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PANEL 4: TECHNICAL CHALLENGES IN MARITIME DELIMITATION

Panel 4 will consider current technical issues and challenges within maritime delimitation. Linking in with presentations on Panels 1 and 3, the speakers on this panel will provide delegates with a technical perspective on the delimitation of continental shelf areas beyond 200 nautical miles, the treatment of islands in recent jurisprudence, the technical challenges in the definition of territorial sea baselines and how the uncertainties in territorial sea baselines can affect equitable boundaries. The panel will conclude with a technical overview of options and methods that could simplify negotiation processes in locations that are geographically challenging.

Dr Robin Cleverly

Dr Robin Cleverly is chairing this session.

Dr Lindsay Parson

The delimitation of continental shelf areas beyond 200 nautical miles - a smorgasbord of past options, missed opportunities and potential outcomes in the future.

The sparse number of current boundary delimitations in maritime space beyond 200 nautical miles (“200M”) is likely to see a steady rise in the next decades as more coastal states establish their continental shelf limits in accordance with Article 76 of UNCLOS. Recommendations from the Commission on the Limits of the Continental Shelf are expected to be delivered at an increasing rate due to their new working practices, and as a result solutions will be required for the large number of overlapping submissions – an area outside the CLCS's remit and competence. Only 16 agreements and adjudications for the outer continental shelf have been recorded over the past 35 years, and these are based on such a broad range of principles and implementations that a consistent pattern of case law is not easy to recognise. With more than 70 potential delimitations still to be addressed in these deep-water areas, it would be useful to take stock of the key factors to be considered in reaching equitable solutions for overlaps and juxtaposition. This paper will review the various influences on past arrangements and critically assess how these might direct (or perhaps, misdirect) future delimitations beyond 200M.

John Brown

Punching above their weight? Issues raised by the regime of islands in recent court cases.



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When Robert Hodgson – formerly the Geographer at the US Department of State – said in 1973 that “the single most troublesome natural feature to cloud the maritime limits field has proven to be islands” this was no understatement. Islands play a large part in the generation of maritime space, and the stakes are high for any country which can lay claim to an island which lies beyond its territorial sea, thereby extending the area over which it has sovereign rights and control over exploitation of any natural resources contained within. Some countries will go to great lengths to lend credence to a claim.

It is well documented that, since UNCLOS entered into force in 1994, little assistance has been forthcoming from jurisprudence to help clarify the uncertainties surrounding islands, and indeed the well-known and highly respected commentators Prescott and Schofield note that paragraph 3 of article 121 of UNCLOS has been the “... source of an extensive and unresolved legal and scholarly debate....”

This paper will look at the recent jurisprudence from – amongst others – *Nicaragua v Colombia*, *Nicaragua v Honduras* and *Ukraine v Romania*, where islands have played an important part in the arguments, addressing technical issues aired during the proceedings.

The opinions expressed are those of the author and do not necessarily represent those of the UK Hydrographic Office or any other UK Government Department.

Professor Clive Schofield

Uncertainties over the Starting Line? Challenges in the Definition of Territorial Sea Baselines

Baselines along the coast provide the “starting line” for the measurement of claims to maritime jurisdiction. Such “territorial sea baselines” as they are often termed (though they are relevant to the definition of all maritime zones) are also often crucial to the delimitation of maritime boundaries. Determining the location of the land/sea interface can, however, be a challenging exercise both legally and technically. This paper highlights key uncertainties in the definition of baselines, notably with respect to the definition of “normal” low-water line baselines and in relation to insular features. The traditional linkage between ambulatory normal low-water baselines and the limits of maritime zones of jurisdiction means that changes in the location of normal baselines potentially leads to shifts in the outer limits of maritime claims. Further, sea level rise has the potential to threaten insular status and this, in turn, may have major “knock-on” impacts on the capacity of a feature to generate maritime jurisdictional claims. These developments have implications not only for the scope of coastal State claims to maritime space and therefore maritime surveillance and enforcement issues but also for maritime boundary delimitation. They can be anticipated to be especially



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problematic where the coast is dynamic, especially in the context of widely anticipated sea level rise. The paper concludes with an assessment of some of the legal and technical options open to coastal States seeking to address the challenges outlined.

Dr Leendert Dorst

On the generation of maritime boundary candidates for efficient negotiation processes

The delimitation of an equidistant maritime boundary starts with the identification of the baselines of the relevant states. The combination of two baselines provides apparent certainty over the location of a maritime boundary. Such a vision of a simple set of rules for every situation, although desirable in practice, can hardly ever be maintained. One may argue that the equidistance line is not equitable, and a long negotiation process begins. A reason to adjust the equidistance line could be uncertainty over the baseline. Such uncertainties could be dealt with in a separate initial round of negotiations over each other's baseline. Another solution is to initially accept the uncertain baselines of the two parties, and correct for them in a single round of negotiations on adjustments of the equidistance line.

Negotiation processes could produce large sets of optional boundaries, from which eventually one boundary candidate is identified as equitable. A negotiation team can only be sure that a truly equitable result has been reached if it has considered the full range of boundary options at its disposal. From a scientific point of view, a maritime boundary negotiation process is an optimization problem – which lends itself to improvements in process efficiency. The range of options to create maritime boundary candidates from automated geographic procedures may not have been fully explored. During the presentation, we will create a systematic overview of options to produce a maritime boundary from two baselines, either fully automatic or semi-automatic. Subsequently, we will draw conclusions on methods that could simplify negotiation processes in areas that are geographically challenging.