# CONTENTS

List of Figures  page xi  
Foreword  xiii  
Preface  xvii  
Table of Cases  xx  
Table of Treaties and Legislation  xxiv  
List of Abbreviations  xxxii  

1 Maritime Delimitation in the Time of International Tribunals  1  
   I Maritime Boundaries and International Tribunals  1  
   II Scope of the Book  2  
   III Structure of the Book  5  

2 Historical and Conceptual Framework  9  
   I Rules and Processes in Maritime Delimitation  9  
   II Historical Framework of Maritime Delimitation  10  
      A Rules Governing Maritime Delimitation  10  
         1 The 1930 League of Nations Codification Conference  10  
         2 The 1958 Geneva Convention on the Continental Shelf  12  
      B Methods for Delimiting the EEZ and the Continental Shelf  17  
         1 The primacy of relevant circumstances (1969–1993)  17  

CONTENTS

2 The two-stage approach (1993–2009) 20
3 The three-stage approach (2009–present) 21

III Conceptual Framework of Maritime Delimitation 23
A Maritime Delimitation as a Process 24
B Objectivity and the Equitable Solution 26
C Connection between Delimitation and the Basis of Title 30

IV An Inevitable Development? 33
3 Relevant Coast and Relevant Area 34
I An Essential Stage in the Delimitation Process 34
II The Relevant Coast 37
A The Land Dominates the Sea 37
1 The delimitation of the maritime zones within 200 nautical miles 37
2 The delimitation of the continental shelf beyond 200 nautical miles 41
B Identifying the Relevant Coast 43
1 The most distant base points as end-points of the relevant coast 44
2 The approximation of the relevant coast by means of straight lines 48
3 The coast of bays and inlets as part of the relevant coast 56

III The Relevant Area 65
A The Concept of the Relevant Area 65
1 The elusive definition of the relevant area 65
2 The 2018 Costa Rica v. Nicaragua judgment 69
B The Direction of Coastal Projections 72
1 The envelope of arcs as the implementation of radial projections 73
2 The application of radial projections by international tribunals 76
C The Limits of the Relevant Area 81
1 The maximum extent of national jurisdiction under UNCLOS 81
2 Pre-existing maritime boundaries 84
3 Relevant areas generated by coasts facing the open sea 90
<table>
<thead>
<tr>
<th>CONTENTS</th>
<th>vii</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 The delimitation of the continental shelf beyond 200 nautical miles</td>
<td>95</td>
</tr>
<tr>
<td>IV An Additional Stage in the Delimitation Process</td>
<td>98</td>
</tr>
<tr>
<td>4 Equidistance</td>
<td>102</td>
</tr>
<tr>
<td>I Brief History of Equidistance</td>
<td>102</td>
</tr>
<tr>
<td>II Legal Basis of Equidistance in Delimitation within 200 Nautical Miles</td>
<td>104</td>
</tr>
<tr>
<td>A Connection to the Basis of Title</td>
<td>104</td>
</tr>
<tr>
<td>1 Basis of title over the EEZ</td>
<td>104</td>
</tr>
<tr>
<td>2 Basis of title over the continental shelf within 200 nautical miles</td>
<td>105</td>
</tr>
<tr>
<td>B Relationship between the Continental Shelf and the EEZ</td>
<td>109</td>
</tr>
<tr>
<td>1 EEZ declarations, judicial approaches and recent studies</td>
<td>109</td>
</tr>
<tr>
<td>2 Interpreting the relevant UNCLOS provisions</td>
<td>111</td>
</tr>
<tr>
<td>3 Approach of states in bilateral delimitation treaties</td>
<td>116</td>
</tr>
<tr>
<td>C Impact of Coastal Configuration</td>
<td>121</td>
</tr>
<tr>
<td>1 The 2007 Nicaragua v. Honduras judgment</td>
<td>122</td>
</tr>
<tr>
<td>2 The 2012 Nicaragua v. Colombia judgment</td>
<td>124</td>
</tr>
<tr>
<td>3 Reconciling Nicaragua v. Honduras and Nicaragua v. Colombia</td>
<td>126</td>
</tr>
<tr>
<td>III Equidistance and the Continental Shelf beyond 200 Nautical Miles</td>
<td>128</td>
</tr>
<tr>
<td>A The Bay of Bengal Cases and Ghana/Côte d’Ivoire</td>
<td>128</td>
</tr>
<tr>
<td>B The Problem of the Basis of Title</td>
<td>130</td>
</tr>
<tr>
<td>1 The Article 76 UNCLOS compromise</td>
<td>130</td>
</tr>
<tr>
<td>2 Distance as an element of the basis of title</td>
<td>131</td>
</tr>
<tr>
<td>C The Grey Area Issue</td>
<td>135</td>
</tr>
<tr>
<td>1 The absence of legal basis under UNCLOS</td>
<td>135</td>
</tr>
<tr>
<td>2 Grey areas and the EEZ-continental shelf relationship</td>
<td>140</td>
</tr>
<tr>
<td>IV Constructing an Equidistance Line</td>
<td>143</td>
</tr>
<tr>
<td>A Selection of Base Points</td>
<td>144</td>
</tr>
<tr>
<td>1 The general principles of base point selection</td>
<td>144</td>
</tr>
<tr>
<td>2 Low-tide elevations as base points</td>
<td>147</td>
</tr>
<tr>
<td>B Islands, Base Points and ‘Creeping Relevant Circumstances’</td>
<td>150</td>
</tr>
</tbody>
</table>
# CONTENTS

1 Using islands as base points 150
2 Avoiding ‘creeping relevant circumstances’ 154

C Base Points and the Relevant Coast 156
1 The relevant coast and the feasibility of an equidistance line 156
2 Coastal instability and the feasibility of an equidistance line 161

V A Common Approach to Equidistance 165

5 Relevant Circumstances 167

I A Dual Basis for Relevant Circumstances 167

II The Basis of Title: Geographical Circumstances 168
A Cut-Off Effect 168
B Coastal Length Disparity 173
C Islands 178
1 Enclavement 178
2 No effect 181
3 Half effect 186
4 Full effect 188
D The Location and Direction of the Land Boundary Terminus 193

III The Functions of Maritime Zones: Non-Geographical Circumstances 195
A Access to Natural Resources 195
1 The approach of states 196
2 The approach of international tribunals 197
B Navigation 201
C Security 205

IV Irrelevant Circumstances 210
A Conduct 211
B Rights of Third States 217
C Geomorphology 221

V Implications of the Judicial Approach to Relevant Circumstances 227
A Identifying Relevant Circumstances 227
B Weighing Relevant Circumstances 232
C Adjusting a Provisional Equidistance Line 235
1 The adjustment and the judicial function 236
## CONTENTS

2 The methods for adjusting an equidistance line 239

VI Consistency in Evaluating Relevant Circumstances 245

6 Disproportionality 246

I Disproportionality as the Final Stage of the Delimitation Process 246

II A Note on Terminology 248

III The Legal Basis of Disproportionality 252
   A Proportionality as a Delimitation Method 252
   B The Original Absence of a Legal Basis for Proportionality 253
   C Disproportionality in Delimiting the Continental Shelf beyond 200 Nautical Miles 259

IV Judicial Approaches to Disproportionality 260
   A The Function of Disproportionality in the Delimitation Process 260
      1 The unclear function of proportionality: 1969–1992 261
      2 Disproportionality as a test of equitableness: 1993–present 263
   B The Assessment of Disproportionality by International Tribunals 267
      1 Scope of application 267
      2 Disproportionality as a mathematical assessment 270
   C The Impact of Coastal Configuration on Disproportionality 275

V Disproportionality and Coastal Length Disparity 280
   A The Functions of Disproportionality and Coastal Length Disparity 280
   B Disproportionality and Coastal Length Disparity in the Jurisprudence 282
      1 Before the three-stage approach 282
      2 After the three-stage approach 286

VI Disproportionality Re-Affirmed 288
7. States, International Tribunals and the Delimitation Process 290

I Misgivings on the Delimitation Process as a Judicial Creation 290

II International Tribunals as Lawmakers 291
   A Legal Basis of Judicial Law-making in Maritime Delimitation 292
      1 Lack of customary international law on the delimitation process 292
      2 Consequences of the vagueness of Articles 74 and 83 UNCLOS 294
   B Judicial Decisions as a Source of the Law of Maritime Delimitation 300
      1 Status of judicial decisions under Article 38 of the ICJ’s Statute 301
      2 Relevance of res judicata 306

III Approach of States 308
   A Maritime Delimitation Treaties 308
   B Statements on the Delimitation Process 310
      1 Statements in multilateral fora 311
      2 Pleadings before international tribunals 312
   C Compliance with Judicial Decisions Establishing Maritime Boundaries 317

IV Interaction between States and International Tribunals 321

V What Next for the Delimitation Process? 322

Appendix 1 324
Appendix 2 334
Bibliography 357
Index 383