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Dogmatic Development and International Jurisprudence on Delineation as well as  
Delimitation of Maritime Areas

### I. Introduction

1. Use of terms
2. Relevant provisions in the UN Convention on the Law of the Sea
  - a) On baselines, articles 5 and 7 of the Convention
  - b) Delineation of the territorial waters, article 3 of the Convention
  - c) Delimitation of the territorial waters, article 15 of the Convention
  - d) Delineation /delimitation of the contiguous zone, article 33 of the Convention
  - e) Delineation of the EEZ, article 57 of the Convention
  - f) Delimitation of the EEZ, article 74 of the Convention
  - g) Delineation of the continental shelf, article 76 of the Convention
  - h) Delimitation of the continental shelf, article 83 of the Convention
  - i) Delineation/delimitation of the continental shelf beyond 200 nm
3. Some of the relevant jurisprudence which will be referred to in this lecture
  - Maritime Dispute (Peru v. Chile), Judgment 27 January 2014
  - Black Sea case (Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment 3 February 2009, ICJ Reports 2009, p.61)
  - Nicaragua v. Colombia, Territorial and Maritime Dispute (Nicaragua/Colombia), Judgment of 19 November 2012, ICJ Reports 2012 p. 624
  - Guyana/Suriname, Award of 17 September 2007, ILR vol. 139, p. 566
  - Bangladesh/Myanmar (Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), Judgment 14 March 2012, ITLOS Report 2012, p.4
  - Bangladesh v. India, Bay of Bengal Maritime Boundary Arbitration, Award of 7 July 2014
  - Ghana v. Cote d'Ivoire, merits
  - Case concerning the Continental Shelf (Libya/Malta, Judgment of 3 June 1985, ICJ Reports 1985, p. 13

## II. Substantial issues to be discussed

### 1. Agreed land boundary terminus

- Bangladesh v. India
- Maritime Dispute (Peru v. Chile), ICJ Reports 2014, paras. 152 – 176.

Rather complicated arguments – According to the Court one has to distinguish between the marker and the land boundary terminus on which the Court held it had no jurisdiction to decide on. The Court defined an intersection of an arc drawn from a particular point on a bridge (part of an agreement) with the low water line as the starting point of the maritime boundary stating that this may not be the starting point of the land boundary.

- Ghana v. Cote d'Ivoire

### 2. Prior agreements

- Black Sea Case (Maritime Delimitation in the Black Sea, (Romania v. Ukraine), ICJ Reports 2009, p.61) paras. 43-76: Existing maritime delimitation between the Parties (effect of the procès verbaux of 1949, 1963, 1974 respectively; Treaty between Romania and USSR 1949/1961; Treaty between Romania and Ukraine 2003 at para. 43 – 76.

- Bangladesh/Myanmar: 1974/2008 agreed minutes 57 – 99; tacit agreement/de facto agreement 100 – 118; estoppel 119 – 125.

- Philippines v. China (statement of China) – DOC (ASEAN)

- Peru v. Chile, paras 24 – 151 (1947 Proclamation of Peru and Chile; 1952 Santiago Declaration = Treaty; 1954 various agreements (Complimentary Agreement of the 1952 Santiago Declaration, Agreement on Measures of Supervision and Control of the Maritime Zones of the Signatory Countries, Agreement relating to a Special Maritime Frontier); 1968/9 Lighthouse Agreement.

The Court came to the conclusion that an agreement existed concerning fishing with small vessels (para. 176) and on that basis that the agreement between the Parties only went up to a distance of 80 nm. Criticism: Only basis fishing with small vessels; different treatment of the common effort to control whaling and fishing in the Humboldt Current up to 200 nm.

- Ghana v. Cote d'Ivoire

### III. On delimitation in particular

#### 1. Territorial sea

- Article 15 – median line; **Bangladesh/Myanmar** historic title, special circumstances 130 -152; **Guyana /Suriname** para. 288 – Guyana claimed a historical equidistance line; Suriname claimed that the territorial sea boundary should follow an azimuth from point 61, which had been accepted (tacit agreement). Reference to the median line, burden of proof. – An established practice of navigation – special circumstances requiring adjustment of the median line. The Tribunal interposed a gradual transition from three to 12 nm (para. 323).
- Baselines (articles 5, 7, 9, 10) – low water line – which low water line?
- Relevance of rocks
- Relevance of low-tide elevations
- Territorial sea of islands v. EEZ of another State – Bangladesh/Myanmar

#### 2. EEZ

- Delimitation methodology: Equidistance (relevant circumstances):
- Black Sea case (relevant coasts 80 -105 also **Bangladesh/Myanmar** 200 - 205; also **Nicaragua v. Colombia** – projection of the coasts or the coastal fronts (para. 141);
- Relevant maritime area **Black Sea case** 106 – background ‘land dominates the sea’ relevant also for disproportionality test; methodology to be used (equidistance/bi-sector) 115 – 122; Nicaragua v. Colombia – part of the maritime space in which the potential entitlements of the parties overlap para. 159; selection of base points 123 – 154 also **Bangladesh /Myanmar**, 241 – 260; **Nicaragua v. Colombia** paras 18 -24 islands, island, however small, are capable of appropriation whereas low tide elevations cannot be appropriated - confirmed in the **South China Sea** case with a more detailed argumentation. Starting point Qatar /Bahrain;
- **Black Sea case** establishment of a provisional equidistance line 123 – 154;
- **Black Sea case**: relevant circumstances (length of coast 158 – 168; nature of the Black Sea 169 – 178; Serpent Island 179 -188; Conduct of oil and gas and other activities 189 – 198; cutting off effect 199 – 201; security considerations 202 – 204); **Bangladesh/Myanmar**, 279 – 297;
- **Black Sea case** disproportionality test.

- Delimitation methodology (differences or no differences compared to the delimitation of the territorial sea (**Ghana v. Cote d'Ivoire**))
- Bi-sector: **Guyana/ Suriname**, Bi-sector, problem of establishing base points,
- Pros and Cons (**Ghana v. Cote d'Ivoire**)
- Equidistance as developed in the Black Sea case (summary)
- Three steps
- Relevant circumstances (historical factors, economic factors, geographical factors), others?
- The island on the wrong side of the line (**Bangladesh/ Myanmar**)
- Disproportionality test

### 3. Continental Shelf

- One boundary
- **Timor-Leste v. Australia (Conciliation report)**

## IV. Delineation

1. EEZ – historical development of the distance criterion
2. Continental Shelf delineation – North Sea and beyond
3. Continental Shelf (illustrative: the agreements between Indonesia and Australia as referred to in the Conciliation Report)
4. Delineation of the continental shelf beyond 200 nm – Revival of the geophysical considerations? –The role of the Continental Shelf Commission
5. Procedure concerning the delineation of the continental shelf beyond 200nm  
**Bangladesh/ Myanmar** 341 - 476
6. The relationship between the Commission and the sub-commission (Iceland)
7. Role of the Continental Shelf Commission in relation to dispute settlement  
(**Bangladesh/Myanmar, Bangladesh v. India; Ghana v. Cote d'Ivoire**)
8. Grey area

## V. Conclusion

1. Role of the jurisprudence