

3-1995

Charting the Law of Maritime Boundaries

W. P. Gormley

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vjtl>



Part of the [International Law Commons](#), and the [Law of the Sea Commons](#)

Recommended Citation

W. P. Gormley, Charting the Law of Maritime Boundaries, 28 *Vanderbilt Law Review* 349 (2021)
Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol28/iss2/5>

This Book Review is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Journal of Transnational Law by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

BOOK REVIEW

Charting the Law of Maritime Boundaries

By W. Paul Gormley*

INTERNATIONAL MARITIME BOUNDARIES. Edited by Jonathan I. Charney & Lewis M. Alexander. Martinus Nijhoff Publishers: Dordrecht, The Netherlands, Boston, Mass. Copyright© American Society of International Law (1993). Vol. I, 1181 + xlvi pp.; Vol. II 1186-2138 + ix pp.

I. WHY STUDY LINES IN THE WATER?

When faced with disputes concerning maritime boundaries, one must analyze an array of materials, including: unilateral state practices, bilateral boundary agreements, multilateral regional conventions, the major international conventions—particularly the Law of the Sea Conventions of 1958 and the 1982 United Nations Law of the Sea Convention¹—and customary international law. Beyond question, this huge corpus of material appears overwhelming to most practitioners and scholars when they attempt to resolve maritime disputes. Faced

*W. Paul Gormley, D. Jur., M. Int'l & Comp. L. (Free University of Brussels), L.L.D. (Victoria University of Manchester, England), J.D., LL.M. (The George Washington University), Ph.D. (University of Denver), M.A. (University of Southern California). Member of the District of Columbia and United States Supreme Court bars.

1. United Nations Convention on the Law of the Sea, April 30, 1982, U.N. Doc. A/CONF. 62/122 (October 7, 1982) (entered into force, November 16, 1994) [hereinafter LOS Convention]. See, e.g., Status of the United Nations Convention on the Law of the Sea, 33 I.L.M. 309 (1994). See generally, *Law of the Sea Forum: The 1994 Agreement on Implementation of the Seabed Provisions of the Convention on the Law of the Sea*, 88 AM. J. INT'L L. 687 (1994). For official copies of the earlier conventions, see Convention of the High Seas, April 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 11 (entered into force, September 30 1962); Convention on the Continental Shelf, April 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311 (entered into force, June 10, 1964).

with such a daunting task, scholars, practitioners, and judges may want to consult *International Maritime Boundaries*, a brilliantly executed research project that analyzes 134 maritime boundaries. The purpose of this major undertaking by a select group of scholars associated with the American Society of International Law is to analyze and to evaluate existing maritime boundary agreements in order to detect any common rules of state practice that might become applicable to the future resolution of boundary questions, either through diplomatic negotiations or through third-party settlement. This research project was "designed to study each of the known boundaries in a systematic way in order to compare the approaches used to resolve these disputes."²

Generally, comprehensive maritime boundaries have not yet been established by states or international organizations. Instead, disputes arise when unilaterally asserted claims of two or more particular states overlap. For example, a dispute may arise when one state's plans to exploit mineral resources or fishing grounds conflict with traditional rights of navigation. Therefore, during the initial stages of inquiry, this study employed a regional approach to examine states that have negotiated boundary limits and, subsequently, ratified appropriate treaties. Typically, states have advanced exaggerated claims for the purpose of furthering their own national interests and extending national jurisdiction over portions of the formerly free high seas. By doing so, states have encompassed valuable fishery and mineral resources within the seabed and continental shelves.

This trend of national assertions of sovereignty over maritime areas that lie adjacent to coastlines has been accepted by the 1958 Law of the Sea Conventions and the 1982 Law of the Sea Convention.³ Consequently, states have claimed and forcibly defended new zones of maritime jurisdiction that have extended traditional territorial seas and continental shelves. States have asserted "boundaries . . . that maximize the areas over which they have exclusive authority to exploit and manage [the] resources" found within these new zones.⁴ Indeed, negotiation and litigation of maritime boundaries is likely to increase in the near future for several reasons: the two hundred mile exclusive economic zones, national harvesting of resources within extended continental

2. Jonathan I. Charney, *Introduction*, in *INTERNATIONAL MARITIME BOUNDARIES* (Jonathan I. Charney & Lewis M. Alexander eds., 1993) xxx [hereinafter *MARITIME BOUNDARIES*].

3. LOS Convention, *supra* note 1; Charney, *Introduction*, *supra* note 2, at xxiii (citations omitted).

4. Charney, *Introduction*, *supra* note 2, at xxiii.

shelves, and the significant consequences created by the exploitation of the deep seabed.

Moreover, the inherent clash between unilateral extensions of national jurisdiction, regional regimes (such as those of the Mediterranean, Black and Baltic Seas), and international law is formidable.⁵ A global survey reveals numerous controversies that remain unresolved. For instance, the clash between Greece and Turkey over the shelf regions in the Aegean Sea remain unresolved.⁶ Conversely, as the book demonstrates, since 1940 more than 130 boundary lines have been resolved by coastal states. Unfortunately, many more maritime boundary disputes remain unresolved. The authors have prepared this book in the hope that states seeking to resolve their disputes by peaceful means will benefit from the book's discussion of precedent.

Additionally, the book's discussion of prior state practice may help to guide international arbitrators and judges, who often face maritime boundary disputes. Since 1940, "there has been more litigation before the International Court of Justice on maritime boundaries than any other single subject."⁷ Nonetheless, the frequency with which such issues appear before the Court has not resulted in settled legal principles. The role of the equidistance principle in maritime law amplifies this problem. The 1969 judgment in the *North Sea Continental Shelf Cases* weakened the equidistance principle, by ruling that its application was not mandated by customary international law.⁸ As a result, there is a lack of clear positive law in this area.⁹ Authors Leonard Legault and Blair Hankey attribute the decline of the equidistance principle to the 1969 *North Sea Continental Shelf Case*. They maintain that the Court's ruling permanently weakened the equidistance principle by tempering it with the notion of "special circumstances."¹⁰ Since then, "[e]quidistance has been largely spurned in judicial proceedings because it is the hard cases that end up in litigation, and in the hard cases pure equidistance will seldom, if ever, produce an equitable result."¹¹ Other issues, such

5. W. Paul Gormley, *The Legal Regime of Enclosed or Semi-Enclosed Areas: The Particular Case of the Mediterranean*, 14 DALHOUSIE L.J. 566 (1992) (Book Review).

6. Charney, *Introduction*, *supra* note 2, at xlvii & n. 47.

7. *Id.* at xxvii.

8. *Id.* at xxvix.

9. *North Sea Continental Shelf Cases, Germany v. Denmark, Germany v. Netherlands*, 1969 I.C.J. REPORTS 3.

10. Leonard Legault & Blair Hankey, *Method, Oppositeness and Adjacency, and Proportionality in Maritime Boundary Delimitation*, in MARITIME BOUNDARIES, *supra* note 2, at 203-241.

11. *Id.* at 205.

as economic factors, must be considered to produce an equitable result. It is possible, therefore, to depart from a strict equidistance rule by the application of a "simplified equidistance" or a "modified equidistance" rule. Examples of this special use of equidistance have appeared in disputes arising on the African continent.¹² As a result of such state actions, the International Court of Justice has further modified, though not completely rejected, the norm of equidistance. "The Court now speaks of considerations of equity in order to produce equitable results."¹³

II. THE STUDY

Instead of beginning with doctrines from classical law,¹⁴ the scholars contributing to this book first reviewed the state practice evidenced by 130 maritime boundary agreements. Ten regional experts were asked to collect data regarding maritime boundaries from ten different regions. The regions and respective experts covering them are: (1) North America (Lewis M. Alexander), (2) Middle America/Caribbean (Kaldone Nweihed), (3) South America (Eduardo Jiménez de Aréchega), (4) Africa (Adronico O. Adede), (5) Central Pacific/East Asia (Choon-Ho Park), (6) Indian Ocean/South East Asia (J.R. Victor Prescott), (7) Persian Gulf (Lewis M. Alexander), (8) Mediterranean/Black Sea (Tullio Scovazzi), (9) Northern and Western Europe (David H. Anderson), and (10) the Baltic Sea (Erick Franckx).¹⁵ The findings of these experts are summarized in Part B of the book, entitled "Regional Analyses." In addition to presenting the raw data resulting from state actions, each expert presents a regional paper. To decide if customary international law may emerge from the negotiation of boundary agreements, each expert isolates common patterns of behavior. Although each of these regional papers deserves individual discussion, that task is beyond the scope of this review.

The regional analyses of Part B are based on the primary data compiled for each region; this primary data, which comprises the largest part of the book, is compiled in Part C, entitled "Maritime Boundary Reports and Documents." The regional experts looked to the methods employed by states to determine their maritime

12. Adronico O. Adede, *African Maritime Boundaries*, in MARITIME BOUNDARIES, *supra* note 2, at 293-94.

13. Charney, *Introduction*, *supra* note 2, at xxviii.

14. Cf. W. Paul Gormley, *The Development of the Rhodian-Roman Law to 1681, With Special Emphasis on the Problem of Collision*, 3 INTER-AMERICAN L. REV. 317 (1961).

15. Charney, *Introduction*, *supra* note 2, at xxx-xxxii.

boundaries. In effect, the regional studies bring together legal precedent from ten distinct geographical areas. Among the benefits of such collaborative research is that certain distinctions can be drawn. For example, the history of settled maritime boundaries for the Baltic Sea can be contrasted with the "continuing controversies and international litigation" regarding the Mediterranean and Black Seas.¹⁶ Primary substantive findings, though inconclusive, demonstrate that geographic factors, such as the existence of continental shelves and the presence of fishery and mineral resources, predominate when boundaries are fixed.¹⁷

Any lawyer or diplomat who must conduct a serious investigation in conjunction with a pressing case will want to know if there are any unique local practices that may be at variance with international norms. Part C of this book incorporates considerable evidence of such state practice, including unilateral actions that were subsequently incorporated into bilateral and regional agreements. It analyzes each existing boundary treaty or regional convention, which may become future precedent for resolving boundary disputes. Each treaty regime is evaluated from nine specific points of reference: (1) political, strategic, and historical considerations; (2) legal factors; (3) economic and environmental considerations; (4) geographic elements; (5) islands, rocks, reefs, and low-tide elevations; (6) baseline considerations; (7) geological and geomorphological factors; (8) methods of delimitation that have been selected and (9) technical evaluations.¹⁸ Part C also provides the reader with a concise summary of the existing realities, including: a full English language copy of treaties, a detailed map illustrating the resulting boundaries, the texts of arbitral awards or judicial verdicts, and a discussion of unresolved issues.

This study also examines worldwide implications of this evolving corpus of law. Using the data compiled in Part C, nine authors discuss global issues in Part A of the book, entitled "Global Analyses." This part contains nine essays covering the following themes: (1) political, strategic, and historical

16. *Id.* at xxxiv-xxxv; see W. Paul Gormley, *The Legal Regime of Enclosed or Semi-Enclosed Areas: The Particular Case of the Mediterranean*, 14 DALHOUSIE L.J. 566 (1992) (Book Review); cf. *ESSAYS ON THE NEW LAW OF THE SEA* (Budislav Vukas ed., 1985).

17. See Prosper Weil, *Geographic Considerations in Maritime Delimitation*, in *MARITIME BOUNDARIES*, *supra* note 2, at 115-130 (stating that geography is the leading factor in maritime delimitation).

18. A tenth category, "Other Considerations," rounds out the points of reference by indicating any unique material.

considerations (Bernard H. Oxman); (2) legal factors (David Colson); (3) economic and environmental considerations (Barbara Kwiatkowska); (4) geographic elements (Prosper Weil); (5) islands, rocks, reefs, and low-tide elevations (Derek Bowett); (6) baseline considerations (Louis B. Sohn); (7) geological and geomorphological factors (Keith Highet); (8) methods of delimitation that have been selected, (Leonard Legault and Blair Hankey), and 9) technical evaluations (Peter Beazley).¹⁹

III. ANALYSIS

In good "common law" fashion, the authors have adopted an inductive method of research, examining each existing boundary determination for the purpose of detecting and isolating common elements. Instead of dealing with abstract concepts from classical international law, such as the unlimited freedom to exploit ocean resources, the authors successfully test existing hypotheses from traditional law.²⁰ For example, the South American practice of establishing maritime boundaries hundreds of miles beyond a state's territorial sea eventually became universally accepted. Obviously, this massive two-volume study contains numerous additional illustrations that detect and isolate the interests that states seek to protect. These interests are mainly economic and political, such as preserving certain waters as fishing grounds and others for mineral exploitation. However, national security sometimes appears as the most pressing interest.

The bilateral treaties examined in this book often resulted from extended periods of negotiation and have prevented open hostilities. Unfortunately, this considerable state practice has not developed into a new body of customary international law.²¹ Yet, while no single norm has emerged, the range of options available to states facing a maritime boundary dispute remains relatively limited.²²

19. Charney, *Introduction*, *supra* note 2, at xxxiii-xxxiv.

20. Cf. OPPENHEIM'S INTERNATIONAL LAW (Robert Jennings & Arthur Watts eds., 1992). In particular, see *The Territorial and Contiguous Zone*, in OPPENHEIM'S INTERNATIONAL LAW, *supra*, at 599-626; *Archipelagoes and Arcipelagic States*, in OPPENHEIM'S INTERNATIONAL LAW, *supra*, at 643-49. See also W. Paul Gormley, *Straits in International Navigation: Contemporary Issues*, 9 OCEAN MGMT. 317 (1984) (Book Review).

21. *Accord generally*, W. Paul Gormley, *The Development and Subsequent Influence of the Roman Legal Norm of "Freedom of the Sea,"* 40 U. DETROIT L.J. (1963).

22. See, e.g., David Colson, *The Legal Regime of Maritime Boundary Agreements*, in MARITIME BOUNDARIES, *supra* note 2 at 41-73. *Accord* W. Paul

Underlying the bilateral approach, when it comes into conflict with global perspectives, is the notion that the interests of sovereign states must be protected. Foremost among such sovereign interests have been economic interests, including the protection of fisheries and mineral resources. Diplomatic and political considerations also often arise as issues. Considerations of national defense and security remain ever present along with notions of national prestige. Regrettably, environmental protection and preservation of eco-systems have, to date, not been accorded much weight.²³

The underlying problem in such disputes is that states advance exaggerated claims when unilateral actions are taken to extend national sovereignty over additional segments of frontier regions. Similarly, states continue to defend these exaggerated claims during diplomatic negotiations and judicial proceedings. States seek to obtain maximum benefits at the expense of their counterparts, third states, and ultimately, the world community. Possibly, the most serious effects of these regional agreements is the effect upon the rights of third states.

The inherent rights of third parties to share ocean resources must be respected, pursuant to customary international law and United Nations conventions. Hence, the rights of other sovereigns must be taken into consideration throughout bilateral negotiations. National maritime legislation and the expression of the global community interact through United Nations conventions. Therefore, the entry into force of the 1982 United Nations Law of the Sea Convention on November 16, 1994²⁴ is quite significant.

The authors examine the factors that dominate during the negotiation process. Geological factors are the most significant because they influence arbitrators and international tribunals. In particular, islands, rocks, and low-tide elevations present unresolvable difficulties. One need examine only the Aegean Sea and the Pacific archipelagos to understand such difficulties.²⁵

Gormley, *The Unilateral Extension of Territorial Waters: The Failure of the United Nations to Protect Freedom of the Seas*, 43 U. DET. L.J. 695 (1965).

23. W. PAUL GORMLEY, *HUMAN RIGHTS AND ENVIRONMENT: THE NEED FOR INTERNATIONAL CO-OPERATION* (1967); W. Paul Gormley, *The Legal Obligation of the International Community to Guarantee a Pure and Decent Environment*, 3 GEO. INT'L ENVTL. L. REV. 85 (1990); Barbara Kwiatkowska, *Economic and Environmental Considerations in Maritime Boundary Delimitations*, in *MARITIME BOUNDARIES*, *supra* note 2, at 101.

24. LOS Convention, *supra* note 1.

25. See Derek Bowett, *Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations*, in *MARITIME BOUNDARIES*, *supra* note 2, at 131-151; see also Prosper Weil, *Geographic Considerations in Maritime Delimitation*, in

Within this context, what are the provisions that states seek to have included within bilateral treaties and multilateral conventions? Even though all of the contributors deal with this issue from their chosen perspective, no final summary is provided for the benefit of future negotiators, arbitrators, or judges. The authors, however, discuss the "special circumstances" that governed the delimitation of each boundary studied. Influenced by private international law, especially conflict of law rules, the authors conclude that each individual case must be decided on its own peculiar factual situation, rather than relying on classical doctrines such as the equidistance principle.

However, the authors do not completely ignore traditional norms. Indeed, traditional rights of navigation and fishery regimes, prior international agreements, historical maritime practices, and classical sea law still influence the delineation of maritime boundaries. When these forces of law come into conflict with current economic forces and potential mineral exploitation, which of these elements will be considered by arbitrators and judges? This book suggests that no definite answer is clear, even though geological factors tend to predominate. Nonetheless, this book represents a splendid beginning in an attempt to determine which legal norms and political and security considerations will influence an international tribunal to reach an equitable result. When states resort to third-party settlement, they must, therefore, take into account a whole range of interests. For instance, it appears that states and judicial fora have been unable to rely on customary international law. Conversely, when the parties have previously negotiated a successful agreement, further controversy has been avoided. Regrettably, there is no definite pattern of state practice, and existing precedent is fragmentary and fails to support any substantive principle. Similarly, no normative principle has emerged within international law that can mandate, or even tentatively indicate, the proper location of any future maritime boundaries. It is impractical, therefore, to predict the subsequent location of any proposed boundary. Unfortunately, as previously mentioned, while 134 boundaries have been settled, several hundred boundaries still must be delineated.²⁶

MARITIME BOUNDARIES, *supra* note 2, at 115-130; accord Peter Beazley, *Technical Considerations in Maritime Boundary Delimitations*, in MARITIME BOUNDARIES, *supra*, at 234-262.

26. Charney, *Introduction*, *supra* note 2, at xlii.

IV. CONCLUSION

While this book suggests that there is no clear answer for delimiting maritime boundaries, editor Jonathan I. Charney does suggest a number of specific considerations that may assist courts, arbitral panels, or states in reaching decisions on maritime boundaries. First, the geography of the coastline will receive "[p]rimary attention."²⁷ Second, the equidistance principle will be considered, even though a variant of it may ultimately be employed.²⁸ Third, states may consider options other than a clear, definite boundary line.²⁹ For example, disputing states could negotiate the joint development of particular zones. Fourth, states may reach interim agreements.³⁰ Other considerations include: the extent of investment in geological resources versus knowledge of the resources; international agreements between the coastal states; the general relations of the disputing states; the limits on the range of possible lines that may be drawn; and, reaching a result that leaves neither party with the sense that it was the loser.³¹ Whether these ideas will be considered by courts facing maritime boundary disputes, or states engaged in them, remains to be seen.

When confronted with issues of customary law, the International Court of Justice has striven to reach equitable results. Accordingly, the availability of the basic data, treaty texts, and judicial opinions contained in this study will help states arrive at reasonable claims and propose solutions, which treaty texts may subsequently incorporate. By first consulting the "boundaries books," parties will become more sensitized to existing legal precedent. The systematic method employed in these volumes may establish precedent for the evolution of international and regional law. Hopefully, these two volumes can help solidify emerging international law and establish future legal regimes, supported by arbitral and judicial dispute resolution mechanisms.

27. *Id.* at xliv.

28. *Id.* at xliv-xlv.

29. *Id.*

30. *Id.*

31. *Id.*

