Dispute Settlement and Regional Cooperation
Third States in Maritime Delimitation Cases:
Too Big a Role, Too Small a Role, or Both?

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Introduction

The delimitation of maritime boundaries between neighbouring States is primarily a bilateral process. At the same time, in many instances more than two States may have an interest in the delimitation of a specific area. The existence of a claim of a third State invariable will be a factor in bilateral negotiations or the adjudication of a bilateral delimitation dispute. Douglas Johnston amply considered this issue in his work on maritime boundary delimitation, including in one of his most significant contributions to the law of the sea, The Theory and History of Ocean Boundary-Making published in 1988. This monograph presents a functionalist approach to ocean boundary-making¹ and this extends to his views on the position of third States in maritime boundary delimitation. These views are succinctly summed-up in a comment on the Libya/Malta Continental Shelf Case.² In this Case, the impact of the position of a third State on the judgment on the merits was criticized in the opinions of a number of judges.³ After reviewing those criticisms, Johnston observed:

On the other hand, functionalists are likely to welcome the Court’s treatment of the third-party-interest problem as an ingenious effort to provide a truly effective facilitative service to the parties. A facilitative judgment, it may be argued, is wholly prospective and problem-oriented in character, and should not be constrained unduly by the bilateral, or bifurcatory, frame

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³ Ibid. For a discussion of this aspect of the judgment see also infra.