The background image is a dramatic seascape. On the right side, a lighthouse with a black and white striped tower and a black lantern room stands on a rocky outcrop. A massive, dark wave is crashing towards the left, creating a large, billowing plume of white water and spray that dominates the center of the frame. The sky is a hazy, golden-brown color, suggesting a sunset or sunrise. The overall mood is one of power and nature's fury.

Equitable Boundaries and Ambulatory Entitlements: The Relevance of Coastal Instability for Maritime Boundary Delimitation

Snjólaug Árnadóttir

Introduction

- Coastal geography is changing
- Maritime limits fluctuate to reflect ongoing changes - even where bilateral boundaries have been fixed
- UNCLOS articles 74 and 83 impose an obligation to delimit an equitable boundary with due regard for all relevant circumstances
- Ongoing changes can sever the link between coastal geography and maritime entitlements and make boundaries arbitrary and unreasonable
- Is coastal instability relevant for delimiting an equitable boundary and, if so, how should it affect the delimitation process?

Relevant Circumstances in Maritime Delimitation

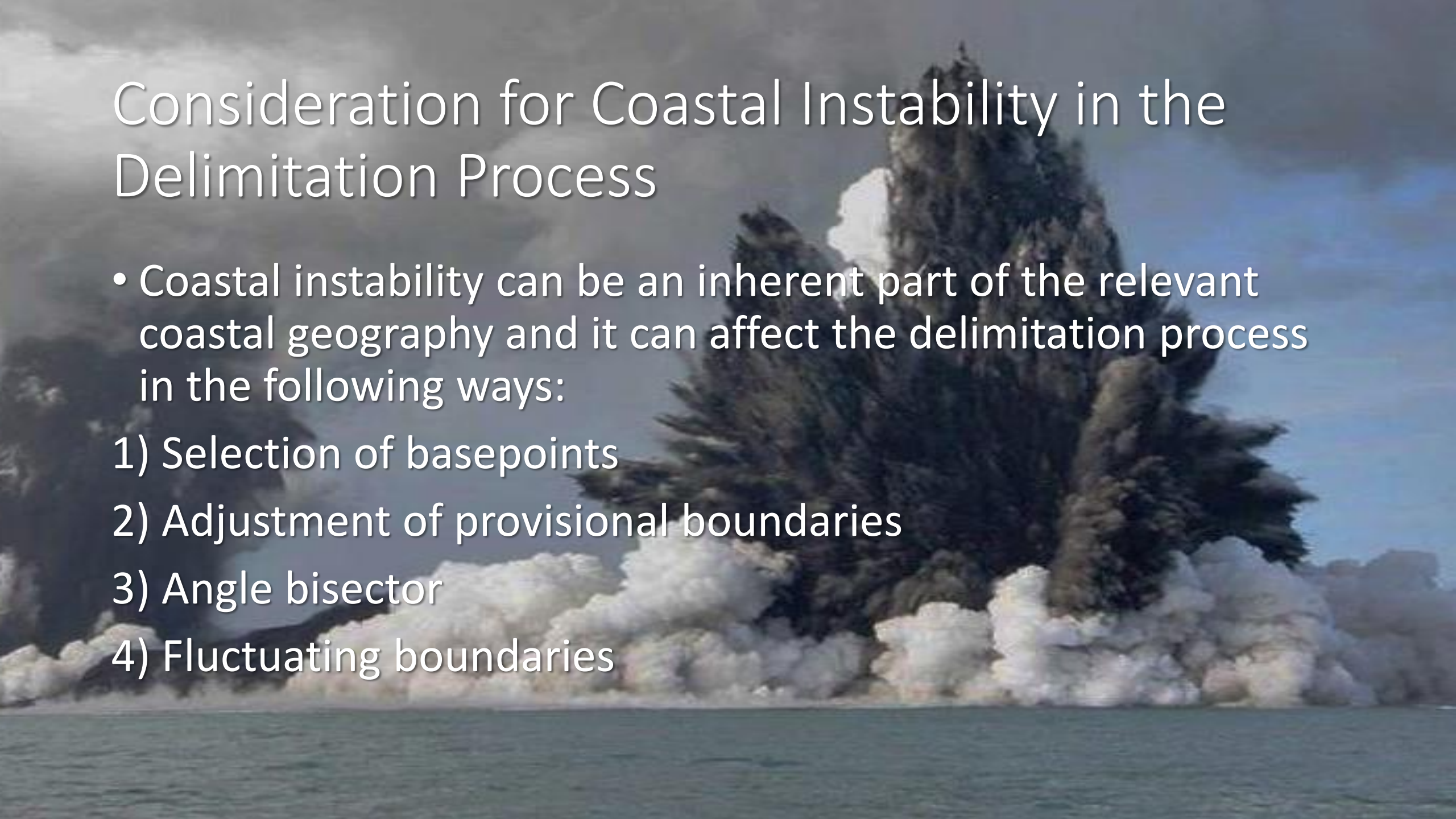
- Relevant circumstances first and foremost relate to coastal geography:
 - Relative coastal length
 - Adjacency or oppositeness
 - General direction of the coastline
 - Concave/convex coastlines: cut-off effects
 - Proximity/geographic appurtenance
 - Size/distance/significance of coastal features
 - Presence of a delta/active morpho-dynamism
 - Coastal instability and foreseeable changes?

Jurisprudence Relating to the Relevance of Foreseeable Changes

- '[C]ontinued accretion at the Cape might render any equidistance line so constructed today arbitrary and unreasonable in the near future' (Nicaragua v Honduras, para 277)
- Court must 'use as base points those which the geography of the coast identifies as a physical reality at the time of the delimitation. That geographical reality covers not only the physical elements produced by geodynamics and the movements of the sea, but also any other material factors that are present' (Romania v Ukraine, para 131)
- 'The Tribunal must therefore choose base points that are appropriate in reference to the time of the delimitation' (Bangladesh v India, para 212) it 'need not address the issue of the future instability of the coastline' (ibid, para 215)
- '[N]either the prospect of climate change nor its possible effects can jeopardize the large number of settled maritime boundaries throughout the world' (Ibid, 217)
- '[I]n connection with sustaining human habitation, to "sustain" means to provide that which is necessary to keep humans alive and healthy over a continuous period of time, according to a proper standard. In connection with an economic life, to "sustain" means to provide that which is necessary not just to commence, but also to continue, an activity over a period of time in a way that remains viable on an ongoing basis.' (Philippines v China, para 487)

Consideration for Coastal Instability in the Delimitation Process

- Coastal instability can be an inherent part of the relevant coastal geography and it can affect the delimitation process in the following ways:
 - 1) Selection of basepoints
 - 2) Adjustment of provisional boundaries
 - 3) Angle bisector
 - 4) Fluctuating boundaries



Selection of Basepoints

- '[N]either case law nor State practice indicates that there is a general rule concerning the effect to be given to islands in maritime delimitation. It depends on the particular circumstances of each case' (Bangladesh/Myanmar, para 147)
- '[A]ny variation or error in situating [base points at a close proximity] would become disproportionately magnified in the resulting equidistance line' (Nicaragua v Honduras, para 277)
- 'If alternative base points situated on the coastline of the parties are available, they should be preferred to base points located on low-tide elevations' (Bangladesh v India, para 266)
- Insignificant features disregarded as basepoints: Quitasueño in Nicaragua v Colombia, Serpents' Island in Rumania v Ukraine, South Talpaty/New Moore Island in Bangladesh v India

Adjustment of Provisional Boundaries

- Islands may be given less than 'their full potential entitlement to maritime zones' (Romania v Ukraine, para 185)
- 'Each case is unique and requires specific treatment, the ultimate goal being to reach a solution that is equitable' (Bangladesh/Myanmar, para 317)
- Scilly Islands (Anglo-French Continental Shelf case), Kerkennah Islands (Tunisia v Libya) and Seal Island (Gulf of Maine) were given half effect
- Long Sand Head (continental shelf boundary agreement between Belgium and the UK) and Kolbeinsey, which is expected to be fully submerged by 2020, (boundary agreement between Iceland and Denmark/Greenland) were given about one-third effect
- The submerging features Qit'at Jaradah and Fasht al Azm were given limited weight in Qatar v Bahrain (paras 218 and 219)

The Angle Bisector Method

- Approximation of relevant coastlines
- ‘[I]f international courts and tribunals have made recourse to the angle bisector methodology in certain cases, this was due to particular circumstances in those cases’ (Ghana v Cote d’Ivoire, para 284)
- Employed in Nicaragua v Honduras, Tunisia v Libya, Gulf of Maine, Guinea v Guinea-Bissau
- Rejected in Ghana v Cote d’Ivoire because the circumstances existing in previous cases were not present

Fluctuating Boundaries

- Boundaries can fluctuate in accordance with natural phenomena: river thalwegs, baselines, median or equidistance lines
- Provisional territorial sea boundaries may fluctuate until otherwise agreed (UNCLOS article 15 and *Guyana v Suriname*, para 325)
- The 1825 Treaty concerning the border of Alaska and the Beaufort Sea, arguably, refer to a receding natural phenomenon: the 'frozen ocean'
- The maritime boundary agreement between France and Tonga establishes an exclusive economic zone boundary by reference to the equidistance line – no fixed coordinates
- First 3 nm of the Nicaraguan/Honduran boundary are ambulatory

Thank you!

