CHAPTER- VI

APPRAISAL, CONCLUSIONS AND SUGGESTIONS
Chapter VI

APPRAISAL, CONCLUSIONS AND SUGGESTIONS

This long exploration of some aspects of the law of maritime delimitation to determine “The Role of Equity in Maritime Boundary Delimitation Disputes particularly in Continental Shelf Delimitation cases and the contribution of International Court of Justice (ICJ) to the development of the Law of Maritime Delimitation”, has taken us not only across already well marked prominences but also into more obscure areas where oriented presentation is difficult. The Courts have managed, in less than twenty five years, to clarify many of these issues, but there is still a long way to go in shaping the law of maritime delimitation.

6.1. Appraisal of the Research Study:

Though the research of the subject of maritime boundary delimitation is no doubt a complex undertaking, the role of international equity in maritime boundary delimitation disputes has been clarified by exposition and analysis of the various stages in their development. The period of time covered in this research is between 1945 to 2007.

In Chapter II, the historical development of Law of Maritime Delimitation, Origin, sources and development of Equity in International Law has been analysed. In this Chapter the profound influence of Aristotle on the Western legal tradition and his articulation of the universality and completeness of the law which necessarily includes broad concepts of justice and equity, Equity - Equality
Conclusions and suggestions

Chapter VI

under Islamic and Hindu Laws the different views of jurists in ancient times and the decisions of International Court of Justice in North Sea Continental Shelf cases (1969) and subsequent cases has been discussed. The provisions of Equity in Maritime Delimitation under UNCLOS I, UNCLOS III, justification for adopting equidistance rule, its current status, difference between Law, Equity, Ex aequo et bono has been analysed.

In Chapter III, the legislative background of the Criteria of Equity for the Maritime Delimitation of Continental Shelf under Pre-International Law Commission Period (1945 to 1949) and during International Law Commission Period (1949 to 1956) has been studied.

In Chapter IV the Judicial and Arbitral Decisions under Pre 1982 and Post 1982 Law of the Sea Convention have been studied. In this chapter the cases relevant to research topic from North Sea Continental Shelf Cases 1969 to Nicaragua V Honduras (2007) have elaborately discussed.

In Chapter V, the Contribution of International Court of Justice (I.C.J) to the development of the Law of Maritime Delimitation by establishing various principles starting from the theory of Natural Prolongation to the theory of Omnidirectional Delimitation and Principle of Proportionality have been analysed.

In Chapter VI i.e. the present chapter, appraisal, conclusions and suggestion of the research topic have been reviewed.

The rule of customary international law which has prevailed is that, although delimitation ought not to involve a refashioning of nature entirely,
totally, completely, it may quite properly make some correction. Given the two approaches, the law has tried to steer a middle course, to respect nature while changing it, to correct geography while still conforming to it. This is precisely the reason for introducing equality into the delimitation process. Maritime boundaries could have been the product exclusively of the political and natural reality of the coastal contours, but, for the sake of equity, international law wanted to improve on this. As Judge Lachs, President of the Guinea/Guinea-Bissau Arbitration Tribunal, put it, equity thus serves to ‘make a bridge between nature and the law.’ This has not been a soft option for the Courts since, in each and every case, they have to strike the difficult balance between the safety of respect for nature and the temptation to rewrite geography so as to impose their own idea of justice. The patch between blind pursuit of the given and the total freedom of ‘ex aequo et bono’ is not an easy one.

The delimitation line is first drawn in faithful reflection of the coasts exactly as they are, fashioned by history and geography. The Court then checks whether a small geographical feature on one of the coasts leads to a displacement of the line, or a major deviation, causing a disproportionate and therefore inequitable amputation, or encroachment. ‘we seek to ensure’ said Judge Lachs, ‘that neither of the two (States) is subjected to any significant cut off to the advantage of the other and that its coastline or rather the effect of its coastline, can not be unduly reduced owing to a whim of nature.

This approach, may seem a happy reconciliation of the contradictory aims of respect for geography and the pursuit of equity. What this approach does is
none other than to move away from nature and take liberties with geography, to impose human judgment at the very moment of proclaiming that the facts of nature take priority.

When the International Court of Justice recommends, in the North Sea cases, that no account be taken of islets, rocks or minor coastal projections, the disproportionally distorting effect of which can be eliminated or considers that so great an exaggeration of the consequences of a natural geographical feature (a concave coastline) must be remedied or compensated for as far as possible, being of itself creative of inequality, is it doing anything other than suggesting a correction to nature in the name of equity? When it suggests abating the effects of an incidental special feature which, by disturbing a general configuration characterized by the resemblance of the two coasts, would risk causing, an unjustifiable difference of treatment, is it not making a judgment about the hierarchy of elements none of which is more or less natural than others? And when it contemplates measuring the coasts according to their general direction, ignoring indentations and salients, in other words, attributing to them a length other than their real one, what is it doing if not correcting nature?

The Anglo French Court of Arbitration, while insisting the need to refer to the actual geographical condition, we also to suggest in the name of equity an abatement of the inequitable effects of the distorting geographical feature, explaining that it was necessary to avoid particular configurations of the coast, individual geographical features or particular geographical features, producing an inequitable delimitation.
More generally the Courts are not making geography to measure each time they decide to ignore an island or to give it only partial effect, each time they undertake the delimitation as if the island did not exist or was closer to the shore that it really is? Under cover of abating the effects of an incidental special feature, sizeable areas of the parties, territory may fail victim to strange attempts at conjuring. In Gulf of Maine, for example, Canada tried in effect, to secure the disappearance of Cape Cod and Nantucket Island, and the United States that of the whole Canadian province of Nova Scotia.

The existing law of delimitation which is based on equitable concepts demands the application of equitable criteria and methods taking into account all relevant factors. Our enquiry would seek to find out whether economic factors have the independent status of equitable principle (or rule,) or whether they are just one of the relevant circumstances deemed applicable in conjunction with the main criteria or other relevant factors in the delimitation process. Also to examine, in the latter case, is it possible to quantify or articulate the weight to be accorded to economic factors independently or in relation to other factors?

The principal purpose of an individual maritime boundary settlement is to settle the issue permanently in order to achieve stability and finality. This assumes the importance of applying those criteria and methods in a delimitation process that are precise and stable and would lead to equitable delimitation. In actual practice no criteria, even the ones based on geographic factors, are perfect. There are instances of the criteria borrowed from geography causing varying degrees of inequity. Thus arises the relevance of other factors playing a supplementary,
remedial role in the process of boundary delimitation in order to achieve equitable results. Economic factors are just one of them. If economic considerations are of variable nature such as data concerning the relative wealth and poverty of the contesting States, they may not serve the purpose of a stable and permanent boundary. Conversely, the existence, over a reasonable period of time, of the potential use and dependency patterns of resources deserve appropriate weight, as they might be manifesting physical realities, or they may help to explain the significance of geographic factors. If such economic factors are ignored, they might in a given situation, cause severe deprivations to the entire social processes of the concerned States. Therefore, a balanced consideration, based on the reasonableness of the claims of the contesting parties, be given to these factors, which would, of sure, promote the goal of stability and finality of maritime boundaries.

The contemporary world arena, which has undergone a drastic qualitative and quantitative transformation since 1945, it witnessing an unprecedented acceleration in demands for expansion of exclusive authority of States over the seas to secure a variety of interest, particularly of economic content.

The Advancement of science and technology has made it possible to adopt new methods for exploiting the resources of the oceans which is commercially more profitable. This factor has lent strength to coastal State campaign to gain exclusive authority to manage and exploit the natural resources of the sea. The ultimate result is the addition of the two more seaward zones, namely continental shelf zone and the exclusive economic zone to the existing territorial sea zone.
As the campaign in support of coastal States for extensive jurisdiction in the Oceans caught momentum, the international law of sea was faced with the necessity of devising a set of criteria for delimiting the vast area of the ocean between no fewer than 132 coastal States. With the increasing number of States claiming extended jurisdiction both on the continental shelf and the water column, the focus of the sea law appears to be shifting to the delimitation of single maritime boundaries which would serve the purpose of continental shelf as well as economic zone boundaries. A number of emergent single maritime boundary agreements and the decision of the Chamber of International Court of Justice (I.C.J) in the Gulf of Maine case bear testimony to this current phenomenon.

The question at this stage arises whether the criteria and methods as well as other considerations of delimitation deemed applicable to the process of delimitation in the afore said zones are common.

There are significant *inter se* legal differences between the delimitation of a continental shelf boundary, determined by the legal criteria emphasizing geological and geographical features, and an exclusive economic zone boundary, based on criteria that might include the relevance of usage and economic considerations, and also between either of them and a single maritime boundary, which attracts the criteria suitable to a multipurpose boundary. Referring to the *inter se* legal differences between a continental shelf boundary and an exclusive economic zone boundary, a recent collaborative study by Collins, Jr., and Rogoff, after a thorough analysis of the pertinent legal materials, has concluded that the
process by which an equitable delimitation of exclusive economic zone boundaries to be achieved is essentially the same as that required for delimitation of continental shelf boundaries. Actually the analogous relationship between them can be fortified by the identical wording of Article 74 and 83 of the Law of the Sea Convention governing delimitation of each of these zones. As observed by Collins, Jr., and Rogoff the emerging law that relates to delimitation of economic zone boundaries is in its essence, the same as the law applicable to delimitation of continental shelf boundaries. According to Collins Jr., and Rogoff the various equitable principles and even the consideration of relevant circumstances, including geographic and economic are essentially the same, in as much as the economic zone includes both the seabed and subsoil and the resources of the water column. Thus on the basis of equitable concepts, the existing law of delimitation of these three categories of zones provides sources for ascertaining the principle and rules of a single, multipurpose maritime boundary delimitation. The judgment of the Chamber of the International Court in the Gulf of Maine case, involving a single line boundary is significant in this regard.

In as much as the delimitation of a single maritime boundary entails a delimitation of the two distinct elements (continental shelf and the water column) by means of a single line, the Chamber differentiated the Gulf of Maine case from the previous decisions involving continental shelf delimitation. In the view of the Court, “this did not mean, that the criteria applied in those decisions must ipso facto be held inapplicable in the present case.
In fact, the tenor of the fundamental norms set out by the Chamber and deemed applicable in this case was no different from the tenor of the law of continental shelf and economic zone delimitation. The sole condition the Chamber put was that the adaptability of those criteria to this essentially different operation should first be verified in relation to its specific requirements.

6.2. Conclusions of the Research:

By way of assessment and appraisal of the study, the following conclusions have been made. We may conclude that the sources of delimitation of various maritime zones, taken singly or in combination, are a great deal common to all except that the significance of a particular kind of relevant circumstance may be specific to a particular zone and, as such, might warrant special weight to be given to it. Hence in the study of the relevance of economic factors to the process of delimitation is not classified in terms of various maritime zones; rather, it seeks to focus an approach that would generally apply to all maritime zones.

6.2.1. Summarising the Conclusions of the Study:

The principles that have emerged from judicial and arbitral decisions on maritime boundary disputes have been summarized below.

6.2.1.(i) Delimitation is to be made to achieve Equitable Solution: Article 83 (on the continental shelf) of the Law of the Sea Convention state that boundary delimitations are to be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution. This reference to “an equitable solution”
mirrors the original statement promulgated by the United States when it claimed sovereignty over its continental shelf in 1945 and stated that: In cases where the continental shelf extends to the shore of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the state concerned in accordance with equitable principles. Although some commentators have argued that the term "equitable" has no definite meaning, fairly specific "equitable principles" have in fact emerged during the past three decades.

6.2.1.(ii) The Equidistance or Median-Line Approach Can Be Used as an Aid to Analysis, But It Is Not to Be Used as a Binding or Mandatory Principle:

In the Libya/Malta case, the Gulf of Maine case, and the Jan Mayen case, among others, the International Court of Justice (ICJ) examined the equidistance or median line as an aid to its preliminary analysis, but then adjusted the line in light of the differences in the length of the coastlines of the contending parties. The Court has made it clear in all these cases that the equidistance line is not mandatory or binding.

6.2.1.(iii) The Proportionality of Coasts Must Be Examined to Determine if a Maritime Boundary Delimitation Is Equitable:

It has now become well established that an essential element of a boundary delimitation is the calculation

---

1 Proclamation No. 2667 (usually referred to as the Truman Proclamation), Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, 10 Fed. Reg. 12,303 (1945)
2 Case concerning the Continental Shelf (Libyan Arab Jamahiriya v. Malta) I.C.J. Reports 1985, (Judgment of 3 June)
3 Case Concerning Delimitation of the Maritime Boundary in Gulf of Maine Area (U.S.A v. Canada), I.C.J. Reports 1984 (Judgment of 12 October)
4 Case Concerning Maritime Delimitation in the Area Between Greenland and Jan Mayen (Denmark v. Norway), I.C.J. Reports 1993 (Judgment of 14 June 1993)
of the relative lengths of the relevant coastlines. If this ratio is not roughly comparable to the ratio of the provisionally-delimited maritime space allocated to each country, then the tribunal will generally make an adjustment to bring the ratios into line with each other. In the *Libya/Malta Case*, for instance, the ICJ started with the median lines between the countries, but then adjusted the line northward through 18' of latitude to take account of the very marked difference in coastal lengths between the two countries. The Court then confirmed the appropriateness of this solution by examining the "proportionality" of the length of the coastlines of the two countries and the "equitableness of the result." In the *Jan Mayen Case*, the ICJ determined that the ratio of the relevant coasts of Jan Mayen (Norway) to Greenland (Denmark) was 1:9, and ruled that this dramatic difference required a departure from reliance on the equidistance line. The final result was perhaps a compromise between an equidistance approach and a proportionality-of-the-coasts approach, with Denmark (Greenland) receiving three times as much maritime space as Norway (Jan Mayen).

6.2.1.(iv) Geographical considerations will govern maritime boundary delimitations and non-geographic considerations will only rarely have any relevance: The *Gulf of Maine* case was perhaps the most dramatic example of the Court rejecting submissions made by the parties regarding non-geographic considerations, such as the economic dependence of coastal communities on a fishery, fisheries management issues, and ecological data.

---

6 I.C.J. Reports 1985, see note 2 above, p. 49, para. 66.
7 Ibid, p. 53, para. 74.
8 Ibid, para. 75. In the *Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau*, 25 I.L.M. 252 (1986), the arbitral tribunal also evaluated the "proportionality" of the coasts to determine whether an "equitable solution" had been achieved by the boundary line chosen.
6.2.1.(v) "Natural prolongation" is no longer a prominent factor in maritime delimitations: The concept of the continental shelf as a "natural prolongation" of the adjacent continent is a geographical notion, but it has not played any significant role in decisions rendered during the past two decades. It was first recognized in the North Sea Continental Shelf Case and is found in Article 76(1) of the Law of the Sea Convention (defining continental shelves that extend beyond 200 nautical miles), but it appears to have been rejected as a factor relevant to maritime boundary delimitation in, for instance, the Libya/Tunisia Case, the Libya/Malta Case, and Gulf of Maine Case. In the St. Pierre and Miquelon Case, the arbitral tribunal stated that the continental shelf was generated by both Canada's and France's land territories, and thus that it was not a "natural prolongation" of one country as opposed to the other. The abandonment of the natural prolongation approach in all recent decisions has required countries to adjust their negotiation strategies in recent agreements, and may have a significant effect in Northeast Asia, because China and South Korea have both made arguments based on this theory, as is discussed below. To some extent, the Principle of Non-Encroachment, discussed next, has taken the place of the natural-prolongation idea, but it leads to some different results.

6.2.1.(vi) The Principle of Non-Encroachment: This principle is included explicitly in Article 7(6) of the Law of the Sea Convention, which says that no state can use a system of straight baselines in such a manner as to cut off the

---

9 North Sea Continental Shelf cases (Federal Republic of Germany (FRG)/Denmark; FRG/Netherlands) I.C.J Reports 1969 (Judgment of 20 February), para. 3
10 Delimitation of the Maritime Areas Between Canada and France (St. Pierre and Miquelon), 31 I.L.M. 1149 (1992) [hereafter cited as the St. Pierre and Miquelon Case]
Conclusions and suggestions

Chapter VI

territorial sea of another State from the high seas or an exclusive economic zone. It played a significant role in the delimitation of the exclusive economic zone (EEZ) in the Jan Mayen Case,\(^1\) where the Court emphasized the importance of avoiding the blockage of a coastal state's entry into the sea. Even though Norway's tiny Jan Mayen island was minuscule in comparison with Denmark's Greenland, Norway was allocated a maritime zone sufficient to give it equitable access to the important capelin fishery that lies between the two land features.\(^12\)

The unusual 16-nautical-mile-wide and 200-nautical-mile-long corridor drawn in the St. Pierre and Miquelon Case\(^13\) appears to have been based on a desire to avoid cutting off these islands' coastal fronts into the sea. But, at the same time, the arbitral tribunal accepted Canada's argument that the French islands should not be permitted to cut off the access of Canada's Newfoundland coast to the open ocean.

6.2.1.(vii) The Principle of Maximum Reach: This principle first emerged in the North Sea Continental Shelf Case,\(^14\) where Germany received a pie-shaped wedge to the equidistant point even though this wedge cut into the claimed zones of Denmark and the Netherlands. Professor Charney reported in 1994 that this approach had been followed in later cases. No subsequent award or judgment has had the effect of fully cutting off a disputant's access to the seaward limit of any zone. The decisions during the past decade have confirmed the importance of this principle. In the Gulf of Fonseca Case, the Court recognized the existence of an

\(^1\) I.C.J. Reports 1993, see note 4 above.
\(^2\) ibid. paras. 70, 79-81
\(^3\) St. Pierre and Miquelon Case, see note 10 above.
\(^4\) I.C.J. Reports 1969, see note 9 above, p. 45, para. 81
Conclusions and suggestions

Chapter VI

undivided condominium regime in order to give all parties access to the maritime zone and its resources, and in the *St. Pierre and Miquelon Case*, France was given a narrow corridor connecting its territorial sea with the outlying high seas. The geographical configuration in the *Jan Mayen Case* presented different issues, but even there the Court gave Norway more than it "deserved" given the small coastline and tiny size of Jan Mayen Island, apparently to enable it to have at least limited geographical access to the middle of the disputed area, which contained a valuable fishery. Several interests are served by the Maximum Reach Principle—"status" (by recognizing that even geographically disadvantaged countries have rights to maritime resources), the right to participate in international arrangements as an equal, navigational freedoms, and security interests in transportation and mobility.

6.2.1.(viii) Each Competing Country Is Allocated Some Maritime Area: This principle is similar to the Non-Encroachment and Maximum-Reach Principles, but must be restated in this form to emphasize how the International Court of Justice has approached maritime boundary delimitations. Although the Court has attempted to articulate consistent governing principles, its approach to each dispute has, in fact, been more like the approach of an arbitrator than that of a judge. Instead of applying principles uniformly without regard to the result they produce, the Court has tried to find a solution that gives each competing country some of what it has sought, and has tried to reach a result that each country can


16 *St. Pierre and Miquelon Case*, see note 10 above, paras 66-74

272
Conclusions and suggestions

live with. In that sense, the Court has operated like a court of equity, or as a court that has been asked to give a decision *ex aequo et bono*.

Perhaps such an approach is inevitable, and even desirable, given that the goal of a maritime boundary delimitation, as stated in Articles 74 and 83 of the Law of the Sea Convention, is to reach an "equitable solution."

6.2.1.(ix) Islands Have a Limited Role in Resolving Maritime Boundary Disputes: Article 121 of the Law of the Sea Convention says that all islands, except "rocks" that cannot sustain human habitation or an economic life of their own, generate exclusive economic zones and continental shelves, but the ICJ and arbitral tribunals have not, in fact, given islands equal ability to generate zones when they are opposite continental land areas or substantially larger islands.

This conclusion has been reached consistently in the *North Sea Continental Shelf Case*, the *Anglo-French Arbitration*, the *Libya/Tunisia Case*, the

---

17 Normally the Court will issue a decision *ex aequo et bono* only "if the parties agree thereto....." I.C.J. Statute, Article 38 (2).

18 I.C.J.Reports 1969, see note 9 above, para. 101(d) ("the presence of islets, rocks, and minor coastal projections, the disproportionality distorting effects of which can be eliminated by other means" should be ignored in continental shelf delimitations).

19 *Anglo-French Arbitration Case* (Arbitration between the United Kingdom of Great Britain and Northern Ireland and the French Republic on the Delimitation of the Continental Shelf)- Decisions of the Court of Arbitration dated 30 June 1977 and 14 March 1978. The arbitral tribunal did not allow the Channel Islands, which were on the "wrong side" of the median line drawn between the French mainland and England, to affect the delimitation at all (giving them only 12-nautical-mile territorial sea enclaves), and gave only "half effect" to Britain's Scilly Isles, located off the British Coast near Land's End.

20 *Case Concerning the Continental Shelf (Tunisia/ Libyan Arab Jamahiriya)* I.C.J. Reports. 1982, para. 129. The Court gave only half-effect to Tunisia's Kerkennah Islands, even though the main island is 180 square kilometers and then had a population of 15,000, and it completely disregarded the island of Jerba, an inhabited island of considerable size, in assessing the general direction of the coastline.
Conclusions and suggestions

Chapter VI

Libya/Malta Case, the Gulf of Maine Case, the Guinea/Guinea-Bissau Case, the Jan Mayen Case, and the St. Pierre and Miquelon Arbitration.

With regard to very small islands, tribunals have given them only limited power to generate maritime zones if their zones would reduce the size of zones created by adjacent or opposite continental land masses. Tiny islets are frequently ignored altogether, as in the North Sea Continental Shelf and Libya/Malta Cases, but even substantial islands are given less power to generate zones than their location would warrant, as in the Libya/Tunisia and Libya/Malta Cases. This approach was also followed in the recent Eritrea-Yemen arbitration, where the tribunal gave no effect whatsoever to the Yemenese island of Jabal al-Tayr and to those in the al-Zubayr group, because their barren and inhospitable nature and their position well out to sea mean that they should not be taken into consideration

---

22 I.C.J. Reports 1985, see note 2 above, p. 48, para. 64. The Court ruled that equitable principles required that the uninhabited tiny island of Filfla (belonging to Malta, five kilometers south of the main island) should not be considered at all in delimiting the boundary between the two countries. Even more significantly, the Court refused to give full effect to Malta's main island, which is the size of Washington, D.C., and contains hundreds of thousands of individuals, and adjusted the median line northward because of the longer length of the Libyan coast and its resulting greater power to generate a maritime zone.

23 I.C.J. Reports 1984, see note 3 above, para. 222. The Chamber gave half effect to Seal and Mud Islands. Seal Island is 2½ miles long and is inhabited year round.

24 In the Guinea/Guinea-Bissau Case, see note 8 above, the arbitral tribunal gave no role to Guinea's small islet of Alcatraz in affecting the maritime boundary.

25 I.C.J. Reports 1993, see note 4 above. The Court allowed the barren island of Jan Mayen to generate a zone, but did not give it a full zone because of its small size in comparison to the opposite land mass -- Greenland.

26 In the St. Pierre and Miquelon Case, see note 10 above, the tribunal gave the small French islands only an enclave and a corridor to the high seas because of their limited size in comparison to Newfoundland.

274
in computing the boundary line.\(^{27}\)

Similarly, in the recent Qatar-Bahrain case, the International Court of Justice ignored completely the presence of the small, uninhabited, and barren Bahraini islet of Qit’at Jaradah, situated about midway between the main island of Bahrain and the Qatar peninsula, because it would be inappropriate to allow such an insignificant maritime feature to have such a disproportionate effect on a maritime delimitation line.\(^{28}\) The Court also decided to ignore completely the “sizeable maritime feature” of Fasht al Jarim located well out to sea in Bahrain’s territorial waters, which Qatar characterized as a low-tide elevation and Bahrain called an island, and about which the tribunal said: at most a minute part is above water at high tide.\(^{29}\) Even if it cannot be classified as an “island,” the Court noted, as a low-tide elevation it could serve as a baseline from which the territorial sea, exclusive economic zone, and continental shelf could be

\(^{27}\) Eritrea-Yemen Arbitration Case, (1999 Award), paras. 147-48. The tribunal also gave the Yemenese islands in the Zugar-Hanish group less power to affect the placement of the delimitation line than they would have had if they had been continental landmasses. These islets, located near the middle of the Bab el Mandeb Strait at the entrance to the Red Sea, were given territorial seas, but the median line that would otherwise be drawn between the continental territory of the two countries was adjusted only slightly to give Yemen the full territorial sea around these islets. The tribunal did not, therefore, view these islets as constituting a separate and distinct area of land from which a median or equidistant line should be measured, illustrating once again that small islands do not have the same power to generate maritime zones as do continental land masses. paras. 160-61.

\(^{28}\) Case concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar V Bahrain) ICJ Reports 2001 (Decision of March 13, 2001), paras. 219 (citing North Sea Continental Shelf Case, see note 9 above, para. 57, and Libya/Malta, see note 2 above, para. 64, for the proposition that “the Court has sometimes been led to eliminate the disproportionate effect of small islands”). The Court reached this conclusion even though it asserted, in paragraph 185, that Article 121(2) of the Law of the Sea Convention, “reflects customary international law” and that “islands, regardless of their size, in this respect enjoy the same status, and therefore generate the same maritime rights, as other land territory.”

\(^{29}\) Ibid, paras. 245-48.
measured. But using the feature as such a baseline would distort the boundary and have disproportionate effects, and, in order to avoid that undesirable result, the Court decided to ignore the feature altogether.

6.2.1.(x) The Vital Security Interests of Each Nation Must Be Protected: This principle was recognized, for instance, in the Jan Mayen Case, where the Court refused to allow the maritime boundary to be too close to Jan Mayen Island, and it can be found in the background of all the recent decisions. The refusal of tribunals to adopt an "all-or-nothing" solution in any of these cases illustrates their sensitivity to the need to protect the vital security interests of each nation. The unusual decision of the ICJ Chamber in the El Salvador-Honduras Maritime Frontier Dispute, concluding that El Salvador, Honduras, and Nicaragua hold undivided interests in the maritime zones seaward of the closing line across the Gulf of Fonseca, illustrates how sensitive tribunals are to the need to protect the interests of all countries. It has also become increasingly common for countries to establish joint development areas in disputed maritime regions.

6.3. Suggestions:

i) The primary rule for maritime delimitation accepted both by conventional law and customary law is that the delimitation must be effected by agreement.

ii) Maritime boundaries between States, to be secure and stable, have to be settled by agreement between them.

---

30 I.C.J. Reports 2001, see note 28 above, para. 245.
iii) The negotiation process between States is very important for the achievement of positive results.

iv) The subject of maritime boundary, like the subject of land boundary, is a sensitive one and should be handled carefully and with understanding of the opposite viewpoints.

v) Despite serious and meaningful negotiations if difficulties and disputes arise, the parties should resort to the third-party settlement procedures.

vi) The use of equidistance/median line, as it is prescribed in the Article 15 of the 1982 LOS Convention, is the best solution for the delimitation of the Continental shelf.

vii) Beyond the territorial sea, for the EEZ and the CS, a single line based on the equidistance method seems to produce an equitable result. It is necessary to examine what relevant circumstances exist in the delimitation area, which are necessary to take into account to shift the equidistance line so as to avoid an unequitable result.

viii) After drawing the provisional equidistance line, the States may compare the ratio between the maritime area and the coastal length and, if the test of proportionality will not meet their requirements, they may shift the line.

ix) Maritime delimitation being a very complex and multiform subject, the international community and the Courts, by taking endeavours should try to adopt a general principle which will be applicable to all maritime delimitation processes.
x) The 1982 LOS Convention sets forth only the goal to achieve maritime delimitation, and says nothing about the principles and methods for the achievement of equitable result. This deficiency should be removed.

xi) The Customary law, which plays an important role in the delimitation process, also establishes that delimitation must be in accordance with equitable principles, taking into account the relevant circumstances. This should be accepted by the parties to a dispute.

xii) Equitable principles do not lay down obligations, but simply clarifies the guidelines for achieving an equitable result in the delimitation and the relevant circumstances are relevant only for particular cases. This should be accepted by the International Community and Courts.

xiii) The case law and especially State practice, supports the use of equidistance/relevant circumstances rule and shows that primacy must be accorded to the geographical factors in delimiting maritime boundaries because each case is unicum. A single rule or method may not be applicable in all circumstances, irrespective of geographical and other facts. This rule should be accepted.

xiv) A maritime boundary, to be durable, must be fair and equitable and take into account the special circumstances in the area relevant to delimitation.