



THE LONDON INTERNATIONAL BOUNDARY CONFERENCE

PANEL 3: RECENT DEVELOPMENTS IN MARITIME BOUNDARY DELIMITATION

Panel 3 complements Panel 1 in addressing maritime boundary delimitation. Two of the presentations on this panel will draw connections between land boundary and maritime boundary disputes and delimitation by looking at the influence of maritime delimitation on the resolution of both maritime boundary disputes and land boundary disputes and the treatment of islands in maritime delimitation. The remaining presentations will focus on specific aspects of maritime boundary delimitation, namely ITLOS's approach to delimitation of the continental shelf beyond 200 nautical miles in the recent *Bangladesh-Myanmar* case and recent developments in maritime delimitation around the United Kingdom.

Judge Dolliver Nelson

Judge Dolliver Nelson is chairing this session.

Dr Alex Oude Elferink

ITLOS's approach to the delimitation of the continental shelf beyond 200 nautical miles in *Bangladesh-Myanmar*: Theoretical and practical difficulties

There seems to be room to question the approach of the International Tribunal for the Law of the Sea to the delimitation of the continental shelf beyond 200 nautical miles in its judgment in *Bangladesh-Myanmar* of 14 March 2012. After setting out the background to this delimitation, the presentation will consider how the Tribunal dealt with it. Next the presentation will evaluate the Tribunal's approach in the light of the existing case law on maritime delimitation. Finally, the presentation will look at a couple of examples from practice to illustrate the kind of difficulties the approach of the Tribunal might run into and will consider possible alternatives.

Professor Taisaku Ikeshima

Do recent developments in maritime delimitation have any implication for territorial and maritime boundary disputes in East Asia?

Recent judicial decisions and arbitral awards on maritime delimitation disputes have, to a considerable degree, clarified the ways to take in resolving maritime delimitation disputes. The so-called three-stage approach has been fairly continuously followed by international tribunals. It is often suggested that, in international practice, islands have not been given full effect but reduced effect in comparison with land masses in terms of creating maritime zones and delimiting maritime boundary.



THE LONDON INTERNATIONAL BOUNDARY CONFERENCE

In East Asia, there are some important territorial issues which certainly affect not only the delimitation of maritime boundaries in the region but also the allocation of natural resources such as gas and oil. These the Northern Territories between Japan and Russia; Takeshima/Dokdo between Japan and Korea; Senakaku/Diaoyu(tai) Islands between Japan and China; the Paracel Islands between China, Taiwan and Vietnam and the Spratly Islands between Brunei, China, Malaysia, Philippines, Taiwan and Vietnam. In each territorial and maritime dispute, the arguments employed by the parties concerned will include the applicability of major methodologies and approaches such as the natural prolongation theory, the equidistance/median line method combined with relevant circumstances and the legal status of an island under Article 121(3) of the United Nations Convention on the Law of the Sea. At the same time, however, one should take into consideration some other unusual factors that are pertinent in this region such as the legal status of Taiwan as a party to a dispute, an argument of China's historic rights and some legacies left behind since the end of the Second World War.

Against this background, this presentation discusses, *inter alia*, whether recent developments in maritime boundary delimitation have any implication for territorial and maritime boundary disputes in East Asia, to what extent the judgments will serve for the resolution of those disputes in the region and whether there is any particular historic element in this region that should be specifically taken into account.

Professor Nico Schrijver

De dominio maris. It all starts with the land.

This contribution examines the lessons to be learned from recent cases concerning sovereignty over islands as regards their implications for maritime delimitation. It demonstrates that title to territory remains the starting point of any maritime delimitation, as attested to by the importance that international courts and tribunals place upon the establishment of an original title as part of ancient territorial domains, of a treaty title, or a title based upon arbitral awards. In absence the of title, evidence of effective manifestation of sovereign authority (both with respect to the islands and the surrounding maritime area) will play a key role. However, minor features such as islets, rocks and minor coastal projections are not allowed to have a disproportionately distorting effect on maritime delimitation. This demonstrates that equitable maritime boundary delimitation requires in many respects the skillful mastering of the art of balancing.



THE LONDON INTERNATIONAL BOUNDARY CONFERENCE

Samuel Wordsworth QC

The treatment of islands in the ICJ's decision in Nicaragua/Colombia.

The recent decision in Nicaragua/Colombia offers an interesting example of the application of the three stage approach to maritime delimitation in the context of small islands opposite and within 200 nautical miles of the main coast of another state. The presentation will consider the Court's judgment (which was of course very poorly received by Colombia), focusing on its rejection of the argument in favour of enclaving the islands, on the question of the relevant coastlines and on the approach to dis-proportionality.

Chris Whomersley

The history and practice of maritime delimitation around the United Kingdom, particularly in the light of the developments in United Kingdom legislation

The United Kingdom has eight maritime neighbours and a large number of interesting geographical features, and therefore the issues surrounding the establishment of the maritime boundaries of the United Kingdom are complex. The result is, however, that the United Kingdom represents an interesting case study of the process of negotiating and agreeing maritime treaties. Chris Whomersley, Deputy Legal Adviser in the Foreign and Commonwealth Office, who has been responsible for Law of the Sea matters in the FCO for the last ten years, will speak about the history and practice of maritime delimitation around the United Kingdom, particularly in light of the developments in United Kingdom legislation.