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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

DISPUTE SETTLEMENT MECHANISM ON MARITIME DELIMITATION WITH SPECIAL REFERENCE TO ITLOS

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Abstract

With over 71% of the Earth's surface covered by oceans, maritime boundaries have become increasingly significant, especially as the global economy shifts toward the Blue Economy framework, where ocean resources play an essential role in sustainable economic growth. Maritime boundary delimitation disputes arise as nations seek to define and protect their maritime zones, often overlapping due to geographical proximity or competing claims to valuable resources. This article explores the mechanisms available under the United Nations Convention on the Law of the Sea for resolving such disputes. The Author discusses the non-compulsory and compulsory methods outlined in UNCLOS, including negotiation, mediation, conciliation, and arbitration. The Author discusses the role played by the ITLOS in the cases pertaining to maritime delimitation.

Introduction

Maritime boundary delimitation disputes have become a growing concern due to the increasing recognition of ocean resources as essential for economic development and strategic national interests. Traditionally, land-based boundary disputes have received more attention; however, as the world economy transitions to include ocean resources within the Blue Economy, states are prioritizing the establishment and protection of maritime boundaries. This shift reflects the immense value of ocean zones for fisheries, energy resources, minerals, and shipping routes. Disputes often emerge from overlapping claims, sovereignty conflicts over islands, and competing rights within the 12-nautical-mile territorial sea, the 200-nautical-mile Exclusive Economic Zone (EEZ), and continental shelf areas that may extend beyond 200 nautical miles. This paper examines the framework provided by UNCLOS for addressing these disputes, with a focus on the different dispute resolution mechanisms available and their effectiveness in various case scenarios.

Land covers 29% of Earth and the remaining is left for water, where more than 96.5 is exclusively held by oceans. But we give more importance to the disputes that arise in 29% because of lack of knowledge about sea resources. Due to the fact that the global economy is transitioning towards the "Blue Economy," or an economy that is reliant on ocean resources, the countries are developing a heightened level of worry for their maritime boundaries.

As the countries are nowadays more dependent on Ocean for their economic development through mineral and other resources, they are very much concerned about their maritime boundaries. The existence of disputes over maritime zones, there lies heavy disadvantage on the part of coastal countries. In order to avoid such issues, the need for definite maritime boundary is inevitable. These sorts of disagreements are also detrimental to the political peace that exists in international relations. The necessity of finding a solution to maritime border disputes is of greater relevance if parties are interested in maintaining healthy relations and living together in peace.

Most disagreements take too long to resolve, unfortunately. Procedures for delimiting marine boundaries are primarily addressed in this Convention.¹

According to N. Newman, less than half of global potential maritime boundaries have been resolved, which leaves opportunity for uncertainty and potential disputes about the remaining potential maritime boundaries. Additionally, maritime border conflicts can arise over commercial, economic, and security concerns; these disagreements constitute a prevalent but undervalued investment risk in the energy sector.

The basis for setbacks in dispute settlement with respect to maritime boundaries can be briefly made out in an effort to get a deeper comprehension of the mechanism.

1. There are not only boundary issues between coastal states. If in that case, the importance to govern the land can be given more importance depending on the intensity of the problem.
2. Lack of awareness about the subject and its supportive arrangements which enable them to have more access if used properly.

¹ Md. M. Hasan, H. Jian, Md. W. Alam & K. M. A. Chowdhury, Protracted Maritime Boundary Disputes and Maritime Laws, 2 J. Int'l Maritime Safety, Envtl. Affairs & Shipping 89 (2019), <https://doi.org/10.1080/25725084.2018.1564184>

3. Other than clash of interests like fishing zones, there won't be strict demand from the people who are directly affected because of their ignorance.
4. Since there is lack of enough knowledge and awareness, its difficult for the ruling governments to convince the opposition as at times, it might rise as an enormous issue.
5. The governments might be worried of the aftermath consequences in facing their citizens if they lose the case. Due to lack of confidence and in order to avoid such circumstances, the coastal state governments delay or seldom take steps to approach the appropriate forum to settle their maritime disputes.

Parties to the Maritime Disputes

The maritime disputes could be classified into two categories, first the disputes relating to challenges over sovereignty or ownership rights over the islands and; secondly, the overlapping claims in different maritime zones, that is, with regard to 12 Nm territorial limits, 200 Nm EEZs, and continental shelves reaching beyond 200Nm. Maritime Delimitation have to be attained wherever maritime spaces of two or more States would cross each other. There would be two kinds of parties.²

1. **Opposing Coasts:** Disputes arise when countries with opposite coastlines, such as France and the UK or Singapore and Indonesia, lay overlapping claims on maritime space. These disputes often involve complex issues of resource control and equitable access.
2. **Adjacent Coasts:** States with adjacent coastlines, such as Libya and Tunisia, may face conflicts over where their maritime boundary lines should be drawn, leading to overlapping claims in key areas of economic interest.

Boundary Delimitation Principles: Equidistance vs. Equity

Boundary delimitation methods are another area of dispute. States may choose between the equidistance principle, which establishes boundaries equidistant from the coasts of each party, and the equitable principle, which considers special geographical or economic circumstances. In disputes between Bangladesh, Myanmar, and India, Bangladesh argued for the equitable principle, while India and Myanmar preferred the equidistance principle, underscoring the variability in state preferences.

² Y.-J. Ma & L. Sohn, Legal Problems of Seabed Boundary Delimitation in the East China Sea, Occasional Papers/Reprints Series in Contemporary Asian Studies No. 3 (1984), <https://core.ac.uk/download/pdf/56353819.pdf>.

Dispute Resolution Mechanisms under UNCLOS

Adopted in 1982, UNCLOS provides a comprehensive framework for peaceful dispute settlement through various mechanisms aimed at achieving equitable solutions. However, UNCLOS does not prescribe a single method of delimitation, allowing states to choose the most appropriate means of resolution. When direct negotiation fails, UNCLOS Part XV provides two main categories of dispute resolution procedures: non-compulsory and compulsory mechanisms.

Normally, if there is any dispute, parties will go for negotiation and if the negotiation fails there is a provision to get the dispute solved under International Law. In case of disputes with regard to maritime boundaries, there are amicable processes suggested by the convention in pursuit of a fair resolution. In light of this, the parties are encouraged to take the initiative and negotiate an acceptable resolution among themselves. As of now there had been no specific method found out. If the parties fail to arrive at an agreement or if their peace talks didn't end up in a solution, then either of the parties or both can chose Part XV of the Convention that facilitates them through various Dispute Settlement Procedures.³

1. Non-Compulsory Dispute Resolution Methods

Section 1 of Part XV of UNCLOS details non-compulsory methods such as negotiation, mediation, and conciliation, which allow parties flexibility and control in resolving disputes.⁴

- **Negotiation:** As the most commonly employed approach, negotiation allows states to resolve disputes without external interference, letting them shape the terms of resolution based on mutual interests. Examples include successful negotiations between Azerbaijan, Kazakhstan, and Russia in 2003, and Australia and New Zealand in 2004. The flexibility of negotiation is its strength, allowing states to enter, exit, or shape discussions according to their needs without any binding rules or third-party influence.
- **Mediation:** Although effective in other international conflicts, mediation has not demonstrated substantial success in resolving maritime boundary disputes, likely due to the often complex and zero-sum nature of maritime claims.
- **Conciliation:** Through conciliation, parties submit the dispute to a third party, who issues a binding decision. This method is often avoided, as it removes control from the

³ www.itlos.org. (n.d.). *International Tribunal for the Law of the Sea: Jurisdiction*. [online] Available at: <https://www.itlos.org/en/main/jurisdiction/> [Accessed 2 Nov. 2024].

⁴ United Nations Convention on the Law of the Sea, pt. XV, sec. 1, Dec. 10, 1982, 1833 U.N.T.S. 3.

parties and may result in outcomes unfavorable to one or both sides.

2. Compulsory Dispute Resolution Mechanisms⁵

If non-compulsory methods are unsuccessful, Section 2 of Part XV provides for compulsory dispute resolution. Article 287 of UNCLOS grants states the option of selecting one or more of the following mechanisms for dispute settlement:

Institutions Involved in Maritime Dispute Resolution

- Arbitration: Arbitration under Annex VII remains one of the most popular methods for maritime boundary disputes, as demonstrated in notable cases like the 2006 arbitration between Barbados and Trinidad and Tobago and the 2014 Bay of Bengal Arbitration between Bangladesh and India, which settled a 40-year dispute.⁶
- International Tribunal for the Law of the Sea (ITLOS)⁷: ITLOS has jurisdiction over a range of maritime disputes, including delimitation cases. However, only a limited number of delimitation cases have been filed with ITLOS, reflecting its restricted use in this context. Notable cases include those between Bangladesh and Myanmar and Ghana and Côte d'Ivoire.
- International Court of Justice (ICJ): The ICJ handles disputes over both maritime and sovereignty issues. Cases currently pending before the ICJ include Nicaragua vs. Colombia, concerning continental shelf delimitation beyond 200 nautical miles, and Somalia vs. Kenya regarding maritime delimitation in the Indian Ocean.

- A Special Arbitral Tribunal⁸

However, disagreements over the appropriate forum often create delays. For example, in the Bangladesh–Myanmar maritime boundary dispute, Bangladesh initially proposed ITLOS jurisdiction, which Myanmar initially opposed. After further negotiation, Myanmar agreed, allowing ITLOS to resolve the dispute in 2012. A similar scenario occurred in Bangladesh's boundary dispute with India, where the dispute was settled through arbitration after India's preference was accepted.

If states do not select a specific dispute resolution method, Annex VII arbitration acts as the default mechanism.⁹

⁵ United Nations Convention on the Law of the Sea, pt. XV, sec. 2, Dec. 10, 1982, 1833 U.N.T.S. 3.

⁶ United Nations Convention on the Law of the Sea, annex VII, Dec. 10, 1982, 1833 U.N.T.S. 3.

⁷ United Nations Convention on the Law of the Sea, annex VI, Dec. 10, 1982, 1833 U.N.T.S. 3.

⁸ United Nations Convention on the Law of the Sea, annex VIII, Dec. 10, 1982, 1833 U.N.T.S. 3.

⁹ United Nations Convention on the Law of the Sea, art. 287(3), Dec. 10, 1982, 1833 U.N.T.S. 3.

Chamber for Maritime Delimitation¹⁰

The **Chamber for Maritime Delimitation** is a specialized chamber within the International Tribunal for the Law of the Sea (ITLOS) focused on handling maritime boundary disputes. Its establishment allows states to bring specific issues regarding the delimitation of maritime boundaries to a more specialized body within ITLOS, rather than engaging the full tribunal. Here's a breakdown of its key aspects:

1. **Specialized Focus:** The Chamber is dedicated to cases on maritime delimitation, which typically involves disputes over boundaries between coastal states' exclusive economic zones, continental shelves, and territorial seas.
2. **Composition and Flexibility:** Parties to a dispute can agree on the composition of the Chamber, selecting judges from ITLOS who are particularly knowledgeable or experienced in maritime boundary matters. This flexibility allows the Chamber to be tailored to the specific needs of the dispute.
3. **Efficiency and Expertise:** By using a chamber specifically designed for maritime delimitation, the process can be more efficient, with judges who have focused expertise in maritime law and boundary issues. This can lead to quicker, more specialized adjudication compared to general-purpose tribunals.
4. **Optional Mechanism:** States may opt to submit their disputes to the Chamber for Maritime Delimitation, but they are not obligated to do so. This chamber operates under ITLOS but is just one of several forums that states may choose under UNCLOS dispute settlement mechanisms.

The Chamber provides a streamlined option for states facing complex technical and legal questions related to maritime boundaries, contributing to the peaceful resolution of these often-contentious issues.

Role of ITLOS

ITLOS is empowered to hear both contentious as well non contentious cases with regard to maritime disputes. The Tribunal has authority to interpret and implement the convention's provisions pursuant to Articles 297 and 298.

The 3 cases that were submitted with the Tribunal pertaining to this particular category of conflict were: Conflict over the delineation of the maritime boundary in the Bay of Bengal

¹⁰ Statute of the International Tribunal for the Law of the Sea, art. 15(2), Dec. 10, 1982, 1833 U.N.T.S. 561.

involving Bangladesh versus Myanmar, dispute regarding the demarcation of the maritime boundary in the Atlantic Ocean between Ghana and Cote d'Ivoire, and disagreement concerning the delineation of the maritime boundary in the Indian Ocean involving Mauritius versus Maldives. However, while dealing with this particular category of disputes, it could be said that the tribunal has not received much attention as expected as only 3 cases has been filed till 2023, so far.

Dispute concerning Bay of Bengal¹¹

It is well recognised for being the first verdict on the 200 mile limit on the continental shelf's delineation, which is known as the —outer continental shelf (OCS). In addition to being the first case addressing maritime delimitation to be decided by ITLOS, it is also notable for being the first case concerning the delineation of the OCS. The disagreement can be traced all the way back to 1974, and talks on a potential resolution continued all the way up until 2010.

The only thing that was resolved as a direct result of the conversations was an understanding regarding the demarcation territorial seas in the form of "agreed minutes." Throughout the whole of the negotiating process, Bangladesh made efforts towards achieving what it referred to as a "equitable solution." Despite the fact that "equidistance" could in no way bring an equitable result for Bangladesh because of its geographical location, Myanmar insisted on the rigid application of a "equidistance formula." Bangladesh is located in a concave portion of the north side of Bay of Bengal, sandwiched between Myanmar and India. The geographic position of Bangladesh makes it difficult for the concept of "equidistance" to produce a fair outcome for the country. Due to the fact that this led to a standstill, Bangladesh made the decision to submit their case to ITLOS, which ultimately led to the resolution of the conflict that had been going on for more than 40 years.

The Tribunal adhered to the three-step methodology established by ICJ. This approach involves drawing a provisional equidistant line, considering factors that may require adjusting that line, and checking that the result of applying the adjustments is fair by comparing the ratio of coastal lengths to the ratio of relevant maritime areas.¹²

¹¹ Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), ITLOS Case No. 16, Judgement of Mar. 14, 2012, 2012 ITLOS Rep. 4.

¹² International Court of Justice, Latest Developments | Maritime Delimitation in the Black Sea (Romania v. Ukraine), <https://www.icj-cij.org/en/case/132> (n.d.).

Another important factor in the decision was the so-called "Grey Area," which is the region where continental shelf extends over and overlaps with Myanmar's EEZ up to 200 nautical miles. The tribunal decided to allow two separate regimes to coexist there so that Bangladesh may have ingress to the OCS. The panel also determined that Myanmar will have control over the water column in the "grey area," while Bangladesh will have control over the sea floor. The move was made to guarantee Bangladesh's entry to the OCS.¹³

Further the 200 NM boundary, the tribunal highlighted its jurisdiction and obligation to find a solution and divide the continental shelf amidst the two countries. The alteration made by the tribunal in delineating the OCS has resulted in a modification to the established protocol for demarcating maritime boundaries. The panel also acknowledged the presence of an individual continental shelf and the consistent application of Art. 83 of the Convention both within and beyond the 200 NM boundary. Further, it also enumerated that defining the outside lines of the OCS is different from defining the OCS itself.

Bangladesh responded by stating that the tribunal was explicitly empowered by the Convention to settle disputes among parties arising from Articles 76 and 83, specifically regarding the delineation of the Continental Shelf.

Additionally, Bangladesh emphasized that the Convention does not differentiate between which party is responsible for defining the continental shelf within 200 NM and who holds that rights beyond the said limit.¹⁴

Dispute concerning Atlantic Ocean¹⁵

The identification of hydrocarbon reserves in the ocean areas next to Ghana and Cote D'Ivoire resulted in an increase in tensions between the two nations.

This was due to both governments asserting their claims over the resources, asserting that they

¹³ J. Mundi, Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal, Judgment, Mar. 14, 2012, <https://jsumundi.com/en/document/decision/en-dispute-concerning-delimitation-of-the-maritime-boundary-between-bangladesh-and-myanmar-in-the-bay-of-bengal-bangladesh-myanmar-judgment-wednesday-14th-march-2012>.

¹⁴ B. M. Magnússon, Judgment in the Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal, 27 Int'l J. Marine & Coastal L. 489 (2012), https://www.academia.edu/6307074/Judgment_in_the_Dispute_concerning_Delimitation_of_the_Maritime_Boundary_between_Bangladesh_and_Myanmar_in_the_Bay_of_Bengal.

¹⁵ Dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire), ITLOS Case No. 23, Judgment of Sept. 23, 2017, 2017 ITLOS Rep. 4.

lay within their respective jurisdictions. The Special Chamber of the Tribunal reaffirmed the utilization of the equidistance method to establish the boundary between the two countries. The judgement also addresses pertinent matters pertaining to States and multinational corporations that engage in activities inside disputed maritime territories, including the obligations that are applicable during the resolution of such disputes. In response to a plea made by Cote D'Ivoire for the implementation of temporary remedies, the forum issued an order, instructing Ghana to undertake all necessary actions to prevent any further drilling works in the region under dispute, until a final judgement is reached. The aforementioned order was issued subsequent to the submission of the state's report about the prescription of interim measures. Cote D'Ivoire presented three undisputed basis to support its position on sovereign rights, including the exclusive rights over exploration and exploitation; ipsofacto and ab initio rights and that the chamber clarified only the scope and doesn't create any new right.¹⁶ However, the Special Chamber did not agree as to the interpretation on the delineation of a continental shelf, and in particular argument that such judgements are only of a declaratory nature. This finding is significant because it shows that the Chamber did not agree with either party. The special chamber came to a different conclusion and pointed out that —Only a delimitation judgement can determine which portion of the continental shelf is rightfully owned by each of the disputing States. Therefore, such a ruling must be considered constitutive rather than just declarative."

Dispute Concerning Indian Ocean¹⁷

Mauritius and the Maldives have submitted a new case to the tribunal, raising a disagreement pertaining to the demarcation of the sea limits in the Indian Ocean. A dedicated Chamber has been established to adjudicate the dispute, and the tribunal is currently deliberating on the final verdict it will provide in relation to the issue. Nevertheless, the Tribunal disregarded the first arguments submitted by Maldives over jurisdiction, including one pertaining to the involvement of United Kingdom. Additionally, the Tribunal asserted its competence to examine the case.¹⁸

¹⁶ Arbitration Notes, ITLOS Rules in Favour of Ghana in Long-Standing Maritime Dispute with Côte d'Ivoire, <https://hsfnotes.com/arbitration/2017/10/16/itlos-rules-in-favour-of-ghana-in-long-standing-maritime-dispute-with-cote-divoire/> (2017).

¹⁷ Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives), ITLOS Case No. 28, Judgment of Dec. 1, 2021, 2021 ITLOS Rep. 18.

¹⁸ Fietta, ITLOS Rejects All Preliminary Objections in Mauritius v. Maldives, https://www.fiettalaw.com/pil_news/itlos-rejects-all-preliminary-objections-in-mauritius-v-maldives.

Conclusion

Although UNCLOS offers an extensive legal framework for maritime dispute resolution, numerous maritime boundary disputes remain unresolved due to a reluctance among states to fully engage in dispute mechanisms. Non-compulsory methods offer flexibility but often fail to yield lasting solutions. Compulsory mechanisms, while more definitive, are frequently hampered by procedural disagreements and jurisdictional challenges. For effective and timely dispute resolution, states must fully leverage UNCLOS mechanisms and adopt a cooperative approach to safeguard valuable ocean resources. With the rise of the Blue Economy, achieving equitable resolutions to maritime boundary disputes is critical for sustainable management and utilization of marine resources. ITLOS is being considered more for urgent procedures than in case of contentious cases including maritime delimitation. It is always beneficial to submit the case related to maritime delimitation before ITLOS that has exclusive jurisdiction for law of the sea matters. This avoids the issue of maritime delimitation from becoming protracted.



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