A CONCEPTUAL APPROACH TO THE LEGALITY UNDERPINNING THE OWNERSHIP OF ISLANDS AND THE BASIC PROCEDURES OF MARITIME BOUNDARY DELIMITATION OF ISLANDS IN AN INTER-STATE CONTEXT

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Abstract

The islands' legal status, i.e. their territorial sovereignty and ownership in States' position, is highly valued since it ensures their jurisdictional rights, e.g., access to the islands' resources, within, to the vicinity, and beyond. Moreover, their significance would be related to navigational plus security reasons affecting the parent State. However, once determined, parties address their jurisdictional rights based on the outcome of the islands' boundaries. The entitlement of maritime zones concerning islands has become problematic due to their unique features, including geographical and geomorphological conditions, their historical debates, the economic, cultural, political, and social factors that contribute to the sovereignty's judgement process. Naturally, the path leads to disagreements, controversies, and disputes among States, impacting peace and security worldwide. In case of a dispute, the common practice would be the peaceful settlement of international disputes, the methods outlined in article 33 of the Charter of the United Nations. The international regime of islands is inherently interdisciplinary, and the underpinned interrelated disciplines are sensible by a concise review of each case. Consequently, this paper provides arguments regarding the sovereignty of islands. It analyses the legal reasons for non-tropical territorial sovereignty and ownership with a brief approach to the three cases of international law of the sea (hereinafter — ILoS). These cases are the Abu Musa Island in the Gulf, where undetermined ownership led to an incomplete boundary agreement between Iran and the United Arab Emirates (hereinafter — UAE) in 1974. Additionally, it covers the Spratly and Paracel Islands in the South China Sea known to be a long-running matter of urgency, and the Falkland Islands, where debates revolve around political inheritance, geographical proximity, international treaties, the principle of territorial integrity, effective occupation, and self-determination. As a result, the first objective of the research would be to conclude the reasons for territorial sovereignty, and the second — to shed light on the basics of maritime boundary delimitation (hereinafter — MBD) in an inter-State context, mainly regarding the status of single islands irrespective of their nature, unless mentioned.

Keywords

sovereignty, ownership, *terra nullius*, self-determination, colonisation, equidistance-solution, enclaving

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Introduction

This paper is based on the question of why islands have a complicated legal status and how States could apply international law, namely customary international law and international treaties including the United Nations Convention on the Law of the Sea 1982 (hereinafter — UNCLOS) to acquire the territorial sovereignty and ownership of islands and avoid military confrontation. Since islands have a unique legal regime, States could treat them as their mainland, which would have severe legal and beneficial consequences for them, as UNCLOS stipulated.

Considering the Falkland Islands, the timeline of the events is evidence of the journeys of the sailors from different States, such as England, Spain, France, Argentina, and the United States of America (hereinafter — US).[1] Each of them deployed their ships and troops to the islands, establishing settlements for their reasons, such as domination over a strategic location that would provide them trading routes, defending their colonialist properties, preparing for any invasion of their hostiles, or exploiting the resources in the vicinity of the island. For any of the reasons above, it is evident that from the XV till the XXI century, regardless of all the peaceful attempts, such as agreements, treaties, correspondences, and negotiations, the islanders have become victims of wars of governments, i.e. by

[1] Calvert P. *Sovereignty and the Falklands crisis* // International Affairs. 1983. Vol. 59. P. 405–407.

1833, the British invaded the Falkland and occupied the islands.[2]

The same controversies surround the legal status of disputed islands of the South China Sea. An example is the dispute between the People's Republic of China (PRC) and neighbouring States. The debates mainly concern the sovereignty of the Xisha and Nansha Islands, also known as Spratly and Paracel, respectively. France claimed their sovereignty before World War II, and Viet Nam and the Philippines claimed it after World War II.[3] In addition to the territorial dispute, the location of the archipelagos and the number of States involved in the conflict has made it more complicated for States to solve the problems arising from the disputed area.

Furthermore, the disputed Islands of Abu Musa, Greater, and Lesser Tunb are located to the south of Iran and North of the UAE in the Gulf, which Sir Arnold T. Wilson described as:[4] "No arm of the sea has been, or is of greater interest, alike to the geologist and archaeologist, the historian and the geographer, the merchant, the Statesman, and the student of strategy than the inland water known as the Persian Gulf." Scholars have had two visions concerning sovereignty and legal status of the islands. Some took the view that the history and documents outweighed the matter in favour of Iran, akin to the situation in the South China Sea. Others, however, believe that they should compare them with the Channel Islands to investigate the territorial dispute.

From the viewpoint of public international law, islands' territorial titles and boundary delimitation are consistently under international conduct. One of the critical terms that States regularly mention as their legal justification is *terra nullius*. In addition to *terra nullius*, there are many discussions on the complexities concerning the acquisition of the title of sovereignty. For instance, one of the critical requirements entitling sovereignty is the actual administration, also known as *effectivités*. Moreover, in territorial entitlements, two terms of possession and title are interrelatedly distinguished, i.e. in a circumstance where the title is concrete and at hand, the possession has no privilege. Still, when the title is uncertain, possession according to the claim of right would be effective, as the judgement of the *Frontier Dispute (Burkina Faso v. Republic of Mali)* articulates.[5] Furthermore, there are five types of acquisition that scholarly publications, mainly books, categorise as:

- occupation;
- accretion;
- cession;
- conquest; and
- prescription.

All reflect Roman Law with their controversies.[6] Throughout the paper, reasons and titles for sovereignty are discussed concisely, considering each case.

Thus, this work reviews and analyses the regime of islands, focusing on the reasons for sovereignty and the role of islands in MBD in an inter-State context. In addition to islands, islets, low-tide elevations, drying rocks, rocks awash, shoals, reefs, atolls, island fringes, groups of islands — archipelagos, and archipelagic States have their legal debates but do not fall within the scope of this paper or partially fall.

1. Legal Definition of Islands

By 1930, the Hague Codification Conference evaluated the law of territorial waters, and governments decided to have a legal look at the dormant matter of islands' definition and their posture in changing the length of territorial waters. The conference was a significant endeavour to determine the qualifying features of islands. Sub-Committee of the Committee of Experts and Sub-Committee II of the Second Commission proposed their drafts regarding the definition of islands and their impact on territorial waters as follows.[7]

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2 Chehabi H.-E. *Self-Determination, Territorial Integrity, and the Falkland Islands* // Political Science Quarterly. 1985. Vol. 100. P. 215–216.

3 Chang T.-K. *China's Claim of Sovereignty over Spratly and Paracel Islands: A Historical and Legal Perspective* // Case Western Reserve Journal of International Law. 1991. Vol. 23. P. 400–401.

4 Wilson A.-T. *The Persian Gulf*. London : Oxford University Press, 1928. P. 1.

5 Crawford J. *Principles of Public International Law*. Oxford : Oxford University Press, 2019. P. 203–204.

6 *Ibid*. P. 208.

7 Jayewardene H.-W. *The Regime of Islands in International Law*. Dordrecht; Boston; London : Martinus Nijhoff, 1990. P. 3.

The first draft contemplated: “If there are natural islands, not continuously submerged, situated off a coast, the inner zone of the sea shall be measured from these islands,” and the second draft proposed: “An island is an area of land, surrounded by water, which is permanently above high-water mark.” After discussions among governments and commissions, the result was an unfinished task of the Hague Conference, which could not propose a solid definition for islands to encompass both aspects of their insular features and their measuring role. Therefore, the International Law Commission (hereinafter — ILC, the Commission) became in charge of preparing a definition.[8]

By 1954, during the discussion of the third ILC report, the Commission affirmed the second suggestion of Hersch Lauterpacht, which led to a significance: “An island to qualify for that name must be an area of land, which apart from abnormal circumstances is permanently above high-water mark.” The Commission saved it in its Final Draft articles of 1956 to be the subject of discussion at the 1958 conference. In the first conference on the Law of the Sea Geneva 1958, the US proposed changing the wording of the latest definition of islands. The Commission applied the new definition: “An island is a naturally formed area of land, surrounded by water, which is above water at high tide.”

From this point till 1975, due to the two noticeable concerns among individuals, the definition of the island was in a gradual process of evolution. The first reason was the potential of islands to produce extended maritime jurisdictions in inter-State boundaries, regime of High Seas (hereinafter — HS) and deep seabed, and the second issue was the more minor insular features of colonised territories and their connection to the emergence of developing countries, highlighting the objective of the United Nations (hereinafter — UN) and its decolonisation framework.[9]

Eventually, the Informal Single Negotiating Text (ISNT), in the second session of the Third Geneva Conference 1975, accepted that the definition by 1958 Convention on the Territorial Sea, Article 10 (1) applies to other land territories except for rocks with no human population or economic condition. Ultimately, UNCLOS, as a legally binding instrument, adopted the definition untouched.[10] It is observable in Article 121: “1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.” Seemingly, there are four legal requirements to qualify an island.[11]

First, it is a naturally formed area of land; regarding this insular feature, it is understandable that artificial islands have no such qualification (for instance, the construction of low-tide elevations or reefs). Subsequently, UNCLOS does not accept island-building activities to raise claims for maritime zones. Second, it is an area of land, which is seemingly a fair and plain feature regarding islands, although it can be problematic. It is the same as considering small features, not more than sand bars, as islands. Third, an island is surrounded by water; accordingly, there is no doubt that if an island does not have this feature, it would follow the character of the mainland, and as a result, it would have total maritime zone claims. Forth, it is above water at high tide; this insular feature is essential in islands, which should be above water at high tide, low-tide elevations above low tide but submerged at high tide, and non-insular features that submerge at low tide. To determine the category of land, the choice of vertical tidal datum is essential, which afterwards enables States to claim extensive maritime zones.

In the same article, paragraph three provides the following: “3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.” It is noticeable that rocks represent different categories with some issues regarding measurements of maritime zones. Therefore, it is vital to distinguish an island from a rock because rocks could give rights only to a Territorial Sea (hereinafter — TS) and a Contiguous Zone (hereinafter — CZ). There are interpretational problems regarding this paragraph. For example, it is unclear when a rock cannot support inhabitants or what comprises the financial structure. Moreover, whether the term “rock” refers to a solid portion of the Earth’s surface or other enclosed features such as cays, sandbanks, islets, and barren islands is unclear.[12]

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8 *Ibid*. P. 4.
9 *Ibid*. P. 4–6.
10 *Ibid*.
11 Hong S.-Y., van Dyke J.-M. *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea* // *The Trouble with Islands: The Definition and Role of Islands and Rocks in Maritime Boundary Delimitation* / ed. by C. Schofield. Leiden ; Boston : Martinus Nijhoff, 2009. P. 24–25.
12 *Ibid*. P. 26.

The Award on the *South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)* on 12 July 2016,[13] would be the first international judicial interpretation of the regime of islands. The Philippines put the *ad hoc* case forward by considering Annex VII of UNCLOS. In all three subjects of the legal debate, the Philippines focused on the interpretational and applicability issues of UNCLOS and were less concerned with the comprehensive subjects of sovereignty and MBD (naturally, each State in an arbitration process will choose to be precise in the statement of claim and address the issues with a higher chance of accomplishment in its favour). China objected by questioning and rejecting the jurisdiction of the tribunal. However, the tribunal could demonstrate its position positively by analysing these problems in its lengthy initial Award on Jurisdiction and Admissibility and the first part of its final Award. The tribunal believed that UNCLOS had delivered the required authority and could evaluate most of the issues the Philippines raised.

Moreover, another significant aspect of the case was about the status of insular features and provisions of UNCLOS in Article 121(3). It has been commendable for the tribunal that, concerning a wide variety of interpretations of scholars, State practice, and lack of significant consideration of the problem by courts and arbitral tribunals, it could declare that "the scope of application of Article 121(3) is not clearly established." Most of the Philippines' claims were about the South China Sea's insular features, which wished to be rocks, as available in the third paragraph of the article.

Since the representatives of China did not attend the hearings, the tribunal resorted to China's diplomatic statement, which brought up the situation of its dispute with Japan on the status of Okinotorishima to the tribunal's attention. Eventually, the tribunal resorted to Articles 31 and 32 of the Vienna Convention on the Law of Treaties to address and interpret the condition.[14]

As a sample of textual and conceptual analysis,[15] the Award compared the Oxford English Dictionary (hereinafter — OED) and the dictionary of the *Académie Française* to find the best definition for the term "rock." As a result, the second definition of rock by OED, "large rugged mass of hard mineral material," equivalented the "Rocher" in *Académie Française*. Rocher means craggy masses of hard stone. Other languages, such as Russian, Spanish, and Chinese, are on the same page with the French terminology. But the tribunal considered the English version.

Regarding the first definition of rocks by OED, it seems there is some ambiguity: "rocks may consist of aggregates of mineral and occasionally also organic matter. They vary in hardness and include soft materials such as clays." In this case, not rocky islands, in which sand, mud, stones, or coral are part of their conformation, would generate vast maritime zones, contrary to islands made up of hard rock.

2. Artificial Islands

As mentioned, governments embarked on highlighting the legal status of islands by 1930 amid the Hague Codification Conference until the ILC substituted it. In addition to islands, other geographical features mainly on the matter of consideration of any TS rights, including lighthouse supporting rocks, low-tide elevations, installations for continental shelf, groups of accommodations built of piles rose in the sea, and islands synthetically made up of sands and rubble were in the path of final amendment of the definition of island. The US suggested including the term "naturally formed" in the definition of islands, which banned governments from claiming any TS for artificial islands. It is worth mentioning that the 1930 Hague Conference, in its second effort, could not successfully decide on the matter of artificial islands and their entitlement to TS. However, the observations of Sub-Committee II of the Second Commission indicate that it was not against the idea either. Concerning the role of synthetic islands in MBD, Article 8 of the 1958 Territorial Sea and Contiguous Zone Convention articulates artificial islands could benefit from a jurisdictional influence in the case of their constituting harbour works or related installations. However, in Article 11, UNCLOS prohibits artificial islands from harbour work purposes and leaves no rights for artificial islands in any condition.[16]

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13 Schofield C. *The Regime of Islands Reframed: Developments in the Definition of Islands under the International Law of the Sea*. Netherlands : Brill, 2019. P. 34–35.

14 *Ibid*. P. 36–40.

15 Guillaume G. *Rocks in the Law of the Sea: Some comments on the South China Sea Arbitration Award 15 March 2021*. URL: https://www.globaltimes.cn/page/202103/1218473.shtml (accessed: 25.11.2023).

16 Jayewardene H.-W. *The Regime of Islands in International Law*… P. 8–9.

UNCLOS in Article 56(1)(b)(i) allows governments to construct artificial islands in their Exclusive Economic Zone (hereinafter — EEZ) to explore, exploit, conserve, and manage living/non-living natural resources. Furthermore, articles 60(8) and 80 stipulate the matter of territorial entitlement in connection to artificial islands. To clarify, they have dictated that artificial islands and facilities in the EEZ or Continental Shelf (hereinafter — CS) do not have a TS and do not affect the State's maritime boundaries. Article 80 states: "Article 60 applies *mutatis mutandis* to artificial islands, installations, and structures on the continental shelf". Moreover, Article 87(d) allows all States, whether land-lock or coastal, to build artificial islands and other authorised facilities in the HS.

More on construction regulations, as mentioned, UNCLOS grants a coastal State the exclusive right to build artificial islands in the sea, bearing in mind that coastal States should announce the construction of artificial islands in advance. For example, one of the famous cases is the situation of artificial islands in the Gulf. Under Article 122, one could define the Gulf as a semi-enclosed sea. Article 123 obliges and specifies littoral States of an enclosed or semi-enclosed sea to cooperate in performing their duties, including management, maintenance, exploration, utilisation of living resources, conservation of the marine environment, and conducting scientific research. Subsequently, constructing artificial islands impacts the marine environment and could affect baselines and maritime zones.

Regarding the latter, however, UNCLOS shares common grounds with the 1958 Convention on the Continental Shelf, prohibiting States from considering any claims of maritime space. Article 5 of the 1958 Convention on the Continental Shelf explicitly explains that artificial islands have no privileges for the coastal State; hence, artificial islands cannot be the basis for measuring the baseline. Notably, Article 60(4) is a matter of discussion because it declares that States can draw a safety zone to safeguard their integrity and maritime rights with the measurements available in the fifth paragraph of the Article. The offshore features have very high values for States to invest in. Therefore, it might be an outstanding attraction for some armed groups to commit an act of terrorism with their own goals and objectives. In that event, due to the facilities' importance in research, touristic purposes, and access to resources, the length of 500 meter is under debate. Would it be enough, or might States require a more extended zone? The dichotomy shaped in the account of that one State might wonder, would not it be an excuse for constructor States to interpret the Article in a way to deploy defence systems for their safety measurements? How far could a defence system target any hostile terrorist group? Will it not provide an excuse to risk the integrity of the opposite/adjacent State, and could it be a good enough reason for an armed conflict? Another example is the situation of the South China Sea — an outrageous sample of competition in construction and desperate aftermath for the marine environment. The Asia Maritime Transparency Initiative (AMTI) has collected satellite pictures of over 90 outposts where claimant States have built over 70 features. China, Malaysia, the Philippines, and Viet Nam have all been under the reclamation-building process with a remarkable difference. China's large-scale island-building activities have a much more devastating impact on the environment than other States' reclamations of occupied features. Therefore, the South China Sea tribunal, concerning part 12 of UNCLOS, Articles 206 and 205, stated that all the States building up artificial islands must bear in mind to assess the amount of substantial pollution they might cause by their activities in their jurisdiction. As it may happen, they shall communicate the result of the assessments.[17]

3. Sovereignty of Islands

The settlement of the islands' territorial title is the subject of international conduct. States refer to several titles when a dispute has soared or is about to. Several types of titles contribute to the process of determining possession for States. For example, in the Falkland Islands or Abu Musa, the United Kingdom (hereinafter — UK) pointed to one of the reasons for sovereignty, known as occupation. A mere act of occupation does not qualify the occupier to any right since it is interrelated with other terms. Notably, international law demonstrated the notion of territorial rights of claim before the normative concept of State.[18]

Therefore, one could contemplate whether the occupation occurred according to international law, which requires an actual administration. It is essential to note that there are debates among scholars and

[17] Schofield C. *Op.cit.* P. 66–69.
[18] Crawford J. *Principles of Public International Law*… P. 203–204.

judges on the effectiveness of ancient principles of traditional international law and to what extent they are applicable today. The debate could have close ties with the concept of *ex post facto* in the context of public international law, with the replacement of characters deluding the dichotomy. The historically legal arguments of territorial sovereignty then interrelatedly link to the progression of international law and thus could have a significant interpretational value. Moreover, one dealing with the issue could bear in mind that, due to the devastating area of failure for individuals involved in this hobble, how could the UN be of any prosperity? In other words, how an organisation that progresses and develops based on liberal thoughts could aid in overcoming the relevant obstacles.

In public international law, the effective occupation occurs under four categories:[19]

– discovery;
– symbolic annexation;
– effective and continuous display of State authority; and
– the Intention to act as sovereign.

To begin with, effective occupation with a comparative view to the context of private law would have the same legal content as possession. The case of *Sovereignty and Maritime Delimitation in the Red Sea (Eritrea v. Yemen)* proceeded at the Permanent Court of Arbitration (PCA), and the legal status of the south-eastern territory of Greenland are two examples of the concept of effective occupation. Accordingly, effectiveness depends on the power and authority of occupier/s to be visible peacefully and continuously alongside the functions of a State. On the other hand, however, arguably, prescription as an interrelated title results from usurpation, e.g. *Island of Palmas (The Netherlands v. The United States of America)*, which could be a case of prescription. A fruitful and continuous occupation is the most wanted feature of an acquisitive prescription claim.[20]

In Abu Musa, occupation, prescription, condominium, and *terra nullius* were among the titles the UK resorted to; relatively, both concepts share common grounds, and States claim them simultaneously. To define prescription,[21] in a condition that, by taking a surrender State's sovereignty, usurpation has already occurred, the prescription would omit the deficiencies in the presumptive title of the occupier. Prescription would be known as an act of good faith to stabilise the aftermath of the action. It is important to note that prescription bears no resemblance to abandonment of a territory. Furthermore, condominium means exercising sovereignty by at least more than one State jointly based on equal rights.[22] Thus, a condominium island belongs to two or more States, so they can control it and exercise their rights jointly without dividing it into national zones. For instance,[23] the Islands of New Hebrides were under the sovereignty of France and the UK before their independence in 1980. Lastly, discovery and *terra nullius* are two of the traditional concepts of international law discredited by scholars in legal analysis.[24]

Terra nullius's definition would be occupying a territory that does not belong to any State.[25] For example, the UK emphasised that Abu Musa plus Tunb Islands were not under the formal control of any State till the end of the XIX century and supported Sharjah's and Ras al Khaimah's claims.[26]

In other words, traditionally, *terra nullius* would be a piece of the Earth's crust that is not under the sovereignty and authority of any State. It would be known as the act of usurpation in a modern context. The reason is mainly due to the rare coincidence of locating an empty area on the Earth and the sense of misinterpretation of the term within the colonial acts of Europeans on extended inhabited areas, e.g. in the case of *Western Sahara.*[27]

The symbolic annexation requires the same generality as an effective occupation. Yet, in contrast, a State or private individual would prepare a declaration or any other act of entitlement as evidence of the acquisition of sovereignty. The declaration of sovereignty would be a formal government conduct with

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19 *Ibid*. P. 210–213.
20 *Ibid*. P. 210.
21 *Ibid*. P. 217.
22 *Ibid*. P. 198.
23 Swan Q.-J. *The Black Pacific: Vanuatu, Decolonization, and the Global 1980s* (2023) // Journal of African American History. 2023. Vol. 108. P. 398, 404.
24 Crawford J. *Op.cit*. P. 211.
25 *Ibid*. P. 203.
26 Al-Nahyan S.-Z.-K. *The Three Islands Mapping the UAE-Iran Dispute*. London : Royal United Services Institute for Defence and Security Studies, 2013. P. 42.
27 Crawford J. *Op.cit*. P. 208.

proof in hand. Furthermore, in the cases where the island has no population, has terrible atmospheric conditions, and is in a distant location, it is merely in principle that the requirement of effective occupation would apply.[28]

The third indispensable term is the effective and continuous display of State authority. To exemplify, in the case of the Island of Palms, the Netherlands claimed sovereignty belonged to her due to its peaceful display from the XVII to XIX centuries.[29] As a result, the acts of settlement and a short occupation with no sign of practical and continuous display of State authority do not empower the occupier. For instance, in the Falkland Islands, when States indicate in their arguments that precedence in discovery would prevail as a reason for sovereignty, it has no legal foundation. As another example, by 1764, Louis Antoine de Bougainville navigated to conquer the islands, left a settlement, and returned home.[30] That does not qualify to be an effective occupation.

The last but not the most minor term is the intention to act as sovereign. The notion of *animus possidendi* does not contribute to the status of sovereignty as a concrete term because of its unrealistic point of rule of thumb. For this reason, the acquisition of sovereignty is not an act of one individual, and there are conflicting acts of sovereignty. There are three types of indication for an *animus possidendi*: firstly, it should be an act of a State and not an unauthorised person; secondly, in a circumstance where another State was the sovereign, no entitlement would be acquirable; lastly, the effectivity of States' actions is considerable in a condition that each party did not make an effort separately but as a whole State.[31]

As other adduced reasons, historical facts, documents, textbooks, maps, reports, memorandums of understanding (hereinafter — MoUs), and treaties are standard instruments in the cases of sovereignty of islands. For instance,[32] according to Chinese books, in the preliminary years of the II century BC (Before Christ), China debunked the islands of the South China Sea and initiated the dispatch of ships during the Han Dynasty. Moreover, the Chinese have explored and administered the Xisha and Nansha since the XIX century. In defence of its actions, China refers to two titles: acquisition based on discovery and acquisition based on occupation.

Furthermore, in the Abu Musa dispute, maps drawn up by the British Naval Force by 1881, the British Maritime and Coastguard Agency by 1863, the British War Office by 1886, the Indian Survey Office by 1897, and the map drawn up by Lord Curzon by 1891 and 1892, the Tunb and Abu Musa Islands have been coloured the same colour as Iran, which would be of the worthy instrument proving the sovereignty for any State sharing same similar legal debates. In addition, the MoU by 1971 would be another piece of evidence contributing to the matter.[33]

As for treaties, a well-known example would be the Falkland Islands; in the account of the claimant of Argentina regarding the illegality of the British acts in 1833 that forcefully occupied the islands, Argentina had always mentioned its effective sovereignty. The Argentinian Government reflected in its 1982 statement: "As soon as it could, the Argentine government carried out acts of possession, occupation and administration inherent in its rights of sovereignty over the islands." The Treaty of Friendship, Trade and Navigation of February 1825 emphasises that, in pre-1833, the British Empire had no objection concerning the Argentinian settlements in the island and was also an important instrument expressing the implicit confirmation of Argentina's sovereignty.[34]

As the forthcoming reason for sovereignty, the islands' political situation has been controversial among the States. As a famous case, the Falkland Islands have been the subject of a political debate on colonialism and self-determination. To begin with, OED defines the word colonialism as:

> a settlement in a new country… a body of people who settle in a new locality, forming a community subject to or connected with their parent state; the community so formed, consisting of the original settlers and their descendants and successors, as long as the connection with the parent state is kept up.

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28 *Ibid*. P. 212.
29 *Ibid*. P. 213.
30 Calvert P. *Sovereignty and the Falklands crisis*… P. 406, 409.
31 Crawford J. *Op.cit*. P. 213–214.
32 Chang T.-K. *China's Claim of Sovereignty over Spratly and Paracel Islands: A Historical and Legal Perspective*… P. 403–404, 409.
33 Jafari Valdani A. *the Historical and Legal Foundations of Iran's Sovereignty over Tunb and Abu-Musa Islands* // Iranian Review of Foreign Affairs. 2015. Vol. 6. P. 155, 180.
34 Beck P.-J. *The Falkland Islands as an International Problem*… P. 68–69.

In short, it refers to Colonia, which means settlement or farm where Romans moved to, albeit keeping their citizen status. The definition, however, does not regard the original inhabitants' rights that they have already lived there, which is a criticism and could challenge the definition. The process of unforming or reforming consists of practices such as commercial, ravage, negotiation, warfare, genocide, enslavement, and revolts. What created the formation of those acts was a collection of public and private files, commercial documents, governmental correspondences and scientific or non-scientific works. Therefore, colonialism means conquering and managing a land with the supplies within, which do not belong to the newcomers but to the primary inhabitants.[35]

On the other hand, however, with an integrated approach, one could legally define self-determination mainly by reviewing Article 1 of the UN Charter or its Chapter XI and Article 2 of the UN General Assembly (hereinafter — UNGA) Resolution 1514 (Declaration on the Granting of Independence to Colonial Countries and Peoples) as a chance for people to exercise their political opinions so that they reach their economic, social, and cultural goals. In the Falkland Islands case[36] Argentina claims that the UK invaded its territorial integrity and has no right of sovereignty over the Falkland Islands. Still, the UK refer to the right of self-determination and indicate that the opinion of islanders inherently matters in the sense that they decide on a proper political system.

The UN's task in achieving the objectives of peace, security, prosperity, and justice, articulated in Articles 1 and 2 of the UN Charter, is quite palpable. For instance,[37] by 1982, the United Nations Security Council (UNSC) required the Argentinian forces to cease fire in Resolutions 502 and 505. Two years later, UNGA Resolution 39/6 repeatedly requested peaceful dispute settlement methods affirming the wills of islanders. Ultimately, by 1989, the Madrid Formula became the basis of negotiations between the parties. Concerning self-determination, the two Covenants of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) have emphasised the matter.

Concerning the other reason for sovereignty, in the subsequent declaration of its rights, Argentina also mentions the shorter proximity of the island to its national land territory. In this regard, two opposing statements exist. First, the proximity is not an unequivocal reason and is interrelated with other factors. For instance, the status exists in the Channel Islands. Second, as a hypothetical parallel theory, geological sciences could be a method to evaluate and analyse the movements of the pieces of the Earth's crust in each geological period, noticing if the movements of the pieces of the Earth's crust caused an island removed from a State's territorial land or in which direction these movements will be. To demonstrate, the geologists obtained that extremely wired features occurred amid the Atlantic opening in the mouths of Amazon and Bahia, Canadian Arctic Island, and in the Norwegian Channels in the Cretaceous period. The evidence of continental margins plus ocean islands and cores both suggest that spreading initiated in the Jurassic and caused the main movement of the Atlantic Ocean in the Cretaceous era. The ocean movement could be the reason for transferring once-attached coastal islands to the opposite side of the ocean basin, noting that the new detached islands geographically bear more resemblance to rock.[38]

Security concerns are involved in the criteria of determination of sovereignty as the next element; for example, in the disputed Islands of Bailiwick of Jersey and Bailiwick of Guernsey, near France's shores, the British Government is responsible for its defence and international affairs.[39] To clarify, the judgement of McNair[40] in *Anglo-Norwegian-Fisheries (United Kingdom v. Norway)* as a form of appurtenance would be an interrelated example, stipulating that the international law assigns responsibilities for a coastal State, such as establishing order and maintaining navigational rights. These safety obligations would qualify the State to establish its rights and sovereignty. Consequently, by applying this view to detached Channel Islands or similar cases, it is deductible that security concerns regarding keeping the good order

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35 Loomba A. *Colonialism/Postcolonialism*. London; New York: Routledge, 2005. P. 7–8.
36 Beck P.-J. *The Falkland Islands as an International Problem*. London; New York: Routledge, 1988. P. 71.
37 Muś A. *Self-determination and the Question of Sovereignty over the Falkland Islands/Malvinas* // Silesian Journal of Legal Studies. 2017. Vol. 9. P. 80, 83.
38 Tuzo Wilson J. *Evidence from Ocean Islands Suggesting Movement in the Earth* // Mathematical and Physical Sciences. 1965. Vol. 258. P. 155–156.
39 Blake G.-H. *Maritime Boundaries and Ocean Resources*, New York: Routledge, 2018. P. 89.
40 Crawford J. *Op.cit*. P. 199.

deserve to be a reason for sovereignty.

An upcoming factor for sovereignty would be the presence of ethnic, social, and cultural conditions of islands, i.e. the condition existing in Bailiwick of Jersey and Bailiwick of Guernsey Islands. In addition, the condition in the Falkland Islands is another relevant sample of the controversial situation of inhabitants.

The Falkland Islands/Malvinas, since 1946, has not been on the Non-Self-Governing Territories list. The UN Charter, in its Chapter XI and UNGA Resolution 1514, mentioned the matter of acquirement of independence in Trust and Non-Self-Governing Territories. By 2012, the Falkland Islands' population was 2931 persons. According to the inhabitants' declarations, four specified types of ethnicities constituted the island: Falkland Islanders 57%, British 24.6%, St. Helenian 9.8%, Chilean 5.3%, and 3.4% were the rest.[41]

In addition, according to the Falkland Government 2021 census, national identity is a more subjective measure because although it inherently stems from both country of birth and nationality, it is a sign of the culture, traditions and language to which people are most attached. It may be a single cultural identity or reflect the combined influence of two or more cultures. About 54% of the permanent population identify as Falkland Islanders or a combination of Falkland Islanders and another culture, and a further 22% identify as British or a combination of British people and another culture. Around 76% of people said they expressed a Falkland Islands identity, British identity, or a combination of both. The next largest group is Saint Helenians, with 8%, followed by Filipinos, with 5%.[42]

As a matter of self-determination, one question is vital: what would be the proper definition for the people of an island? The African Commission on Human and Peoples' Rights advised the following definition: "Peoples are, for the purpose of these guidelines, any groups or communities of people that have an identifiable interest in common, whether this is from the sharing an ethnic, linguistic or other factor". The United Nations Educational, Scientific, and Cultural Organization (UNESCO) as well in a gathering of experts, defined the people as follows:

> a group of individual human beings who enjoy some or all of the following common features: (a) a common historical tradition; (b) racial or ethnic identity; (c) cultural homogeneity; (d) linguistic unity; (e) religious or ideological affinity; (f) territorial connection; or (g) common economic life; the group as a whole must have the will to be identified as a people, or the consciousness of being a people, allowing the groups or some members of such to grow, though sharing the foregoing characteristics, may not have that will or consciousness; and possibly; the group must have institutions or other means.[43]

A possible solution here is to do DNA (Deoxyribonucleic acid) tests on islanders to define their ethical roots. This action helps determine their bloodline to their homeland's ancestors and gives islanders more options to distinguish themselves from those who happen to be non-indigenous.

As an interconnected title, one of the acquisition methods of sovereignty is cessation, which grants territorial sovereignty to the transferee under its terms. The date of a ratified treaty will change the title to the island under the binding document. One of the limited-relevance examples of cession by a treaty goes back to the colonialism era, when European States, mainly Western ones, concluded many treaties with African polities. These agreements with indigenous leaders could distinguish between a sole act of occupation and acquisition of title, which are not known as a cessation in normal circumstances.[44]

4. Islands and Boundaries

The islands' status has become a problematic, long-running, and contemporary issue in ILoS worldwide and has caused several disputes between States. The disputes could be, first, regarding the sovereignty over islands and, second, the insular features of islands, which determine whether it is possible to consider jurisdictional maritime boundaries for the islands. Disputes over islands are generally over the

41 Muś A. *Self-determination and the Question of Sovereignty over the Falkland Islands/Malvinas*… P. 86.
42 *Falkland Islands Government the Directorate of Policy, Economy & Corporate Services*, *Falkland Island Census Report 2021*. URL: https://www.falklands.gov.fk/policy/downloads?task=download.send&id=219:falkland-islands-2021-census-report&catid=13 (accessed: 25.11.2023).
43 Muś A. *Op.cit*. P. 86–87.
44 Crawford J. *Op.cit*. P. 215.

uninhabited islands, rocks, low-tide elevations, and reefs. This results in discord diplomatic exchanges between States or might cause military confrontation.[45]

Concerning Articles 121(2) and 76(5) of UNCLOS, islands are significant because even a tiny island can give potential jurisdictional claims over large maritime zones and resources within. For instance, the EEZ and the CS are the subjects of these extensions. To illustrate, the CS could extend beyond 200 nautical miles (hereinafter — NM) up to 350, and the reason for the extension is access to resources such as fish stocks and offshore hydrocarbons, which are essential in food and energy reserves. In the case of a well-qualified island, to benefit from full jurisdictional boundaries, it depends on the fact that no neighbouring States have occurred in its vicinity to 400 NM.[46]

As a maritime security matter, the islands' strategic location has significant value for States. For instance, in the Abu Musa dispute, the Islands of Abu Musa, Greater, and Lesser Tunb create Iran's defence line and are the only way to pass the region's oil tankers and maritime traffic.[47] Abu Musa is near the Hormuz Strait's entry and is approximately equidistant from both coasts. Before explaining the categorisation of islands by location, reviewing the postulate of delimitation procedures is necessary.

In ILoS, the main objective of States is to generate maximum maritime zones to manage marine resources and maintain peace and security. Overlapping maritime boundaries among States causes a maritime boundary circumstance. Article 15 of UNCLOS applies to a situation with overlapping claims to TS up to 12 NM, which provides delimitation based on the equidistance method. The equidistance method does not apply if parties agree not to opt for it. For instance, if a historic title or when other special circumstances exist. In Article 12 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, the same concept distinguishes States with neighbouring coastlines. The median line, also known as an equidistance line, is applicable in opposing (see Figure 1[48]) or adjacent (see Figure 2[49]) coastlines, which both have the same function.

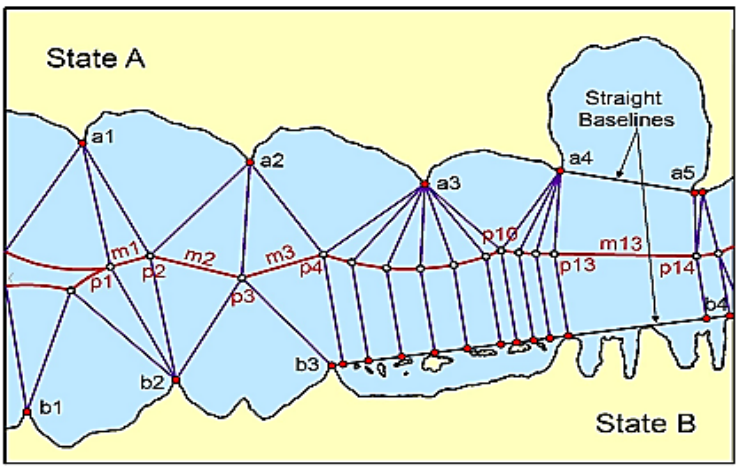

Figure 1. Red median line in three constructing situations.
Source: taken and rephrased from Kastrisios C. *Op. cit*. P. 17.

[45] Hong S.-Y., Van Dyke J.-M. *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea* // ed. by C. Schofield *The Trouble with Islands: The Definition and Role of Islands and Rocks in Maritime Boundary Delimitation*… P. 19–20.
[46] *Ibid*. P. 21.
[47] Al-Nahyan S.-Z.-K. *The Three Islands Mapping the UAE-Iran Dispute*… P. 30, 32.
[48] Kastrisios C. *Methods of Maritime Outer Limits Delimitation //* Nausivios Chora. 2014. Vol. 5. P. 17.
[49] United Nations. *Handbook on the Delimitation of Maritime Boundaries*. New York : United Nations Publication, 2000. P. 48.

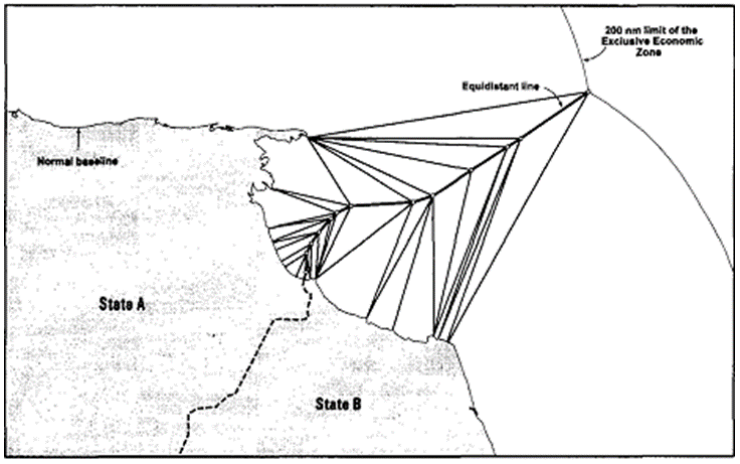

Figure 2. Strict equidistant line between adjacent States. Source: taken and rephrased from Handbook on the Delimitation of Maritime Boundaries, by Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, © 2000 United Nations. Reprinted with permission of the United Nations.

The definition of three methods of commonly used equidistance lines is as follows:

– A strict equidistance line considers all coastal base points permitted under UNCLOS. It could result in a complicated and inadequate line comprised of numerous turning points and short straight-line divisions.
– A simplified equidistance line has fewer base points or turning points. Usually, this method makes no noticeable distinction concerning the net maritime area of the zone for each coastal State involved in boundary measurement (see Figure 3[50]).[51]
– An adjusted or modified equidistance line is a line in which certain relevant geographical features like rocks and islands do not fully generate an effect in creating maritime areas, like CS or EEZ. The goal is to minimise the inequitable impact of these features based on equity or other considerations (see Figure 4[52]).[53]

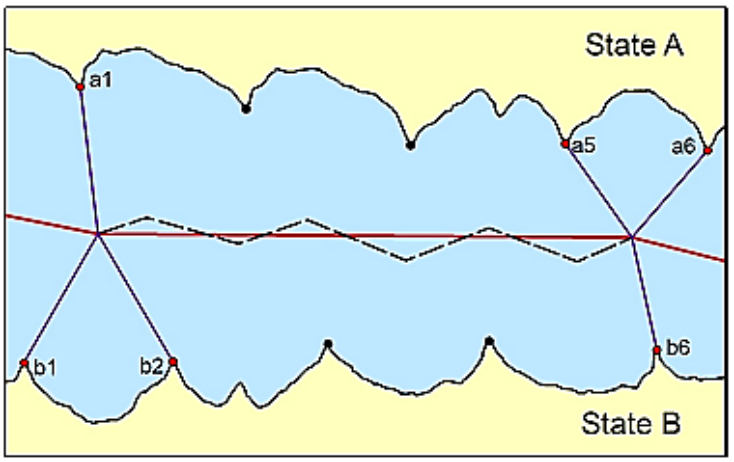

Figure 3. Strict and simplified equidistant lines.
Source: taken and rephrased from Kastrisios C. *Op. cit*. P. 18.

[50] Kastrisios C. *Methods of Maritime Outer Limits Delimitation*… P. 18.
[51] Idem.
[52] *Ibid*. P. 19.
[53] Idem.

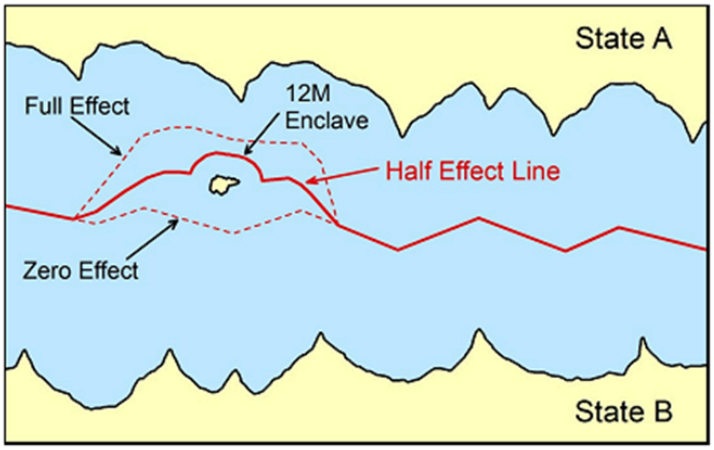

Figure 4. Half effect and modified median line.
Source: taken and rephrased from Kastrisios C. *Op. cit*. P. 19.

Furthermore, Articles 74 and 83 of UNCLOS determine general expressions to reach an agreement for the EEZ and the CS named equitable solution. According to the articles, no preferred delimitation method exists beyond the TS; instead, they merely specify an equitable solution's objective. For this reason, State practice plus precious outcomes of international courts and tribunals play a crucial role in the process of MBD.[54]

It is worth mentioning that a fully-fledged island does not guarantee the State to consider full effects in MBD, a measurement with any method of its achievement, whether negotiations or third-party contribution. Therefore, an equidistance line applies to islands with full or partial effects. As an example, the maritime boundary measurement of Gotland Island and Gotska Sandon accorded 75% weight between Sweden and the Soviet Union. In addition, international courts and tribunals are also considering a modified equidistance line. For instance, the preferred delimitation method was the half-effect applied to Scilly Isles in the *Continental Shelf Arbitration (France v. United Kingdom)*.[55]

Moreover, the modified equidistance line method aims to measure the breadth of CS and EEZ according to equitable principles and based on the type of geographical features. Consequently, one State in the MBD benefits from a larger maritime territory. When an island is located far from other geographical features of the coastal State, a modified equidistance line applies to prevent it from having disproportionate effects.[56] According to international courts/tribunals and State practice, the enclaving methodology is another way to deal with islands. Enclaving occurs when an island receives no or only partial effects in a situation where the island location is on the incorrect side of the median line or exists in the middle of the zone (see Figure 5[57]). In this circumstance, a boundary maker would draw a certain width of the maritime belt over the island equal to the breadth of TS.[58] An example of enclaving would be the Italy and Tunisia agreement by 1971 (see Figure 6[59]). The delimitation of the CS boundary in the Mediterranean Sea resulted in partial enclaving and reduced effect on the delimitation line.[60]

54 Schofield C. *Op.cit*. P. 32.
55 *Ibid*. P. 33.
56 Kastrisios C. *Op.cit*. P. 18–19.
57 *Ibid*. P. 19.
58 Idem.
59 Jayewardene H.-W. *Op.cit*. P. 361.
60 Schofield C. *Op.cit*. P. 33.

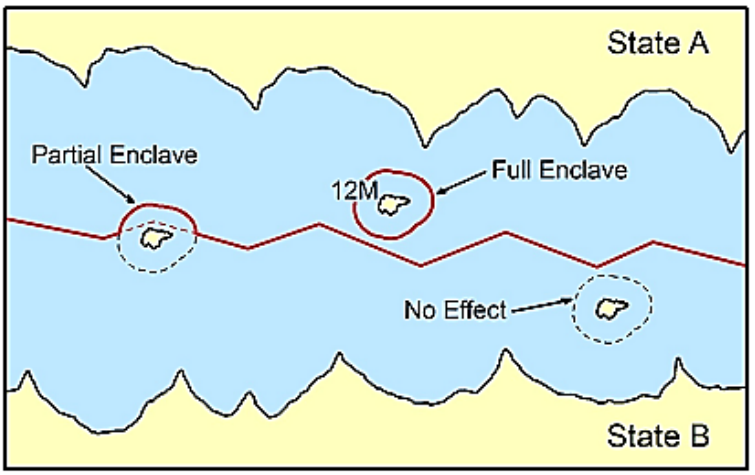

Figure 5. Fully and partially enclaved features of State B.
Source: taken and rephrased from Kastrisios C. *Op. cit*. P. 19.

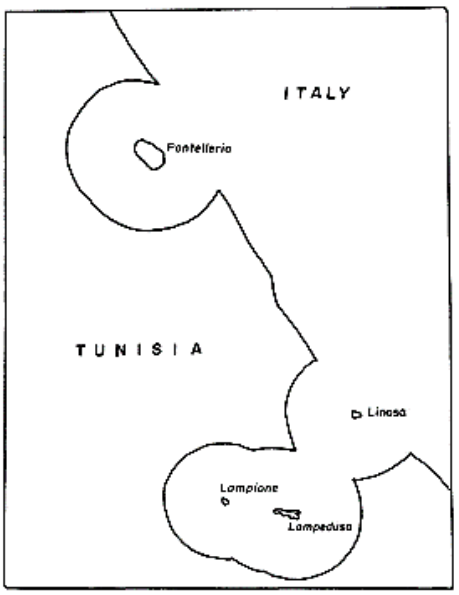

Figure 6. Italy-Tunisia: semi-enclave solution.
Source: taken from Jayewardene H. W. *Op. cit.* P. 361.

Furthermore, Abu Musa is referable to receive a partial enclave as an island with an indeterminate status and an unfinished shelf boundary agreement on its eastward extension.[61] The complex issue is, first and foremost, about the sovereignty and ownership of Abu Musa, which is uncertain, as well as other relevant circumstances of the MBD process. Concerning the *North Sea Continental Shelf* (*Federal Republic of Germany v. Netherlands*) judgment, the relevant circumstances are as follows: "Delimitation is to be affected by agreement per equitable principles, and taking into account all the relevant circumstances." Further, according to international jurisprudence, it is possible to categorise relevant/special circumstances into geographical and nongeographical categories as follows:[62]

– Geographical circumstances: configuration of the coasts, regional geography, the proportionality of a State's CS area to the length of its coastline, the presence of islands, low-tide elevations and promontories, the existence of third States and regional arrangements.

[61] *United States Department of State Bureau of Intelligence and Research*, *Limits in the Sea No. 94 CONTINENTAL SHELF BOUNDARIES: THE PERSIAN GULF 11 September 1981*. URL: https://www.state.gov/wp-content/uploads/2019/12/LIS-94.pdf (accessed: 27.10.2023).

[62] Karaman I.-V. *Dispute Resolution in the Law of the Sea*. Leiden; Boston: Martinus Nijhoff, 2012. P. 222.

– Nongeographical circumstances: seabed's geology and geomorphology for outer shelf' measurement, historical rights, prior conduct of parties, developing activities, safety measurements, and navigational purposes. Typically, international courts consider geographical factors more than nongeographical ones in their judgments.[63]

The 1969 *North Sea Continental Shelf* case also illustrated the concept of proportionality, which means that in the maritime delimitation process, considering the opposite State's coastal length is essential before determining any maritime zone for States involved in the dispute. Furthermore, in the case of *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, the Court introduced the disproportionality test to determine whether the delimited zones comply with equitable principles.[64]

Precautionary measurements are also interrelated in the delimitation process: non-encroachment,[65] avoidance of cut-off effects[66] (see Figure 7[67]) and disproportionate results.[68]

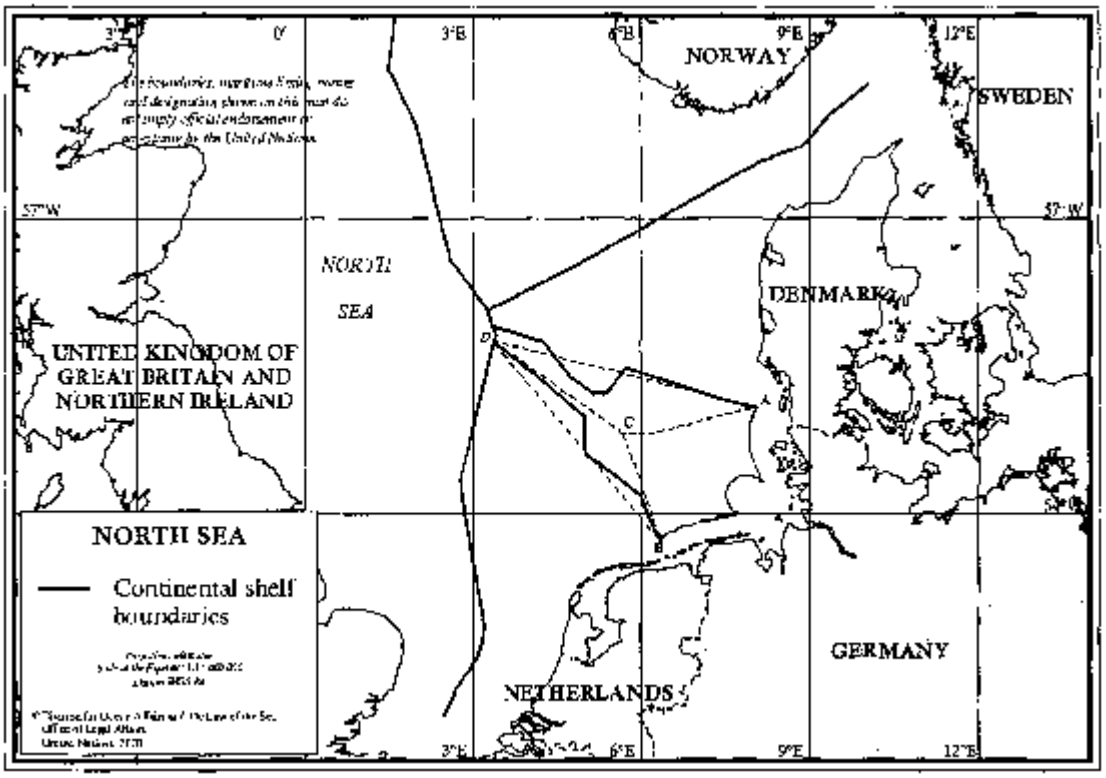

Figure 7. (a) the continental shelf of Germany that would have resulted from the application of equidistance sought by the Netherlands and Denmark (area comprised between points ACB); (b) the continental shelf claimed by Germany (area ADB); and (e) the continental shelf that was negotiated by Germany with the Netherlands and Denmark. Source: taken from Handbook on the Delimitation of Maritime Boundaries, by Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, © 2000 United Nations. Reprinted with permission of the United Nations.

The existence of a disagreement over the sovereignty of an island could thus significantly delay the settlement of international boundaries, perhaps causing a conflict between the parties involved. Furthermore, as Robert David Hodgson points out[69],

> If the criterion of 'dispute' were used, a nation wishing to disclaim the effect of an island would need only to establish a contrary claim to sovereignty. Consequently, a need exists to clarify the status of the dispute in relation to the time of the negotiations for the (shelf) boundary; most island disputes today

63 *Ibid*. P. 223.
64 ICJ. *Maritime Delimitation in the Black Sea* (*Romania v*. *Ukraine*). Application No. 132. Judgment of 3 February 2009. § 210, 213–214.
65 United Nations. *Handbook on the Delimitation of Maritime Boundaries*… P. 19–21.
66 *Ibid*. P. 31.
67 *Idem*.
68 Anderson D.-H. *Maritime Delimitation in the Black Sea Case (Romania v. Ukraine)* // The Law and Practice of International Courts and Tribunals. 2009. Vol. 8. P. 313.
69 Jayewardene H.-W. *Op.cit*. P. 487.

are known, although in some cases one of the parties may not acknowledge that there is a dispute.

From the geographical perspective, islands could take different positions relating to the parent State concerning measurements of MBD if no sovereignty status exists as follows[70] (see Figure 8[71]):

– offshore islands;
– offlying islands;
– islands in the median zone;
– detached islands; and
– islands of indeterminate political status.

Offshore and Offlying Islands

A comparison view illustrates that offshore islands have a closer distance, are more connected to the shoreline, and would appear annexed in a broader geographical scope. In a situation where they have the nearest proximity distance to the shore in a sub-category, they are known as coastal islands. The standard treatment for such islands is to give offshore islands full effect, and this practically applies to their situation where they fall in TS and CZ. In the MBD process, insular features that qualify as base points would likely receive full weight as normal baselines in the delimitation of TS.[72]

Offlying islands are in a geographical position that goes further seaward, and the proximity element is not as practical as it defines offshore islands. Despite their location, beyond 24 miles, they share more similarities and features with parent State's landwards. From MBD's perspective, much of the difficulties in discriminating between offshore islands in the coastal area and offlying islands stems from the fact that the further offlying islands are in the sea, the more influence they have on the equidistance line. Consequently, deciding on the matter would rely on the size of the water area involved, as R.-D. Hodgson has pointed out. Thus, a suitable geographical perspective considering the water space would be the primary priority in categorising the islands and identifying relevant precedents.[73]

Islands in the Median Zone

In some circumstances, islands are located beyond offshore and offlying islands close to the equidistance line, which are islands on the wrong/right position of the equidistance line. In some cases, islands are on the median line, and their astride extends to 12 miles on either side. Identifying offlying islands from islands in the median zone could be challenging, mainly when drawing later boundaries. To overcome the problem, the boundary maker should rely on the 12-mile test for the median zone from both sides. These islands would not have any role as base points, mainly when a narrow ocean or a neighbouring State delimitation exists. The primary criterion in the following circumstance should be the island's proximity to the equidistance line bearing; it is not a base point.[74]

Detached Islands

Detached islands fall within two categories: when located on the wrong side of the equidistance line and outside the median zone, beyond 12 NM, with no impact on the equidistance line. Second, islands detached from the parent State are very close to the coast of the opposite State, representing an extension of the parent State territory, bearing that they are not incidental to delimitation (see Figure 9[75]). The proximity element is quite outstanding, and there is no efficacious connection between the island/s and the parent State's jurisdictional territory. As a result, they are far away from the islands in the median zone. However, the distinction appears meaningless in inter-State TS delimitation.[76]

Islands of Indeterminate Political Status

From the MBD viewpoint, the methods, and the provisions within exacerbate the determination of territorial entitlement to some extent. To illuminate, on the one hand, some islands can generate extra maritime zones; therefore, States claim their sovereignty and deploy delimitation procedures to achieve extended marine areas, which have led to many pending delimitation situations and underpinned

[70] *Ibid*. P. 368–371.
[71] *Ibid*. P. 422.
[72] *Ibid*. P. 478.
[73] *Ibid*. P. 480.
[74] *Ibid*. P. 483.
[75] *Ibid*. P. 368.
[76] *Ibid*. P. 484.

increments of risk of escalation. Nevertheless, in some other circumstances, no party would be interested in acquiring an unqualified island's sovereignty, resulting in an indeterminate political status. The latter would highlight and emphasise the insights of the island's location as the primary factor in any government's desire. Consequently, a boundary maker should be delicate in evaluating the geographical features in different scenarios (see Figure 10[77]).

Moreover, different elements, including political, legal, and other relevant factors, have become a burden to learn a globally applicable model analysis of the problem of boundary measurements according to this type of classification. For instance, in the *Aegean Sea Continental Shelf (Greece v. Turkey)*, contrary to its complex geographical situation, there is a basis for objective analysis concerning the Greek Islands in the light of State practice (see Figures 11[78] and 12[79]).[80]

In MBD, a standard method among States is that they do not involve these islands as a compelling feature impacting the boundary. It is quite sensible that MBD will not proceed as long as a sovereignty dispute exists.[81] In negotiations, as one of the ways to peacefully settle a dispute, States should consider the following three types of circumstances in the practice of MBD.[82] First, political conditions: for instance, if there is an act of war, there are no formal relations, or they are weak. In this circumstance, negotiations would not initiate. Second, geographical conditions: for example, the islands' location may be problematic for one of the States. Those with short coasts or surrounded by adjacent States would probably disagree with using equidistance lines in the MBD. Third, economic conditions: if the disparity in economic resources between the two parties is significant, the disadvantaged nation may require a larger share of the disputed zone. Besides, the agreement might become complicated if the disputed territory has a substantial economic value.

77 *Ibid*. P. 369.
78 *Ibid*. P. 429.
79 *Ibid*. P. 446.
80 *Ibid*. P. 371.
81 *Ibid*. P. 488.
82 Blake G.-H. *Maritime Boundaries and Ocean Resources*… P. 210–212.

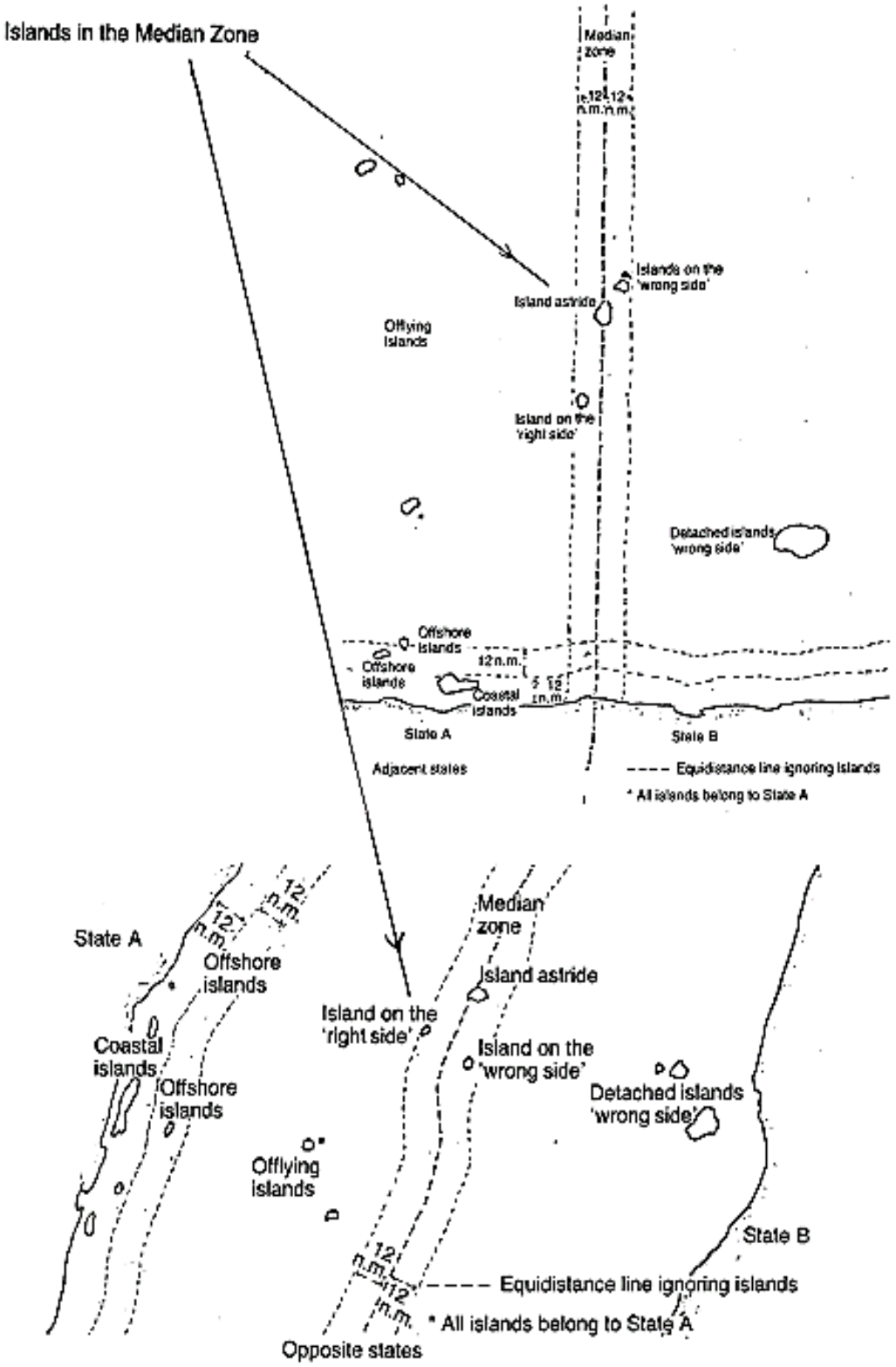

Figure 8. Islands' positions in opposite/adjacent states.
Source: taken and rephrased from Jayewardene H. W. *Op. cit*. P. 442.

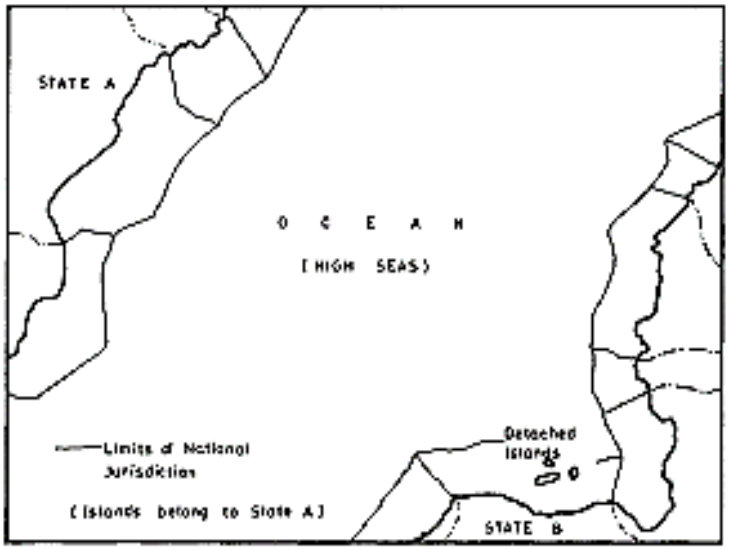

Figure 9. Second category of detached islands.
Source: taken and rephrased from Jayewardene H. W. *Op. cit*. P. 368.

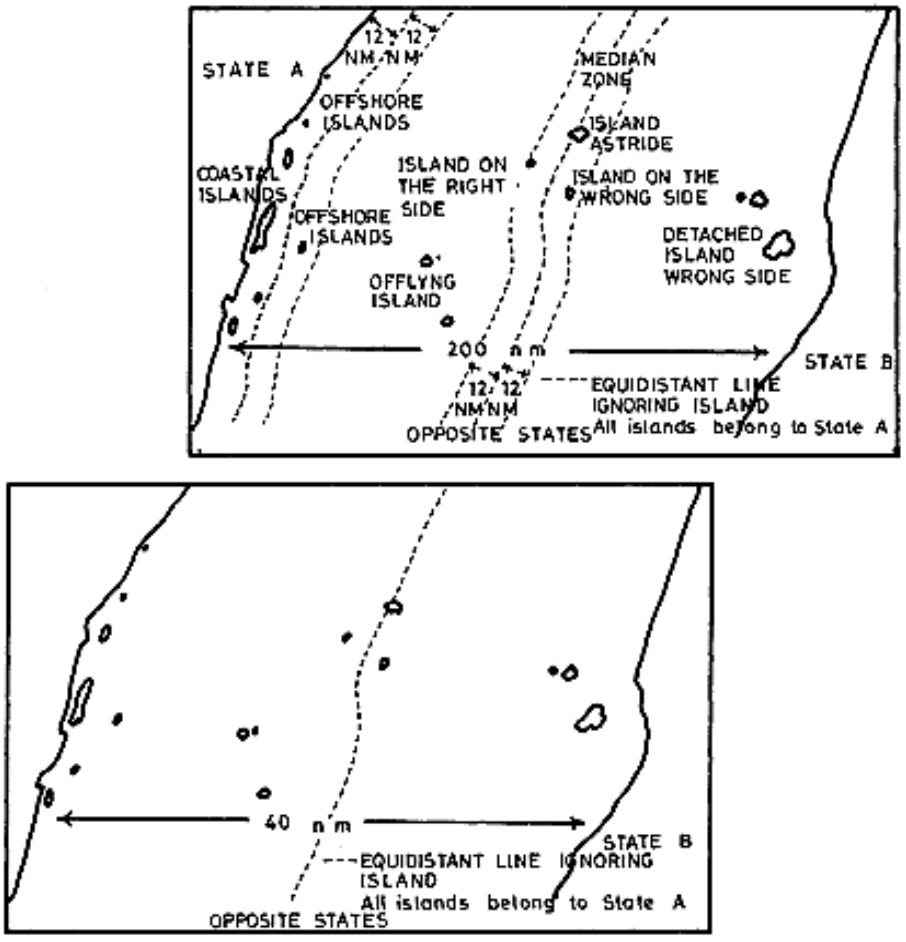

Figure 10. Two similar island situations on differing scales.
Source: taken and rephrased from Jayewardene H. W. *Op. cit*. P. 369.

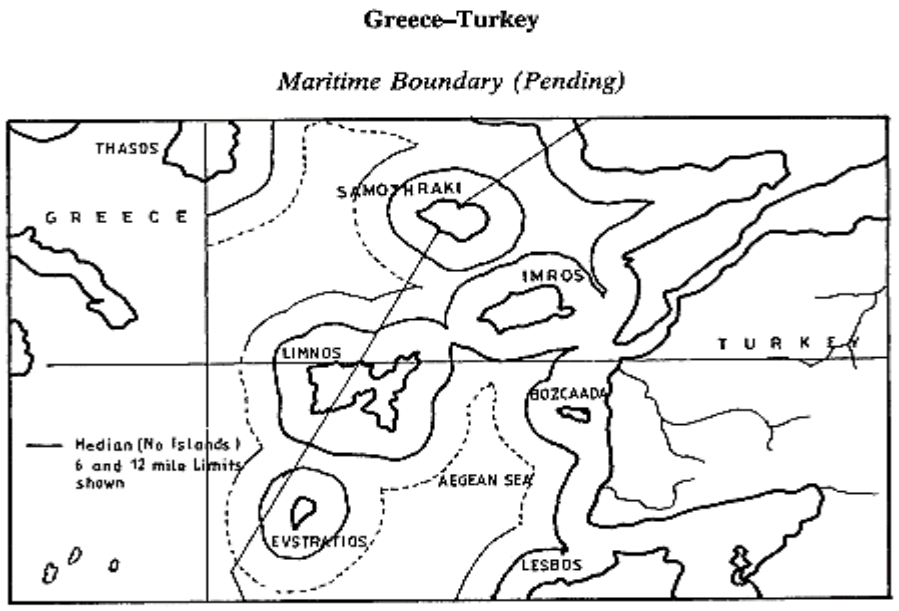

Figure 11. Maritime boundary status of the Aegean Sea.
Source: taken and rephrased from Jayewardene H. W. *Op. cit*. P. 429.

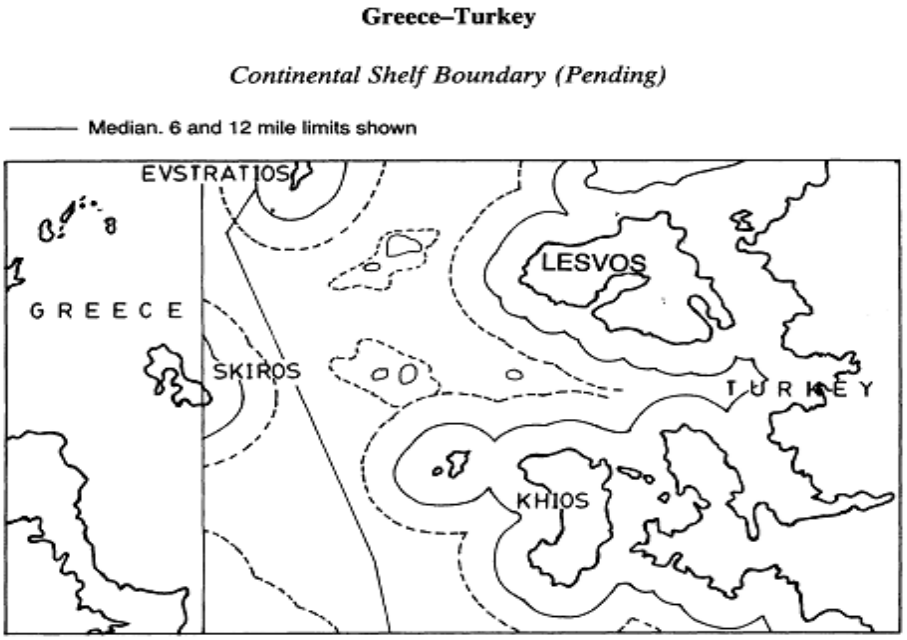

Figure 12. Continental shelf boundary situation of the Aegean Sea.
Source: taken and rephrased from Jayewardene H. W. *Op. cit.* P. 446.

Conclusion

This paper reviewed and illustrated the historical path to the definition of islands, the status of artificial islands, and the sovereign reasons/titles contributing to islands' territorial sovereignty in the position of States. It provided legal insights/discussions based on the relevant publications and cases and explained why the sovereignty issues of islands were complex due to the several integrated factors impacting the criteria. Furthermore, it mentioned the undeniable role of the UN in serving as a competent organisation in connection to the subject and explained the keynotes of the MBD process.

The main point of the research indicates that the regime of islands consists of two legal domains in ILoS. To begin with, the most critical significant dimension would be its long-running process of territorial sovereignty determination and jurisdictional authorities, which was on from the XV century up to the present time. It is arguable that, due to the evolutionary course of international law, the principles of traditional international law have faded to some extent. For instance, the principle of *terra-nullius* merely no longer functions. As a legal discussion concerning sovereignty, forms of governmental authority over territory and acquisition and transfer of territorial sovereignty constitute the legal aspect, i.e. in the Falkland Islands, one of the mentioned reasons for sovereignty was occupation accompanied by the effective administration; in Spratly and Abu Musa, the historical context was undeniable as a reason States proposed them.

The second interrelated measurement would be the progression of MBD. The first attempts by the Hague Codification Conference and ILC to shed light on defining islands and their impact on maritime space till the emergence of UNCLOS indicate the importance of the subject internationally. Engaging with the island's obstacles relating to their role in determining maritime boundaries is the most critical concern for States; in normal circumstances, when there is no argument over the ownership of islands, the first aim would be to reach an agreement with the equidistance method. Due to the unique features of islands, States may not always be able to follow the instructions for this method. UNCLOS refers to those troublesome situations as special/relevant circumstances. Subsequently, UNCLOS materialises the idea of reaching an equitable delimitation. To accomplish this idea, judicial decisions and State practice are among the treatments for islands, particularly in maritime zones beyond TS. Therefore, the international courts/tribunals' judgments of each case regarding the disputes over the island's sovereignty would be a complementary and decisive instrument.

ТЕОРЕТИЧЕСКИЙ ПОДХОД К ОБОСНОВАНИЮ ЗАКОННОСТИ ТЕРРИТОРИАЛЬНОГО ПРАВА ГОСУДАРСТВ НА ОСТРОВА И ОСНОВНЫЕ ПРОЦЕДУРЫ ОПРЕДЕЛЕНИЯ МОРСКИХ ГРАНИЦ ОСТРОВНЫХ ТЕРРИТОРИЙ В КОНТЕКСТЕ МЕЖГОСУДАРСТВЕННЫХ ОТНОШЕНИЙ

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Аннотация

Правовой статус островов, то есть вопрос о территориальной принадлежности и распространении на них суверенитета государств, имеет существенное значение, поскольку определяет юрисдикцию государств в отношении островных территорий, в частности возможность доступа к ресурсам непосредственно на островах, на прилегающих территориях и за их пределами. Кроме того, высокое значение правового статуса связано с навигационными соображениями и соображениями безопасности государств, суверенитет которых распространяется на островные территории. По итогам определения границ островов государства решают вопрос о своих юрисдикционных правах. Определение границ морских зон возле островов сопряжено с рядом трудностей, обусловленных географическими и геоморфологическими факторами, историческими территориальными спорами, экономическим, культурным, политическим и социальным контекстом. Естественно, этот процесс сопряжен с разногласиями и спорами, которые могут представлять угрозу миру и безопасности во всем мире. В случае возникновения споров общепринятой практикой их разрешения является мирное урегулирование, методы которого изложены в статье 33 Устава Организации Объединенных Наций. Определение международного режима островов предполагает междисциплинарный подход, предусматривающий обращение к иным отраслям знания, помимо юриспруденции. В настоящей статье представлены примеры такого подхода. Кроме того, в статье рассматриваются аргументы, используемые при решении вопроса о принадлежности островов суверенной территории государств, анализируются правовые основания определения суверенной принадлежности островов в ряде необычных случаев, известных международному морскому праву. Речь идет об острове Абу-Муса в Персидском заливе, островах Спратли, Парасельских и Фолклендских островах. Целью настоящего исследования является решение двух задач: во-первых, определение оснований территориального суверенитета государств над островами, и, во-вторых, определение основ делимитации морских границ в контексте соответствующих межгосударственных отношений (речь преимущественно идет об отдельных островах различной природы происхождения, не входящих в архипелаги).

Ключевые слова

суверенитет, территориальная принадлежность, *terra nullius*, самоопределение, колонизация, метод равного отстояния, анклав

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