CHAPTER FOUR

THE EL DORADO EFFECT: REAPPRAISING THE ‘OIL FACTOR’ IN MARITIME BOUNDARY DISPUTES

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INTRODUCTION

Where overlapping claims to maritime jurisdiction exist, suggestions that the disputed zone is ‘oil rich’ frequently follow. Accordingly, the potential existence of seabed energy resources underlying ocean spaces subject to overlapping claims to maritime jurisdiction often plays an important role in maritime boundary disputes. Of course other valuable marine resources, most obviously fisheries, are often also at stake. However, the possible presence of oil seems to provide a particularly compelling lure. The perception that such resources exist and that a State’s vital national interests are therefore engaged, can serve as a powerful factor motivating policy-makers to robustly defend territorial and maritime claims.1

While it can be argued that the suspected presence of valuable seabed hydrocarbons resources can act as a spur to dispute settlement such that the interested parties can gain access to such resources as soon as possible, all too frequently the opposite effect can be observed. That is, the essential willingness to compromise in order to reach an agreed solution tends to be undermined by concerns that to do so will leave crucial seabed energy resources on the ‘wrong side of the line’ as it were.2

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This chapter seeks to reappraise the ‘oil factor’ in the context of maritime boundary disputes. The substantial expansion in national claims to maritime jurisdiction seawards is outlined together with the associated proliferation in overlapping maritime claims, potential maritime boundaries and, almost inevitably, maritime boundary disputes. It is suggested that the importance of the ‘oil factor’ in such disputes tends to be enhanced, and often overplayed, as a result of increasing global energy security concerns, coupled with significant advances in offshore hydrocarbons exploration technology, allowing for oil exploration activities in deeper waters, further offshore and in more hostile environments. Particular reference is made to two maritime areas where hydrocarbons are often viewed as playing a significant underlying, if not central, role: the South China Sea and the Arctic Ocean. It is concluded that the frequently highly speculative estimates as to the oil and gas resource potential of disputed waters are often misleading and unhelpful from a dispute resolution perspective, suggesting that the apparently crucial role of seabed energy resources in many maritime disputes should be radically reappraised.

Expanding and Overlapping Maritime Claims

Coastal State claims to maritime jurisdiction have advanced increasingly far offshore over time through a process that has commonly been termed ‘creeping coastal State jurisdiction’. Whereas in the past coastal State maritime claims were restricted to a relatively narrow band of territorial waters, generally out to 3 nautical miles from the coast, now of 200 nautical miles breadth and beyond are commonplace. A particular achievement of the United Nations Convention on the Law of the Sea (LOSC) was the definition of clear spatial limits to national claims to maritime jurisdiction, something which had eluded earlier codification efforts. Under LOSC agreement was reached on 12 nautical miles as the maximum breadth of the territorial sea. LOSC also provides for a contiguous zone out to 24 nautical miles from relevant baselines. Additionally, and significantly, the concept of the exclusive economic zone (EEZ) gained general international acceptance at the Third United Nations Conference on the Law of the Sea.

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4 LOSC, article 3 provides that every State has the right to establish the breadth of the territorial sea "up to a limit not exceeding 12 nautical miles", measured from baselines determined in accordance with the Convention. Article 4 further states that 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.”

5 LOSC, article 33.