STUDY GUIDE ICJ

A LITTLE LAW BRIEF

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Guide to international law

Guatemala's Territorial, Insular and Maritime Claim (Guatemala v Belize)

Overview of the Case

Economist.com

Guatemala and Belize are both independent, ex-colonial, sovereign nations. Guatemala gained its independence September 1821 and Belize (former British Honduras) was declared independent by the United Kingdom of Great Britain and Northern Ireland in 1981. Guatemala is considered as a successor state of the Spanish Empire, whereas Belize constituted a province of the British Honduras, occupied by the UK. After years of tension, Guatemala finally recognized Belize as an independent state in 1991. But although Guatemala recognizes Belize as a state entity, it does not accept the borderline claimed by Belize. More specifically, Guatemala rejects the borderline set from Livingston to Rio Azul River and claims sovereign rights over the territory stretching from Belmopan to Livingston. Even though there have been attempts to reach delimitation through negotiations, the two border treaties that have been signed between Guatemala and Great Britain (Aycinena-Wyke Treaty of 1859 and the Exchange of Notes between Guatemala and Britain in 1931) have failed to end up in a mutually agreed delimitation. Neither did the US mediation bear fruit, due to the rejection of

the Webster proposals by the Belizean administration in 1968. Thanks to a special agreement (compromis), notified to the Court on 22 August 2018 by Guatemala and 7 June 2019 by Belize, Guatemala's claim was finally litigated, falling under the Court's jurisdiction in accordance with article 36 of the ICJ Statute. The proceedings before the ICJ commenced with an order conducted by President Abdulqawi Ahmed Yusuf and Registrar Philippe Couvreur on 18 June 2019.

Remember: You should presume that the court **has jurisdiction** to hear the case and prepare the case on the merits. In other words; take the court's jurisdiction for granted.

Statement of Law

Chapter 1: The sources of law

As you do your research, you might wonder what legal basis, apart from the facts, you could use to prove your points. The aim of this guide is to familiarize you with the sources of law, which you can then call upon in order to support the interests of your party.

According Article 38 of the Statute of the ICJ[1], the sources of law are the following:

a. **international conventions**, whether general or particular, establishing rules expressly recognized by the contesting states;
b. **international custom**, as evidence of a general practice accepted as law;
c. **the general principles of law** recognized by civilized nations;
d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

The first three (a, b, c) constitute the main sources of international law the ICJ takes into account when adjudicating a case. That means that they carry the same weight and they are equally evaluated. For instance, customary law is not superior to conventions (treaties) and vice versa. When it comes to judicial decisions and teachings, they are complementary sources of law, used as keys to applying the main sources of law in specific cases. The teachings can be found in books or academic articles, which you can find in google scholar. However, due to your level of studies, you might not be familiar with the legal notions presented in those articles.
Remember you MUST NOT use the ICJ's decision on your particular case as evidence, but you could take a look at the pleadings so as to corroborate your arguments. However, you are encouraged to call upon past ICJ judgments, such as the Case concerning the continental shelf of 1981 so as to corroborate your argumentation. You should also bear in mind that UNGA resolutions- and not the Security Council's directives-carry no weight, as they are "soft law", which means that they are simply recommendations to the states. We will now proceed to examining the 3 different types of evidence, as stated in the art.38 of the ICJ Statute.

[1] https://www.icj-cij.org/en/statute

1. International Treaties

In accordance with article 1 of the Vienna Convention on the law of Treaties[2](VCLT), a "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. Treaties are divided into two main categories, related to the number of states that make part of them. We thus make a distinction between:

a. **Bilateral** agreements, that have been signed and ratified by 2 states, for which they are binding;

An example of a bilateral agreement is the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for Co-operation on the Uses of Atomic Energy for Mutual Defense Purposes. The Agreement entered into force on August 4, 1958.

b. **Multilateral** agreements, that that have been signed and ratified by more than two states, for which they are binding

The UNCLOS, as well as other UN Treaties, is an example of a multilateral treaty, joined by 191 states, including the UK. The treaty was adopted as a text and opened for signature on the 10th of December 1982 but it became binding for its members as soon as it entered into force on 16 November 1994 in accordance with its article 308, 12 months after the deposit of the sixtieth instrument of ratification or accession.[3] Generally speaking, treaties become binding for states once they have signed and ratified them and that applies to the NPT, as stated in article IX. These two procedures indicate the State's willingness to undertake its obligations, as designated in the Treaty. Therefore, if a State party to a particular treaty fails to abide by its provisions, it is considered to have committed an internationally wrongful act and it is thus held accountable for the damage caused by its incompliance.[4]It is then obliged to compensate the states affected by its unlawful actions and comply with its obligations.[5]

[2] The Convention was adopted and opened to signature on 23 May 1969, and it entered into force on 27 January 1980. It has been ratified by 116 states as of January 2018.Some non-ratifying parties, such as the United States, recognize parts of it as a restatement of customary law and binding upon them as such.

[3]https://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm

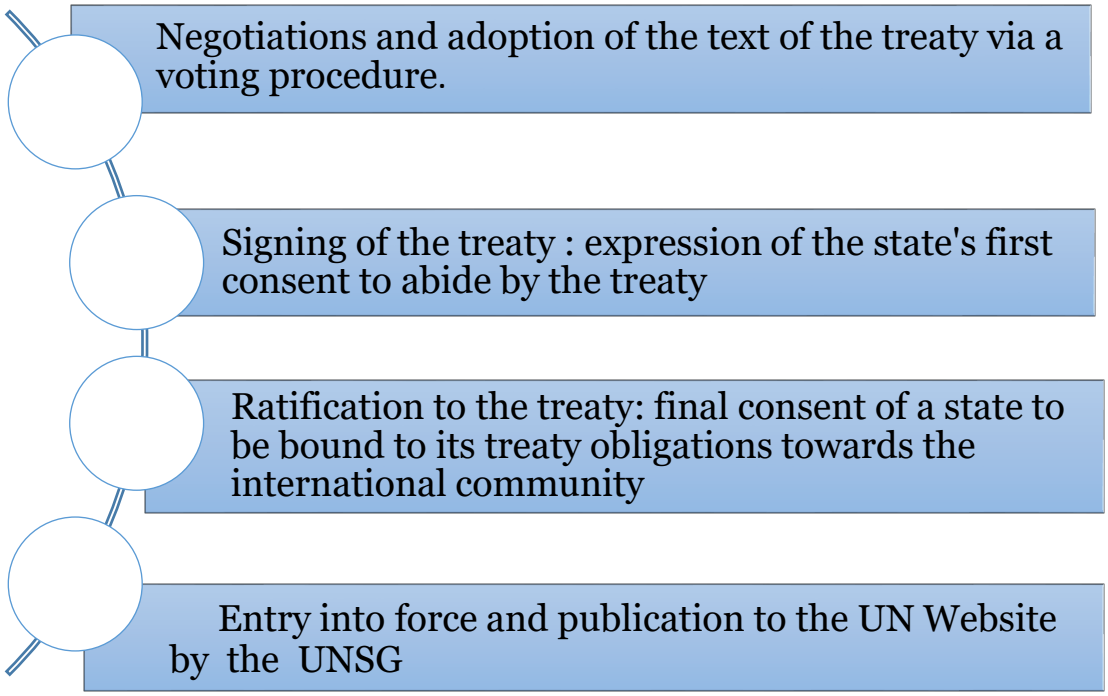
[4] Articles 2, 3, 12, and 13 of the Articles on Responsibility of States for Internationally Wrongful Acts (2001), which constitute customary law.

[5] Article 27 of the Articles on Responsibility of States for Internationally Wrongful Acts (2001).

1 b. Adoption, signing and ratification to a treaty

In the international community, where all states are sovereign and equal, there is not a central system supervising them and imposing sanctions. States have to gather together and negotiate in order to decide which measures and principles they should adhere to for the scope of international peace and security. They then sign treaties which become binding either by the signing, the ratification or the accession by the parties.[6] For instance, the NPT treaty became a binding instrument for states when it got into force in 1970 and it requires the **ratification**, and **not just the signing**, by the member states in order to create international obligations.[7] However, in the time between the signing and the ratification to a treaty, a state should demonstrate good faith and refrain from actions contradicting the scope and the purpose of the treaty. For example a state that has signed a treaty on the prohibition of illicit traffic in narcotic drugs (UN 1988), cannot justify the expansion of its illegal drug market on the grounds of absence of ratification. The same principle also applies when a state has ratified a treaty but it has yet to enter into force.[8]

Steps towards the "birth" of treaty-based obligations



[6] Art.11 VCLT
[7] Art IX NPT
[8] Art 18 VCLT

2. Customary international law

Customary international law consists in identifying and adhering to customs. A custom is established as a source of law when it is practiced repetitively and uniformly for a certain period of time among states (longa usus), to which this practice is so important that they consider it as legally binding (opinio juris). The period of time required for the practice to identify as a custom is dependent on the rule and the frequency of its repetition. For example, the UN General Assembly acknowledged the birth of an 'instant custom' in the event of the adoption of two resolutions in 1963 on space law. This practice is often illustrated in some UN resolutions, because they testify for the states' actions towards a certain goal and their willingness to stick to it. For example, the prohibition of the use of force is a rule of customary law that manifests itself in the UN resolutions 2625 and 3314.All countries have agreed to refrain from using force and when they do, they try to justify their actions by seeking exemptions to this rule.[9]That means that they recognize their forceful actions as unlawful. What makes customary law so important and debated is that it creates obligations all states should fulfill. The only possibility for a state to be exempted from a customary rule of law would require it to object persistently to the establishment of a certain practice as custom from its very beginning. This state then qualifies as a Persistent Objector.

Customary law can also be found in treaties. What that means is that some articles of a treaty, take for instance the UN Convention of the Law of the Sea (UNCLOS), might reflect an internationally accepted custom. That is highly important because, as noted above, treaties are only binding for their parties and not for non-signatory states. But when a treaty contains customary law, all states should comply with its customary provisions, even if they have neither signed nor ratified it. If they don't, they bear again international responsibility and owe compensation to the states suffering by the breach of the custom

[9] See ICJ, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)
186 *It is not to be expected that in the practice of States the application of the rules in question should have been perfect, in the sense that States should have refrained, with complete consistency, from the use of force or from intervention in each other's internal affairs. The Court does not consider that, for a rule to be established as customary, the corresponding practice must be in absolutely rigorous conformity with the rule. In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should, in general, be consistent with such rules, and that instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule. If a State acts in a way prima facie incompatible with a recognized rule, but defends its conduct by appealing to exceptions or justifications contained within the rule itself, then whether or not the State's conduct is in fact justifiable on that basis, the significance of that attitude is to confirm rather than to weaken the rule.*

2b. Relationship between treaties and customary international law

The concepts of treaty and customary law are inter-related and they usually overlap each other. Having said that, a treaty provision might also involve aspects of an ascertained general practice being accepted as law (opinio juris) by a considerable number of states. This correlation between customary international law and international treaties is clearly depicted in comment 11 of the *Draft conclusions on identification of customary international law*, adopted by the International Law Commission at its seventieth session, in 2018. This draft, despite not being legally binding, is of utmost importance, as it provides guidelines and criteria for the identification of a practice as a custom.

In accordance with comment number 11: "*A rule set forth in a treaty may reflect a rule of customary international law if it is established that the treaty rule:*
(a) codified a rule of customary international law existing at the time when the treaty was concluded;
(b) has led to the crystallization of a rule of customary international law that had started to emerge prior to the conclusion of the treaty; or
(c) has given rise to a general practice that is accepted as law (opinio juris), thus generating a new rule of customary international law."

The criteria set forth in the above commentary correspond to three different cases based on the time the practice started to gain ground. The term codification in sub clause a) concerns the case where a practice is already recognized as custom before the related treaty was adopted. For example, the concept of innocent passage was recognized as binding by the ICJ in the *Corfu Channel case* in 1949, whereas the related provision was codified in article 17 of the UNCLOS which was adopted 33 years later, in 1982[10]. Another treaty codifying principles of law is the 1978 treaty on state succession, which serves as a guideline to settling boundary disputes between successor states of big colonial powers such as Great Britain and Spain. When it comes to sub clause b, the critical point for the identification of the custom is the time of the adoption of the related treaty. The custom is therefore embodied in a treaty instrument as soon as it is born. Finally, a treaty might lay the foundation for the birth of a customary rule as long as this provision is continuously and consistently adhered to by states as part of their legal tradition. The fact, however, *that a rule is set forth in a number of treaties may, but does not necessarily, indicate that the treaty rule reflects a rule of customary international law*. What is essential for the ascertainment of the custom is the existence of a general practice adopted as law (opinio iuris).

[10] The Corfu Channel Case, Judgment of April 9th,1949 page 33

3a. International Principles of Law

The International principles of law are abstract and general notions that can be applied for the interpretation of any treaty or a custom. The Court is usually reluctant to using general principles of law as sole evidence, unless no other legal basis is provided. They express the civilized states' desire for the creation of a common legal code and permit international law to have a degree of flexibility in its application and enforcement.

The most commonly practiced principle of law is **good faith**. By good faith in domestic law[11], we mean the honesty and the sincerity of intention to deal fairly with others, without any malice or purpose to defraud them. In international law, it is used to describe a state's adherence to its obligations. It governs the creation and performance of legal obligations and is the foundation of treaty law. This principle is illustrated in article 31 of the VCLT, where it is cited that *a treaty shall be interpreted in* ***good faith*** *in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose*. A similar provision on good faith when it comes to the fulfillment of treaty obligations can be found in article 300 UNCLOS. [12]The persistent use of this term in treaties indicates its significance for assuring their efficiency. Another principle, derived from the 3rd preamble of the VCLT, is the rule ***pacta sunt servanda.*** The oft-quoted Latin phrase means no more than that agreements which are legally binding must be performed[13], so that stability of international relations and treaties can be served. This ancient rule is a preponderant principle of law as it embodies the elementary and fundamental values universally agreed by all legal systems. It is therefore not restricted to civilized nations, but is also applied to the relations formed by any state or citizen.

Other principles are those of **equity** and **sovereign equality** of the nations in the sense that no state is entitled to interfere into another state's territory, unless the latter has agreed on that. It is due to this principle that no state can oblige another state to appear in the ICJ for a dispute settlement without its consent. Another important principle especially when it comes to exercising countermeasures[14]against a state

[11] Britannica, International Law

[12] UNCLOS, Article 300 Good faith and abuse of rights
States 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 right.
[13] Anthony Aust, Oxford International Public Law, February 2007
[14] Art 22 of the Articles on Responsibility of States for Internationally Wrongful Acts (2001).They consist in the reaction of a state A to an attack by the other state B.

is the principle of **proportionality.** In order for this rule to be satisfied, we have to assess whether a measure is essential, suitable for the purpose we aim to achieve and whether the advantages of its imposition outweigh the disadvantages.

Don't forget that these three sources of law, along with the complementary ones might overlap each other and apply equally. You then have to evaluate them all and use them when appropriate. Accordingly, when these sources contradict each other, you should interpret them in such a way that the meaning of the one harmonizes with the essence of the other. In order to achieve that, you should be diligent, impartial, objective and patient. That is what will make you a good ICJ-and future judge.

3b. Principles governing the case

The principle of self determination

The principle of self-determination was first noted by the United Nations in the 1960s and was then emphasized in a number of resolutions, covenants and treaties, such as the 1966 International Covenants on Human Rights and the 1970 Declaration on Principles of International Law adopted with resolution 2625/1970[15]. Article 1 of the International the Covenant on Economic, Social and Cultural Rights [16] designates the peoples' right to *freely determine their political status and freely pursue their economic, social and cultural development*.

[15] Res. 2625/1970 preamble : "*Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality,"*

[16] The Covenant was signed on 16 December 1966 and entered into force 3 January 1976, in accordance with article 27. It is both signed and ratified by Guatemala (1988) and Belize (2015).
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4

This principle, contrary to territorial integrity, is mostly applied in territorial disputes arising from uncertain frontier demarcations. It is thus correlated with the principle of uti posssidetis juris (see below), as the right to an economic, social and cultural development requires the organization of people carrying the same cultural background in a specific territory. However, the Arbitration Commission of the Peace Conference on Yugoslavia, also known as the Badinter Committee after President Badinter, noted that such right *would not, however, have any effect upon the territories of those States concerned. Frontiers would remain unchanged*. Even though permanent population constitutes one of the criteria of statehood, along with a defined territory and the exercise of political authority by an established government[17], the mere existence in a state's territory of a population identified as a people of another state does not entail the annexation of the inhabited territory of the former state by the latter.

This acquisition of land can only be achieved either through a border treaty or by enacting acquisitive prescription. Acquisitive prescription is a doctrine enabling a state to possess a territory through the peaceful, public, open and uninterrupted exercise of sovereignty over the territory of another state, without the latter objecting to the effective control of the former[18]. The state acquires a historical title and therefore legal expectations over this territory which justify the state's sovereign claim over the impugned territory. The legality of these expectations emanates from the exercise of effective control (factum) of an unoccupied territory for a considerable amount of time with the assertion of ownership (animus). Under no circumstances should a state use force to claim sovereignty over another state's territory, as such a strategy would breach the principle of territorial sovereignty and would therefore contradict international law[19].

[17] Ilias Bantekas, Efthymios Papastavridis, *International Law Concentrate*,4th edition, Oxford University Press 2019, page 58-61
[18] Proceedings of the American Society of International Law at Its Annual Meeting (1921-1969) , APRIL 28-30, 1960, Vol. 54 (APRIL 28-30, 1960), pp. 77-84
[19] Roukounas, page 192 and resolution 2625/1970 : "Having considered the principles of international law relating to friendly relations and co-operation among States,
1. Solemnly proclaims the following principles:
The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues."

4. State Succession and uti possidetis juris

State succession constitutes a rather controversial concept due to the general contempt and suspicion for colonial strategies. It is identified as the replacement of one State by another in the responsibility for the international relations of a particular geographical area [20]as well as in the exercise of sovereignty in this territory.[21]There have been many attempts to reach a consensus when it comes to the creation of an international legal framework regulating state succession but such an agreement is far from being achieved. The Vienna Convention on Succession to State Property, Archives and Debts, 1983 as well as the Vienna Convention on Succession of States in respect of Treaties, which was done at Vienna on 23 August 1978 and entered into force on 6 November 1996, is a tangible example of the attempts to codify state succession law. This treaty- albeit being signed only by 19 states[22] and thus not crystallizing customary international law- serves as a comprehensive guideline for the understanding of state succession in respect of treaties. In accordance with article 2 of the convention, the State which has been replaced by another State on the occurrence of exercise of sovereignty by means of effective control (effectivités)[23] in the impugned territory is considered a "predecessor state", whereas the controlling state that has replaced the former as a result of the state succession is named "successor state". Sovereignty over a territory that is not under the effective control of a state entity (terra nullius) can be also granted through its occupation by another state[24], as long as it is effective and intended as a claim of sovereignty over the area.

In accordance with article 11 of the Vienna Convention 1978, the succession of states in a defined territory does not affect

(a) a boundary established by a treaty; or

(b) obligations and rights established by a treaty and relating to the regime of a boundary.

This provision confirms that border treaties have an **erga omnes** effect, because they continue to bind the successor state to an international agreement in which its predecessor state was engaged.

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[20] E.Roukounas, Public International Law, Nomiki Bibliothiki 2017, page 464
[21] Vienna Convention on Succession of States in respect of Treaties, article 2(b)
[22]Neither Guatemala nor Belize have signed the treaty.
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXIII-2&chapter=23&clang=_en
[23] As Huber argued, 'the actual continuous and peaceful display of state functions is in case of dispute the sound and natural criterion of territorial sovereignty'.
[24] «Occupation is a method of acquiring territory which belongs to no one (terra nullius) and which may be acquired by a state in certain situations."
M. Shaw, International Law, Cambridge University Press 8th Edition 2017, page 372

Therefore, article 12 clarifies that *succession of States does not as such affect:*

(a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of any territory of a foreign State and considered as attaching to the territories in question;

(b) rights established by a treaty for the benefit of any territory and relating to the use, or to restrictions upon the use, of any territory of a foreign State and considered as attaching to the territories in question.

However, article 15 provides an exception to the erga omnes effect of treaties when it comes to succession in respect of part of territory. To be more specific *treaties of the predecessor State cease to be in force in respect of the territory to which the succession of States relates from the date of the succession of States* ***unless it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation***. At this point it should be highlighted that the common "tabula rasa" (clean state) approach rejects the succession in respect of most multilateral and bilateral treaties, arguing that the contractual autonomy of states and the absence condition of reciprocity supersede the need to comply with a treaty agreed between the predecessor state and another state. [25]The recent practice, however, seems to tend towards the succession, especially when it comes to human rights treaties. Nevertheless, article 34(1) harmonizes the need for the preservation of treaties with the respect for the successor state's sovereign will. It is hence established that "any treaty in force at the date of the succession of states in respect of the entire territory of the predecessor state continues in force in respect of each successor state so formed", although this does not apply where the states concerned otherwise agreed or if it appears from the treaty that the compliance with its provisions would trigger the conditions of its operation or would impede the fulfillment of its purpose. Practice has, however, been inconsistent, and it would be premature to assert that a new rule or presumption had been established as a matter of international customary law.[26]

Although the provisions of this treaty do not reflect customary international law due to lack of consensus, there is a general principle that is acknowledged as being legally binding among states. This principle, namely ***uti possidetis juris***, determines the boundaries of

[25] M.Shaw, page 735
[26] M.Shaw, page 736

states emerging at the dawn of the post-colonial era starting from the decolonized territories in Latin America in the 19th century and has been applied by the ICJ several times. The Court has acclaimed uti possidetis juris as: "*a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new States from being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power*."[27]That is to say that not only does this principle serve as a key to the settlement of a state's boundaries, but the Court recognizes its applicability to maritime delimitation disputes. [28]

[27]Frontier Dispute (Burkina Faso/Republic of Mali),Judgement of 22 December 1986 General List no 69, par.20
http://www.icjcij.org/docket/files/69/6447.pdf?PHPSESSID=48c0411022f9809a797e7d32f1d0a20b

[28] TERRITORIAL AND MARITIME DISPUTE BETWEEN NICARAGUAAND HONDURAS IN THE CARIBBEAN SEA (NICARAGUA v. HONDURAS) ICJ, judgment of 8 October 2007,par.232-233
"The Court observes that the uti possidetis juris principle might in certain circumstances, such as in connection with historic bays and territorial seas, play a role in a maritime delimitation."

Chapter 2: International Law of the Sea

Introduction

As explained before, states have been traditionally concerned about land boundaries. Their interest in maritime boundaries came relatively late when sea's economic potential was discovered in the 17th century, the period of great discoveries and sea voyages[29]. Since then, coastal states have tried to increasingly exert their sovereignty over seas and oceans, by creating larger maritime zones and to safeguard their right to Navigation.

The laws regulating maritime boundaries and navigation used to be customary[30]. Soon states realized the necessity for its codification.

An unsuccessful attempt was firstly carried out by the League of Nations in 1930. It was not until 1958 that under the auspices of the United Nations a conference on international law of the sea was organised in Geneva, with 86 member-states as participants[31]. In this conference, member states managed to produce 4 treaties regarding: 1) Territorial Waters and Contiguous Zone, 2) High Seas, 3) Continental Shelf, 4) Fishing and protection of biological sources of the sea. These 4 Conventions were not widely ratified by all member states of the UN, despite the fact that they mainly codified pre-existing customs (particularly the second convention on the High Seas).

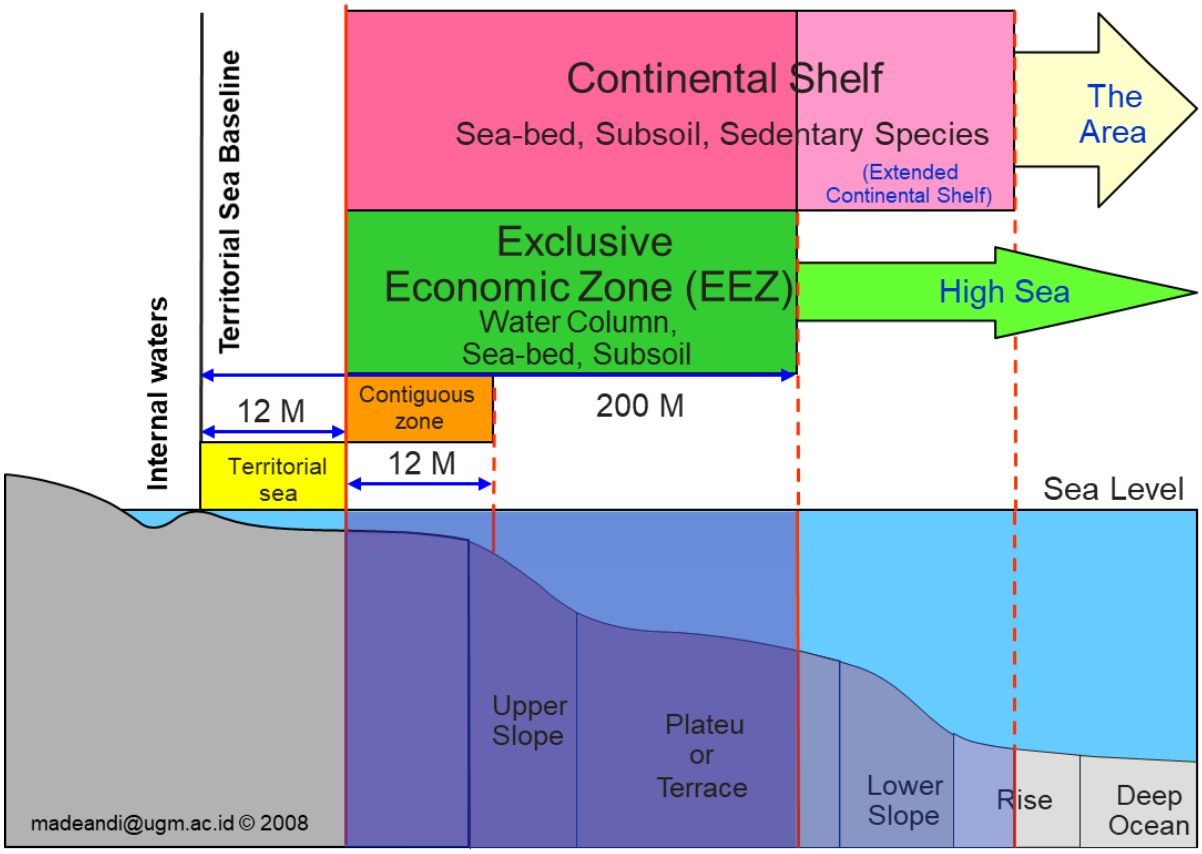
However, some issues were not completely covered by these 4 conventions (ex. the maximum length of territorial waters). Hence, the UN decided to organize a second Conference, which unfortunately had no outcome.

The United Nations Convention on the Law of the Sea (UNCLOS) was adopted in 1982, during the third conference organized by the UN. It embodies traditional rules for the uses of the oceans and simultaneously introduces new legal concepts (such as the Exclusive Economic Zone).

1. Maritime Zones

The rights of coastal States to regulate and exploit areas of the ocean under their jurisdiction is a fundamental part of the Law of the Sea. These sovereign and economic rights need to be balanced with the freedom of navigation and free access to resources – also known as freedom of the seas. States are allowed to establish several different maritime zones, which give states different sovereign, jurisdictional rights, and economic opportunities. More specifically, the UNCLOS splits the marine areas into six main zones, each with a different legal status: Internal Waters, Territorial Sea, Contiguous Zone, Continental Shelf, Exclusive Economic Zone (EEZ) and the High Seas. The starting point of the aforementioned zones is called *Baseline*.

[29] Roukounas E. "Public International Law" p. 231
[30] Roukounas, p. 232
[31] Roukounas pp. 232-233



1.1. Baselines

A baseline is the line (whether straight, curved or indented) taken as the inner line of sea zones such as the territorial sea, contiguous zone, exclusive economic zone, and the continental shelf. All these sea zones are measured from the baselines. It is important to note that all Maritime zones although different, they have common starting point, namely common baselines.

a. Normal Baselines

Normal Baselines are defined in Article 5 of the UNCLOS. More specifically, Normal baselines are "the low-water fine along the coast as marked on large-scale charts officially recognized by the coastal State". The low-water line is the intersection of the plane of low water with the shore.

b. Straight baselines

Article 7 of the UNCLOS allows a coastal State to draw straight baselines in place of or in combination with normal baselines, provided that "the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity".

The 1982 Convention, however, does not define what constitutes a coastline which is "*deeply indented and cut into", "fringe of islands"* or *"immediate vicinity*". The straight baselines must be drawn to satisfy several requirements[32]:

- they must not depart from the general direction of the coast,
- the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters,
- they shall not be drawn to and from low-tide elevations,
- and they shall not cut off the territorial sea of another state from the high seas or an exclusive economic zone.

Normal baselines are the generally applicable rule, while straight baselines are the exception deemed necessary under specific circumstances. For instance, the ICJ in the *Norwegian Fisheries case, 1951* "*led to conclude that the method of straight lines, established in the Norwegian system, was imposed by the peculiar geography of the Norwegian coast.*"[33]

1.2. Internal Waters

In accordance with Article 8 of the UNCLOS[34], *Internal waters* are all the waters that fall landward of the baseline. These include littoral areas such as ports, rivers, inlets, and other marine spaces landward of the baseline (low-water line) where the port state has jurisdiction to enforce domestic regulations. In fact, states have the same sovereign jurisdiction over internal waters as they do over other land-territory, namely full sovereignty. There is no right of innocent passage through internal waters.

1.3. Territorial waters

Everything from the baseline to a limit not exceeding twelve (12) miles is considered to be each State's *territorial sea,* in accordance with Article 3 of

[32] United Nations Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, *"Handbook on the Delimitation of Maritime Boundaries"*, New York, 2000, p. 4 https://www.un.org/depts/los/doalos_publications/publicationstexts/Handbook%20on%20the%20delimitation%20of%20maritime%20boundaries_Eng.pdf (from now on referred as UNH)

[33] International Court of Justice, "*Fisheries case, Judgement of December 18th, I95I*: I.C.J. Reports 1951, p. 116." p. 25 https://www.icj-cij.org/public/files/case-related/5/005-19511218-JUD-01-00-EN.pdf

[34] *1. Except as provided in Part IV, waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.*
2. Where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.

the UNCLOS[35]. Coastal States have *sovereignty and jurisdiction* over the territorial sea; these rights are applicable not only to the water surface but also to the seabed and subsoil, as well as to airspace.

It is important to mention that the UNCLOS simply determines the maximum length of territorial waters each state is entitled to. Therefore, it is up to Costal States' discretion to choose if their territorial waters are going to be 12 nautical miles or less. For instance, the United Kingdom of Great Britain and Northern Ireland used to have 3-miles-long territorial waters. Greece on the other hand has declared 12-miles-long territorial waters in the Ionian Sea[36] and 6-miles-long territorial waters in the Aegean Sea[37].

It is of utmost importance to mention that territorial waters exist "automatically" in the essence that every Costal State has undeniably territorial waters. This practically means that Costal states only have to declare the length of their territorial waters (either 12 or less).

Although territorial seas are subject to each State's exclusive sovereignty and jurisdiction, these rights are not absolute. Instead, they can be limited by the *innocent passage* (Article 17 of the UNCLOS)[38] through the territorial sea and *transit passage* (Article 38 of the UNCLOS)[39] through international straits.

Innocent passage signifies a right of free passage through territorial waters which exists only when the foreign vessel respects coastal state regulations, does not interfere with, or threaten the tranquility of the coastal state. In accordance with Article 18, Innocent passage means navigation which must be continuous and expeditious. Article 19's reflects nearly every

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[35] "*Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.*"

[36] Presidential Decree 107/2020

[37] Law 230/1936 as amended by Presidential Decree 187/1973

[38] *Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.*

[39] *1. In straits referred to in article 37, all ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics.*
2. Transit passage means the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.
3. Any activity which is not an exercise of the right of transit passage through a strait remains subject to the other applicable provisions of this Convention

situation which might present a threat to the coastal state. As asserted by the ICJ in the Corfu Channel Case (UK v. Albania) Right of Innocent Passage has customary origin.

It is important to mention that there is no right of innocent passage for aircraft flying through the airspace above the coastal state's territorial sea.

Transit passage on the other hand refers to navigation through straits which connect the high seas, in accordance with article 37. Transit passage applies to all vessels, submarines, and aircrafts.

1.4.Contiguous zone

States may also establish a contiguous zone from the outer edge of the territorial seas to a maximum of 24 nautical miles from the baseline (territorial seas' length + 12 miles).
It must be claimed by the Costal State and, unlike territorial seas, does not exist automatically; the contiguous zone must be officially declared so as to exist.

In accordance with article 33[40], within the contiguous zone, a State has the right to both prevent and punish infringement of *fiscal, immigration, sanitary, and customs laws* within its territory and territorial sea. Unlike the territorial sea, the contiguous zone only gives jurisdiction to a State on the ocean's surface and floor regarding matters that fall under one of the previous categories. It does not provide air and space rights.

1.5.Continental Shelf

The term "Continental Shelf" is first and foremost a geological one. In accordance with Geology Science, the continental shelf is "*a broad, relatively shallow submarine terrace of continental crust forming the edge of a continental landmass*". A continental shelf typically extends from the coast to depths of 100–200 metres. In simplistic words, continental shelf is mainland's extension underneath the water.

The term, however, has a legal meaning as well. When it was discovered that the shelf carries oil and gas deposits and that the seabed provides fishery resources, states became very interested in financially exploiting and having sovereign rights over this area. The decisive step was taken

[40] *1. In a zone contiguous to its territorial sea, described as the 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.
2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

when US made the Truman Proclamation on 28 September 1945 regarding the natural resources of the subsoil and seabed of the continental shelf[41]. The shelf was regarded as a geological feature extending up to the 100 fathoms line. The resources of the shelf were described as '*appertaining to the United States, subject to its jurisdiction and control*'. The US Proclamation paved the way for similar proclamations by other states.

In accordance with Geneva Convention on Continental Shelf Article 2, repeated in UNCLOS Article 77, the coastal state exercises 'sovereign rights for the purpose of exploring [the shelf] and exploiting its natural resources'. It is important to note that in the absence of a claimed EEZ, and also when the shelf extends beyond 200nm, the superjacent waters will be legally considered the *high seas*. Therefore, continental shelf's regime does not affect the water surface, rather the seabed and subsoil.

The regulations governing Continental Shelf have mainly customary origin, as recognized by the ICJ in its decision in *Continental Shelf (Libya/Malta)*. In fact, the ICJ has states in its Judgment for the *North Sea Continental Shelf* case that *"the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist* ***ipso facto and ab initio****, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed ' and exploiting its natural resources. In short, there is here an inherent right. In order to exercise it, no special legal process has to be gone through, nor have any special legal acts to be performed. Its existence can be declared (and many States have done this) but does not need to be constituted. Furthermore, the right does not depend on its being exercised."*[42]

1.6.Exclusive Economic Zone

The *Exclusive Economic Zone* is an intermediary zone, lying between the territorial waters and the high seas, with maximum extent of 200 nautical miles, in accordance with Article 55[43] and 57[44] of the UNCLOS. In accordance with Article 56 of the UNCLOS[45], in this zone the costal state

[41] Crawford James, p. 270-271
[42] *North Sea Continental Shelf*, Judgment, I.C.J. Reports 1969, p. 3, paragraph 19. https://www.icj-cij.org/public/files/case-related/52/052-19690220-JUD-01-00-EN.pdf
[43] *The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.*

[44] *The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.*

[45] *1. In the exclusive economic zone, the coastal State has:*

retains exclusive sovereign rights over exploring, exploiting and conserving all natural resources. The coastal state hereinafter can take action to prevent infringement by third parties of its economic assets in this area including, *inter alia*, fishing, bio-prospecting and wind-farming.

The right of exploring and exploiting for economic purposes within the EEZ is not limited to the seabed and subsoil, (which is the case with the continental shelf), but is also applicable to the surface (meaning the High Seas) ensuring, for example, the exclusive right to fishing. Additionally, the EEZ must be claimed by the Coastal State and, unlike Continental Shelf, does not exist *ipso facto and ab initio*; the EEZ must be officially declared so as to exist.

1.7. High Seas

The High Seas, which lie beyond 200 nautical miles from shore (Article 86 of the UNCLOS)[46], are governed by the principle of equal rights, and therefore are freely available and accessible to every state. No state has jurisdiction, sovereignty, or sovereign rights in the high seas (Article 89). In accordance with Article 88[47] of the UNCLOS, all states acknowledge that the oceans are for peaceful purposes. This practically means that on the High Seas, no state can act or interfere with interests or domestic issues of another state[48].

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
(
i) the establishment and use of artificial islands, installations and structures;
(ii) marine scientific research; (iii) the protection and preservation of the marine environment;
(c) other rights and duties provided for in this Convention.
2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.
3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.

[46] *The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. This article does not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.*

[47] *The high seas shall be reserved for peaceful purposes.*

[48] See the example of the *Lotus Case, Permanent Court of International Justice*

What is more to say, the UNCLOS in Article 86[49] establishes freedom of states' activity within the High Seas in six
spheres: Navigation, Overflight, Laying of cables and pipelines, artificial islands and installations, Fishing, Marine scientific research.

2. Maritime Delimitation

The delimitation of maritime boundaries is governed by laws and regulations that have evolved through codification and progressive development as reflected in treaty provisions. The jurisprudence of the International Court of Justice and other relevant ad hoc tribunals has also greatly influenced latest developments.

The first step that needs to be taken when solving maritime delimitation cases is to search for an agreement between the litigant states regarding the maritime zones in question. If states have signed bilateral agreements regarding their territorial seas, EEZ or Continental shelf, then these agreements are binding.

If such agreement does not exist, there are internationally applicable rules.

2.1. Treaty provisions

Two of the Geneva Conventions on the Law of the Sea of 29 April 1958, namely the *Convention on the Territorial Sea and the Contiguous Zone* and the *Convention on the Continental Shelf,* as well as the 1982 Convention (UNCLOS), contain provisions dealing with the delimitation of maritime zones. The rules applicable to the delimitation are different depending on the zones concerned. It also needs to be noted that the 1982 UNCLOS, in accordance with its article 311[50], prevails, as between States Parties, over the 1958 Geneva Conventions.

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[49] *1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:*
(a) freedom of navigation;
(b) freedom of overflight;
(c) freedom to lay submarine cables and pipelines, subject to Part VI;
(d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
(e) freedom of fishing, subject to the conditions laid down in section 2;
(f) freedom of scientific research, subject to Parts VI and XIII.
2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

[50] *1. This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958.*

2.1.1. Territorial Waters

Article 15 of the 1982 UNCLOS (which is identical in substance to article 12, paragraph 1, of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone) reads as follows:

> *"Where the coasts of 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 median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, 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."*

This provision, which reflects customary law[51], suggests the application of the **method of the median line**, every point of which is *equidistant from the nearest point on the baseline*s for the delimitation of the territorial sea when states fail to agree between them. States, in the absence of a bilateral agreement, may not extend their territorial seas beyond that median line. These rules apply both in the case of delimitation between States with adjacent coasts and in the case of delimitation between States with opposite coasts. Observing state's practice, one can conclude that states tend to follow the *equidistance method* for the boundary relating to the territorial sea.

However, this method does not apply by reason of **historic title or other special circumstances**.

2.1.2. EEZ and Continental Shelf

The 1982 UNCLOS contains identical provisions for the delimitation of the exclusive economic zone (art. 74) and the delimitation of the continental shelf (art. 83), even though these two zones are different by nature:

1. *The delimitation of the exclusive economic zone [and the continental shelf) between States with opposite or adjacent coasts shall be affected 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.*
2. *lf no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV*

[51] UNH, p. 13

3. *Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.*
4. *Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone [and the continental shelf] shall be determined in accordance with the provisions of that agreement.*

Again, in the EEZ or Continental Shelf delimitation we can observe that the UNCLOS values the importance of bilateral agreements. The most important consequence of the fundamental rule that maritime boundary delimitation should be affected firstly by any existing agreement is that the parties are able to freely adopt whatever delimitation line they wish, whether that line is based on political, economic, geographic or any other kind of consideration[52].

But what happens when such agreement does not exist? What methods are applicable? The answer is given by Article 6 of the *1958 Geneva Convention on the Continental Shelf*[53]*:*

1. *Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.*
2. *Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.*
3. *In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they*

[52] UNH, p. 15

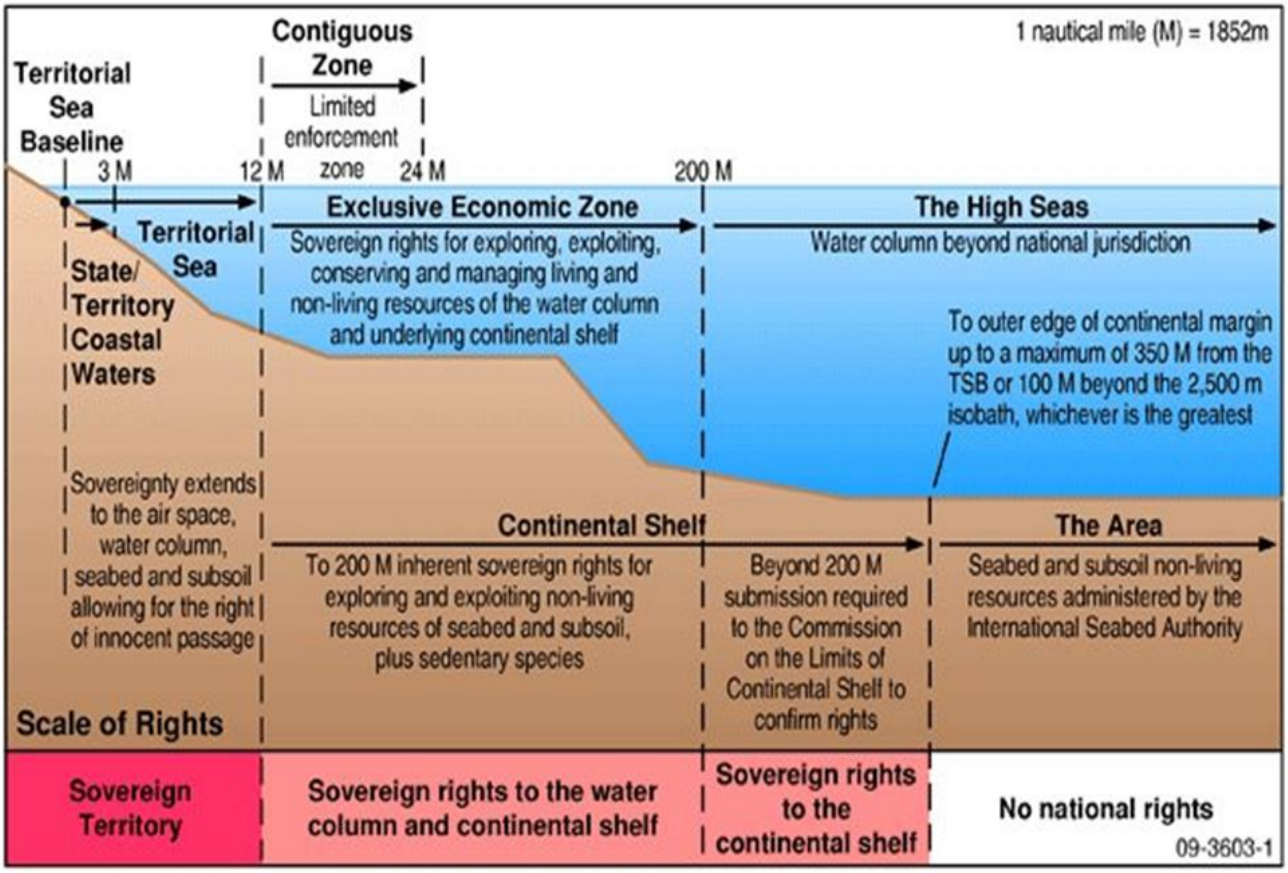
[53] As stated before, the rules regarding Continental Shelf are of customary origin. Therefore, they can be applied proportionally to EEZ delimitation cases as well.

exist at a particular date, and reference should be made to fixed permanent identifiable points on the land. "

Under article 6, the delimitation of the continental shelf has to be affected by agreement. In case of no agreement, two solutions are offered:

- Between two or more States with opposite coasts and unless another boundary is justified by *special circumstances*, **the boundary is the median line**.

- Between two or more States with adjacent coasts and unless another boundary is justified by *special circumstances*, the boundary shall be determined by the **application of the principle of equidistance** from the nearest points of the baselines from which the breath of the territorial sea of each State is measured.



Bibliography

- Anthony Aust, Oxford International Public Law, February 2007
- Cavare, L., *Le droit international public positif*, 2nd révision. Edition, Paris, 1961-2,2 volumes.
- Crawford J., *Brownlie's Principles of International Law*, 9th edition, Oxford University Press 2019
- Ilias Bantekas, Efthymios Papastavridis, *International Law Concentrate,*4th edition, Oxford University Press 2019, page 58-61
- Pellet Alain, *The Opinions of the Badinter Arbitration Committee /A Second Breath for the Self-Determination of Peoples*, 3EJIL(1992)
- Proceedings of the American Society of International Law at Its Annual Meeting (1921-1969) , APRIL 28-30, 1960, Vol. 54 (APRIL 28-30, 1960) Cambridge University Press
- Roukounas E., *Public International Law*, Nomiki Bibliothiki 2017
- Sarvarian Arman, *Codifying the Law of State Succession: A Futile Endeavour?* The European Journal of International Law Vol. 27 no. 3, EJIL (2016), Vol. 27 No. 3, 789–812. Published by Oxford University Press on behalf of EJIL Ltd.
- Shaw M., *International Law*, Cambridge University Press 8th Edition 2017
- United Nations Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, *"Handbook on the Delimitation of Maritime Boundaries"*, New York, 2000, https://www.un.org/depts/los/doalos_publications/publicationstexts/Handbook%20on%20the%20delimitation%20of%20maritime%20boundaries_Eng.pdf

Treaties and ICJ Cases

- United Nations, "*United Nations Convention on the Law of the Sea" done on 10th December 1982 at Montego Bay. Entered into force: 16th November 1994* *https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf*
- United Nations, "*the Vienna Convention on the Law of the Treaties", adopted and opened to signature on 23 May 1969 in Vienna. Entered into force on 27 January 1980* https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
- United Nations, *Vienna Convention on Succession of States in respect of Treaties,* done at Vienna on 23 August 1978 *https://legal.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf*
- United Nations, International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and

accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entered into force 3 January 1976, in accordance with article 27 https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20pm/ch_iv_03.pdf

- International Court of Justice, *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)* , judgment of 8 October 2007 https://www.icj-cij.org/en/case/120/judgments
- International Court of Justice, "*North Sea Continental Shelf*", Judgment, I.C.J. Reports 1969,P.3 https://www.icj-cij.org/public/files/case-related/52/052-19690220-JUD-01-00-EN.pdf
- International Court of Justice, "*Fisheries case", Judgement of December 18th, I95I*: I.C.J. Reports 1951,P. 116 https://www.icj-cij.org/public/files/case-related/5/005-19511218-JUD-01-00-EN.pdf
- International Court of Justice, "*Frontier Dispute (Burkina Faso/Republic of Mali),*"Judgement of 22 December 1986 General List no 69" http://www.icjcij.org/docket/files/69/6447.pdf?PHPSESSID=48c0411022f9809a797e7d32f1d0a20b
- International Court of Justice, "*Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania),"*Judgment of April 9th, 1949, I.C. J. Reports 1949, P. 4. *https://www.icj-cij.org/public/files/case-related/1/001-19490409-JUD-01-00-EN.pdf*
- International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America),* Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 392. https://www.icj-cij.org/public/files/case-related/70/070-19860627-JUD-01-00-EN.pdf

Now, it is your turn to put what you've learnt into practice!

The purpose of this guide is to help you understand some legal principles that will help you serve your case. You are encouraged to go through this passage and try to adapt this theory to your argumentation. This is not a piece of evidence, it only facilitates your preparation. Good luck!