INTRODUCTION

Currently low-tide elevations are increasingly important in international law of the sea in both theory and practice.\(^1\) First, low-tide elevations have practical importance for the coastal State, since such elevations may have an impact on identifying the outer limits of the territorial sea. In this regard, Article 13(1) of the 1982 United Nations Convention on the Law of the Sea\(^2\) (hereafter the LOSC) provides that:

Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.\(^3\)

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3. That provision is identical to Article 11 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. The origin of this provision could date
In connection with this, Judge Oda argued in the Qatar/Bahrain case (Merits) that “[i]n 1930 and 1958, low-tide elevations located in the rather narrow (three-mile) seabelt off the coast would not have had much effect on the extent or the boundary of the territorial sea, and these provisions might have reflected customary law prevailing at that time.” Yet Judge Oda asked: “how could they have the same minor effect if the territorial sea were to be widened to 12 miles?” Furthermore, the presence of low-tide elevations may produce an important question in maritime delimitations: whether low-tide elevations may be a relevant circumstance and, if this is the case, what is their effect on maritime delimitations? Considering that there are a number of areas where maritime delimitations are needed, the impact of low-tide elevations upon this is worth examining.

Secondly, low-tide elevations provoke interesting theoretical questions relating to the concept of the “territoriality” in international law: Whether low-tide elevations could be regarded as part of land territory or as part of the seabed. If low-tide elevations are argued to be terrestrial territory, international law regarding the acquisition of territory is applicable to them. By contrast, if low-tide elevations are regarded as part of the seabed, such a feature should be subject to law of the sea. On this point, it is worth noting that the Qatar/Bahrain decision (Merits) of 2001 broke new ground.

It is against this background that this article seeks to examine low-tide elevations in international law focusing on three principal issues. Following an introduction, the identification of low-tide elevations will be addressed in Part Two. Part Three will examine the territoriality of low-tide elevations by analyzing the Qatar/Bahrain case (Merits). Furthermore, Part Four will consider the impact of low-tide elevations upon maritime delimitations on


4. Separate Opinion of Judge Oda in the Qatar/Bahrain Case (Merits), ICJ Reports (2001): 125, para. 7. Furthermore, with respect to Article 13 of the LOSC, Judge Oda pointed out that the latter simply copied the relevant 1930 and 1958 texts on those issues without any in-depth discussion at the Third United Nations Conference on the Law of the Sea on the effect which would follow from the broadening of the territorial sea from 3 miles to 12 miles. Id.

5. According to a study by the United States Department of State, the total number of potential maritime boundaries is 420. United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Limits in the Seas, No. 108: 1st Revision, Maritime Boundaries of the World (1990): 2. At the opening of the 21st century, maritime boundaries are settled by approximately 200 agreements, merely 48 percent of the total number of potential maritime delimitations. It is predictable from the above data that disputes over maritime delimitation will continue.