CHAPTER 4

Delimitation of the Continental Shelf Beyond 200 nm—The Method

4.1 Introduction

The delimitation of maritime boundaries is one of the more heavily litigated subjects of public international law. Nevertheless, in only two cases thus far has the outer continental shelf been delimited. As a result, many questions remain unanswered concerning maritime boundary delimitations beyond 200 nm. The main objective of this chapter is to shed light on the method that is applicable in boundary delimitations between neighbouring States involving the outer continental shelf. An attempt will be made to answer the question of whether the principles of the delimitation of the continental shelf beyond 200 nm are the same as those within 200 nm. The chapter will also try to answer the question of whether a rule of customary international law has emerged that is especially applicable in outer continental shelf delimitations.

The chapter is divided into seven main parts. The first is dedicated to the delimitation of the continental shelf between neighbouring States. The main purpose of this part is to introduce the underlying ideas and principles of maritime boundary delimitation. Moreover, it explains the views of the two main schools of maritime boundary delimitation. Finally, it provides a brief historical overview of continental shelf delimitation. The second part asks the question of whether there is an inner and outer continental shelf, in the context of boundary delimitations. In the third part, an attempt is made to explain the primary difference between negotiated and litigated maritime boundaries. The fourth part deals with the question of whether the equidistance/relevant circumstances method is applicable in outer continental shelf boundary delimitations before international courts and tribunals. This part analyses the different stages of the delimitation method established by international courts and tribunals. Furthermore, an attempt is made to fit various different aspects of the outer continental shelf into the method. The fifth part addresses the terminus of an outer continental shelf boundary. The sixth addresses so-called grey areas. The seventh part analyses negotiated agreements involving the outer continental shelf with the aim of identifying trends and differences in State practice. The reason why the chapter addresses the rules applied by international courts and tribunals, in the absence of an agreement between
States, before the treaty practice of States is because it is easier to clarify many complex concepts by first explaining their origin and how international courts and tribunals have developed them.

4.2 The Delimitation of the Continental Shelf between Adjacent or Opposite Coastal States

4.2.1 The Drawing of a Line
Delimitation is in essence a simple act. It can be defined as consisting of ‘drawing a demarcation line, a boundary, between two neighbouring States when the geographical situation does not allow both the parties concerned to enjoy their title to its full extent’. In other words delimitation ‘aims at describing the precise territorial scope of each State’s title’. What complicates this act is that many statesmen view territory as power and loss of power as weakness. Because ‘[t]he drawing of frontiers both on land and at sea must always entail restrictions on the extensions of a country’s territorial expanse’ it is, from this viewpoint, ‘a painful process since, by its very definition, it implies an amputation of the area which each of the States involved could hope to appropriate if it faced the oceans on its own’. In essence, ‘maritime boundary delimitation is a fundamentally political process, dealing as it does with the highly sensitive issues of sovereignty and sovereign rights which touch on core national

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4 Weil, The Law of Maritime Delimitation (n 1) at 5.