MUNQSMUN '17

*"**Rise** above the **Rest**"*

International Law Commission
Background Guide

Letter from the Executive Board

Respected delegates of the ILC,

It gives us immense pleasure to welcome you all to this edition of the MUNQS Model United Nations.

The guide has been prepared to give you an idea of the functioning of the council as well as the very pertinent agendas that the council shall deal with. But, this guide is merely a facilitator to help you kick start your research and you, as delegates must feel free to go beyond the scope of the guide. The purpose of this guide is only to provide you initial assistance to initiate your research.

Diplomacy is the first lesson that MUNs offer and thus, you as delegates are expected to be extremely courteous towards your fellow delegates as well as teachers and members of the Executive Board. As delegates you are expected to promote the interests of your nation but at the same point respect the differences of opinion to achieve a solution in accord and harmony.

Logic and foreign policy combined with in-depth research and knowledge are necessary to be a successful delegate. We wish that you will not be intimidated by your competitors. It's great to win an award but its better if you don't win but take back lessons with you which help you for a lifetime. For this one conference, let us all make winning incidental but learning purposeful. Let's dedicate the three days of this conference to develop passion for this activity.

We now leave you with our best wishes and I hope that at the end of this three day venture we will all emerge a little wiser. Please feel free to contact us, we will be more than happy to solve your queries.

Regards

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Nature of Reports and Evidences in the Council

Evidence or proofs from the following sources will be accepted as credible in the committee:

1. News Sources a. REUTERS – Any Reuters' article which clearly makes mention of the fact stated or is in contradiction of the fact being stated by another delegate in council can be used to substantiate arguments in the committee. (http://www.reuters.com)

However, Reuters reports claiming to quote any individual affiliated in any manner to any government may not necessarily reflect the views of that government in totality. Thus, Reuters report can be denied by any member state subject to their policy and it is only when the report is accepted by the government that it shall be admitted as persuasive proof.

b) State operated News Agencies – These reports can be used in the support of or against the State that owns the News Agency. These reports, if credible or substantial enough, can be used in support of or against any country as such but in that situation, they can be denied by any other country in the council.

Some examples are : (i) RIA Novosti (Russia) http://en.rian.ru/ (ii) IRNA (Iran) http://www.irna.ir/ENIndex.htm (iii) Xinhua News Agency and CCTV (P.R. China) http://cctvnews.cntv.cn/

2. Government Reports: These reports can be used in a similar way as the State Operated News Agencies reports and can, in all circumstances, be denied by another country.

3. UN Reports: All UN Reports are considered as credible information or evidence for the Executive Board.

a) UN Bodies like the UNSC (http://www.un.org/Docs/sc/) or UNGA (http://www.un.org/en/ga/)

b) UN Affiliated bodies like the International Atomic Energy Agency (http://www.iaea.org/) World Bank (http://www. worldbank.org/) International Monetary Fund (http://www. imf.org/external/index.htm) International Committee of the Red Cross (http://www.icrc.org/eng/index.jsp)

c) Treaty Based Bodies like the Antarctic Treaty System (http://www.ats.aq/e/ats.htm) , the International Criminal Court (http://www.icccpi.int/Menus/ICC)

Please note that under no circumstances will sources like Wikipedia (http:// www.wikipedia.org/) Amnesty International (http://www.amnesty.org/) or newspapers like The Guardian (http://www.guardian.co.uk/)Times of India (http:// timesofindia.indiatimes.com/) Be accepted in the Council.

Duly note each document's source before its presentation in council. Please carry the required reports in soft copy (saved directly from the source and unedited). Also, the background guide cannot be used as proof in the council.

ABOUT THE COMMITTEE

The International Law Commission was established by the General Assembly, in 1947, to undertake the mandate of the Assembly, under article 13 (1) (a) of the Charter of the United Nations to "initiate studies and make recommendations for the purpose of ... encouraging the progressive development of international law and its codification".

In accordance with General Assembly resolution 71/140 of 13 December 2016, the Commission will hold its sixty-ninth session at the United Nations European Headquarters in Geneva from 1 May to 2 June and from 3 July to 4 August 2017:

Article 1, paragraph 1, of the Statute of the International Law Commission provides that the "Commission shall have for its object the promotion of the progressive development of international law and its codification". Article 15 of the Statute makes a distinction "for convenience" between progressive development as meaning "the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States" and codification as meaning "the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine". In practice, the Commission's work on a topic usually involves some aspects of the progressive development as well as the codification of international law, with the balance between the two varying depending on the particular topic.

Although the drafters of the Statute envisaged that somewhat different methods would be used in regard to progressive development, on the one hand, and codification, on the other, they thought it desirable to entrust both tasks to a single commission. Furthermore, they did not favour proposals for the setting up of separate commissions for public, for private and for penal international law. Thus article 1, paragraph 2, of the Statute states that the Commission "shall concern itself primarily with public international law, but is not precluded from entering the field of private international law".

For more than fifty years, however, the Commission has worked almost exclusively in the field of public international law. In 1996, the Commission noted that in recent years it had not entered the field of private international law, except incidentally and in the course of work on subjects of public international law; moreover, it seemed unlikely that the Commission would be called upon to do so having regard to the work of bodies such as UNCITRAL and the Hague Conference on Private International Law.

The Commission has worked extensively in the field of international criminal law, beginning with the formulation of the Nürnberg principles and the consideration of the question of international criminal jurisdiction at its first session, in 1949, which culminated in the completion of the draft Statute for an International Criminal Court at its forty-sixth session, in 1994, and the draft Code of Crimes against the Peace and Security of Mankind at its forty-eighth session, in 1996. The Commission

took up a further criminal law topic with the inclusion in its programme of work of the topic “the obligation to extradite or prosecute (*aut dedere aut judicare*)”, at its fifty-seventh session, in 2005.

Agenda : Determining the framework and standards for the delimitation of maritime boundaries in case of overlapping claims.

INTRODUCTION

Maritime delimitation remains an important topic: in boundary-making, sensitive questions of State sovereignty, sovereign rights, jurisdiction and title to valuable natural resources are all put into question. Nowadays, the potential political and security risks of boundary disputes are high, and unresolved maritime boundaries between States may easily affect bilateral relations or even international peace and security. Such disputes may also hamper economic activities, such as exploitation of fishing sites, due to fear of action by the other States. Furthermore, unresolved maritime boundaries may also cause disputes over certain areas of jurisdiction between States if oil and/or gas discoveries are made in overlapping claimed areas. Thus a lot of questions will need to be answered because the studies have been few and scarce. The existing international framework only calls for negotiations among concerned parties and delimitations to be reached by agreement but delimitations entail further consequences for states in terms of resource allocations.

Maritime Boundaries In Context of Delimitation

In general the maritime zones subject to maritime boundary delimitation are the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf. By showing the maritime boundary delimitation treaties that have been concluded between coastal States with adjacent or opposite coasts regarding their maritime zones, we are in a position to provide a more complete picture of the extent of sovereignty or jurisdiction of each coastal State. (SOURCE: UN)

Delimitation (MEANING)

The low of the sea, in its essence, divides the sea into zones and specifies the rights and duties of States and ships flying their flags in those zones. Every coastal State has jurisdiction over the maritime space by international conventions and national regulations must confirm to international law. Those maritime zones of two States frequently meet and overlap, and the line of separation has to be drawn to distinguish the right and obligations between the States, which is what maritime delimitation is about.

MARTIME ZONES

INTERNAL waters

The article 5 of 1958 Geneva Convention and the article 8 and 47 of 1982 United Nations Convention provide that Internal Waters are waters on the landward side of normal baseline, straight baseline and archipelagic (peninsula) baseline from which the territorial sea is measured. Based on the foregoing provision, the Internal Waters are waters on the landward side of the normal baseline which is low water line along the coast as mark on large scale charts officially recognized by the coastal state ; waters on the landward side of straight baselines accepted to calculate the breadth of the territorial sea ; waters of bays to which the breadth of the entry does not exceed 24 miles ; waters considered to be historic gulfs, bays, inlets, and strait even if the breadth of entry exceed 24 miles ; waters of ports limited by a line passing through the most extended port installations seaward; waters of the deeply indented and enclosed by the territory of single state ; waters in the case of islands situated on atolls or of islands having fringing reef ; mouth of river ; waters of which is considered highly unstable ; and archipelagic waters which is closed by closing line . In some case, however, the establishment of internal water of states is considered not appropriate with international laws and regulations. The coastal state exercises full sovereignty over its internal waters, and foreign ships while in this water, is to observe the laws and regulations of this state as its land territory. The regime of the maritime port is usually established under maritime regulations.

BASELINES:

a. Normal Baselines:

In accordance with article 3 of 1958 and article 5 of 1982 United Nations Convention on law of the sea, except where otherwise provided, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal state. Besides, the convention contains articles concerning low water line basis. In the case of islands situated on atolls or of islands having fringing

reefs, the baseline is the seaward low-water line of the reefs (article 6 of 1982 Convention). In the case of river flowing directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low water line of its banks (article 9 of the 1982 Convention).

b. Straight Baselines:

Article 7 of 1982 United Nations Convention states that in localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of territorial sea is measured. This provision is mainly based on the 1958 Convention on the Territorial Sea and Contiguous Zone. The new provision has been made to meet the concern of some coastal states whose coastlines are highly unstable. The paragraph 2 of the article 7 of 1982 Convention states that where because of the presence of a delta and other natural condition the coastline is highly unstable, the appropriate points may be selected along the farthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed made by the coastal state in accordance with this Convention. Moreover, the Convention has clauses on the restrictions for the coastal states in the establishment of their straight baseline. (Look up article 7 of the convention)

b. Archipelagic baselines:

The development of the United Nations Convention has been made detailed the provisions regarding the drawing of archipelagic baselines enclosing the archipelagic waters. Within the archipelagic waters, the archipelagic state may draw closing lines across the mouth of rivers, bays, or outermost harbor works for delimitation of its internal waters (article 50). The breadth of the territorial sea and other maritime zones of an archipelagic state shall be drawn from the archipelagic baselines (article 48). The archipelagic state may draw straight archipelagic baseline joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 percent of the total number of baselines enclosing any archipelago may exceed that length up to a maximum length of 125 nautical miles. In order to meet concerns of some states whose parts of their state separated by sea, the article 99 of 1982 Convention provides that if a part of the archipelagic waters of an archipelagic states lies between two parts of an immediately adjacent neighboring states, existing rights and all other legitimate interests which the latter state has traditionally exercised in

such waters and all rights stipulated by agreement between those states shall be continue and be respected.

3. Territorial Sea:

The Territorial Sea is an area extending from internal waters to the seaward side. The coastal state enjoys its sovereignty over the area subject to the right of the ships of other states to engage in innocent passage. According to the 1958 Convention, the breath of territorial sea has not been stated how far from the baseline it is measured, but it could be inferred from the breadth of the contiguous zone which was established in article 24, paragraph 2 that the territorial sea cannot exceed 12 nautical miles from the baseline. It means that the territorial sea and contiguous zone under this convention are the same area. However, article 3 of 1982 United Nations Convention clearly defined, every state has the rights to establish the breadth of its territorial sea up to the limit not exceeding 12 nautical miles, measured from baseline determined in accordance with the convention, and the outer limit of the territorial sea is the line every point of which is at the distance from the nearest point of the baseline equal to the breadth of the territorial sea. According to article 12 of the 1982 United Nations Convention, the territorial sea can be extended beyond 12 nautical miles. Roadsteads, which are normally used for the loading and unloading and anchoring of ships and would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in territorial sea. The article 15 of 1982 United Nations Convention provided that, where the coasts of the two states are opposite or adjacent to each other, neither of the two states is entitled, failing agreement between them to the contrary to extend its territorial sea beyond the meridian line every point of which is equidistant from the nearest points on the baseline from which the breadth of the territorial sea is measured. Moreover, states sometimes do not have their territorial sea in case the low water line is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island. In practical, this provision has not applied to any coastal states. All coastal states have their territorial sea. The said provision, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two states in a way which is at variance therewith.

4. Contiguous Zone:

In accordance with 1982 United Nations Convention on law of the sea, the coastal states have the rights to establish their contiguous zone which is adjacent to the territorial sea. The article 33 of 1982 Convention provides that the contiguous zone may not extend beyond 24 nautical miles from baseline from which the territorial sea is measured. The establishment of contiguous zone aimed at preventing violation of laws and regulations within its territory. The article 33 paragraphs 1 of

the 1982 Convention states that in contiguous zone, the coastal state may exercise the control necessary to: a Prevent infringement of its customs, fiscal, immigration, or sanitary laws and regulations within its territory or territorial sea; b Punish infringement of the above laws and regulations committed within its territory or territorial sea. Based on the spirit of the above article, a coastal state has its rights in a contiguous zone to defend its interests by stopping foreign ship supposed to be an offender in order to search, inspect or punish the offenders against its laws and regulations. In addition, in case the suspect foreign ships have intention to evade the responsibility and leave the contiguous zone, the coastal state has the rights to pursuit beyond the limit of contiguous zone. In the establishment of the contiguous zone, the coastal state has to take into account the fact of the sea areas, which are, in some case, bordered, by two or more states whose breadth does not exceed twice the breadth of the territorial sea. The Strait of Malacca, for example, used for international navigation is less than 24 nautical miles wide. In this case the bordering states have to undertake their agreement in the delimitation of maritime boundary and to cooperate in the establishment of international sea route pass.

CONTINENTAL SEA SHELF

The concept of the establishment of the continental shelf in the international law of the sea is a result of the activities of exploitation natural resources in the seabed of the developed countries. For the purpose of preventing the danger of the division of the continental shelf, the International Law Commission was tasked to prepare the draft in the purpose of controlling such exploration and exploitation. As a result of the work of Commission and the discussion at the conference, the Convention on the Continental Shelf was adopted in 1958 in Geneva and get into force in 1964. The coastal states are given the sovereign rights to explore and exploit the natural resources of the seabed and subsoil in the submarine area adjacent to the mainland or islands, but outside the area of territorial sea, to a depth of 200 meters, or beyond that limit, to a point where the exploitation of such resource become impossible. In accordance with the 1958 Convention, the outer limit of the continental shelf is not defined precisely. It depends on the rate of scientific and technological progress in the exploitation of resource in seabed and ocean floor. The definition of continental shelf in the convention is far from adequate.

According to the article 76(5), if the underwater edge extends more than 200 nautical miles from coastline the outer limit may not exceed 350 nautical miles from baselines of territorial water or 100 nautical miles from 2,500 meters isobaths (line connecting depth of 2,500 meters). On the submarine ridge, other than submarine elevation that are natural components of the continental margin, such as its plateau, rise, caps, blank and spurs, only 350 miles applies (article 76). The information on the limits of the continental shelf where it extends beyond 200 nautical miles is to be submitted to the Commission on the Limits of Continental Shelf composed of experts in geology, geophysics and hydrographic, which is formed by coastal state

to the convention. The Commission may issue recommendation to coastal state on the delimitation of the outer boundary of continental shelf.

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6. Exclusive Economic Zone:

The concept of the Exclusive Economic Zone is the most important pillars of the United Nations Convention on the Law of the Sea. The Convention contains the articles on legal regime of the Exclusive Economic Zone; the limitation of the Zone, the sovereign rights of the coastal state to manage the zone in good faith; the regard for the economic interests of the third states; regulations of the certain activities in the zone, such as marine scientific research, protection and preservation of the marine environment, and the establishment and use of artificial islands; freedom of navigation and over flight; the freedom to lay submarine cables and pipelines; military and strategic use of zone; and the means of settlement of disputes. In accordance with the article 57 of 1982 Convention on law of the sea, the Exclusive Economic Zone is an area adjacent to the territorial sea and it shall not extend beyond 200 nautical miles from baseline where the territorial sea is measured. The Convention gives the coastal states the sovereign rights over natural resources and control of resources related to activities in the zone, and preserves for the other states the freedom of navigation, over flight and the laying submarine cables and pipelines. The coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the living resources of the exclusive economic zone (article 56). Moreover, the coastal state has exclusive right to construct and to authorize and regulate the construction, operation and use of artificial islands, installation and structures; and has jurisdiction over such artificial islands, installation and structure. They also have the rights to over flight, lay submarines cables and pipelines and other internationally lawful uses of the seas on the zone (article 58). of law enforcement such as boarding, inspection, arrest and judicial proceedings over the foreign fishing vessels (article 73). As the other zones, Convention on the Law of the Sea establishes the articles on the delimitation of the Exclusive Economic Zone between the states with opposite or adjacent coastlines. According to the article 74, the delimitation of the Exclusive Economic Zone between the states with opposite or adjacent coastlines shall be effected by agreement on the basis of international law. In case there is no agreement, the states concerned could follow the procedure provided in Part XV. With regard the fisheries disputes concerning the interpretation and application of the convention, the states concerned are to be settled by a binding form of disputes settlements (article 273).

Past Efforts at Codification

Following the Hague Haia Conference, there were three decisive moments in the process of codification of the LOS: The First, Second, and Third United Nations Conferences on the Law of the Sea (UNCLOS I, II and III: 1958, 1960 and 1973-82, respectively).

UNCLOS I, which was held in Geneva in 1958, led to the codification of four conventions that dealt with some areas of the LOS: Convention on the Territorial Sea and the Contiguous Zone; Convention on the Continental Shelf, Convention on the High Seas, and Convention on the Fishing and Conservation of the Living Resources of the High Seas. In the view of many scholars, the four conventions adopted by UNCLOS I in Geneva, reflected the sectoral, limited approach to international law still in vogue at that time. UNCLOS I documented much of international customary law; however, an agreement could not be reached on a number of issues. One such fundamental issue was the breadth of the TS. They were negotiated and ratified by a small number of maritime States, without participation of most of the newly emerging developing States.

UNCLOS II later convened in 1960 to solve the problems left open by the first conference, yet ended without results. UNCLOS III convened from 1973 to 1982, and during a period of ten years held eleven sessions.

With its new provisions, LOSC expanded the coastal State's resources and economic rights in a vastly expanded EEZ and Continental Shelf (CS), while also fully protecting sovereign rights in navigational freedom. LOSC established the maritime spaces subject to jurisdiction of coastal States and principles governing the delimitation of maritime boundaries. In particular, the maritime spaces which would be most often subject to boundary delimitation between two or more States are the TS (Article 15), the EEZ (Article 74) and the CS (Article 83).

There is a difference in treatment to be found between Article 15, which gives prominence to a median line, and two other Articles 74 and 83, which stress the need to reach an equitable solution. The delimitation of maritime boundaries between two or more States occurs in a situation of overlapping maritime claims between those States.

It seems that new compromise formula is vague, but it is workable, If there was one prescribed method of delimitation, in many cases it would lead to inequitable results. The States are free during the negotiation process to agree on any method or methods which they consider to be equitable for them.

PRINCIPALS AND METHODS OF DELIMITATION

Equidistance line. The 1958 Conventions defines equidistance “as the line as the line every point of which is equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each of the Two States is measured.” „

According to the 1958 Geneva Conventions, the use of the equidistance line was obligatory in the absence of an agreement, historical titles or special circumstance. Equidistance line is used in most agreements concerning the maritime delimitation, it found its privileged role in State practice. But its privileged role was diminished by the ICJ and arbitral awards. In the majority of cases, it was declared that the equidistance was not a binding rule of law, but merely one method among others, as it was never regarded as part of customary international law, which plays the role in maritime delimitation process. The demolishing of equidistance went so far that It disappeared from red from the text of article 74 and 83 of the 1982 LOS Conventions and remains only in article 15.

At present It is not possible to produce a structured system of equity and a clear body of equitable principle, because each case is unicum, which means that geographical features of each delimitation case varied so greatly that it is difficult, if not impossible, to posit any fixed principles applicable for the establishment of maritime boundaries between States.

Reference link: http://www.keepeek.com/Digital-Asset-Management/oecd/international-law-and-justice/handbook-on-the-delimitation-of-maritime-boundaries_8ff8a7c6-en#.WXtkGoiGPIU#page1

PROPORTIONALITY

Proportionality plays an important role in various domains of international law and law of the sea, in particular maritime delimitation. The concept of proportionality has been taken into account in every judgment relating to maritime judgment relating to maritime delimitation. According to this concept, maritime delimitation should be effected by taking into account the ratio between the water and CS areas attributed to each State and the length of their coastline. In some ICJ cases the use of

proportionality rises some misunderstanding. (1982 Tunisia/Libya and 1984 Gulf of Maine cases). Proportionality is a good factor to test that the result is not inequitable.

PERPENDICULAR LINE

This method was used in some cases by ICJ and has also found its place in place in State Practice. „ The use of the perpendicular line is more frequent in the case of adjacent States, presenting coasts that are more or less straight. This line seems to be close to equidistance line. A line of equidistance between two points is, by definition, the perpendicular bisecting the straight line between two points. It is possible to say that equidistance line is the line is the scientific development of the perpendicular and it reflects better the configuration of coasts.

FACTORS EXERTING AN INFLUENCE ON MARITIME BOUNDARY DELIMITATION

A number of Geographical, Political, Economic, Historical, Security or other factors may be taken into consideration during maritime delimitation process. There is no limit to the factors the state may consider in the negotiation process. As a matter of fact, the International Court of Justice in the 1969 case of the North Sea Continental Shelf recognised the same.

However , International jurisprudence does not recognise economic position of the states concerned as a factor relevant to delimitation process. The two main reasons for this are that the economic circumstances are extraneous to entitlement to maritime zones and that they lack the degree of permanency to influence them. This finds recognition in the 1982 Continental Shelf case of the ICJ.

In some cases navigational concerns have been applied directly to determine the boundary line. Navigation is a special circumstance to modify equidistant line even though the passage of ships is guaranteed by the right of innocent passage. This is because at times the states want to ensure that certain navigational routes be there within their territorial waters. Agreements between Italy and Yugoslavia (1975) and Indonesia and Singapore (1973) are examples of such situations. Likewise in the agreement between Argentina and Chile of 1984 accepted the solution adopted by

arbitral tribunal in the Beagle channel case in which the equidistant line had been adjusted.

It must be pointed out that the case law on maritime delimitation and the practice of states tend to support the view that the base points used to delimit maritime zones between two states do not necessarily have to coincide with basepoints and straight baselines for measuring the breadth of the territorial sea adopted by the States themselves.

The question of mineral resources is dealt with by including in the delimitation agreement one or more provisions on cooperation between parties for exploitation of resources straddling across the delimitation line.

Thus, the International law at present currently views the issue of maritime delimitation as an issue bearing a largely bilateral (and at some instances multilateral) character but rarely an international character.

PRACTICAL ASPECTS OF THE NEGOTIATIONS AND SETTLEMENT OF DISPUTES

The 1982 convention has established a compulsory system for settlement of disputes arising between parties concerning its interpretation and application. When coastal states fail to establish their maritime boundaries through negotiations and no agreement is reached within the reasonable time the coastal states concerned if parties to the 1982 convention shall resort to the procedure mentioned in the Part XV

The specified procedure involves steps involving recourse to measures producing non- binding decisions and if these measures fail , then resolving to binding decisions.

The measures which entail non – binding decisions involve exchange of views, establishment of good offices, mediation, enquiry and conciliation while those which

involve binding decisions include Arbitration, the International Tribunal of the Law of the Sea and the International Court of Justice.

Reference links : http://www.keepeek.com/Digital-Asset-Management/oecd/international-law-and-justice/handbook-on-the-delimitation-of-maritime-boundaries_92b43e12-en#.WXtkI4iGPIU%23page1#page16

http://www.keepeek.com/Digital-Asset-Management/oecd/international-law-and-justice/handbook-on-the-delimitation-of-maritime-boundaries_6f758c9b-en#.WXtkIIiGPIU%23page4#page5

For an independent view on maritime delimitation please refer to the following link : http://opiniojuris.org/2006/04/12/how-to-draft-a-maritime-boundary/

CASE STUDIES

SOUTH CHINA SEA

The South China Sea (SCS) dispute is composed of two aspects: the overlapping jurisdictional claims and the territorial dispute over groups of mid-ocean islands. It is regarded as one of the most complex disputes in the East Asia, if not of the world, and remains a dangerous source of potential conflict which could turn into a serious international conflict if it is not properly managed and resolved.

However , in the context of the agenda at hand, the delegates are recommended to restrict this case to the tangent of maritime delimitation only.

There have been two factors that constitute the maritime boundary disputes in the SCS: (i) the progressive development and codification of the law of the sea which prompted States in the region to unilaterally claim their maritime areas; (ii) the geographical circumstances in the region does not allow coastal States to establish maritime jurisdiction to the maximum possible extent as recognized by the law of the sea without overlapping with others.

The People's Republic of China's and Taiwan's claim to the so- called "historic water" in the SCS overlap to varying degrees with claim to the exclusive economic

zone and the continental shelf areas made by Vietnam, by Indonesia to the northeast of Natuna, by Malaysia to the north of the coast of the State of Sarawak, and to the northwest of the State of Sabah, by Brunei to the north of its coast, and by the Philippines to the west of the Filipino archipelago. However, the validity of this claim is rejected by all countries in the region that the nine-dashed line and the historic water claims do not conform to the provisions of UNCLOS.

A key aspect of the ongoing South China Sea arbitration is to identify whether the submissions fall within the delimitation exception in the UNCLOS and China's declaration under the exception: China argues yes, while the Philippines disagrees. On 29 October, the Arbitral Tribunal delivered its award on jurisdiction. Issues relating to delimitation exception are addressed briefly in paragraphs 155-157. The Tribunal states that it is "not convinced" by China; it considers that a dispute concerning maritime entitlement is distinct from a dispute concerning the delimitation; the Philippines has not requested the Tribunal to delimit, and the Tribunal will not effect the delimitation of any boundary. Then in paragraphs 397-412 titled "[t]he Tribunal's conclusions on its jurisdiction", the Tribunal concludes that 14 submissions of the Philippines do not concern maritime delimitation.

Article 298.1(a) of the UNCLOS provides that a State may declare that it does not accept compulsory procedures with respect to "disputes concerning the interpretation or application of Articles 15, 74 and 83 relating to sea boundary delimitations".

First, delimitation is a process, and the term *delimitation* in the exception shall be understood as such. "The task of delimitation consists in resolving the overlapping claims" which indicates that delimitation is a process of identifying, weighing and effecting competing claims, not only the final determination of the boundary line.

"Turning now to the question of maritime boundaries, the Tribunal is likewise not convinced by the objection in China's Position Paper that the Parties' dispute is properly characterised as relating to maritime boundary delimitation. The Tribunal agrees with China that maritime boundary delimitation is an integral and systemic process. In particular, the Tribunal notes that the concepts of an "equitable solution", of "special circumstances" in respect of the territorial sea, and of "relevant circumstances" in respect of the exclusive economic zone and continental shelf may entail consideration of a wide variety of potential issues arising between the parties to a delimitation. It does not follow, however, that a dispute over an issue that may be considered in the course of a maritime boundary delimitation constitutes a dispute over maritime boundary delimitation itself."

However, the Chinese perspective on the issue remains different. The Tribunal ought to have interpreted Article 298.1(a) before applying the Article to check whether submissions concern delimitation. Such interpretation is particularly important because of the strong disputes and absence of authoritative

understanding in this respect. Regrettably, there is no reading into the text or context of that Article.

The Tribunal ought to have applied some methods in characterizing real dispute. In the *Chagos Marine Protected Area,* the real dispute has been identified by examining the consequences of endorsing the claims .If the Tribunal applied the Chagos method, it would have found that endorsing the Philippines' claims has definite consequences/bearings on the delimitation. In deciding whether the submissions relate to territorial sovereignty, the Tribunal has considered whether its decision will advance or detract from either party's claims. If the Tribunal applied the same criterion, it would have found that the Philippines apparently intend to take advantage of its decision in the delimitation. Unfortunately, with respect to the delimitation exception, there is neither method nor criterion.

ARCTIC

The dispute concerning the ownership of the Arctic region, generally called as the Arctic issue, has become one of the most crucial and controversial topics not just within the negotiations of the North Atlantic Alliance. For each of the eight states, Canada, Denmark , Finland, Iceland, Norway, Russia, Sweden and the United States (hereinafter referred to as the Arctic states), is the ownership of the area and of the natural resources located therein, a matter of strategic importance and the possible power struggle could endanger the long lasting cooperation between involved states. Nowadays, the main goal of all involved states is to handle the issue peacefully and not to confront each other, to ensure the stability, prosperity and security in the Arctic and that comes hand in hand with promoting cooperation in the field of monitoring and protection of the region.

The Arctic area consists of an ocean, part of it is permanently or seasonally frozen, and the land around – including Greenland and northern parts of Alaska, Russia, Canada and Norway. The Arctic is rich in natural resources and due to the rapid warming it is increasingly accessible, as the amount of ice is on its historical minimum. The area has been inhabited for thousands of years by indigenous people as well. Therefore, it is not just the environment, but also the livelihoods of all the local inhabitants and the indigenous people that are potentially endangered by the climate change and by the exploration of the natural resources itself.

The agreement under which the apportionment of riches will go forward — the 1982 Law of the Sea Convention *— lays out a comprehensive set of rules governing ocean issues, including protection of marine environments. All Arctic nations* except the U.S*. have signed.* if the U.S. does not join UNCLOS, it is of course not bound by any of the determinations of the UN Continental Shelf Commission. It would be

harder, but in theory the U.S. could simply work out bilateral deals with all of the claimants on delimitations on the continental shelf.

On September 15, 2010, the foreign ministers of Norway and Russia signed a treaty on maritime delimitation and cooperation in the Barents Sea and the Arctic Ocean. By reaching an agreement on the delimitation line with Russia in the Barents Sea, Norway clarified its last maritime boundary within 200 nm off its coast, thereby ensuring predictability and legal certainty. This is important, among other reasons, for enacting and enforcing environmental rules and fishery regulations. The 2010 Agreement also defines the maritime boundary of the outer continental shelf in the Arctic Ocean. It is reasonable to assume that economic interests drove the signing of the 2010 Agreement. Norway is particularly interested in the development of hydrocarbon deposits in the area because since 2001, oil production on the Norwegian shelf has declined, with much production coming from discoveries made during the 1970s and 1980s and no large recent discoveries.

Arctic cooperation and politics are partially coordinated via the Arctic Council, composed of the eight Arctic nations such as the United States of America, Canada, Iceland, Norway, Sweden, Finland, Russia and Denmark with Greenland and the Faroe Islands. The dominant governmental power in Arctic policy resides within the executive offices, legislative bodies, and implementing agencies of the eight Arctic nations, and to a lesser extent other nations, such as United Kingdom, Germany, European Union and China. NGO's and Academia play a large part in Arctic policy. Also important are intergovernmental bodies such as the United Nations (especially as relates to the law of the sea treaty) and NATO.

The legal status of the Northwest Passage is disputed: Canada considers it to be part of its internal waters according to the United Nations Convention on the Law of the Sea. The United States and most maritime nations consider them to be an international strait, which means that foreign vessels have right of "transit passage".

Again we need to here understand that these Territorial claims are important to be debated upon and elaborated upon considering the question of ownership of resources will be answered by the simple argument of territorial jurisdiction. Jurisdiction will only be established once we resolve this issue of territory. Resources obviously form a part of the Territory or Extended Continental Shelf and thus to have control over resources, control over these territories is important.

The Important question here is that how can these territorial claims and disputes be resolved keeping in mind the International Law ?

Maritime Boundary by the Decision of International Courts or Arbitrations

As previously noted, to bring the maritime boundary disputes to the courts or arbitrations is the last resort that the state parties concerned shall do in case the disputes could not be settled by agreement.

(1) On 11 September 1992 in a case between Honduras and El Salvador, the International Court of Justice decided as follows: The Gulf of Fonseca is an historic bay the waters whereof, having previously to 1821 been under the single control of Spain, and from 1921 to 1839 of the Federal Republic of Central America, were thereafter succeeded to and held in sovereignty by the Republic of El Salvador, the Republic of Honduras, and the Republic of Nicaragua, jointly, and continue to be so held (....), but excluding a belt, as at present established, extending 3 miles (one marine league) from the littoral of each of the three States, such belt being under the exclusive sovereignty of the coastal state, and subject to the delimitation between Honduras and Nicaragua effected in June 1900, and to the existing rights of innocent passage through the 3 miles belt and the waters held in sovereignty jointly; the water at the central portion of the closing line of the Gulf, that is to say, between a point on that line 3 miles (one marine league) from Punta Amapala and a point on that line 3 miles (one marine league) from Punta Cosigüina, are subject to the joint entitlement of all three states of the Gulf unless and until a delimitation of the relevant marine area be effected (.....). The legal situation of the waters outside the Gulf is that, the Gulf of Fonseca is a historic bay with three coastal states, the closing line of the coast constitutes the baseline of the territorial sea; the territorial sea, continental shelf and exclusive economic zone of El Salvador and those of Nicaragua off the coast s of those two states are also to be measured outward from a section of the closing line extending 3 miles (one marine league) along that line from Punta Amapala (in El Salvador) and 3 miles (one marine league) from Punta Cosigüina (in Nicaragua) respectively; but entitlement of territorial sea, continental shelf an exclusive economic zone seaward of the contral portion of the closing line appertains to the three states of the Gulf, El Salvador, Honduras and Nicaragua; and that any delimitation of the relevant maritime areas is to be effected by agreement on the basis of international law.

(2) On 30 June 1977 in a case between France and United Kingdom, the Court of Arbitration rendered a decision on the delimitation of the continental shelf and relating to the submarine areas in the English Channel and in the Atlantic Ocean, as far as the furthest limits of the continental shelf of the parties. The court concluded the following: In the Channel, the delimitation is based on the equidistance between the opposite coasts of England and France (segments from A to M): The effects of irregularities in the coastline of each state are, broadly, offset by the effects of irregularities in the coastline of the other, a median line boundary will thus result in a generally equitable delimitation as between the parties.166 In the Channel Islands

area, the enclave method is applied to the continental shelf around the Channel Islands archipelago, a dependency of the Crown of the United Kingdom composed by four main groups (Alderney, Guernsey, Jersey and Minquiers). As remarked by the court, the Channel Islands are not only on the wrong side of the mid Channel Median line but wholly detached geographically from the United Kingdom. In the actual circumstances of the region, where the extent of the continental shelf is comparatively modest and the scope for adjusting the equities correspondingly small, the Court considered that the situation demands a twofold solution. The Channel Islands are enclosed in an enclave (arcs from 1 to 12) formed, to their north and west, by a 12 miles series of radiuses and, to their east, south and south west, by the boundary between them and the French coasts (Normandy and Britany), the exact course of which was outside the competence of the Court to specify. France is thus accorded a substantial band of continental shelf in mind Channel which is continuous with its continental shelf to the east and west of the Channel Islands region. In the Atlantic area, the method of the reduced effect of islands is applied to the Scilly Isles (United Kingdom), which are given a half-effect with respect to the equidistance line (segment M-N): The method of giving half effects consists in delimiting the line equidistant between the two coasts, first, without the use of the offshore islands as base-point and, second, with its use as a base-point; a boundary giving half effect to the island is then the line drawn mid-way between those two equidistance lines.

(3) Another case between the United States and Canada concerning the delimitation of the maritime boundary in the Gulf of Maine area, the International Court of Justice rendered a decision on 12 October 1984. The two parties asked the court to determine the course of a single maritime boundary dividing their continental shelf and 200 miles exclusive fishery zones from point A to a point to be determined by the Court within an area bounded by three lines (the triangle shown on the map). The main economic interest at stake was the right to fish in the waters above Georges Bank. The map shows the line drawn by the Court, as well as those claimed by the parties. The segment A-B is the bisector of the angle formed by the two lines drawn from point A and perpendicular to the two basis coastlines of Canada and United States in the region, namely the line from Cape Elizabeth to the international boundary terminus and the line from that latter point to Cape Sable. The segment BC corresponds to a corrected median line between the opposite and quasi-parallel coasts of Massachusetts (from Cape Ann to Cape Cod) and Nova Scotia (from Brier Island to Cape Sable). The correction reflects the ratio of the length between these coastal fronts (1.38 to 1 in favour of the United States), but gives a half effect to the Canadian Seal Island. The final ratio to be applied for the purpose of determining the location of the corrected median line is thus approximately 1.32 to 1.173 the segment C-D is the perpendicular to the closing line of the Gulf of Maine.

QUESTIONS TO CONSIDER

1. Is your country a party to the UNCLOS?
2. Does your country believe that the issue of maritime delimitation should be resolved bilaterally or is there a need for international resolution? If not, is arbitration at the International Tribunal of the Law of the Sea a viable proposition? Why?
3. How does your country view maritime disputes in the South China Sea and the Arctic?
4. Does your country support codification of the maritime delimitation process ?