A. Introduction

For centuries the delimitation and protection of boundaries have been the most important duties of States. However, States concentrated first of all on their land delimitations, taking less care with adjacent maritime areas. The situation has changed in recent decades. The delimitation of maritime boundaries has become an important element in the practice of States.

The essence of maritime delimitation is its international character. In the 1984 Gulf of Maine case the International Court of Justice held that “[n]o maritime delimitation between States with opposite or adjacent coasts may be affected unilaterally by one of those States. Such delimitation must be sought and effected by means of an agreement, following negotiations conducted in good faith and with the genuine intention of achieving a positive result”.

This means that maritime delimitation as an international operation must be the result of negotiations between two or more States. Some writers even underline that “delimiting maritime zones that are not in contact with those of another coastal state may be done unilaterally”.

In the process of maritime delimitation one has to distinguish between “delimitation” and “apportionment”, as the ICJ did in 1969 North Continental cases stating that “[…] the task in the present proceedings relates to delimitation and not the apportionment of the areas concerned, or their division into converging sectors. Delimitation is a process which involves establishing the boundaries of an area already in place, in principle, appertaining to the coastal State and not the determination de novo such an area.” Due to such distinction the

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1 Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. United States), ICJ Reports 1984, para. 112 (1).
3 North Sea Continental Shelf, Judgement, ICJ Reports 1969, para. 18.
process of delimitation can be influenced by a number of objective factors used by States to achieve a favourable course of their maritime boundaries and can end with rather predictable results, while the process of appertaining related to disputed territories assumes that the area in question is divided between States in agreed proportions based only on notions of equity.

For some time the determination of maritime boundaries has had great importance. This happened for many reasons. The first is related to the fact that since World War II the exploration and exploitation of marine resources have grown very rapidly and, as a consequence of that, many coastal States’ claims to areas of the sea, which under former international customary law were considered the common property of mankind or the property of no one, have been increasing. Also a new factor has appeared, namely the broad development of international law.

For a very long time the law of the sea, and in particular the law governing maritime delimitation, was regulated by customary international law. This law was supplemented in 1958 by four Geneva Conventions: on Continental Sea and the Contiguous Zone, on High Seas, on Fishing and Conservation of the Living Resources of the High Seas and on Continental Shelf. Then came the United Nations Convention on the Law of the Sea adopted at the UN Headquarters in New York on 30 April 1982 with 130 States voting in favour, 4 against and 17 abstaining. The Convention, which entered into force on 16 November 1994, was a major legal and political achievement for the international community. Not only did it codify important matters, rules and principles which already existed, but also implied considerable progressive development of international law.

The current remarks on the main factors influencing the maritime delimitation process are my token contribution to the collection of papers on the 70th birthday of my esteemed colleague, former President of the International Tribunal for the Law of the Sea, Judge Rüdiger Wolfrum, who has contributed a lot to the development and implementation of the law of the sea.

For the purpose of further discussion it would be advisable to recall the most important provisions of UNCLOS relating to the factors exerting influence on maritime boundary delimitation. It is important to underline that the Convention has established a comprehensive framework for the regulation of the entire ocean space. The Convention allows for the establishment of a territorial sea of up to 12 nautical