The Role of the Technical Expert in Maritime Delimitation Cases

Martin Pratt*

1. INTRODUCTION

A state seeking to persuade a court or tribunal of its title to a certain maritime area will usually deploy a wide range of arguments in support of its case. Issues relating to living and non-living resources, the geology and geomorphology of the seabed, historical rights, national security, economics and environmental protection are all frequently raised, and most states will seek expert assistance in these areas to help prepare and present the most convincing case possible. However, while acknowledging the multidisciplinary nature of the task, this paper will focus on an area of expertise which is crucial to any maritime boundary delimitation, namely geographical expertise.

Areas in which a technical expert (as the geographical expert is more commonly described)1 can assist in maritime boundary delimitation include:

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* Director of Research, International Boundaries Research Unit (IBRU), Department of Geography, University of Durham, DH1 3LE, UK.

Tel: +44 191 334 1961 Fax: +44 191 334 1962 Email: ibru@durham.ac.uk Web: http://www-ibru.dur.ac.uk

1 The terms ‘technical’ and ‘geographical’ will be used interchangeably in this paper. Traditionally, technical assistance in maritime delimitation has been provided by hydrographers – specialist geographers with particular expertise in surveying and mapping.
• Constructing and defining the boundary and other relevant limits with sufficient technical precision to meet practical needs.
• Helping to interpret concepts such as “the relevant area”, “the general direction of the coast” and “reduced effect” within the context of the delimitation in question.
• Testing proportionality between coastline lengths and maritime areas.
• Interpreting maps, charts and other sources of geographical information such as satellite imagery and aerial photography. This is particularly important in terms of identifying basepoints relevant to the delimitation of the boundary.
• Ensuring that clients, counsel and judges understand the significance of geographical and geodetic issues such as datums, map projections and the type of line connecting boundary turning points.

Reliable software tools for constructing maritime limits, equidistance lines, etc. are now commercially available, and states are becoming increasingly aware of the need for geodetically precise boundaries, especially where hydrocarbons are located close to the line. Boundary awards by courts and tribunals are coming under closer and closer scrutiny by technically-proficient analysts, and errors or deficiencies in the definition of a maritime boundary are sure to be exposed. For this reason, it is recommended that a) adjudicators ensure that they have adequate technical support themselves, and b) they encourage the parties to the case to agree technical standards for delimitation before the adjudicators begin their deliberations.

2. THE PURPOSE OF MARITIME BOUNDARY DELIMITATION

The primary aim of maritime delimitation, at least as far as the EEZ and continental shelf are concerned, is the equitable division of maritime space. This aim is enshrined in Articles 74 and 83 of the 1982 United Nations Convention on the Law of the Sea (hereafter “UNCLOS” or “the Convention”) which begin by stating that: “The delimitation of the exclusive economic zone [Article 74]/continental shelf [Article 83] between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.” The Convention is silent on what factors need to be considered in order to achieve an equitable outcome, and it is evident from case law and the writings of leading jurists that a range of factors may come into play in different contexts. However, in all cases, one factor stands head and