

Forum: The Legal Committee (GA6)

Issue: The legal implications of maritime boundary disputes (Article 15, 74/83, 76, 298)

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Introduction:

Maritime boundary disputes have been a main cause of international conflict for many years. Having access to the sea imposes economic, political, and even cultural advantages over other states. Therefore, many states seek to claim more sea areas which leads to conflicts between states. The problem arises from the nature of maritime disputes, due to the interconnectedness of the oceans. These disputes occur when nations claim overlapping maritime areas, leading to tensions and potential conflicts that can disrupt regional stability and adversely affect the well-being of those living in the disputed areas. Though there are set borders with border patrol, it is impossible to manage all maritime borders, making the sea borders virtually permeable. Thus, it is crucial to establish a legal framework to both prevent and settle maritime boundary disputes.

In addressing this matter, we must acknowledge the involvement of various stakeholders, including nations with overlapping claims, international maritime organizations, and the United Nations Convention on the Law of the Sea (UNCLOS). It is within the legal framework of UNCLOS and other relevant international laws that the resolution of maritime boundary disputes is sought. UNCLOS provides a comprehensive framework for resolving such disputes, and several articles within UNCLOS, including Article 15, Article 74, Article 83, Article 76, and Article 298, are particularly relevant in addressing the legal complexities associated with maritime boundary disputes.

Article 15 calls for the delimitation of territorial seas in cases of opposite or adjacent coasts, emphasizing peaceful dispute resolutions. Articles 74 and 83 outline the principles for delimiting Exclusive Economic Zones (EEZ) and continental shelves between opposite states encouraging cooperation. Article 76 defines the continental shelf and criteria for its outer limits, guiding states in extended continental shelf claims which can lead to disputes over resources. Lastly, Article 298 allows states to opt out of dispute resolution procedures, potentially leading to issues while preserving their right to protect national interests. These clauses establish the legal framework for maritime boundaries, and the understanding of these clauses and their legal implications is crucial when approaching this issue.

Definition of Key Terms:

1. **Equidistance:** The method of boundary determination ensures that every point in the boundary is equidistant from the nearest points of the baselines, which serve as the starting points for measuring the breadth of the territorial sea of each State (Article 6 of UNCLOS)
2. **Maritime Boundaries:** Maritime boundaries are the defined limits that determine a state's jurisdiction and control over its maritime areas, including territorial waters, exclusive economic zones (EEZs), and continental shelves.
3. **Baseline:** In maritime law, the baseline refers to the low-water line along the coast used as a reference point for measuring the breadth of the territorial sea and other maritime zones.
4. **United Nations Convention on the Law of the Sea (UNCLOS):** UNCLOS is an international treaty that was signed on the 10th of December, 1982, establishing the legal framework for the use and protection of the world's ocean resources. It consists of guidelines, rights, and responsibilities of states concerning the use of the ocean and managing maritime resources.
5. **Exclusive economic zone (EEZ):** The EEZ is a maritime zone established under the UNCLOS. It is an area beyond a coastal state's territorial sea that extends up to 200 nautical miles (approximately 370 kilometres) from its baselines. In some cases, where the distance between adjacent states is less than 400 nautical miles, the EEZ may be determined by an agreed equidistance or other relevant criteria. The EEZ grants coastal states certain rights and jurisdiction over the exploration and exploitation of natural resources, both living (fisheries) and non-living (oil, gas, minerals) within this zone. The coastal state has exclusive rights to exploit and manage these resources, as well as the responsibility to conserve and manage the marine environment.
6. **Territorial Sea:** The territorial sea is the area of water adjacent to the coast of a state that is considered part of its sovereign territory. It extends up to 12 nautical miles from the baseline.

7. **Continental Shelf:** The continental shelf refers to the underwater extension of a coastal state's land territory beyond its territorial sea. It comprises the seabed and subsoil of the submarine areas adjacent to the coast and can extend beyond 200 nautical miles in certain circumstances.
8. **Delimitation:** Delimitation is the process of establishing the boundaries or dividing lines between adjacent or overlapping maritime zones of two or more coastal states, such as the territorial sea, EEZ, or continental shelf.
9. **Joint Development Zone:** A joint development zone (JDZ) is a designated area in which neighboring states agree to jointly explore and exploit resources, often established in areas where maritime boundary disputes exist. JDZs aim to facilitate cooperation and shared benefits while deferring the resolution of the underlying boundary dispute.
10. **Compulsory Dispute Settlement Mechanisms:** These are legal procedures specified in UNCLOS that require states to submit maritime boundary disputes to compulsory arbitration or adjudication unless they have made a declaration under Article 298 to exclude certain types of disputes.
11. **Arbitration:** Arbitration is a method of dispute resolution in which parties submit their case to a neutral third party, the arbitrator, who makes a binding decision based on the evidence and arguments presented.
12. **Adjudication:** Adjudication refers to the process of resolving a dispute through legal proceedings in a court or tribunal. In the context of maritime boundary disputes, it typically involve an international tribunal, such as the International Court of Justice or the International Tribunal for the Law of the Sea.
13. **Precedence:** Precedence refers to the legal weight given to previous decisions or rulings in similar cases. It can influence the outcome of maritime boundary disputes by providing guidance or establishing a basis for future delimitation decisions.

Background Information

The issue of the legal implications of maritime boundary disputes arises when conflicts or disagreements between states emerge regarding the delimitation of their maritime boundaries. These disputes typically revolve around the allocation of rights

and jurisdiction over resources in the disputed areas, such as fishing rights, oil and gas reserves, and control over shipping lanes.

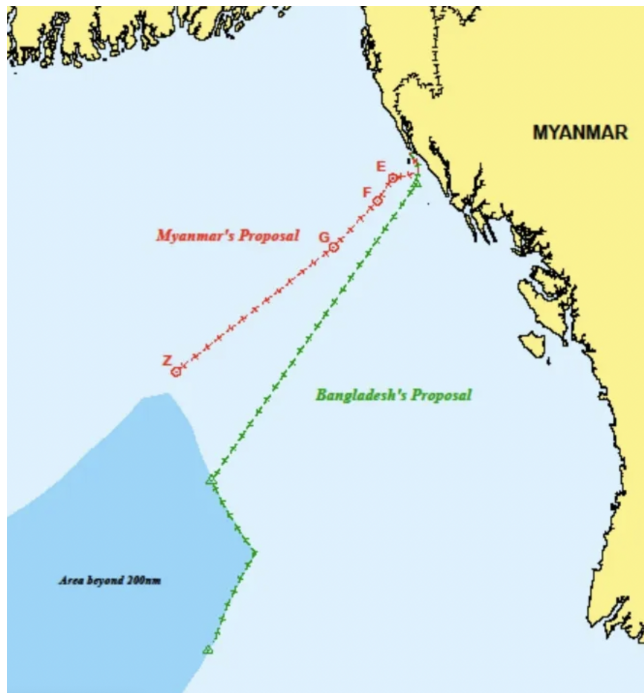
The history of maritime boundary disputes is complex and varies among different regions and states. One significant factor contributing to these disputes is the colonial legacy, where conflicting territorial claims were established by European powers. These historical boundaries often do not align with modern interpretations of international law. While geopolitical considerations, such as strategic interests, national security concerns, and access to resources, can contribute to maritime boundary disputes. These factors are most significant in the recent South China Sea Disputes and the Beaufort Sea Dispute from 1970 to 1980. States may seek to secure control over certain areas to assert sovereignty, protect economic interests, or project influence in a region.

Differences in the interpretation and application of international law, particularly concerning the United Nations Convention on the Law of the Sea (UNCLOS), have contributed to disputes. Disagreements exist regarding the extent of exclusive economic zones (EEZs), the status of certain features as islands or rocks, and the legality of activities conducted in disputed areas.

Maritime boundary disputes have a long history dating back to for example the North Sea Continental Shelf Cases in 1969-1978, which includes disputes between Germany and the Netherlands, and Denmark and Germany, over the delimitation of the continental shelf in the North Sea. These cases were brought before the International Court of Justice (ICJ) while Denmark and the Netherlands argued for equidistance (see key terms) as stated in the UNCLOS the court decided that it would not apply as Article 6 in the UNCLOS is not binding to Germany as Germany did not ratify the UNCLOS at that time and only signed it, making it unqualified for estoppel (A principle of international law that prohibits a party from retracting or contradicting its previous statements when such statements have led others to rely on them or incur some form of harm or disadvantage.). Another significant maritime boundary dispute is the Gulf of Maine Boundary Dispute in 1977-1984 where Canada and the United States disagreed on the maritime boundary in the Gulf of Maine, particularly concerning the delimitation of the exclusive economic zone (EEZ) and fishing rights. The dispute was settled through the signing of the Canada-United States Agreement on the Gulf of Maine in 1984.

A maritime boundary dispute that was influential in the aspect of fishing rights was the Anglo-Icelandic Cod Wars (1958 to 1976). Iceland and the United Kingdom clashed over fishing rights in the waters surrounding Iceland. The disputes escalated into several confrontations, known as the Cod Wars, and involved the use of naval vessels. These conflicts led to changes in fishing practices and contributed to the development of the EEZ concept under UNCLOS.

Case Study



(Sketch map composed by ITLOS illustrating the competing claims of Bangladesh (green) and Myanmar (red).)

Another example of a maritime boundary dispute between states that involved the UNCLOS but still faced disagreements is the dispute between Bangladesh and Myanmar (Burma) over the delimitation of their maritime boundary in the Bay of Bengal. The dispute between Bangladesh and Myanmar dates back to the 1970s when both countries started exploring for potential offshore oil and gas reserves in the Bay of Bengal. The region is rich in natural resources, and the competing claims over these resources led to tensions and disputes between the two neighbouring nations.

In 2009, both Bangladesh and Myanmar submitted their claims to the United Nations Commission on the Limits of the Continental Shelf (CLCS) under the UNCLOS to determine the extent of their continental shelves beyond the 200-nautical-mile Exclusive Economic Zone (EEZ). According to UNCLOS, coastal states have the right to claim an extended continental shelf if they can demonstrate that the seabed and subsoil of the area are a natural prolongation of their land territory.

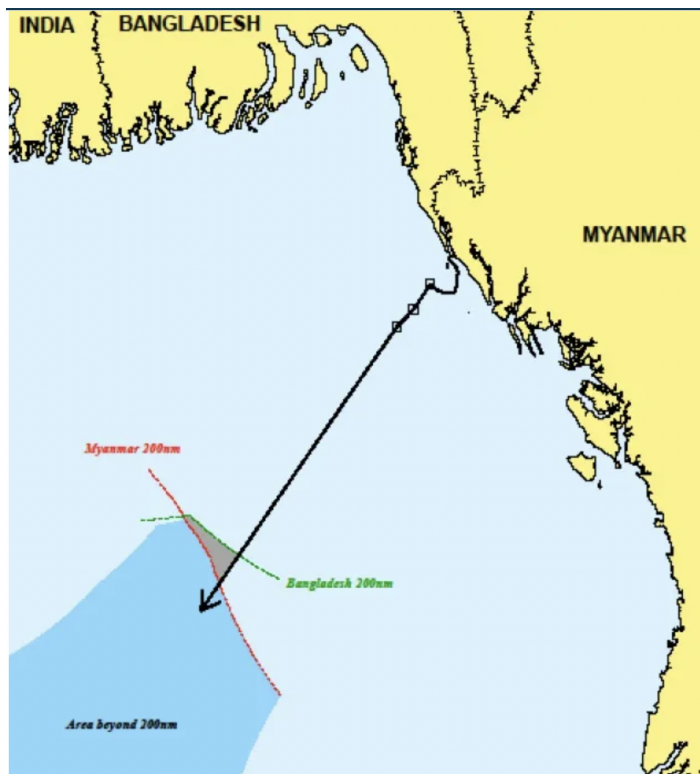
Bangladesh's elongated and indented coastline made maritime boundary disputes highly likely. The application of standard maritime boundary law suggested that India's and Myanmar's 200 nautical mile exclusive economic zones (EEZs), with their intersecting arcs, could potentially deprive Bangladesh of access to the continental shelf, leaving it with an unfairly small EEZ considering the length of its coastline. Consequently, both Myanmar and Bangladesh asserted opposing claims to a specific area of ocean and seabed that extended southwest from the endpoint of

their land border in ways that would maximise their access to potential oil and gas reserves.

The situation remained unresolved for several years, with both countries asserting their claims and refusing to make concessions. Diplomatic efforts were made to reach a negotiated settlement, but progress was slow, and tensions persisted.

In 2012, the situation escalated when Myanmar awarded exploration licences to foreign companies for blocks in the disputed area. Bangladesh saw this move as a direct challenge to its maritime claims and raised objections. The situation became more complicated as international oil companies became involved, further complicating the dispute.

Despite the disagreements and tensions, both Bangladesh and Myanmar remained committed to the UNCLOS process and the resolution of the dispute through peaceful means. They continued to engage in bilateral discussions and sought to find a solution that would be acceptable to both parties.



(Delimitation of the Bay of Bengal)

Finally, in 2014, after years of negotiations, Bangladesh and Myanmar reached a breakthrough when they agreed to a partial resolution of their maritime boundary dispute. The two countries signed a Memorandum of Understanding (MoU) to delimit their maritime boundary in the Bay of Bengal. The agreement allowed both countries to explore and exploit the oil and gas reserves in the contested area jointly.

The ruling created a grey-area which eliminated the contradicting conditions of how Myanmar would normally be granted the seabed in this area, however this would disrupt the continental shelf of Bangladesh.

However, this decision is still debatable due to the jurisdiction on a small island that belongs to Bangladesh but is directly West to Myanmar. The Tribunal prohibited Bangladesh from utilizing the island as a reference point when establishing the equidistance line between their respective exclusive economic zones (EEZs) and continental shelves. Furthermore, the decision downplayed the island's relevance by refusing to recognize it as a "relevant circumstance" to be taken into account when making adjustments to the boundary line. Zhiguo Gao, China's appointee on the tribunal, disagreed with the final delimitation and thought that further emphasis should be on the economic development of the island and such.

However, in general, this agreement resulted in a peaceful solution and finally allowed international energy companies to utilize the natural resources in the area.

Current Situation

There are still maritime boundary disputes happening between coastal states, and the majority are only solved through court decisions or third-party solutions.

An ongoing dispute is the South China Sea Disputes. Multiple states, including China, Vietnam, the Philippines, Malaysia, and Brunei, have overlapping claims over territories and maritime boundaries in the South China Sea. The disputes involve contested islands, reefs, and the delimitation of EEZs and continental shelves, directly invoking Articles 15, 74/83 and 76. These states are legally not breaching the articles of UNCLOS however are still in indirect conflict with each other causing problems. Tensions remain high in the region, leading to geopolitical concerns and military activities.

Due to the rich natural gas and oil resources in the South China Sea, neighbouring countries are all interested in owning a share of the sea and an appropriate EEZ. China asserts a historical claim over nearly the entire South China Sea, marked by the "nine-dash line," which encompasses an extensive area and overlaps with the exclusive economic zones (EEZs) of other countries. Vietnam, the Philippines, Malaysia, and Brunei also claim various parts of the region based on their own historical rights and proximity to the contested features. Additionally, due to Article 298, states have the authority to not negotiate with other states, only leading to escalation.

The dispute involves ownership claims over specific islands, reefs, and shoals in the South China Sea. For example, the Spratly Islands and the Paracel Islands are claimed by multiple countries, leading to overlapping territorial claims.

The Philippines has taken the dispute to international arbitration, contesting China's extensive claims in the South China Sea. In 2016, the Permanent Court of Arbitration in The Hague ruled in favor of the Philippines, stating that China's "nine-dash line" claim had no legal basis, but China rejected the ruling, maintaining its historical claims. Thus this portrays the issues of UNCLOS, where state sovereignty is valued to the point where it prevents a strict enforcement of the arbitration and clauses itself.

In recent years, China has engaged in extensive land reclamation and construction of artificial islands in the South China Sea. These developments have raised concerns among other claimant countries and the international community, as they can be used for military purposes and potentially change the balance of power in the region. This portrays how China's assertion of power prevents states or third parties to enact maritime boundary laws. Therefore, a strong method of enforcement is necessary in order to prevent superpowers such as China to bypass legal repercussions.

Major Parties Involved and Their Views

The Division for Ocean Affairs and the Law of the Sea (DOALOS)

The DOALOS enacts as the secretariat of UNCLOS and provides information and advice to states to assist in better understanding the convention, in order to establish a uniformed and consistent implementation. This is the key organisation that can achieve an agreement as it is actively ensuring states follow the agreements of UNCLOS. It strives for all states to closely follow the terms of UNCLOS and to ensure peace between states regarding maritime borders

China

China has become a superpower in the last few years due to its rapid economic growth. This can be attributed to China's fast development which could be seen as the reason for its claim over the SCS. China being in the center of the SCS dispute, plays a major role in handling this issue. China's claim over the SCS is on the basis of historical rights, which were initially ruled out by UNCLOS in 2016, in which China stated would not be bound to the decision. With the military development of the SCS and defiance against UNCLOS, it seems as if China seeks the individual freedom of states to assert maritime

jurisdiction. However, China has also openly stated its willingness to resolve this issue peacefully, potentially looking to accept a joint development plan for the SCS.

Association of Southeast Asian Nations

The Association of Southeast Asian Nations (ASEAN) is an IGO that aims to promote economic development, political stability and cooperation among its member states in South East Asia. Many of the parties involved in the SCS conflict are part of ASEAN. Thus, at an attempt to prevent escalation, ASEAN has aimed to foster a Code of Conduct which has been difficult due to the non-ASEAN state, China. While ASEAN do not have direct impact on maritime boundary laws, it can influence and shape ASEAN states to adhere to international maritime law and assist in achieving an agreement.

Greece/Türkiye:

These states are involved in various maritime disputes that are yet to be resolved. One of the disagreements comes from The Aegean Sea, which is located in between Greece and Türkiye. The issue lies within the small islands within the region, which are subject to its own maritime jurisdiction, EEZ, and airspace. These islands are under the jurisdiction of Greece, and due to their strategic positions and potential for natural resources, both states aim for control over this area. Greece argues on the basis of UNCLOS whereas Türkiye states that it is too close to its country and justifies their claim with the principle of “*blue homeland*”. To this day, NATO, the EU, and the UN have attempted to mediate peaceful negotiations between the two states. However, both have performed military-assisted expeditions and even had a naval standoff. It is clear that this issue will not resolve in its current state, thus changes need to be made that allow legal enforcement.

ICJ

The ICJ is the principal judicial organization in the UN and handles an array of legal disputes between states including maritime conflicts. As the main legal prosecuting group of the UN, the ICJ holds a principal role in resolving issues case by case. Since it is legally binding, states are forced to adhere to their statements, making it an effective way to regulate disputes. However, the glaring weakness of the ICJ is that all parties must agree in order for the ICJ to make a judgement. Therefore although the ICJ still remains as an important body to settle disputes, its limited jurisdiction prevents it from taking action in the bigger ongoing conflicts such as the SCS.

UN Involvement, Relevant Resolutions, Treaties and Events

- United Nations Convention on the Law of the Sea, 17 December 1970 (**Resolution 2749 (XXV)**):
- *Article 15 (summary): States with opposite or adjacent coasts cannot extend their territorial sea beyond the median line, which is equidistant from the nearest points on their baselines, unless they agree otherwise or have historic title or special circumstances.*
- *Article 74 (summary): The delimitation of the exclusive economic zone should be achieved through international law and equitable solutions. If no agreement can be reached, the States concerned should resort to procedures provided in Part XV of the Convention. Before reaching a final agreement, the States should make efforts to enter into provisional arrangements without jeopardising the final delimitation.*
- *Article 83 (summary): The delimitation of the continental shelf should be based on international law and an equitable solution. If no agreement can be reached, the States concerned should follow the procedures in Part XV of the Convention. Like in Article 74, provisional arrangements can be made before a final agreement is reached.*
- *Article 76 (summary): The continental shelf of a coastal State extends beyond its territorial sea to the outer edge of the continental margin or 200 nautical miles from the baselines, whichever is less. The continental margin includes the seabed and subsoil of the shelf, slope, and rise but excludes the deep ocean floor and its ridges. Procedures for determining the outer limits of the continental shelf are detailed, including submission to the Commission on the Limits of the Continental Shelf.*
- *Article 298: Optional exceptions to the applicability of Section 2 (dispute settlement procedures). States can declare exceptions to certain procedures related to sea boundary delimitations or historic bays/titles disputes. Disputes concerning military activities or matters under the UN Security Council's jurisdiction can be exempted from certain procedures. States can withdraw or modify their declarations, but disputes in the process won't be affected unless parties agree otherwise.*

Possible Solutions

- Establish a Regional Maritime Boundary Commission
 - A specialized commission composed of legal experts and geographers from the concerned coastal states
 - Primary task would be to collaboratively and precisely delineate maritime boundaries
- Imposing the negotiation of EEZ Sharing Mechanisms

- These agreements would establish clear rules for resources allocation (what percentage, revenue sharing, explicitly defining EEZ territories, etc)
- Creation of a *Historical Rights Panel*
 - International panel of historians and legal experts tasked with evaluating a historical claim made by a state
 - This would reduce the conflicts regarding boundaries
- Regular UNCLOS Compliance Audits
- Restricting naval activity for all states within a maritime zone that multiple states claim to own until a formal agreement is reached

Bibliography

Useful Links

- [United Nations Convention on the Law of the Sea](#)
- <https://www.imo.org/en>
- <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/introduction.htm#:~:text=The%201982%20Convention%20fixed%20the,for%20the%20exclusive%20economic%20zone.>
- https://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm#:~:text=by%20%22*%22.-,The%20United%20Nations%20Convention%20on%20the%20Law%20of%20the%20Sea,the%20oceans%20and%20their%20resources.
- <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/index.htm>
- https://www.un.org/depts/los/doalos_publications/publicationstexts/Handbook%20on%20the%20delimitation%20of%20maritime%20boundaries_Eng.pdf

Works Cited

- [Introduction to Maritime Boundary Disputes-Sciencedirect](#)
- [North Sea Continental Shelf Cases \(with pictures and legal explanations\)](#)
- [Maritime Boundary Dispute Gulf of Maine \(US/Canada\)](#)
- [Case study 1](#)
- [Case study 2](#)
- [North Sea Continental Shelf Cases \(with pictures and legal explanations\)](#)

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- <https://www.iom.int/sites/g/files/tmzbd1486/files/documents/maritime-security-and-border-management.pdf>
- <https://www.un.org/ola/en/content/div-doalos>