Chapter 23

Developments in Maritime Boundary Law and Practice*

Introduction

The preparation of Volume V of *International Maritime Boundaries* is a good occasion to stand back and assess the developments that have occurred in maritime boundary law and practice since the project was launched in the late 1980s. Assessing developments is a process that necessarily involves making personal judgements, both in the choice of the material events and the appraisal of their significance. This paper contains, therefore, nothing more than the personal appraisals and general impressions of the author at this time. Moreover, the Regional Reviews of practice and the individual Boundary Reports in all five volumes of this work remain the primary sources of information, analysis and comment. This paper seeks to build on those source materials by seeking to identify some overall trends of development. Reasons of space preclude any attempt at exhaustive analysis of these trends and all the conclusions are tentative.1

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I The Situation at the Outset of the ASIL Project

Before reviewing these developments, it may be helpful to recall some key elements in the situation prevailing in the late 1980s when the American Society of International Law took up the present project. One significant element of a general nature was the uncertain status of the 1982 United Nations Convention on the Law of the Sea at that time. Whilst the greater part of the text was viewed as helpful and many states were steadily proceeding to align their maritime legislation and limits with its terms, the 1982 Convention had not entered into force and controversy still persisted over Part XI concerning deep seabed mining. It was unclear whether or not the Convention would attract the 60 ratifications, etc. needed for its entry into force and, if so, whether it would attract equal support from all the different regions of the world.

The factual situation regarding the delimitation of boundaries was set out by the founding editor of this work, Professor Jonathan Charney, in his Introduction to Volume I. He noted that the number of agreed boundaries was over 130 at that time (1993) and that nearly twenty disputes had been submitted to international bodies for resolution. The number of agreements compared with the then current estimates of about 420 for the potential maritime boundaries in a world of wide limits of national jurisdiction.

The legal situation regarding delimitation was in an uneven state. The principles and procedures governing the delimitation of the territorial sea, based on the approach contained in Article 12 of the Convention on the Territorial Sea and the Contiguous Zone of 1958 (Territorial Sea Convention), were not generally controversial. In contrast, those governing the delimitation of the continental shelf were beset by uncertainties. The status of Article 6 of the Convention on the Continental Shelf of 1958 (Continental Shelf Convention) remained unclear in the aftermath of the decision of the International Court of Justice (ICJ or Court) in the North Sea Continental Shelf cases of 1969 (North Sea cases) to the effect that Article 6 did not represent a statement of customary law. The Court had described Article 6 as a “purely conventional rule” and one that “did not embody or crystallize any pre-existing or emergent rule of customary law.” The Third United Nations Conference on the Law of the Sea (LOS Conference) had seen a polarization of positions over

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2 Volume I, pp. xxvii-xxix. Professor Charney noted that new agreements continued to be concluded. See also his article entitled “Progress in International Maritime Boundary Delimitation Law,” 88 AJIL (1994) p. 227.


5 The states Parties to the Continental Shelf Convention found themselves in a somewhat strange position: they remained bound inter se by the terms of the Convention, including its Article 6, but at the same time they were bound by customary law vis-a-vis non-states Parties, who also applied that law among themselves. The law of the sea is a part of international law which cries out for the holistic approach and universal rules, not fragmentation, of course.