Chapter II

The Trouble with Islands: The Definition and Role of Islands and Rocks in Maritime Boundary Delimitation

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I. Introduction

Islands have become a particularly troublesome feature of the maritime political land and seascape around the world in recent years. This is certainly the case in East and Southeast Asian seas, which, in terms of the number and complexity of overlapping jurisdictional and sovereignty claims, comprise arguably the most keenly contested waters worldwide. Many of these disputes are linked to the presence of frequently small, remote and, at first glance, apparently worthless islands.

Two broad but interrelated categories of disputes related to islands can be identified. First, contentious disputes over island sovereignty have emerged. Second, opposing views have arisen over the insular status to be accorded to particular features, and thus their capacity to generate claims to maritime jurisdiction. A further important concern is the role such insular features should play in the context of maritime boundary delimitation.

This paper provides a maritime jurisdictional overview, against which context the importance of islands is assessed. In the process, disputes over islands are highlighted. The regime of islands in the context of the United Nations Convention of the Law of the Sea is then addressed. This is a significant issue, as the majority of potential maritime boundaries around the world remain undelimited, and disputes over islands frustrate or complicate access to and management of ocean resources. Such disputes also represent a significant source of discord among states with the

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potential to cause friction in bilateral relations and ultimately act as flashpoints for armed confrontation.

The issue of distinguishing between types of insular feature, especially what constitutes an “island” versus a “rock” in the context of the Law of the Sea Convention Article 121, must be considered. This is a crucial distinction in respect of the claims to maritime jurisdiction that may be generated from such features. Developments potentially contributing towards the clarification of Article 121 are then discussed prior to a review of the role of islands in maritime boundary delimitation. Examples of islands being accorded variable effect in the construction of equidistance line boundaries are provided, drawn from the experience of state practice and the jurisprudence of international judicial and arbitral courts. Finally, some brief concluding observations and reflections are offered.

II. Claims to Maritime Jurisdiction and Islands

Before the middle of the 20th Century, coastal state jurisdiction rarely extended more than three nautical-miles (n.m.) offshore. Since then, there has been a tremendous increase in the maritime space coming under the jurisdiction of coastal states, notably as a consequence of the establishment of the 200-n.m. breadth exclusive economic zone (EEZ) regime under the Law of the Sea Convention. Indeed, it has been estimated that if all coastal states were to exert their maximum possible claims (excluding extended continental shelf claims), approximately 44.5 percent of the world ocean would fall under some form of national jurisdiction. Inevitably, this significant extension of coastal states’ sovereignty seawards has generated the potential for many “new” maritime boundaries and a host of overlapping jurisdictional claims and offshore boundary disputes.

1. The Importance of Islands

Many disputes over islands appear to be over the possession of a handful of remote, barren, small and often uninhabited islands, rocks, low-tide elevations and reefs. Nonetheless, such features have the capacity to prompt fierce diplomatic exchanges between states, to sour bilateral relations, and even to act as a trigger for military

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3 Technically the correct abbreviation for a nautical mile is “M” (“n.m.” being the abbreviation for nanometres). However, “n.m.” is widely used by many authorities (for example the United Nations Office of Ocean Affairs and the Law of the Sea) and appears to cause less confusion than “M”, which is often taken to be an abbreviation for metres.
5 Prescott & Schofield, supra note 4, at 9.
6 Id. at 217.