Maritime Security


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1. INTRODUCTION

The 1982 United Nations Law of the Sea Convention (LOSC) gives expanded jurisdiction to coastal states, and its provisions on boundary delimitation made some advances on those of the 1958 Geneva Conventions governing Territorial Sea and Continental Shelf delimitation. As well, the 1982 provisions emphasize the use of inter-state 'agreements' as the bases of the delimitation exercise. This way, the provisions unequivocally leave the state to decide whether to resort to any of the dispute settlement procedures provided under the Convention for the resolution of a boundary delimitation dispute. For this reason, the Convention's delimitation provisions seem to subsume the state's legal obligation to observe them, to their use as a diplomatic and/or political bargaining chip in the exercise. This article affirms that notwithstanding the freedom of parties as to adhering to them, the delimitation process enjoined under the LOSC imposes a legal obligation rather than gives political license. However, the diplomatic hue to the Convention's provisions is necessary and realistic in view of the complexities involved in deciding sovereign title to resource-rich marine areas. It is also consistent with existing peaceful means and practices of settling international conflicts.

Overview

It is common knowledge that the conventional rules on maritime boundary delimitation do not in themselves as rules of treaty law provide sufficient
guidance either in principle or practical direction to inform states as to how to undertake the exercise between or among themselves. In other words, even where states may seek to apply them, the rules themselves contain the ingredients for disputes over their meaning and application in the specific delimitation circumstances, in addition to the conflicts over the interests that each state may seek to secure by its interpretation of the rules. The actual and potential conflicts in this area of international relations have been, and could be, major threats to international peace and security. That they have not gone out of hand cannot be attributed to the operation of the conventional rules *per se*, nor to any definite set of factors generically explainable. But it cannot be denied that in spite of their inadequacies, they have been and remain functionally helpful mechanisms that are employed by both the courts and the states themselves in seeking peaceful solutions to their delimitation disputes. To establish this view, this article explores the conduct of states in the context of the relevant conventional rules on disputes settlement and maritime boundary delimitation provided under the 1958 Geneva Conventions on the Law of the Sea and the 1982 United Nations Convention on the Law of the Sea (LOSC). The analysis is in terms of the interpretation and application of the rules by judicial fora when they are asked to intervene in these disputes, and in terms of the states’ use of these rules to forge boundaries, and where necessary, to agree upon accompanying resource management regimes pursuant to, or outside of, judicial interpretation and application.

The essence of delimiting boundaries at sea is to allocate both maritime areas and resources to coastal states. The conflicts occasioned by this exercise are propelled largely by the known or potential resources in the overlapping maritime border regions to which disputing opposite and/or adjacent coastal states invariably seek exclusive access. The nature and importance of this background scenario to the potential for peaceful settlement of delimitation disputes is discussed in section II. The section also discusses the delimitation rules under the relevant 1958 Geneva Conventions on the Law of the Sea relating to the establishment of baselines, and the delimitation of the territorial sea and the continental shelf between opposite and adjacent coastal states. The discussion here compares the rules of the 1958 Geneva regime to the similar ones under the LOSC. While pointing out areas in which the latter has made advances on the former, it also sets out the background for the fashioning of the disputes settlement and boundary delimitation provisions of the LOSC.

Section III then explores in detail the legal nature and the functioning of the LOSC’s delimitation rules in practice before the courts. The analysis here establishes that by virtue of the recognition of the exclusive economic zone of water and shelf under the LOSC, the legal foundation for the entitlement of coastal states to such areas is that they have become emanations of coastal statehood. Thus, the delimitation rules defer to the primary right of