

Geographic Considerations in Maritime Delimitation

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I GEOGRAPHY: THE LEADING FACTOR IN MARITIME DELIMITATION

A *The Underpinning Principles*

The dominant position occupied by geographic considerations in agreements to delimit maritime boundaries flows from the very philosophy of maritime jurisdiction. As has been written elsewhere,

From the moment States were recognized as having rights over areas of sea – that is to say, for as long as there has been such a thing as the territorial sea – these rights have been based on two principles which have acquired an almost idiomatic force . . . : the land dominates the sea and it dominates it by the intermediary the coastal front.¹

These principles, which have always lain behind states' claims to maritime areas adjacent to their coasts, also lay behind the rules of customary international law governing maritime rights and jurisdiction codified in the 1982 United Nations Convention on the Law of the Sea.²

First, maritime rights are not primary or autonomous rights. They have no independent existence but are an extension of the preexisting territorial sea. They are, thus, subsidiary and derived rights. The International Court of Justice embedded this idea in well-known and often quoted phrases which, although addressed specifically to continental shelf rights, are applicable to all maritime zones subject to the jurisdiction of the coastal state:

The land is the legal source of the power which a State may exercise over territorial extensions to seaward.³

Maritime rights, the Court says, exist 'solely by virtue of the coastal State's sovereignty over the land.' They are 'both an emanation from and an automatic adjunct of the territorial sovereignty of the coastal State.'⁴

Secondly, maritime rights are mediated rights, because they are generated

¹ P. WEIL, *THE LAW OF MARITIME DELIMITATION – REFLECTIONS*, 50 (1989).

² Opened for signature, 10 December 1982, U.N. Doc. A/Conf. 62/122, reprinted in 21 I.L.M. 1261 (1962).

³ North Sea Continental Shelf, 1969 I.C.J. 51 (para. 96).

⁴ Aegean Sea Continental Shelf, 1978 I.C.J. 36 (para. 86).

through the intermediary of the coastal facade. Here again, phrases coined by the International Court of Justice are well known and apply to all maritime jurisdiction, even though they were written specifically with regard to the continental shelf:

✓ The geographic correlation between coast and submerged areas off the coast is the basis of the coastal State's legal title [T]he coast of the territory of the State is the decisive factor for title to submarine areas adjacent to it.⁵

The juridical link between the State's territorial sovereignty and its rights to certain adjacent maritime expanses is established by means of its coast.⁶

Because they are at the root of coastal states' jurisdiction in maritime areas further seaward, these concepts are understandably at the heart of the delimitation of boundaries between coastal states' maritime spaces whose maritime projections from their coasts overlap. The link between title and delimitation has been affirmed by the Court in the *Libya/Malta* case:

✓ The legal basis of that which is to be delimited, and of entitlement to it, cannot be other than pertinent to that delimitation The criterion (of delimitation) is linked with the law relating to a State's title⁷

✓ Hence, the primacy of geographic considerations is found in each and every maritime delimitation, regardless of whether it concerns territorial sea, continental shelf, fishery zone, or exclusive economic zone; or whether it is negotiated and agreed by the interested parties, or decided by a third party in judicial or arbitral proceedings. Already in 1969 the International Court of Justice stated that it is 'necessary to examine closely the geographical configuration of the coastlines of the countries whose maritime areas are to be delimited.'⁸ This principle has since been reaffirmed in various forms:

✓ The coast of each of the Parties . . . constitutes the starting line from which one has to set out in order to ascertain how far the . . . areas appertaining to each of them extend . . . in relation to neighboring States situated either in an adjacent or opposite position.⁹

The delimitation line to be drawn in a given area will depend upon the coastal configuration.¹⁰

B Geography as Coastal Geography

✓ Because the jurisdiction of coastal states in maritime areas is generated by the coastal front, it follows that the relevant geography boils down to coastal geo-

⁵ Continental Shelf (Tunisia/Libyan Arab Jamahiriya), 1982 I.C.J. 64 (para. 73).

⁶ Continental Shelf (Libyan Arab Jamahiriya/Malta), 1985 I.C.J. 30 (paras. 27 and 61).

⁷ Continental Shelf (Libyan Arab Jamahiriya/Malta), 1985 I.C.J. 30 (paras. 27 and 61).

⁸ North Sea Continental Shelf, 1969 I.C.J. 3, 51 (para. 96).

⁹ Continental Shelf (Tunisia/Libyan Arab Jamahiriya/Malta), 1982 I.C.J. 61 (para. 74).

¹⁰ Delimitation of the Maritime Boundary in the Gulf of Maine Area, 1984 I.C.J. 330 (para. 205).

raphy. This is true when delimiting the seaward extent of such zones and the boundaries between the zones of two coastal states. The landmass behind the coasts, for its part, is irrelevant in this respect. In the *Libya/Malta* case, Libya relied heavily on the great difference between its own landmass and that of Malta with a view to obtaining a delimitation more favorable than the equidistant line. This claim was rejected by the Court in words worth recalling:

The Court is unable to accept this as a relevant consideration. Landmass has never been regarded as a basis of entitlement to continental shelf rights The capacity to engender continental shelf rights derives not from the landmass, but from sovereignty over the landmass; and it is by means of the maritime front of this landmass, in other words by its coastal opening, that this territorial sovereignty brings its continental shelf rights into effect The concept of adjacency measured by distance is based entirely on that of the coastline and not on that of the landmass.¹¹

The irrelevance of the geography behind the 'coastal opening' applies primarily to delimitations decided according to the principles and rules of international law, i.e., to judicial or arbitral delimitations. In a negotiated settlement the parties are at liberty to take into account the size of the landmass as they are at liberty to take into account any other factor, irrelevant though it may be from a strictly legal point of view. It is quite conceivable, for instance, that the party with the greater bargaining power may achieve through negotiation a delimitation that is more favorable than that which it could have obtained from a judicial or arbitral settlement under the principles and rules of international law. The difference in the size of the two landmasses may quite well be a factor in this bargain. Even if such a hypothesis cannot be excluded in theory, the practice does not warrant it. For example, the four consecutive agreements concluded by Finland and the Soviet Union all draw an equidistant line between the coasts of the two parties in the Gulf of Finland without taking into account the huge difference in the size of the landmasses behind these coasts (Finland-Soviet Union (1965), No. 10-4(1); (1967), No. 10-4(2); (1980), No. 10-4(3); and (1985), No. 10-4(4)).

Some years ago, the relevant geographic considerations included (insofar as at least as the continental shelf was concerned) the geomorphology and geology of the seabed and the subsoil adjacent to the coasts. For the delimitation of the territorial sea, this factor obviously did not come into play. The emergence of the 200-mile zone and the prominence accorded to the criterion of distance with respect to the exclusive economic zone and the continental shelf led UNCLOS III, the 1982 Convention, and the International Court of Justice to limit the role of physical natural prolongation to the shelf beyond 200 nautical miles (n.m.) and to deny it any significance (even as a legally relevant circumstance) up to that distance.¹²

¹¹ Continental Shelf (Libyan Arab Jamahiriya/Malta), 1985 I.C.J. 41 (para. 49).

¹² Continental Shelf (Libyan Arab Jamahiriya/Malta), 1985 I.C.J. 35 (paras. 39-40).

Here again and perhaps more than in the case of the landmass, governments may take into consideration for the purpose of a negotiated delimitation the physical or geological configuration of the seabed. To what extent did they actually base their continental shelf agreements, and more recently, their maritime boundary agreements, on such factors? To these questions an answer may be found in the individual reports under the heading 'Geological and Geomorphological Considerations' and in Keith Highet's discussion of geographical consideration in this volume.¹³ It appears again that contemporary practice takes little account of this consideration. Thus, there seems to be a significant coincidence between the legal rules and the negotiation practice, albeit not compelled by law.

C Geography as Physical Geography

- ✓ From the principles set out above it follows that it is to the physical components of geography that the primacy of geographic considerations relates. In principle, the jurisprudence does not regard economic or human geography as a relevant factor to be taken into account when drawing a maritime boundary ✓ line. On the other hand, it regards economic and social or human geography as elements in the final stage of the delimitation process. This is when a ✓ tribunal comes to check the equitableness of the result arrived at by way of the geographical factors.¹⁴ There is no denying, however, that in practice economic and human geography, including the location of the resources and ✓ the respective wealth of the parties, have more than once actually been in the courts' mind.¹⁵

Once again one has to observe that, even though they are not legally relevant in a judicial or arbitral delimitation, considerations of economic or human geography may and do play an important, sometimes even decisive, role in negotiated and agreed delimitations. To what extent has this been so in actual cases? To find an answer to this question, one has to refer to the heading 'Economic and Environmental Considerations' in the individual reports and to Barbara Kwiatkowska's discussion of economic considerations in this volume.¹⁶ These studies show that in some, but not many, cases economic considerations appear to have been decisive, even though this is not explicitly acknowledged in the agreements.¹⁷ Professor Kwiatkowska suggests that their influence may be subtle but not absent in others.

¹³ Highet, *The Use of Geophysical Factors in the Delimitation of Maritime Boundaries*.

¹⁴ See WEIL, *supra* note 1, at 258.

¹⁵ Although there is, of course, no decisive evidence of this assertion, it appears impossible to question the economic rationale lying behind the maritime boundary drawn in the Gulf of Maine case; the judgment in effect comes very close to admitting it. (Delimitation of the Maritime Boundary in the Gulf of Maine Area, 1986 I.C.J. 334 (paras. 237-41).)

¹⁶ Kwiatkowska, *Economic and Environmental Considerations in Maritime Boundary Delimitations*.

¹⁷ E.g., Iceland-Norway (Jan Mayen) (1980), No. 9-4; and United States-Soviet Union (1990), No. 1-6.

Since the coastal geography to be taken into account is that of the shore belonging to the interested states, the point where the land boundary intersects the coast of each party may become a relevant circumstance in both negotiated and judicially decided delimitations. Because this point is determined by the political history of the parties, this aspect of political geography thus becomes a component of the physical geography of the coasts. This has been recognized by the courts in a number of cases¹⁸ and is obvious in state practice. It is, for instance, from the terminal point where the land boundary reaches the sea that the maritime boundary usually starts, and it is by reference to this point that boundary lines defined as parallels or perpendicular to the general direction of the coast are drawn. The course of the land boundary behind its intersection with the shore, on the other hand, is irrelevant for purposes of maritime delimitation.

To sum up, it is to the physical configuration of the coasts, supplemented in certain cases by the terminal point of the land boundary, that 'the dominant parameters provided by the physical and political geography of the area' referred to by the International Court of Justice apply.¹⁹

D The Dual Function of Geography

Thus defined, geographic considerations inspire, if they do not dictate, most delimitations. In this sense, geography represents nature as it is, with its irregularities and inequities. That is the meaning of the well-known dictum of the International Court of Justice that delimitation does not 'seek to make equal what nature has made unequal'²⁰ and 'there can never be any question of completely refashioning nature' or 'totally refashioning geography.'²¹

The very use of the word 'completely' points, however, to another aspect of geographic considerations. While geography primarily dictates the boundary line, in some cases it appears necessary to both the courts and governments to ignore or to attenuate the effect of certain geographical features in order to ensure an equitable result which in their view, if these realities were fully taken into account, would not be achieved. That is the thrust of the theory that maritime delimitations have to give partial or no effect to a 'special,' 'incidental,' 'particular,' 'unusual,' or 'insignificant' geographical feature which appears to be 'of itself creative of inequity.'²²

Thus, at the same time as it shapes the boundary line in a positive way,

¹⁸ Continental Shelf (Tunisia/Libyan Arab Jamahiriya), 1982 I.C.J. 65 (para. 82); Delimitation of the Maritime Boundary in the Gulf of Maine Area, 1986 I.C.J. 334 (para. 217); Guinea-Guinea-Bissau, 25 I.L.M. 252, 295 (para. 106) (1986).

¹⁹ Delimitation of the Maritime Boundary in the Gulf of Maine Area, 1984 I.C.J. 340 (para. 231).

²⁰ Continental Shelf (Libyan Arab Jamahiriya/Malta), 1985 I.C.J. (para. 46).

²¹ North Sea Continental Shelf, 1969 I.C.J. 49-50 (para. 91).

²² WEIL, *supra* note 1, at 89 and 285 ff.

geography in some cases is taken into account in what might be called a negative way, that is to say, by being ignored or downplayed.

E *Geographic Considerations in Judicial or Arbitral Delimitations*

Whatever the view held on the structure of the delimitation process, geographic considerations as defined above play a decisive role in judicially decided, i.e., legally mandated, delimitations. According to one view, the delimitation decision is a unique and global operation whereby all the equities of the case are balanced up. According to this view, the search for an equitable result requires that the two functions of the geography be taken into account at one and the same time: by shaping positively the boundary line, and by being ignored or played down due to special or unusual features.

According to another view, the delimitation process begins with a starting point in which the equidistant line serves as a first stage. This is followed in a second stage by a possible adjustment of the provisional equidistant line in order to achieve an equitable result. According to this view, geography fulfills its positive function in the first stage, and its negative (corrective) function in the second stage, when it gives rise to the definitive delimitation. 'In other words, as the present writer has suggested, having generated the original line of equidistance, the coastal geography will provide the means of criticizing and possibly modifying it.'²³

Obviously, geographic considerations are not the only factors taken into account in the balancing-up of the equities. They weigh, nevertheless, more than any other, so much so that the equitable result that is sought is perhaps no more than the drawing of a line at a sufficient distance from both coasts in order to avoid danger to the political and economic interests of either party. 'Maritime jurisdictions, has it been said, just as territorial sovereignty, express themselves in spatial terms.'²⁴

F *Geographic Considerations in Negotiated Delimitations*

To what extent do these remarks apply to agreed delimitations? The answer to this question is not an easy one. On the one hand, it is clear that judicially determined and negotiated delimitations belong in certain respects to the same world. No one can deny that the principles and rules expressed in judicial decisions have an important effect on the negotiating positions adopted in maritime boundary delimitation negotiations. In particular, the judge-made concepts of 'particular,' 'incidental,' and 'special' geographical features which are to be ignored or given only partial effect have certainly pervaded state

²³ *Id.* at 217-18.

²⁴ Weil, *Des Espaces Maritimes aux Territoires Maritimes: vers une Conception Territorialiste de la Délimitation Maritime*, in *LE DROIT INTERNATIONAL AU SERVICE DE LA PAIX, DE LA JUSTICE ET DU DÉVELOPPEMENT* (1991).

practice. Conversely, no one can deny that third party decision-makers are mindful of state practice and the development of customary international law.

On the other hand, however, it is quite obvious that the two modes of delimitation – the judicially decided and the negotiated and agreed ones – must be distinguished.²⁵ In the words of Judge Jiménez de Aréchaga, between the two situations there is 'a world of difference.'²⁶ While there are legal norms binding on the courts, there are no legal norms restricting the contractual freedom of states in this area. Third party delimitations are decided according to legal rules; negotiated delimitations are not, or at least are not necessarily. Governments certainly can, and often do, take into account legal precedents or rules when negotiating a delimitation agreement, but they can quite as well set aside legal considerations and draw a line according to whatever considerations they deem relevant (i.e., politically relevant) such as geography, economics, military, or convenience. It is indisputable that the agreed delimitation lines are so varied that it cannot possibly be assumed that a court deciding on the basis of law would have reached an identical, or even similar, results.

Since governments can agree on any line they regard as satisfactory and can base their agreement on any consideration they regard as pertinent, it is difficult to assess the exact role of geographic considerations in delimitation agreements as a whole. In some instances this role appears as evident. That is the case, in particular, in all agreements based on equidistance. In others, as is illustrated below, the impact of geographic considerations on the boundary agreed upon is less obvious, and in some cases even doubtful.

The observation is sometimes made that, as a consequence of the importance of geographic considerations, maritime boundaries present a higher degree of predictability than land boundaries; land boundaries are the fruit of the fortunes of history, while maritime boundaries reflect the coastal geography. Even though it is true that, because of the impact of geographic considerations the range of alternatives is more limited in the sea than on the land, the great variety of the solutions arrived at in the hundred or so maritime delimitation agreements so far concluded makes the assessment of the role of geographic considerations in state practice a difficult exercise. Even if some general patterns emerge, none is exempt from examples that illustrate the opposite. In the absence of definite patterns one should speak of mere trends. From each one of these trends one may conclude that there is a dominant practice, but from each of these exceptions one may quite as well conclude that there is no convincing or consistent practice. Is the bottle half full or half empty? Legally speaking, both answers are correct.

This inherent difficulty faced by an objective assessment of state practice is compounded by the fact that more often than not it is impossible to identify with any certainty which considerations lie behind any specific agreed

²⁵ WEIL, *supra* note 1, at 103.

²⁶ *Sep.op.* Continental Shelf (Tunisia/Libyan Arab Jamahiriya), 1982 I.C.J. 117 (para. 61).

boundary. Even an apparently equidistant line does not always speak of itself; there are different varieties of equidistance. Many so-called equidistant boundaries are such only in a general sense. Every time quasi- or modified equidistance has been preferred by the parties to strict equidistance, some factor other than geography, pure and simple, has obviously come into play. On the other hand and quite to the opposite, some agreements which announce explicitly a given method (e.g., equidistance) draw a line which does not actually match that method (Colombia–Dominican Republic (1978), No. 2–2; Colombia–Haiti (1978), No. 2–3; Costa Rica–Panama (1980), No. 2–6).

An additional difficulty flows from the fact that any assessment has quite obviously to be based on the agreements already concluded, that is to say, on a partial (even if not negligible) sample. As appears from the regional reports, a great number of delimitations, probably the most complex and difficult ones, remain to be done.

G *The Ambiguities of Coastal Geography*

Another reason for caution lies in the ambiguity of the very concept of coastal geography (even limited to the physical and, insofar as the terminus of the land boundary is involved, the political geography of the coasts). The geographical configuration of each of the concerned coasts is, in effect, not an objective and indisputable fact. It also lends itself to subjective and often contradictory interpretations. The general direction of the coasts, for example, is a factor frequently taken into account by negotiators as well as by judges. It is clear, however, that any evaluation of this apparently objective factor depends on two options.

On the one hand, a delimitation may take each part of the area separately in detail to take account of most if not of all local variants and therefore result in a boundary that uses almost every basepoint; or, alternatively, it may jump, so to speak, over minor coastal features to take account only of the most important ones and therefore result in a boundary that uses and reflects only a few basepoints on each coast (or on one of them). On the other hand, a delimitation may regard as relevant smaller or greater stretches of coastal front.

The two approaches may conveniently be subsumed under the concept of micro- versus macrogeography. A delimitation may be said to be macrogeographic when it takes account of long coastal fronts i.e. of coastal fronts beyond the area of delimitation proper. Conversely, it may be said to be microgeographic when it takes accounts of only a few coastal features or when it rests on short coastal fronts i.e., on fronts restricted to area of delimitation proper. Macrogeography relies on small-scale maps, microgeography on large-scale maps. Thus, islands, rocks, promontories, and similar features all will appear as significant elements of the coast when looked at from a microgeographic viewpoint on a large-scale map, but will appear as insignificant features, unable to affect the general direction of the coast, when looked at from a macrogeographical viewpoint on a small-scale map.

Even though distinct, the two approaches are closely related. When account is taken of long stretches of coastal fronts, minor geographical irregularities are likely to be neglected, and some turning points of the boundary line are likely to be passed over; all the more so since in such cases the boundary will often rest on straight baselines. Conversely, when account is taken of only short stretches of coastal fronts, most if not all possible basepoints are likely to be taken into account, and only a few turning points of the boundary are likely to be passed over.

The same holds true for many other geographic considerations. The regularity or irregularity of the coast and its convexity or concavity depend to a great extent on the scale of the map as much as on the objective facts. So does the general geographical context sometimes taken into account by judges and arbitrators,²⁷ and probably also by many negotiators. The same is true regarding the perceived relationships of oppositeness and adjacency between the parties' coasts, and the comparisons between the lengths of the relevant coasts. For all these geographical considerations, objective facts though they may seem, are often to be found in the eyes of the negotiators and decision-makers.

II GEOGRAPHIC CONSIDERATIONS IN STATE PRACTICE

A *The Scope of the Present Report*

It is with the above remarks in mind that an attempt will be made hereinafter to highlight certain aspects of state practice regarding geographic considerations. Since the role of these factors in judicially decided delimitations has been sufficiently studied in the literature, it will be left aside. Furthermore, geography will be taken here as synonymous with the physical geography of the coasts (including the terminal point of the land boundary). Finally, in order to avoid excessive overlap with other articles in this book, the considerations relating to offshore features such as islands and rocks, as well as adjacency, oppositeness, and proportionality, will be kept to a minimum.

Needless to say, the examples given hereafter have no more than an illustrative purpose. While they may point to what has been called *opinio aequitatis*,²⁸ they can in no way be regarded as the expression of an *opinio juris*. The parties agree on a boundary because they regard it as appropriate (as equitable, in other words) in the light of the circumstances of the case, not because they regard it as legally obligatory. In maritime delimitation state practice is practice, no more; in my opinion it is not creative of customary law.²⁹

²⁷ Guinea-Guinea-Bissau, 25 I.L.M. 252 paras. 108-11 (1986); Libya/Malta, 1985 I.C.J. 50 (para. 69).

²⁸ N. Valticos, sep. op. Libya/Malta, 1985 I.C.J. 108 (para. 11).

²⁹ On the role of state practice in the development of the customary law of maritime delimitation, see WEIL, *supra* note 1, at 149.

B *Examples of State Practices*1 *The Interaction of Geographic and Nongeographic Considerations*

Geographic considerations lie behind all delimitation agreements. In no case can it be said that geography was simply not in the mind of the negotiators. For some cases geographic considerations were, if not the only, then at least the decisive factor. In other cases considerations of a nongeographical nature appear to have exerted a greater, and at times a decisive, influence on the location of the boundary.

All agreements which draw an equidistant line either by name or by defining a series of points which are in effect equidistant points may be regarded as geography-inspired by their very nature. Good examples are the numerous agreements which draw an equidistant line between opposite coasts of comparable length. Such are, among others: Canada–Denmark (Greenland) (1973), No. 1–1; Japan–South Korea (1974), No. 5–12; and Colombia–Dominican Republic (1978), No. 2–2. This applies, of course, not only to strict equidistant boundary lines, but also to simplified or adjusted equidistant lines. These quasi-equidistant lines are as much geography-oriented as strict equidistant lines, all the more so since it is usually with a view to giving more or less weight to some specific geographic feature that the governments agree on some flexibility in applying the method.

From the preceding it should not, of course, be inferred that non-equidistant lines have no geographic basis. In some cases the complete departure from equidistance is motivated precisely by the particularly complex geographic situation (e.g., France–Spain (1974), No. 9–2; Sweden–Soviet Union (1989), No. 10–10; and Netherlands (Netherlands Antilles)–Venezuela (1978), No. 2–12). In others, nongeographic considerations played a more important role. The effect attributed to the islands of Gotland and Gotska Sandon by the Sweden–Soviet Union (1988), No. 10–9, agreement is totally determined by a political compromise reached after protracted negotiations.³⁰ The reasons behind the Argentina–Chile (1984), No. 3–1 and the France–Monaco (1984), No. 8–3, agreements are more political than geographical. The Argentina–Chile agreement is a compromise solution arrived at through the mediation of the Holy See. Since the maritime boundary was only one of the questions in dispute, its location cannot be assessed independently of the whole package. With reference to the France–Monaco agreement, Mr (now Judge) Guillaume (then legal adviser of the French Ministry of Foreign Affairs) commented that ‘it was inspired by considerations of courtesy and good neighborliness, and adopted as an *ad hoc* solution which has nothing to do with law and is explained only by the special nature of the relations between the two countries.’³¹

³⁰ Franckx, *Baltic Sea Maritime Boundaries*.

³¹ Guillaume, *Les Accords de Délimitation Maritime Passés par la France*, in PERSPECTIVES

In several cases the geographical or political situation is so complex, and the boundary agreed upon so special, that it would be an abuse of language to say that specific geographic considerations (except the complexity of the geographic situation itself) have been decisive. Examples are provided by the Colombia–Honduras (1986), No. 2–4; Colombia–Panama (1976), No. 2–5; Netherlands (Antilles)–Venezuela (1978), No. 2–12; Australia–Papua New Guinea (1978), No. 5–3; Burma–Thailand (1980), No. 6–4; and Norway–Soviet Union (1957), No. 9–6, delimitation agreements. In some instances geographic considerations appear as having been subordinated to economic or political ones (Iceland–Norway (Jan Mayen) (1980), No. 9–4). The presence of third states was an important factor that influenced a number of delimitation agreements in Africa,³² as well as the Colombia–Costa Rica (1977), No. 2–1 and Dominican Republic–Venezuela (1979), No. 2–9, agreements. Baseline considerations were important to the Cuba–United States (1977), No. 1–4, and Colombia–Haiti (1978), No. 2–3, agreements. Navigation interests influenced the course of many agreements in the Baltic Sea.³³

2 *Geography Ignored*

In some cases geography can be regarded as having played a role, if any, only in a very general sense. Thus, no coastal configuration can possibly have dictated the solution in the Cook Islands–United States (American Samoa) (1980), No. 5–5 agreement, where the delimitation was drawn between small islands. Except for the terminal point of the land boundary, no geographical considerations related to the configuration of the parties' coasts lie behind the boundaries drawn along parallels of latitude in South America (Pacific coast) and Africa.

3 *Small Islands, Islets, and Rocks*

Where one (or both) of the parties have islands, islets, or rocks more or less close to its (or their) coasts, the question of the weight to be accorded to these features arises. In some cases, however, where an island lies at a great distance from the mainland of the party to which it is politically attached, no geographic consideration relating to the mainland coast can possibly be relevant. In such cases, the only relevant geographic considerations are those of the island itself and those attributable to the other party or parties. Examples are provided by the Cook Islands–United States (American Samoa) (1980), No. 5–5; France (Wallis and Futuna)–Tonga (1980), No. 5–8; France (French Polynesia)–United Kingdom (Pitcairn, Henderson, Duce and Oeno Islands)

DU DROIT DE LA MER À L'ISSUE DE LA SOCIÉTÉ FRANÇAISE POUR LE DROIT INTERNATIONAL (Rouen, 1983), Paris, (1984), at 284.

³² Adede, *African Maritime Boundaries*.

³³ Franckx, *supra* note 30.

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(1983), No. 5-7; Australia (Heard/McDonald Islands)-France (Kerguelen Island) (1982), No. 6-1; France (Martinique)-Saint Lucia (1981), No. 2-10; and France (Guadeloupe and Martinique)-Venezuela (1980), No. 2-11, agreements. In cases where the islands lie close to the mainland coasts of the two parties and the boundary has been drawn between these island features rather than between the mainland coasts, the geographic considerations pertaining to the mainland coasts cannot be said to have played a role in the delimitation. This problem has arisen a number of times in the Caribbean.³⁴

4 *The Land Boundary*

As explained above, the point where the land boundary between the parties reaches the shore is a relevant geopolitical factor. This point dictates the choice of the parallel of latitude which constitutes the maritime boundary in many South American agreements on the Pacific coast³⁵ and in some African agreements. Land boundary considerations, however, obviously played no role where the two parties share no common land boundary, as in the Norway-United Kingdom (1965), No. 9-15; Netherlands-United Kingdom (1965), No. 9-13; Colombia-Costa Rica (1984), No. 3-6; and Costa Rica-Ecuador (1985), No. 3-8, delimitations. In some of these agreements the delimitation was required to take account of offshore islands and the boundary was established by a line of equidistance between the two countries in the areas where their 200-mile maritime areas overlap.³⁶

5 *Oppositeness and Adjacency*

The geographic configuration most frequently taken into account is the oppositeness/adjacency relation between the coasts. From the study by Leonard Legault and Blair Hankey in this volume it appears that equidistance is by far the preferred method used between opposite coasts. It remains so, although to a lesser degree, in situations of mixed oppositeness and adjacency. Between lateral coasts, on the other hand, equidistance, though not unknown, is less frequently utilized. The authors produce interesting statistical data in this respect.³⁷

It is clear in this area that while one may safely speak of trends, no clear-cut practice, and a fortiori no customary rule, has emerged as regards the influence that oppositeness and adjacency may have on a maritime boundary delimitation. This may easily be confirmed by some examples. Between

³⁴ See Nweihed, *Middle American and Caribbean Maritime Boundaries*.

³⁵ See Jiménez de Aréchaga, *South American Maritime Boundaries*, and Adede, *supra* note 32.

³⁶ See Jiménez de Aréchaga, *supra* note 35.

³⁷ Legault and Hankey, *Method, Oppositeness and Adjacency, and Proportionality in Maritime Boundary Delimitation*.

opposite coasts more or less parallel and with comparable configurations and lengths, equidistant or quasi-equidistant solutions clearly prevail (e.g., Canada–Denmark (Greenland) (1973), No. 1–1; Cuba–Mexico (1976), No. 2–8; Greece–Italy (1977), No. 8–4; Cuba–Haiti (1977), No. 2–7; Norway–United Kingdom (1965), No. 9–15; Finland–Soviet Union (1965), No. 10–4(1); Denmark (Faroe Islands)–Norway (1979), No. 9–1; Denmark–Norway (1965), No. 9–9; Colombia–Dominican Republic (1978), No. 2–2; Colombia–Haiti (1978), No. 2–3; and Finland–Sweden (1972), No. 10–3). But non-equidistant boundaries are not unknown (Sweden–Soviet Union (1988), No. 10–9).

Between opposite coasts with different configurations and lengths one finds non-equidistant solutions (e.g., India–Maldives (1976), No. 6–8; and Ireland–United Kingdom (1988), No. 9–5), but also equidistant or quasi-equidistant ones (e.g., Netherlands–United Kingdom (1965), No. 9–13; and German Democratic Republic–Sweden (1978), No. 10–7).

Between adjacent coasts with comparable configurations and lengths equidistant delimitations are frequent, either as such or as a perpendicular to the general direction of the coast (e.g., Brazil–France (French Guiana) (1981), No. 3–3; Brazil–Uruguay (1972), No. 3–4; and Costa Rica–Panama (1980), No. 2–6). Some boundaries, however, are drawn along a parallel at the intersection of the land boundary with the coast. This line is usually a far cry from equidistance (e.g., various agreements on the Pacific coast of South America; The Gambia–Senegal (1975), No. 4–2; Kenya–Tanzania (1976), No. 4–5; and Portugal–Spain (1976), No. 9–7).

Between adjacent coasts of clearly differing configurations non-equidistant delimitations seem to have prevailed (e.g., Federal Republic of Germany–Netherlands (1971), No. 9–11, and Denmark–German Democratic Republic (1988), No. 10–11 (where one coast is convex and the other concave); Colombia–Panama (1976), No. 2–5 (where convexities and concavities on the two coasts are different); and France–Spain (1974), No. 9–2)). But equidistant or quasi-equidistant delimitations may also be found in such circumstances (e.g., Costa Rica–Panama (1980), No. 2–6; and German Democratic Republic–Poland (1989), No. 10–6(1)).

6 *Islands*

Just as it is true for the oppositeness/adjacency relationship only some general patterns can be found in the treatment of islands. Geography presents an infinite variety of situations and solutions as is evident from the delimitation agreements analyzed by Professor Derek Bowett.³⁸ Whatever their location with respect to either coast, islands have been given full effect, partial effect, or no effect without there being any consistent pattern. In some instances one and the same island has been given a different treatment in different agree-

³⁸ Bowett, *Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitation*.

ments. Thus, the Finnish island group of Bogskar was given no effect at all in the Finland–Sweden (1972), No. 10–3, agreement but was given full effect in the Finland–Soviet Union (1980), No. 10–4(3), agreement.³⁹

Whatever the respective coastal relationships between islands (dependent islands or island states) and continental coasts one can find a variety of solutions, including equidistant delimitations (Denmark–Norway (1965), No. 9–9; Cuba–Mexico (1976), No. 2–8; India–Maldives (1976), No. 6–8; Colombia–Costa Rica (1977), No. 2–1; France–Italy (1986), No. 8–2; and Italy–Tunisia (1971), No. 8–6), as well as non-equidistant ones (India–Thailand (1978), No. 6–11; Australia–France (1982), No. 5–1; and Colombia–Panama (1976), No. 2–5).

Between islands (dependent islands or island states) of comparable coastal configuration, coastal length, and size one finds equidistant or quasi-equidistant solutions (e.g., France–Tonga (1980), No. 5–8; France–Mauritius (1980), No. 6–5; New Zealand–United States (1980), No. 5–14; Cuba–Haiti (1977), No. 2–7; and France–Saint Lucia (1981), No. 2–10), as well as non-equidistant ones (e.g., France–Venezuela (1980), No. 2–11; Iceland–Norway (1980), No. 9–4; and Burma–India (1986), No. 6–3).

Likewise, between islands (dependent islands or island states) of differing coastal configurations, coastal lengths, or sizes one finds equidistant solutions (e.g., United States–Venezuela (1978), No. 2–14; and Italy–Spain (1974), No. 8–5), as well as non-equidistant ones (e.g., India–Thailand (1978), No. 6–11; and France–Venezuela (1980), No. 2–11).

7 *Macro- and Microgeography*

It is difficult to determine whether there is a general pattern with respect to the question of macro- or microgeographic approach. Here again widespread discrepancies appear in state practice. In some cases all basepoints have been taken into consideration so that a macrogeographic approach may be said to have been adopted (e.g., Norway–United Kingdom (1965), No. 9–15; Netherlands–United Kingdom (1965), No. 9–13; and Federal Republic of Germany–Netherlands (1964), No. 9–11). On the other hand, the Norway–Soviet Union (1957), No. 9–6 agreement resorted to microgeography in the Vanrangerfjord. The France–Spain (1974), No. 9–2, agreement used microgeography for delimiting the territorial sea and macrogeography further to seaward. In the Denmark (Faroe Islands)–Norway (1979), No. 9–1, agreement only one basepoint was used on each side.

8 *Concavities and Convexities*

Concavities and convexities are no doubt among the most prominent coastal

³⁹ Other examples may be found in Franckx, *supra* note 30.

configurations subject, however, to the qualifications set out above. In the France–Spain (1974), No. 9–2, agreement the concavity of the French coast was certainly a factor behind the agreement. In other cases the influence of this factor is less clear.

9 Proportionality

The role of the proportionality of the coastlines is carefully examined in the paper by Legault and Hankey.⁴⁰ Whatever the degree of sophistication this matter has received in judicial thinking, the authors note, '[i]t is difficult to determine with any degree of precision what role it (proportionality) plays in negotiated boundaries.'⁴¹ An exception is found perhaps in the France–Spain (1974), No. 9–2, and the Netherlands (Antilles)–Venezuela (1978), No. 2–12, agreements where proportionality was certainly incorporated into the methodology used to determine the course of the boundary. The authors also observe that it is difficult to assess whether, and to what extent, this factor played a role in any specific delimitation agreement.⁴² At times such a role can be presumed, but almost never can it be proven. Anyway, the authors declare, 'the use of proportionality is more often subjective and impressionistic than mechanical and precise.'⁴³ Moreover, there are situations where the comparison of coastal lengths is difficult (India–Maldives (1976), No. 6–8; Dominican Republic–Venezuela (1979), No. 2–9; Denmark–United Kingdom (1971), No. 9–10; Cook Islands–United States (1980), No. 5–5; and New Zealand–United States (1980), No. 5–14).

10 Regional Differences

Have geographic considerations been more influential in certain regions than in others? The regional reports do not warrant any such conclusion, even though some regional trends have been identified in the respective reports. In South America, for instance, most delimitations on the Pacific coast follow a parallel of longitude drawn from the point where the land boundary intersects the coast, while most delimitations on the Atlantic coast follow the method of equidistance.⁴⁴ In the Baltic Sea, while islands are treated in widely different ways, equidistance is usually the method adopted unless navigational interests require some deviation.⁴⁵ On the whole, however, state practice appears in all regions not to follow any particular regional logic. Thus, as already noted, one and the same island may be given different treatments in

⁴⁰ Legault and Hankey, *supra* note 37.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See Jiménez de Aréchaga, *supra* note 35.

⁴⁵ See Franckx, *supra* note 30.

different agreements. Not even may the practice of one particular state be regarded always as consistent with itself. British practice, for instance, shows how equidistant lines can be set aside in favor of various kinds of 'pragmatic lines.'⁴⁶

III CONCLUSION

The preceding exercise could easily continue with all imaginable variables. What emerges from the individual boundary and regional reports is clear: geographic considerations certainly play an important role in agreed, as well as in judicially decided, delimitations. At times this role is decisive or exclusive. At other times geographic considerations are only a factor, among others. The impact of a given geographic feature or situation on the course of the boundary differs widely. The variations are so multitudinous that all kinds of relationships between given types of geographic configurations and the agreed boundary line are to be found. The overwhelming role of geographic considerations and the infinite variety of influences these considerations have exerted on these delimitations are the main lessons one may draw from the practice of states. It cannot be concealed, however, that to a certain extent these were foregone conclusions.

⁴⁶ Anderson, *Maritime Delimitation: A View of British Practice*, MARINE POLICY 231, 240 (1988).

- d. Consumer Notes
 - i. BEA, ss. 188-192 (generally) SM 166
 - ii. Baxter, pp. 45-49 (generally) SM 206

Part 3 - Extinguishing Money Claims

A. Limitations of Actions

- 1. General
 - a. *Limitations of Action Act*, ss. 1 ("action", "proceeding"); 2-12; 16; 17 (generally) SM 211
 - b. *Newfoundland Limitations Act*, ss. 2; 16 SM 213

B. Payment and Settlement

- 1. Money
 - a. *Constitution Act*, s. 91(14), (15), (20) SM 1
 - b. Legal Tender
 - i. *Currency Act*, ss. 2; 3; 8 SM 216
 - ii. Crawford, pp. 23-32 SM 217
 - c. Electronic Money
 - i. Crawford, pp. 35-40 SM 226
- 2. Tender and Payment
 - a. Dunlop, pp. 18-27 SM 232
- 3. Payment by Cheque
 - a. Bank Customer Relationship
 - i. Baxter, pp. 51-60 SM 242
 - b. Authority to Honour
 - i. BEA, s. 167 SM 166
 - ii. Baxter, pp. 33-35 SM 252
 - c. Conditional/Unconditional Payment
 - i. *Whyton v. Hille* SM 258

d.	Drawer/Drawee Liabilities	
	i. Drawee - Wrongful Dishonour - BEA, s. 126	SM 166
	ii. Engagements of Drawer - BEA, ss. 33;129	SM 166
e.	Postdated Cheques	
	i. Baxter, pp. 35-36	SM 252
	ii. <i>Contract Air v. A. W. Service</i>	SM 262
f.	Certified Cheques	
	i. Baxter, pp. 36-38	SM 252
4.	Payment with "Plastic" Money	
	a. Credit Cards (Crawford, pp. 365-378)	SM 270
	b. Debit Card (Crawford, pp. 415-432)	SM 281
5.	Accord and Satisfaction	
	a. Dunlop, pp. 27-40	SM 289
	b. <i>Robichaud v. Caisse Populaire de Pokemouche</i>	SM 303
C.	Set-off, Counterclaim, Abatement	
1.	General	
	a. Palmer, pp. 9-19	SM 309
D.	Judgment	
1.	Merger into Judgment	
	a. Dunlop, pp. 200-205	SM 17
E.	Federal Aspects - General	
1.	Bankruptcy - Release of Claims	
	a. BIA, s. 178	SM 320
2.	Proposals and Arrangements	

Part 4 - Security Interests

A. Mortgages and Other Security Interests

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|----|--|--------|
| 1. | Introduction (Ziff, pp. 369-371) | SM 141 |
| 2. | Origins of the Mortgage (Ziff, pp. 371-372) | SM 143 |
| 3. | The Contributions of Law and Equity | |
| a. | Generally (Ziff, pp. 373-374) | SM 145 |
| b. | Disguised and Other Equitable Mortgages
(Ziff, pp. 374-376) | SM 146 |
| c. | Clogs and Fetters on the Equity of Redemption
(Ziff, pp. 376-378) | SM 148 |
| d. | Alienation of Interests (Ziff, pp. 378-380) | SM 152 |

B. Remedies and Related Matters

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|------|---|--------|
| 1. | Overview | |
| a. | Introduction (Ziff, pp. 380-381) | SM 154 |
| b. | The Personal Covenant (Ziff, pp. 381-383) | SM 155 |
| c. | Taking Possession or Appointing a Receiver | |
| i. | Ziff (pp. 383-386) | SM 157 |
| ii. | Rule 41.01-41.05 | SM 161 |
| iii. | Leonard (paras. 338-354) | SM 163 |
| iv. | PPSA, s. 64 (generally) | SM 167 |
| d. | Foreclosure (Ziff, pp. 386-388) | SM 169 |
| e. | Sale | |
| i. | Ziff (pp. 388-391) | SM 171 |
| ii. | <i>Property Act</i> , ss. 40; 44(1), (4), (5);
45(1); 47; 48 | SM 175 |
| f. | Interrelationship of Remedies (Ziff, pp. 391-392) | SM 179 |

- g. Relief From Acceleration
 - i. Ziff (p. 392) SM 102
 - ii. PPSA, s. 62(4) SM 98
- h. Distribution of Surplus
 - i. *Property Act*, s. 47(3); 48(2) SM 175

C. Other Types of Security Arrangements

- 1. Pledges, Charges, Liens
 - a. Ziff (pp. 395-396) SM 221
 - b. Mechanics Liens
 - i. Goldsmith (pp. 11.1-11.16) SM 223
 - ii. *Mechanics Lien Act*, ss. 1 ("contractor", "improvement", "owner", "work"); 2-7; 9(1), (2); 15(1)-(3), (6), (7), (8); 16 20(1); 24(1)-(4); 25 SM 238
 - c. *Liens on Goods and Chattels Act*, (generally) SM 241
 - d. *Workers Compensation Act*, ss. 61; 68: 72(2)-(5); 73(2) SM 244

D. Personal Property Security Act

- 1. Background
 - a. Modern Pers. Prop. Security Law (Ziff, pp. 397-398) SM 1
 - b. Alberta PPSA Handbook (pp.1-5) SM 2
- 2. Scope of Act
 - a. PPSA, ss. 1 ("debtor", "secured party", "security interest"); 3; 4 (generally) SM 7
- 3. Enforcement Options Security
 - a. PPSA, ss. 9; 55-58(1); 59; (generally); 61 (generally) SM 36

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|----|------------------------------|--------|
| 4. | Redemption and Reinstatement | |
| | a. PPSA, ss. 62 (generally) | SM 97 |
| 5. | Exemptions | |
| | a. PPSA, 58(3)-(7) | SM 67 |
| 6. | Distribution of Surplus | |
| | a. PPSA, s. 60 (generally) | SM 102 |

Part 5 - Priority and Registration

A. Introduction

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|----|---|--------|
| 1. | Introduction (Ziff, pp. 399-401) | SM 180 |
| 2. | Overview of Priorities at Common Law | |
| | a. Introduction (Ziff, p. 401) | SM 182 |
| | b. Priorities (Ziff, pp. 402-406) | SM 183 |
| | c. Providing Good Title (Ziff, pp. 406-407) | SM 187 |

B. Registration for Land

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|----|--|--------|
| 1. | Introduction (Ziff, pp. 407-408) | SM 188 |
| 2. | Deeds Registration (Ziff, pp. 408-410) | SM 189 |
| 3. | <i>Registry Act</i> , ss. 1 ("instrument", "land"); 19(1) | SM 197 |
| 4. | Title Registration (Ziff, pp. 410-412) | SM 193 |
| 5. | The Cardinal Elements of Torrens Title (Ziff, pp. 412-414) | SM 194 |

C. Registration for Personal Property

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|----|--------------------------------|--------|
| 1. | The Registration System | |
| | a. General (Ziegel and Cuming) | SM 104 |

- b. PPSA, ss. 1 ("financing statement", "financing change statement", "Registry"); 42(1); 43; 44; 47; 48 SM 109
- 2. Basic Concepts
 - a. Attachment
 - i. PPSA, ss. 9; 10; 12(1). (2); 13(1) SM 36
 - b. Perfection
 - i. PPSA, ss.19, 24, 25 SM 51
- 3. Priority Rules
 - a. Unperfected SP v. TP
 - i. PPSA, ss. 20(1), (2). (3); 22 SM 121
 - b. SP v. SP
 - i. PPSA, ss. 34(1); 35 (1)-(5) SM 112
 - c. Priority - Perfected SP v. TP
 - i. PPSA, s. 30; 31 (generally); 32 SM 122

Part 6 - Bankruptcy and Insolvency

A. Constitutional Considerations

- 1. Bankruptcy and Insolvency
 - a. Division of Powers
 - i. *Constitution Act, 1867*, s. 91(21) SM 340
 - ii. Dunlop, pp. 627-628 SM 341
 - iii. BIA, s. 2 ("bankrupt"; "bankruptcy"; "insolvent person") SM 343
 - iv. Leonard (paras. 1-17) SM 343
 - v. BIA, s. 72(1) SM 346

B. Bankruptcy

- 1. General
 - a. Leonard, paras. 18-35 SM 346

- b. Courts
 - i. BIA, ss. 2 ("court"); 183-192 (generally) SM 349
 - ii. Bankruptcy Rules (BIA, s. 209) SM 354
- c. Provable Claim
 - i. BIA, s.121; 122(2); 124-126; 135 SM 354
- 2. Becoming a Bankrupt
 - a. Voluntary Assignment
 - i. BIA, s. 49(1) SM 356
 - ii. Leonard, paras. 36-38 SM 357
 - b. Petition for a Receiving Order
 - i. BIA, ss. 42; 43(1), (6), (9); 46; 48 SM 357
 - ii. Leonard, paras. 39-49 SM 360
- 3. Consequences of Bankruptcy
 - a. Property Vesting in Trustee
 - i. BIA, ss. 2 ("date of initial bankruptcy event");
2.1; 67(1); 68(1)-(3), (5)-(7); 70; 71(2); 73 SM 363
 - ii. Leonard, paras. 50-51 SM.365
 - b. Stay of Proceedings
 - i. BIA, ss. 69.3 SM 370
 - ii. Leonard, paras. 52-53 SM 371
 - c. Right of Set Off
 - i. BIA, s. 97(3) SM 371
 - d. Personal Disabilities
 - i. BIA, s. 199 SM 371
 - e. Discharge of the Bankrupt
 - i. BIA, ss. 168.1(1)(f), (4); 169(1), (4); 172(1);
175; 178 SM 372
- 4. Secured Creditors in Bankruptcy
 - a. General
 - i. BIA, s. 2 ("secured creditor") SM 374
 - ii. Leonard, paras. 97-121 SM 376

- b. Stay of Proceedings
 - i. BIA, s. 69.3(2) SM 370
- c. Proof of Security Interest
 - i. BIA, ss. 127-134 (generally) SM 383
- 5. Administration of Estate
 - a. General
 - i. BIA, 16(1), (3); 30 SM 384
 - b. Inspectors
 - i. BIA, ss. 102(4), (5); 116; 119 SM 385
 - c. Distribution of Estate
 - i. BIA, ss. 136-151 (generally) SM 386
 - d. Discharge of Trustee
 - i. BIA, s. 41(1), (2), (8) SM 391
- C. Proposals and Arrangements**
 - 1. General
 - a. Constitutional Considerations
 - i. BIA, s. 42(2) SM 391
 - 2. Statutory Provisions
 - a. Bankruptcy and Insolvency Act
 - i. Leonard, paras. 54-96 SM 392
 - b. Companies Creditors Arrangement Act
 - c. Farm Debt Mediation Act