



Taking Stock Before ITLOS Takes Off: A Citation Analysis of the Maritime Delimitation Case Law

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- **Starting-point**
- **Statistics**
- **Citation analysis: summary of findings**
- **The case law's contribution to the maritime delimitation process**
- **Conclusion: is invoking “precedent” a contentious issue for standing and *ad hoc* bodies charged with maritime delimitation?**

The starting-point

- **2010 *Lalive Lecture* by Gilbert Guillaume, former ICJ President:**
 - » *(1) International judicial bodies (ICJ) commonly refer to their own previous decisions*
 - » *(2) Arbitral tribunals (except ICSID) are reluctant to refer to arbitral precedents*
- **True in maritime delimitation context?**
- **Is invoking “precedent” a contentious issue?**

Wrong premise?

- **Has ITLOS not taken off?**
- **Docket (www.itlos.org)**
- **Total of seventeen (17) cases**
- **Nine (9) vessel release cases**
- **Two (2) provisional measures cases**
- **But what about maritime delimitation?**

Statistics

- **Decided maritime delimitation cases (1969-2009)**

Forum	#
International Court of Justice (ICJ) (1969-2009)	9
<i>Ad Hoc</i> Tribunals (1977-1992)	6
UNCLOS Annex VII Tribunals (2006-2007)	2
International Tribunal for the Law of the Sea (ITLOS)	0
(Total)	(17)

Statistics

- **Pending maritime delimitation cases (2010)**

Forum	#
International Court of Justice (ICJ): <i>Nicaragua v. Colombia</i> ; <i>Peru v. Chile</i>	2
<i>Ad Hoc</i> Tribunals	0
UNCLOS Annex VII Tribunals: <i>Bangladesh v. India</i>	1
International Tribunal for the Law of the Sea (ITLOS): <i>Bangladesh v. Myanmar</i>	1

Statistics

- **Basis of Jurisdiction (filed cases)**
- **Consensual jurisdiction: first four ICJ cases**
- **First nine cases relied on an *ad hoc* treaty**
- **All cases have been non-consensual since *Jan Mayen (Denmark v. Norway)* (1988)**

Consensual (special treaty)	10
Non-consensual (unilateral application)	11

Citation Analysis: ICJ

ICJ Judgment (9)	Number of cases citing	Total number of citations
North Sea Continental Shelf (1969)	16	120
Tunisia/Libya (1982)	10	52
Libya/Malta (1985)	8	52
Gulf of Maine (1984)	9	46
Qatar-Bahrain (2001)	5	25
Jan Mayen (1993)	5	27
Cameroon-Nigeria (2002)	4	18
Nicaragua-Honduras (2007)	1	4
Romania-Ukraine (2009)	-	-
TOTAL		(409)

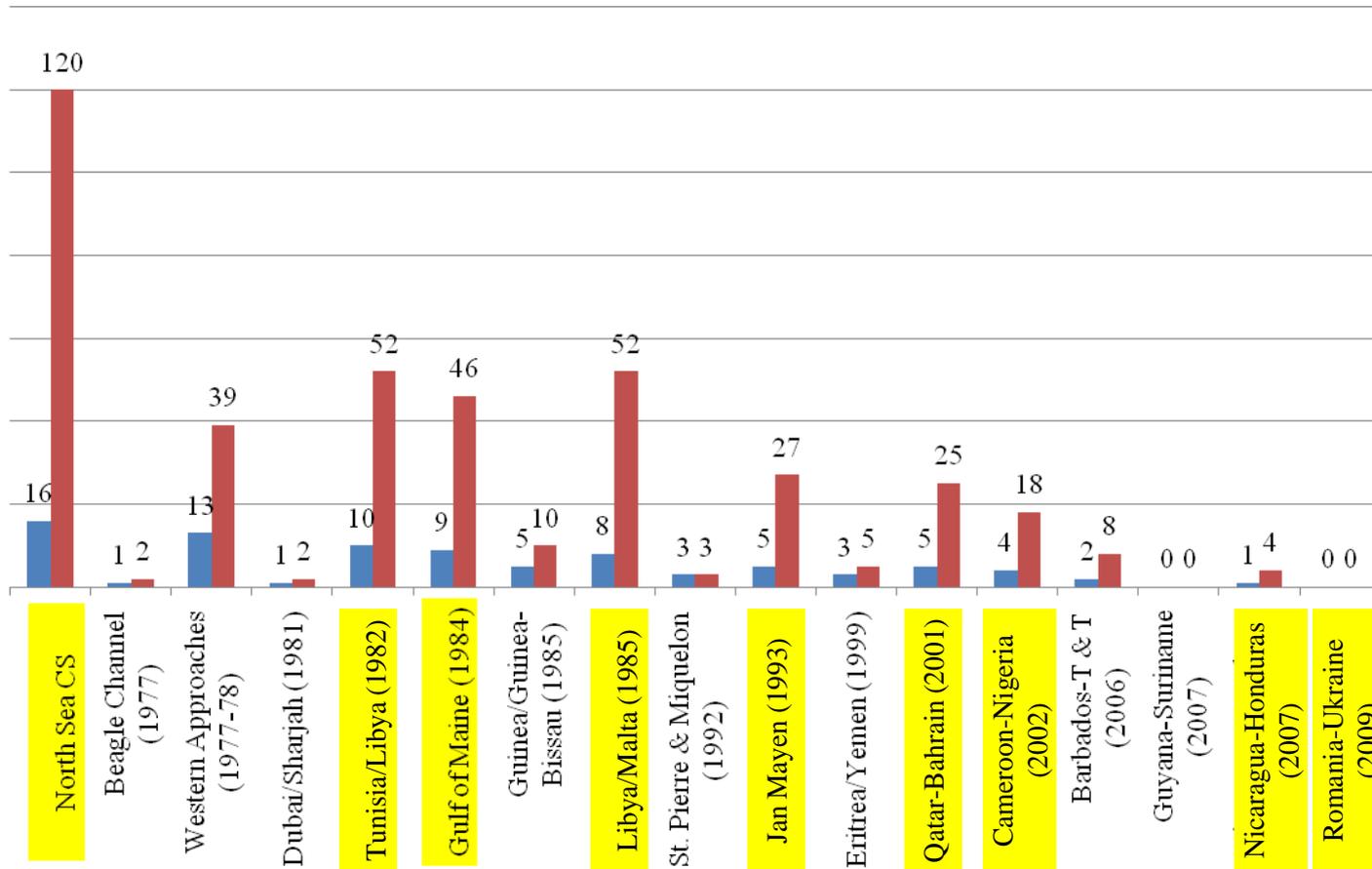
Citation Analysis: *Ad Hoc* Tribunals

<i>Ad Hoc</i> Tribunal Award (6)	Number of cases citing	Total number of citations
Western Approaches (1977-78)	13	39
Guinea/Guinea-Bissau (1985)	5	10
Eritrea/Yemen (1999)	3	5
St. Pierre & Miquelon (1992)	3	3
Dubai/Sharjah (1981)	1	2
Beagle Channel (1977)	1	2
TOTAL		(61)

Citation Analysis: Annex VII Tribunals

UNCLOS Annex VII Tribunal Award (2)	Number of cases citing	Total number of citations
Barbados-Trinidad & Tobago (2006)	2	8
Guyana-Suriname (2007)	0	0
TOTAL		(8)

■ Number of Cases Citing ■ Total Number of Citations



The case law's contribution to the delimitation process

Step	Maritime Delimitation Methodology
I	Identification of the “relevant area”
II.1	Construction of a provisional delimitation line, usually but not always based on the principle of equidistance
II.2	Examination of the provisional (equidistance) line in the light of equitable factors (relevant circumstances) so as to determine whether it is necessary to adjust or shift that line in order to produce an “equitable solution”
III	Application of a final proportionality check

Conclusions

- **Maritime delimitation through third parties has become an increasingly contentious process since the late 1980s**
- **Citing to each other's decisions is not a contentious issue for judicial and arbitral bodies charged with maritime delimitation**
- **There are no “glaring contradictions” in the decisions of such bodies**
- **Precedent is not used as “a mere decorative item”**

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