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# Obligations of States in Disputed Areas of the Continental Shelf

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Normally, a coastal State has sovereign rights to explore and exploit the natural resources of the continental shelf appurtenant to its territory. In some situations, however, States have overlapping claims as to their continental shelves,[1] which raises important issues as to how they must conduct themselves prior to resolution of their dispute. This is not an unusual circumstance. Indeed, it is estimated that more than half of the possible maritime boundaries between States have yet to be delimitated, and that more than 2.7 million square kilometers of potential extended continental shelf areas are subject to these overlapping claims.[2]

Various sources of international law provide guidance as to the rights and obligations of States prior to the resolution of their overlapping continental shelf claims. Treaty provisions, in particular Article 6 of the 1958 Convention on the Continental Shelf (CS Convention)[3] and Article 83 of the U.N. Convention on the Law of the Sea (LOS Convention), are directly binding upon States Parties, at least in their relations with other States Parties. State practice in the application of those treaties is also pertinent. To the extent that States are not bound directly by treaty rules, customary international law becomes pertinent. As

1 States, of course, also often have overlapping claims with respect to their territorial seas, contiguous zones, or exclusive economic zones (EEZs). Delimitation of the territorial sea must take account of Article 15 of the United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3 (hereinafter LOS Convention), as well as Article 12 of the Convention on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958, 516 U.N.T.S. 205 (hereinafter TSC Convention). Delimitation of the contiguous zone must take account of Article 24 of the TCS Convention. While this chapter focuses on disputed continental shelf areas, what is discussed applies, *mutatis mutandis*, to disputes relating to EEZs, which in particular should take into account the language of LOS Convention Article 74.

2 Robert Van de Poll and Clive Schofield, *A Seabed Scramble: A Global Overview of Extended Continental Shelf Submissions*, ADVISORY BOARD ON THE LAW OF THE SEA PROC. CONFERENCE ON CONTENTIOUS ISSUES IN UNCLOS: SURELY NOT? 3–4 (2010). *See also* JOANNA MOSSOP, THE CONTINENTAL SHELF BEYOND 200 NAUTICAL MILES: RIGHTS AND RESPONSIBILITIES 242 (2016).

3 Convention on the Continental Shelf art. 6, Apr. 29, 1958, 499 U.N.T.S. 311. Article 6 provides that, in the absence of an agreement between the two States Parties, they shall act in accordance with a median line (opposite States) or equidistance line (adjacent States), "unless another boundary line is justified by special circumstances."

subsidiary sources, the views expressed by various international courts or tribunals, notably in the *Guyana v. Suriname*[4] and *Ghana/Côte d'Ivoire*[5] disputes, and by publicists,[6] provide further guidance.

Based on these sources of international law, there would appear to be eight basic rules that every State is expected to follow in such a situation: (1) as a general matter, the States concerned shall act in good faith with respect to the dispute on delimitation; (2) if applicable, the States concerned shall abide by an order on provisional measures of protection by a competent international court or tribunal; (3) the States concerned shall negotiate in good faith toward a final agreement on delimitation; (4) pending the reaching of such an agreement, the States concerned shall seek a provisional arrangement of a practical nature; (5) pending reaching a final agreement, the States concerned shall not take steps that jeopardize the reaching of such an agreement; (6) the States concerned shall use only permissible counter-measures in response to unlawful acts; (7) the States concerned shall not threaten or use force in violation of the U.N. Charter; and (8) third States shall not knowingly assist one of the States concerned if it is acting wrongfully.

These rules are relevant when there exists a dispute concerning maritime boundary delimitation, but they are not *delimitation* rules; they are rules oriented toward the duty of States to resolve disputes peacefully. Further, while these rules are informed both by the law and practice associated with maritime spaces, there may be some cross-over with respect to rules associated with contested land boundaries.

Each of the eight rules indicated above is discussed below. Before doing so, one threshold problem in this area must be addressed, which is whether a disputed area of the continental shelf actually exists in any given situation.

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4 Delimitation of the Maritime Boundary Between Guyana and Suriname (Guyana v. Suriname), 30 R.I.A.A. 1 (Perm. Ct. Arb. 2007).

5 Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/ Côte d'Ivoire), Case No. 23, Judgement of Sept. 23, 2017, https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.23_merits/C23_Judgment_23.09.2017_corr.pdf (last visited Nov. 28, 2018).

6 *See, e.g.*, Rainer Lagoni, *Interim Measures Pending Maritime Delimitation Agreements*, 78 AM. J. INT'L L. 357, (1984); David Anderson & Youri van Logchem, *Rights and Obligations in Areas of Overlapping Maritime Claims*, *in* THE SOUTH CHINA SEA DISPUTES AND THE LAW OF THE SEA 192 (Jayakumar, Koh, & Beckman eds. 2014); Youri van Logchem, *The Scope for Unilateralism in Disputed Maritime Areas*, *in* THE LIMITS OF MARITIME JURISDICTION 175 (Schofield, Lee, and Kwon eds. 2013); BRITISH INST. INT'L & COMP. L., REPORT ON THE OBLIGATIONS OF STATES UNDER ARTICLES 74(3) AND 83(3) OF UNCLOS IN RESPECT OF UNDELIMITED MARITIME AREAS (2016), available at: http://www.biicl.org/documents/1192_report_on_the_obligations_of_states_under_articles_743_and_833_of_unclos_in_respect_of_undelimited_maritime_areas.pdf?showdocument=1 (last visited Nov. 28, 2018).

**Existence of a Disputed Area of the Continental Shelf**

A threshold issue concerns determining that there exists a disputed area of the continental shelf that must be delimited, either by agreement or by means of adjudication. Initially, there may exist an area of the continental shelf where one (or both) of two adjacent or opposite States have not yet advanced claims of legal entitlement. In such circumstances, there is not yet a dispute and the rules discussed below are not yet engaged.

Ultimately, however, the two States likely will advance claims of legal entitlement to the continental shelf, typically by indicating what they each regard as the correct delimitation line. If the two delimitation lines are compatible, then an agreement may be concluded between the two States to that effect, or the two States may simply conform their practice so as to abide by the lines. If two delimitation lines are not compatible, a dispute arises with respect to the overlapping area, meaning the area of the continental shelf located between the two claimed lines. It is to this disputed area of the continental shelf which the rules discussed below apply.

In some circumstances, there may be a dispute as to whether one of the two States is even capable of advancing a claim to a continental shelf. In other words, each State must be advancing a claim that is plausible, a standard that was applied by the *Ghana*/*Côte d'Ivoire* special chamber in the context of its 2015 order on provisional measures of protection.[7] Questions as to plausibility in the context of a continental shelf dispute might arise in at least two situations. First, it is possible that a State's claim to an area of the continental shelf is predicated on a claim to sovereignty over land territory, where the latter claim is contested. Second, it is possible that a State's claim to an area of the continental shelf is predicated on a claim that a feature is capable of possessing a continental shelf, but that latter claim is contested. Such contestation may arise where the feature is viewed by other States as a low-tide elevation or as an island that falls within the scope of Article 121(3) of the LOS Convention. A report published by the British Institute of International and Comparative Law identified five different scenarios where such contestation may complicate the application of rules in this area.[8]

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7 Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire), Case No. 23, Order on Provisional Measures of Apr. 25 2015, 2015 ITLOS Rep. 146, at 158, para. 58. To address this dispute, a special chamber of the International Tribunal for the Law of the Sea was constituted in accordance with Article 15(2) of the tribunal's Statute, consisting of three judges of the tribunal and two judges ad hoc chosen by the parties.

8 The report indicated the following scenarios:

i. Two States dispute the status of a feature; for example one (usually the State with sovereignty) argues that the feature is an island and thus capable of generating a 200 [nautical mile] zone while the other argues that it is a rock with no maritime entitlement; either way, the two States have a maritime boundary which needs to be delimited;

Even if there is agreement that a "delimitation dispute" exists, it may be unclear how broadly that dispute sweeps. For example, it seems doubtful that the obligation to seek provisional arrangements or to avoid aggravating the delimitation dispute (as discussed below) includes an obligation to address an issue of sovereignty on a provisional basis, or to refrain from acts that seek to establish such sovereignty. Rather, the obligation to seek provisional arrangements or to avoid aggravating the delimitation dispute relates to a dispute concerning delimitation, not a dispute over sovereignty. Yet it may be difficult to disentangle the two types of disputes, given that acts intended to establish a sovereign claim might include pursuing acts relating to delimitation of the maritime space. Recently, there has been a willingness to treat minor questions of sovereignty as an ancillary matter when interpreting the LOS Convention, as the tribunal did in the *Chagos* arbitration.[9] This kind of "mixed dispute" also arose in the *South China Sea* arbitration, where the tribunal decided the issues while claiming to be making no sovereignty determinations.[10] Whether these "mixed disputes" will continue to be adjudicated by law of the sea tribunals remains to be seen, as there are divergent views as to whether such disputes are within their competence.[11]

**As a General Matter, the States Concerned Shall Act in Good Faith**

Turning to the individual rules, first, every State must conduct itself in good faith with respect to its claimed rights in the contested maritime space. This "good faith" rule operates as a background rule of international law, but may also be seen in LOS Convention Article 300, which reads: "State Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of rights."[12]

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ii. As for (i) except that the two States have a maritime boundary only if the feature is determined to be an island; if it is a rock there is no overlap of maritime entitlements;

iii. Two States claim sovereignty over the same island; whichever way sovereignty is determined, the two States have a maritime boundary which needs to be delimited;

iv. Two States claim sovereignty over the same island; if sovereignty is determined to belong to State A, the two States have a maritime boundary which needs to be delimited, whereas if sovereignty belongs to State B there is no maritime boundary between them[;]

v. Two adjacent States dispute the position of the land boundary between them. Each claims entitlement to the maritime zone generated by the same coastal land area. Whichever way that dispute is resolved, the two States have a maritime boundary which needs to be delimited.

BRITISH INST. INT'L & COMP. L., *supra* note 6, at 33, para. 112.

9 The Chagos Marine Protected Area Arbitration (Mauritius v. U.K.), Case No. 2011-03, Award (2015), at 90, paras. 220–21, https://files.pca-cpa.org/pcadocs/MU-UK%2020150318%20Award.pdf (last visited Nov. 28, 2018).

10 South China Sea Arbitration (Philippines v. China), Case No. 2013-19, Award (2016), at 58, para. 154, https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Award.pdf (last visited Nov. 28, 2018).

11 *See, e.g.*, Marina Aksenova & Ciaran Burke, *The Chagos Islands Award: Exploring the Renewed Role of the Law of the Sea in the Post-Colonial Context*, 35 Wis. Int'l L.J. 1, 17 (2017).

12 LOS Convention, *supra* note 1, art. 300.

What constitutes "good faith" or "bad faith" with respect to actions taken in a disputed continental shelf area may only be determined in context. One aspect no doubt concerns whether the State at issue genuinely believed that it had sovereign rights in the area in question. Another, perhaps related, aspect concerns whether the State at issue believed that no other State had made a claim to the area in question. A third aspect concerns whether, even though it knows that an area is disputed, the State believes that the acts it is taking are permissible even in a disputed area, such as might be the case for non-invasive seismic studies in certain situations.

In any event, one potential consequence of a State acting or not acting in good faith concerns whether it can be said to have violated the sovereign rights of the other State in the disputed area, in which case the first State may incur responsibility for an internationally wrongful act.[13] If the first State acts in good faith, then the mere fact that it commits acts in the disputed area likely does not violate the sovereign rights of the other State, whether or not those acts are in an area that is later found to be part of the latter's continental shelf. By contrast, if the first State is not acting in good faith (in other words, is acting in a manner that is, in some sense, dishonest or disingenuous about its claims or rights in the disputed area), then it may violate the sovereign rights of the other State. There are, in essence, four scenarios that might arise:

| | **State Acts in Disputed Area Later Found to Be Its Continental Shelf** | **State Acts in Disputed Area Later Found Not to Be its Continental Shelf** |
|---|---|---|
| **State Acts in Good Faith** | Scenario #1 (easiest case):<br><br>No State responsibility | Scenario #2:<br><br>No State responsibility |
| **State Acts in Bad Faith** | Scenario #4 (hardest case):<br><br>State responsibility arises(?) | Scenario #3:<br><br>State responsibility arises |

13 Whether an international court or tribunal has jurisdiction over a claim for State responsibility may vary. The *Ghana/Côte d'Ivoire* special chamber found that it had jurisdiction over such a claim based on *forum prorogatum* (Ghana had not raised any objection to the special chamber's jurisdiction in this regard). See Ghana/Côte d'Ivoire, *supra* note 5, at 153–54, paras. 552–53.

Scenario # 1 is the easiest case. A State that acts in good faith in a disputed area does not – merely by virtue of having taken such actions in a disputed area – incur State responsibility, especially when the disputed area ultimately is determined to be a part of that State's continental shelf.

Scenario # 2 is a less intuitive outcome, but seems to be consistent with existing jurisprudence.[14] Here, a State that takes actions in a disputed area in good faith does not – merely by virtue of having taken such actions in a disputed area – incur State responsibility, even if the disputed area is ultimately determined not to be a part of its continental shelf. Though less intuitive, the rationale for this outcome is that, in a contested maritime space, it is entirely possible that both States are operating in good faith (the maritime boundary line often is not obvious and there is almost always some margin of appreciation as to how it should be drawn). As such, if conduct within the contested maritime area is ultimately shown to be mistaken, but undertaken in good faith, a court or tribunal should not view such conduct as engaging rules on State responsibility. The *Ghana/Côte d'Ivoire* special chamber maintained that this was true,[15] although on the facts of that case, the actions taken by Ghana appear to have all occurred in waters that were later delimited in favor of Ghana.[16]

An analogy to how this rule operates in maritime spaces might be seen in case law relating to land territory. In its 2002 *Cameroon v. Nigeria* judgment, the International Court of Justice determined that Nigeria had improperly claimed and occupied territory of Cameroon, including the Bakassi Peninsula and areas in the Lake Chad region.[17] At the same time, the Court decided that the injury suffered by Cameroon – in the form of destruction of property and environmental harm – as a result of the occupation was sufficiently addressed by the delimitation effected by the Court and by the Court's order to withdraw its troops.[18] In all likelihood, the judges were mostly concerned with the formulation of a remedy that would generally satisfy the overall demands of the prevailing party without overburdening the other party with

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14 *See, e.g.*, Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, 2012 I.C.J. Rep. 624, at 718, para. 250 (Nov. 19).

15 Ghana/Côte d'Ivoire, *supra* note 5, at 162, para. 592 ("In the view of the Special Chamber, … maritime activities undertaken by a State in an area of the continental shelf which has been attributed to another State by an international judgment cannot be considered to be in violation of the sovereign rights of the latter if those activities were carried out before the judgment was delivered and if the area concerned was the subject of claims made in good faith by both States.").

16 *Id.* at 172–73, para. 633 ("[T]he Special Chamber takes into account that Ghana has undertaken hydrocarbon activities only in an area attributed to it.").

17 Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgement, 2002 I.C.J. Rep. 303 (Oct. 10).

18 *Id.* at 452, para. 319 ("In the circumstances of the case, the Court considers moreover that, by the very fact of the present Judgment and of the evacuation of the Cameroonian territory occupied by Nigeria, the injury suffered by Cameroon by reason of the occupation of its territory will in all events have been sufficiently addressed. The Court will not therefore seek to ascertain whether and to what extent Nigeria's responsibility to Cameroon has been engaged as a result of that occupation.").

excessive costs. As such, the Court tried to contribute to the creation of a non-confrontational environment in which the parties could move to a speedy implementation of the core objective of the judgment, which was the delimitation of territory. At the same time, the Court was likely influenced by a sense of whether Nigeria acted wrongfully. Counsel for Nigeria argued to the Court that if it ultimately assigned the disputed areas to Cameroon, it should not lead to a determination of State responsibility by Nigeria, because Nigeria was administering those territories in good faith and in the honest belief that those areas were under its sovereignty.[19]

One might ask whether such an approach gives States a free license to engage in actions in disputed continental shelf areas. I do not think it does. First, the State does have to be acting in good faith. Second, it is not giving a free license to all actions that a State might take in the disputed area; it is simply saying that the *mere* fact that actions are being taken in a disputed area is not wrongful. Nonetheless, some actions taken in the disputed area would be wrongful, such as actions taken in violation of an order on provisional measures issued by a competent international tribunal.

Scenario # 3 concerns the situation where the State has acted in bad faith in an area ultimately established not to be its continental shelf. Here the result should be different from the first two scenarios, given that the conduct results from a State's malfeasance in assessing and adhering to its rights and the rights of others. Perhaps an analogy drawn from a land boundary dispute is Iraq's invasion and occupation of Kuwait during 1990-1991, where Iraq's claims were generally regarded, including by the U.N. Security Council, as legally unsustainable, leading to Iraq's responsibility for loss, damage or injury from its conduct in Kuwaiti territory.[20]

Scenario # 4 presents the hardest case, one in which the State has acted in bad faith, but in an area that ultimately is determined to be part of its continental shelf. A failure to impose State responsibility on the State would be based solely on grounds that the State guessed right as to its entitlements and would look past acts it undertook that were in bad faith. On balance, it seems likely that State responsibility should be imposed in such circumstances. Perhaps an analogy for this in the land boundary context is the decision reached by the Eritrea-Ethiopia Claims Commission, which found that

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19 *Id.*, Verbatim Record, CR 2002/20, para. 24 (Mar. 15, 2002, 10 a.m.), https://www.icj-cij.org/files/case-related/94/094-20020315-ORA-01-01-BI.pdf (last visited Nov. 28, 2018).

20 *See* MARCO FRIGESSI DI RATTALMA & TREVES TULLIO, THE UNITED NATIONS COMPENSATION COMMISSION: A HANDBOOK (1999); GULF WAR REPARATIONS AND THE UN COMPENSATION COMMISSION: ENVIRONMENTAL LIABILITY (Payne & Sand eds. 2011); Roger P. Alford, *The Claims Resolution Tribunal*, *in* THE RULES, PRACTICE, AND JURISPRUDENCE OF INTERNATIONAL COURTS AND TRIBUNALS 575 (Chiara Giorgetti ed. 2012); WAR REPARATION AND THE UN COMPENSATION COMMISSION: DESIGNING COMPENSATION AFTER CONFLICT (Tim Feighery et al. eds., 2015).

Eritrea willfully invaded a contested area that had been peacefully administered by Ethiopia for many years, and which awarded significant amounts of compensation to Ethiopia for loss, damage and injury, even with respect to areas that were later determined to be Eritrean territory by the Eritrea-Ethiopia Boundary Commission.[21]

**The States Concerned Shall Abide by any Legally-Binding Order on Provisional Measures of Protection by a Competent International Court or Tribunal**

Second, it is possible that the dispute is placed before an international court or tribunal, and further possible that one or both of the States will seek an order from that court or tribunal for provisional (or interim) measures of protection (*i.e.*, measures to be following provisionally until the issuance of a final decision on delimitation). If such an order is issued and is legally-binding, then both States are obliged to abide by it.

In the *Aegean Sea Continental Shelf* case, Greece sought a provisional measures order requiring that both Greece and Turkey not engage in exploration activities in the Aegean Sea, saying that Turkey's activities threatened the exclusivity of Greece's rights with respect to the extent and location of seabed resources. The Court was not applying the LOS Convention; rather, it was applying its own rules and jurisprudence with respect to whether conditions existed meriting provisional measures of protection by the Court, prior to a judgment on matters of jurisdiction or the merits. The Court said that provisional measures are only warranted if necessary to ensure that States do not undertake activities that cause "physical damage to the seabed or subsoil" (as opposed to exploratory activity such as seismic exploration), do not establish installations on the continental shelf (as opposed to activities of a "transitory character"), and do not engage in actual appropriation or other use of natural resources.[22]

Yet whether such activities are occurring within a disputed area of the continental shelf is not the sole touchstone for determining whether to issue an order on provisional measures of protection. The 2015 *Ghana/Côte d'Ivoire* special chamber's order on provisional measures accepted that drilling causes a "permanent physical modification of the area in dispute which no form of financial compensation or reparation can restore."[23] Further, the special chamber found that acquisition and subsequent use of

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21 *See* Eritrea-Ethiopia Claims Commission, Partial Award, *Jus Ad Bellum*, Ethiopia's Claims 1-8, Decision of Dec. 19 2005, 26 R.I.A.A. 457; see also Sean D. MURPHY, WON KIDANE, & THOMAS R. SNIDER, LITIGATING WAR: MASS CIVIL INJURY AND THE ERITREA–ETHIOPIA CLAIMS COMMISSION 157–60 (2013).

22 Aegean Sea Continental Shelf Case (Greece v. Turkey), Interim Protection, Order of Sept. 11, 1976, 1976 I.C.J. Rep. 1976 3, at 11, para. 30.

23 Ghana/Côte d'Ivoire, Order on Provisional Measures, *supra* note 7, at 163, paras. 89–90.

geological information of the disputed area created a risk of irreversible prejudice.[24] Even so, the *Ghana/Côte d'Ivoire* special chamber declined to order Ghana to suspend *existing* oil exploration and exploitation activities in the disputed maritime area.[25] Thus, the special chamber allowed exploitation of shelf resources to continue even within the disputed area, because suspending such activities would cause prejudice to Ghana (Ghana had been engaged in such exploitation before Côte d'Ivoire claimed that the area was part of its continental shelf) and could cause harm to the marine environment.[26] At the same time, the special chamber ordered[27] that:

> (a) *No new drilling by Ghana*. The special chamber ordered Ghana to take all necessary steps to ensure that no new drilling (either by Ghana or by others under its control) take place in the disputed area. As such, the special chamber did not order that Ghana suspend its existing exploitation, only that it refrain from drilling new wells.
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> (b) *Ghana must protect information*. The special chamber ordered that Ghana take all necessary steps to prevent information resulting from past, ongoing or future exploration activities conducted by Ghana, or with its authorization, in the disputed area that is not already in the public domain from being used in any way whatsoever to the detriment of Côte d'Ivoire. As such, the special chamber apparently allowed Ghana to continue to gather such information, including from ongoing physical surveys, so long as it is not so used.
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> (c) *Ghana must conduct strict monitoring*. The special chamber ordered Ghana to carry out strict and continuous monitoring of all activities undertaken by Ghana or with its authorization in the disputed area with a view to ensuring the prevention of serious harm to the marine environment.
>
> (d) *Both parties must take steps to protect marine environment*. The special chamber ordered both parties to take all necessary steps in the disputed area to prevent serious harm to the marine environment, including on the continental shelf and in its superjacent waters, and to cooperate toward that end.

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24 *Id*. at 164, para. 95.
25 *Id.* at 20–23, paras. 99–100, 108.
26 *Id.*
27 *Id.* at 21–22, para. 108(1).

(e) *Both parties must cooperate and avoid aggravating dispute*. The special chamber ordered both parties to pursue cooperation and to refrain from any unilateral action that might lead to aggravating the dispute.

**The States Concerned Shall Negotiate in Good Faith Toward a Final Agreement on Delimitation**

Third, the States concerned shall negotiate in good faith toward a final agreement on delimitation.[28] This rule emanates from LOS Convention Article 83(1), which provides: "The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution." International courts and tribunals generally have assumed that Article 83(1) expresses a rule of customary international law.[29]

The *Ghana/Côte d'Ivoire* special chamber maintained that

> the obligation under article 83, paragraph 1, of the Convention to reach an agreement on delimitation necessarily entails negotiations to this effect. The Special Chamber emphasizes that the obligation to negotiate in good faith occupies a prominent place in the Convention, as well as in general international law, and that this obligation is particularly relevant where neighbouring States conduct maritime activities in close proximity.[30]

Further, the special chamber noted that "the obligation to negotiate in good faith is an obligation of conduct and not one of result."[31] Such negotiations need to be meaningful, but they do not need to be successful and they do not require that a State depart from the position it has taken at the outset of the

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28 Examples of such agreements include: Treaty between the Republic of Trinidad and Tobago and the Republic of Venezuela on the Delimitation of Marine and Submarine Areas, Apr. 18, 1990, http://extwprlegs1.fao.org/docs/pdf/bi-22381.pdf (last visited Nov. 28, 2018); Treaty on the Delimitation of the Continental Shelf in the Western Gulf of Mexico beyond 200 Nautical Miles, Mex.-U.S., June 9, 2000, T.I.A.S. No. 01,117; Agreement between Kenya and the United Republic of Tanzania, June 23, 2009, http://extwprlegs1.fao.org/docs/pdf/bi-158812.pdf (last visited Nov. 28, 2018); and Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean, Sept. 15, 2010, https://www.regjeringen.no/globalassets/upload/ud/vedlegg/folkerett/avtale_engelsk.pdf (last visited Nov. 28, 2018). For a discussion of these agreements, see BJARNI MÁR MAGNÚSSON, THE CONTINENTAL SHELF BEYOND 200 NAUTICAL MILES: DELINEATION, DELIMITATION AND DISPUTE SETTLEMENT 187–212 (2015).

29 *See e.g.*, Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Judgement, 2001 I.C.J. Rep. 40, at 91, para. 167 (Mar. 16); Nicaragua v. Colombia, *supra* note 14, at 674, para. 139; Maritime Dispute (Peru v. Chile), Judgement, 2014 I.C.J. Rep. 3, at 65, para. 179 (Jan. 27).

30 Ghana/Côte d'Ivoire, *supra* note 5, at 165–66, para. 604.

31 *Id*.

negotiations.[32] This is consistent with the jurisprudence of international courts and tribunals with respect to the "obligation to negotiate" in the context of a shared natural resource.[33]

One issue that may arise concerns the relationship between this obligation to negotiate toward a final agreement and the resort to an institutional mechanism that may help in resolving the delimitation dispute. Thus, the International Court in the *Somalia v. Kenya* maritime boundary dispute emphasized the ability of States to negotiate and reach their own agreement on the delimitation of continental shelf boundaries independent of a recommendation from the Commission on the Limits of the Continental Shelf.[34] Conversely, a State normally may pursue dispute settlement before an international court or tribunal without first exhausting efforts at reaching a final agreement. For example, the tribunal in the *South China Sea* arbitration decision on jurisdiction and admissibility found that there is no requirement that States first exhaust diplomatic negotiations before resorting to LOS Convention Annex VII arbitration.[35]

**Pending a Final Agreement on Delimitation, the States Concerned Shall Seek Provisional Arrangements of a Practical Nature**

Fourth, pending conclusion of an agreement with respect to overlapping claims relating to the continental shelf, LOS Convention States Parties have an obligation to make every effort to seek an interim solution to overlapping continental shelf claims. LOS Convention Article 83(1) provides in part that: "Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and

32 *Id.*

33 *See, e.g.*, Cameroon v. Nigeria: Equatorial Guinea intervening, *supra* note 17, at 424, para. 244 (explaining that there is no requirement that the negotiations be successful, but that, "like all similar obligations to negotiate in international law, the negotiations have to be conducted in good faith"). Of course, in contexts other than a disputed area of the continental shelf, there may be no obligation under international law to negotiate a matter in dispute between two States. *See, e.g.,* Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile), Judgement, at 54, para. 175 (Oct. 1, 2018), https://www.icj-cij.org/files/case-related/153/153-20181001-JUD-01-00-EN.pdf (last visited Nov. 28, 2018) (holding that, under the circumstances, Chile did not undertake a legal obligation to negotiate sovereign access to the Pacific Ocean for Bolivia).

34 *See* Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Judgement on Preliminary Objections, 2017 I.C.J. Rep. 3, at 26, para. 67 (Feb. 2); see also Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia), Judgement on Preliminary Objections, 2016 I.C.J. Rep. 100, at 136, paras. 107–108 (Mar. 17); Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh v. Myanmar), Case No. 16, Judgment of Mar. 14, 2012, 2012 ITLOS Rep. 4, at 98-103, paras. 369-94; Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India), PCA Case No. 2010-16. Award of July 7, 2014, at 21-22, paras. 76-82.

35 South China Sea Arbitration (Philippines v. China), Case No. 2013-19, Award on Jurisdiction and Admissibility (2015), at 120–23, paras. 345, 350, https://pcacases.com/web/sendAttach/1506 (last visited Nov. 28, 2018).

cooperation, shall make every effort to enter into provisional arrangements of a practical nature . . . . Such arrangements shall be without prejudice to the final delimitation."[36]

The obligation to seek to negotiate an interim solution is a *positive* obligation imposed upon States Parties. According to the *Guyana v. Suriname* arbitral tribunal, this text indicates "the drafters' intent to require of the parties a conciliatory approach to negotiations, pursuant to which they would be prepared to make concessions in the pursuit of a provisional arrangement."[37] Indeed, such language implicitly recognizes the importance of avoiding wholesale suspension of activities in the disputed area, so long as doing so does not affect the ability to reach a final agreement.[38] As with the obligation to negotiate in good faith, the *Ghana/Côte d'Ivoire* special chamber concluded that this obligation is one of conduct rather than result;[39] the State is expected to make every effort to conclude a provisional arrangement, but there is no requirement that such efforts be successful.[40] The text does not impose on the parties an obligation to enter into any particular agreement or to adopt any specific solution, or any solution at all, but does require some action by them. Moreover, one State Party likely does not violate this obligation if the other State Party never requests that a provisional arrangement be undertaken, as was found in the *Ghana/Côte d'Ivoire* decision.[41]

Examples of actions likely to be contrary to this aspect of LOS Convention Article 83(1) may be seen in the analysis of the *Guyana v. Suriname* tribunal. These include:[42] refusing to send a delegation or a representative to agreed-upon meetings; failing to respond to a proposal by the other State; and, in some cases, not informing the other State about proposed actions in the contested area. On the other hand, conduct that could help to satisfy this requirement might include: efforts to commence negotiations with the other party; accepting the invitation of the other party to negotiate; seeking the cooperation of the other party when undertaking proposed activities; and offering to share the results and benefits of activities in the contested area.

The interim solution need not be in the form of a binding international agreement, although such agreement is certainly possible. Further, the content of the provisional solution may vary considerably,

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36 LOS Convention, *supra* note 1, art. 84(3). For an argument that the rule set forth in Article 83(3) is also part of customary international law, see R.R. CHURCHILL AND A.V. LOWE, THE LAW OF THE SEA 192 (3d ed. 1999).

37 Guyana v. Suriname, *supra* note 4, at 130, para. 461.

38 *Id*.

39 Ghana/Côte d'Ivoire, *supra* note 5, at 170–71, para. 627.

40 *Id.*

41 *Id.* at 171, para. 628.

42 Guyana v. Suriname, *supra* note 4, at 133–36, paras. 471–78.

ranging from mutually-agreed restraint from undertaking exploitation activities in a contested area, to the establishment of a provisional boundary, to cooperation in the disputed area through joint development.[43] Indeed, joint development zones on a provisional basis may be found in many parts of the world.[44] For example, Nigeria and the island nation of São Tomé e Príncipe concluded in 2001 a joint development agreement in the Gulf of Guinea on a provisional basis, which allows for exploitation of seabed resources in an area where their zones overlap. Under the agreement, there exist joint bodies charged with managing the zone, including with respect to the sharing of revenue, the application of laws and regulations, and environmental protection.[45] While these are "provisional arrangements," that does not mean they are necessarily of a short duration; indeed, by its terms, the Nigeria and São Tomé e Príncipe agreement is to remain in force for 45 years.[46]

Whatever provisional solution is achieved, LOS Convention Article 83(3) is clear that the solution does not prejudge the final settlement of the dispute, and thus a State cannot acquire, even over a long period of time, permanent rights by entering into such a provisional arrangement.[47]

**Pending a Final Agreement, the States Concerned Shall Not Take Steps that Jeopardize the Reaching of a Final Agreement**

Fifth, pending conclusion of an agreement with respect to overlapping claims in the exclusive economic zone or the continental shelf, a LOS Convention State Party has a further "make every effort"

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43 See Anderson and van Logchem, *supra* note 6, at 206.

44 For example, such zones were established by: Kuwait and Saudi Arabia in the Persian Gulf (1965); Japan and South Korea in the Sea of Japan/East Sea (1974); Sudan and Saudi Arabia in the Red Sea (1974); Malaysia and Thailand in the Gulf of Thailand (1990); Malaysia and Vietnam in the Gulf of Thailand (1993); and Australia-Timor Leste in the Timor Sea (2002).

Joint development zones can also be used as a more permanent solution. For example, in 2008 Mauritius and Seychelles submitted a joint application to the Commission on the Limits of the Continental Shelf for the Mascarene Shelf Plateau shared between them, and then concluded two treaties providing for the co-management of the shelf. *See* Mossop, *supra* note 2, at 227–30. Such a solution is particularly suited to overlapping extended continental shelf claims since much of the area will be little explored and thus States will have fewer vested interests before negotiation. *Id.* at 243. In 2018, Australia and Timor-Leste concluded a treaty establishing their maritime boundaries in the Timor Sea, which provides in principle for both States to develop the Greater Sunrise gas fields together and share in the benefits.

45 Treaty between the Federal Republic of Nigeria and the Democratic Republic of São Tomé e Príncipe on the Joint Development of Petroleum and Other Resources, in respect of Areas of the Exclusive Economic Zone of the Two States art. 51, Feb. 21, 2001, http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/STP-NGA2001.PDF (last visited Nov. 28, 2018).

46 *Id*. For a discussion of this joint development zone, but also broader State practice on this issue, see J. Tanga Biang, *The Joint Development Zone between Nigeria and Sao Tome and Principe: A Case of Provisional Arrangement in the Gulf of Guinea—International Law, State Practice and Prospects for Regional Integration*, DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA, U.N. OFFICE OF LEGAL AFFAIRS (2010), http://www.un.org/depts/los/nippon/unnff_programme_home/fellows_pages/fellows_papers/tanga_0910_cameroon.pdf (last visited Nov. 28, 2018).

47 *See* Lagoni, *supra* note 6, at 359.

obligation. LOS Convention Article 83(3) also provides in part that: "Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort . . . not to jeopardize or hamper the reaching of the final agreement."[48] This obligation might be characterized as a negative obligation; it requires States Parties to refrain from engaging in unilateral action that may aggravate a dispute. At the same time, it is also an obligation of conduct, not of result.[49] States must exercise due diligence in this regard but may not ultimately succeed.

Although this analysis breaks up into two "rules" the obligation to pursue practical arrangements and the obligation not to jeopardize the reaching of a final agreement, it should be noted that the *Ghana/Côte d'Ivoire* special chamber found that these are "two interlinked obligations for the States concerned" and "that the two obligations are connected."[50] Further, the special chamber viewed this obligation "not to jeopardize or hamper" as operating during the period after the maritime delimitation dispute has been established, but before either a provisional arrangement has been reached or a final delimitation by agreement or adjudication has been achieved.[51]

Importantly, the obligation under Article 83(3) does not require a complete moratorium on exploration or even on exploitation activities in areas claimed in good faith by a State.[52] Rather, it aims at balancing two considerations: a desire not to prevent all unilateral activities pending final settlement of the boundary; and a desire to avoid, as far as possible, any unilateral action that could worsen the dispute and could threaten international peace and security. In the *Guyana v. Suriname* Award, the tribunal focused largely on whether the parties' unilateral actions would cause permanent physical change to the marine environment ("seismic exploration" versus "exploitation of oil and gas reserves"),[53] an approach that was likely inspired by[54] the International Court's decision on provisional measures of protection in *Aegean Sea Continental Shelf*.[55] With that standard in mind, the *Guyana v. Suriname* tribunal found that both Guyana and Suriname had violated their obligations under LOS Convention Article 83(3).[56] According to the tribunal, Guyana failed to exercise the necessary self-restraint by authorizing exploratory drilling

48 LOS Convention, *supra* note 1, art. 84(3).
49 Ghana/Côte d'Ivoire, *supra* note 5, at 171–72, para. 629.
50 *Id.* at 170–72, paras. 626, 629.
51 *Id.* at 172, para. 630.
52 Guyana v. Suriname, *supra* note 4, at 131–32, para. 465.
53 *Id.* at132, para. 467.
54 *Id.* at 132–33, paras. 468–69.
55 Aegean Sea Continental Shelf, *supra* note 22, at 9–10, paras. 26–27.
56 Guyana v. Suriname, *supra* note 4, at 139, para. 488(3).

by an oil rig in the contested waters, while Suriname had failed by sending a coast guard vessel to order the rig to leave the area, stating that if it did not do so, unspecified "consequences" would ensue.[57]

Yet, while the provisional measures of protection ordered in the *Aegean Sea* case, and in other cases before international courts[58] and tribunals,[59] are important reference points, it should be kept in mind that the standard being applied with respect to provisional measures of protection is a higher standard than exists for not jeopardizing or hampering under LOS Convention Article 83(3). A court or tribunal may refrain from ordering provisional measures out of a belief that any wrongful act may be later remedied through compensation; the tribunal is not determining whether or not the act is wrongful in the first place.[60] By contrast, Article 83(3) has a wider sweep, seeking to prevent all acts that jeopardize or hamper the reaching of a final agreement, whether or not the harm caused might later be remedied through compensation. At the same time, if an action is egregious enough to satisfy the standard applied with respect to provisional measures of protection, it would appear also then to meet the standard set under the LOS Convention.[61]

The obligation "not to jeopardize and hamper" the reaching of a final agreement might also be considered in light of the duty to refrain from aggravating or extending a dispute during the course of dispute settlement proceedings.[62] The tribunal in the *South China Sea* arbitration explained that

> the conduct of either party may aggravate a dispute where that party continues during the pendency of the proceedings with actions that are alleged to violate the rights of the other, in such a way as to render the alleged violation more serious. A party may also aggravate a dispute by taking actions that would frustrate the effectiveness of a potential decision, or render its implementation by the parties significantly more difficult. Finally, a party may aggravate a dispute

57 *Id.* at 137–38, paras. 479–84.

58 *See, e.g.*, Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Provisional Measures, Order of Mar. 8, 2011, 2011 I.C.J. Rep. 6; Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Provisional Measures, Order of Nov. 22, 2013, 2013 I.C.J. Rep. 354.

59 *See, e.g.*, Ghana/Côte d'Ivoire, Order on Provisional Measures, *supra* note 7.

60 *See generally* SHABTAI ROSENNE, PROVISIONAL MEASURES IN INTERNATIONAL LAW: THE INTERNATIONAL COURT OF JUSTICE AND THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (2005).

61 Guyana v. Suriname, *supra* note 4, at 156, para. 469 ("Activities that would meet the standard required for the indication of interim measures, in other words, activities that would justify the use of an exceptional power due to their potential to cause irreparable prejudice, would easily meet the lower threshold of hampering or jeopardising the reaching of a final agreement.").

62 *See, e.g.,* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Provisional Measures, Order of Mar. 15 1996, 1996 I.C.J. Rep. 13, at 22–23, para. 41; Pulp Mills on the River Uruguay (Argentina v. Uruguay), Provisional Measures, Order of Jan. 23 2007, 2007 I.C.J. Reports 3, at 16, paras. 49–50; Pulp Mills on the River Uruguay (Argentina v. Uruguay), Provisional Measures, Declaration of Judge Buergenthal, 2007 I.C.J. Rep. 21, (Jan. 23).

> by undermining the integrity of the dispute resolution proceedings themselves, including by rendering the work of a court or tribunal significantly more onerous or taking other actions that decrease the likelihood of the proceedings in fact leading to the resolution of the parties' dispute.[63]

In striking the right balance under LOS Convention Article 83(3) between provisionally pursuing activities and refraining from aggravating the dispute, it appears that context is very important. While an objective criterion (permanent versus non-permanent effects from the activities) may be attractive, such an approach does not sufficiently take into account that, depending on the particular situation, an act with non-permanent effects could potentially trigger a forceful response by the other State, while an act with permanent effects might be viewed as harmless. For example, even exploration of resources, in some situations, might aggravate the dispute, especially if this is undertaken without any previous notification by the exploring State. Interestingly, the *Ghana/Côte d'Ivoire* special chamber saw a link between this obligation under Article 83(3) and the final judgment on delimitation. Because the special chamber found that Ghana had not engaged in any hydrocarbon activities in any area that was accorded to Côte d'Ivoire in the delimitation judgment, it was therefore "impossible to state that Ghana has undertaken activities which have jeopardized or hampered the conclusion of an agreement as envisaged by article 83, paragraph 3, of the Convention."[64]

Though the focus of this chapter is on a dispute over the continental shelf, it is noted that the application of this rule to fishing activities entails different elements. Fish are a renewable resource if harvested in a sustainable manner, so it may be possible for one (or both) claimant States to engage in fishing in the disputed area if done sustainably. If such harvesting does not occur, then an economic resource is being wasted. In the *Guyana v. Suriname*, the tribunal stated that "international courts and tribunals should … be careful not to stifle the parties' ability to pursue economic development in a disputed area during a boundary dispute, as the resolution of such disputes will typically be a time-consuming process."[65] Further, the exercise of jurisdiction in the disputed area by one of the States may be desirable as a means of avoiding a situation whereby the vessels of third States are engaging in unsustainable activities that destroy the fish stocks. To the extent that the standards applied to provisional measures of protection are relevant, it might be noted that the International Court, in its 1972 provisional

63 South China Sea Arbitration, *supra* note 10, at 462, para. 1176.
64 Ghana/Côte d'Ivoire*, supra* note 5, at 172–73, para. 633.
65 Guyana v. Suriname, *supra* note 4, at 156, para. 470.

measures order in *Fisheries Jurisdiction (United Kingdom v. Iceland)* indicated that States should not undertake fishing activities that result in "irreparable prejudice."[66] As such, it would appear that exploitation of fish can be undertaken by one or both of the disputing States, so long as it is done sustainably.

**The States Concerned Shall Use Only Permissible Counter-measures in Response to Unlawful Acts**

Sixth, every State may exercise countermeasures in response to another State's violation of its obligations in a disputed area of the continental shelf, provided that such countermeasures conform to the rules on State responsibility.[67] Thus, if one of the two States advancing claims to a contested area is acting wrongfully – perhaps by taking acts that aggravate the dispute or by refusing to negotiate a provisional arrangement – the other State may exercise permissible countermeasures, which might consist of non-compliance with the LOS Convention. Among other things, the purpose of the countermeasures must be to induce compliance by the other State; advance notice must be given of the intent to take countermeasures (thereby giving the other State an opportunity to come into compliance); and they must be taken in such a way as to permit resumption of performance if the other State comes into compliance. Moreover, the countermeasures must be proportionate to the other State's non-compliance and cannot violate human rights or *jus cogens*.[68]

**The States Concerned Shall Not Threaten or Use Force in Violation of the U.N. Charter**

Seventh, there are limits on using force or threatening to use force against another claimant State in contested maritime spaces. Under international law, a State may not use force or threaten to use force against another State's territorial integrity or political independence.[69] LOS Convention Article 301 reinforces this general rule by stating: "In exercising their rights and performing their duties under this Convention, States Parties shall refrain from any threat or use of force against the territorial integrity or

66 Fisheries Jurisdiction (United Kingdom v. Iceland), Interim Protection, Order of Aug. 17, 1972, 1972 I.C.J. Rep. 12, at 16, para. 21.

67 An important source in this context is the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (ILC Articles). *See* Draft Articles on Responsibility of States for Internationally Wrongful Acts, arts. 49–54, in Y.B. Int'l L. Comm'n, 2001, Vol. II, Part Two, UN Doc. A/CN.4/SER.A/2001/Add. 1, at 26 (hereinafter ILC Articles).

68 The rules on State responsibility also provide that the counter-measure may not violate rules on the use of force as set forth in the U.N. Charter, which are addressed in the next sub-section.

69 U.N. Charter art. 2(4).

political independence of any State, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations."[70]

This rule has been applied even in contested maritime spaces, where a State believes that it has sovereign rights in those waters while another State does not. Thus, in *Guyana v. Suriname*, the tribunal applied such a rule in a situation where Guyana claimed that Suriname had wrongfully used force in the disputed maritime space.[71] The tribunal accepted the argument "that in international law force may be used in law enforcement activities provided that such force is unavoidable, reasonable and necessary."[72] Yet the tribunal asserted that Suriname's action of sending a patrol vessel to order an oil rig to leave the contested waters was an unlawful threat of force under the circumstances (the rig was approached at midnight and given twelve hours to leave; the rig was told if it didn't leave "the consequences would be yours"; the men on the rig perceived that this meant military force would be used if they did not leave).

While the *Guyana v. Suriname* tribunal was not clear in identifying what would have been acceptable "law enforcement activity" by Suriname, the implication may be that the patrol vessel could have instructed the rig to leave the area without issuing a vague threat and, if the rig did not leave, perhaps the patrol vessel could have boarded the rig, inspected its papers, and ultimately arrested the rig operators if they did not comply with instructions. In any event, the standard applied was that an enforcement activity should only use "such force [as] is unavoidable, reasonable and necessary." The International Tribunal for the Law of the Sea articulated a comparable standard in the *Saiga No. 2* case, when it stated:

> Although the Convention does not contain express provisions on the use of force in the arrest of ships, international law, which is applicable by virtue of article 293 of the Convention, requires that the use of force must be avoided as far as possible and, where force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances. Considerations of humanity must apply in the law of the sea, as they do in other areas of international law.[73]

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70 LOS Convention, *supra* note 1, art. 301.

71 Guyana v. Suriname, *supra* note 4, at 145, para. 445. Unfortunately, the Tribunal also did not discuss the fact that the action was taken not against a Guyana vessel, but against a private oil company rig flagged to a third State that had a contract with Guyana, a situation that normally might not constitute an inter-State use of force.

72 *Id.*

73 The M/V "SAIGA" Case (Saint Vincent and the Grenadines v. Guinea), Case No. 2, Judgment of July 1, 1999, 1999 ITLOS Rep. 10, at 10, para. 155.

The *Guyana v. Suriname* tribunal cited to the Eritrea-Ethiopia Claims Commission decision relating to Eritrea's use of force against Ethiopia in 1998. That Commission explained that, if the law were to recognize a State's ability to use force in a contested area peacefully administered by another State based solely on the first State's claim of sovereignty, the international prohibition on the use of force would be significantly weakened. The Commission noted that "border disputes between States are so frequent that any exception to the prohibition of the threat or use of force for territory that is allegedly occupied unlawfully would create a large and dangerous hole in a fundamental rule of international law."[74]

The *South China Sea* arbitral tribunal also addressed the use of law enforcement vessels in disputed waters, specifically recounting multiple instances where Chinese law enforcement vessels operated in a dangerous manner toward Philippine coast guard and surveillance ships, causing near collisions.[75] The Philippines argued that such actions by China were in violation of the Convention on the International Regulations for Preventing Collisions at Sea,[76] and the tribunal found that the vessels "created serious risk of collision and danger to Philippine vessels and personnel."[77]

**Third States Shall Not Knowingly Assist One of the States Concerned if It is Acting Wrongfully**

Eighth, third States are obligated not to knowingly aid or assist a State that is acting wrongfully with respect to a disputed area of the continental shelf. If one of the two States advancing claims to a contested area is acting wrongfully, for example by acting in a way that aggravates the dispute or by refusing to negotiate a provisional arrangement, then third States have an obligation not to aid or assist the State acting wrongfully. Article 16 of the ILC Articles provides: "A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and (b) The act would be internationally wrongful if committed by that State."[78]

**Conclusion**

In many areas of the seas, there remain overlapping claims to the continental shelf, including the extended continental shelf, which in due course may be resolved through negotiation or dispute

74 Eritrea-Ethiopia Claims Commission, *supra* note 21, at 465, para. 10.
75 South China Sea Arbitration, *supra* note 10, at 417–21, paras. 1046–58.
76 Convention on the International Regulations for Preventing Collisions at Sea, Oct. 20, 1972, 1050 U.N.T.S. 17.
77 South China Sea Arbitration, *supra* note 10, at 421, 435, paras. 1059, 1109.
78 ILC Articles, *supra* note 67, art. 16.

settlement. In the meantime, the disputing States must conduct themselves in the disputed area of the continental shelf in conformance with their obligations under international law. Drawing upon relevant treaties and customary international law, as well as international jurisprudence, this chapter has advanced eight basic rules that every State should follow in such a situation. Inevitably, such rules are general in nature and will have variable effects when applied in context. Nevertheless, it is submitted that such rules provide importance guidance to States in upholding their overall duty to resolve disputes peacefully.