

# *The Principle of Equidistance on Continental Shelf Delimitation*

Ma Xueyao<sup>1,a,\*</sup>

<sup>1</sup>*Department of International Law, China Foreign Affairs University, 24 Zhanlan Road, Beijing, China*

<sup>a</sup>*ma\_xueyao@163.com*

<sup>\*</sup>*Corresponding author*

**Keywords:** Principle of equidistance, the delimitation of continental shelf, the principle of natural prolongation

**Abstract:** In the field of the international law of the sea, continental shelf delimitation has always been one of the most controversial issues. Since the definition of the Equity Principle in the “United Nations Convention on the Law of the Sea” (UNCLOS) is relatively vague, the connotation of the Equity Principle depends on the accumulation and development of international judicial precedents, arbitration awards, and state practice. The Equity Principle of continental shelf delimitation has been generally recognized by the international community and has become a part of customary international law. Only when all relevant circumstances are fully considered can a fair delimitation result be obtained and a balance of reasonable interests of all parties be achieved.

## 1. Introduction

As one of the global geographical forms, the shallow seabed area of the continental shelf is extremely rich in oil, gas, minerals, and other resources, and has considerable economic potential and important military status. The delimitation of the continental shelf is related to the maritime interests of all countries. Therefore, the issue of delimitation continues to attract more and more attention. In the legal system of continental shelf delimitation, the relevant debates mainly focus on the status of the principle of natural prolongation, the principle of middle line, and the principle of equidistance in the delimitation theory [1]. In international practice, the principle of equidistance of continental shelf delimitation has been generally applied. However, given the flexibility of the content of the principle of equidistance, difficulties have been encountered in practice. This article analyzes the meaning and practice of the principle of equidistance.

## 2. The Meaning of the Principle of Equidistance in Continental Delimitation

First, we need to clarify the existing meaning of the principle of equidistance. This is stipulated in the United Nations Convention on the Law of the Sea. And the academic community also has opinions and explanations.

## 2.1. Provisions in United Nations Convention on the Law of the Sea

The principle of equidistance is the product of the compromise of the third United Nations Ocean Conference, stipulated in Article 83 of the United Nations Convention on the Law of the Sea (UNCLOS).

“1) The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement based on international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

2) If no agreement can be reached within a reasonable period, the States concerned shall resort to the procedures provided for in Part XV.

3) Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.”

As a product of compromise, the expression of Article 83 of UNCLOS is very vague. It does not define the specific concept of the principle of equidistance but only puts forward the requirement for achieving an equitable solution. However, the principled provisions of this treaty confirm equity. Therefore, the principle of equidistance that should be followed in the delimitation of the continental shelf can only rely on the accumulation and development of international judicial precedents, arbitral awards, and state practices.

## 2.2. Main Views of the Academic Community on the Concept of the Principle of Equidistance

With the practice of international justice, the principle of equidistance has been continuously developed and improved, but academic circles have different understandings and explanations of the principle of equidistance. Some scholars believe that the legal system involved in the principle of equidistance must be just, and applying the principle of equidistance to resolve disputes is precisely to distribute rights and obligations reasonably. The principle of equidistance not only means that the delimitation of the continental shelf must adopt a fair method, but more importantly, it must achieve a fair result. This does not mean that the countries should divide the land equally regardless of all circumstances but should maintain the extended relationship between the continental shelf and the land [2]. Therefore, the core of the principle of equidistance is to achieve a fair result of the reasonable distribution of rights and obligations as much as possible. In addition to the fairness of the result, the process also needs to apply the principle of equidistance, but it is not simply divided into two equal parts.

To sum up, although the meaning of the principle of equidistance has not been clearly defined in UNCLOS, the provisions have established that the principle of equity is one of the basic principles of continental shelf delimitation, and the principle of equity can be continuously enriched and improved through continuous practice connotation.

## 3. Principle of Equidistance and Other Principles of Continental Shelf Delimitation

In addition to the principle of equidistance, the principles of natural prolongation and middle line can also be applied to the delimitation of the continental shelf. The principle of equidistance cannot exist alone, and it complements the other two principles. It must be based on the specific circumstances of the case, combined with the principles of natural prolongation and equidistance, and work together to achieve a fair result.

### **3.1. Principle of Equidistance and the Principle of Natural Prolongation**

Article 76 of the UNCLOS stipulates that “the continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin.” It recognizes the foundational status of the principle of natural prolongation. In the North Sea Continental Shelf Case, this principle was cited as "the most basic principle of all legal rules related to the continental shelf". Not changing the concept of nature is the premise of implementing the concept of fairness. The principle of equidistance is based on the principle of natural prolongation. To achieve a fair result, the factor of natural geographical extension must be taken into account. At the same time, the principle of equidistance also includes more circumstances that should be considered according to the circumstances of the case in addition to natural factors, which helps to better achieve fair results.

### **3.2. Principle of Equidistance and Principle of Middle Line**

The principle of middle line is more deterministic than the principle of equidistance. Article 6 of the Convention on the Continental Shelf stipulates that in the absence of an agreement, the median line shall be used as the boundary unless another line should be drawn due to special circumstances. In the North Sea Continental Shelf case, the International Court of Justice objected to the principle of equidistance, which has become an argument of customary international law. The court held that small irregularities on the coastline are automatically exaggerated by equidistance lines. At the Third Conference on the Law of the Sea, there were big differences in the adoption of the equidistance principle and the principle of equidistance. The author believes that Article 6 of the Convention on the Continental Shelf does not concretize the principle of equidistance, and lacks a detailed definition of "special circumstances". For example, the above-mentioned small irregularities on the coastline are normal phenomena of natural geography. Are they "special circumstances"? Blindly adopting the equidistance method will inevitably become rigid and sluggish because of its deterministic advantages. The application of the principle of equidistance is able to avoid the use of the equidistance method to delineate boundaries in some cases, resulting in unfair results.

To sum up, the principle of equidistance is different from the principle of natural prolongation and the principle of middle line. It is not a simple demarcation method, but a basic principle applicable to every submission. But the principle of equidistance does not exclude and limit the principle of natural prolongation and middle line. On the contrary, the principle of equidistance complements the consideration of the other two principles and is more conducive to achieving fair results.

## **4. Development of the Principle of Equidistance in Practice**

Regarding the principle of equidistance, it can be traced back to 1909, when the Court of International Arbitration heard the Grispadana demarcation case between Sweden and Norway. Although the Court did not explicitly use the term fairness, it did not test whether the demarcation result was reasonably considered a related factor. The connotation of the principle of equidistance has been continuously enriched with practice. The following two cases played an important role in the development of the principle of equidistance.

### **4.1. North Sea Continental Shelf Cases in 1969**

In 1969, the judgment of the International Court of Justice on the "North Sea Continental Shelf

Case" affirmed the basic principle of continental shelf delimitation, which is closely related to the principle of equidistance and the principle of natural prolongation. The North Sea continental shelf case is of great significance. In its judgment, the International Court of Justice emphasized that such boundaries "shall be determined by the United States and the State concerned in accordance with equitable principles. These two concepts, of delimitation by mutual agreement and delimitation in accordance with equitable principles, have underlain all the subsequent history of the subject." [3]

In this case, the Court pointed out three factors that should be considered for the standard of fairness: the natural resources and geological environment of the continental shelf, the general structure, and the characteristics of the coast of the country concerned. Due to the specificity and individuality of individual cases, the Court did not impose restrictions on the application of the principle of equidistance, but the judgment reflects the Court's tendency to pursue fair results. The principle of equidistance still has room for flexibility as cases vary.

#### 4.2. Libyan Arab Jamahiriya/Malta Cases in 1985

Another important case concerning the demarcation of the continental shelf boundary between two countries using the principle of equidistance is the Libya-Malta case in 1985. This case reflects that international justice has begun to consciously transform the flexibility of the principle of equidistance into certainty.

The Court listed five specific principles of general application that can embody the principle of equidistance, that is, the relevant terrain must not be changed, or the injustice caused by nature must not be compensated, a country must not infringe on the natural prolongation of other countries, respect for all relevant circumstances, fairness does not necessarily imply equality, nor is it intended to make the inequalities of nature equal, distributive justice cannot be achieved. The Court's judgment is to apply the principle of equidistance to achieve a fair result, which mainly focuses on the result. In the process of application, the relevant circumstances that should be considered in this case are also distinguished.

#### 5. Conclusions

Since the specific situations related to the delimitation of the continental shelf vary greatly, it is difficult to formulate a specific rule that is applicable to all situations [4]. The principle of equidistance is flexible and uncertain, and there are many factors that should be considered when applying the principle of equidistance to deal with the continental shelf. Based on the above analysis, this paper believes that the application of the principle of equidistance should consider the following factors.

First, natural prolongation is the primary factor in determining the principle of equidistance. In the North Sea Continental Shelf Case in 1969, the Anglo-French Continental Shelf Case in 1977, and the Libya-Malta Case in 1985, the International Court of Justice and the Arbitration Tribunal all emphasized that natural prolongation is the key point of delimitation. The delimitation of the continental shelf must follow the natural and geographical conditions of the countries concerned, and evaluate whether the result is fair in light of the specific circumstances. Natural prolongation is the most essential attribute of the continental shelf, and the principle of natural prolongation has been generally recognized in the practice of continental shelf delimitation.

Second, the demarcation method of equidistance combined with consideration of special circumstances as a supplement. In practice, there are many cases where the method of middle line is used as an intermediate means, and other special circumstances are considered comprehensively to achieve the purpose of applying the principle of equidistance. The method of middle line is a step in the process of demarcation, which is selectively adopted based on comprehensive consideration in

accordance with the principle of equidistance. In order to achieve a fair result, there are many relevant factors that can be considered, such as history, physical geography, population, politics, economy, historic rights, and many other factors that may have an impact.

The principle of equidistance is a combination of demarcation methods, which is flexible and uncertain. It needs to be interpreted under the purpose of the principle of equidistance in practice, so as to be applied in line with the original intention of the establishment.

The principle of equidistance has been repeatedly practiced and applied in international practice. Due to its flexibility, it should be applied carefully, so as to fully incorporate the factors that should be considered within the scope of the principle of equidistance into the scope of the decision, and to ensure that it will not be abused.

China has always maintained that the issue of maritime delimitation between neighboring or facing countries should be determined by the parties concerned through consultations based on the principles of equidistance and reasonableness, taking into account all relevant circumstances, so that the maritime boundaries can take into account the reasonable interests of all parties concerned interests to achieve a satisfactory result for all parties. China is a big maritime country, and it is difficult to deal with complex and diverse maritime disputes. Therefore, China should continue to stand firm, safeguard maritime rights and interests, and adhere to the principle of equidistance in maritime delimitation based on international law.

## References

- [1] Qu Guangqing, Qu Bo editor-in-chief. (2017) *Law of the Sea (Fourth Edition) (In Chinese)*. Renmin University of China Press, 116.
- [2] Qu Guangqing, Qu Bo editor-in-chief. (2017) *Law of the Sea (Fourth Edition) (In Chinese)*. Renmin University of China Press, 117.
- [3] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/ Netherlands), Judgment, I.C.J. Reports 1969, p. 33. para.47.*
- [4] Shao Jin. (1980) *The Judgment of the International Court of Justice in the North Sea Continental Shelf Case and the Principles of Continental Shelf Delimitation (In Chinese)*. *Journal of Peking University*, 2, 1980, 34.