

*La delimitación marítima entre Estados. Formaciones insulares y bajos.* By Antonio Pastor Palomar (Editorial Tirant le Blanch, Valencia, 2017) 440 pp. (Includes e-book).

The role of islands, rocks and low-tide elevations (LTEs) in maritime boundary delimitation has been widely discussed by scholars. Yet even today, it remains a highly contentious topic in international law.

States have a great interest in this particular issue since the presence of islands, rocks and LTEs can affect the location of the maritime boundary dividing the maritime zones between neighbouring States to the benefit of one of those States. Consequently, if taken into consideration, a maritime feature could push seawards the outer limits of the territorial sea (TS), the contiguous zone (CZ), the exclusive economic zone (EEZ) and the continental shelf (CS) increasing the areas and the rights of that State over those spaces, in particular its sovereign rights to explore and exploit valuable living and non-living ocean resources.

As rightly pointed out by Pastor through his book, assessing the impact of maritime features in the context of maritime delimitation is a very complex exercise that needs to be approached in a comprehensive and pragmatic ways since geographical situations can be highly variable from case to case. Also, maritime delimitation cases involving maritime features sometimes require decisions on preliminary questions, such as disputes concerning sovereignty over islands or the legal nature of a particular feature as being an “island”, a “rock” or a “LTE”. A good example of this complexity is reflected in the *Nicaragua v. Colombia* case concerning territorial and maritime issues. The author also mentions pending delimitations and potential conflicts involving maritime features, such as the delimitation of the CS beyond 200 nautical miles (nm) between Nicaragua and Colombia before the International Court of Justice (ICJ), the sovereignty dispute over the Perejil Island between Spain and Morocco in the Mediterranean Sea and the dispute concerning the Savage Islands (Portugal) in the Atlantic Ocean whose legal status as islands or rocks is disputed by Portugal and Spain. A further example is the very recent and controversial *South China Sea Arbitration* between the Philippines and China where the Tribunal, among other things, determined the legal status as “islands”, “rocks”, “LTE” or “submerged banks” of certain maritime features occupied by China in the South China Sea, including Scarborough Shoal and some of the features in the Spratly Islands.

The book written by Antonio Pastor Palomar aims at determining the legal regime governing maritime features in the context of maritime boundary delimitation between States with opposite and adjacent coasts. In this respect, the author analyses the relevant State practice (national legislation and maritime boundary agreements) and judicial decisions of national and international courts and tribunals to assess the influence of islands, rocks, LTEs and other categories of maritime features in the delimitation of maritime zones between States. With regard to this last point, Pastor provides a very interesting and innovative analysis concerning the role of the “emerging categories” (*categorías incipientes*) of maritime features, as the author called them, in the context of maritime delimitation, namely, reefs, atolls, islets, cays and banks (pp. 307-386). These are categories that scholars have not had examined in much detail. In relation to the methodology, Pastor proposes using the inductive

approach, that is to say a systematic analysis of the relevant State practice and judicial decisions in order to identify the main trends or rules concerning the influence of maritime features in the delimitation of maritime boundaries and that would be applicable to other similar cases (p. 35).

The book is divided in two parts. The first part comprises one chapter (Chapter I) and the second part contains seven chapters (Chapters II to VIII). The first part gives a general overview of the legal framework of maritime features preceding the adoption of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone (hereinafter the 'CTS'). The second part examines the legal regime of maritime features before and after the adoption of the 1982 United Nations Convention on the Law of the Sea (hereinafter LOSC). The author then analyses separately and in detail the legal definition of the main categories of maritime features (islands, rocks and LTEs) and the so-called "emerging categories" (reefs, atolls, islets, cays and banks) as well as their influence in the context of maritime delimitation by examining the relevant State practice and judicial decisions prior and subsequent to the adoption of LOSC.

Chapter I provides a general overview of the legal regime of maritime features from a historical perspective, including the examination of the relevant State practice and judicial decisions until the adoption of the CTS and the discussions during the First United Nations Conference on the Law of the Sea (hereinafter UNCLOS I). During this period, there were two main categories of maritime features that were later codified respectively in articles 10 and 11 of the CTS: islands and LTEs. As for the "emerging categories" of maritime features, they were assimilated and recognized as pertaining to this two main categories. In relation to their function, they were considered as being part of the coastal configuration when they were located next to the coast, as a group of features together with islands and LTEs. Consequently, they were used as basepoints from where the TS would be measured. An example is the 1951 *Anglo-Norwegian Fisheries* case, where the islands, islets, rocks and reefs forming the so-called feature *Skjaergaard* were taken into account in delimiting the TS of Norway.

Chapter II provides a short introductory framework of the legal regime of all maritime features and their legal definition as discussed during the Third United Nations Conference on the Law of the Sea (hereinafter 'UNCLOS III') and as finally adopted in the relevant provisions of LOSC. In addition, this chapter recalls the basic principles and rules governing the delimitation of the TS, the CS and the EEZ between States, such as the role of equidistance and equitable principles and the three-stage approach in the process of maritime delimitation. Regarding this chapter, four main points need to be highlighted. First, the creation of new independent States during the 20th century and the introduction of the EEZ in international law and, consequently, the extension of competences of the coastal States were major changes that lead to a revision of the existing rules provided in the 1958 Geneva Conventions, including the CTS and the 1958 Geneva Convention on the Continental Shelf (hereinafter the 'CCS'). Second, the legal terms defining islands, rocks, LTEs and other categories of maritime features are terms that leave significant scope for different interpretations. Third, the presence of islands may constitute a relevant circumstance that would justify shifting the provisional equidistance line in the context of the delimitation of maritime spaces between States. Fourth, the delimitation of maritime zones between States requires the achievement of an equitable solution

taking into consideration all the relevant circumstances of the case. In consequence, there is not an obligation of means, but of result.

Chapters III to V discuss the legal definition of the three main categories of maritime features (islands, LTEs and rocks) and their impact in the delimitation of maritime boundaries. Chapters VI to VIII examine the other categories of maritime features.

Chapter III first analyses the legal definition of the term “island” as provided in article 121(1) LOSC, emphasizing that even if islands and LTEs are both naturally formed areas of land, surrounded by water, an island is above water at high tide. Conversely, a LTE is above water at low tide but submerged at high tide. In relation to the impact of islands in maritime boundary delimitation, the effect to be given to islands may differ since an island can be granted full effect, less than full effect (enclave, partial effect or little effect) or no effect. This will depend on different factors, such as the method of delimitation used, the location of the island, as well as on whether the delimitation concerns the TS or other maritime areas (CS or EEZ). In the case of maritime boundary agreements, this effect may also differ depending on political and economic considerations. In conclusion, as noted by the International Tribunal of the Law of the Sea (ITLOS) in the *Bay of Bengal* case: “[...] neither the case law nor State practice indicates that there is a general rule concerning the effect to be given to islands in maritime delimitation. It depends on the particular circumstances of each case.”<sup>1</sup>

Chapter IV analyses the rules applicable to LTEs. The author starts by discussing the legal definition of LTEs as laid down in article 13(1) LOSC, stressing the problems related to the sea-level measurement to determine whether a feature is above water at low-tide and therefore considered to be a LTE. If located within the TS of the mainland or an island, a LTE can be used as a basepoint. However, the effect given to LTEs in the context of maritime delimitation may differ as they can or cannot be granted an effect in the delimitation line. The *Qatar v. Bahrain* Case (Merits) and the *Bay of Bengal Maritime Boundary Arbitration* between Bangladesh and India are a good example of this.

With the introduction of new maritime spaces, States started claiming large maritime zones, including EEZs up to 200 nm, around and from small features. In view of these claims, the subcategory of rocks within the overall category of islands was established in article 121(3) LOSC in order to limit the capacity of a certain type of islands to generate maritime spaces. Chapter V then examines the legal definition of “rocks” as provided in LOSC by highlighting the problem related to the criteria defining a rock in international law: the lack of capacity to sustain human habitation or the lack of an economic life of their own. In the context of maritime delimitation, if situated in the TS of a mainland or an island, a rock may or may not be given an effect in the delimitation line. However, if located outside the TS of a mainland or an island, a rock can only generate its own TS and a CZ. An example can be seen in the *Nicaragua v. Colombia* case in relation to the so-called maritime feature *Quitasueño*.

Chapter VI analyses the rules applied to reefs and atolls. These categories were, for the first time,

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<sup>1</sup> *Dispute Concerning Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar)*, ITLOS Reports 2012, 4, at 147.

consecrated in articles 6 and 47(I) LOSC. Although the terms “atolls” and “reefs” are not expressly defined by LOSC, Pastor suggests that these categories must respond to the same criteria used to define islands and LTEs (pp. 76-77). He also suggests that this idea is confirmed in particular by the *South China Sea Arbitration* in respect of reefs that were qualified as being rocks (p. 402). Chapter VII deals with the category of islets. The term “islet” is not mentioned in any of the codification Conventions. However, it has been used in the practice of States and in judicial decisions related to maritime delimitation. Chapter VIII concerns cays and banks, categories that were not mentioned in the codification Conventions, but that have been recognized in State practice and judicial decisions. Concerning the effect given to these “emerging categories”, they have been used as basepoints and granted in some cases full effect in delimitation line.

Through the book the author contributes to the debate on the legal regime of maritime features in international law giving a constructive analysis of the rules governing these features in the context of maritime delimitation and related aspects. This book therefore represents a useful reference, particularly for legal practitioners and academics interested in these matters.

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