



Law of the Sea in the 21st Century
Stalemate or flexibility to address new challenges?
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Formal dispute settlement or diplomatic solutions:
Maritime boundary cases

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Introduction

- Comparison of third party dispute settlement and diplomatic settlement
- Third party dispute settlement has focused on compulsory dispute settlement. Some exceptions:
 - Jan Mayen conciliation
 - Qatar/Bahrain case resulted from mediation
 - Belize/Guatemala: OAS mediation
 - Chile/Argentina: mediation Holy See
- Role of international law in third party and diplomatic settlement
- Delimitation primarily approached bilaterally
 - Raises question of third states in maritime boundary delimitation



Comparison between third party and diplomatic settlement

- 200+ bilateral agreements; 28 cases
- Equidistance much more prominent in diplomatic settlement (Legault and Hankey)
- Control over the process
- Possibilities to take into account issues other than delimitation differ
 - But can be done subsequently after judgment
- Possibility to submit unilaterally to third party settlement (e.g. LOS Convention, Pact of Bogota, European Convention for the Peaceful Settlement of Disputes)
 - 16 joint submissions; recently few
 - 12 unilateral submissions; first brought 1988; picked up after 2000
 - Possibility of unilateral submission may lead to joint submission
- Position/role of third states may be different



Role international law

- Third party settlement
 - Decision on the basis of applicable rules of international law
 - Variations in the application of the law through time
 - Relation to compromise contained in article 74 and 83 of the LOSC
- Negotiations
 - Applicable rules of international law provide legal framework
 - States need not take law into account; but generally seem to do so
 - *North Sea continental shelf*: “[the parties] are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it” (para. 85(a))
 - *Cameroon v. Nigeria*: articles 74 and 83 of the LOSC imply that “like all similar obligations to negotiate in international law, the negotiations have to be conducted in good faith”



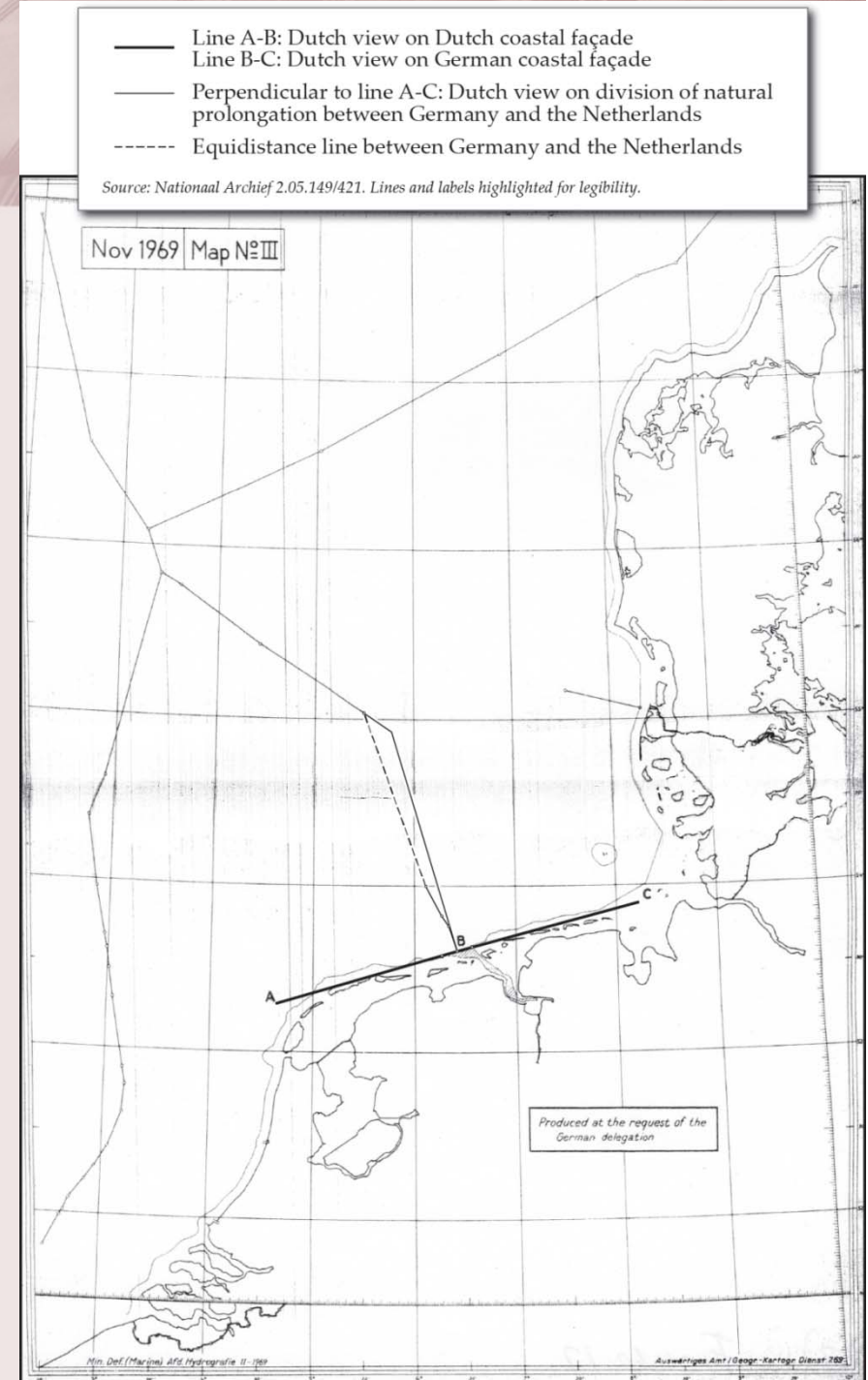
Role international of law in negotiations – *North Sea Continental Shelf*

- [The Delimitation of the Continental Shelf between Denmark, Germany and the Netherlands; Arguing Law, Practicing Politics?](#) (Cambridge University Press, 2013)
- Based on research in relevant archives
- Germany in first half of 1960s failed to formulate its positive case and during pleadings was very cautious
- Germany not willing to press its legal case on basis of the judgment in order not to damage bilateral relations; sensitivity because of German occupation of neighbors during World War
- Law still sets limits:
 - Parties will know that certain claims are not credible (next slide);
 - Denmark and Netherlands were aware that they should not push Germany too far in view of what the judgment said
 - E.g. difficult to refute that Germany should get access to median line with United Kingdom



Role of the ICJ's judgment and the law in the negotiations – Dutch view on natural prolongation

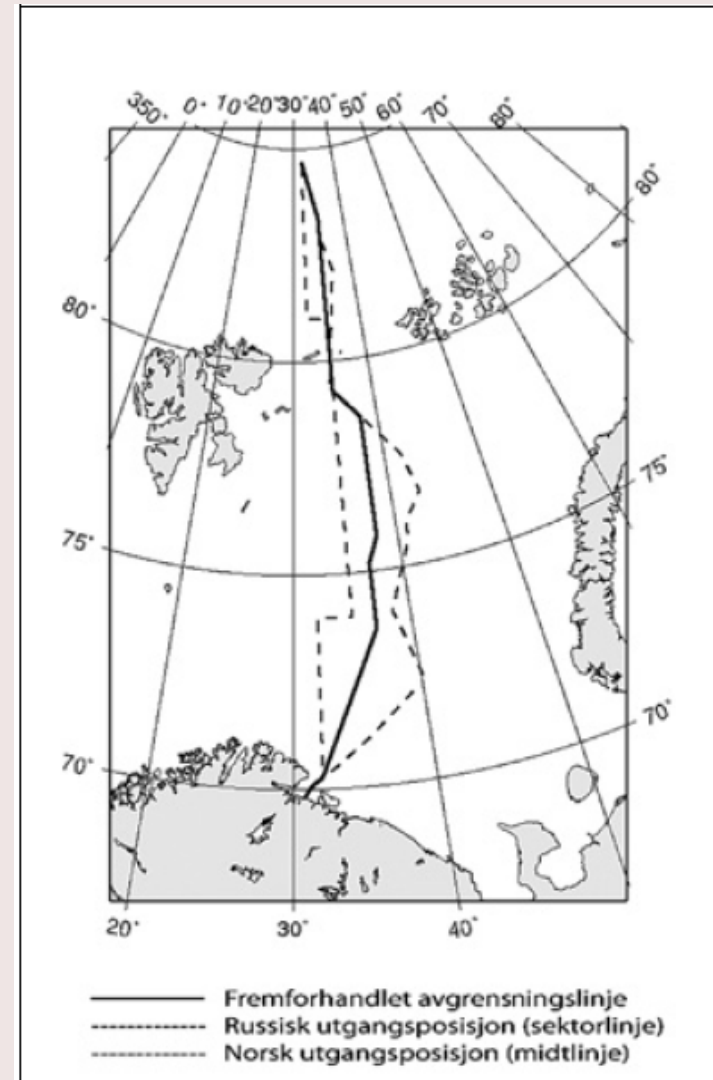
- Determining natural prolongations key aspect of delimitation on basis of the judgment
- Dutch view would give Germany less than equidistance method
- Ignores both concavity of German coast and convexity of Dutch coast
- Signaled Dutch unwillingness to negotiate on the basis of the judgment





Role international law – Agreement Norway-Russian Federation

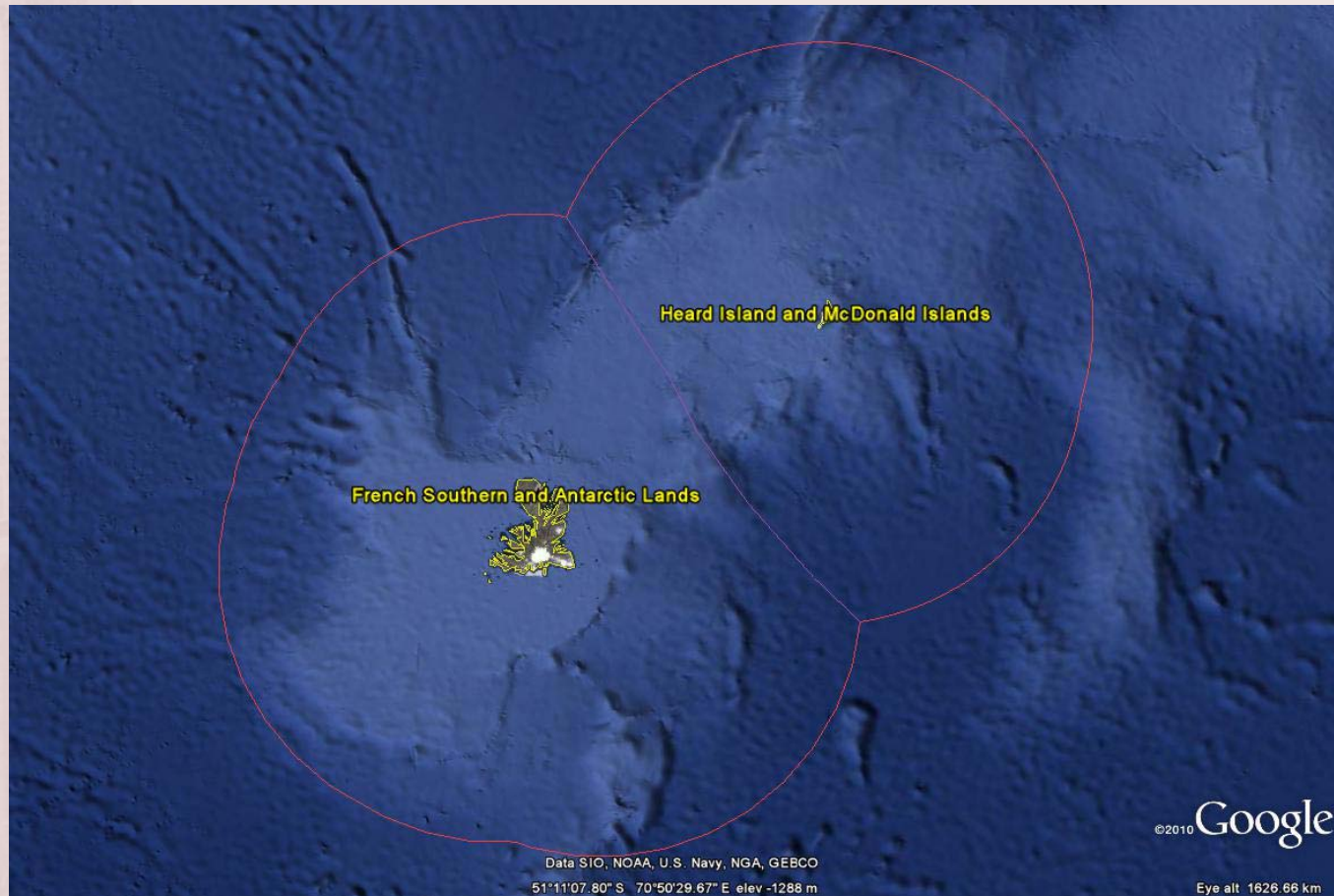
- Positions: equidistance (Norway); sector line (Russian Federation)
- Agreement of 15 September 2010 divides the area of overlapping claims equally
- Outcome by both sides viewed as on basis of general international law; in particular *Black Sea* case
- Russian Federation's reliance on sector line could be coupled to relevant circumstances recognized by international law
- Still, question remains if outcome would have been the same without existence of sector line





Bilateral nature of delimitation process

- Sometimes third states not an issue



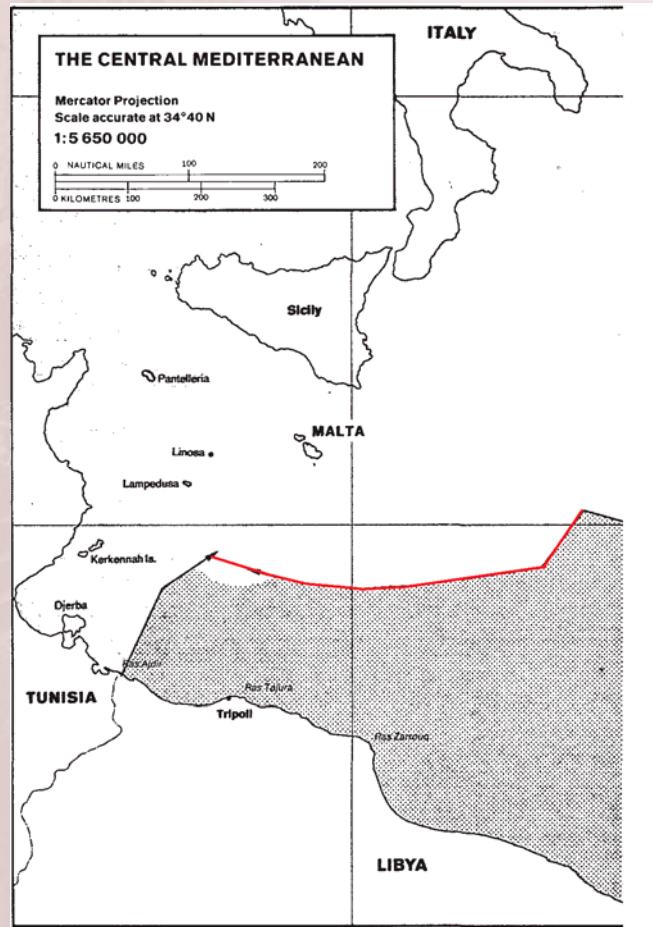


Approaches to dealing with third states in the case law

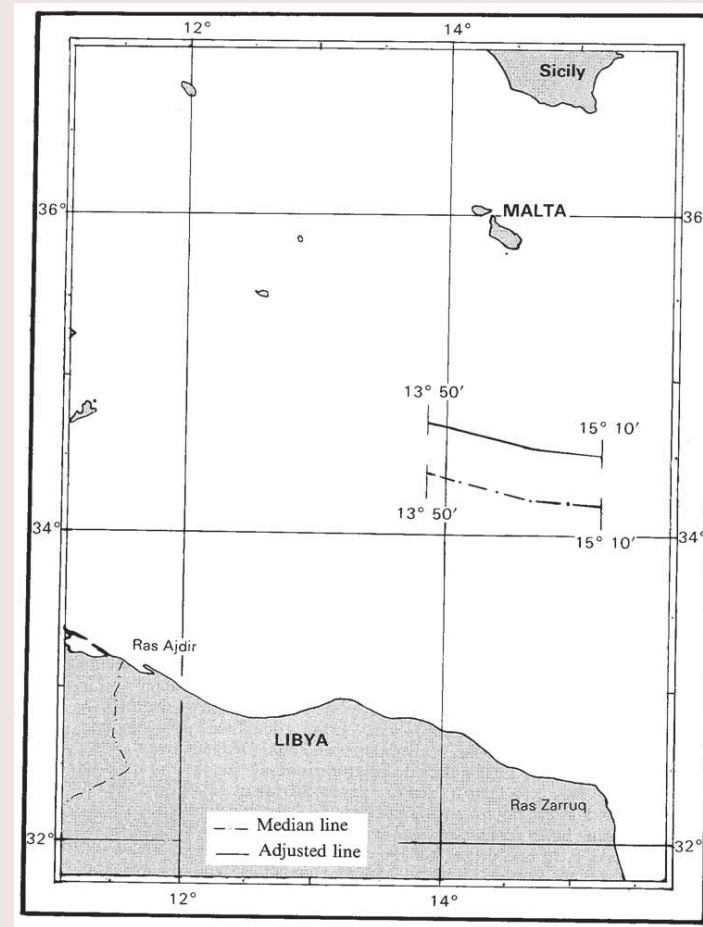
- Two “roles” of third states:
 - As part of the relevant regional geography; and
 - Impact on extent of the boundary between the parties
- Case law on second point
 - “as Article 59 of the Statute of the Court makes clear, it is axiomatic that a judgment of the Court is not binding on any State other than the parties to the case. Moreover, the Court has always taken care not to draw a boundary line which extends into areas where the rights of third States may be affected” (Nicaragua v. Colombia, 2012 judgment, para. 228).
- Case law contradictory on two counts?
 - Pronouncements on regional geography may affect rights of third states
 - Article 59 could be argued to be sufficient safeguard of rights of third states



Third states in the case law – *Libya/Malta*



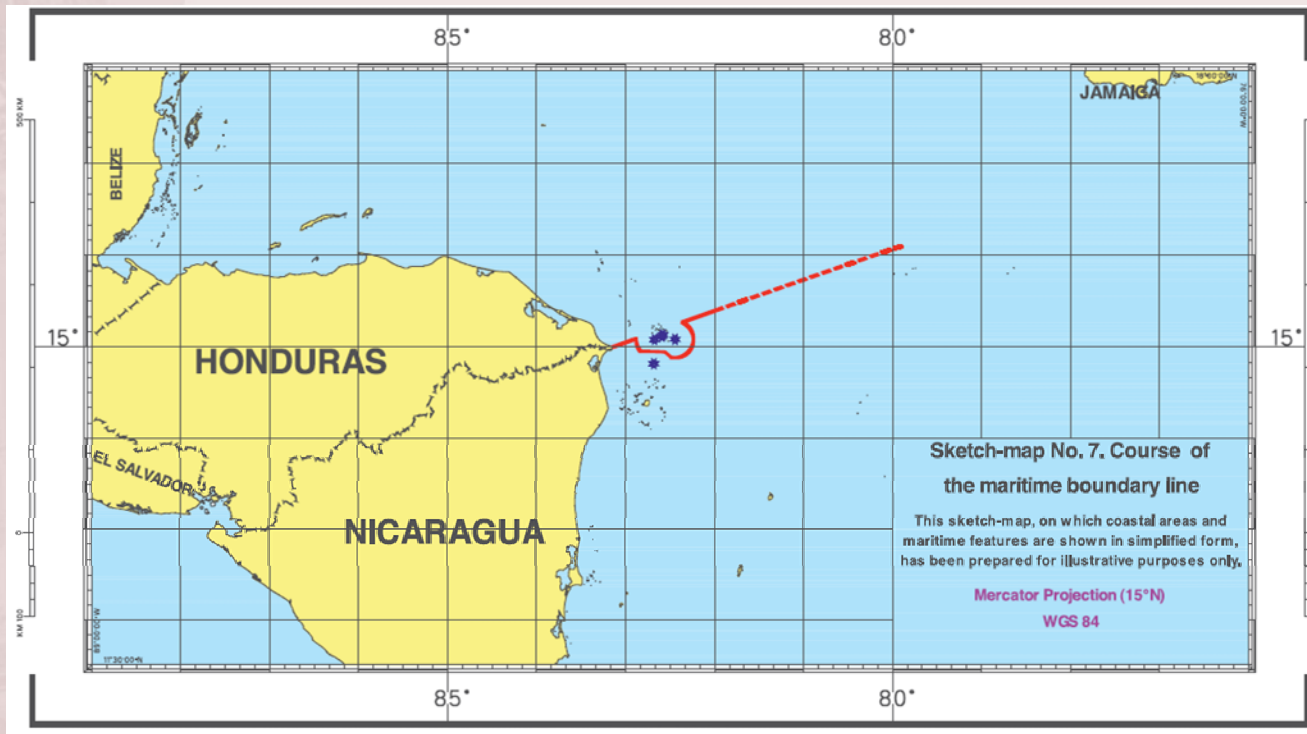
Equidistance line



Delimitation effected by the ICJ



Third states in the case law – *Nicaragua v. Honduras*



“... shall continue along the line having the azimuth of 70° 14' 41.25" until it reaches the area where the rights of third States may be affected” (judgment of 8 October 2007, para. 321)

- This solution is only possible if relevant circumstances remain the same



Third states in bilateral negotiations/agreements

- View on method of delimitation coincides: linking up of bilateral boundaries unproblematic
- View on method of delimitation differs:
 - View of third State may be taken into account in defining bilateral boundary (various techniques)
 - View of third State is ignored and boundary is established in area of trilateral overlap – cases that may eventually end up in court



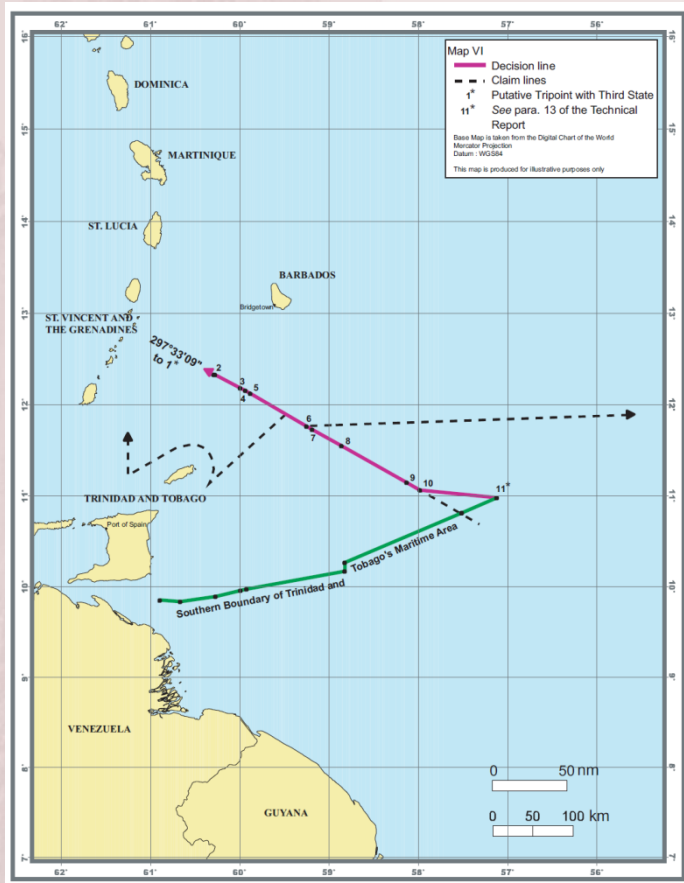
Third states in bilateral delimitations – *North Sea cases*



- Netherlands and Denmark concluded agreement establishing a bilateral boundary in the area claimed by Germany
- Acknowledged that was *res inter alios acta*
- Still argued relevance of this treaty boundary as part of regional pattern of adherence to equidistance principle and existence of customary law
- Relevance rejected by the Court – did not consider agreements between the parties themselves reliable guides as precedents



Third states in bilateral delimitations – *Salida al Atlántico*



- Trinidad and Tobago and Venezuela concluded agreement that would give latter access to 200-M limit and beyond
 - Deviates from equidistance in favor of Venezuela
 - Based on (implicit) recognition of claim of Venezuela to part of the territory of Guyana
- Barbados v. Trinidad and Tobago*:
 - Trinidad and Tobago argued that salida al Atlántico would be impeded by equidistance line between it and Barbados
 - Its adjusted line found justification in contribution it makes to salida al Atlántico
- Tribunal
 - Barbados not required to “compensate” Trinidad and Tobago
 - Res inter alios acta*
 - Regional circumstances do not have a role to play in the bilateral delimitation before it



Conclusions

- Diplomatic solutions and third party settlement complementary
- Significance of possibility of unilateral submission to third party compulsory settlement (limitation of article 298 LOSC)
- Difficult cases end up in court
 - Complex geography
 - Complex diplomatic history of a delimitation
- International law also plays a critical role in (most) negotiated settlements
- Third states as a “complicating” factor in diplomatic solutions and third party settlement
 - Significance of third party settlement for third party in negotiated settlements
 - May be difficult to finalize all sets of bilateral boundaries
 - Multilateral approach only a solution if there is a willingness to achieve an equitable solution for all states