwaag* (note 1), 244.

[35] *Ibid.*, 256 (footnote omitted).

this state of affairs. The conclusion of an agreement on a maritime boundary may be the consequence of an interest in the development or management of particular resources, *i.e.* hydrocarbons in the case of the continental shelf and fish stocks in the case of the exclusive economic zone. The relative paucity of activities in ocean space as compared to the land militates against investing too much in the development of mechanisms for dealing comprehensively with transboundary cooperation. In addition, maritime boundary agreements exist in the broader framework of international law, which contains significant obligations on transboundary cooperation,[36] thus obviating the need for dealing with those obligations in the context of a delimitation agreement. Finally, the often complex and protracted nature of boundary negotiations would seem to militate against including a further layer of complexity consisting of a comprehensive management regime that in many cases may not be urgently needed to start with. To conclude, although direct negotiations are better-suited for dealing with a maritime boundary relationship comprehensively, the difference to third-party procedures should not be overstated. In both cases, the focus in general will be on arriving at the establishment of a boundary, and in both cases the resolution of the boundary dispute will enable the parties to work out further arrangements in relation to transboundary cooperation subsequently.

D. The Complementarity of Negotiations and Adjudication

Negotiations and adjudication are alternatives, but they can also be seen as being complementary. Different points have been highlighted in relation to the latter point. *Anderson* observes that the mention of the possibility of litigation during negotiations "may help to concentrate minds on the need to seek agreement across the table".[37] Third-party settlement obviously offers a way out where negotiators are not able to reach an agreement. In this connection, the last-resort nature of such recourse to a third party is regularly emphasised. For instance, *Robinson* argues that in the case of the United States and Canada, due to the dislike of national constituencies to involve an unpredictable third party, such recourse will not be an option

[36] See *e.g.* Arts. 63–67, 194 (2), and 204–206 UNCLOS.

[37] *Anderson,* Negotiating (note 27), 132; see also *Jonathan I. Charney,* The Implications of Expanding International Dispute Settlement Systems: The 1982 Convention on the Law of the Sea, AJIL 90 (1996), 69, 71.

> unless and until either the management of the problem becomes so fraught with difficulty and peril or the chance of reaching an acceptable negotiated settlement becomes so minimal and elusive, that resort to third party dispute resolution is literally the only option left [...].[38]

Going to court offers national decision makers a way out of negotiations that are in a deadlock, as they can "dodge blame for not winning an entire claim while attaining the compromise needed to terminate the conflict".[39]

The interaction between negotiations and third-party settlement is formulated more positively by *Spain* in discussing the dispute between Eritrea and Yemen over sovereignty over certain islands and their maritime boundary in the Red Sea:

> The use of multiple forms of [international dispute resolution] in a sequential process ultimately led to a resolution of the dispute with Eritrea acknowledging that this outcome would "pave the way for a harmonious relationship between the littoral States of the Red Sea" and Yemen noting that the [arbitral] award was the "culmination of a great diplomatic effort".[40]

Notwithstanding these differences in tenor, there is no disagreement as regards the basic notion that the different modes of disputes settlement are complementary.[41]

A major, perhaps even the most important, difference between negotiated and adjudicated settlements may be that cases with a complex legal setting will more often end up in court. As much is suggested by the above discussion. One measure to determine this complexity is what method of delimitation has been used to determine the boundary. Already in the *North Sea Continental Shelf Cases*, in which the ICJ found that equidistance did not constitute an obligatory method for the parties, the Court

[38] *Robinson* (note 27), 40 (footnote omitted); see also *VanderZwaag* (note 1), 244; *Charles R. Majinge*, Emergence of New States in Africa and Territorial Dispute Resolution: The Role of the International Court of Justice, Melbourne Journal of International Law 13 (2012), 462, 492; *Beth A. Simmons*, Capacity, Commitment, and Compliance: International Institutions and Territorial Disputes, Journal of Conflict Resolution 26 (2002), 829, 831, 835, and 838.

[39] *Lawrence J. Prelli/Mimi Larsen-Becker*, Learning from the Limits of an Adjudicatory Strategy for Resolving United States-Canada Fisheries Conflicts: Lessons from the Gulf of Maine, Natural Resources Journal 41 (2001), 445, 453. Similar considerations led Denmark, the Federal Republic of Germany, and the Netherlands to submit their delimitation disputes in the North Sea to the ICJ in the 1960s (see further *Oude Elferink* (note 20), 162–175).

[40] *Anna Spain*, Examining the International Judicial Function: International Courts as Dispute Resolvers, Loyola of Los Angeles International and Comparative Law Review 34 (5) (2011), 5, 26 (footnotes omitted).

[41] See *e.g. ibid.*, 25; *Robinson* (note 27), 40.

emphasised the advantages of the equidistance method in geographically – and hence legally – straightforward situations.[42] This same distinction has been observed by *Legault* and *Hankey* in a statistical analysis of negotiated boundaries.[43] 89% of the boundaries between opposite coasts included in their sample are based on the equidistance method. On the other hand, only 40% of the cases in their sample involving adjacent coasts employ the equidistance method. In the latter case this figure was split evenly between strict equidistance and modified equidistance.[44] Interestingly, the figures for adjudicated boundaries indicate a larger reliance on the equidistance method than is the case for negotiated boundaries involving adjacent coasts. Eleven out of twenty adjudicated boundaries, or 55%, delimiting the continental shelf and/or the exclusive economic zone are based on the equidistance method.[45] This might suggest that the legal complexity of delimitation is not the only factor explaining why States resort to adjudication. However, before turning to other explanations, the figure of 55% requires some qualification. Only three out of these eleven cases – 15% of the total number of adjudicated cases – concern strict equidistance for (almost) the entire boundary.[46] In addition, modified equidistance lines at times may have little relationship to the strict equidistance line. In these cases, use of the term modified equidistance line suggests the absence of a complex legal and geographical situation, while the opposite may be true.[47]

Resort to adjudication may also be explained by a number of factors other than the complexity of the maritime boundary delimitation. Fifteen out of the 29 cases sub-

[42] ICJ, *North Sea Continental Shelf Cases* (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment of 20 February 1969, ICJ Reports 1969, 3, para. 57.

[43] A recent review in this respect is contained in *Cottier* (note 28), 242–250. However, *Cottier* focusses on the period between 1942 and 1992 (*ibid.*, 242), which is basically the period covered by *Legault* and *Hankey*. Unsurprisingly, *Cottier* concludes that his findings are "roughly appropriate" when compared to the study of *Legault* and *Hankey* (*ibid.*, 249).

[44] *Leonard H. Legault/Blair Hankey*, Method, Oppositeness and Adjacency, and Proportionality in Maritime Boundary Delimitation, in: Charney/Alexander (eds.) (note 1), 203, 215–216.

[45] This concerns entries A. 8, A. 12, A. 13, B. 2, B. 3, B. 6, B. 7, B. 8, B. 9, B. 10, and B. 11 in Table 1 at the end of this article. In making this count, only boundaries that were established *de novo* by a court or tribunal have been taken into account.

[46] This concerns entries B. 3, B. 7, and B. 8 in Table 1 at the end of this article.

[47] In the overview of adjudicated boundaries reference can be made to entries A. 8, B. 2, B. 9, B. 10, and B. 11 in Table 1 at the end of this article. For a further discussion of the equidistance line established by the ICJ in *Peru v. Chile* see also *infra*, text at notes 95 *et seq.*

mitted to compulsory third-party settlement also include issues other than the delimitation of a maritime boundary.[48] This concerns such issues as the location of the land boundary, sovereignty disputes over islands, and disputes over whether or not there already exists an agreement establishing a maritime boundary. Such issues may (further) complicate negotiations over a maritime boundary and submitting them as a package to a court or tribunal has definite advantages. For one thing it avoids that States will have to return to the negotiating table after one of the parties has lost a case in court, which may limit its willingness and scope to compromise in further negotiations. In addition, these issues lend themselves well to third-party settlement as is illustrated by the large number of adjudications dealing with territorial disputes. Another explanation for the resort to adjudication may be that decision makers consider that they run political risks if they abandon entrenched negotiating positions and expose themselves to being accused of 'selling the national interest'. This may even be the case where the delimitation itself might seem straightforward. For instance, the equidistance line an arbitral tribunal applied to delimit the exclusive economic zone and continental shelf up to the 200-nautical-mile (nm) limit between Guyana and Suriname by most neutral observers likely would be considered to represent an equitable outcome.[49] However, the parties for more than 40 years had both claimed a delimitation line that diverged significantly from the equidistance line. In addition, they had a complex dispute over the location of the terminus of their land boundary. The deadlock in the negotiations apparently could only be resolved through recourse to an arbitral tribunal. Finally, as is discussed further in the next section, the possibility of unilateral resort to third-party settlement may constitute an option of last resort for a State where its neighbours are unwilling to engage in meaningful negotiations.

E. Disagreement about Submission to Adjudication

Parties to a dispute may differ over the appropriate mode of dispute settlement. As a number of recent law of the sea cases illustrate, the possibility of unilateral submis-

[48] This concerns entries A. 5, A. 6, A. 9, A. 10, A. 12, A. 13, A. 14, B. 3, B. 4, B. 5, B. 8, B. 9, B. 11, B. 12, and B. 13 in Table 1 at the end of this article.

[49] For instance, *Gao* concludes that "[a]s far as using a strict equidistant line to delimit the single maritime boundary beyond the 12-nm limit is concerned, the decision of the Tribunal is unquestionable", *Jianjun Gao*, Comments on Guyana *v.* Suriname, Chinese Journal of International Law 8 (2009), 191, 197.

sion of a specific dispute to a third party on the basis of a general dispute settlement clause in a multilateral treaty may not be welcomed by the other party involved in the dispute.[50]

A number of authors have observed that compliance with a judicial decision may be less likely in the case of unilateral submission of a dispute to a court or tribunal.[51] *Gent* offers the following explanation for this state of affairs:

> When disputants opt for arbitration or adjudication, they must forgo [...] other options [of dispute settlement]. Since States with greater bargaining power are able to guarantee themselves favorable outcomes outside of court, they will be reluctant to submit their claims to arbitration or adjudication unless they can expect a similarly favorable outcome.[52]

Simmons in analysing territorial disputes has established a correlation between the specificity of the commitment to have recourse to a court or tribunal and the likelihood of compliance:

> [G]eneral multilateral treaties were inversely associated with achieving a ruling. This suggests that general commitments (which are binding "in principle") may be of limited use for solving specific problems. General commitments made to a large number of states on a range of issues simply do not function in the same way as a specific commitment designed to overcome a domestic hurdle on a particular issue.
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> [...]

[50] This concerns the arbitrations initiated by the Netherlands and the Philippines against the Russian Federation and China respectively under Annex VII UNCLOS and the case before the ICJ started by Nicaragua against Colombia in 2001. In the former two cases the respondent is not participating in the proceedings and in the latter case Colombia first raised issues of jurisdiction and admissibility, while after the Court's 2012 judgment on the merits, Colombia's President *Santos* declared that the Court in determining the maritime boundary between the two States made serious mistakes. As a consequence, *Santos* emphatically rejected that aspect of the Court's judgment (see Alocución del Presidente *Juan Manuel Santos* sobre el fallo de la Corte Internacional de Justicia, available at: http://wsp.presidencia.gov.co/Prensa/2012/Noviembre/Paginas/20121119_02.aspx (accessed on 15 October 2015); for an English translation of this text see ICJ, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea* (Nicaragua *v.* Colombia), Application Instituting Proceedings of 26 November 2013, Annex 1, available at: http://www.icj-cij.org/docket/files/155/17978.pdf (accessed on 15 October 2015)).

[51] See *Aloysius P. Llamzon*, Jurisdiction and Compliance in Recent Decisions of the International Court of Justice, European Journal of International Law (EJIL) 18 (2008), 815, 818–820; *Simmons* (note 38), 841–842; see also *Stephen E. Gent*, The Politics of International Arbitration and Adjudication, Penn State Journal of Law & International Affairs 2 (2013), 66, 76. The arguments set out in this paragraph apply similarly to cases in which a party does not participate in the proceedings. Non-compliance with a judgment is likely to follow on non-participation in the proceedings.

[52] *Gent* (note 51), 76.

> [B]ilateral and especially ad hoc agreements to arbitrate showed a strong positive correlation with actually reaching a ruling. The more specific the commitment, the more likely it is to be carried out.[53]

It seems likely that there also is a correlation between these two explanations. As I remarked elsewhere in respect of the multilateral dispute settlement framework created by the UNCLOS:

> Acceptance of compulsory dispute settlement as part of the [UNCLOS] was a price certain States had to pay to arrive at a generally acceptable compromise. This did not mean that those States renounced their opposition to compulsory dispute settlement. Even though the [UNCLOS] allows for significant exceptions to compulsory dispute settlement, the two recent arbitrations involving non-appearance indicate that this does not preclude that cases may be brought that touch on fundamental interests of States. In both these cases, the power disparity between the claimant and respondent is also obvious.[54]

None of the cases on maritime boundary delimitation that have been brought under the UNCLOS thus far has led to a refusal of a respondent State to participate in the proceedings,[55] and there do not seem to have been any cases of non-compliance with a judgment or award under the UNCLOS determining a maritime boundary.[56] The existence of the option to exclude delimitation disputes from compulsory dispute settlement under the UNCLOS should guarantee that States which oppose this means for settling their maritime boundaries will not be faced with a unilateral application of a neighbouring State.[57]

Where the respondent State refuses to comply with a decision of a court or tribunal, third-party settlement, instead of finally disposing of the dispute, adds a further layer

[53] *Simmons* (note 38), 841–842. On the former point see also *Donald R. Rothwell/Alex G. Oude Elferink/Tim Stephens/Karen N. Scott*, Charting the Future for the Law of the Sea, in: *id.* (eds.), The Oxford Handbook of the Law of the Sea (2015), 888, 911.

[54] *Rothwell/Oude Elferink/Stephens/Scott* (note 53), 911 and 888, footnote 1.

[55] It should however be acknowledged that the statement of claim of the Philippines in the arbitration it initiated against China, and in which China is not participating, implicitly seems to be asking the arbitral tribunal to pronounce itself on the delimitation of the continental shelf. China has excluded disputes concerning maritime boundaries from compulsory dispute settlement under the UNCLOS (see *supra*, note 17). Moreover, in a number of cases the respondent State raised preliminary objections. In no case brought under the UNCLOS did this result in a finding that there was no jurisdiction to deal with the dispute concerned.

[56] But see the discussion of *Nicaragua v. Colombia*, *supra*, note 50. In this case the jurisdiction of the Court was founded on Art. XXXI Pact of Bogotá.

[57] But see *supra*, note 17.

of complexity. At first sight, it would seem to be difficult to talk about the complementarity of the different modes of dispute settlement in these instances. However, viewed from the perspective of the applicant, complementarity does exist, as the option of recourse to third-party dispute settlement makes it possible to use that option where it is for instance felt that the other party is unwilling to engage in meaningful discussions. A judgment or award upholding (part of) the claim of the applicant in such a case is bound to change the legal and diplomatic setting of the dispute.

Apart from changing the bilateral legal and political landscape, a judgment or award may also have consequences for the boundaries of a party to the case with third parties, notwithstanding the fact that the judgment or award is not binding on third parties. For instance, the decision of the Arbitral Tribunal in *Barbados v. Trinidad and Tobago* implies that part of the maritime boundary that was agreed upon between Trinidad and Tobago and Venezuela now abuts on areas that have been recognised as Barbadian by the award. It will be on Barbados and Venezuela to agree on the consequences of the award for their boundary relations.[58] The judgment of the ICJ in *Nicaragua v. Colombia* seems to have led to Costa Rica's decision of definitively not proceeding with the ratification of a delimitation treaty it had concluded with Colombia in 1977.[59] This 'knock-on' effect of judicial decisions may provide a mechanism to a State that is confronted by a bilateral delimitation between neighbouring States that it considers to be encroaching on its maritime zones.

A judicial decision may also impact on the regional boundary landscape in another way, namely in effecting a delimitation between the parties to a case. A court or tribunal may effect a delimitation that takes into account the regional setting of the

[58] In addition to these States, Guyana probably claims this area as a part of its continental shelf beyond 200 nm (see Republic of Guyana, A Submission of Data and Information on the Outer Limits of the Continental Shelf of the Co-Operative Republic of Guyana pursuant to Part VI of and Annex II to the United Nations Convention on the Law of the Sea: Executive Summary, available at: http://www.un.org/Depts/los/clcs_new/submissions_files/guy57_11/GUY_Executive%20Summary.pdf (accessed on 15 October 2015)). A further complication of this case is the existence of a dispute between Guyana and Venezuela concerning the territory of Guyana to the west of the Essequibo River.

[59] ICJ, *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean* (Costa Rica *v.* Nicaragua), Application Instituting Proceedings of 25 February 2014, para. 10, available at: http://www.icj-cij.org/docket/files/157/18344.pdf (accessed on 15 October 2015). As a result of the 2012 judgment of the Court in *Nicaragua v. Colombia* the maritime boundary between Costa Rica and Colombia defined in their 1977 treaty became located on Nicaragua's side of the Court's maritime boundary between Colombia and Nicaragua (see ICJ, *Territorial and Maritime Dispute* (Nicaragua *v.* Colombia), Judgment of 19 November 2012, ICJ Reports 2012, 624, 714, Sketch-map No. 11).

bilateral boundary. Pronouncing on this regional setting necessarily involves making a judgment call on the relevance of the coastal geography of one or more neighbouring States that are not a party to the case. Although a decision obviously does not affect the rights of those States in a legal sense, it undoubtedly will have an impact on their negotiating position.[60]

III. The Role of International Law in Negotiations and Adjudication

A. Negotiations and International Law

Unlike courts and tribunals, States in concluding a bilateral agreement are not bound to apply the substantive rules applicable to the delimitation of maritime boundaries.[61] However, this does not mean that international law has no role to play in bilateral negotiations.[62] First of all, international law imposes procedural obligations on States involved in delimitation negotiations.[63] As the ICJ observed in the *North Sea Continental Shelf Cases* "[the parties] are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it".[64] At face value this pronouncement would seem to imply that a party might be

[60] For a detailed discussion of this issue see *Alex G. Oude Elferink*, Third States in Maritime Delimitation Cases: Too Big a Role, Too Small a Role or Both?, in: Aldo Chircop/Ted L. McDorman/Susan J. Rolston (eds.), The Future of Ocean Regime-Building: Essays in Tribute to Douglas M. Johnston (2009), 611, 633–638.

[61] As the ICJ observed in *Libya/Malta* "although there may be no legal limit to the considerations which States may take account of, this can hardly be true for a court applying equitable procedures", ICJ, *Case concerning the Continental Shelf* (Libyan Arab Jamahiriya *v.* Malta), Judgment of 3 June 1985, ICJ Reports 1985, 13, para. 48.

[62] It is uncontroversial that States cannot unilaterally impose a maritime boundary on a neighbouring State (see *e.g.* ICJ, *Case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Canada *v.* United States of America), Judgment of 12 October 1984, ICJ Reports 1984, 246, para. 112). This is also implicated in the relevant provisions of the Convention on the Territorial Sea and the Contiguous Zone, 29 April 1958, UNTS 516, 205 (Art. 12), the Convention on the Continental Shelf (Art. 6), and the UNCLOS (Arts. 15, 74, and 83). The UNCLOS in addition specifies the duty to resort to the dispute settlement mechanisms of Part XV UNCLOS where no agreement can be reached (see also *Cottier* (note 28), 357–358).

[63] For a detailed discussion see *e.g. Cottier* (note 28), 660–690.

[64] ICJ, *North Sea Continental Shelf Cases* (note 42), para. 85 (a).

required to modify a position based on the law if the other party were to insist on a boundary that is at odds with the substantive rules of delimitation law. However, it is submitted that this observation of the Court has to be read in the context of the circumstances of these specific cases.[65] In other delimitation cases, the Court has limited itself to the more general observation that the parties to delimitation negotiations are required to negotiate in good faith.[66]

In negotiations, international law is seen both as providing States with arguments to justify their negotiating positions and to assess the position of the other party involved.[67] As *Oxman* points out, strong and weak States alike

> have an interest in credibility. Unless a state is prepared to expend unrelated resources [...] to obtain a favourable maritime boundary, its proposal must be grounded in more than unrestrained self-interest. The search for a platform of principle will entail, at least in part, a search for a proposal that has a plausible legal and equitable foundation.[68]

Grounding one's position in terms of international law does not mean that the other party will necessarily accept it. This may in part be explained by the indeterminacy of the law. Law in general will allow arguing for different outcomes and the law applicable to the delimitation of maritime boundaries is no exception. Perhaps more importantly, as is also suggested by *Oxman's* observation quoted above, international law is only one of the factors that impact on the outcome of negotiations. In a recent case study on the delimitation of the continental shelf between Denmark, Germany, and the Netherlands I looked in detail at the question of what role international law

[65] See further *Oude Elferink* (note 20), 327–328.

[66] See *e.g.* ICJ, *Gulf of Maine* (note 62), para. 87; *id.*, *Land and Maritime Boundary between Cameroon and Nigeria* (Cameroon *v.* Nigeria: Equatorial Guinea intervening), Judgment of 10 October 2002, ICJ Reports 2002, 303, para. 244.

[67] See *Anderson*, Negotiating (note 27), 123; *Bernard H. Oxman*, Political, Strategic, and Historical Considerations, in: Charney/Alexander (eds.) (note 1), 3, 15; *Prosper Weil*, The Law of Maritime Delimitation: Reflections (1989), 111; *Oude Elferink* (note 11), 371; see also *Iain Scobbie*, Tom Franck's Fairness, EJIL 13 (2002), 909, 924; *Davor Vidas*, Consolidation or Deviation? On Trends and Challenges in the Settlement of Maritime Delimitation Disputes by International Courts and Tribunals, in: Nerina Boschiero/Tullio Scovazzi/Cesare Pitea/Chiara Ragni (eds.), International Courts and the Development of International Law (2013), 325, 325.

[68] *Oxman* (note 67), 15; see also *Keith Highet*, The Use of Geophysical Factors in the Delimitation of Maritime Boundaries, in: Charney/Alexander (eds.) (note 1), 163, 165; *Oude Elferink* (note 11), 370–372; *Weil* (note 67), 120.

played in the negotiations between the three States.[69] During the negotiations, which started five years before the ICJ's 1969 judgment in the *North Sea Continental Shelf Cases* and lasted until 1971, hovering in the background was the spectre of Nazi Germany's occupation of Denmark and the Netherlands during World War II. Germany was not willing to push its legal case while risking burdening its bilateral relations by pursuing an 'aggressive' claim. At the end of the negotiations following the Court's judgment – the Court had not been requested to establish a boundary, but only to identify the applicable law – the German Foreign Office concluded that the outcome was "a compromise that was still bearable"[70] and submitted that a better result for Germany would only have been possible if it would have been willing to face a political confrontation with Denmark and the Netherlands.[71] At the same time, the fact that Denmark and the Netherlands took great care to couch their proposals in terms of conformity with international law underlines the law's relevance.[72]

A more recent example of the complexity of the interaction between law and politics in maritime boundary making is provided by the 2010 Murmansk Treaty concluded by Norway and the Russian Federation.[73] The Treaty put an end to 40 years of negotiations and, apart from determining a boundary, also set up a regime for cooperation in relation to fisheries and transboundary hydrocarbons. In the negotiations the parties held widely diverging positions on what should be their maritime boundary. Norway maintained that an equidistance line constituted an appropriate boundary, but the Russian Federation, and the Soviet Union before it, took the position that a so-called sector line had to be applied.[74] This led to an area of overlapping claims

[69] *Oude Elferink* (note 20).

[70] Annex to the proposal of the Foreign Office to the Cabinet dated 17 April 1970 (*Bundesarchiv* Koblenz, Minstry for the Economy folder B102/260036), 3. Translation by the author. The original text reads *"ein noch tragbarer Kompromiß"*.

[71] *Ibid.*

[72] See *Oude Elferink* (note 20), 342–448 *passim;* see also *ibid.*, 476–480.

[73] Treaty between Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean, 15 September 2010, Law of the Sea Bulletin 77 (2012), 24.

[74] Sector lines follow meridians and meet at the North Pole, dividing the Arctic Ocean in sectors. Sector lines have been used by the Soviet Union and the Russian Federation in connection with claims to territory and the definition of the limits of maritime zones. For a recent discussion see *Alex G. Oude Elferink*, Does Recent Practice of the Russian Federation Point to an Arctic Sunset for the Sector Principle?, in: Suzanne Lalonde/Ted L. McDorman (eds.), The Arctic Ocean: Essays in Honour of Donat Pharand (2015), 269.

of approximately 175,200 km².[75] The Murmansk Treaty divides the area of overlapping claims in two equal parts of approximately 87,600 km².[76]

Moe, Fjærtoft, and *Øverland* have in particular focussed on the timing of the conclusion of the Murmansk Treaty. They submit that Norway was ready to accept a compromise on the boundary for a long time. Consequently, an explanation as to why an agreement was reached in 2010 primarily has to be sought on the part of the Russian Federation.[77] *Moe, Fjærtoft,* and *Øverland* identify a number of explanatory factors, but they conclude that "[t]here are, however, several indications that a desire to reaffirm [the UNCLOS] as the pre-eminent framework for Arctic governance may have been a particularly important motivation for the Russian government."[78]

Henriksen and *Ulfstein* have, based on the limited information available, assessed to which extent the boundary established by the Murmansk Treaty may have been affected by international law.[79] They conclude amongst other things that:

> Use of the less descriptive wording "relevant factors" [included in a Joint Statement of April 2010] rather than the established concepts of "relevant or special circumstances" could suggest that the delimitation process has been different from that used in recent third party adjudications. In addition to international law, the two parties "have taken into account the progress achieved in the course of long-standing negotiations between the parties." This formulation also suggests that non-legal factors may have been relevant and accorded weight in establishing the final delimitation line.[80]

Reaching more specific conclusions about the role of international law in arriving at the boundary contained in the Murmansk Treaty would require access to the records related to the negotiations. This should also allow assessing the role political

[75] This figure is mentioned in *Rolf E. Fife,* Le Traité du 15 Septembre 2010 entre la Norvège et la Russie relatif à la délimitation et à la coopération maritime en Mer de Barents et dans l'Océan Arctique, Annuaire Français de Droit International 56 (2010), 399, 402.

[76] *Ibid.*, 407.

[77] *Arild Moe/Daniel Fjærtoft/Indra Øverland,* Space and Timing: Why Was the Barents Sea Delimitation Dispute Resolved in 2010?, Polar Geography 34 (3) (2011), 145, 158.

[78] *Ibid.*

[79] *Tore Henriksen/Geir Ulfstein,* Maritime Delimitation in the Arctic: The Barents Sea Treaty, Ocean Developments and International Law 42 (2011) 1, 4.

[80] *Ibid.*, 6.

considerations and economic factors played in the negotiations. It is clear from information in the public domain that the parties took care to argue their claims in the terms of international law and also took care to legitimise the outcome with reference to the law.[81] The Russian Federation probably would have had more difficulty in credibly maintaining the position that the boundary had to be a sector line if a deviation from the equidistance line could not have been justified by reference to the applicable law – in particular, the configurations of the mainland coasts and the difference in length of the relevant coasts. Norway probably was faced to a much lesser extent with the issue how to ground its position in the law because of the central role of equidistance in the delimitation process, although this was less the case in the first decades of the negotiations, the start of which more or less coincided with the 1969 judgment of the ICJ in the *North Sea Continental Shelf Cases.*

B. The Case Law and International Law

In deciding cases, courts and tribunals are bound to apply the law – unless the parties to a dispute would instruct them to do otherwise. In the case of maritime delimitation disputes the application of the law to the individual case has posed particular challenges and there is a general perception that the law has been given its specific content by the judiciary. This is largely explained by the fact that States in negotiating multilateral conventions on the law of the sea were not able to agree upon detailed rules concerning the delimitation of maritime boundaries. The two Geneva Conventions refer to the equidistance/median line and allow for another boundary if this is justified or necessary because of special circumstances.[82] The two Conventions neither define special circumstances nor do they indicate what kind of impact they should have on the equidistance/median line. For the territorial sea the UNCLOS repeats the Convention on the Territorial Sea and the Contiguous Zone, but for the continental shelf and exclusive economic zone it fails to provide substantive rules.

The development of the law by the judiciary has been a far from linear process. The key issue in this respect has been the role of the equidistance method in the delimitation process. While the ICJ in the *North Sea Continental Shelf Cases,* the first continental shelf delimitation cases decided in 1969, rejected any particular role for equidistance, starting in the 1980s the judiciary has gradually come around to the view that equidistance in principle always should be the starting point of the delimitation process.[83] This trend towards greater predictability generally has been welcomed by legal scholarship. Already in 1989 *Weil* concluded:

> It is sometimes said that despite all the talk of law there is really nothing the judge cannot do. There is no doubt that certain trends in the case-law have invited this criticism. But the courts [...] have made a good deal of progress and more is within reach.[84]

In a similar vein, *Anderson* argues that from the 1970s to the early 1990s the law was controversial, but nowadays is much more settled.[85] On the other hand, *Scobbie,* writing in 2002, still argued that the indeterminacy of the law applicable to the delimitation of maritime boundaries made it difficult for States to ascertain what the outcome of a legal determination of their boundary would be.[86]

So, how determinate is the law of maritime delimitation really since the ICJ and arbitral tribunals consistently turned to the equidistance method as a provisional starting point in the early 2000s? There are quite a number of indications that the current standard delimitation methodology is not consistently applied and that delimitation to a large extent continues to be dominated by a case-by-case approach. First of all, although as a first step the equidistance line is in principle selected as the provisional delimitation line, courts and tribunals have taken great leeway in selecting

[81] See further *Oude Elferink* (note 74), 285–289.

[82] Art. 12 Convention on the Territorial Sea and the Contiguous Zone; Art. 6 Convention on the Continental Shelf.

[83] In first instance, this only concerned cases involving opposite coasts (see ICJ, *Libya/Malta* (note 61), para. 62). The ICJ had already recognised that this was the appropriate way of dealing with delimitations between opposite coasts in its judgment in ICJ, *North Sea Continental Shelf Cases* (note 42), para. 56. The judgment on the merits in *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* was the first instance in which the Court applied the equidistance line as a provisional line between adjacent coasts, ICJ, *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (Qatar *v.* Bahrain), Judgment of 16 March 2001, ICJ Reports 2001, 40, paras. 170 and 216–217.

[84] *Weil* (note 67), 288.

[85] *Anderson,* Negotiating (note 27), 125–126. For a similar view see *e.g. Malcolm D. Evans,* Maritime Boundary Delimitation: Where Do We Go From Here?, in: David Freestone/Richard Barnes/David Ong (eds.) The Law of the Sea: Progress and Prospects (2006), 137, 160; *Yoshifumi Tanaka,* Reflections on Maritime Delimitation in the Cameroon/Nigeria Case, International and Comparative Law Quarterly 53 (2004), 369, 405.

[86] *Scobbie* (note 67), 924.

the basepoints for calculating that line. One practical explanation for that approach is readily apparent from the *Black Sea Case*[87] – it allowed the ICJ to dodge answering the intensely pleaded and no doubt controversial point whether or not Ukraine's Serpents' Island was covered by the provision on rocks contained in Article 121 (3) UNCLOS. However, it can be questioned whether such practical considerations should be allowed to turn the determination of the equidistance line, which avowedly should be an objective exercise,[88] into a process fraught with uncertainty. While in the *Black Sea Case* some justification might be said to exist to ignore a small isolated feature in determining a provisional equidistance line, a similar rationalisation was not present in two other recent cases.

In *Bangladesh/Myanmar*, the International Tribunal for the Law of the Sea (ITLOS) in delimiting the maritime boundary up to the 200 nm limit of Myanmar determined that Bangladesh's St. Martin's Island should not be taken into account in establishing a provisional equidistance line.[89] In view of the size and other characteristics of St. Martin's Island there can be no doubt that the island is entitled to a 200 nm zone. The island measures some 6.5 km in length, has a surface area of some 8 km² and 3,700 inhabitants. The Tribunal's rejection of St. Martin's Island as a basepoint for the provisional equidistance line was couched in language that rather was reminiscent of the jurisprudence in relation to the assessment of relevant circumstances than that concerning the selection of basepoints.[90]

In the second stage of determining this part of the maritime boundary the ITLOS adjusted its provisional equidistance line to account for the relevant circumstance that the concavity of Bangladesh's coast meant that the provisional equidistance line led to "a cut-off effect on that coast requiring an adjustment of that line".[91] During this stage, the Tribunal also revisited St. Martin's Island, posing the question whether the

[87] ICJ, *Maritime Delimitation in the Black Sea* (Romania *v.* Ukraine), Judgment of 3 February 2009, ICJ Reports 2009, 61.

[88] As the Court observed in the *Black Sea Case*, as a first step in effecting a delimitation it "will establish a provisional delimitation line, using methods that are geometrically objective and also appropriate for the geography of the area in which the delimitation is to take place", *ibid.*, para. 116.

[89] ITLOS, *Bangladesh/Myanmar* (note 14), para. 265.

[90] See *ibid.* To illustrate my point I refer the reader to the ICJ's approach to the selection of basepoints and the assessment of islands as relevant circumstances in ICJ, *Territorial and Maritime Dispute* (note 59), paras. 202–204 and 215–216.

[91] ITLOS, *Bangladesh/Myanmar* (note 14), para. 297.

island should be considered a relevant circumstance requiring an adjustment of the provisional equidistance line,[92] *i.e.* by giving full or limited weight to it. Considering the Tribunal's treatment of St. Martin's Island in the first stage of the delimitation, it should not come as a surprise that it was not considered to be a relevant circumstance requiring an adjustment of the provisional equidistance line.[93]

It is submitted that the Tribunal's approach to St. Martin's Island not only made the determination of the provisional equidistance line unnecessarily subjective, but also resulted in making the relation between the provisional equidistance line and the final boundary much more tenuous than was necessary. The Tribunal's provisional equidistance line, which gives no effect to St. Martin's Island, at its intersection with the 200 nm limit of Bangladesh is some tens of nautical miles distant from the Tribunal's final boundary that was based on the consideration that the concavity of Bangladesh's coast constituted a relevant circumstance. To the contrary, a provisional equidistance line giving full effect to St. Martin's Island would only need to be shifted for a limited distance to take into account the concavity of Bangladesh's coast *and* St. Martin's Island as relevant circumstances to arrive at a final boundary similar to that of the Tribunal.[94]

In *Peru v. Chile* the ICJ determined that only the landward part of the maritime boundary had been established through the agreement of the parties.[95] As a consequence, the remainder of the boundary up to the 200 nm limit had to be established by the Court. In this connection, the Court had to face the issue that the boundary that had been agreed between the parties was a line that departed radically from the equidistance line, raising the question how a provisional equidistance line would have to be linked to the pre-existing boundary, which ended at a point A. The Court's approach cannot be qualified other than imaginative. For Chile the Court selected a basepoint near the starting point of the maritime boundary with Peru,[96] which is a relevant basepoint for determining a strict equidistance line. If the Court would have

[92] *Ibid.*, para. 316.

[93] For the conclusion of the ITLOS in this respect see *ibid.*, para. 319.

[94] These figures are based on a comparison of a number of figures included in the ITLOS's judgment and the separate opinion of Judge *Gao*.

[95] ICJ, *Maritime Dispute* (Peru *v.* Chile), Judgment of 27 January 2014, ICJ Reports 2014, 3, para. 198 (2) and (3).

[96] *Ibid.*, para. 185.

chosen the relevant basepoints for Peru in the same way, the Court's provisional equidistance line would only have connected to the previously agreed maritime boundary at its starting point. To link its provisional line to Point A of the agreed boundary the Court decided to ignore all Peruvian basepoints and territory that where closer to point A than the basepoint it had selected for Chile.[97] In this way, the Court disregards a stretch of coast of Peru measuring some 230 km in length if measured by a straight line. The maximum width of the territory of Peru that lies behind this coast is almost 60 km.[98] The only justification the Court provides for its approach is that it had to find a way to arrive at a line that started at point A of the previously agreed boundary.[99] Notwithstanding its amputation of the Peruvian coast, the judgment has no hesitation to refer to the resulting line as a "provisional equidistance line"[100] and to this part of the final boundary as "the line equidistant from the *coasts* of the Republic of Peru and the Republic of Chile".[101]

That the above criticism of the Court is not merely a splitting of hairs is readily apparent from the alternative the Court could have adopted. That alternative would have consisted of the determination of a provisional equidistance line on the basis of the relevant basepoints along the coasts of Peru and Chile, which is in accordance with the Court's own preferred methodology.[102] In view of the geography of the relevant coasts, there does not seem to be any justification for disregarding any part of the baselines of either Chile or Peru. As was observed above, the resulting provisional equidistance line is a considerable distance from point A – the terminus of the previously agreed boundary. To connect the two lines the Court could have chosen to draw a line from point A to the provisional equidistance line.[103] In this case the Court

[97] *Ibid.* The approach of the Court is depicted in Sketch-map No. 3 included in the judgment.

[98] To put this figure in perspective, the island of Jan Mayen, which was given partial effect by the Court in the *Jan Mayen Case* in relation to Greenland (ICJ, *Maritime Delimitation in the Area between Greenland and Jan Mayen* (Denmark *v.* Norway), Judgment of 14 June 1993, ICJ Reports 1993, 38), measured by a straight line measures some 53 km where it faces Greenland and the maximum width of Jan Mayen behind this coastline is some 15 km.

[99] ICJ, *Peru v. Chile* (note 95), para. 185.

[100] *Ibid.*

[101] *Ibid.*, para. 198 (4) (emphasis added).

[102] See *supra*, note 88.

[103] See also *In the Matter of an Arbitration between Guyana and Suriname* (Guyana, Suriname), Arbitral Award of 17 September 2007, para. 323, available at: http://www.pca-cpa.org/Guyana-Suriname%20Award70f6.pdf?fil_id=664 (accessed on 13 October 2015).

would have had to determine the bearing of this connecting line, which avowedly would imply a margin of discretion. However, the resulting boundary established by the Court in this case would, apart from the connecting line to point A, have been an equidistance line that is measured from the baselines of both States. The Court's so-called equidistance line sharply diverges from this line.

Apart from these incompatibilities between the judiciary's avowed delimitation methodology and the actual delimitation methodology applied by it, the recent case law also displays inconsistencies if different cases are compared. For instance, in *Cameroon v. Nigeria,* the ICJ considered that it was not appropriate to take into account the coast of a third State to determine whether Cameroon was situated at the back of a concave coast – a circumstance that would have justified the adjustment of a provisional equidistance line.[104] On the other hand, the ITLOS in *Bangladesh/Myanmar* observed:

> [T]he coast of Bangladesh, seen as a whole, is manifestly concave. In fact, Bangladesh's coast *has been portrayed as a classic example of a concave coast.* In the North Sea cases, the Federal Republic of Germany specifically invoked the geographical situation of Bangladesh (then East Pakistan) to illustrate the effect of a concave coast on the equidistance line.[105]

Interestingly, another such "classic example of a concave coast"[106] that was provided by Germany was the Gulf of Guinea,[107] on which Cameroon, Equatorial Guinea, and Nigeria abut and it could be argued that the concavity in the case of Cameroon is even

[104] ICJ, *Cameroon v. Nigeria* (note 66), paras. 296–301. For a criticism of the Court's approach on this point see *Oude Elferink* (note 60), 629–630.

[105] ITLOS, *Bangladesh/Myanmar* (note 14), para. 291 (emphasis added). Although the language of the Tribunal suggests that the concavity is only due to configuration of the coast of Bangladesh, it is obvious that without the presence of India and Myanmar this concavity would not negatively affect the extent of the maritime zones of Bangladesh. Equidistance gives Bangladesh a more limited area than the other two States because it is located in between them. That this certainly was the German view is apparent from Germany's pleadings, which in this connection observe that "the equidistance method [...] necessarily attributes undue weight to projecting parts of the coast", ICJ, *North Sea Continental Shelf Cases* (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Memorial submitted by the Government of the Federal Republic of Germany of 21 August 1967, ICJ Pleadings 1968, Vol. I, 13, para. 44.

[106] The words "classic example of a concave coast" are those of the ITLOS, *Bangladesh/Myanmar* (note 14), para. 291, and are not to be found in the German Memorial.

[107] See ICJ, *North Sea Continental Shelf Cases,* Memorial (note 105), 43.

more marked than in the case of Bangladesh.[108] One would be hard pressed if required to defend the consistency of the respective approaches of the ICJ and the ITLOS in these two cases.[109]

Another example of inconsistency between cases is provided by the *Jan Mayen Case* and *Barbados v. Trinidad and Tobago*. In these two cases, the ICJ and an arbitral tribunal respectively found that there was a disparity between the lengths of the relevant coasts of the parties that required the shifting of a provisional equidistance line.[110] The ratios of the lengths of the relevant coasts in the two cases were very similar: either 9.2:1 or 9.1:1 for the coasts of Greenland and Jan Mayen and 1:8.2 for the coasts of Barbados and Trinidad and Tobago.[111] However, the adjustment of the provisional equidistance line differed dramatically in both cases. The Court shifted that line throughout its length – the final boundary as determined by the Court measures some 600 km – and on average the shift was approximately 50 km.[112] This results in an area of roughly 30,000 km² between the provisional equidistance line

[108] A measure to determine the amount of cut-off that results from applying the equidistance method could consist of comparing the length of the relevant coast of the State concerned and the length of equidistance boundaries. If the relevant coasts of Cameroon and Bangladesh as defined by respectively the ICJ and the ITLOS are compared to the distance from that coast to the equidistant tripoint between the States concerned, the ratio is more advantageous to Bangladesh than to Cameroon. For the definition of these relevant coasts see ICJ, *Cameroon v. Nigeria* (note 66), para. 291 and ITLOS, *Bangladesh/Myanmar* (note 14), para. 202, respectively. The ITLOS determined that the relevant coast of Bangladesh measured 413 km. If the relevant coast of Cameroon as determined by the Court is measured by two straight lines it measures approximately 80 km. The equidistant tripoint between Cameroon, Nigeria, and Equatorial Guinea is located approximately 28 nm from the baselines and for Bangladesh, India, and Myanmar this distance is approximately 163 nm.

[109] The approach of the ITLOS to the delimitation between Bangladesh and Myanmar was subsequently adopted by the arbitral tribunal that had been seized of the delimitation dispute between Bangladesh and India (see *The Bay of Bengal Maritime Boundary Arbitration* (The People's Republic of Bangladesh, The Republic of India), Arbitration Award of 7 July 2014, paras. 400–421, available at: http://www.pca-cpa.org/BD-IN%2020140707%20Award2890.pdf?fil_id=2705 (accessed on 15 October 2015)).

[110] ICJ, *Jan Mayen Case* (note 98), paras. 67–68; *Barbados v. Trinidad and Tobago* (note 13), paras. 337–338.

[111] *Barbados v. Trinidad and Tobago* (note 13), para. 352; ICJ, *Jan Mayen Case* (note 98), para. 61. In the case of Barbados and Trinidad and Tobago the Tribunal does not itself provide a figure but refers to the figure as provided by Trinidad and Tobago in its pleadings.

[112] Figure mentioned in *David H. Anderson*, Denmark (Greenland)-Norway (Jan Mayen), in: Jonathan I. Charney/Lewis M. Alexander (eds.), International Maritime Boundaries, Vol. III (2004), 2507, 2508.

and the final boundary.[113] The Tribunal in *Barbados v. Trinidad and Tobago* only adjusted a part of the provisional equidistance line. While Trinidad and Tobago had requested that the equidistance line be adjusted from a point it referred to as A, which was located some 208 km from the intersection of the equidistance line with the bilateral boundary between Trinidad and Tobago and Venezuela, the Tribunal selected a different point that was approximately 55 km from this point of intersection.[114] The area located between the equidistance line, the Tribunal's final boundary, and the bilateral boundary between Trinidad and Tobago and Venezuela is some 4,500 km². These figures imply that a very similar difference in coastal lengths led to a very dissimilar adjustment of the equidistance line.

A couple of arguments might be advanced to explain the difference between the two cases away. For one thing, it might be submitted that the relevant maritime area in the two cases differs. However, that fact alone certainly cannot explain the difference in outcome. In the case of Jan Mayen and Greenland the final boundary determined by the ICJ divides the area of overlapping 200 nm entitlements in a ratio of approximately 3:1 to the advantage of Denmark/Greenland.[115] In the case of Barbados and Trinidad and Tobago, the area between the provisional equidistance line and the boundary determined by the Tribunal only constitutes a minimal part of the area of overlapping 200 nm entitlements.[116]

Another argument that might be advanced to justify the difference between the two cases is the different coastal relationship between the parties to the two cases. In the case of Greenland and Jan Mayen this relationship is primarily characterised by oppositeness for the entire maritime boundary. This makes the difference in the length of the relevant coasts a relevant circumstance for the entire boundary. On the other hand, in the case of Barbados and Trinidad and Tobago only a part of the provisional equidistance line is located between opposite coasts, while for another part this concerns adjacent coasts. Only in the latter case does the marked disparity between

[113] For a depiction of both lines see *ibid.*, 2523 and ICJ, *Jan Mayen Case* (note 98), 80, Sketch-map No. 2.

[114] See *Barbados v. Trinidad and Tobago* (note 13), paras. 53 and 373 describing the location of these points. For a depiction of these points and the equidistance line see Sketch map VI included in the Award. Point A is identified as point 6 in this figure and the Tribunal's point as point 10.

[115] See *Anderson* (note 112), 2508.

[116] Based on the author's assessment. In addition, the boundary established by the Tribunal completely cuts off Trinidad and Tobago from the continental shelf beyond 200 nm.

the coasts of the parties exist.[117] The Tribunal adopted the following reasoning to justify the selection of the point on the provisional equidistance line beyond which it should take the difference in the length of relevant coasts into account. First, the Tribunal observes that "[t]here are no magic formulas for making such a determination and it is here that the Tribunal's discretion must be exercised within the limits set out by the applicable law."[118] It then determines the specific point (point 10) as the point of intersection of the provisional equidistance line and a line between: 1) a point on the baseline of Trinidad and Tobago and 2) the point of intersection of Trinidad and Tobago's 200 nm limit and its maritime boundary with Venezuela.[119] According to the Tribunal "[t]his point gives effect to the presence of the coastal frontages of both the islands of Trinidad and of Tobago thus taking into account a circumstance which would otherwise be ignored by an unadjusted equidistance line".[120] Subsequently, the Tribunal used the line described above as the maritime boundary from point 10 to the 200 nm limit of Trinidad and Tobago.[121]

A number of things are remarkable about the Tribunal's approach to determining the part of the provisional equidistance line that should be adjusted. First, there is no logical relationship between the coastal frontages of the islands of Trinidad and Tobago and the intersection of Trinidad and Tobago's 200 nm limit with the maritime boundary with a third State. That point of intersection is determined by a single point on the baselines of Trinidad and Tobago and as a matter of fact does not say anything about the area into which the coastal fronts of the islands and Trinidad and Tobago project. Secondly, to determine the coastal relationship between Trinidad and Tobago and Barbados, it is necessary to look at the relevant coasts of both parties, not just one of them. Finally, it might be said that the Tribunal's approach is not devoid of a certain irony. After observing that there are no magical formulas for determining the point beyond which the provisional equidistance line should be shifted,[122] the Tribunal seems to engage in just that. The point selected by the Tribunal results in a boundary ending exactly at the 200 nm limit of Trinidad and Tobago,

[117] See also *Barbados v. Trinidad and Tobago* (note 13), para. 372.

[118] *Ibid.*, para. 373.

[119] *Ibid.*

[120] *Ibid.*

[121] *Ibid.*, paras. 373–374.

[122] *Ibid.*, para. 373.

while ignoring the existence of a continental shelf entitlement extending beyond that limit. As there are no compelling legal arguments for this approach – there rather are compelling arguments against it – one is left with the impression that the Tribunal was not prepared to face the legal complexities involved in the delimitation of the continental shelf beyond 200 nm.

It is submitted that in view of the above arguments, the almost diametrically opposed outcomes of the *Jan Mayen Case* and *Barbados v. Trinidad and Tobago* cannot be explained away by the different circumstances of the two cases, but by a lack of consistency in applying the law.

IV. Conclusions

Negotiations remain the preferred mode for settling maritime boundary disputes, but at the same time States continue to have recourse to adjudication. While some States repeatedly have had recourse to third-party dispute settlement, other States categorically reject this option. One measure of the extent of this opposition is provided by the fact that 25 States currently have used the option to exclude third-party settlement of their maritime boundaries by making a declaration under Article 298 UNCLOS. A number of explanations are available to explain this opposition. States may dislike the idea of having a body over which they have no control decide on their maritime boundaries. Secondly, States may be reluctant to accept third-party dispute settlement because of the uncertainty of the outcome of this process. Thirdly, a more powerful State may be reluctant to give up the greater bargaining power it has in dealing with a weaker neighbour. Finally, a State may be unwilling to test a claim that has dubious legal pedigree in court.[123] On the other hand, adjudication also offers

[123] An interesting example of a State withdrawing its consent to compulsory dispute settlement of maritime boundaries is provided by Australia, which amended its optional clause declaration under Art. 36 ICJ Statute and made a declaration under Art. 298 UNCLOS in 2002 (for a discussion see *Gillian Triggs/Dean Bialek*, Australia Withdraws Maritime Disputes from the Compulsory Jurisdiction of the International Court of Justice and the International Tribunal for the Law of the Sea, International Journal for Marine and Coastal Law 17 (2002), 423). This step likely was intended to prevent Timor Leste from submitting the matter of the delimitation of their mutual boundary in the Timor Sea to a third party (*ibid.*, 423). This boundary relation is among others characterised by a complex history, an Australian position on the location of the boundary that perhaps is difficult to square with the applicable law and the existence of a provisional arrangement for hydrocarbon development. All of these factors may have played a role leading up to Australia withdrawing its consent to compulsory dispute settlement of maritime boundaries.

obvious advantages. It allows reaching a solution where negotiations are deadlocked and provides the justification that the outcome is mandated by international law and not a result of political bargaining.

One significant development in relation to adjudication is an increase in the number of cases that are started by a unilateral application, while the number of cases that have been brought by a special agreement has dropped significantly. The availability of compulsory dispute settlement under the UNCLOS, which entered into force in 1994, has significantly contributed to the former development. As is argued in section II of this article, unilateral application poses a certain risk that the respondent may not accept the outcome of third-party dispute settlement. However, even in that case the claimant State may be better off as compared to a continued deadlock of negotiations.

Negotiations are generally considered to offer more flexibility to the parties and greater control over the outcome. While this proposition no doubt is correct, this article argues that it should be realised that negotiated settlements – just like court cases do – in general will focus on arriving at a boundary and will pay limited attention to issues of transboundary cooperation.

International law plays a significant role in negotiations and adjudication. Although this might even sound like an understatement in the latter case, the current article demonstrates that the application of the law by the judiciary continues to be characterised by inconsistencies and departures from the avowed general approach to delimitation.[124] A number of explanations for this state of affairs may be tentatively formulated. Statements on the applicable law will invariably be formulated in the context of a specific case. That context may make a seemingly generally applicable

[124] A commentary on a draft of this article suggested that the apparent contradiction in the case law might be explained through an in-depth analysis of the complex structure of equidistance-special circumstances and underlying principles. Having considered this argument carefully I find it unpersuasive. By way of example, the ICJ's judgment in *Peru v. Chile* does not provide an explanation based in the law as to why it does not use the actual equidistance line as a starting point for the second part of the maritime boundary, but only relies on a practical consideration to justify an arbitrary provisional line that at best has a tenuous relation to the actual equidistance. As was set out above, the Court did have an alternative that would have been in accord with the three-stage approach to delimitation (see *supra*, text at notes 95 *et seq.*).

rule inapplicable in a subsequent case that is characterised by a different context.[125] Second, considerations which do not form part of the applicable law may play a role in arriving at a solution in a specific case.[126] Third, the difference in composition of courts and tribunals may lead to a different assessment of how the law should be applied to the individual case.[127]

As is set out in section III. A., assessing the impact of international law on negotiations is much more difficult to gauge and is only really possible with full access to the negotiating record. A review of a couple of cases does indicate that States in negotiating maritime boundaries are operating in the context of a detailed set of legal rules and that in order to convince their negotiation partners that they are taking these rules seriously – and are not engaging in pure bargaining – they will have to come up with a reasoned justification as to why their position is in accordance with the law. A negotiating partner will be able to assess whether a proposal is in its view credible in this respect. This is not to say that bargaining does not take place – international law is only one of the factors that feed into the negotiation process and because of that the law operates in a much more complex environment in negotiations than in adjudication – but the existence of a legal framework puts limits on what States can credibly claim.

[125] For an example in this respect see the critique of the ITLOS's findings on the appropriateness of equidistance as a provisional delimitation line for the delimitation of the continental shelf beyond 200 nm in *Bangladesh/Myanmar* in *Alex G. Oude Elferink*, ITLOS's Approach to the Delimitation of the Continental Shelf beyond 200 Nautical Miles in the Bangladesh/Myanmar Case: Theoretical and Practical Difficulties, in: Rüdiger Wolfrum/Maja Seršić/Trpimir Šošić (eds.), Contemporary Developments in International Law: Essays in Honor of Budislav Vukas (2015), 230.

[126] For an example in this respect see *Evans* (note 85), 279.

[127] This may both concern the individual members of a court or tribunal and the set-up of a court or tribunal. A standing court may want to put its mark on the law and come up with imaginative solutions (see also *Oude Elferink* (note 20), 244–245 and 325), while an *ad-hoc* tribunal is likely to first of all look for consensus, resulting in a compromise solution.

Table 1 – Maritime Delimitations Submitted to Compulsory Procedures entailing Binding Decisions[128]

A. Joint Submission	B. Unilateral Submission
1. *Grisbadarna Case* (Norway/Sweden) BS: SA (1908) O: DM (1909)	1. *Aegean Sea Continental Shelf Case* (Greece *v.* Turkey) BS: General Act for Pacific Settlement of International Disputes (1928) YA: 1976 O: AJ (1978)
2. *North Sea Continental Shelf Case* (Germany/Netherlands) BS: SA (1967) O: DM (1969)	2. *Maritime Delimitation in the Area between Greenland and Jan Mayen* (Denmark *v.* Norway) BS: OC YA: 1988 O: DM (1993)
3. *North Sea Continental Shelf Case* (Germany/Denmark) BS: SA (1967) O: DM (1969)	3. *Land and Maritime Boundary between Cameroon and Nigeria* (Cameroon *v.* Nigeria: Equatorial Guinea intervening) BS: OC YA: 1994 O: DM (2002)
4. *Case concerning the Delimitation of Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic* BS: SA (1975) O: DM (1977)	4. *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea* (Nicaragua *v.* Honduras) BS: Pact of Bogotá and OC YA: 1999 O: DM (2007)
5. *Case concerning a Dispute between Argentina and Chile concerning the Beagle Channel* BS: SA (1971) O: DM (1977)	5. *Territorial and Maritime Dispute* (Nicaragua *v.* Colombia) BS: Pact of Bogotá YA: 2001 O: DM (2012)
6. *Case concerning the Continental Shelf* (Tunisia/Libya) BS: SA (1977) O: DM (1982)	6. *Maritime Delimitation in the Black Sea* (Romania *v.* Ukraine) BS: Additional Agreement to the Treaty on the Relations of Good Neighbourliness and Co-operation (1997) YA: 2004 O: DM (2009)
7. *Case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Canada/USA) BS: SA (1979) O: DM (1984)	7. *In the Matter of an Arbitration between Barbados and the Republic of Trinidad and Tobago* (Barbados *v.* Trinidad and Tobago) BS: UNCLOS YA: 2004 O: DM (2006)

[128] The table only lists cases between States and not between entities that form part of federal States. The table does not list incidental procedures unless these resulted in a discontinuation of the proceedings.

8. *Case concerning the Continental Shelf* (Libya/Malta) BS: SA (1976) O: DM (1985)	8. *In the Matter of an Arbitration between Guyana and Suriname* (Guyana *v.* Suriname) BS: UNCLOS YA: 2004 O: DM (2007)
9. *Case concerning the Delimitation of the Maritime Boundary between Guinea and Guinea Bissau* BS: SA (1983) O: DM (1985)	9. *Maritime Dispute* (Peru *v.* Chile) BS: Pact of Bogotá (2008) YA: 2007 O: DM (2014)
10. *Case concerning the Delimitation of Maritime Boundary between Guinea Bissau and Senegal* BS: SA (1985) O: DM (1989)	10. *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal* BS: UNCLOS[129] YA: 2009 O: DM (2012)
11. *Case concerning the Delimitation of Maritime Areas between Canada and France* BS: SA (1989) O: DM (1992)	11. *In the Matter of the Bay of Bengal Maritime Boundary Arbitration* (Bangladesh *v.* India) BS: UNCLOS YA: 2009 O: DM (2014)
12. *Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain* BS: SA (1987/1990)[130] O: DM (2001)	12. *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast* (Nicaragua *v.* Colombia) BS: Pact of Bogotá YA: 2013 O: Pending
13. *In the Matter of an Arbitration pursuant to an Agreement to Arbitrate dated 3 October 1996 between the Government of the State of Eritrea and the Government of the Republic of Yemen* BS: SA (1996) O: DM (1999)	13. *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean* (Costa Rica *v.* Nicaragua) BS: Pact of Bogotá YA: 2014 O: Pending

[129] The case was initiated unilaterally by Bangladesh. The parties subsequently agreed to joint submission to the ITLOS.

[130] The case was referred to the ICJ by an application of Qatar. However, the case is listed as a joint submission because, as was held by the ICJ in a judgment of 1 July 1994, by the terms of two international agreements of respectively 1987 and 1990 "the Parties had undertaken to submit to the Court the whole of the dispute between them", ICJ, *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (Qatar *v.* Bahrain), Jurisdiction und Admissibility, Judgment of 1 July 1994, ICJ Reports 1994, 112, para. 41(2).

14. *Territorial and Maritime Arbitration between Croatia and Slovenia* BS: SA (2009) O: Pending	14. *Maritime Delimitation in the Indian Ocean* (Somalia *v.* Kenya) BS: OC YA: 2014 O: Pending
	15. *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean* (Ghana *v.* Ivory Coast)[131] BS: UNCLOS YA: 2014 O: Pending

AJ: finding that there was no basis of jurisdiction; BS: basis of submission; DM: decision on the merits; O: outcome; OC: declarations under Article 36 (2) Statute of the ICJ; SA: agreement between the parties to submit the specific dispute; YA: year of application

[131] The case was initiated unilaterally by Ghana. The parties subsequently agreed to joint submission to the ITLOS.