

The Three Equidistance Lines in Maritime Delimitation: What and Why?

By: Dany Channraksmeychhoukroth* (Aug 2015)

Equidistance is a common term in math defined as the equal distance from every point. Similarly, in maritime delimitation, equidistance is used in the same way as it is applied in math. It is known as the basic method for maritime boundary delimitation enshrined in international law of the sea. According to the survey by professor Yoshifumi Tanaka, state practice has shown that 51 per cent of the maritime delimitation agreements use the equidistance method for all or part of their maritime boundaries with respect to delimitations between states with adjacent coasts.¹ Schofield added that equidistance lines are often constructed at least as a means for assessing a maritime boundary or as a starting point for maritime boundary negotiation.²

With this popularity, however, equidistance has not been recognized as customary international law. This privilege status of equidistance was diminished by international court's decision as well as the notion of special circumstances.³ Case law has shown that equidistance does not lead to an equitable result for the parties. For instance, in the *North Sea Continental Shelf* cases, the use of equidistance line produced a cut-off effect, which led to an inequitable result to Germany.

Regardless of what status equidistance has achieved, it is currently applied at the first stage of maritime delimitation decided by the International Court of Justice (ICJ) and the international tribunals. In fact, case laws and state practices suggest that there are three types of equidistance lines: strict equidistance, simplified equidistance, and modified equidistance. This article explores the three equidistance lines and explains why these methods are applicable?

Strict Equidistance

The Geneva Conventions and the United Nations Convention on the Law of the Sea (UNCLOS) define a strict equidistance line as a line “every point of which is equidistant from the nearest point on the baselines”.⁴ This line will produce an equal division of maritime space and thus an equitable delimitation. However, this does not mean that strict equidistance line takes priority over the other methods of maritime delimitation. There are cases where equidistance line produced an inequitable result. For example, when the coastlines of the parties are the deeply indented coasts with numerous islands lying in the delimitation area.

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¹ Yoshifumi Tanaka, *Predictability and Flexibility in the Law of Maritime Delimitation* (Oxford; Portland, Oregon: Hart Publishing, 2006), 135.

² Clive H. Schofield, “The Delimitation of Maritime Boundaries of the Pacific Island States,” *University of Wollongong* (2010): 166.

³ Yeadul Islam Mohammad, “Arbitral Jurisprudence and Sovereignty over the Sea,” *ASA University Review* 8, no. 1 (January–June 2014): 276.

⁴ Article 15, The United Nations Convention on the Law of the Sea, 1982.

The author of this article notices that whenever there is no explicit name given to the equidistance, the constructed equidistance line is usually referred to strict equidistance, conforming to the meaning of the Geneva Conventions and UNCLOS. The strict equidistance line is simple to apply if the relative baselines are clearly defined. It is automatically constructed based on modern computer methods.⁵ However, there are some cases where the construction of equidistance line is impossible. The ICJ declared in *Nicaragua v. Honduras* case that the construction of the equidistance line is impossible if there is an active morpho-dynamism of the relevant area.⁶

The equidistance line is also known as median line when it comes to the delimitation between two opposite states. Figure 1 illustrates the equidistance line between two adjacent states. On the other hand, Figure 2 shows the equidistance (median) line between two opposite states.

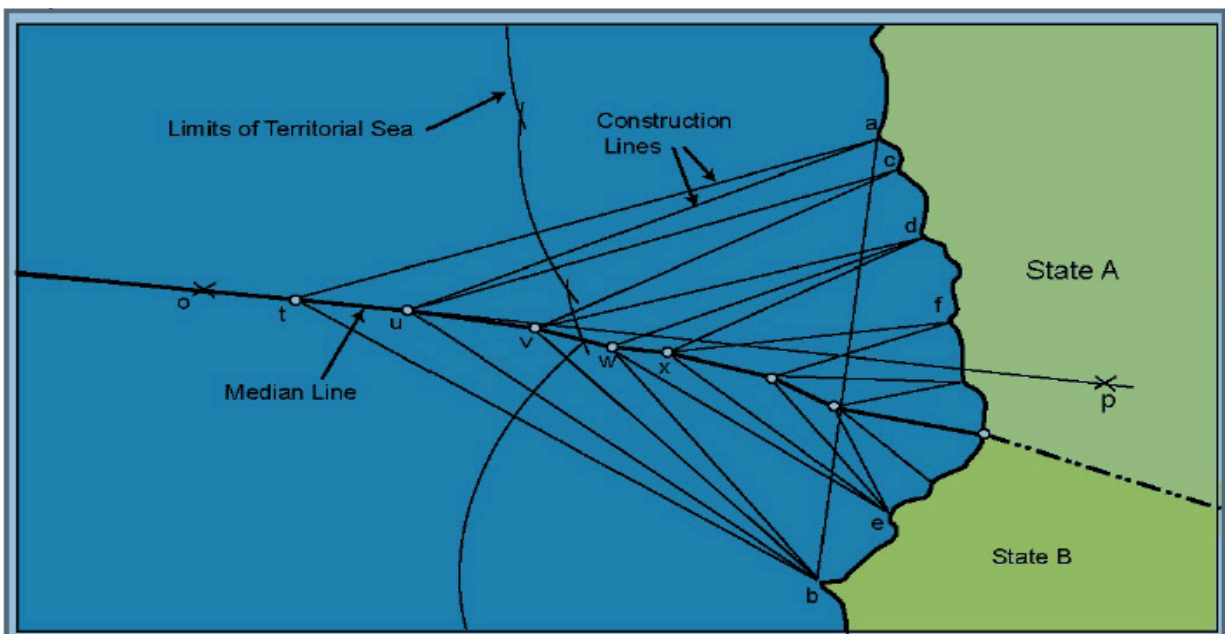


Figure 1: The equidistance line between two adjacent states.

Source: International Oceanographic Commission, International Hydrographic Organization, and International Association of Geodesy, “A Manual on Technical Aspects of the United Nations Convention on the Law of the Sea-1982” (International Hydrographic Bureau, March 2006), 111.

⁵ International Oceanographic Commission, International Hydrographic Organization, and International Association of Geodesy, “A Manual on Technical Aspects of the United Nations Convention on the Law of the Sea-1982” (International Hydrographic Bureau, March 2006), 110.

⁶ Yoshifumi Tanaka, “Reflections on Maritime Delimitation in the Nicaragua/Honduras Case,” *Heidelberg Journal of International Law* 68, no. 4 (2008): 911.

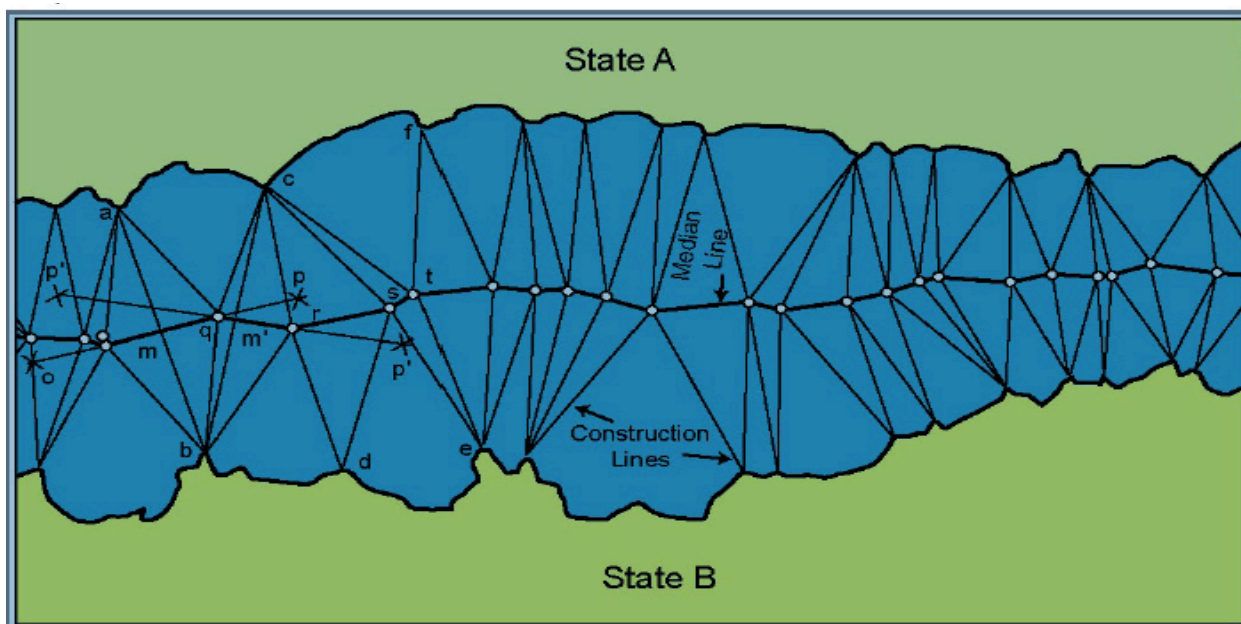


Figure 2: The equidistance (median) line between two opposite states.

Source: International Oceanographic Commission, International Hydrographic Organization, and International Association of Geodesy, *“A Manual on Technical Aspects of the United Nations Convention on the Law of the Sea-1982”* (International Hydrographic Bureau, March 2006), 111.

Simplified Equidistance

The strict equidistance lines are commonly constructed based on the finiteness and large number of turning points joined by geodesics or other curves, which sometime produce difficulties especially in terms of ocean administration and management. To avoid this issue, strict equidistance line is then simplified. Simplifying equidistance involves reducing the number of turning points to a manageable level. As a result, it can increase the length of the intervening straight-line segments. In other word, simplified equidistance line composes of the smallest practical number of basepoints, which still retain the general course of the original line or slightly derivate from it.⁷ Therefore, there is no significant difference regarding the net area of maritime space ascribed to each state involving in the delimitation.⁸

Simplified equidistance is used where the parties’ coastlines are complex. Method of line simplification is to select only certain key basepoints, which could eliminate the complexities to the resulting dividing line caused by the intervening basepoints.⁹ Figure 3 presents the simplified equidistance line.

⁷ International Oceanographic Commission, International Hydrographic Organization, and International Association of Geodesy, *“A Manual on Technical Aspects of the United Nations Convention on the Law of the Sea-1982,”* 114.

⁸ Division for Ocean Affairs and the Law of the Sea, *Handbook on the Delimitation of Maritime Boundaries* (United Nations Publications, 2000), 49.

⁹ Clive Howard Schofield, *“Maritime Boundary Delimitation in the Gulf of Thailand”* (Durham University, 1999), 74, <http://etheses.dur.ac.uk/4351/>.

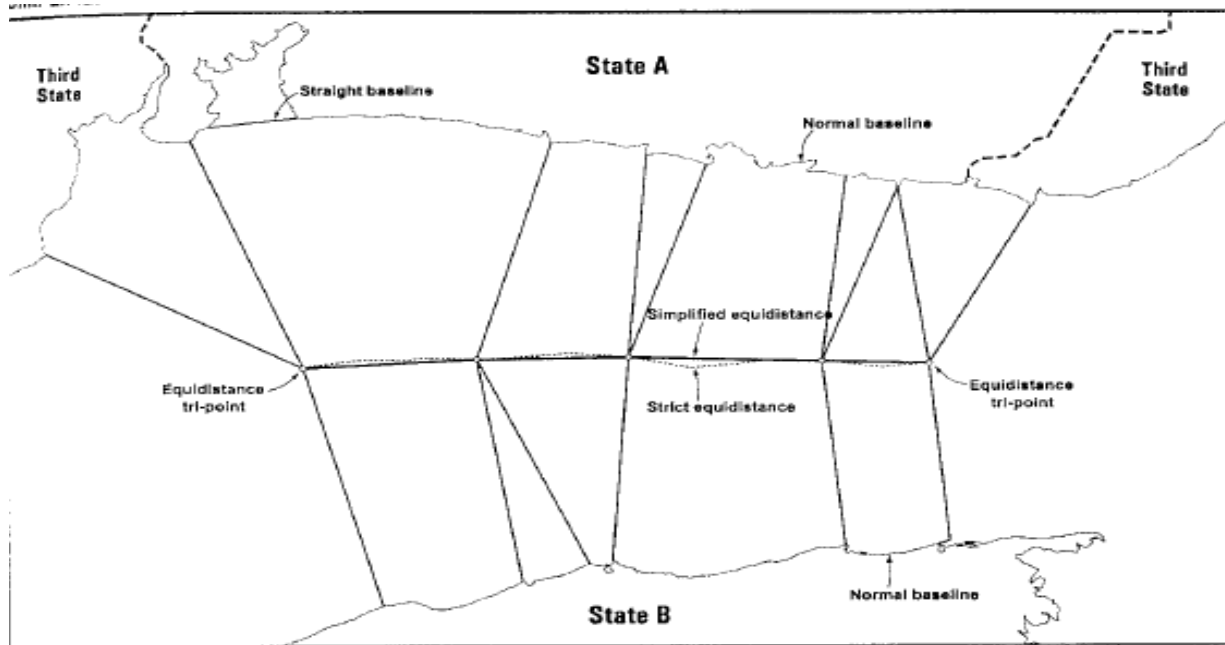


Figure 3: The simplified equidistance line.

Source: Division for Ocean Affairs and the Law of the Sea, *Handbook on the Delimitation of Maritime Boundaries* (United Nations Publications, 2000), 49.

Modified Equidistance

When there are numerous geographical features, which are capable of influencing strict equidistance line, the strict equidistance line might produce an inequitable result to the parties. Therefore, to settle this matter, the solution is to modify the strict equidistance line by discounting certain basepoints or by according them a reduced effect.¹⁰ This method creates a greater alteration to the equidistance line rather than using simplified equidistance. Strictly speaking, modified equidistance refers to a line resulted from various methods and *ad hoc* approach.¹¹

As Schofield stated, “One popular way to modify a strict equidistance line is to adopt some flexibility in terms of the selection of appropriate basepoints.”¹² This allows the parties to either ignore certain features when constructing the equidistance line. Another way to modifying the equidistance line is to accord the maritime features with partial effect. This is a case between Malta and Libya, whereby the equidistance line was shifted 18 minutes of latitude northward to Libya’s advantage. In another case, the equidistance line is modified by giving half effect to maritime feature. To apply the half effect, two equidistance lines need to be constructed, one giving full effect to the feature and the other ignore the feature. Then, a third line,

¹⁰ *Ibid.*, 75.

¹¹ Nuno Sergio Marques Antunes, “Towards the Conceptualisation of Maritime Delimitation: Legal and Technical Aspects of a Political Process” (Durham University, 2002), 161.

¹² Schofield, “Maritime Boundary Delimitation in the Gulf of Thailand,” 75.

equidistance from the other two lines can be drawn to accord the feature with half effect. In other word, the half effect line situates half way between the full effect line and the no-effect line.¹³ Figure 4 displays the modified equidistance line by giving half effect to island.

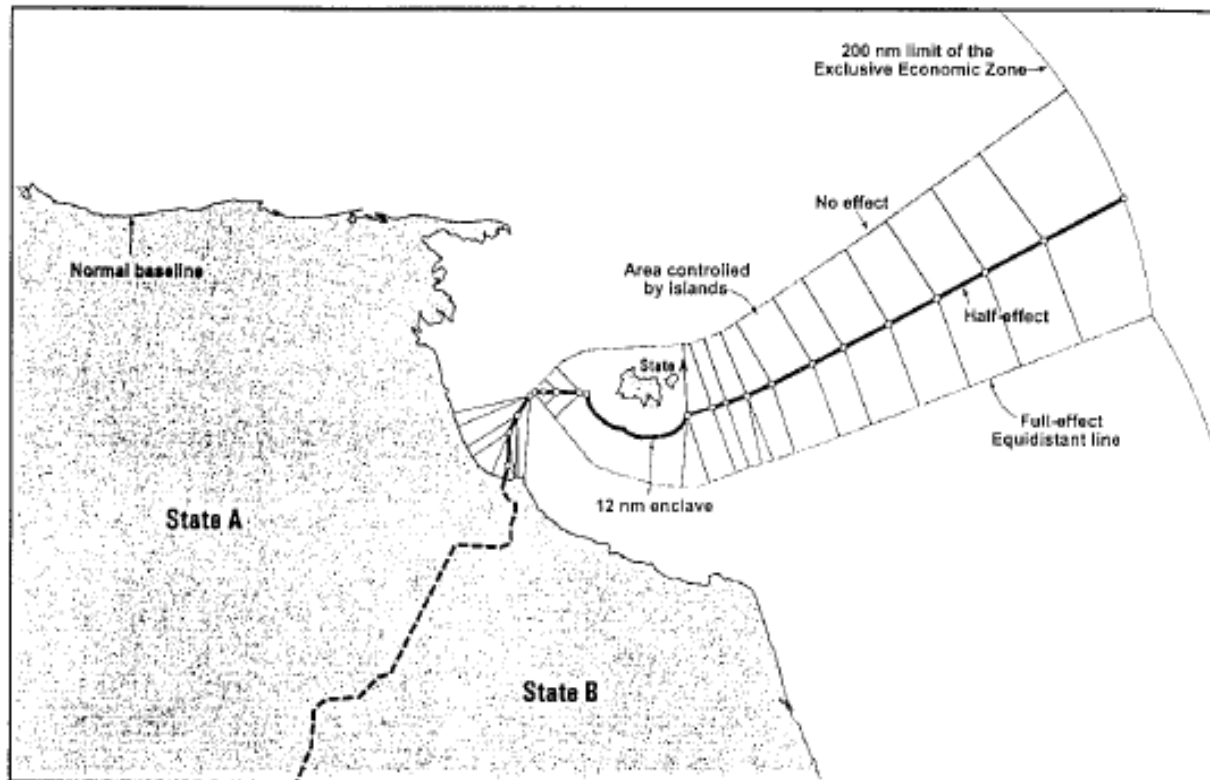


Figure 4: The modified equidistance line by giving half effect to island.

Source: Division for Ocean Affairs and the Law of the Sea, *Handbook on the Delimitation of Maritime Boundaries* (United Nations Publications, 2000), 54.

Even though strict equidistance is the starting point for constructing simplified and modified equidistance, these two lines are confusing to understand. Legault and Hankey made a simple comparison between the two lines by stating that modified equidistance line involves greater departure from strict equidistance than does a simplified equidistance line.¹⁴ Furthermore, modified equidistance line concerns with the allocation of maritime space to one party at the expense of the other; however, simplified equidistance line associates with an equal exchange of areas.¹⁵

¹³ International Oceanographic Commission, International Hydrographic Organization, and International Association of Geodesy, "A Manual on Technical Aspects of the United Nations Convention on the Law of the Sea-1982," 114.

¹⁴ Antunes, "Towards the Conceptualisation of Maritime Delimitation: Legal and Technical Aspects of a Political Process," 161.

¹⁵ Ibid.

In short, equidistance line has three distinct types, which are all adopted by state and case law in maritime boundary delimitation. However, this does not mean that equidistance is recognized as a method to apply in every cases of maritime delimitation under customary international law. The equidistance is just one among many other methods, and its application is somehow ensured predictability in the law of delimitation. This author has a strong belief that equidistance should be the first method to think of when states talk about boundary delimitation. If the application of equidistance produces an unreasonable result to the parties, they then can adjust the line by using the other factors.