THE DUAL FUNCTION OF BASE POINTS

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In recent years, the issue of base points and baselines has been dealt with quite at length by international courts and tribunals¹ addressing claims relating to maritime delimitation between States with adjacent or opposite coasts. However the dual function of base points has curiously been neglected or cursorily overlooked by the relevant literature in international law.² No doubt Judge Wolfrum will make a significant contribution to the issue in the years to come. This tribute modestly aims at recalling the development of the case law on the subject in recent years and at mapping some of the problems which may arise in future conflicts.

In a lone and little noticed contribution to the T. O. Elias Festschrift,³ Professor Prosper Weil underlined the duality of functions of base points and baselines in the law of the sea. Firstly, base points and baselines are used to determine the outer limits of the maritime jurisdiction of the coastal States. Arts. 3 to 14 of the United Nations Convention on the Law of the Sea (UNCLOS) set the rules concerning the determination of the baselines used to calculate the breadth of the territorial sea. These baselines constitute the outer limit of internal waters and the inner limit of the territorial waters of the States concerned. UNCLOS Article 4 declares: “The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.”

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¹ The expression “international courts and tribunals” is loosely used here and corresponds to the notion of “compulsory procedures entailing binding decisions” in UNCLOS, Part XV, section 2.

² The major textbooks on the law of the sea ignore the issue or address it cursorily. D.W. Bowett hints at it in The Legal Regime of Islands in International Law, at 34 (1979), as does H. Dipla, Le régime juridique des îles dans le droit international de la mer, at 18 and at 105 (1984).

The points referred to in Article 4 are those chosen by the coastal States, in accordance with the provisions of UNCLOS, to determine the outer limits of national maritime jurisdiction. They also determine the breadth, and hence the outer limits, of the exclusive economic zone (EEZ) and the continental shelf. Article 57 thus declares: “The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.” Article 76 uses the same wording for the purpose of the determination of the outer limit of the continental shelf.

Secondly, base points are instrumental in the delimitation of the respective maritime jurisdiction of States with adjacent or opposite coasts. They are used to draw lines of equidistance between adjacent or opposite coasts. Furthermore, they may also be used to determine the starting point or the angle of a delimitation decided by other methods. Lastly, they may be used to calculate the respective length of relevant coasts of the parties.

This contribution will concentrate on base points and not on baselines. More specifically, base lines, being a set of points, do not normally have the same dual function as base points. Their essential function is to determine the outer limits of maritime jurisdiction, and also the legal status of the waters concerned (internal waters, territorial sea, continental shelf and exclusive economic zone). Base points contribute naturally to the definition of baselines, in particular of straight baselines. But they also serve as mathematical references in the construction of a maritime delimitation between States with adjacent or opposite coasts.4

The question addressed by Prosper Weil is the following: are the base points used to measure the outer limits of maritime jurisdiction the same as the base points used to delimit maritime jurisdiction between adjacent and opposite coasts? As Weil noted in 1992, that may be the case. But it is not necessarily so, because the nature and purpose of the two different sorts of base points are not identical.

In the present contribution, aimed at assessing today the hypothesis advanced by Prosper Weil some 15 years ago, the focus will be on the

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4 UNCLOS uses the term “base points” in relation to the low water line. The ICJ uses the term in a geometrical sense as any given point, whether chosen by the parties or a court or tribunal, for the purpose of determination or delimitation of maritime jurisdiction. I shall use the term in the latter sense.