



UN Convention on the Law of the Sea (1982) in light of Maritime Zones Jurisdiction

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ABSTRACT

The legal regime and jurisdiction of maritime zones stipulated in the Law of the Sea Convention's provisions, demonstrates substantial geopolitical, defensive, economic, and political interests for coastal States. Therefore, maritime zones jurisdiction, and its legislative framework in general, reflects a crucial factor towards the resolution of interstate or regional conflicts within the domain of international relations. Therefore, this analytical paper, taken into considerations the aforementioned issue, aims towards a relevant comprehension of the maritime zones implications, particularly the role that maritime boundaries delimitation' legislation and jurisdiction has towards global or regional conflicts. Subsequently, the authors in this study, underscore that law of the sea' legal vacuum, lack of legal priorities and ambiguities as well as the implication and significance that maritime zones reflect for the coastal States, are the main factors which exert influence towards prospective interstate conflicts concerning maritime zones' jurisdiction, particularly as to maritime delimitation process. The maritime zones' articles stipulated in the Law of the Sea Convention, according to the authors' opinion, should undergo relevant revisions, and proper legal adjustments should be taken under consideration with reference to provide an effective resolution to this substantial matter.

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1. Introduction.

The legal regime and jurisdiction of maritime zones stipulated in the Law of the Sea Convention's provisions, demonstrates substantial geopolitical, defensive, economic, and political interests for coastal States. Therefore, maritime zones jurisdiction, and its legislative framework in general, reflects a crucial factor towards the resolution of interstate or regional conflicts within the domain of international relations. Therefore, this analytical paper, taken into considerations the aforementioned issue, aims towards a relevant comprehension of the maritime zones implications, particularly the role that maritime boundaries delimitation' legislation and jurisdiction has towards

global or regional conflicts. Subsequently, the authors in this study, underscore that law of the sea' legal vacuum, lack of legal priorities and ambiguities as well as the implication and significance that maritime zones reflect for the coastal States, are the main factors which exert influence towards prospective interstate conflicts concerning maritime zones' jurisdiction, particularly as to maritime delimitation process. The maritime zones' articles stipulated in the Law of the Sea Convention, according to the authors' opinion, should undergo relevant revisions, and proper legal adjustments should be taken under consideration with reference to provide an effective resolution to this substantial matter.

Political crises and regional conflicts between powerful States of the international system have been created as a result of securing a strategic maritime position along oceans' coastline as well as to efficiently benefit politically, socially and economically from the maritime zones such as territorial waters, exclusive economic zone and continental shelf, that UN Law of the Sea Convention (1982) promotes and jurisdictionally al-

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lows for every coastal States. Coastal States' conflicts vis-a-vis the delimitation of maritime boundaries represent a paramount political, economic and social issue for the international relations in general. In this regard, the sensitive issue of maritime boundaries' delimitation is considered more important for international system taken under consideration also that this process represent a very difficult matter to resolve since it involves many complex political, legal, geographical, economic and strategic factors. Therefore, it is important that academic studies and scholars should be analysing further and in-depth this crucial matter in light of the law of the sea regime and international relations fields of study.

In this respect, this study discusses delimitation of maritime boundaries with regard to international conflicts, mainly through analysing and shedding light into important matters such as the determination of maritime delimitation issues leading to regional crises, legal issues pertaining to the delimitation of maritime boundaries as well as several main cases of maritime delimitation' conflicts between coastal States, concluding as well with some final remarks regarding this fundamental matter.

2. Interstate conflicts vis-a-vis maritime zones

Many authors take the view that UNCLOS provisions regarding maritime zone jurisdiction and delimitation reflect several substantial legal issues. In this respect, there are concerns on disorientation and problematic effects of Article 15 of UNCLOS regarding territorial sea's equidistant delimitation notion among coastal States, which may create issues or bilateral disagreements, as occurred during Nicaragua vs. Honduras (Caribbean Sea) legal case, when Article 15 wording and terminology generated serious debates among parties during ICJ 2007 legal proceedings (Rothwell & Stephens, 2010). Similar issues in respect to maritime boundaries delimitation have been experienced also during Qatar vs. Bahrain conflict in 2001, both of which filed legal cases against each other to ICJ for the specific dispute resolution (Mendelson, 2001). Furthermore, the legal case Ukraine vs. Rumania (2009) related to EEZ and continental shelf delimitation dispute on the Black Sea was characterized by the same fundamental legal issue. In this context, it must be noted that the legal principles of maritime delimitation, which are found on Article 15 of UNCLOS and Article 12 of Geneva Convention (1958) have been interpreted to some extent by international courts and arbitrage with uncertainty and obscurity. For this reason, it is hard to present a clear and comprehensive situation regarding the legal notion of maritime boundaries delimitation, as well as of the international conflicts characterized by these important issues. Apart from inherited generalization and legal ambiguity which reflect maritime delimitation legal principle, each maritime delineation process involves a specific practical, legal and theoretical situation which contains per se its particular and distinct features, which have to be taken under consideration during the designation and delimitation of maritime zones (Churchill and Law, 1999).

The developments on the European political, diplomacy and military field are characterized traditionally by regional con-

flicts regarding national jurisdiction over particular maritime zones. The adoption and entry into force of UNCLOS by coastal States have resulted in the eruption of many conflicts in respect to maritime boundaries delimitation. One of these conflict situations related to sovereignty issue and maritime boundaries delimitation on the Aegean Sea is reflected on the controversial bilateral relations between Turkey and Greece, which are characterized as quite dangerous and problematic during the last decades to date. Notwithstanding that both States are NATO allies, their maritime boundaries delimitations disagreements during the years 1974, 1976, and 1986-1987, have almost been resulted in an open conventional military conflict (Keesing's Contemporary Archives). The international crises between these States is characterized by the escalation phase, reflected mostly via matters such as political issues, nationalistic manifestation, military demonstrations, ultimatums and even isolated military incidents which have resulted in loss of life and military hardware from both sides. This specific conflict of maritime nature, which is still active in nowadays, have had negative impact on international relations system, of both regional and global consequences, increasing dramatically the threat for a potential military conflict in the entire region. Another serious disagreement on maritime delimitation boundaries on Ionian Sea has also revealed recently between Albania and Greece, which has created political, economic and diplomatic tensions, obstructing the bilateral and regional relations, encouraging thus extreme nationalism and destabilizing the political situation in that particular region.

The UNCLOS legal provisions on the delimitation of maritime boundaries, as well as the natural resource management located in the Mediterranean Sea revealed the considerable jurisdiction differences between the legal right to possess and legal obligations not to exert jurisdiction, reflecting as a consequence the controversial and opposing interests as well disagreements among Mediterranean coastal States. In this context, national legal practice on the boundaries delimitation and exploitation of maritime resources by these States, based on their interests, is considered diverse and controversial. France, Lebanon, Malta, Morocco, Spain and Tunisia historically have adopted distinct national legislation for their maritime zones. A 100 miles EEZ for the purpose of maritime resources exploitation is designated earlier in time by Egypt and Morocco in Mediterranean, as well as by France, Spain and Morocco in Atlantic Ocean (Kliot, 1989). Nevertheless, the adoption of the new UNCLOS 200 miles legal right for the EEZ in Mediterranean Sea, has compromised the status quo situation in the entire maritime region because has encouraged the formation of a overlapping EEZ and maritime boundaries system, which normally have increased the number and frequency of disagreements among Mediterranean States. The absence of a common legal standard on the delimitation of maritime boundaries delimitation and maritime resources exploitation in the Mediterranean Sea based on UNCLOS consequently has negatively influenced towards the development or aggravations of international disagreements in the context of international relation system.

3. Main factors contributing towards conflicts

Conflicts are often escalated due to immature political decisions by governments which are not willing to concede ground or show tolerance in a potential international conflict on maritime boundaries because it might result in serious political consequences and undermine vital national interests. In this respect, there are four essential political decisions which appear to emerge in connection to maritime boundaries' delimitation: the decision to negotiate, the decision to propose a specific maritime delimitation, the decision to tolerate a potential territorial concession in order to reach an agreement as well as the decision to politically accept this particular maritime demarcation agreement (Oxman, 1994-95).

The main issue which has probably contributed towards international or regional crises concerning the delimitation of maritime boundaries is linked to the law of the sea regime, which instead of ensuring an efficient and comprehensive definition of State sovereignty over maritime zones in light of current challenges such as political, economic and social factors, promotes an inefficient and ambiguous system of legal norms reflected upon international conventions as well as in the jurisprudence literature and scholarly studies (Churchill and Law, 1999). The governmental decision to respect a compulsory legal ruling from the international courts or arbitration is also considered a political decision.

Apart from political factor, maritime delimitation crises among States often escalate when there are strong economic, nationalistic and social interests. Territories and maritime zones may contain important natural resources such as oil, natural gas, minerals as well as in cases when such maritime zones reflect crucial strategic and national interests for coastal States. Additionally, maritime zones may represent also historical value for States or provide an important ground for defense issues and national security.

On the other hand, another cause for potential regional conflict may be considered the international competition on contested maritime resources or on maritime zones subject of international exploration (*res communis*), which have become quite intensive recently due to economic expansion and scientific progress, new technological developments, high financial value of maritime resources, ocean environmental changes, unlimited exploitation of living and natural resources at sea as well as global climate issues, causing as a result the development or aggravations of international disagreements and sometimes regional conflicts.

The jurisdiction on maritime resources, as well as fishing rights on specific maritime zones under States' authority, have particularly exerted considerable influence upon national politics and governmental decisions, causing disagreements among coastal States regarding the delimitation of maritime boundaries, generating accordingly regional conflicts. In this respect, the fishing rights on disputed and overlapping EEZ, reflected in UNCLOS (1982) have potential in creating tensions among coastal States, leading subsequently in severe escalation of conflict situations to even use of force or international crises (Churchill and Law, 1999). Experts of international relations are of the

opinion that coastal States which want to avoid provocations against other States need to refrain undertaking sudden and determined actions in respect to the development of maritime activities of oil and natural gas exploitation, and to engage in constructive political bilateral cooperation in order to explore possible solutions for the maritime boundaries' delimitation of maritime zones of national interests.

Legal ambiguities existent in international law assists the aforementioned issue, contributing towards refraining the undertaking of such extreme governmental activities due to the presence per se of legal restriction effects upon oil and natural gas investors, international corporations with immense financial capacities, as well as to the technological industries and companies under State jurisdiction. In such cases when the oil and natural gas exploitation located in contested continental shelf and EEZ areas are subject of international boundaries delimitation disagreement between States, strong and immature decisions that States undertake in connection to the maritime resources might cause incidents, which often lead towards possible regional conflicts. Such incident is considered the disagreement between Malta and Libya, which almost escalated to a conflict of military nature, when in August 1980 a Libyan naval frigate interfered and halted the construction of a Maltese offshore oil platform in the contested maritime area of Medina (Kliot, 1989). This case went to ICJ for judgment, which subsequently laid down a legal resolution regarding the delimitation of continental shelf between aforementioned coastal States (Brown, 1983).

The same fundamental principle is mirrored even in cases of State jurisdictional rights in respect to fishing and living marine resources in certain maritime zones. Fishing vessels which illegally undertake their activities in disputed maritime zones historically have exercised and continue to exert inevitable influence towards the initiation of international conflicts. The natural resources exploitation from oceans provide immense economic benefits and political power to States, therefore the exploitation of these particular resources are considered the main reason which often causes disagreements or even conflicts between States. In this respect, it is generally accepted that Japan's exploitation restriction of natural resources such as oil and natural gas, vital for the development of its heavy industry and national economy, was commonly the main cause which forced Japan towards open military conflict in the Pacific Ocean during WWII. Consequently, governments are always under constant pressure to undertake provocative actions to enforce their rights upon maritime zones with abundant natural resources.

International conflicts reflect three main qualities connected to the natural ocean resources, which are: the need for industrial economy function; seabed oil and mineral resources found in a certain maritime zone, for which States may involve in armed conflict in order to legally control it, and; that ocean natural resources have the tendency to present a global irregular distribution, found with abundance in one State and reflecting a total inexistence on others (Goldstein, 2001). These ocean natural resources' qualities indicate that the trade of such resources is considered extremely profitable and normally very politicized, creating occasionally financial and economical turmoil which

may turn into regional or international confrontations (Goldstein, 2001).

International community have experienced a number of issues and conflicts regarding the delimitation of maritime boundaries or maritime zones' overlying, resulting from the designation of 200 miles EEZ, and the protection needs for ocean natural resources exploitation, including military protection, laid down in the relevant provisions of UNCLOS. In this respect, it is worth mentioning the case of Canada, which in 1995 implemented new set of fishing rules beyond 200 nautical miles, using military power to enforce its legislation upon foreign fishing vessels. As a result of arresting several Spanish fishing vessels to enforce its laws, Canada was confronted with Spanish and other EU countries' diplomatic and economic consequences (Byers, 2009).

4. Maritime zones jurisdiction vs. legislative implications

In spite of political, economic and national factors, the main issue which has exerted great influence towards the development or resolution deficiency of international disagreements in respect to maritime boundaries delimitation, is probably caused similarly from the law of the sea regime, represented by considerable number of international conventions, which it appears that is characterized by a legal system lacking legal priorities and therefore reflecting many ambiguities and issues in its relevant provisions. The most fundamental impact regarding the development of international disagreements on maritime delimitations was probably caused by the adoption and legal formulation of UNCLOS (1982). During the final proceedings of the III UNCLOS Conference, the international practice had shed light on the existence of more than 375 bilateral or regional conflicts on maritime boundaries delimitation, among which only 90 of these disagreements were in process of intermediation or negotiations between coastal States in respect of the particular legal dispute resolution (Smith, 1982).

While many maritime delimitation cases have been successfully reached an agreement, mainly through international; and national courts' rulings or intermediation process, a considerable number of disagreements on maritime boundaries demarcation are yet unresolved. Moreover, in light of recent developments in international relation system, predominantly in the international maritime law regime reflected mostly on the continental shelf delimitation issue, the number of international disagreements has been dramatically increased. This issue is caused as a result of the adoption of UNCLOS new legal norms, which have introduced a new 350 miles continental shelf, in contrast to 200 nautical miles continental shelf set of rules reflected in Geneva Convention on Continental Shelf (1958). Coastal States worldwide now have to engage in new negotiations or to solve possible tensions and disagreements among each other regarding the overlapping exclusive economic zones in different parts of the world. This situation has brought ambiguity and confusion among coastal States creating thus new conflicts or escalating old ones. The delimitation of new continental shelf by coastal States have now to be implemented only after a formal request is forwarded to the Continental Shelf Delimitation

Commission, which under the provision 76 of UNCLOS undertakes the inquiry process and decides whether the States' request is in conformity of international maritime law. In this context, it is apparent that in many ways the law of the sea vis-à-vis maritime delimitation is dynamic and yet in evolving and changing process, influencing therefore towards the instability of international relations. UNCLOS has dramatically changed the fundamental legal elements on the capability and rights of coastal States upon the exploitation of natural maritime resources. With regard to this issue, the most profound legal notion is considered the EEZ dwelling up to 200 nautical miles, in which coastal States exerts jurisdiction on the exploitation of natural resources, as well as to a certain legal extent on scientific research and environmental protection (UNCLOS, Part v).

The second legal notion reflects norms and regulations under which States exert sovereignty rights upon continental shelf (seabed) area with the purpose of exploiting its natural resources (UNCLOS, Part VI). The fundamental importance of maritime delimitations sheds light on the perspective that conflicts regarding the overlapping maritime boundaries delimitation, as mirrored in the delimitation cases of EEZ during the last decades, are considered the furthestmost crucial conflicts due to the direct linked that this issue provides with States' national sovereignty (Klein, 2005). The significance of national interests involved in maritime delimitation issues hinders coastal States to unconditionally delegate decisions on maritime boundaries demarcation during legal proceedings and international conferences. In this respect, throughout the international negotiations at the UNCLOS III Conference, the most important debates, multilateral disputes and controversial disagreements were focused on the legal provisions in connection to maritime boundaries delimitation.

Basically, there are two essential legal provisions in UNCLOS dealing with maritime boundaries delimitations. The first provision found in Article 15 on the delimitation of territorial waters between States with opposite or adjacent coastline. The fundamental notion of this legal provision reflects on the international cooperation between States on the delimitation of territorial waters, which extends up to 12 miles from the States' baseline. In case of a potential disagreement vis-à-vis this issue, the delimitation must occur based on equidistant principle which is defined from the nearest point on the baselines from which the breadth of territorial seas of each of the two States is measured. On the other hand, Article 74 sets the legal principle for the delimitation EEZ, following logically by Article 83 which lays down the delimitation of continental shelf between States with opposite or adjacent coastline. In light of these considerations, it may be submitted that both the aforementioned provisions are regarded as legally ambiguous. This ambiguity has resulted from generic legal terms utilized as well as limited wording reflected in both relevant provisions. Notwithstanding that Article 74 on EEZ, and Article 83 on the delimitation of continental shelf share similar wording, and the delimitation process is based on identical legal principle, the terminology and the legal notion reflected in both provisions is considered ambiguous and complicated legally and practically, offer-

ing ground for creation of disagreements and potential conflict among States. Although the delimitation notion and wording appears similar in both provisions, yet they represent two distinct maritime zones which reflect different purpose and usage, and moreover are subject of diverse jurisdiction.

The fact that according to these provisions the delimitation process of relevant maritime zones reflects equitable solution as well as contains similar wording of technical nature, makes it more difficult for States to reach an acceptable or successful agreement in respect to this issue. A maritime delimitation which may be appropriate of EEZ purpose and objectives might not be righteous or suitable for the determination of continental shelf matter. This has resulted due to distinctive considerations, characteristics and variations which reproduce each maritime zone in order to achieve a just and equitable resolution (Churchill & Law, 1999). Nevertheless, the central principle behind both provisions provides for international or bilateral cooperation in order to promote compromise towards equitable delimitation of relevant boundaries. When a EEZ and continental shelf delimitation international disagreement emerges, within a reasonable time period, parties based on Article 74(2) and 83(2) have the responsibility to implement conflict resolution procedures consistent with UNCLOS Part XV provisions. Mandatory dispute resolution's mechanisms according to Section 2, Part XV, deal with States' disagreements on delimitation of territorial sea, continental shelf and EEZ. When party States have explicitly rejected this particular legal dispute settlement mechanism, based in Article 298 (1)(a), they are not bound by it.

Conclusions

There are several approaches of legal and political nature which may assist towards peaceful dispute resolution between States on the issue. The first approach reflects mandatory legal norms and mechanisms which may be followed. Obligatory procedures reflect dispute resolution by international courts, which State parties of UNCLOS have accepted to be bound by the relevant legal provisions. Non-mandatory procedures involve the intermediation process, participation of third parties States or arbitration courts' decisions. On the other hand, political settlement mainly achieved through bilateral and regional cooperation might be more acceptable for States in order to resolve their disagreement.

The legal vacuum and ambiguities of the maritime legal regime, the absence of legal priorities, as well as the sensitivity and crucial importance that maritime zones represent for the coastal States, are the main contributors of potential in-

ternational conflicts regarding delimitation of maritime boundaries. Consequently, the international legal regime of maritime boundaries, mainly based on UN Law of the Sea Convention (1982), should perhaps undergo a comprehensive revision / evaluation, and appropriate amendments should be made to relevant legal norms, which in turn may clarify this legal issue with the purpose of promoting peace and security in international system.

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