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# INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH IN BUSINESS & SOCIAL SCIENCES



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## The Demarcation of Malaysia-Indonesia Maritime Boundaries: A Review

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### Abstract

This research paper analyses the convention underpinning delimitation of Malaysia-Indonesia maritime boundaries. The study analyses international legal frameworks and customary international law, and their application to maritime boundary disputes. The research reveals that 1982 UNCLOS provides general principles and guidelines for delimitating maritime boundaries but does not offer a definitive solution to the complex disputes between states. The research concludes that delimiting maritime boundaries between Malaysia and Indonesia requires a comprehensive and context-specific approach considering legal, historical, and equitable considerations. The study recommends that Malaysia and Indonesia engage in a constructive and cooperative dialogue based on mutual respect, good faith, and pacifistic settlement of disputes. The study also highlights the significance of supporting the rule of law and obeying international law principles in fostering regional political stability. The normative juridical method of research provides a valuable contribution to understanding the legal principles governing the delimitation of maritime boundaries. It offers practical recommendations for resolving disputes between Malaysia and Indonesia in a manner that upholds international law and promotes regional cooperation.

**Keywords:** Maritime Delimitation, Maritime Agreement, Maritime Boundary Dispute Resolution

### Introduction

The maritime boundary disputes of Malaysia-Indonesia, have a long and complicated history, dating back to the colonial era when the Dutch and British Empires controlled the region. Malaysia and Indonesia share a maritime boundary in the South China Sea (SCS), the Straits of Malacca and the Celebes Sea, claiming overlapping maritime zones. Despite the attempts by the two countries to address their conflicts through various bilateral and multilateral mechanisms, including the signing of the 1969 Treaty of Jakarta, tensions and disagreements have persisted (ILM, 1970). The legal framework for delimiting maritime boundaries is primarily regulated by the 1982 UNCLOS, which provides general principles and guidelines for maritime boundary delimitation. However, the interpretation and application of 1982 UNCLOS principles can be complex and contentious, particularly in cases where historical and

equitable considerations come into play. Given the importance of maritime boundaries for the security and prosperity of Malaysia and Indonesia, it is essential to critically scrutinize the principles governing the delimitation process and identify ways to promote a peaceful and equitable resolution to this issue. This research seeks to analyze the relevant legal and policy frameworks and identify the opportunities and challenges involved in delimiting Malaysia-Indonesia maritime boundaries.

### **The Objective of The Study**

The significance of defining maritime boundaries between coastal states has grown due to the expansion of existing maritime zones that are under their jurisdiction, sovereign rights and sovereignty. This is particularly important for states with opposite or adjacent coasts and those sharing a coastline. Moreover, some states find it challenging to claim maximum maritime zones under the 1982 UNCLOS due to their close proximity to neighbouring countries, resulting in inevitable overlap of maritime jurisdictions. In such cases, a line of separation must be drawn to divide the maritime areas when there are overlapping claims by two or more states. Maritime delimitation is a complex topic due to its multifaceted nature, covering issues such as the source of authority, primary methods of delimitation, and technical aspects involved in determining lines in the sea (Alexander, 1986). The objective of the study is analyze the relevant legal and policy frameworks and identify the opportunities and challenges involved in delimiting Malaysia-Indonesia maritime boundaries.

### **Maritime Delimitation Principles Developed By The Law of The Sea Conventions**

The maritime delimitation principles have been shaped by a complex interplay of factors, including evolving legal norms, geopolitical dynamics, and changing perceptions of sovereignty and jurisdiction over the oceans. Specifically, it began to take shape during the 1930 Hague Conference. The Preparatory Committee proposed "when two states border on a strait which is not wider than twice the breadth of the territorial waters, the territorial waters of each state extend in principle up to a line running down the centre of the strait" (Nordquist et al., 1993). However, this proposal only addressed the demarcation of territorial waters between states with opposite coastlines. The Conference did not work out an agreement on delimitation due to disagreements over the breadth of territorial waters. However, ideas and suggestions put forth during the Conference formed the foundation for the present maritime delimitation law, even though no systematic rule was established then.

The "United States Truman Proclamation of 1945", which established the claim to the resources of its continental shelf, including the oil and gas reserves, was a crucial development in the history of maritime law. This proclamation was made at a time when there was growing concern about depletion of natural resources and the necessity of securing their access for the state's benefit. Following the proclamation, many coastal states, particularly those with extensive coastlines, saw it as a precedent for expanding their fishery jurisdiction over sea resources off their coast. This situation provided the motive for holding the "1st UN Conference on the Law of the Sea". The International Law Commission (ILC) adopted the 1956 ILC's Final Report, followed by an Experts Group, and worked on the preparations for the Conference (Koh & Jayakumar, 1985). The First Conference adopted four conventions that is the 1958 "Convention on the Territorial Sea and the Contiguous Zone 1958", the "Continental Shelf Convention", the "High Sea Convention", and the "Convention on Fishing and Conservation of the Living Resources of the High Sea". Article 12 of ILC's Report

delimits the territorial sea with opposite coasts and Article 14 with adjacent coasts. It provides the fundamental rule that the territorial sea's delimitation between states "should be done by agreement", and if no agreement can be reached, the boundary should be drawn based on "the principle of equidistance or the principle of special circumstances". The equidistance principle means that the boundary should be drawn at an equal distance between the coasts of the two states. However, if special circumstances justify a deviation from this principle, such as historic title or other exceptional circumstances, the equidistance principle may not apply. The 1958 Convention does not define what constitutes "other special circumstances," which can be subject to interpretation and negotiation between the parties involved. It is vital to understand that the territorial sea's delimitation can be a complex and often contentious issue, particularly in cases where there are overlapping claims between states. In such cases, the parties involved may need to resort to other dispute resolution methods, such as negotiation, mediation, or international arbitration. Article 6 of the 1958 "Convention on the Continental Shelf" ruled that two separate rules govern the delimitation of the continental shelf: Article 6 (1) controls the delimitation of "states with opposing coasts", and Article 6 (2) deals with "states with adjacent coasts". Except for using the words "the median line" for opposite coasts and "the principle of equidistance" for adjacent coasts, both paragraphs contain the same triple rule as in Article 12, namely, "agreement-equidistance (median-line)-special circumstance" (Charney, 1994). However, a historical title is not mentioned as an exceptional circumstance. The continental shelf's concept became evident following the Truman Proclamation, which asserted a "claim over the continental shelf and clarified any associated legal rights and entitlements".

The "3rd UN Conference on the Law of the Sea" commenced in 1973 and spanned nine years until its conclusion in 1982, culminating in the 1982 UNCLOS adoption. Presently, the Convention has been ratified by 168 states. UNCLOS draws a distinction between Articles 74 and 83 on the delimitation of the EEZ and continental shelf and Article 15 on the delimitation of the territorial sea. Article 15 appears more precise than the former, as it specifies a more definite delimitation rule. In contrast, Articles 74 and 83 are phrased less concretely, requiring an agreement based on international law to achieve an equitable solution (Lando, 2017). Article 15 acknowledges the median line principle between opposing and neighbouring coastal states as the default rule unless modified by mutual agreement or in cases where "historic title or special circumstances" exist (Jacovides, 1979). It is worth noting that the delimitation rule for the territorial sea is the only maritime zone governed by Article 12 of the 1958 Territorial Sea Convention that remains unaltered (Boggs, 1930).

Article 74 of the 1982 Convention is focused on the delimitation of the Exclusive Economic Zone (EEZ), while Article 83 addresses the delimitation of the continental shelf. Both Articles are essentially identical in terms of content. Since the concept of EEZ was new then, no equivalent reference was found in the 1958 Convention. Articles 74 (1) and 83 (1), as adopted in the 1982 UNCLOS, provide:

"The delimitation of the EEZ/continental shelf between states with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution".

Articles 74 and 83 do not advocate for a particular technique of delimitation. Both Articles instead, provide measures for the delimitation of the EEZ and the continental shelf that are "flexible" in their approach. The notion that the conclusion of a maritime delimitation must be "equitable" for all involved parties continues to serve as the overarching guiding principle. As a result, it can be affected by many different aspects of geography, including politics, strategic and historical considerations, economics, and features like "islands, rocks, reefs, low-tide elevation", and proportionality. The "equidistance principle" outlined in Article 15 for overlapping territorial sea and the "equitable principle" outlined in Articles 74 and 83 for overlapping EEZ and continental shelf appear to be the two main principles under the 1982 UNCLOS that guide the determination of maritime delimitation. Both 1958 and 1982 Conventions shared common wisdom that maritime boundaries' delimitation between states should primarily be determined by agreement.

### **Maritime Delimitation Principles Established By International Courts and Tribunals**

During the initial stages of the development of maritime delimitation principles and rules, international courts and tribunals did not consider the "equidistance principle" from the 1958 Convention as a mandatory rule of international law. Instead, they prioritized the customary "equitable principles" rule when resolving maritime delimitation disputes. Nevertheless, since the landmark decision in the "*North Sea Continental Shelf, Germany v Denmark*" (1968), there were conflicting views on the applicable methods in determining maritime delimitation. The case involved a dispute between the United Kingdom and Norway over the delimitation of their continental shelf in the North Sea. The ICJ's decision was significant in establishing the principle of equidistance as the primary method for determining maritime delimitation. This principle holds that the boundary between neighbouring states should be equidistant from the nearest points on each state's coast. However, the Court also acknowledged that other factors, such as the presence of islands, could be considered in exceptional cases. In *Tunis. v. Libya* (1982), ICJ ruled in favour of Tunisia and held that the equidistance principle should be the primary method for delimiting the continental shelf between the two countries. The ICJ stated that the principle of equity should guide the delimitation process and that the equidistance principle was a key equity component. The *Libya v Malta*, [1985] marked a significant turning point in the development of maritime delimitation law when the "equidistance line" was recognized as "a primary delimitation step in the delimitation process to be adjusted if justified by relevant circumstances". The ICJ ruled in favor of Malta, stating that Libya had not provided sufficient evidence to support its claims and that Malta's proposed delimitation line was in accordance with international law. ICJ reaffirmed the importance of the equitable principle in maritime delimitation disputes. Gradually, the use of the equidistance-based approach became more common in law, and this continued after the 1982 Convention went into effect, as in the case of (*Nicaragua v Honduras*, 2007; *Barbados v Trinidad and Tobago*, 2006; *Guyana v Suriname*, 2007).

This equidistance-based approach utilized by courts and tribunals combines "equidistance" and "equitable" principles. Both principles complement each other in yielding an equitable result (Sein, 2019). Courts and tribunals endeavoured to define the meaning of "equitable solutions" as enshrined in Articles 74 and 83. The current understanding is that achieving an equitable outcome requires the delimitation process to adhere to equitable principles while considering all pertinent circumstances. The process of weighing all of these factors will, more

often than not, generate an equitable outcome. Delimitation should be carried out with the goal of equity in mind rather than as a method.

The practice of using a provisional equidistance line as the starting point for maritime boundary delimitation has gained acceptance in recent judicial decisions. However, it may be subject to adjustment depending on relevant circumstances. In the final stage, the proportionality test is used to verify the line to ascertain the equitableness of the result. This equidistance-relevant circumstances-proportionality test method has come to be known as a three-stage approach. It seems to be a standard methodology adopted in (*Romania v Ukraine*, 2009; *Bangladesh v India*, 2014; *Nicaragua v Colombia*, 2012; *Peru v Chile*, 2014; *Costa Rica v Nicaragua*, 2018; *Somalia v. Kenya*, 2021). Using the "provisional equidistance line" as a delimitation starting point will help resolve overlapping maritime boundaries. Adjusted equidistance seems to be well established in the court's and the tribunal's jurisprudence as the preferred delimitation method.

As far as special or relevant circumstances is concerned, it functions as a basis for the adjustment of the "equidistance line" when it leads to an inequitable result. As previously stated, the law of the sea conventions does not specify the criteria for special or relevant circumstances. Therefore, the international courts and tribunals seem to have wide discretion as to which of these criteria are selected and how they are weighted. There is no clear-cut criteria have been established, given that each case has its particular characteristics. However, analysis of the case law implies that the primacy is accorded to geographical factors rather than non-geographical factors. Coastal state configuration, presence of islands, historic title, low-tide elevation, and conduct of the parties have been argued as capable of being relevant factors.

Regarding proportionality, the case law suggests that only a disproportion of significant orders of magnitude will affect a provisional median line. *Somalia v. Kenya* (2021) highlighted that "relevant circumstances are factors which are mostly geographical in nature, but there is no closed list of relevant circumstances." This opens the door to allowing for non-geographic factors as relevant considerations. In the *Gulf of Maine Area* (1984), the ICJ has given a paramount role to coastal geography as a relevant factor. However, the physical and ecological characteristics of the seabed and overlying waters were not considered relevant factors. In *Libya v Malta* (1985) relevancy of natural maritime boundaries such as "geology, geomorphology, economics, population and other social science data were dismissed". In *Denmark v Norway* (1993), it was held that the coastline length disparity was relevant and observed that it would be "inequitable" based on other relevant considerations "to permit Greenland its full 200-nautical-mile entitlement and left Jan Mayen with the remaining 50-nautical miles between them". *Qatar v Bahrain* (1994) is the first precedent in international case law to give effect to low-tide elevation albeit partially.

In conclusion, there have been conflicting views on the applicability of the equidistance principle for determining maritime delimitation, with some experts arguing that it is too rigid and others believing that it provides a clear and objective basis for delimitation. However, recent years have seen a growing trend towards using other methods, such as the proportionality method and the use of natural features as a basis for the boundary, allowing for greater flexibility and consideration of unique circumstances. Nevertheless, *the North Sea*

*Continental Shelf* case established the equidistance principle as a guiding principle for maritime delimitation and provided a framework for resolving disputes between neighboring states, thus having a significant influence on the development of maritime law.

### **Delimitation by Agreement As An Established State Practice**

Existing maritime delimitation boundaries have largely been established through agreements or treaties, rooted in the historical development of delimitation rules outlined in the 1958 Conventions and 1982 Convention. Articles 6 and 12 of the 1958 Conventions emphasize the principle of mutual agreement between states. Articles 15, 74, and 83 of the 1982 Convention accorded the same principle. Furthermore, Article 38 (1) (a) of the Statute of the International Court of Justice identifies "international convention" as the primary source of international law to be applied by the court. Consequently, the court first examines whether existing agreements provide for delimitation of the maritime territories in question, as other delimitation methods are only considered in the absence of an agreement.

Most maritime delimitation agreements are the product of bilateral negotiations. Indeed, conducting a bilateral negotiation between states expected to have different views and interests is not easy. Many factors need to be considered before a final delimitation agreement, which is "equitable" for both parties, can be reached. A successful maritime delimitation negotiation very much depends on the commitment and dedication of the negotiating teams; be it political, economic or technical, as well as the expertise and facilities available to the state concerned. Given that each maritime boundary delimitation situation is unique the methods and strategies adopted also play an important role in the negotiation. What is essential is that the negotiation process should be carried out in the spirit of "neighbourhood to maintain peace and friendly relationship between states" following the spirit of international law.

Regarding delimitation method, the use of the equidistance-based principle remains widespread practice among the states. The method has been expressly stated in several delimitation agreements. Based on the claims submitted to international courts and tribunals, state practice seems to show that adopting a single maritime boundary delimiting the EEZ and the continental shelf has increased since the 1982 Convention. Many delimitation agreements were concluded based on a single maritime boundary for practical reasons and convenience.

### **Malaysia-Indonesia Maritime Delimitation**

Malaysia ratified the 1982 Convention on October 14 1996. Prior to that, Malaysia had already become a State Party to the 1958 Conventions. Malaysia's claimed maritime zone consists of "12 nautical miles for the territorial sea, 200 nautical miles for the EEZ" (Section 3, EEZ Act 1984) and "200 nautical miles or to the extent of the continental margin for the continental shelf". Malaysia's maritime delimitation legal framework comprises various domestic legislations such as the Baselines of Maritime Zone Act 2006, the Territorial Sea Act 2012, the EEZ Act 1984 and the Continental Shelf Act 1966. As a state party to the 1982 Convention, limited changes to the existing legislation have been undertaken to assure conformity with this Convention. Malacca Strait, the Celebes Sea and the South China Sea (SCS) are the three primary areas where Malaysia and Indonesia share a maritime border ((Mark, 1991). Although some parts of them have been delimited, there are areas in which maritime delimitation has

not been fully accomplished or remains unresolved. Few maritime delimitation treaties or agreements have been concluded between Malaysia and Indonesia.

The Agreement on the "Delimitation of the Continental Shelves between the Two Countries in the central and southern parts of the Strait of Malacca and areas to the west and east of the Natuna Islands" in the SCS was concluded on October 27 1969, and came into effect on November 7 1969. Article 1 of the Agreement sets out that the Malaysia-Indonesia continental shelves' boundaries in those areas are straight lines. The first section of the seabed boundary in the Malacca Strait is "equidistant between Indonesia's archipelagic baselines in which Pulau Perak and Pulau Jarak were given full effect", perhaps as "circumstances relevance" in the drawing of the delimitation lines as portrayed in the *1979 Peta Baru* (Salleh & Jusoff, 2009).

The EEZ regime was not yet established at that time. Hence, the the EEZ delimitation in the area remains a problem. Indonesia argues that the EEZ boundary should be negotiated since the 1969 Agreement is concerned with seabed exploitation and resources and does not extend to the body of water above it. Therefore, a separate delimitation boundary is required. Malaysia on the other hand argues that the 1969 Agreement should apply to the EEZ boundary (Bernard, 2012). Upon ratifying the 1982 Convention, Malaysia declared that:

"if the maritime area is less than 200 nautical miles from baselines, the boundary for the EEZ zone shall be the same line with the boundary of the continental shelf."

(Malaysia's declaration upon ratification of the 1982 UNCLOS, Para 7).

Accordingly, considering that the geographical distance of both coastal states in the sector is less than 200 nautical miles, a new delimitation line is not required. It appears doubtful that Indonesia will give in to Malaysia's demand, given the circumstances at hand and the significance of the EEZ.

Though it is possible to have separate and distinct boundaries, the implementation can be quite challenging and complex, considering the close geographical proximity of both states in this area. Another option is to make a provisional agreement to develop the shared resources in the overlap zone together. The approach provided in Article 74(3) of the 1982 Convention is consistent with this approach. It states:

"Pending agreement...the states concerned, in a spirit of understanding and cooperation shall make every effort to enter into provisional arrangements of practical nature and during this transitional period not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation".

Both countries have prior experience instituting "Joint Development Area (JDA)" and have shown some degree of success. Malaysia had established JDA Agreements with Thailand and Vietnam, while Indonesia had a similar experience constituting a "Joint Development Zone with Australia in Timor Gap Area. A provisional arrangement may avoid undue delays due to deadlock in negotiations. As has been demonstrated by state practice, the negotiation



process typically takes a long time before a final agreement. In some respects, the word "provisional arrangement" has been demonstrated to be adaptable in terms of geographical scope, length, and resource or function (Schofield & Storey, 2005).

Regarding the continental shelf boundary in the SCS, the seabed boundary is mainly an "equidistant line" from Peninsular Malaysia and Indonesia's Kepulauan Anambas and Kepulauan Natuna (Prescott, 1996). The border follows the "equidistant line between the baselines of Indonesia and Malaysia." The 1969 Agreement generally resolved the "continental shelves" problem between Malaysia and Indonesia, particularly in the "Strait of Malacca, the Strait of Singapore and in the SCS" but not the "Celebes Sea" (Salleh & Jusoff, 2009).

Another treaty is concerned with "the determination of boundary lines of territorial waters at the Strait of Malacca" which entered into effect on March 10, 1971. Article 1 of the Treaty provides that "boundary lines of territorial waters of Indonesia and Malaysia at the Strait of Malacca in areas shall be the line at the center drawn from baselines of the respective parties in the areas." In a way, the Treaty almost coincides with the 1969 Continental Shelf Delimitation Agreement.

Malaysia, Indonesia and Thailand reached an agreement to establish a common tripoint for their respective maritime boundaries on December 21 1971. The resulting delimitation line continued the "Indonesia-Malaysia continental shelf boundary to the common tripoint", "extended the Malaysia-Thailand maritime boundary to the common point", and "partially delimited an Indonesia-Thailand maritime boundary." Some have contended that the "common point" agreed by the parties has "not been determined based on equidistance". More exactly, it was a "negotiated settlement" based on "equitable principle having regards to the geographical locations and the baselines used in the area".

Both the "1969 Continental Shelf Boundary" and the "1971 Territorial Sea Boundary" typically conform to the "equidistant line" between the baselines of the two countries. The boundaries are generally "one and the same line except for one turning point of the territorial sea boundary known as Turning Point 6", resulting in the formation of a "small triangle of the sea in the southern part of the Straits of Malacca which forms part of the Indonesian continental shelf but not part of its territorial sea" (Hamzah et al., 2014).

The Celebes Sea continues to pose a challenge in terms of maritime delimitation between Malaysia and Indonesia, despite the resolution of the "sovereignty dispute over Pulau Ligitan and Pulau Sipadan" in favor of Malaysia (*Sovereignty over Pulau Ligitan and Pulau Sipadan*, 2002). The origins of the dispute can be traced back to 1969 when Malaysia and Indonesia were conducting initial offshore petroleum exploration in the area and engaged in negotiations regarding their respective continental shelf boundaries. The inclusion of both islands as part of Malaysia's territory in the "1979 Peta Baru" was contested by Indonesia for the reason their sovereignty issue was not addressed during the negotiation of the 1969 Agreement on the Continental Shelf (Salleh & Jusoff, 2009). It is crucial to highlight that the court's jurisdiction was limited to resolving the issue of sovereignty over the disputed islands and did not extend to the broader question of maritime delimitation between Indonesia and

Malaysia in the region. Therefore, the impact of these islands on the unresolved maritime boundary remains a matter of concern.

This prolonged dispute over the area was an "uncomfortable distraction to the diplomacies" between Malaysia and Indonesia. Though not resulting in any significant "military conflagrations", it has seen its share of "emotional flare-ups". Malaysia's claim on ND6 and ND7 Blocks (Ambalat blocks) is based on two grounds. Firstly, the area is within Malaysia's territory as illustrated in the *1979 Peta Baru*. Secondly, the 2002 decision of the ICJ in which the sovereignty of Pulau Sipadan and Pulau Ligitan was awarded to Malaysia. On the other hand, Indonesia claims the Ambalat block based on the 1891 Convention between Great Britain and the Netherlands. Indonesia also contested the use of straight baselines is not in accordance with Article 7 of the 1982 Convention (Supancana, 2022). Presently, no agreement has been established between Malaysia and Indonesia on overlapping territorial sea, EEZ, and continental shelf claims in that area.

Since 2005, Malaysia and Indonesia have met to try to delineate the area, but with little success (BA Hamzah, 2018). As state practice demonstrates, negotiation involving two states may take a long time. The perceived importance of the topics at stake, which is decided by political, economic, and larger security views, has a role in determining the frequency and length of a bilateral negotiation. Perhaps, a possibly good option, for now, is the idea of a provisional arrangement in the form of a JDA. Although it does not resolve the maritime delimitation problem in the area, based on the state practice such arrangements are favourable pending the conclusion of the disputes. A provisional arrangement is considered an effective measure pending a final delimitation.

### **Conclusion**

A maritime boundary dispute arises when there is a disagreement between two or more states over the demarcation of maritime areas, including the water column and seabed for territorial sea, continental shelf and EEZ. Defining maritime boundary can be a complex task, as it is largely based on legal and geographical principles that are widely accepted. Unlike a land border, a maritime boundary lacks tangible physical markers and is merely represented as a line on a map, making it a somewhat elusive concept (Osthagen, 2021). Maritime delimitation should be accomplished through an agreement that serves as the foundation for the delimitation of overlapping marine boundaries, as stipulated in Articles 6 and 12 of the 1958 Conventions and Articles 15, 74, and 83 of the 1982 Convention. The standard approach currently favoured by international courts and tribunals for maritime boundary determination is the three-stage principle grounded on an equidistance line as a starting point.

Malaysia has preferred resolving maritime disputes with neighbouring countries through negotiated agreements. Negotiated solutions have been widely employed to address overlapping maritime claims based on the principle of equidistance in maritime boundary delimitation. However, in cases where such agreements cannot be reached, coastal states are bound by international law of the sea obligations that restrict their activities in areas subject to overlapping claims (Schofield, 2021). Several delimitation agreements; including "provisional arrangement" have been concluded most of which between 1969 to 1979. The most significant characteristic of delimitation agreements between Malaysia and its

neighbouring countries is the application of the equidistance method, which is modified following the circumstances to arrive at an equitable result. The approach reflects the adherence to the delimitation provisions under the sea conventions and the development of the maritime delimitation law as demonstrated by the decisions of the international courts and tribunals. Most of the maritime boundary treaties signed between Malaysia and its neighbouring countries happen after the confrontation between Malaysia and Indonesia. Perhaps, looking from another perspective the 'lenient' approach taken by the states related to the aim of maintaining and persevering the spirit of the neighbourhood.

Upon ratifying the 1982 Convention, Malaysia made a Declaration highlighting the importance of using the "equidistance line" to determine its maritime borders. It seems to imply that the "equidistance principles" is to be generally adopted in its bilateral negotiations of maritime boundaries, at least on Malaysia's part. Several maritime delimitation issues between Malaysia and its neighbours remain unresolved. The submission to third-party settlement is very unlikely, at least in the near future. Having reviewed the past practice of Malaysia it can reasonably be expected that Malaysia will continue with the bilateral negotiation or opt for a "provisional arrangement" pending a final delimitation agreement.

A set of guidelines for the delineation of maritime borders between surrounding governments have been defined by the 1982 UNCLOS. These principles are designed to ensure that the jurisdiction and rights of each state are respected while also promoting regional stability and cooperation. The primary principle governing maritime boundary delimitation is the principle of equity, which requires that the boundary be determined based on the relevant circumstances of each case, taking into account factors such as geography, geology, and historical and current usage. This principle requires that each state's rights and interests be considered on an equal footing, with no state being unduly favoured or disadvantaged. Other key principles include the principle of non-encroachment, which requires that the boundary not infringe on the rights of neighbouring states; the principle of natural prolongation, which assumes that the boundary should follow the natural continuation of the land territory; and the principle of proportionality, which requires that the boundary be proportionate to the length of the coastline and the area of the territorial sea.

The UNCLOS mandates the adoption of fair delimitation techniques, such as the equidistance method. The concept is predicated on the idea that the boundary should be an equal distance from the spots on each state's shore that are geographically closest to it. The equidistance/special circumstances method also allows for adjustments to the equidistance line where special circumstances, such as a concave coastline, exist. The overarching goal of the principles adopted by the law of the sea agreements was to provide a framework that was just and balanced for maritime boundaries delimitation, founded on equity and the non-encroachment principles. These principles provide a basis for resolving disputes between neighboring states and promoting regional cooperation and stability.

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