

## SEPARATE OPINION OF JUDGE KOROMA

*Employment of bisector consistent with jurisprudence on maritime delimitation — Geographical features of area at heart of delimitation — Choice of method depends upon particular circumstances of the area to be delimited — Equidistance method when appropriate but not obligatory — Bisector also a geometric method and its relation to coastal geography — Articles 15, 74, paragraph 1, and 83, paragraph 1, of United Nations Convention on the Law of the Sea (UNCLOS) — Reservations regarding decision to attribute territorial sea south of the 14° 59.8' N parallel — Avoiding giving disproportionate effect to insignificant maritime features and creating potential source of future maritime conflict.*

1. Although I concur with the Court's conclusion regarding the method of delimitation applied in this case, I nevertheless consider that certain significant aspects of the Judgment call for emphasis and clarification.

2. It has been suggested that the utilization of the bisector to effect the delimitation in this case represents a departure from the jurisprudence of the Court. I do not think so. In my view, the Judgment is both consistent with and reflective of the jurisprudence on maritime delimitation, including the Court's case law. Under this jurisprudence, the delimitation process begins, as a rule, with defining

“the geographical context of the dispute . . . , that is to say the general area in which the . . . delimitation, which is the subject of the proceedings, has to be effected” (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, *Judgment*, *I.C.J. Reports 1982*, p. 34, para. 17).

3. In the *Gulf of Maine* case, the Chamber of the Court made clear that the geographical features of the maritime area to be delimited were at the heart of the delimitation process and that the criteria to be applied were

“essentially to be determined in relation to what may be properly called the geographical features of the area” (*Delimitation of the Maritime Boundary in the Gulf of Maine Area*, *Judgment*, *I.C.J. Reports 1984*, p. 278, para. 59).

4. So also did the Arbitral Tribunal in the case concerning the delimitation of the continental shelf between the United Kingdom of Great Britain and Northern Ireland and the French Republic, observing that

“it is the geographical circumstances which primarily determine the appropriateness of the equidistance or any other method of delimita-

tion in any given case” (*International Law Reports*, Vol. 54, p. 66, para. 96)

and going on to state that

“the appropriateness of the equidistance method or any other method for the purpose of effecting an equitable delimitation is a function or reflection of the geographical and other relevant circumstances of each particular case” (*ibid.*, para. 97).

5. The importance of geographical features in relation to the delimitation method and outcome has also been emphasized in the following cases: *Saint Pierre and Miquelon*, (*International Law Reports*, Vol. 95, p. 660, para. 24); *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, *Judgment (I.C.J. Reports 1985, pp. 42 et seq.)*; *Maritime Delimitation in the Area between Greenland and Jan Mayen, Judgment (I.C.J. Reports 1993, pp. 74-75)*; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, *Judgment (I.C.J. Reports 2002, p. 339, para. 49)*.

6. However, this is not to suggest that geographical facts alone determine the line to be drawn; rules of international law as well as equitable principles must be applied to determine the relevance and weight of the geographical features. As the Chamber of the Court declared in the *Gulf of Maine* case,

“delimitation . . . must be based on the application of equitable criteria and the use of practical methods capable of ensuring an equitable result” (*Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984, p. 300, para. 113*).

7. As the Arbitration Tribunal in the *Guinea/Guinea-Bissau* case also made clear, no one delimitation formula works in all cases:

“the equidistance method is just one among many and . . . there is no obligation to use it or give it priority, even though it is recognized as having a certain intrinsic value because of its scientific character and the relative ease with which it can be applied” (*Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau, International Law Reports*, Vol. 77, p. 681, para. 102).

8. Thus, its intrinsic value notwithstanding, equidistance cannot be applied universally and automatically as the method of delimitation irrespective of the specific characteristics of the area to be delimited, of the suitability of the method for a particular area, and of the difficulty of its application to a specific situation.

9. Recognizing this, the Court in the *North Sea Continental Shelf* cases stated:

“It would . . . be ignoring realities if it were not noted at the same

time that the use of this method . . . can under certain circumstances produce results that appear on the face of them to be extraordinary, unnatural or unreasonable.” (*Judgment, I.C.J. Reports 1969*, p. 23, para. 24.)

10. As pointed out in the Judgment in the present case, a number of geographical and legal considerations were raised by the Parties regarding the method to be followed by the Court for the maritime delimitation. As a result of the geographical instability of the mouth of the River Coco, any variation or error in situating the base points would be disproportionately magnified in the resulting equidistance line. The Parties, moreover, agreed that owing to the sediment carried to and deposited at sea by the River Coco the delta and the coastline to the north and south of the cape exhibit very active morpho-dynamics. Thus, the continued accretion of the cape might render any equidistance line constructed today arbitrary and unreasonable in the near future.

11. Neither Party argued, in the main, that the equidistance/special circumstances method should be used for delimiting the respective territorial seas in this case. Nicaragua instead urged the Court to account for the unstable coastal geography by constructing the entire single maritime boundary from “the bisector of two lines representing the entire coastal front of both states” (*Judgment*, para. 273), that bisector running along the geodetic azimuth of  $52^{\circ}45'21''$ . As regards equidistance, Honduras acknowledged that the mouth of the River Coco “shifts considerably, even from year to year” (*ibid.*, para. 274), and argued from this that it was “necessary to adopt a technique so that the maritime boundary need not change as the mouth of the river changes” (*ibid.*), while also contending that the 15th parallel accurately reflected the eastward-facing coastal fronts of the two countries, such that it represented “both an adjustment and simplification of the equidistance line” (*ibid.*). Honduras also admitted that “geometrical methods of delimitation, such as perpendiculars and bisectors, are methods that may produce equitable delimitations in some circumstances” (*ibid.*).

12. The Court, having carefully examined the arguments advanced by the Parties, understood their well-founded reluctance — based on geographical and legal factors — to embrace equidistance and judiciously decided to employ the bisector method — based on the line formed by bisecting the angle created by *the two lines approximating the coastal fronts of the disputed area* — as a suitable delimitation method in this case.

13. Thus, the choice of method in this case very much depends upon the pertinent circumstances of the area, as well as the coastal configurations abutting upon the disputed area. And where the Court is called upon to determine a single maritime boundary as in the present case,

such a line, as the Chamber of the Court noted in the *Gulf of Maine* case,

“can only be carried out by the application of a criterion, or combination of criteria, which does not give preferential treatment to one of [the zones] to the detriment of the other, and at the same time is such as to be equally suitable to the division of either of them” (*Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 327, para. 194).

14. As pointed out in the Judgment, not only has the bisector method proved to be viable where equidistance is not possible or appropriate, but, like equidistance, the bisector is a geometric method that can be used to give legal effect to the

“criterion long held to be as equitable as it is simple, namely that in principle, while having regard to the special circumstances of the case, one should aim at an equal division of areas where the maritime projections of the coasts of the States . . . converge and overlap” (*ibid.*, para. 195).

15. The Court in *Libya/Malta* declared that, if the delimitation method is to “be faithful to the actual geographical situation” (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 45, para. 57), it should seek an equitable solution by reference first to the State’s “relevant coasts” — which is exactly what the Court has done in the present case in ensuring that the relevant coasts are of fairly comparable length. The Court confirmed this position in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, where it was asked, *inter alia*, to establish a single maritime delimitation. The Court considered the geographical configuration and peculiarity of the maritime area, including the coastline in question, to be important elements in the case to be taken into account, as relevant circumstances for the delimitation, declaring as follows:

“The geographical configuration of the maritime areas that the Court is called upon to delimit is a given. It is not an element open to modification by the Court *but a fact on the basis of which the Court must effect the delimitation.*” (*Judgment, I.C.J. Reports 2002*, pp. 443-445, para. 295; emphasis added.)

16. As recognized in the Judgment, the equidistance method approximates the relationship between two parties’ relevant coasts by comparing

the fine relationships between acceptable pairs of base points. The bisector method likewise seeks to approximate the relevant coastal relationships, but does so on the basis of the macro-geography of a coastline as represented by a line drawn between two points on the actual coast, although care must be taken in applying the bisector method to avoid “completely refashioning nature” (*North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 49, para. 91).

17. As has been indicated, the method used by the Court in the present case is not at all unprecedented. The Arbitration Tribunal in its Award in the 1985 *Guinea/Guinea-Bissau* case drew a perpendicular (the bisector of a 180° angle) to a line drawn from Almadies Point (Senegal) to Cape Shilling (Sierra Leone) to approximate the general direction of the coast of “the whole of West Africa” (*Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau, International Law Reports*, Vol. 77, pp. 683-684, para. 108). The Tribunal considered this approach, rather than equidistance, to be necessary in order to effect an equitable delimitation that had to be “integrated into the present or future delimitations of the region as a whole” (*ibid.*, p. 683, para. 108).

18. Moreover, by its choice of method, the Court has taken into consideration and applied not only Article 15 of the United Nations Convention on the Law of the Sea (UNCLOS), which allows for delimitation “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 herewith” (emphasis added), but also Articles 74, paragraph 1, and 83, paragraph 1, of UNCLOS, which provide that the exclusive economic zone and continental shelf are to be delimited by “agreement on the basis of international law . . . to achieve an equitable solution” — an objective which should guide every delimitation.

19. It can thus be seen that, in choosing the bisector in the present case, the Court, rather than departing from its established jurisprudence, has reaffirmed, applied and given effect to the law as well as its jurisprudence.

20. On the other hand, I have reservations regarding the decision to attribute to Honduras areas of territorial sea lying south of the 14° 59.8' N parallel. While Article 3 of UNCLOS entitles a State party to claim a territorial sea up to a limit not exceeding 12 nautical miles, Honduras stated in its Counter-Memorial that its territorial sea would not extend south of the 14° 59.8' N parallel and this was also reflected in its final submissions. There is, therefore, no compelling reason, legal or otherwise, not to uphold this submission, especially as this would have prevented the overlapping of the maritime areas of the Parties and eliminated a potential source of future conflict. In the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, the Court considered that using Qit'at Jaradah, a very small, uninhabited, barren island situated between the main island of Bahrain and Qatar, as a base point in the construction of an equidistance line to be adopted as the delimitation line would give

“a disproportionate effect . . . to an insignificant maritime feature”  
(*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Merits, Judgment, I.C.J. Reports 2001*, pp. 104 and 109, para. 219).

Accordingly the Court declined to do so.

21. Upholding Honduras’s request would not only have been consistent with the applicable law but would have eliminated a potential source of future maritime conflict, which the history of the dispute might appear to portend.

(Signed) Abdul G. KOROMA.

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