Effect of Islands on Maritime Delimitation: A Look at the Recent Judgments of ITLOS and ICJ

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1. Delimitation of Territorial Sea
2. Delimitation of EEZ and Continental Shelf
3. Bangladesh/Myanmar Judgment
4. Nicaragua/Colombia Judgment
Article 121 UNCLOS
Regime of Islands

• 1. An **island** is a naturally formed area of land, surrounded by water, which is above water at high tide.

• 2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.

• 3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.
Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.
Territorial sea is the minimum maritime area to be allocated to an island.

No State is entitled to extend its EEZ or continental shelf into the territorial sea of an island belonging to another State.

Sovereignty that attached to the territorial sea is more essential to the integrity of a State as a whole than the rights which are exercised in other maritime jurisdictional zones.
The delimitation of the [EEZ] / continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
Delimitation of EEZ / CS

• What effect should be given to islands in EEZ / CS boundary delimitation?

• Small islands should not be given full effect in delimiting maritime boundaries against the mainland of a large mainland State.

• In some instances, islands were given a reduced EEZ and continental shelf; while in other instances, no EEZ and continental shelf was given to islands at all.
Bangladesh v Myanmar
ITLOS Decision – 14 March 2012

• Bangladesh’s St. Martin’s Island is a small island situated 5 nm southwest of Bangladesh’s southernmost mainland coast and 4.5 nm off Myanmar’s coast.

• The main island is 5.8 kilometres long and up to one kilometre wide.

• The population of St. Martin’s Island is about 7,000 people.
Territorial Sea claims proposed by the parties
Myanmar’s Argument:

• St. Martin’s Island is on the ‘wrong’ side of the equidistance line.

• St. Martin’s Island should not be given full territorial sea, as this would lead to a considerable distortion of the general configuration of the coastline.

• Myanmar observed that small or middle-size islands are usually ignored or given little or no effect in maritime delimitation.
**Bangladesh v Myanmar**

**Delimitation of Territorial Sea**

**Bangladesh’s Argument:**

- Cases identified by Myanmar in support of its argument were on the delimitation of the EEZ and CS.
- The right of States to claim a territorial sea around islands is a well-established principle of customary international law.
ITLOS Decision:

- ITLOS recognized that Bangladesh has the right to a 12 nm territorial sea around St. Martin’s Island.

- Any conclusion to the contrary would result in more weight being given to the sovereign rights and jurisdiction of Myanmar in its EEZ and CS than to the sovereignty of Bangladesh over its territorial sea.

- A standard 12 nm territorial sea is the minimum area that must be accorded an island.
Territorial Sea Boundary decided by ITLOS
Bangladesh v Myanmar
Delimitation of EEZ and CS

Bangladesh’s Argument:

• By not giving consideration to St. Martin’s Island, the delimitation between the two parties would be disproportionate for Bangladesh, and this would render the result inequitable.
Myanmar’s Argument:

• Giving full effect to St. Martin’s Island would produce a disproportionate result, in that St. Martin’s island, which is 5 kilometres long, would in itself generate at least 13,000 square kilometres of maritime area for Bangladesh.
EEZ and CS Boundary Suggested by the Parties
**Bangladesh v Myanmar**

**Delimitation of EEZ and CS**

**ITLOS Decision:**

- Giving effect to St. Martin’s Island would result in a line blocking the seaward projection from Myanmar’s coast.

- The distorting effect of an island on an equidistance line may increase substantially as the line moves beyond 12 nm from the coast.

- St. Martin’s Island was not given any effect in the delimitation of the EEZ and the continental shelf.
But, ITLOS adjusted the provisional equidistance line:

- Bangladesh’s concavity results in a cut-off effect on the maritime projection of Bangladesh.
- The concavity is a relevant circumstance, requiring an adjustment of the provisional equidistance line.
- The provisional equidistance line is to be deflected at the point where it begins to cut off the seaward projection of the Bangladesh coast.
EEZ and CS Boundary decided by ITLOS
Bangladesh v Myanmar

Conclusion

- ITLOS confirmed a full effect territorial sea as the minimum maritime jurisdiction accorded to an island

  BUT,

- Did not clarify how an island can effect delimitation of EEZ and CS

- Effectively ignored St Martin’s Island on drawing the EEZ boundary line
Nicaragua v Colombia
ICJ Decision – 19 November 2012

- Colombia has sovereignty over the islands of San Andrés, Providencia and Santa Catalina
- These are the 3 largest islands which have population of more than 70,000
- They are located approximately 105 – 125 nm off the coast of Nicaragua, but 380 nm from the mainland of Colombia
Sketch-map No. 1: Geographical context

This sketch-map has been prepared for illustrative purposes. The symbols showing maritime features indicate only their location, and not their physical characteristics or geographical and legal status.

Mercator Projection (12° 30' N)
WGS 84
Nicaragua v Colombia
Challenges

• Three stages approach not feasible?
  – Equidistance line treated the three islands as coastal front
  – Left out three quarters of relevant waters subject to delimitation to Colombia

• Effect of small islands on the delimitation of EEZ
  – Can LTE be appropriated?
  – Rock or island issue (Article 121(3) UNCLOS)
Sketch-map No. 11: Course of the maritime boundary

This sketch-map has been prepared for illustrative purposes only.

Mercator Projection (12° 30' N)  
WGS 84
Quitasueño

- One of the features at Quitasueño, namely QS 32, is above water at high tide → an island (Article 121, paragraph 1, of UNCLOS)
- The other 53 features identified at Quitasueño are low-tide elevations
- Colombia is entitled to use those low-tide elevations within 12 nautical miles of QS 32 for the purpose of measuring the breadth of its territorial sea.
Quitasueño – Island or LTE?
Parties agreed that Quitasueño is a rock incapable of sustaining human habitation or an economic life of its own → Article 121(3) of UNCLOS

It is not entitled to a continental shelf or EEZ.

The boundary will follow a 12-nautical-mile envelope of arcs measured from QS 32 and from the low-tide elevations located within 12 nautical miles from QS 32.
Sketch-map No. 11:
Course of the maritime boundary

This sketch-map has been prepared for illustrative purposes only.

Mercator Projection (12° 30′ N)
WGS 84
Serrana

- 170 nautical miles from the mainland of Nicaragua and about 360 nautical miles from the mainland of Colombia;
- The largest cay, Serrana Cay (also known as Southwest Cay), is some 1,000 metres in length and has an average width of 400 metres.
Serrana

• Although larger than Quitasueño, Serrana is also a comparatively small feature, whose considerable distance from any of the other Colombian islands means that placing a base point upon it would have a marked effect upon the course of the provisional median line which would be out of all proportion to its size and importance.

• In the Court’s view, no base point should be placed on Serrana.
Serrana

- The Court concluded that it is unnecessary to decide whether or not Serrana falls within the rule stated in Article 121 (3).
- Its small size, remoteness and other characteristics mean that, in any event, the achievement of an equitable result requires that the boundary line follow the outer limit of the territorial sea around the island.
**Nicaragua v Colombia**

**Conclusion**

- Confirmed that an island is entitled to a full effect of Territorial Sea at the minimum
- LTE cannot be appropriated, can be used as base-points if within 12 nm of an island/mainland coast
- Did not clarify effect of islands on delimitation of EEZ
- Side-stepped the issue of rock/island, but effectively only granted 12 nm to small islands
Thanks for your Attention

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