

# Workshop on Resolving Complex Maritime Boundaries

Session 1: Maritime Delimitation Rules  
Evolving Practice and Legal Complexities:  
An Introduction to Maritime Boundary Delimitation

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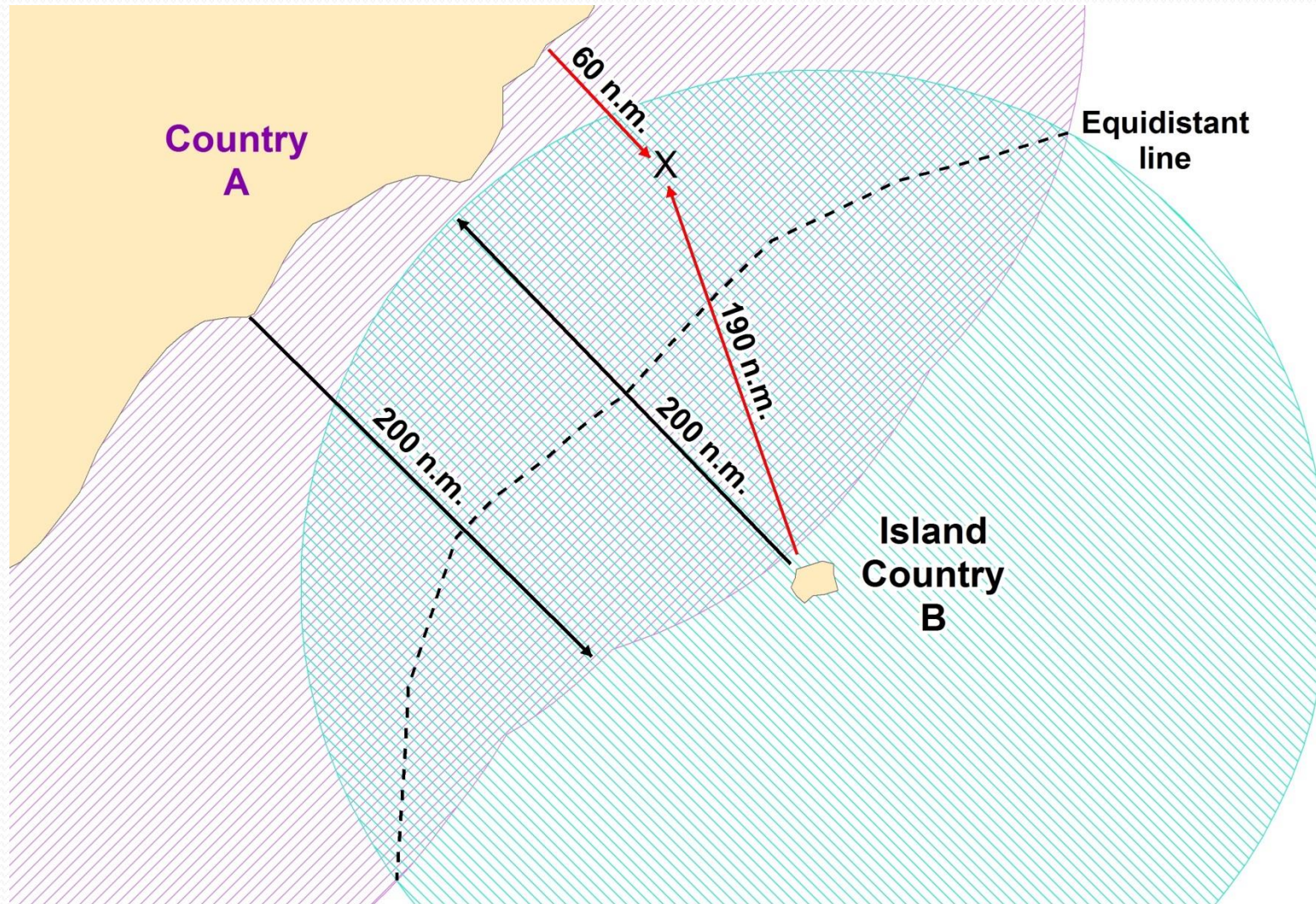


# Overview

- Today Ash and I have the challenging task of providing in very limited time an overview of what is maritime boundary delimitation, what are the relevant international legal rules to aid countries in negotiating those boundaries, and what are some common challenges negotiators face in successfully negotiating such boundaries.
- In its simplest terms, a maritime boundary delimitation arises when two or more countries have maritime entitlements (e.g., an exclusive economic zone of 200 nautical miles drawn from coastal baselines from land) that overlap with one another.



# Overlapping Maritime Entitlements



X = Eureka Gas Field

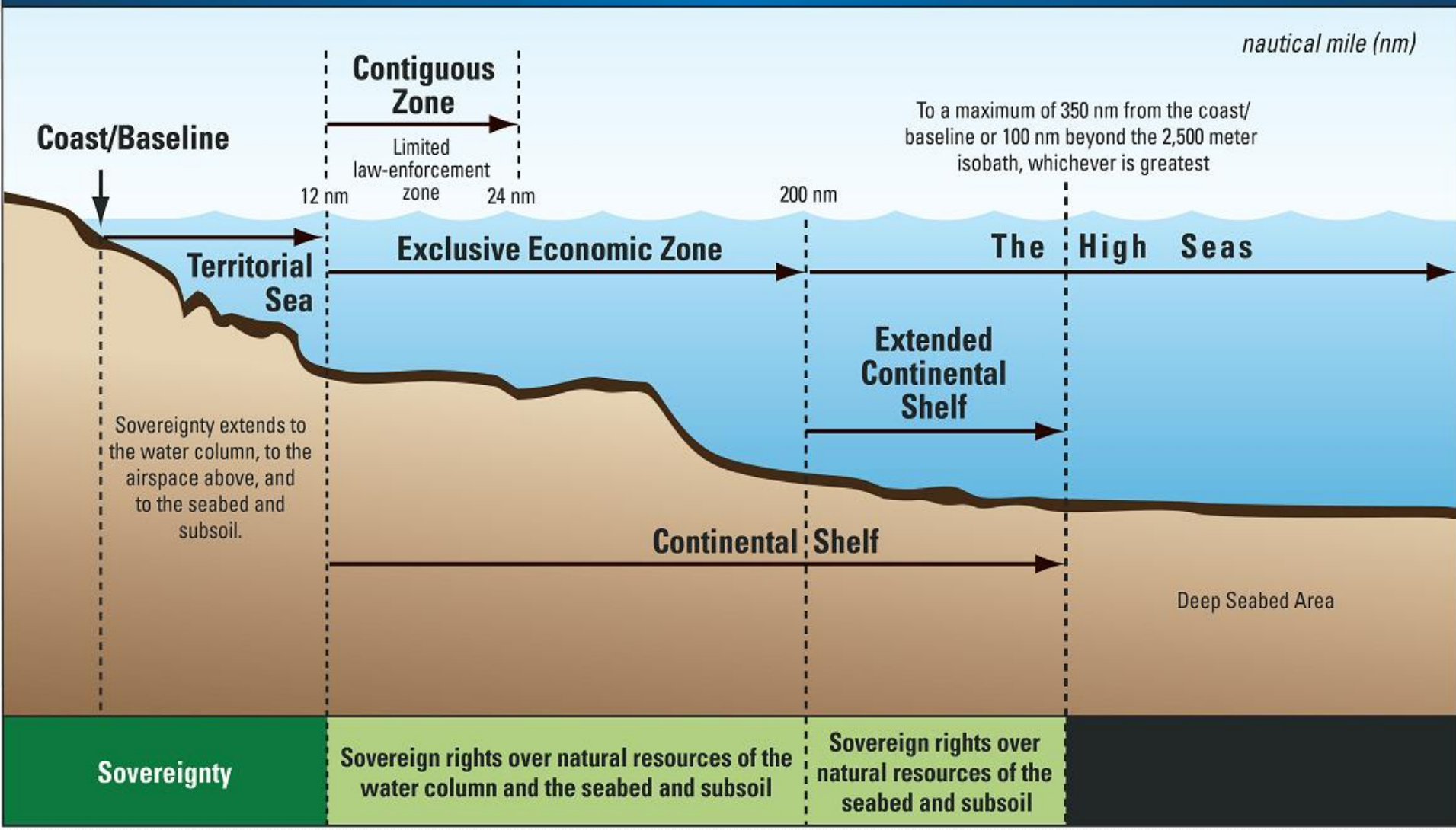
## Overview (Cont.)

- Without overlapping maritime entitlements, there is nothing for the States to “delimit.”
- So what is the relevant international law for determining maritime entitlements?



# Law of the Sea:

## Maritime Zones



# Types of Delimitations

- Delimitation of overlapping territorial seas
- Delimitation of overlapping contiguous zones
- Delimitation of overlapping EEZs
- Delimitation of overlapping continental shelf
- Delimitation of overlapping extended continental shelf

# Overview (continued)

- The rules for maritime boundary delimitation are different in the territorial sea and for the EEZ and continental shelf.
- As there are many more undelimited EEZs, continental shelves, and extended continental shelves, this workshop focuses on delimitation of those maritime areas.

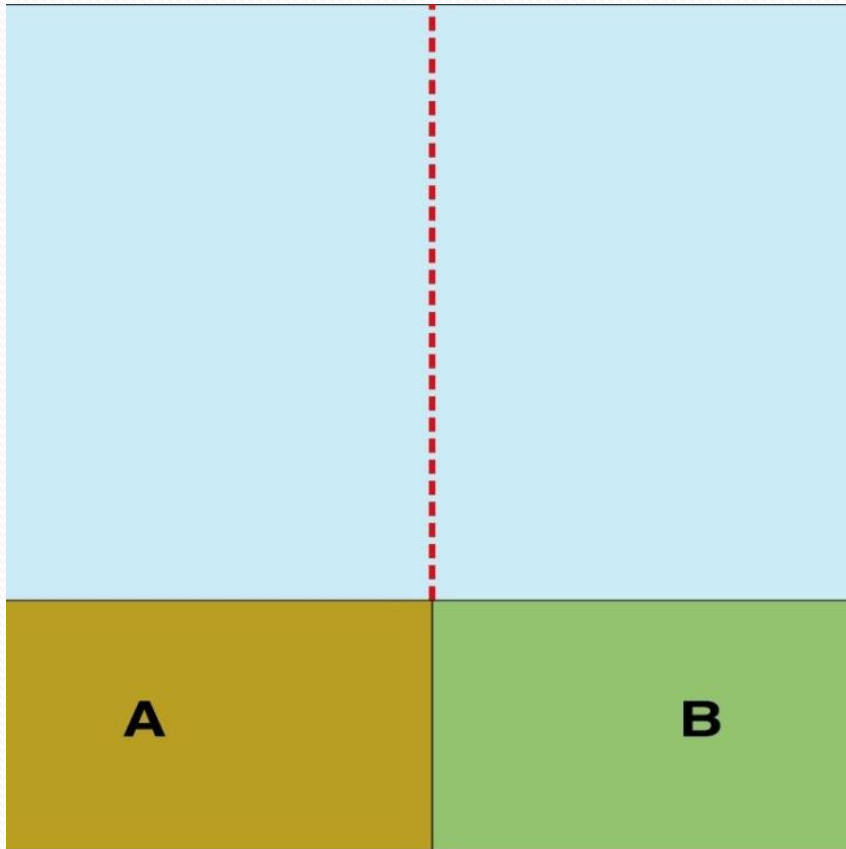
# What is Maritime Boundary Delimitation?

- Defined: “the process of establishing lines separating the spatial ambit of coastal State jurisdiction over maritime space where the legal title overlaps with that of another State.”
  - Distinguish **maritime limits** (extent of legal entitlements of one or more States individually) from **delimitation** (process of allocating of maritime entitlements between/among those States);
  - Delimitation is not a unilateral act, but must be done by agreement with State(s) with overlapping entitlements. Delimitation is an international act.

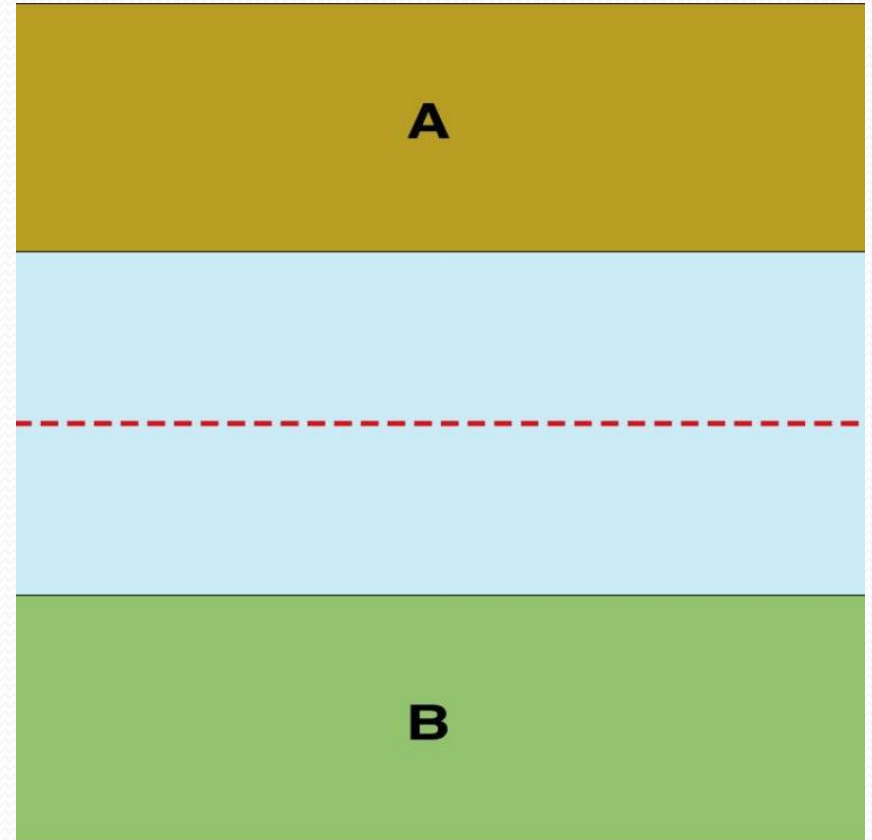


# The Geographical Context

## Adjacent Coasts



## Opposite Coasts



# Adjacent Coasts



# Opposite Coasts



# The Concept of “Equidistance”

- Until the development of the legal concept of the “continental shelf” (which began in 1945), coastal State maritime entitlements consisted of a territorial sea of 3 nautical miles.
- Under Roman law, where different polities were on opposite sides of a river, each State could claim rights to the river’s mid-line.
- Historically, allocating rights in overlapping territorial seas was not the subject of particular academic interest. The process while important to the participants for defense and economic interests, was relatively small in size (i.e., 3 nm from land).

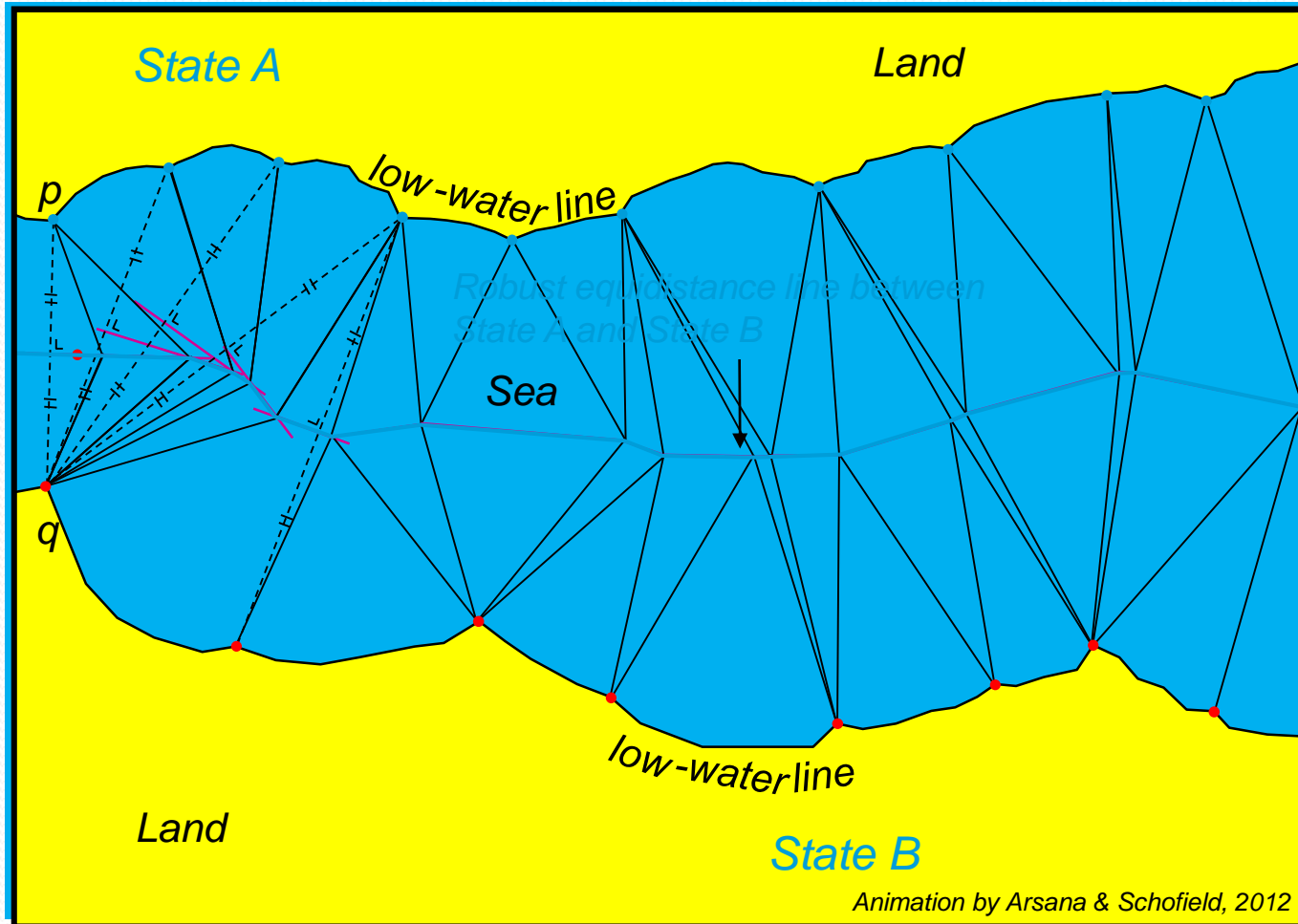
# Development of Equidistance Approach

In the early 20<sup>th</sup> Century, S. Wittemore Boggs, Geographer at the U.S. State Department was influential in developing methodology for determining how to determine a median line:

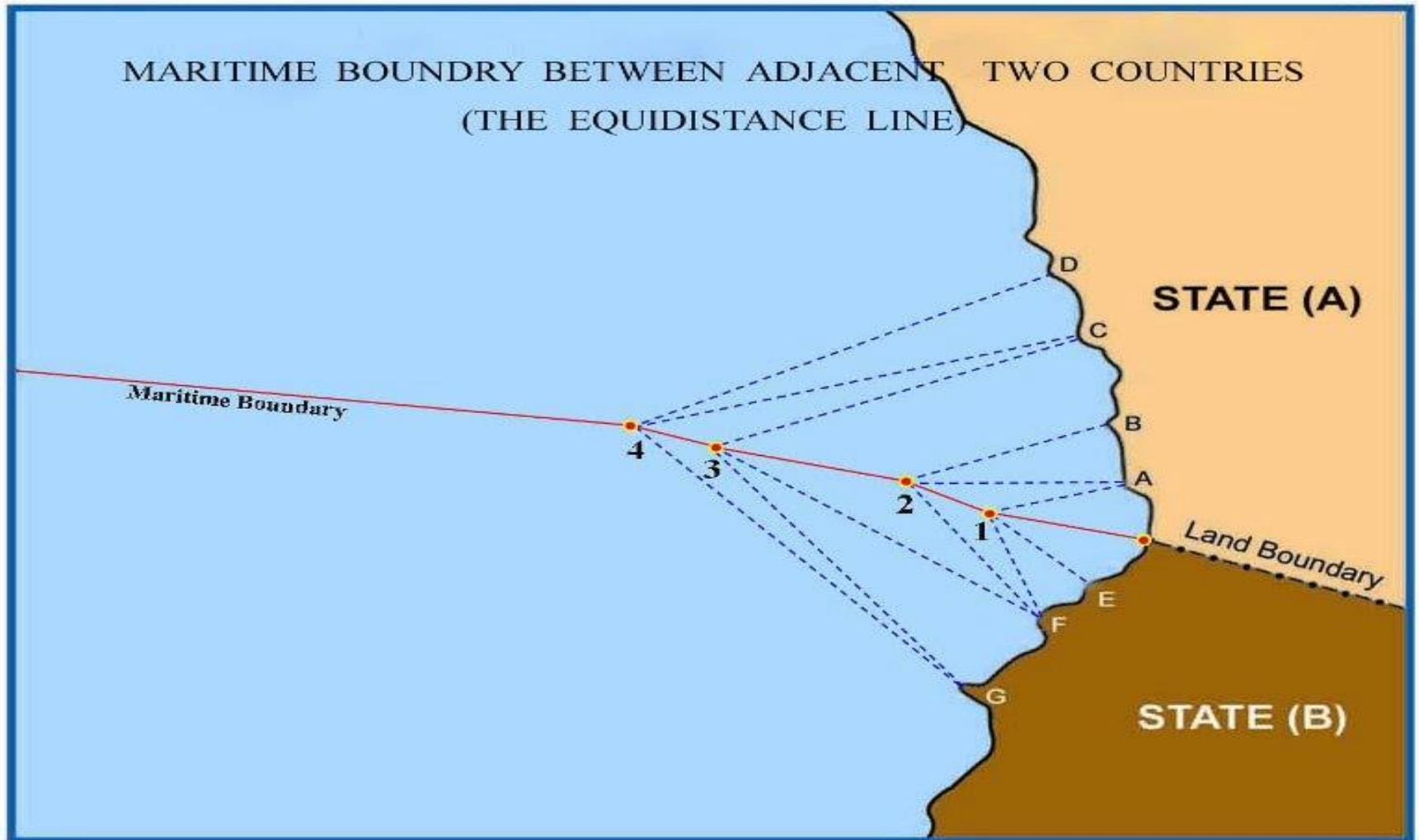
“a line every point of which is equidistant from the nearest point or points of the opposite shores.”



# Equidistance Line for Opposite States



# Creating an Equidistant Line for Adjacent States



# The Equidistance/Special Circumstances Rule

- Article 12(1) of the 1958 Convention on Delimiting the Territorial Sea and Contiguous Zone:

“1. 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 provisions of this paragraph shall 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 with this provision.”
- This rule was adopted virtually verbatim in Art. 15 of UNCLOS.
- Although it was controversial, negotiators of the 1958 Convention on the Continental shelf agreed to a similar rule for delimiting the continental shelf.

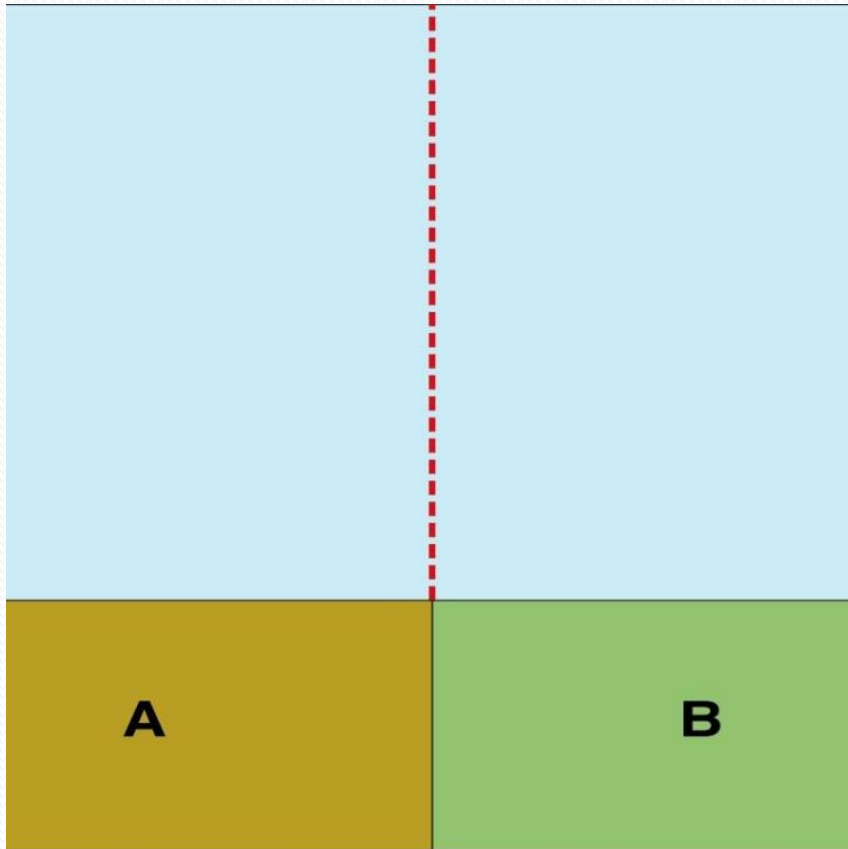
# Does the Rule for the Territorial Sea Make Sense for the Continental Shelf?

- As the continental shelf projects far beyond 3 nm, the effects of coastal geography are amplified the farther one projects them from shore.
- Even though the “special circumstances “ could correct for this, countries whose shelf would be minimized from strict equidistance applying the Article 15 to the shelf opposed this rule as unfair.

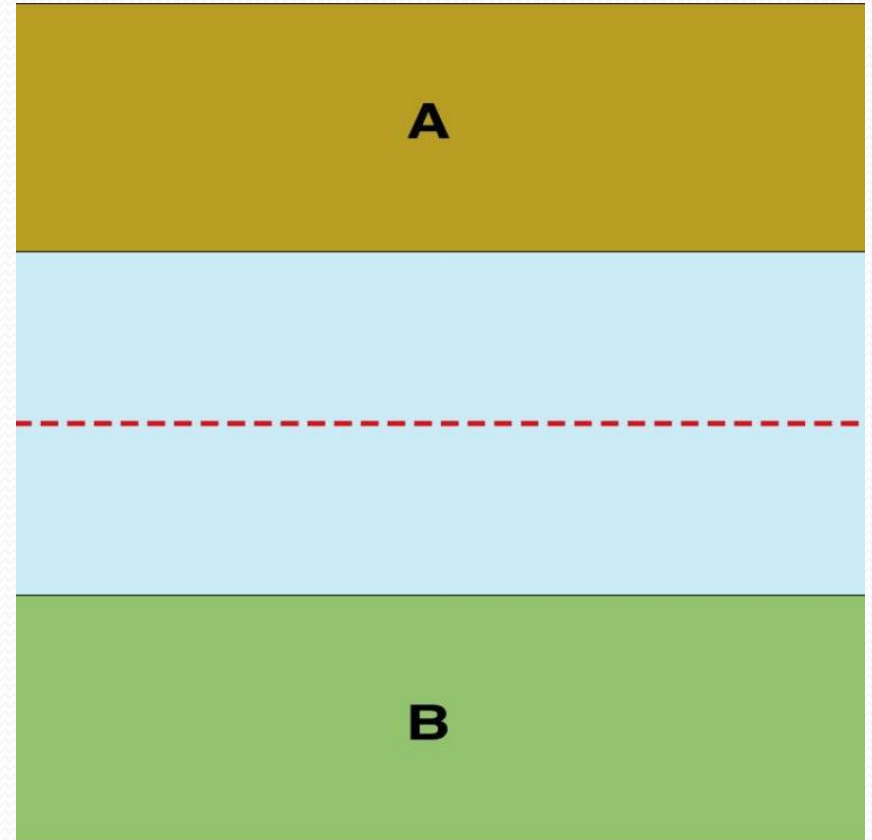


# Equidistance Can Be Equitable

## Adjacent Coasts

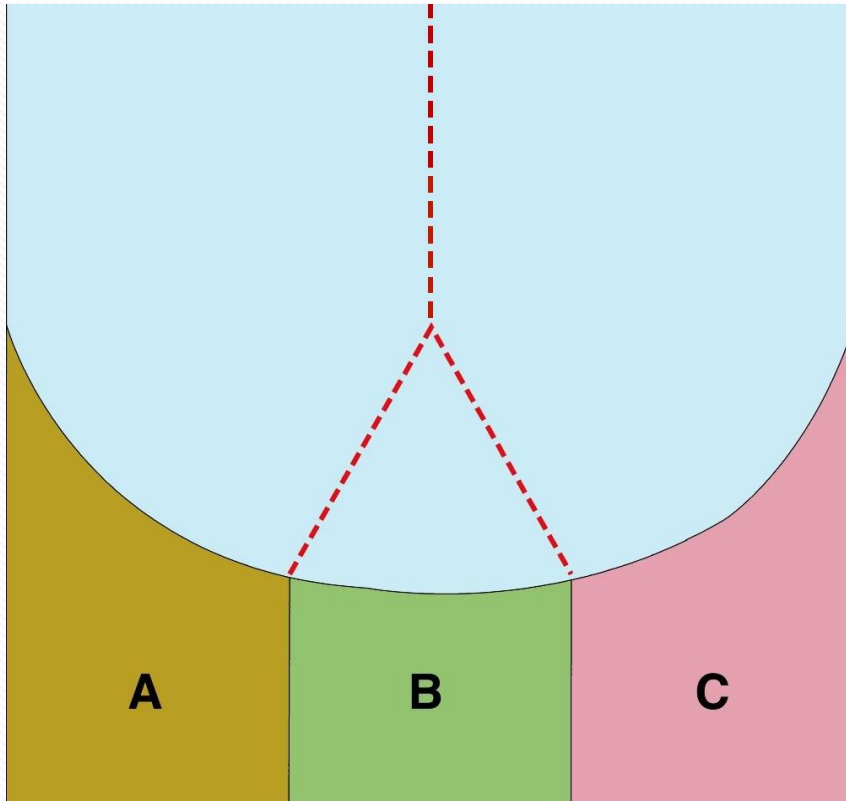


## Opposite Coasts

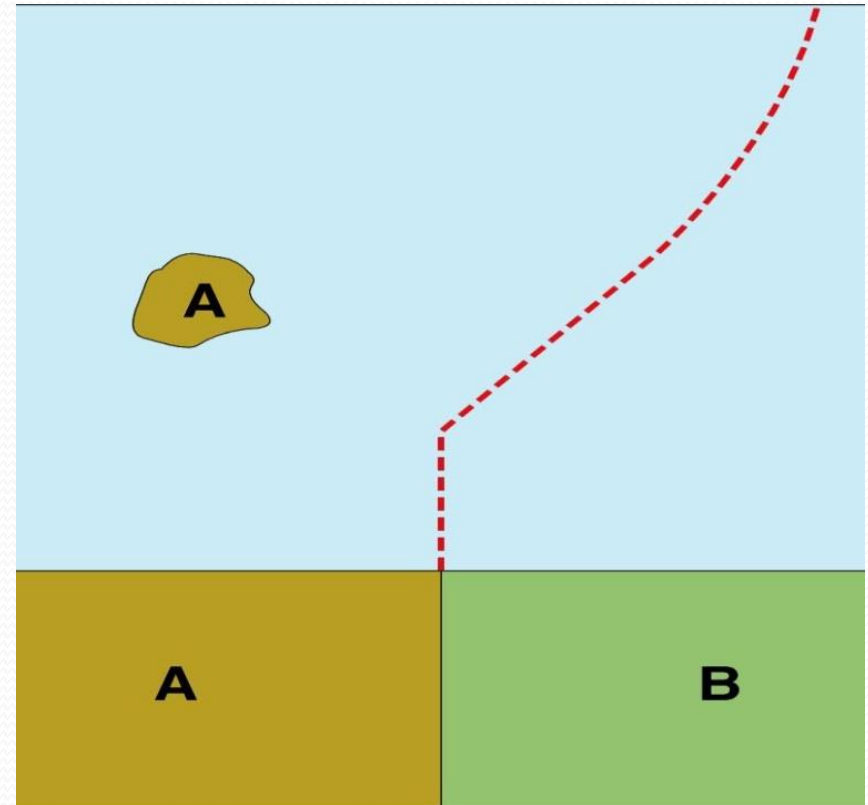


# Problems with Equidistance

## The Convex Coast



## The Effect of Islands



# Equidistance for the Channel Islands?



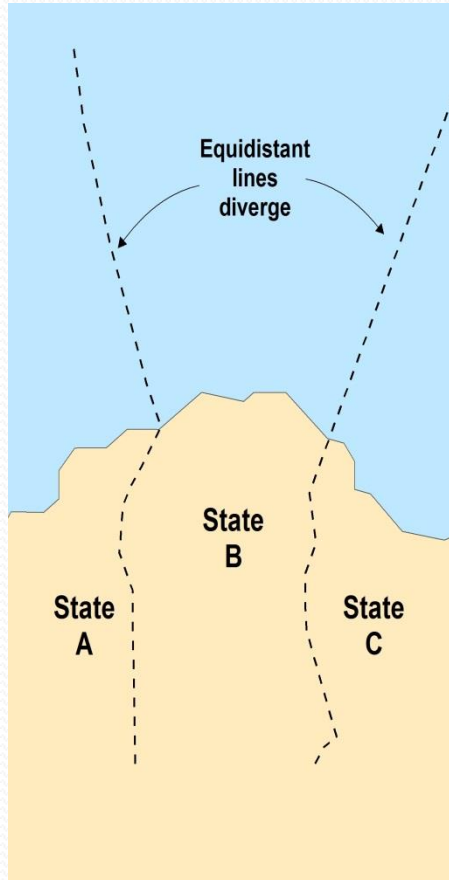
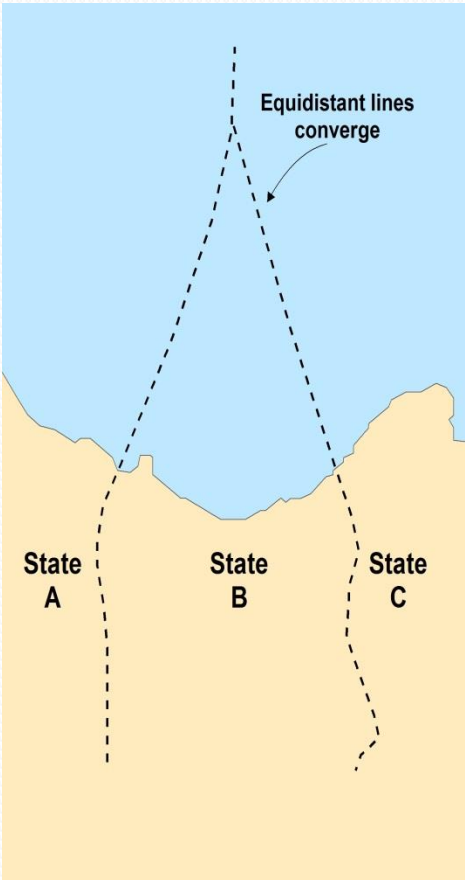
# Equidistance vs. Equity: The Case of the North Sea Continental Shelf

## Effect of Coastline Shape

## N. Sea Continental Shelf Case

### Concave coastline

### Convex coastline





# North Sea Continental Shelf Case (1969)

- Germany was not party to the 1958 CCS. Denmark and the Netherlands argued that equidistance should be basis for delimitation as a matter of customary international law.
- The ICJ decided that the rule set out in CCS Article 6 was not customary international law, binding on Germany.
- “[D]elimitation **must be the object of agreement between the States concerned**, and that such agreement must be arrived at **in accordance with equitable principles**.”
- Factors that should be considered by the parties to ensure an equitable result include the coastal configuration of the coastline, the unity of any seabed mineral deposits, and a reasonable degree of proportionality between the length of a party’s coastline and the geographic extent of the continental shelf claimed.

# LOS Convention Articles 74 and 83

- During UNCLOS III, while the equidistance/special circumstances rule was uncontroversial for the territorial sea (Art. 15), the rules for delimiting the EEZ and continental shelf were very contentious issues and were among the last to be agreed.

# UNCLOS Articles 74 and 83

During the UNCLOS III negotiations, there was disagreement on three sets of issues relevant to the resolution of maritime boundary disputes:

- What legal rule applies for delimiting overlapping EEZs/continental shelf (e.g., equidistance or some formula based on the concept of equity/equitable principles)?
- If resolution is not possible by diplomacy, is the dispute subject to compulsory, legally binding dispute settlement?
- During the pendency of the delimitation, what rules or guidelines should apply to the conduct of the parties?

# Overview of Articles 74 and 83

- **Substantive standard**: Paragraph 1: “The delimitation . . . shall be effected **by agreement** on the **basis of international law** . . . in order **to achieve an equitable solution**.”
- **Dispute settlement**: Paragraph 2: Disputes are subject to compulsory dispute settlement entailing binding decisions **unless** a party makes an article 298(1)(a)(i) declaration.
- **Interim rules**: Paragraph 3: “Pending agreement . . . 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.” (*Emphasis added*)

### 3 Essential Elements in 74 and 83 para 1

**“The delimitation . . . shall be effected **by agreement on the basis of international law** . . . in order to **achieve an equitable solution.**”**

- “by agreement”: maritime boundaries are consensual, they cannot be unilaterally imposed by one claimant;
- “on the basis of international law”: while countries with overlapping entitlements have broad discretion to delimit their boundaries, they cannot diminish the international legal rights of other countries; and
- “to achieve an equitable solution” is a standard of result, rather than of methodology. In effect, the Convention left the content of this to subsequent case law.

# Jurisprudence to Determine an Equitable Result

- The jurisprudence of the ICJ, ITLOS, and arbitral tribunals (most notably, LOS Convention Annex VII) are important both in resolving the disputes before them and in giving guidance to States on how to assess their own undelimited maritime boundaries.
- This helps define what are reasonable and unreasonable negotiating positions and may become directly relevant if a dispute is taken to dispute settlement processes.



# The Case Law: Methods to Determine What is an Equitable Result

- As the North Sea decision and Articles 74 and 83 did not provide a methodological basis for determining what would constitute an equitable result, the early shelf and EEZ delimitation decisions provided for various methods.
- Initially, there was substantial variance on methodology and disagreement on whether and when in the process to take into account issues related to equidistance.
  - Pro: Equidistance, even if the tribunal departs from it, provides a predictable analytical starting point.
  - Con: Equidistance has an increasingly distorting impact on the direction of the boundary the farther one moves from land, amplifying the effect of islands or coastal configurations (e.g., convex coasts) if used without correction.

# The Black Sea Case and Corrective Equity and the Three Step Approach

In the ICJ's judgment in the 2009 Romania/Ukraine (Black Sea) case, in delimiting a single EEZ/continental shelf boundary, the Court adopted a 3 stage methodology:

**Stage 1:** Establish a **provisional equidistant line**

# Stages 2 and 3

**Stage 2:** The Court examined whether there are **relevant circumstances** calling for the adjustment of the provisional equidistant line in order to achieve an equitable result;

**Stage 3:** The Court verified the line resulting from stage 2 by looking at the respective coastal lengths of the two States and the respective maritime areas to see if they are **disproportionate**.

# Conclusions

- In considering delimitation of the EEZ and continental shelf the touchstone as a matter of international law remains achieving an equitable result, with equity being a focused on issues related to coastal geography.
- UNCLOS not only gives guidance on what sort of boundary is appropriate in geographical terms, but sets out the obligations for parties both on available dispute settlement mechanisms and on the conduct of the parties during the pendency of the the delimitation process.
- Future sessions will give greater content to the three part test set out in the Black Sea case.