When Pathways of Change Crisscross

*Courts, consensus and custom**

Ezgi Yildiz** and Umut Yüksel***

Introduction

What does it take for a change attempt to be materialized and registered as actual change? We argue that it takes formation of consensus. Depending on the issue areas, this could be consensus among states, members of an epistemic community or legal practitioners. But why is it that some practices come to command consensus and become established as custom while some other potentially beneficial rules fail to achieve this status? In responding to this question, we draw inspirations from the framing paper and understand legal change as convergence around a certain interpretation.[1] In particular, we examine how certain state practices converge around a legal rule, which eventually comes to acquire customary law status. We tease out the factors that may facilitate or hinder the convergence around a rule. In this respect, we pay a particular attention to the potential impact of institutions that are tasked with making and interpreting law.

As an illustration, we examine the rule of continental shelf delimitation and trace states' views on the appropriate delimitation method as evidenced in their domestic legislation and bilateral delimitation treaties. We, then, juxtapose these with relevant international court decisions and other lawmaking episodes – paying a particular attention to those which discuss the customary law status of certain delimitation methods. We find that conflicting court rulings may have hindered the emergence of consensus around a

* Prepared for the Paths of Change in International Law Workshop, 6-7 June, Geneva, Switzerland. Please do not circulate or cite without the permission of the authors.

** Ezgi Yildiz is a Postdoctoral Researcher at the Global Governance Center, Graduate Institute of International and Development Studies. The research for this article was generously supported by the European Research Council for the working on the Paths of International Law: Stability and Change in the International Legal Order project.

*** Umut Yüksel, is a PhD Candidate International Relations and Political Science, Graduate Institute of International and Development Studies

[1] Nico Krisch and Ezgi Yildiz, "The Paths of International Law: Stability and Change in the International Legal Order," *Concept Note for the Paths Workshop*, April 2019, 3.

simple, unique delimitation rule, and that subsequent attempts to resolve the confusion had limited results. This analysis helps us understand how and why an interstate consensus about the method for drawing continental shelf boundaries has failed to emerge.

The result of this analysis should be assessed in the light of the fact that the case of continental shelf delimitation is a high salience issue. That is, it concerns "a negative sum game, whereby a state's gain would imply another state's loss."[2] There are distributional consequences arising from application of one delimitation method over another. These consequences are not negligible. Depending on the method chosen, one party may have control over a larger area including the natural resources beneath the surface – compared the other one. Evidently, the stakes are higher when it comes to deciding on a single method, as we will see in the analysis section.

Beyond the specific continental shelf case, this exploratory study essentially looks at the interaction between the state action path and the judicial path – two of the five pathways of change identified in the framing paper.[3] Deriving from the continental shelf delamination case, we aim at generating testable hypotheses to sketch out the conditions under which the pathway to custom can be broken. In so doing, we contribute to the literature on customary international law. We also make a call for further inquiry into the role of courts (and court-like institutions) and what is at stake in shaping the processes by which interstate consensus forms and or fails to materialize in other domains of international law.

This is timely because international relations and law scholars have had a limited view of international lawmaking and legal change. They tend to attribute a special role to specific events such as international treaty negotiations, or their concrete products: treaties. They, thus, seem to take law as a given and focus on its impact from the moment of its consecration in a treaty. Yet, a focus on these moments or documents may be misleading if one wishes to understand how law changes or the conditions under which states initiate or register this change. Similarly, the role of courts in generating change is often viewed as a straightforward affair. While legal scholars overemphasize the courts' role as the source of focal points, international relations scholars downplay courts' ability to create legal certainty and confusion.[4] We attempt to respond to these entrenched assumptions by providing an empirically grounded account on the interplay between the state-action path

[2] Krisch and Yildiz, 7.
[3] Krisch and Yildiz, 4–5.
[4] Pierre-Hugues Verdier and Erik Voeten, "Precedent, Compliance, and Change in Customary International Law: An Explanatory Theory," *American Journal of International Law* 108, no. 3 (July 2014): 389–434; Laurence Helfer and Ingrid Wuerth, "Customary International Law: An Instrument Choice Perspective," *Michigan Journal of International Law* 37, no. 4 (2016): 563–609; Pierre-Hugues Verdier and Erik Voeten, "How Does Customary International Law Change? The Case of State Immunity," *International Studies Quarterly* 59, no. 2 (June 1, 2015): 209–22; Richard Price, "Emerging Customary Norms and Anti-Personnel Landmines," in *The Politics of International Law*, ed. Christian Reus-Smit (Cambridge: Cambridge University Press, 2004), 106–30.

and judicial path. Our systematic analysis of state practice in light of the judicial decisions show the nuanced role that the courts may play. We hope that our approach and findings contribute to the broader inquiries into how states make law and laws affect states, and the various degrees to which different sources of law (treaties, judicial decisions, etc.) may shape the process of legal evolution.

The organization of this article will be as follows: We first describe what customary international law is and how it is identified. Second, we explain how the understanding around method for continental shelf delimitation has changed and the role of judicial decisions in this regard. Then, we introduce our method which consists of identifying state positions and tracing the evolution of the rules preferred by states. Fourth, we determine cut-off points in the evolution of preferences over each of the delimitation methods. We compare them to the common narratives about the development of the international law of the sea and specifically to the narratives about the delimitation rule that are constructed or interpreted by international courts. Finally, we formulate propositions about the conditions for consensus in state practice that may be interesting to probe into in other domains of international law.

What is customary international law and how it is identified?

There has been a recent scholarly interest in customary international law.[5] This is partially motivated by a need to situate the role of custom in the contemporary law-making scene. What made this an imperative is the recent decline in the number of new treaties due to either saturation or the complications often arising from reaching an agreement about the treaties' contents.[6] This development, in a way, brings customary international law and other forms of non-traditional law-making mechanisms to the forefront. In this regard, custom is particularly interesting and perhaps unique because of its three inherent traits: its universality, unwritten nature, and non-negotiated character (as in it would not be subject to the negotiations we often see in the making of hard or soft law).[7] Recent studies on customary international law often analyze the way judicial authorities identify customs or examine how and under what conditions a custom emerges. These analyses make

[5] Curtis A. Bradley, ed., *Custom's Future: International Law in a Changing World* (New York, NY: Cambridge University Press, 2016); Stephen J. Choi and Mitu Gulati, "Customary International Law: How Do Courts Do It?," in *Custom's Future: International Law in a Changing World* (New York: Cambridge University Press, 2016), 117–47; Niels Petersen, "The International Court of Justice and the Judicial Politics of Identifying Customary International Law," *European Journal of International Law* 28, no. 2 (2017): 357–85.

[6] Joost Pauwelyn, Ramses A. Wessel, and Jan Wouters, "When Structures Become Shackles: Stagnation and Dynamics in International Lawmaking," *European Journal of International Law* 25, no. 3 (August 1, 2014): 733–63, https://doi.org/10.1093/ejil/chu051; Harold Hongju Koh, "Remarks: Twenty-First-Century International Lawmaking," *Georgetown Law Journal* 101 (2013): 725–47.

[7] Helfer and Wuerth, "Customary International Law," 568.

important contributions as there is certainly an aura of mystery around what customs are and how one identifies them.

What is custom? Custom is known to be built upon state practice (rather a consensus around a particular practice or understanding) and *opinio juris* (statements expressed in treaties or declarations issued within international organizations). Anthea Roberts distinguishes between these two distinct yet complementary ways of identifying custom. She defines the identification exercise based on state practice as "traditional" and the approaches focusing on *opinio juris* as "modern".[8] She proposes a mid-way and suggests a careful interpretive analysis that would first consider state practice (in the interpretive stage) and then *opinio juris* (in the post-interpretive stage).[9]

Although Roberts' careful analysis proposes a robust methodology, it does not reflect how custom has been identified in general. As Mark Weisburd argues, the International Court of Justice (ICJ), for example, has referred to actual practice on rare occasions. Instead, it has justified its decisions and conclusions relying on declarations issued by international organizations or its own previous decisions.[10] He adds that "[i]n some cases, [the ICJ] has reached decisions clearly inconsistent with significant and relevant state practice; in others, it has proclaimed doctrines unsupported by state behavior as rules of law."[11] This observation is reaffirmed by Curtis Bradley, who finds that the adjudicative bodies often rely on their own decisions or the rulings issued by other courts to determine the customary international law's content.[12] Stephen J. Choi and Mitu Gulati echo this point and highlight that courts derive custom by means of a "forward looking and aspirational analysis," rather than looking at state practice.[13]

Leaving aside the courts, some studies also have attempted to identify the conditions under which states would turn to claiming or supporting the existence of a custom. For example, Laurence Helfer and Ingrid Wuerth have found that custom is likely to be formed when (i) "a general norm with low distributional costs" benefits all nations; (ii) powerful states make salient and persistent attempts to change or instill a norm; (iii) states attempt to establish a norm that embodies shared values no matter what the distributional costs are.[14] We take these assumptions as a starting point and consider our case to have high

[8] Anthea Elizabeth Roberts, "Traditional and Modern Approaches to Customary International Law: A Reconciliation," *The American Journal of International Law* 95, no. 4 (2001): 757–91, https://doi.org/10.2307/2674625.
[9] There is also a pre-interpretive stage, where all the relevant information is collected. Roberts.
[10] A. Weisburd, "The International Court of Justice and the Concept of State Practice," *University of Pennsylvania Journal of International Law* 31, no. 2 (January 1, 2009): 295.
[11] Weisburd, 295.
[12] Curtis A. Bradley, "Customary International Law Adjudication as Common Law Adjudication," in *Custom's Future: International Law in a Changing World*, ed. Curtis A. Bradley (New York: Cambridge University Press, 2016), 36.
[13] Choi and Gulati, "Customary International Law: How Do Courts Do It?," 147.
[14] Helfer and Wuerth, "Customary International Law," 580.

distributional consequences. That is, when a state settles for a less favorable rule, there is a non-negligible cost.

What this picture also alludes is the importance of persuasion. It is about whether few powerful states or a group of states could compel or influence the behavior of others, and create a sense of consensus.[15] To explain how states rally around a custom, Pierre-Hugues Verdier and Erik Voeten suggest a tipping point model, according to which a new customary law forms once its supporters reach a critical mass.[16] In this regard, they underscore the importance of formulation of state preferences *vis-à-vis* a custom. They claim that states adjust their position in light of what they know about the predominant state practice and *opinio juris*, as well as their own interests. Moreover, they propose that international courts directly influence state behavior and expectation "by offering *a focal point* for settlement that helps state choose among multiple equilibria".[17] They acknowledge the courts' roles as either accelerating the formation of a custom (pathbreaking) or putting brakes on it (conservative).[18]

One wonders whether the international courts' role is always this clear cut. What if they have a more nuanced impact on state preferences and the formation of custom than previously thought? After all, as Weisburd emphasizes, it is not uncommon for courts to proclaim doctrines around which there is no intrastate consensus.[19] Could such proclamations introduce rival norms or doctrines and deal a blow at the possibility of formation a consensus?[20] Should we expect states to immediately change course and adjust their domestic policies in line with judicial decisions about custom? We find these questions to be pertinent and overlooked in the literature. Both strands of literature – be it the one focusing on judicial practices of identifying custom or the one analyzing the how and why states resort to establishing a custom – see the courts as institutions with clear visions. Courts are there to help custom form, by means of providing focal points, or to identify rules of customary international law. In Michael Scharf's words, they could recognize the "Grotian moment" – so called paradigm shifting developments that facilitate the emergence or solidification of new rules of customary international law.[21] They may

[15] Michael Byers, "Custom, Power, and the Power of Rules," *Michigan Journal of International Law* 17, no. 1 (January 1, 1995): 109–80.
[16] Pierre-Hugues Verdier and Erik Voeten, "Precedent, Compliance, and Change in Customary International Law: An Explanatory Theory," *American Journal of International Law* 108, no. 3 (July 2014): 405.
[17] Verdier and Voeten, 420.
[18] Verdier and Voeten, 420.
[19] Weisburd, "The International Court of Justice and the Concept of State Practice," 295.
[20] Gunther Teubner, "Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences," *The Modern Law Review* 61, no. 1 (1998): 11–32; see also, Nico Krisch, Francesco Corradini and Lucy Lu Reimers, "Order at the Margins: The Legal Construction of Norm Collisions over Time" (forthcoming).
[21] Michael P. Scharf, "Seizing the 'Grotian Moment': Accelerated Formation of Customary International Law in Times of Fundamental Change," *Cornell International Law Journal* 43 (2010): 468.

have questionable methods in deriving custom. Yet, they are viewed as agents with a plan; agents that create a sense of cohesion by either accelerating the emergence of custom or blocking it.[22]

In this paper, we question this entrenched view and empirically examine how state behavior is informed by court rulings and treaty interpretations in one particular domain of international law. In this regard, we do not take the influence of legal decisions as a given positive but investigate how judicial decisions regarding the existence of a customary norm or lack thereof shape state behavior. In order to measure the influence of rulings or treaty interpretations on state behavior we analyze their impact on the degree of consensus that seems to form over different rules over time. We find studying intrastate consensus in tandem with the judicial decisions about the state of custom to be highly important. This is because consensus analysis promises to show us whether a given legal change, introduced via proclamation of existence of customary rule, is registered by the states. It also demonstrates the extent to which state practice precedes or follows legal change – commonly taken to be the moment where something is pronounced customary by a court – and provides indicators as to the conditions under which legal change gains traction among states. Overall, we aim to capture the interplay between legal change and state practice by combining legal and social science methods and seek to provide empirical and methodological contributions to the study of custom, which has been so far under the radar of interdisciplinary accounts.[23]

Consensus and custom

Studying state practice by taking consensus as a reference point is not entirely new or out of ordinary. The ICJ may have rarely referred to state practice on a global scale, yet the European Court of Human Rights (ECtHR) has routinely done so on a regional scale since the 70s.[24] The ECtHR has often justified its evolutive interpretation by conducting consensus analysis and looking at the common legal positions among European and sometimes even non-European states.[25] In so doing, the ECtHR has identified custom – or

[22] For an interesting read on the courts' role in creating cohesion see, John A. Stookey, "Trials and Tribulations: Crises, Litigation, and Legal Change," *Law & Society Review* 24, no. 2 (1990): 497–520, https://doi.org/10.2307/3053692.

[23] Verdier and Voeten, "How Does Customary International Law Change?"

[24] Luzius Wildhaber, Arnaldur Hjartarson, and Stephen Donnelly, "No Consensus on Consensus? The Practice of the European Court of Human Rights," *Human Rights Law Journal* 33, no. 7–12 (2013): 248–63.

[25] Wildhaber, Hjartarson, and Donnelly, 253; Kanstantsin Dzehtsiarou, "European Consensus and the Evolutive Interpretation of the European Convention on Human Rights," *German Law Journal* 12, no. 10 (2011): 1731–45; Kanstantsin Dzehtsiarou, *European Consensus and the Legitimacy of the European Court of Human Rights* (Cambridge: Cambridge University Press, 2015); Panos Kapotas and Vassilis P. Tzevelekos, *Building Consensus on European Consensus: Judicial Interpretation of Human Rights in Europe and Beyond* (Cambridge University Press, 2019).

lack thereof – on a regional level and used this analysis to bolster the legitimacy of its expansive interpretation.[26]

Consensus analysis is useful for studying custom for two reasons. First, it helps one distill whether state practice indeed converges around an issue area, as the studies on European consensus has well documented. Second, it demonstrates whether the pronouncements about the existence of customary law or lack thereof resonate with the state practice, which the literature has largely overlooked. This is precisely what we seek to analyze in this study. Instead of studying whether the ICJ decisions reflect state practice, we examine how the ICJ decisions influence the possibility of forming interstate consensus around a delimitation method. In so doing, we show what comes after custom and contribute to the emergent literature on customary international law.

Our inquiry will be limited to the study of practices in Europe, Mediterranean Middle East, and North Africa. We expect that these states will show a certain degree of uniformity in their uses of the sea and will be similarly likely to have specific policies with regards to how they should be divided and used.[27] Moreover, limiting the scope of our analysis will help us better trace the moments when consensus forms and fails to form.

Seeking Consensus for *the* Method for Continental Shelf Delimitation

Finding *the* Method: Rules and Rulings about Continental Shelf Delimitation

Finding an ideal method for continental shelf delimitation has been an arduous, and confusing process. It was not always this way, however. Article 6 of the 1958 Geneva Convention on the Continental Shelf had once established that "in the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured."[28] This provision clearly identifies using equidistance (median line) as *the* method of delimiting continental shelf.

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[26] Dzehtsiarou, *European Consensus and the Legitimacy of the European Court of Human Rights*; Kanstantsin Dzehtsiarou and Conor O'Mahony, "Evolutive Interpretation of Rights Provisions: A Comparison of the European Court of Human Rights and the U.S. Supreme Court," *Columbia Human Rights Law Review* 44 (2013 2012): 309–66.

[27] Amir Goldberg and Sarah K. Stein, "Beyond Social Contagion: Associative Diffusion and the Emergence of Cultural Variation," *American Sociological Review* 83, no. 5 (2018): 897–932, https://doi.org/10.1177/0003122418797576.

[28] International Law Commission, *Convention on the Continental Shelf*, 29 April 1958, United Nations, Treaty Series, vol. 499, p. 311, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXI-4&chapter=21&clang=_en [accessed 6 February 2019]

The reason why there arose any significant confusion about the rule contained in this provision is the ICJ's 1969 *North Sea Continental Shelf Cases* decision.[29] What gave grounds to this case was a disagreement between Germany, on the one hand, and Denmark and the Netherlands, on the other, with respect to the method to be employed for continental shelf delimitation. While the former requested that the boundary between them to be determined in a manner to give all parties a fair and equitable share, the latter argued that the boundary should be determined in line with equidistance principle. This was because, as Denmark and the Netherlands argued, the equidistance principle represented customary law. Therefore, it would bind Germany even if it is not a party to the Geneva Convention.

The ICJ was confronted with a big dilemma. Entertaining Danish and Dutch position would mean solidifying the equidistance method as a custom and locking in states that are not party to the 1958 Geneva Convention. This dilemma was not entirely inevitable, however. The ICJ could have just avoided settling this matter in this case. It could have identified Germany's position as an exception due to the *special circumstances*. After all, Germany is surrounded by Denmark and the Netherlands. But it did not. It met the problem head on. Here with this case, it decided that Article 6 of the Geneva Convention did *not* reflect customary law.

Before coming to that conclusion, the Court carefully analyzed whether Article 6 would ordinarily bind Germany. To that effect, it listed the number of signatories (46 at the time) and ratifications (39 at the time) to the Geneva Convention. While Denmark and the Netherlands were parties to the Convention, Germany was only a signatory, and therefore not officially a party. The ICJ effectively concluded that Germany did not have obligations directly deriving from the treaty.[30] Subsequently, it turned to the thorny question of whether Germany would be bound in view of the fact that the equidistance principle is a custom. To answer this question, the ICJ started with explaining the genesis and the development of the equidistance principle. In particular, it referred to the Truman Proclamation of 1945, which does not mention equidistance, but talks of equitable principles.[31] Then, it underlined that International Law Commission (ILC) or the Committee of experts had never given special prominence to equidistance while considering the issues surrounding the delimitation.[32]

Furthermore, it evaluated the Danish and Dutch claim that even if the principle of equidistance was not crystalized as custom before the Geneva Convention, it certainly did so subsequent to its adoption. Yet, the ICJ did not find this argument convincing. Specifically, it said that "the number of ratifications and accessions so far secured is, though

[29] *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark, Federal Republic of Germany/Netherlands* (Judgment) [1969] ICJ Rep 3.
[30] *North Sea Continental Shelf Cases,* [26]-[26].
[31] *North Sea Continental Shelf Cases,* [47].
[32] *North Sea Continental Shelf Cases,* [49]-[55].

respectable, hardly sufficient," for the Convention provisions to reflect custom.[33] It further added that customary law would require the following: "[D]elimitation is to be effected by agreement *in accordance with equitable principles*, and taking account of all *the relevant circumstances*, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other."[34]

This decision opened the possibility of two different approaches to delimitation, either "equidistance/special circumstances" rule under Article 6, or "equitable principles/relevant circumstances." The latter approach endorsed in the *North Sea Continental Shelf Cases* judgment has been known to be a relatively more open. This decision effectively obliterated any chance for achieving consensus around one method. It created a rift between two camps of states, each backing one method of choice. During the UNCLOS III, these camps pushed for the method that suited their interests the best. As a result, there was no consensus around this issue. Therefore, the drafters introduced a vague formula under Article 74(1) and 83(1) of the Law of the Sea Convention (LSOC).[35] It provides that delimitations are to 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".[36] The drafters carefully avoided the controversial terms such as equidistance, equitable principles, special circumstances, or relevant circumstances. Yet at the same time, they left little guidance as to how to delimit the boundaries of continental shelves. It would be up to the judicial bodies to articulate a consistent and predictable rule.

Around the time of the LOSC's adoption, the ICJ delivered three judgments, all of which emphasized the role of equity at the expense of equidistance: *Tunisia/Libyan Arab Jamahiriya*; *Canada v United States of America; Libyan Arab Jamahiriya v Malta.* [37] Finally, the tides turned with 1993 *Jan Mayen* judgment, where the ICJ announced that "[p]rima facie, a median line delimitation between opposite coasts results in general in an equitable solution."[38] As we will see in the analysis part, however, the damage was already done until

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[33] *North Sea Continental Shelf Cases,* [57].

[34] *North Sea Continental Shelf Cases,* [101(1)] (emphasis added).

[35] UN General Assembly, *Convention on the Law of the Sea*, 10 December 1982, available at: https://treaties.un.org/PAGES/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en [accessed 7 February 2019]

[36] Ibid.

[37] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* (Judgment) [1982] ICJ Rep 18; *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v United States of America)* (Judgment) [1984] ICJ Rep 246 (hereinafter *Gulf of Maine*); *Continental Shelf (Libyan Arab Jamahiriya/Malta)* (Judgment) [1985] ICJ Rep 13 (hereinafter *Libya v Malta)*

[38] *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v Norway)* (Judgment) [1993] ICJ Rep 38, [64] (hereinafter *Jan Mayen*)

this point. The ICJ's *North Sea* decision not only gave the legal grounds to claim two different methods of delimitation but also dealt a blow at the possibility of having state consensus around one delimitation method.

Then, in 2001 in *Qatar v. Bahrain,* the ICJ accepted the equidistance/special circumstances method as a rule of customary international law.[39] This time the ICJ described drawing a provisional line based on the equidistance principle and then adjusting it if special circumstances require as "the most logical and widely practiced approach."[40] Curiously, it did not refer to the state practice or *opinio juris* while arriving to this conclusion. This judgment immediately become a gold standard, and the logic presented here was subsequently confirmed in the *Nicaragua v Honduras* decision.[41]

The ICJ did not stop there, and continued to clarify things. In the 2009 *Black Sea* case, it attempted to systematize delimitation practice by introducing a three-stage approach and merging the principles of equidistance and equity: i) draw a provisional line (an equidistance line for adjacent coasts unless there are compelling reasons that make this exercise *unfeasible*, and a median line for opposite coasts); ii) consider the factors which might necessitate shifting or adjusting this provisional line; and iii) verify that this line does not lead to an inequitable result.[42]

The ITLOS endorsed this three-stage test in *Bay of Bengal* in 2012,[43] and the ICJ reiterated it in *Peru v Chile* in 2014.[44] However, they both modified it in a way that undermined the centrality of equidistance in the whole exercise. The ITLOS put more emphasis on an equitable solution and favored a bisector methodology over equidistance.[45] It specifically underlined that "[t]he goal of achieving an equitable result must be the paramount consideration guiding the action of the Tribunal (…) the method to be followed should be one that, under the prevailing geographic realities and the particular circumstances of each case, can lead to an equitable result."[46] In *Peru v Chile*, the ICJ revised the first stage of the method. It pronounced that provisional equidistance line for *both adjacent and opposite coasts* would be drawn unless there are compelling reasons not to do so. This effectively replaced *unfeasible* with any other compelling reason, and allowed

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[39] *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v Bahrain)* (Merits) (Judgment) [2001] ICJ Rep 40, [175]–[176].

[40] *Qatar v Bahrain,* [176].

[41] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v Honduras)* (Judgment) [2007] ICJ Rep 659, [268] and [281]

[42] *Maritime Delimitation in the Black Sea (Romania* v *Ukraine)* (Judgment) [2009] ICJ Rep 61, [116].

[43] *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar)* (Judgment) [2012] ITLOS Rep 12 [240].

[44] *Maritime Dispute (Peru v Chile),* (Judgment) [2014] ICJ Rep 3 [91]–[92].

[45] This method has not been used since 1980s, and it is generally used for lateral boundary between adjacent mainland coasts.

[46] *Bay of Bengal,* [235].

an easier way out of drawing an equidistance-based provisional line. Similar to the ITLOS, the ICJ also revealed that the method it applies should have "the aim of achieving an equitable solution."[47]

Prior to this, in *Nicaragua v Colombia*, the ICJ went so far as to advance that "the three-stage process is not, of course, to be applied in a mechanical fashion and… it will not be appropriate in every case to begin with a provisional equidistance/median line."[48] Be that as it may, it decided to apply the three-stage method for that case.[49] This zigzagging certainly contributed to the semantic and legal confusion around the one true delimitation method. But more practically, both *Nicaragua v Colombia* and *Peru v Chile* signaled that the ICJ effectively backtracked from the determinant approach that it once took in *Black Sea.* As a matter of fact, both the ICJ and the ITLOS tacitly and openly divulged that delimitation's true purpose is to reach an equitable solution. This led academics to conclude that they are bringing equity back in. Equity "couched in the language of equidistance" is re-emerging as the dominant approach.[50]

To summarize this long plot with several twists, the equidistance principle, codified under the Geneva Conventions of 1958 had a firm standing until the ICJ sanctioned a rival delimitation method: the equity principle. This meant that the states and the tribunals could freely pick and choose between these two dominant delimitation methods for a period. Then, in 1993, the ICJ ruled that the equidistance principle could in fact lead to an equitable outcome. This decision effectively heralded that the logic of equity would be blended into equidistance-based delimitation method. Then, in 2001, the ICJ reversed its own 1969 *North Sea* decision, and acknowledged the equidistance/special circumstance method (to be infused with the equity principle) as a rule of customary international law. How did all these twists and turns influence the chances of forming a consensus around a method? To answer this question, we now turn to our analysis on state behavior.

The Evolution of Consensus over the Delimitation Rule

How much of the preceding narrative is actually corroborated by an actual examination of state practice? We expect that there will be visible trends in the way states formulate their preferences depending on how international courts (and court-like bodies) rule about the (non) customary nature of certain rules. The convergence around preferred rules evolve in light of the authoritative declarations about whether a rule is custom or not.

To guide our analysis, we begin with a series of basic propositions about what we would typically expect. If the existence of a unique rule serves a coordinating function that

[47] *Peru v Chile,* [184].

[48] *Territorial and Maritime Dispute (Nicaragua v Colombia)* (Judgment) [2012] ICJ Rep 624, [141].

[49] *Nicaragua v Colombia,* [199].

[50] Malcolm Evans, "Maritime Boundary Delimitation," *The Oxford Handbook of the Law of the Sea*, March 1, 2015, https://doi.org/10.1093/law/9780198715481.003.0012.

benefits states using it, we expect such benefits to increase as the number of states adopting the rule increases. As such, we should not be surprised to find a diffusion curve with a number of early adopters leading to further diffusion, until virtually all states adopt the rule.

We posit that maritime delimitation would benefit states involved, and a rule that makes delimitation an easy exercise can be expected to serve as a potential customary rule that could attract more and more states to it. We suggest that *equidistance* is such a simple delimitation rule that it would make maritime boundary making a mere technical issue – on the condition that every state agrees to it. We could reasonably expect equidistance to serve as a focal method, recognized as the most straightforward way of delimiting maritime boundaries. This should be ideally the case even when some states would lose out by the application of equidistance — i.e. differences in how much each state gets when strict equidistance is strictly applied (distributional consequences). Again hypothetically, we could suppose such states would still prefer the existence of a simple rule that allows them to delimit their boundaries. This should be favorable to a situation of legal void or contending delimitation rules where gains from delimitation are not realized. By solving this coordination problem, this parsimonious rule would provide enormous gains for the rest of the community. The recognition of this potential should lead states to promote that rule, for instance, by adopting it in their practice and codifying it in treaties. The states should also have an interest in seeing that rule applied by courts and tribunals until the rule becomes customary, for the benefit of all states.

We assess these expectations by examining *state practice* concerning maritime boundary delimitation. Our results conflict with our expectations in two respects. First, states seem to care much more about the distributional consequences of the rule even though having a clear rule would have facilitated boundary settlement and avoided disputes. Some states disadvantaged by the general application of equidistance, its distributional consequences, have entered into disputes and resorted to the courts. This brings to our second point: instead of declaring the rule to be customary, the judges initially decided to give reason to those states that wished not to be bound by equidistance principle. The result was a significant disruption of the diffusion of the equidistance rule. Germany was one of the states and took its case to the ICJ. The ICJ could have held that equidistance was the simplest solution on the books that, if promoted as customary, would have reduced the rate of conflict to a great extent by facilitating delimitation. But it instead wanted to please both sides, and on top of that, made bold statements about how equidistance was not customary. After that, states had another chance to converge around equidistance, but they could not agree to it. This is the process that we illustrate in what follows.

We focus on a specific set of practices—the *policies of states with respect to the appropriate delimitation rule.* Our time period extends from 1960 to 2016. As a first cut, we

focus on states in Europe, North Africa, and the Eastern Mediterranean, where state composition remains relatively stable over the time we are interested in studying.[51] The coastal states included in these two regions are adjacent to semi-enclosed seas like the Mediterranean and the Baltic Sea on the one hand and the Atlantic Ocean on the other.

For classification of state positions, we rely on Leonard Legault and Blair Hankey, who distinguish between the following three categories: (1) "Equidistance Strict or Simplified," (2) "Modified Equidistance," and (3) "Non Equidistance". The difference between the first two categories is explained by the authors as follows:

> A modified equidistant line is one based on equidistance principles but composed of segments connecting points whose position is not strictly equidistant from the territorial sea baselines because certain features, such as islands, rocks, or low-tide elevations have not been used or have been given reduced effect. Such a line generally involves a greater departure from strict equidistance than does a simplified equidistant line. Moreover, and more to the point, whereas a simplified line typically involves an equal exchange of areas, a modified equidistant line generally involves the allocation of maritime space to one party at the expense of the other, when compared to the allocation effected by a strict equidistant line. As is demonstrated below, the possibilities for modifying an equidistant line are almost limitless and the resulting modifications can be so substantial that the final boundary may bear only a tenuous relationship to the notion of equidistance.[52]

We rely on Legault and Hankey's data until 1993 and identify the rest of the state positions in various ways. First, we examine states' domestic legislation for provisions where they express their positions on the appropriate delimitation rule. Some states, like Greece, clearly provide that equidistance rule should be applied in the delimitation of maritime areas. Second, we look at state commitments that may imply adoption of a specific position. One important example of this is the ratification of the 1958 Continental Shelf Convention, where the equidistance rule is provided for the continental shelf delimitation. Netherlands ratified the 1958 CSC on 18 February 1966; hence it is coded to have opted for strict or simplified equidistance from 1966 onwards.

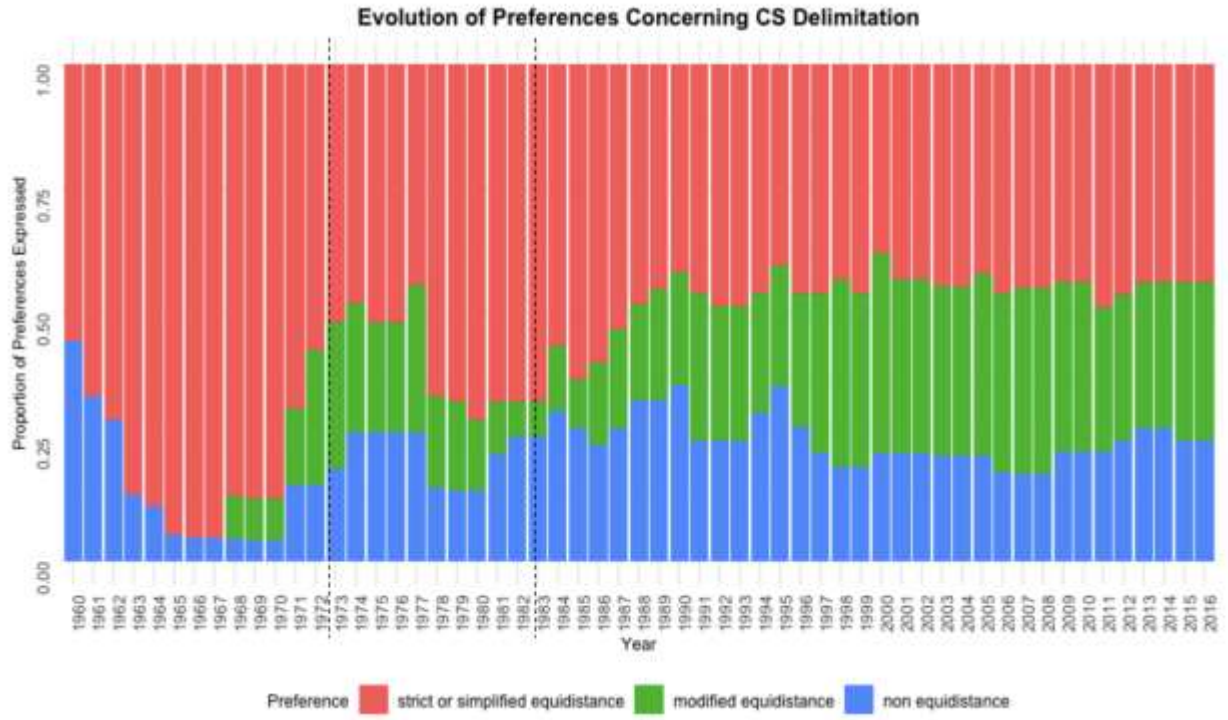
Third, we inspect bilateral treaties which help us deduce the adherence to a position by one or both of the states. For instance, Finland and Sweden signed a maritime boundary agreement on 29 September 1972 where it is clearly stated that "the boundary shall in principle be a median line taking account of special circumstances."[53] Both countries are coded as having opted for strict or simplified equidistance from 1972 onwards if they were not already coded as such. Finally, we look at judicial proceedings of delimitation cases

[51] By comparison, the number of states in Africa rose from 9 to 26 in 1960 and is 54 today.
[52] Legault, Leonard, and Blair Hankey. 1993. Method, Oppositeness and Adjacency, and Proportionality in Maritime Boundary Delimitation. In *International Maritime Boundaries*, edited by J. I. Charney and L. M. Alexander. Dordrecht: Martinus Nijhoff Publishers.
[53] IMB Report No. 10-3.

where positions may be put forward by the states involved in the proceedings or discussed by judges and/or arbitrators.

We first present the distribution of categories over time. **Figure 1** below shows the proportion of expressed preferences belonging to each of the three categories for every year between 1960 and 2016. This ignores country-years where we have not been able to identify a preference.

Figure 1. Evolution of state preferences concerning continental shelf delimitation rule in Europe, North Africa, and the Eastern Mediterranean.



As we can see, an initial move towards forming a consensus around strict or simplified equidistance in the 1960s seems to have given way from the early 1970s onwards, where this method was only preferred by half of the countries in Europe, the Eastern Mediterranean, and North Africa. Equidistance seems to have gained some ground at the end of the 1970s – just to lose support again relative to modified equidistance and non-equidistance later on. We also observe that since 1998 the relative popularity of each method seems to have stabilized. The state support for the methods has remained consistently divided, however. This patchwork picture indicates that it is highly difficult to achieve a consensus around a single method.

To examine what may lie behind the varying levels of support in more detail, we look for change points for each category.

Figure 2 below focuses on the first category – *strict or simplified equidistance*. The algorithm used identifies sudden changes in the proportion of preferences expressed in favor of strict or simplified equidistance. We choose the optimal number of change points based on the jumps in the reduction of sum of squared residuals. For strict or simplified equidistance, this gives us six change points at the following years: **1964**, **1972**, **1978**, **1987** and **2006**. Around each year there is a clear change in the proportion of preferences for strict or simplified equidistance. What can be seen is that strict or simplified equidistance reach their peak popularity before the second change point – 1972. The upward trend seems to have been broken a year before 1972. After that change point, strict or simplified equidistance had a period of decline, followed by some gains later on close to the end of the 1970s. Another slump in popularity can be seen around 1987.

What does this tell us in terms of the track record of consensus? It is clear that the emergence of consensus around equidistance was cut short some time at the beginning of 1970—a year after the ICJ rendered its *North Sea Continental Shelf Cases* judgment. What is also interesting to note is that none of the points that could be used as cut-off points seem to coincide with treaty negotiation histories. This is contrary to what accounts on formal legal change would predict. For instance, during the negotiations for the 1982 LOSC (1973-1982), there is only one cut-off point identified, and it corresponds to neither the beginning nor the end of the negotiations – moments that are particularly likely to give rise to change.

Figure 2. Change points in the evolution of the proportion of states opting for strict or simplified equidistance in continental shelf delimitation.

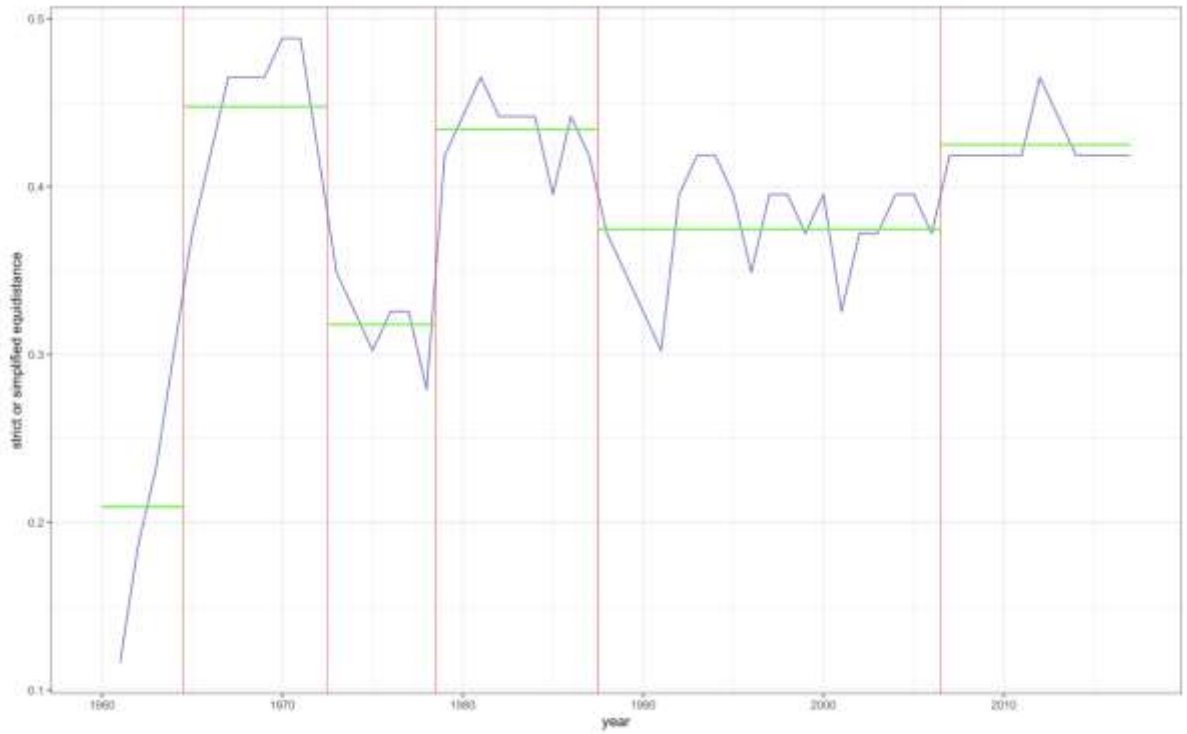
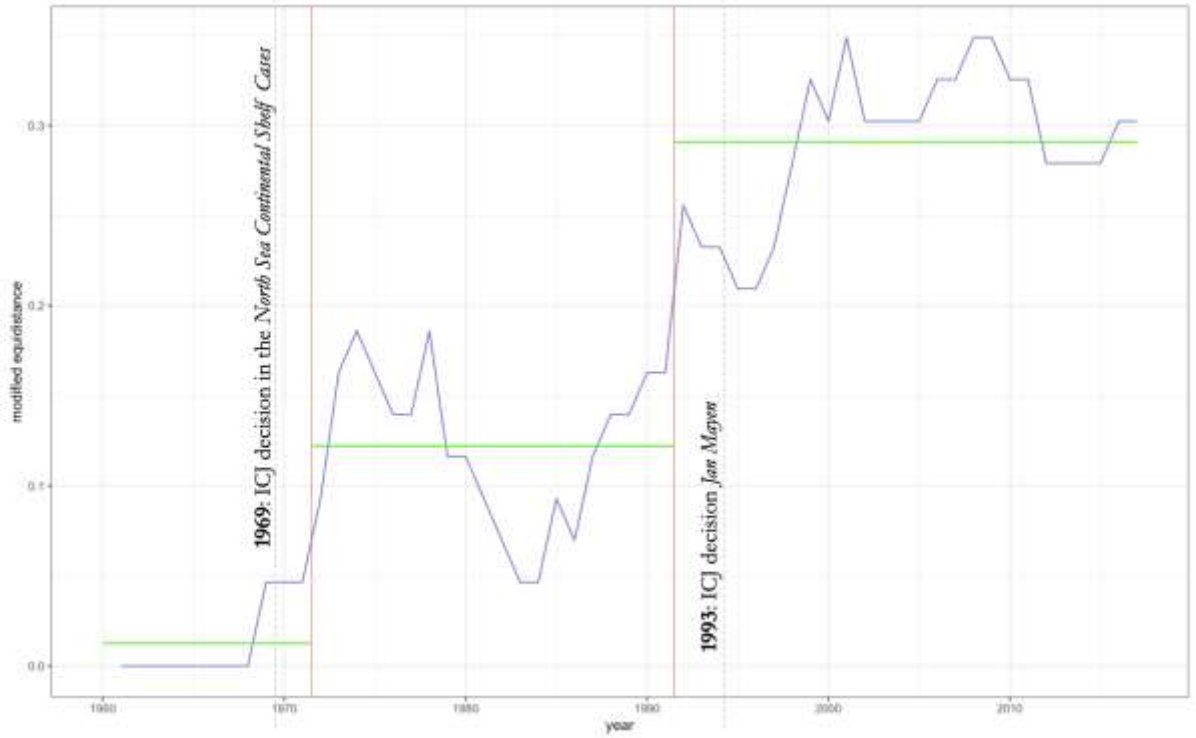


Figure 3 depicts the evolutionary trend for the modified equidistance, with change points identified in **1971** and **1991**. Instead of the ups and downs observed in strict or simplified equidistance, we clearly see an upward trend in the popularity of modified equidistance throughout the time period. Note that 1971 represents a jump in the modified equidistance's popularity and at the same time marks the beginning of a downward trend for strict or simplified equidistance.

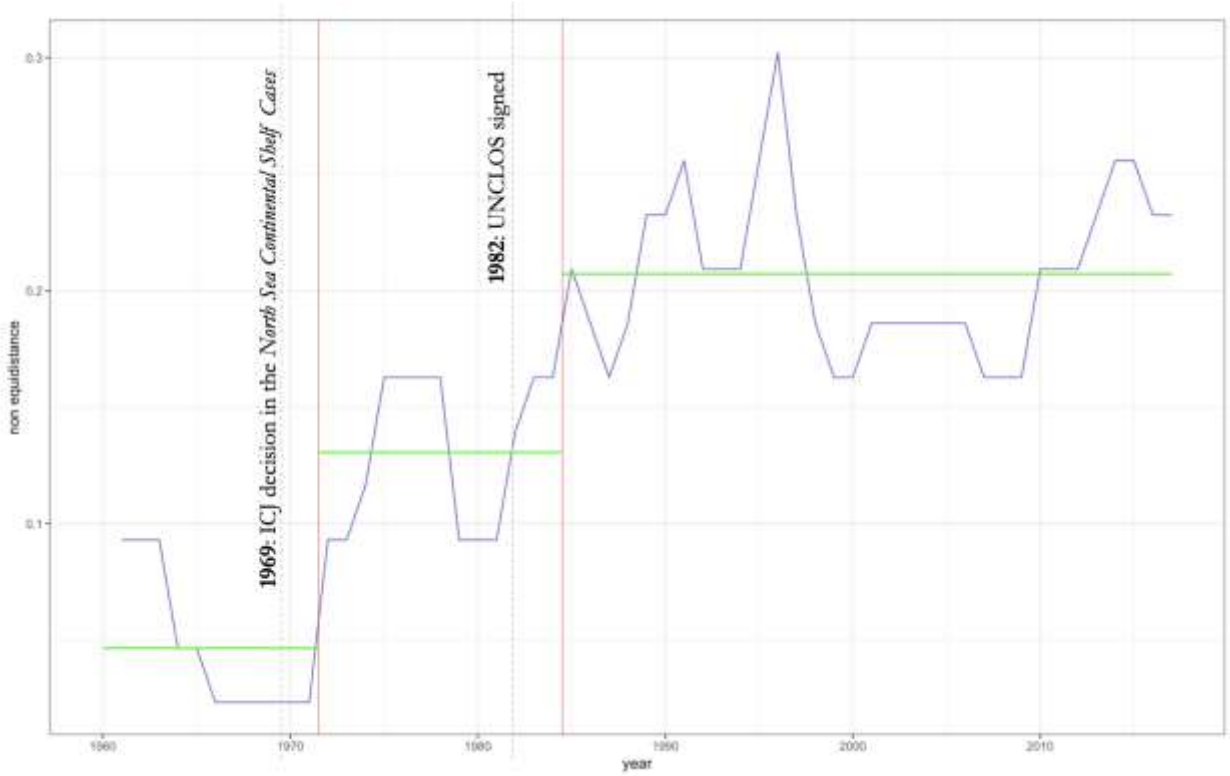
In a sense, it is not entirely surprising. Modified equidistance emerges as a middle ground, a tradeoff between strict equidistance and an approach that completely ignores the median line. It is also not surprising to see a boost in support for modified equidistance from the beginning of 1990s. The 1993 *Jan Mayen* case may have provided a justification for countries to adopt it as a way of beginning with the median line and adjusting it as deemed necessary. Despite *Jan Mayen* and other similar subsequent decisions, modified equidistance seems to have had limited gains, with non equidistance still favored by an important proportion of states.

Figure 3. Change points in the evolution of the proportion of states opting for modified equidistance in continental shelf delimitation.



When we finally turn to the examination of the evolution of non equidistance, represented in **Figure 4**, we have another series of overall upward trends. The change points identified here are **1971** and **1984**.

Figure 4. Change points in the evolution of the proportion of states opting for non-equidistance in continental shelf delimitation.



Just by looking at the figures, we can see that for all of these methods either 1971 or 1972 is identified as a change point. This suggests that the ICJ's 1969 judgment had a significant impact on states' preferences for these methods. It was a watershed moment undercutting the dominance of strict or simplified equidistance, and boosting the popularity of modified equidistance and non-equidistance. We should also note that 1984 and 1991 also emerge as years after which there is an increase in the popularity of modified equidistance and non-equidistance.

To these plots we may juxtapose what has been identified as important junctures for the development of the law of maritime delimitation (i.e. the signature and entry into force of the 1958 Continental Shelf Convention and 1982 Law of the Sea Convention, the 1969 ICJ judgment on the North Sea Continental Shelf cases. The 1969 ICJ judgment seems to have broken the momentum of strict or simplified equidistance. However, interestingly, we see that strict equidistance seems to make a comeback in the late 1970s as a preferred method. This paradoxically coincides with a time when the equidistance rule was taken out of the text of the 1982 Law of the Sea Convention with regards to the delimitation of the continental shelf and the exclusive economic zone.

These findings lead us underline three observations. First, state practice does not always follow what might otherwise be assumed from treaty texts. Therefore, it would not be a good idea to use treaty-related years as cut-off points in the study of how law evolves

and has effects on state behaviour, as the literature has done so far. Second, court decisions may not always solidify customary rules or block their emergence. Courts may also do harm to legal certainty by introducing rival rules – inadvertently or otherwise – and engendering legal confusion. Finally, courts' decisions sanctioning the existence of custom may not automatically translate into state practice. This is particularly the case when the courts' repertoire of past decisions includes rulings to the opposite effect.

Concluding Discussion

In this paper we have proposed a way of tracing consensus around a rule or interpretation thereof over time. We have suggested that consensus analysis contains important information that scholars and practitioners should have to understand what law is in a given time and how it changes. We have also argued that it would be wrong to rely entirely on moments related with treaty making to draw boundaries between the states of law at different times.

Our discussion has been limited to a specific area of the world, and we are thus unable to speak to how the rule of maritime delimitation evolved elsewhere. A similar examination can be carried out for other regions or globally, so can similar analysis on different rules of law in different issue areas. From the foregoing discussion and results, we may at least be able to draw some propositions that deserve attention in further such studies.

Consensus may be less likely to be formed if there are legal authorities that can legitimately propose a different rule. To be sure, it is hard to draw a counterfactual where consensus would have occurred if the courts had not intervened, or if they intervened in support of the one rule that might have been questioned. We can at least propose, however, that in issue areas with adjudicative bodies or institutions that provide rules and interpretations periodically, there is a danger of rule consensus being damaged, sometimes irreparably. This is because precedents to the opposite effect may be sticky and be employed as a rhetorical justification against the emerging customary rule. This also leads us to expect that once *once legal confusion is introduced, consensus is less likely to be formed.*

Consensus is less likely to be formed where distributional consequences of settling for one rule or seeking an alternative are non-negligible. If there are no distributional consequences to which rule or interpretation is adopted, we may expect consensus to be more forthcoming, especially if agreement on the same rule benefits the system and its members by providing predictability. If, however, the zero-sum aspect weighs heavier than the gains from cooperation, we are likely to expect attempts to unsettle a rule by those who expect great disadvantage from the spread of it. This is in line with what Helfer and Wuerth propose regarding the possibility of the successful diffusion of norms.

The study of the overlap between state-action path and judicial path helps us evaluate the facilitating or hindering role played by institutions (judicial or otherwise), which are available to cement or unsettle law, in forming custom and shaping state practice. The emergence of consensus or custom may have twists and turns especially when states are able to bring in institutions to intervene in the development of law. In these instances, the latter may offer a range of options for the former – from providing a focal point or planting the seeds of legal disagreement. Hence, it is harder to predict how and when a consensus emerges. In the absence of institutions, for example, we may expect change attempts to be more bottom-up, through persuasion of other states. This is where a focus on treaty-making may have a better chance of capturing how rules evolve. But when institutions intervene they are bound to have significant role in shaping subsequent practice, sometimes without intending to do so, and despite further interventions that may want to correct some of the earlier damage done.

Appendix

Coding Summary

Country	Domestic	Bilateral	1958 CS	1982 LOS	Coding
Albania	1970 (.)	1992 (equidistance strict or simplified)	7 Dec 1964 a	23 Jun 2003 a	1964- (equidistance strict or simplified)
Algeria	(.)	2009 (equidistance strict or simplified)		11 Jun 1996	2009- (equidistance strict or simplified)
Belgium	1969 (equidistance)	1990 (non equidistance) 1991 (non equidistance) 1996 (modified equidistance)		13 Nov 1998	1969-1989 (equidistance) 1990-1995 (non equidistance) 1996- (modified equidistance)
Bosnia and Herzegovina	(.)	1999 (equidistance strict or simplified)	12 Jan 1994 d	12 Jan 1994 s	1999 (equidistance strict or simplified)
Bulgaria	1962 (.) 1987 (equity) 2000 (equity)	1997 (equidistance strict or simplified)	31 Aug 1962 a	15 May 1996	1962-1986 (equidistance strict or simplified) 1987-1996 (non equidistance) 1997-1999 (equidistance strict or simplified) 2000- (non equidistance)
Croatia	1994 (equidistance)	1999 (equidistance strict or simplified) 2009 (non equidistance) 2013 (equidistance)	3 Aug 1992 d	5 Apr 1995 s	1994-2008 (equidistance) 2009- (non-equidistance) 2013- (equidistance)
Cyprus	1972 (.) 1974 (.)	1960 (equidistance strict or simplified) 2003 (equidistance strict or simplified) 2007 (equidistance strict or		12 Dec 1988	1960- (equidistance strict or modified)

		simplified) 2010 (equidistance strict or simplified)			
Denmark	1963 (equidistance) 1999 (.) 2004 (.) 2009 (.)	1965 (equidistance strict or simplified) 1965 (equidistance strict or simplified) 1965 (equidistance strict or simplified) 1966 (equidistance strict or simplified) 1971 (non equidistance) 1973 (modified equidistance) (Greenland) 1984 (modified equidistance) 1988 (equidistance strict or simplified) 1979 (equidistance strict or simplified) (Faroes) 1995 (non equidistance) (Greenland) 1997 (modified equidistance (Greenland) 1999 (equidistance strict or simplified) (Faroes) 1999 (equidistance	12 Jun 1963	16 Nov 2004	1963-1970 (equidistance strict or modified) 1971-1972 (non equidistance) 1973-1987 (modified equidistance) 1988-1994 (equidistance strict or simplified) 1995-1996 (non equidistance) 1997-1998 (modified equidistance) 1999-2006 (equidistance strict or simplified) 2007- (modified equidistance)

		strict or simplified) (Faroes) 2006 (equidistance strict or simplified (Greenland) 2007 (modified equidistance) (Faroes)			
Egypt	1958 (.)	2003 (equidistance strict or simplified)		26 Aug 1983	2003- (equidistance strict or simplified)
Estonia	1993 (.)	1996 (equidistance strict or simplified) 1998 (modified equidistance) 2001 (equidistance strict or simplified) 2005 (modified equidistance)		26 Aug 2005	1996-1997 (equidistance strict or simplified) 1998-2000 (modified equidistance) 2001-2004 (equidistance strict or simplified) 2005- (modified equidistance)
Finland	1965 (.)	1965 (equidistance strict or simplified) 1967 (equidistance strict or simplified) 1972 (modified equidistance) 1980 (equidistance strict or simplified) 1985 (equidistance strict or simplified) 1994 (non equidistance) (Bogskar Area)	16 Feb 1965	21 Jun 1996	1965-1971 (equidistance strict or simplified) 1972-1979 (modified equidistance) 1980-1993 (equidistance strict or simplified) 1994-1995 (non equidistance) 1996- (equidistance strict or simplified)

		1996 (equidistance strict or simplified) 2001 (equidistance strict or simplified)			
France	1968 (.) 1977 (.) 2006 (.) 2007 (.) 2009 (.) 2009 (.) 2009 (.) 2009 (.) 2012 (.) 2014 (.)	1960 (non equidistance) (with Portugal over Senegal) 1972 (modified equidistance) 1974 (modified equidistance) 1977 (modified equidistance) 1982 (equidistance strict or simplified) 1984 (non equidistance) 1986 (modified equidistance) 1988 (equidistance strict or simplified) 1990 (non equidistance) 1991 (equidistance strict or simplified) 1992 (equidistance strict or simplified) 2000 (modified equidistance) 2011 (equidistance strict or simplified)	14 Jun 1965 a	11 Apr 1996	1960-1964 (non equidistance) 1965-1971 (equidistance strict or simplified) 1972-1981 (modified equidistance) 1982-1983 (equidistance strict or simplified) 1984-1985 (non equidistance) 1986-1987 (modified equidistance) 1988-1989 (equidistance strict or simplified) 1990-1990 (non equidistance) 1991-1999 (equidistance strict or simplified) 2000-2010 (modified equidistance) 2011-2014 (equidistance strict or simplified) 2015- (modified equidistance)

		2015 (modified equidistance)			
Georgia	1998 (.)			22 May 1996	(.)
German Democratic Republic	1964 (.)	1974 (non equidistance) 1978 (equidistance strict or simplified) 1988 (equidistance strict or simplified) 1989 (non equidistance)	27 December 1973 a		1973-1973 (equidistance strict or simplified) 1974-1977 (non equidistance) 1978-1988 (equidistance strict or simplified) 1989-1990 (non equidistance)
Germany	1964 (.)	1964 (equidistance strict or simplified) 1965 (equidistance strict or simplified) 1971 (non equidistance) 1971 (non equidistance) 1971 (modified equidistance) 1974 (non equidistance)		14 Oct 1994 a	1964-1970 (equidistance strict or simplified) 1971- (non equidistance)
Greece	1959 (.) 1969 (.) 2011 (equidistance)	1960 (equidistance strict or simplified) (Cyprus) 1977 (modified equidistance) 2009 (equidistance strict or simplified)	6 Nov 1972 a	21 Jul 1995	[1960-1976 (equidistance strict or simplified)] rather 1972-1976 1977-2008 (modified equidistance) 2009- (equidistance strict or simplified)
Iceland	1969 (.) 1979 (equidistance) 1985 (equidistance	1981 (non equidistance) 1997 (modified equidistance) 2007		21 Jun 1985	1979-1980 (equidistance strict or simplified) 1981-1984 (non equidistance) 1985-1996 (equidistance strict or simplified)

	) 2009 (.)	(modified equidistance)			1997- (modified equidistance
Ireland	1968 (.) 1974 (.) 2005 (.) 2006 (.) 2009 (.)	1988 (non equidistance) 1992 (non equidistance) 2013 (non equidistance)		21 Jun 1996	1988- (non equidistance)
Israel	1953 (.)	2010 (equidistance strict or simplified)	6 Sep 1961		1961- (equidistance strict or simplified)
Italy	1967 (.) 1978 (equity) 2012 (equity)	1968 (modified equidistance) 1971 (modified equidistance) 1974 (equidistance strict or simplified) 1975 (equidistance strict or simplified) 1977 (modified equidistance) 1986 (modified equidistance) 1992 (equidistance strict or simplified) 2015 (modified equidistance)		13 Jan 1995	1968-1973 (modified equidistance) 1974-1976 (equidistance strict of simplified) 1977-1977 (modified equidistance) 1978-1985 (non equidistance) 1986-1991 (modified equidistance) 1992-2011 (equidistance strict or simplified) 2012-2014 (non equidistance) 2015- (modified equidistance)
Latvia	1993 (.)	1996 (modified equidistance)		23 Jan 2004 a	1996 - (modified equidistance)
Lebanon	2010 (equidistance)	2007 (equidistance strict or simplified)		5 Jan 1995	2007- (equidistance strict or simplified)
Libya	1955 (equity)	1982 (non equidistance) (ICJ) 1986 (modified			1955-1985 (non equidistance) 1986- (modified equidistance)

		equidistance)			
Lithuania	2004 (.)			12 Nov 2003 a	
Malta	1966 (equidistance)	1986 (modified equidistance)	19 May 1966 d	20 May 1993	1966-1985 (equidistance strict or simplified) 1986- (modified equidistance)
Monaco		1984 (non equidistance)		20 Mar 1996	1984- (non equidistance)
Montenegro			23 Oct 2006 d	23 Oct 2006 d	(.)
Morocco	1958 (equity)			31 May 2007	1958- (non equidistance)
Netherlands	1965 (.) 2003 (.)	1964 (equidistance strict or simplified) 1965 (equidistance strict or simplified) 1965 (equidistance strict or simplified) 1966 (equidistance strict or simplified) 1971 (non equidistance) 1996 (modified equidistance)	18 Feb 1966	28 Jun 1996	1964-1970 (equidistance strict or simplified) 1971-1995 (non equidistance) 1996- (modified equidistance)
Norway	1963 (equidistance) 1964 (equidistance) 1965 (.) 1985 (equidistance)	1957 (non equidistance) 1965 (equidistance strict or simplified) 1968 (equidistance strict or simplified) 1978 (equidistance strict or simplified) 1979 (equidistance strict or simplified) 1982 (non equidistance)	9 Sep 1971 a	24 Jun 1996	1957-1962 (non equidistance) 1963-1981 (equidistance strict or simplified) 1982-1984 (non equidistance) 1985-1994 (equidistance strict or simplified) 1995-2005 (non equidistance) 2006- (equidistance strict or simplified)

		(Jan Mayen) 1995 (non equidistance (Jan Mayen) 2006 (equidistance strict or simplified)			
Poland	1977 (.)	1969 (equidistance strict or simplified) 1985 (non equidistance) 1985 (equidistance strict or simplified) 1989 (modified equidistance) 1989 (non equidistance)	29 Jun 1962	13 Nov 1998	1962-1988 (equidistance strict or simplified) 1989- (modified equidistance)
Portugal	1956 (.) 1979 (equidistance) 2006 (equidistance) 2009 (.)	1960 (non equidistance) (in Africa with France)	8 Jan 1963	3 Nov 1997	1960-1962 (non equidistance) 1963- (equidistance strict or simplified)
Romania	1962 (.)		12 Dec 1961 a	17 Dec 1996	1961- (equidistance strict or simplified)
Russian Federation/USSR	1968 (equidistance) 1995 (.) 2011 (.) 2003 (.) 2015 (equidistance)	1957 (non equidistance) 1965 (equidistance strict or simplified) 1967 (equidistance strict or simplified) 1969 (equidistance strict or simplified) 1973 (non equidistance) 1978	22 Nov 1960	12 Mar 1997	1957-1959 (non equidistance) 1960-1972 (equidistance strict or simplified) 1973-1977 (non equidistance) 1978-1987 (equidistance strict or simplified) 1988-2014 (modified equidistance) 2015- (equidistance strict or simplified)

		(equidistance strict or simplified) 1980 (equidistance strict or simplified) 1985 (equidistance strict or simplified) 1985 (non equidistance) 1985 (equidistance strict or simplified) 1986 (equidistance strict or simplified) 1988 (modified equidistance) 2005 (modified equidistance)			
Serbia and Montenegro			12 Mar 2001 a	12 Mar 2001 s	2001- (equidistance strict or simplified)
Slovenia	2005 (.)	2009 (non equidistance)		16 Jun 1995 s	2009- (non equidistance)
Spain	2006 (.) 2009 (.) 2014 (equidistance)	1974 (equidistance strict or simplified) 1974 (modified equidistance) 1976 (modified equidistance)	25 Feb 1971 a	15 Jan 1997	1971-1973 (equidistance strict or simplified) 1974- (non equidistance)
Sweden	1966 (.) 1966 (.)	1968 (equidistance strict or simplified) 1972 (modified equidistance) 1978 (equidistance strict or simplified)		25 Jun 1996	1968-1971 (equidistance strict or simplified) 1972-1977 (modified equidistance) 1978-1983 (equidistance strict or simplified) 1984-1984 (modified equidistance) 1985-1987 (non equidistance)

		1984 (modified equidistance) 1985 (non equidistance) 1988 (modified equidistance) 1989 (modified equidistance) 1994 (non equidistance) 1998 (modified equidistance) 2001 (equidistance strict or simplified)			1988-1993 (modified equidistance) 1994-1997 (non equidistance) 1998-2000 (modified equidistance) 2001- (equidistance strict or simplified)
Syria	2003 (.)				
Tunisia		1971 (modified equidistance) 1982 (non equidistance) (ICJ)		24 Apr 1985	1971-1981 (modified equidistance) 1982- (non equidistance)
Turkey		1960 (equidistance strict or simplified) 1973 (non equidistance) 1978 (equidistance strict or simplified) 1986 (equidistance strict or simplified) 1997 (equidistance strict or simplified)			1960-1972 (equidistance strict or simplified) 1973-1977 (non equidistance) 1978- (equidistance strict or simplified)
Ukraine			12 Jan 1961	26 Jul 1999	1961- (equidistance strict or simplified)
United Kingdom	1950 (.) 1964 (.) 1964 (.)	1942 (non equidistance) (in Venezuela)	11 May 1964	25 Jul 1997 a	1942-1959 (non equidistance) 1960-1970 (equidistance strict and simplified)

1965 (.)	1960 (equidistance strict or simplified)	1971-1977 (modified equidistance)
1968 (.)		1978-1987 (equidistance strict or simplified)
1968 (.)		1988-1990 (non equidistance)
1971 (.)	1965 (equidistance strict or simplified)	1991-1999 (equidistance strict or simplified)
1971 (.)		2000-2010 (modified equidistance)
1974 (.)		2011-2012 (equidistance strict or simplified)
1974 (.)	1965 (equidistance strict or simplified)	2013- (non equidistance)
1976 (.)		
1977 (.)		
1978 (.)	1966 (equidistance strict or simplified)	
1978 (.)		
1979 (.)		
1994 (.)	1971 (modified equidistance)	
1999 (.)		
2000 (.)	1977 (modified equidistance)	
2001 (.)		
2006 (.)		
2008 (.)	1978 (equidistance strict or simplified)	
2009 (.)		
2009 (.)	1982 (equidistance strict or simplified)	
	1988 (equidistance strict or simplified)	
	1988 (non equidistance)	
	1991 (non equidistance)	
	1991 (equidistance strict or simplified)	
	1992 (non equidistance)	
	1992 (equidistance strict or simplified)	
	2000 (modified equidistance)	
	2011	

		(equidistance strict or simplified) 2013 (non equidistance)		
Yugoslavia	1965 (.)	1968 (modified equidistance) 1975 (equidistance strict or simplified)	28 Jan 1966	1966-1967 (equidistance strict or simplified) 1968-1974 (modified equidistance) 1975- (equidistance strict or simplified)