

**Report on the Obligations of States under
Articles 74(3) and 83(3) of
UNCLOS in respect of
Undelimited Maritime Areas**



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Table of Contents

1. Introduction	1
1.1 The scope, origin and aims of the study	1
1.2 Composition of the research team	3
1.3 Overview of research methodology, including roundtable discussion of preliminary findings	4
2. Relevant Law in the Absence of Maritime Boundaries	6
2.1 Overview of the law and practice on delimitation	6
2.1.1 Delimitation under Parts V and VI of UNCLOS	6
2.1.2 Customary international law on maritime delimitation	8
2.2 The obligation to negotiate pursuant to Articles 74(1) and 83(1) of UNCLOS	9
2.2.1 The content of the obligation	9
2.2.2 The consequences of failure to reach agreement	11
2.2.3 The effect of provisional arrangements on the obligation	12
2.3 The “reasonable time” requirement of Articles 74(2) and 83(2) in relation to recourse to Part XV of UNCLOS	12
2.4 The obligation to make every effort to enter into provisional arrangements of a practical nature pursuant to paragraph 3 of Articles 74 and 83 of UNCLOS	13
2.4.1 The content and consequences of the obligation	13
2.4.2 The temporal scope of provisional arrangements	17
2.4.3 The legal status of provisional arrangements and their effect on States’ obligations in respect of undelimited areas	18
2.5 An obligation to exercise restraint in respect of undelimited areas under customary international law?	19
2.5.1 The obligation of good faith and a general duty of restraint?	19
2.5.2 The “no harm” principle	19
2.6 The obligation to make ‘every effort . . . Not to jeopardize or hamper the reaching of final agreement’ pursuant to Articles 74(3) and 83(3) of UNCLOS	21
2.6.1 The substantive scope of the obligation	21
2.6.2 The geographic scope of the obligation	29
2.6.3 The temporal scope of the obligation	31
2.6.4 How does the obligation apply in respect of undelimited maritime areas which are also subject to sovereignty disputes?	33
2.7 The relationship between provisional measures and Articles 74(3) and 83(3)	35
2.7.1 Comparison and cross-reference	35
2.7.2 The relationship between the requirements of provisional measures and the obligation of restraint	36
3. State Practice Concerning States’ Obligations in Undelimited Maritime Areas	40
3.1 The North America, Arctic and Sub-Arctic Region	42
3.1.1 Introduction	42
3.1.2 Continental shelf rights	43
3.1.3 FZ/EEZ rights	46
3.1.4 Analysis	47

3.2	The Caribbean and Gulf of Mexico Region	48
3.2.1	Introduction	48
3.2.2	Legislative practice and CLCS submissions	51
3.2.3	Continental shelf rights	52
3.2.4	FZ/EEZ rights	64
3.2.5	Provisional arrangements and agreements	69
3.3	The Northern and Western Europe Region	70
3.3.1	Introduction	70
3.3.2	Continental shelf rights	71
3.3.3	FZ/EEZ rights	74
3.4	The Mediterranean Region	76
3.4.1	Introduction	76
3.4.2	Legislative practice	78
3.4.3	Continental shelf rights	81
3.4.4	Provisional arrangements and agreements	83
3.5	The Sub-Saharan Africa and the Greater Indian Ocean Region	84
3.5.1	Introduction	85
3.5.2	Legislative practice and CLCS submissions	86
3.5.3	Continental shelf rights	87
3.5.4	FZ/EEZ rights	91
3.5.5	Provisional arrangements and agreements	92
3.6	The South East Asia and South China Sea Region	94
3.6.1	Introduction	94
3.6.2	Continental shelf rights	95
3.6.3	FZ/EEZ rights	100
3.6.4	Provisional arrangements	102
3.7	The East Asia Region	104
3.7.1	Introduction	104
3.7.2	Agreements and provisional arrangements	104
3.7.3	Continental shelf rights	107
3.7.4	FZ/EEZ rights	111
4.	Conclusions and Directions	113
4.1	Overview of State practice	113
4.2	Areas of continued uncertainty and further research	114
ANNEX I		118
	Biographies of the research team	118
ANNEX II		121
	List of Agreements and Arrangements Relating to Maritime Delimitation	121
ANNEX III		167
	Summary report of Expert Roundtable held on 22 January 2016	167
I.	Introduction	167
II.	Discussion on the state of the law	167
III.	Discussion on State practice	171
IV.	Conclusion and follow up	173

1

Introduction

1.1 The scope, origin and aims of the study

1. This report considers the requirements of Articles 74(3) and 83(3) of the United Nations Convention on the Law of the Sea (“UNCLOS”) concerning delimitation of the Exclusive Economic Zone (“EEZ”) and continental shelf, with particular focus on States’ obligations in respect of undelimited maritime areas in which no provisional arrangements apply. Its aim is to shed light on the content and application of the duty in Articles 74(3) and 83(3) of UNCLOS to refrain from activities that could jeopardise or hamper the reaching of a final agreement on delimitation.
2. Regarding the delimitation of EEZ boundaries between States with opposite or adjacent coasts, Article 74(3) of UNCLOS provides:

Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, 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.
3. Article 83(3) sets out the same obligations in respect of the delimitation of continental shelf boundaries.
4. The principal goal of the research has been to collect and analyse the practice of States in respect of undelimited maritime areas. For the purposes of the present report, “undelimited” maritime areas are areas where the continental shelves or EEZs of States overlap or may potentially overlap, and no final delimitation is in place (whether by agreement or judicial award).¹
5. In particular, this report seeks to document State practice which may provide evidence of States’ understanding of the obligations set out in the second limb of Articles 74(3) and 83(3) of UNCLOS, namely the obligation “not to jeopardize or hamper the reaching of the final agreement” by the States concerned (sometimes abbreviated in this report as “the obligation not to jeopardize or hamper”). It focuses on activities in, and in respect of, these undelimited maritime areas. It also includes within its scope State practice that may evidence, or be relevant to, other obligations of restraint in undelimited maritime areas, such as customary international law rules preceding or deriving from Articles 74(3) and 83(3) of UNCLOS or broader principles of restraint or non-aggravation deriving from other rules in general international law. All such obligations of this kind may be referred to generically as “obligations of restraint”.

¹ The term “undelimited area” is used here rather than “disputed area”, which may, depending on context, refer to a more specific area and is not free from ambiguity. See section 2.6.2 below.

6. The main research activity was the identification and analysis of the historical and contemporary practice of States in undelimited areas, in selected regions, with the aim of determining whether there are any trends in that practice that might shed light on the content of the UNCLOS obligation not to jeopardise or hamper the reaching of the final agreement, or any related general obligations of restraint under UNCLOS or customary international law. Research questions included whether the practice elucidates the temporal or geographic scope of these obligations, the categories of activities that are prohibited and permitted within undelimited areas, and the relationship between these obligations and the obligations to negotiate to reach a final agreement in accordance with international law and to make best efforts to enter into provisional arrangements pending final agreement. The intended focus is on what States may, or may not, do in the absence of any provisional arrangements during the transitional period, rather than on the contents of provisional arrangements that States have concluded or could conclude.
7. As noted above, provisional arrangements of a practical nature are applicable in some undelimited maritime areas, but not in others. This study is primarily concerned with the latter. Therefore, to assess the relevance to the research questions of any particular State practice, it may be necessary to consider whether provisional arrangements apply to the area concerned.
8. The research included consideration of historical State practice in relation to some currently delimited areas during the period prior to the final delimitation. In cases where the delimitation took place after the entry into force of UNCLOS on 16 November 1994, practice between that date and the delimitation could potentially be relevant to the interpretation of UNCLOS Articles 74(3) or 83(3). Practice prior to the entry into force of UNCLOS could potentially be evidence of the existence and content of similar or related rules of restraint in customary international law at that time. Likewise, the contemporary practice of States that are not party to UNCLOS may be relevant evidence of the current existence and content of such rules of customary international law and therefore was included in the scope of the study.
9. For the purposes of this study, the research team aimed to identify all published agreements and arrangements concluded by States in relation to boundaries and undelimited areas, in the regions covered by the study. The purpose of doing so was not to analyse the contents of such documents in depth, but rather to provide information for reference by the research team, to assist its consideration of regional State practice. The texts collected provide information on the legal status of the area concerned, in particular whether it is subject to final delimitation or provisional arrangements, and if the latter, which activities are within the scope of such arrangements. To the extent that a particular instance of State practice in an undelimited area is not covered by the provisions of any applicable provisional arrangements, it may be relevant to interpreting the obligations of restraint that apply in the absence of such arrangements. The agreements and arrangements² identified are listed in Annex II. All such texts identified worldwide are included in the list, which is not limited to the regions covered by this study.
10. Due to constraints of time, it was decided to focus the study on practice relating to the EEZ and the continental shelf within 200 nautical miles (“nm”), in which the concentration of relevant activities is greatest.³ Where practice in relation to the undelimited area of the continental shelf beyond 200 nm

² In international practice it is common for the word “agreement” to be used for instruments intended to be binding, whereas “arrangements” tends to denote a text intended to be non-binding. However the use of such terms in the title of an instrument is not definitive of its legal status: Vienna Convention on the Law of Treaties 1969, Art 2(1)(a). In this report, the use of such terms does not imply that the authors have taken any view on the binding character of any particular instrument referred to. The list in Annex II contains binding and non-binding instruments.

³ On the paucity of State practice in undelimited outer continental shelf areas, see RR Churchill, ‘The Exercise of Coastal State Rights on the Outer Continental Shelf Pending Establishment of its Outer Limit’, Ch 5 in J Barrett and R Barnes (eds), *Law of the Sea: UNCLOS as a Living Treaty* (BIICL 2016).

was found, it has been included in the report. As there is no equivalent of the obligation set out in Articles 74(3) and 83(3) in respect of the territorial sea, practice in relation to the delimitation of the territorial sea has not been considered.

11. Following this introduction in Section 1, Section 2 of this report sets out the legal framework applicable to undelimited areas, highlighting areas of uncertainty in the law. Section 3 documents relevant State practice, divided on a regional basis, while Section 4 discusses some key questions raised by such practice.

1.2 Composition of the research team

12. This research project has been undertaken by the British Institute of International and Comparative Law (“BIICL”) and funded by the Government of Japan. BIICL was approached due to, inter alia, its long history of scholarship in law of the sea⁴ and the recent activities of its Arthur Watts Fellowship programme in this field.⁵ This is an independent report and published for public dissemination.
13. A research team was formed under the direction of Jill Barrett, Arthur Watts Senior Research Fellow in Public International Law, BIICL. The other members are Dr Naomi Burke, Arthur Watts Research Fellow in Law of the Sea, BIICL; Callum Musto, Research Consultant in Law of the Sea, BIICL; David H. Anderson, Former Judge, International Tribunal for the Law of the Sea; Professor Robin Churchill, Professor of Public International Law, University of Dundee; Dr Kentaro Nishimoto, Associate Professor, School of Law, Tohoku University, Japan, and Dr Makoto Seta, Associate Professor of International Law, Yokohama City University, Japan.⁶ The project formally began in October 2015 with a meeting of the full team in London.
14. The research team has been assisted by the following research assistants: Alexandra Mazgareanu, Alfredo Crosato Neumann, Paata Simsive and Suzu Tokue.
15. The maps included in this report are provided to assist the reader in understanding the location of the oceans and seas referred to in the report. They display the approximate areas considered by the research team in their review of State practice concerning undelimited maritime areas set out in section 3 of this report. The maps have been produced using ArcGIS. The nomenclature attached to areas of land and sea was generated by the software and is not intended to indicate any view on the part of the research team as to the status of any particular area or entity. BIICL would like to express its gratitude to Mr Ian Musto for his invaluable assistance to this project as consulting Geographic Information Systems expert, particularly in producing the maps and in compiling a dataset of delimited maritime boundaries.

⁴ For example, N Marsh (ed), *Developments in the Law of the Sea 1958-1964* (BIICL International Law Series No 3, 1965); S Houston Lay, R Churchill and M Nordquist (eds), *New Directions in the Law of the Sea- Documents*, Vols 1 and 2 (Oceana Publications/BIICL 1973), H Fox (ed), *Joint Development of Offshore Oil and Gas*, Vol I, January 1989 and Volume II, February 1990 (BIICL); and papers delivered at the BIICL Law of the Sea Symposium held on 22 March 2005, which were published in D Freestone, R Barnes and D Ong (eds), *The Law of the Sea: Progress and Prospects* (OUP 2006).

⁵ For example, ‘UNCLOS at 30’ BIICL conference on 22–23 November 2012 in Belfast: <http://www.biicl.org/unclos30>; ‘Maritime boundary delimitation - current issues in international jurisprudence and Japan’s experience’ BIICL roundtable 13 May 2013: <http://www.biicl.org/event/766>; J Barrett and R Barnes (eds), *Law of the Sea: UNCLOS as a Living Treaty* (BIICL 2016). For further information see: http://www.biicl.org/arthurwatts_fellowship

⁶ Author biographies are in Annex I.

1.3 Overview of research methodology, including roundtable discussion of preliminary findings

16. The research project consisted of two parts. The first involved an analysis of how the obligations of Article 74(3) and 83(3) have been interpreted by international courts and tribunals and academic commentators. The second consisted of an empirical examination of how States behave in practice in undelimited areas.
17. The team began by compiling a bibliography of relevant scholarly work and judicial opinions on the subject and conducting a literature review. The outcome of this analysis is set out in Section 2 of this report.
18. Regarding the research into State practice, the world was divided into regions for organisational purposes. The method followed by the research team consisted of first identifying incidents of controversial or disputed State practice, and then deepening the focus of analysis through further research. More detailed information on the research methodology followed by the research team is set out at the beginning of Section 3 of this report.
19. The research team sought to identify any acts constituting State practice within undelimited maritime areas, including practice related to oil and gas exploration, fisheries, environmental protection, marine scientific research, artificial installations and submarine cables. The team examined both contemporary and historical practice.
20. The research team identified practice which may provide evidence of States' understanding of the meaning of the paragraph (3) obligations not to jeopardise or hamper and State practice that may be evidence of, or be relevant to, a broader customary international law principle of restraint or non-aggravation.
21. There are a number of disputed maritime boundaries worldwide in which competing sovereignty claims over land territory (mainland or island) are involved. Cases where the maritime boundary dispute is generated *solely* by a sovereignty dispute are not relevant for this study, and have not been analysed in depth. Cases where UNCLOS delimitation issues are mixed with sovereignty issues *may* be useful. In collating State practice, the research team has included practice in respect of such areas, indicating however the existence of competing sovereignty claims relevant to the maritime zone in question and the consequent need for caution in considering its significance for this study.⁷
22. An Expert Roundtable Event was held in London on 22 January 2016. Over 40 experts in the law of maritime delimitation attended the event, which was chaired by Professor Catherine Redgwell of the University of Oxford. Prior to the event, the research team circulated a discussion document, setting out certain aspects of the research to date in the form of a draft report. Members of the research team also presented aspects of their research to the assembled experts at the roundtable and discussed questions raised by the State practice collated thus far. Ambassador Rolf Einar Fife of Norway, Professor Alex Oude Elferink, Utrecht University and University of Tromsø, and Professor Alan Boyle, University of Edinburgh, acted as discussants, each providing his reactions to the presentations and comments on a section of the discussion document.
23. It was agreed that it was difficult to draw firm conclusions from the State practice surveyed so far, and the discussion was more in the nature of teasing out the questions raised by the research. For this reason, the final section of this report highlights a series of issues that the State practice set out

⁷ See section 2.6.4, paras 112–9.

herein raises, and illuminates to a greater or lesser degree, with suggestions as to where further research would be useful.

24. The experts participating in the roundtable brought additional instances of State practice to the attention of the research team.⁸ A summary report of the proceedings of the roundtable, including the names of participants, is contained in Annex III to this report. Following the roundtable, the research team edited the report to take into account these additional examples and the comments made by roundtable participants in response to the discussion document and the presentations. Final drafts of the regional State practice sections of the report were sent to external reviewers in March–May 2016 and their feedback was taken into account in this final version of the report.⁹

⁸ Feedback received at the roundtable is set out in the summary attached at Annex III on an unattributed basis.

⁹ Input from the following reviewers is acknowledged with thanks: Kevin Baumert, Chris Whomersley, Tomohiro Mikanagi and Professor Keyuan Zou, as indicated in the relevant sections of this report.

Relevant Law in the Absence of Maritime Boundaries

25. In keeping with the general scope of this report, this section examines relevant law in the absence of maritime boundaries only as far as the EEZ and the continental shelf within 200 nm of coastal States' base lines are concerned. It thus does not consider at all boundary delimitation issues relating to the territorial sea or the continental shelf beyond 200 nm. All references to the "continental shelf" in this section are therefore only to the continental shelf within 200 nm, unless otherwise indicated.
26. The section begins with a brief overview of the law and practice on delimitation of the EEZ and continental shelf. This is followed by a discussion of the obligation to negotiate a maritime boundary under paragraph 1 of Articles 74 and 83 (sub-section 2.2); the "reasonable time" requirement in paragraph 2 of Articles 74 and 83, after which unilateral reference may be made for the determination of a maritime boundary by judicial means (sub-section 2.3); the obligation under paragraph 3 of Articles 74 and 83 to enter into provisional arrangements pending the determination of a definitive boundary (sub-section 2.4); an obligation to exercise restraint in respect of undelimited areas under customary international law (sub-section 2.5); and the obligation not to jeopardise or hamper the reaching of a maritime boundary agreement, also found in paragraph 3 of Articles 74 and 83 (sub-section 2.6). The final sub-section considers the relationship between this obligation not to jeopardise or hamper and provisional measures ordered by a court or tribunal in a maritime delimitation case (sub-section 2.7).

2.1 Overview of the law and practice on delimitation

2.1.1 DELIMITATION UNDER PARTS V AND VI OF UNCLOS

27. At the start of substantive negotiations at the Third UN Conference on the Law of the Sea ("UNCLOS III") in 1974, there was no law governing the delimitation of EEZ boundaries for the very obvious reason that the EEZ had not yet become part of international law: in due course it was to be one of the major products of UNCLOS III. On the other hand, there was a significant body of law governing the delimitation of continental shelf boundaries. This law had two quite distinct strands. First, for States parties to it, the 1958 Continental Shelf Convention provided, in Article 6, that the boundary between the continental shelves of opposite and adjacent States was to be determined by agreement: in the absence of agreement, the boundary was to be the equidistance line, unless another line was justified by special circumstances. The second strand was customary international law, which had been propounded by the ICJ in the *North Sea Continental Shelf* cases in 1969.¹⁰ In these cases the Court found that Article 6 of the 1958 Convention and the equidistance principle did not represent customary international law. Instead, it held that:

¹⁰ *North Sea Continental Shelf cases* (*Federal Republic of Germany v Denmark; Federal Republic of Germany v The Netherlands*) [1969] ICJ Rep 3, (hereafter *North Sea* cases).

delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other.¹¹

28. At UNCLOS III, the delimitation of continental shelf and EEZ boundaries, which were discussed together, proved to be one of the most intractable issues to be negotiated. Most States participating at the Conference divided into two broad camps, one (relying on the 1958 Convention) argued that the starting point for delimitation should be the equidistance line,¹² the other (invoking the *North Sea* cases) that delimitation should be on the basis of equitable principles.¹³ Ultimately a compromise between these two positions was reached, but the resulting provisions of UNCLOS are at a high level of generality: they posit the goal of delimitation, but provide little real guidance to States as to the method(s) that could or should be used to delimit a boundary. The provisions concerned are Article 74 (in Part V of UNCLOS), which deals with the delimitation of EEZ boundaries, and Article 83 (in Part VI), which deals with continental shelf boundaries. The two provisions are identical apart from the fact that in Article 83 the words “exclusive economic zone” that are used in Article 74 are replaced by “continental shelf”. Each provision has four paragraphs, which read as follows:

1. The delimitation of the [EEZ/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.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
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 [EEZ/continental shelf] shall be determined in accordance with the provisions of that agreement.

29. Paragraphs 1 and 4 are analysed in sub-section 2.2 below; paragraph 2 in sub-section 2.3; and paragraph 3 in sub-sections 2.4 and 2.5.

30. Before turning to this analysis, a basic question that must be asked is whether Articles 74 and 83 are still applicable in the contemporary world of maritime boundary delimitation. Since the entry into force of UNCLOS in 1994, the vast majority of maritime boundary agreements that have been negotiated have been agreements to establish a single maritime boundary (“SMB”) for both the seabed and superjacent waters, ie for both continental shelf and EEZ. Only a handful of agreements have been concluded that establish separate boundaries for the continental shelf and EEZ. In

¹¹ [1969] ICJ Rep 3 at 54.

¹² In this report, the terms “equidistance line” and “median line” are used interchangeably.

¹³ See further M Nordquist (ed), *United Nations Convention on the Law of the Sea 1982. A Commentary* (hereafter *Virginia Commentary*), Vol II (Martinus Nijhoff 1993), 796–813 and 948–82; and SP Jagota, *Maritime Boundary* (Martinus Nijhoff 1985), Chapters 13 and 14.

addition, a number of agreements deal solely with EEZ boundaries, providing that the EEZ boundary is to be the same as a pre-existing (and usually longstanding) continental shelf boundary. Furthermore, all the maritime boundary cases brought before international courts and tribunals since the entry into force of UNCLOS have been requests to delimit a SMB.

31. It seems likely that these trends will continue: in other words, when States engage in negotiations for a maritime boundary in an undelimited area lying beyond the territorial sea and within 200 nm of the baselines, they will usually be seeking to agree on a SMB. UNCLOS says nothing about the SMB. The question then is whether Articles 74 and 83 have any application to the SMB. This is a matter that has been considered by international courts and tribunals. While they have at times explicitly recognised that the SMB is the product of State practice and international case law rather than UNCLOS,¹⁴ they have nevertheless tended simply to assume, without ever really explaining why, that Articles 74 and 83 are applicable to delimitation of the SMB.¹⁵ They have also stated that these articles represent customary international law.¹⁶ Thus, it would seem that Articles 74 and 83 (in their entirety) are applicable and relevant to any delimitation of an undelimited area between the territorial sea and 200 nm from the baselines, regardless of whether the States concerned are parties to UNCLOS and whether they are negotiating over a SMB or separate EEZ and continental shelf boundaries. (In the case of States which are not party to UNCLOS, the applicable law would be, strictly speaking, not Articles 74 and 83 directly, but, rather, customary international law rules having the same content).

2.1.2 CUSTOMARY INTERNATIONAL LAW ON MARITIME DELIMITATION

32. Before turning to an analysis of the provisions of Articles 74 and 83 in the following sub-section, it is desirable first to give a brief overview of customary international law on maritime boundary delimitation since to some degree that law informs the content of the obligation to negotiate under paragraph 1, as will be seen in sub-section 2.2.1 below. Customary international law on maritime boundary delimitation has simply been declared by international courts and tribunals, rather than being ascertained by an examination of State practice and *opinio juris*.¹⁷ While it would be possible to trace the evolution of customary international law on maritime boundary delimitation from the *North Sea* cases onwards, that is not required for the purposes of this report. All that is necessary is to examine the current state of the law. Because of the equation by international courts and tribunals of customary international law with Articles 74 and 83 of UNCLOS (as pointed out above), what is said by courts and tribunals about how a maritime boundary is to be delimited applies whether the applicable law is customary international law or UNCLOS.

¹⁴ See, for example, *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain)* [2001] ICJ Rep 40 (hereafter *Qatar v Bahrain* case), para 173; and *Arbitration between Guyana and Suriname* (Annex VII Tribunal) (2007) 139 ILR 566; (2008) 47 ILM 166; (2007) XXX RIAA 1, para 334, (hereafter *Guyana v Suriname* case).

¹⁵ See, for example, *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria, Equatorial Guinea intervening)* [2002] ICJ Rep 303, paras 285–6, (hereafter *Cameroon v Nigeria* case); *Arbitration between Barbados and Trinidad and Tobago* (Annex VII Tribunal) (2006) 45 ILM 798; (2006) XXVII RIAA 147, paras 234–5, (hereafter *Barbados v Trinidad and Tobago* case); *Maritime Delimitation in the Black Sea (Romania v Ukraine)* [2009] ICJ Rep 61, paras 17 and 31, (hereafter *Black Sea* case); *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar)* [2012] ITLOS Rep 4, paras 182–4, (hereafter *Bangladesh/Myanmar* case); *Territorial and Maritime Dispute (Nicaragua v Colombia)* case [2012] ICJ Rep 624, para 139, (hereafter *Nicaragua v Colombia* case); *Case Concerning Maritime Dispute (Peru v Chile)* case [2014] ICJ Rep 3, para 179, (hereafter *Peru v Chile* case); and *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v India)* (Annex VII Tribunal) Award of 7 July 2014, available on the website of the PCA, para 312, (hereafter *Bangladesh v India* case).

¹⁶ See, for example, *Qatar v Bahrain* case, para 167; and *Nicaragua v Colombia* case, para 139.

¹⁷ According to Talmon, simple assertion is the ICJ's usual methodology (if it can be called that) for determining the content of customary international law. See S Talmon, 'Determining Customary International Law: The ICJ's Methodology between Induction, Deduction and Assertion' (2015) 26 EJIL 417, especially at 434–43.

33. The current law is set out in the 2009 *Black Sea (Romania v Ukraine)* case, where UNCLOS was the applicable law. In this case the ICJ declared that the normal method for delimiting a SMB is the equidistance/relevant circumstances method. This involves a three-stage process.¹⁸ The first stage requires the construction of a provisional equidistance line. At the second stage, a court considers whether there are relevant circumstances (which are primarily geographical in nature) that may call for an adjustment of the equidistance line in order to achieve an equitable result. At the third stage, a court conducts a disproportionality test to assess whether the effect of the line, as adjusted, is such that the parties' respective shares of the relevant area are markedly disproportionate to the lengths of their relevant coasts. If so, a further adjustment will be made. If not, the equidistance line, as modified in the light of the relevant circumstances (if any), will be the maritime boundary.¹⁹
34. This three-stage process has been followed in all the cases to date since the *Black Sea* case, not only when both parties to the case were parties to UNCLOS (*Bangladesh v India* and *Bangladesh/Myanmar*) but also when only one party to the case was a party to UNCLOS and the applicable law therefore was custom (the *Nicaragua v Colombia* and *Peru v Chile* cases). The way in which the three-stage process has been used in these cases, and the process itself, have come in for some academic criticism.²⁰ Where the geographical characteristics of the delimitation area make the use of the three-stage process unfeasible or inappropriate, a court may use a different methodology: for example, in the *Nicaragua v Honduras* case,²¹ the ICJ used the angle-bisector method.

2.2 The obligation to negotiate pursuant to Articles 74(1) and 83(1) of UNCLOS

2.2.1 THE CONTENT OF THE OBLIGATION

35. As seen earlier, paragraph 1 of Articles 74 and 83 provides that a maritime boundary (whether EEZ, continental shelf, or SMB) is to be "effected by agreement". This implies, therefore, that the States concerned are under an obligation to enter into negotiations to establish a maritime boundary.²² The scope of the obligation to negotiate was spelt out in some detail by the ICJ in the *North Sea* cases. According to the Court:

[T]he parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement; they are under an obligation so to conduct themselves that the

¹⁸ *Black Sea* case, paras 115–22, which describe the process in detail.

¹⁹ This three-stage process has developed from what was previously a two-stage process, in which the third stage of the three-stage process (the issue of (dis)proportionality) was effectively subsumed in the second stage as a relevant circumstance: for application of the two stage process, see, for example, the *Qatar v Bahrain* case, para 230; the *Cameroon v Nigeria* case, para 288; the *Barbados v Trinidad and Tobago* case, paras 242 and 304–6; and the *Guyana v Suriname* case, para 342.

²⁰ See, for example, RR Churchill, 'Dispute Settlement in the Law of the Sea: Survey for 2012' (2013) 28 *International Journal of Marine and Coastal Law* 572–8 and 605–11; 'Dispute Settlement in the Law of the Sea: Survey for 2014' (2015) 30 *International Journal of Marine and Coastal Law* 611–7 and 632–6; MD Evans, 'Maritime Boundary Delimitation' in DR Rothwell, AG Oude Elferink, KN Scott and T Stephens (eds), *The Oxford Handbook of the Law of the Sea* (OUP 2015) 254; 'Maritime Boundary Delimitation: Whatever Next?' in J Barrett and R Barnes (eds), *Law of the Sea: UNCLOS as a Living Treaty* (BIICL 2016).

²¹ *Case concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v Honduras)* [2007] ICJ Rep 659, (hereafter the *Nicaragua v Honduras* case).

²² *Virginia Commentary*, Vol II at 813; *Cameroon v Nigeria* case, para 244.

negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it ... [I]n its Advisory Opinion in the case of *Railway Traffic between Lithuania and Poland*, [the Permanent Court of International Justice] said that the obligation was “not only to enter into negotiations but also to pursue them as far as possible with a view to concluding agreements”, even if an obligation to negotiate did not imply an obligation to reach agreement.²³

36. In the *Cameroon v Nigeria* case, the ICJ, referring explicitly to Articles 74 and 83, emphasised that while negotiations must be conducted in good faith, it was not a requirement that they be successful.²⁴
37. Thus, negotiations under Articles 74 and 83 must be conducted in good faith and be meaningful in the sense described in the *North Sea* cases. The aim of the negotiations, according to the articles, is to “achieve an equitable solution”. Logic suggests that any agreement on a maritime boundary on which the parties are genuinely agreed, without one party having been coerced by the other in some way,²⁵ must be considered to be an “equitable solution”. If States A and B are happy with the boundary agreed between them, it is not open to a State C or any other third party to argue that the boundary is inequitable as between States A and B.
38. Articles 74 and 83 also stipulate that a boundary delimitation must be “on the basis of international law, as referred to in Article 38 of the Statute of the [ICJ]”. Paragraph 1 of Article 38 sets out the sources of international law to be applied by the ICJ, while paragraph 2 provides that the ICJ may decide a case *ex aequo et bono* if the parties so agree. It must be assumed that the reference to Article 38 in Articles 74(1) and 83(1) is to the first paragraph.²⁶ According to the latter, the sources of international law are treaties, customary international law and “the general principles of law recognised by civilised nations”. There are no general principles of law that are relevant to maritime delimitation. Less obviously, there are no multilateral treaties that are likely to be relevant. It might be thought that Article 6 of the 1958 Continental Shelf Convention would be covered by the reference to international law in Articles 74(1) and 83(1). However, Article 311(1) of UNCLOS provides that for parties to UNCLOS, the latter prevails over the 1958 Conventions. Thus, Article 6 of the Continental Shelf Convention is not applicable to the negotiation of a maritime boundary agreement pursuant to Articles 74 and 83.²⁷ On the other hand, were the provisions of Articles 74 and 83 being applied as reflecting customary international law, Article 311 would not apply, so

²³ *North Sea* cases, paras 85 and 87. See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation)* (Preliminary Objections) [2011] ICJ Rep 70 at paras 157–61, which contains a similar but slightly more detailed explanation of what is involved in the obligation to negotiate. In particular, the obligation to negotiate in good faith is emphasised.

²⁴ *Cameroon/Nigeria* case, para 244.

²⁵ Coercion would invalidate a boundary agreement: see Arts 51 and 52 of the Vienna Convention on the Law of Treaties (hereafter VCLT). Any fraud or corruption would also invalidate an agreement: see Arts 49 and 50. Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

²⁶ This position is taken by, inter alia, L Caflisch, ‘The Delimitation of Marine Spaces between States with Opposite and Adjacent Coasts’ in RJ Dupuy and D Vignes (eds), *A Handbook of the New Law of the Law of the Sea* (Martinus Nijhoff 1991) 485 and Jagota (n 13) 270.

²⁷ Tanaka, however, takes the opposite view, arguing that the effect of Art 311(5), which provides that Art 311 “does not affect international agreements expressly permitted or preserved by other articles of” UNCLOS, is to make Art 6 of the Continental Shelf Convention applicable as between States parties both to that Convention and UNCLOS: see Y Tanaka, *The International Law of the Sea* (2nd edn, CUP 2015) 201. It is difficult to accept this argument. First, Arts 74(1) and 83(1) can hardly be said to “expressly preserve” Art 6 of the Continental Shelf Convention. Second, those States that at UNCLOS III opposed the inclusion of any reference to equidistance in Arts 74 and 83 would be startled, not to say disbelieving, if they discovered that their support for the eventual formulation of para 1 of Arts 74 and 83 meant that the equidistance/special circumstances principle had become applicable as a result of the reference to international law in para 1.

that if both the negotiating States were parties to the 1958 Continental Shelf Convention, the latter would be applicable and relevant. UNCLOS cannot be considered to be included in the reference to international law in Articles 74(1) and 83(1) because that would make those articles completely circular. Bilateral treaties may be relevant, but they are addressed in paragraph 4 of Articles 74 and 83, which will be considered shortly. Thus, the only source of international law referred to in paragraph 1 of Articles 74 and 83 that is applicable to maritime boundary delimitation is customary international law. The content of that law was briefly outlined in sub-section 2.1.2 above.

39. It follows from this analysis that the effect of the reference to international law in paragraph 1 of Articles 74 and 83 is that any agreement reached by the States concerned must be “on the basis” of customary international law as propounded by international courts and tribunals. It is not clear how far this means that States must strictly adhere to such law when negotiating a maritime boundary. The phrase “on the basis of” does not appear to have been the object of judicial comment, but its ordinary meaning would suggest that complete adherence is not required. In any case, there is so much flexibility and discretion inherent in the courts’ case law on custom – for example, whether to apply the three-stage process or some other method; if applying the former, the choice of circumstances that are considered relevant and their effect on the adjustment of the provisional equidistance line – that the reference in paragraph 1 of Articles 74 and 83 to an agreement having to be “effected . . . on the basis of international law” is in practice unlikely to be a constraining factor on States in negotiating a boundary.
40. The final element of the content of the obligation to negotiate concerns paragraph 4 of Articles 74 and 83. This provides that “[w]here there is an agreement in force between the States concerned, questions relating to the delimitation of the [EEZ/continental shelf] shall be determined in accordance with the provisions of that agreement”. At first sight this provision might appear redundant. If there is an agreement in force, why would States still be negotiating a maritime boundary agreement? However, the provision does have some potential purpose or application. For example, there may already be an agreement in force between the States concerned setting out principles to be applied in a future maritime delimitation. That was the position in the *Black Sea* case, for example. Or there may be an agreement that has already delimited part of the boundary, as was also the situation in the *Black Sea* case. Conceivably, there could be a tacit agreement establishing part of the boundary, as the ICJ found to be the situation in the *Peru v Chile* case.²⁸ Another possible reading of paragraph 4 of Articles 74 and 83 is that it is a savings clause, to provide that bilateral agreements concluded pre-UNCLOS shall continue to apply to delimitation even if inconsistent with paragraph 1. It is difficult to see how such inconsistency could arise in practice; but, on this interpretation, paragraph 4 would preclude an argument that pre-existing bilateral agreements should be set aside in favour of “an equitable solution”.

2.2.2 THE CONSEQUENCES OF FAILURE TO REACH AGREEMENT

41. There would seem to be three consequences of a failure by the negotiating States to reach agreement on a maritime boundary. First, it is clear that there is not necessarily any breach of paragraph 1 of Articles 74 and 83 since, as pointed out in the previous sub-section, the obligation to negotiate does not include an obligation to reach agreement. Second, failure to reach agreement would allow either party to make a unilateral application to an UNCLOS dispute settlement body to have the dispute determined by judicial means in accordance with Part XV of UNCLOS, provided that a “reasonable

²⁸ *Peru v Chile* case, paras 90–1.

time” had elapsed since the commencement of boundary negotiations, a requirement that is discussed in sub-section 2.3 below, and provided that the other party had not exercised its option to make a declaration under Article 298 excluding maritime boundary disputes from compulsory dispute settlement under Part XV. Third, failure to reach agreement does not relieve either party of its obligations under paragraph 3 of Articles 74 and 83 to make every effort to enter into provisional arrangements of a practical nature and not to jeopardise or hamper the reaching of an eventual boundary delimitation.²⁹ If a provisional arrangement has been concluded, the failure of the States concerned to agree on a definitive maritime boundary does not relieve them of their obligations under such an arrangement unless the arrangement itself so provides (see further the discussion in subsection 2.4.2 below).

2.2.3 THE EFFECT OF PROVISIONAL ARRANGEMENTS ON THE OBLIGATION

42. It is easier to understand the effect of provisional arrangements on the obligation to negotiate following the discussion of such arrangements in sub-section 2.4 below. What may be said at this point is that in principle such arrangements have no effect on the obligation to negotiate, which therefore continues. However, as will be seen below, some arrangements preclude or defer negotiations on a definitive maritime boundary until after a specified period.

2.3 The “reasonable time” requirement of Articles 74(2) and 83(2) in relation to recourse to Part XV of UNCLOS

43. Paragraph 2 of Articles 74 and 83 provides that “[i]f no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV”. Thus, States must have engaged in negotiations on a maritime boundary for “a reasonable period of time” before either of them may unilaterally refer the matter for determination by a court or tribunal under Part XV of UNCLOS. Even then, they may not be able to do so if the other party has made a declaration under Article 298 of UNCLOS excluding the delimitation of maritime boundaries from the compulsory settlement procedures of Part XV.³⁰ As to what is meant by a “reasonable period of time”, the arbitral tribunal in the *Barbados v Trinidad and Tobago* case (the only case so far in which the matter has been considered) found that as the parties had held nine rounds of negotiations over a period of nearly three and a half years without approaching agreement, a “reasonable period of time” had elapsed.³¹ Depending on the intensity of the negotiations and the distance between the two parties’ positions, a shorter period of negotiations might also be adjudged to have lasted a “reasonable period of time”. Although paragraph 2 is couched in mandatory terms, it is clear that if neither of the parties wishes to refer the matter to a court or tribunal after what might be considered a “reasonable period of time” for negotiations, they cannot in practice be compelled to do so, but may continue to negotiate in the hope that they will eventually reach agreement on a boundary.

²⁹ This is also the position of Lagoni: see R Lagoni, ‘Interim Measures pending Maritime Delimitation Agreements’ (1984) 78 AJIL 357.

³⁰ Currently around one-fifth of States Parties to UNCLOS have made such a declaration.

³¹ *Barbados v Trinidad and Tobago* case, paras 194–200.

2.4 The obligation to make every effort to enter into provisional arrangements of a practical nature pursuant to paragraph 3 of Articles 74 and 83 of UNCLOS

2.4.1 THE CONTENT AND CONSEQUENCES OF THE OBLIGATION

44. The obligation to make every effort to enter into provisional arrangements of a practical nature is set out in paragraph 3 of Articles 74 and 83 of UNCLOS as follows:

Pending agreement [on a boundary] as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature . . . Such arrangements shall be without prejudice to the final delimitation.

45. At the present time there are roughly 200 or so areas where the EEZs and continental shelves of opposite or adjacent States overlap where a definitive maritime boundary has not yet been established,³² and to which, therefore, the obligation is applicable. The obligation also applied to States whose boundaries were delimited after UNCLOS came into force in 1994, pending the delimitation of such boundaries. The practice discussed below includes examples from both currently and previously undelimited areas.

46. The purpose of the obligation to make every effort to enter into provisional arrangements of a practical nature was explained by the arbitral tribunal in the *Guyana v Suriname* case. As both parties had made written submissions to the arbitral tribunal setting out their respective claimed boundaries, the area between these two lines was clearly defined, and was referred to by the tribunal as the “area in dispute”.³³ In the tribunal’s view the obligation to make every effort to enter into provisional arrangements is designed to promote interim regimes and practical measures that could pave the way for provisional utilisation of disputed areas pending delimitation. In the view of the Tribunal, this obligation constitutes an implicit acknowledgment of the importance of avoiding the suspension of economic development in a disputed maritime area, as long as such activities do not affect the reaching of a final agreement.³⁴

47. The obligation in Articles 74(3) and 83(3) is “to make every effort” to enter into provisional arrangements. This would seem to be an obligation of conduct, not of result. If it had been intended to be an obligation of result, Articles 74(3) and 83(3) could simply have been drafted “the States concerned shall enter into provisional arrangements of a practical nature”. That the obligation is one of conduct is also supported by the finding of the tribunal in the *Guyana v Suriname* case that “[t]he language in which the obligation is framed imposes on the Parties a duty to negotiate in good faith” and requires them to take “a conciliatory approach to negotiations, pursuant to which they would be prepared to make concessions in the pursuit of a provisional arrangement”.³⁵

48. Reading this passage in the light of what the ICJ said in the *North Sea Continental Shelf* cases about the obligation to negotiate in good faith (see section 2.2.1 above), it is clear that there is no obligation to reach agreement on a provisional arrangement. The position of the tribunal in the *Guyana v Suriname* case is supported by a finding in relation to an obligation worded in similar terms

³² D Anderson and Y van Logchem, ‘Rights and Obligations in Areas of Overlapping Maritime Claims’ in S Jayakumar, T Koh and R Beckman (eds), *The South China Sea Disputes and the Law of the Sea* (Edward Elgar 2014) 198.

³³ *Guyana v Suriname* case see Map 1, after para 163.

³⁴ *Guyana v Suriname* case, para 460, footnotes omitted.

³⁵ *Ibid*, para 461.

to Articles 74(3) and 83(3) of UNCLOS by the arbitral tribunal in the *Heathrow Airport User Charges* case.³⁶ In this case the tribunal had to interpret the meaning of an obligation on each of the States concerned (the UK and the USA) to “use its best efforts” to achieve particular goals. The tribunal held that this was an obligation of conduct, which placed the parties:

under a continuous duty to do their best to ensure that the goals of [the provisions in question] are attained. That is, however, not an absolute duty, since a Party may be able to point to good reasons to explain why [if the goals were not met], that was not due to any lack of required effort on its part.³⁷

49. A party must be allowed a reasonable amount of time in which to discharge that duty, but cannot rely on expediency or political considerations to excuse a failure to discharge its duty.³⁸
50. UNCLOS does not prescribe or even suggest what form a provisional arrangement should take or what its content should be. Anderson and van Logchem suggest that a wide variety of arrangements is possible, including a co-operative arrangement or joint regime that permits the exploration and exploitation in an undelimited area to proceed, a partial or total moratorium on certain types of activity such as drilling, or simply an arrangement of prior notification of a proposed activity in the undelimited area followed by consultations.³⁹ Articles 74(3) and 83(3) refer to “provisional arrangements” of a “practical nature”. In a report by the International Law Association (“ILA”) Committee on the Exclusive Economic Zone, published in 1988, it was argued that a provisional arrangement was of “a practical nature” if “the actual need to enter into it is so overwhelming that it would be against the interests of the Parties concerned to wait until delimitation.”⁴⁰ This seems a debatable view. A more natural reading of Articles 74(3) and 83(3) would suggest that “practical nature” refers to the required attributes of a provisional arrangement rather than the necessity to enter into an arrangement. In our view, the term “arrangements” indicates that it need not be a treaty but may be informal or even non-binding, and “of a practical nature” indicates content of an operational rather than legislative nature, consistent with the requirement that it not prejudice the final delimitation.
51. In practice provisional arrangements usually take one of two main forms – a provisional boundary line or an area of joint management. A good example of a provisional boundary is the agreement between Algeria and Tunisia concluded in 2002 that established a provisional single maritime boundary between the two States.⁴¹ The preamble to the agreement refers to Articles 74(3) and 83(3) of UNCLOS, while Article 4 states that the agreement is without prejudice to the final delimitation of the maritime boundary. A second example of a provisional boundary is a 2001 agreement between Ireland and the UK.⁴² The agreement provisionally delimited a part of their overlapping continental shelves that had not been delimited by an earlier agreement of 1988. The

³⁶ *Arbitration concerning Heathrow Airport Use Charges (USA/United Kingdom)* (1992) XXIV RIAA 1.

³⁷ *Ibid*, 73 (para 2.2.4). See also 74–6 (section III) on the obligation of conduct.

³⁸ *Ibid*, 74 (paras 2.2.8 and 2.2.9).

³⁹ Anderson and van Logchem (n 32), 206.

⁴⁰ International Law Association, *Report of the Sixty-Third Conference, Warsaw, 1988* (International Law Association 1988) 546.

⁴¹ Agreement on Provisional Arrangements for the Delimitation of the Maritime Boundaries between the Republic of Tunisia and the People’s Democratic Republic of Algeria (11 February 2002), 2238 UNTS 197. This agreement is discussed further in section 3.3.4 below.

⁴² Exchange of Notes dated 18 October 2001 and 31 October 2001 between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland constituting an agreement pursuant to Article 83 paragraph 3 of the United Nations Convention on the Law of the Sea 1982 on the provisional delimitation of an area of the continental shelf, 2309 UNTS 21. This agreement is discussed further in section 3.3.2 below.

agreement described itself as being made “in accordance with Article 83(3) of” UNCLOS and stated that it was “without prejudice to any future agreement” concerning the delimitation of that area of continental shelf between the two States. The agreement was replaced by a definitive boundary agreement in 2013.⁴³

52. Provisional arrangements in the form of joint management or exploitation zones take various forms and may relate to a particular activity or a number of activities. Some arrangements are concerned only with the exploitation of seabed resources. A good example is an agreement between Nigeria and São Tomé e Príncipe of 2001 which establishes a joint development zone, in an area where their EEZs overlap, for the orderly exploration and exploitation of petroleum and other resources.⁴⁴ The agreement deals, inter alia, with the establishment of joint bodies to manage the development of the zone, the sharing of revenue between the parties, the laws and regulations to be applied in the zone, and environmental protection. The preamble to the agreement refers to Article 74(3) of UNCLOS and states that the agreement is “without prejudice to the eventual delimitation of their respective maritime zones by agreement in accordance with international law.” The agreement is to remain in force for 45 years, with a review after 30 years.⁴⁵ That might be thought to be a very long time for a “provisional arrangement”, but a lengthy period may be necessary if oil companies are to have the necessary security for their investments.
53. A second, rather more complex, example concerns three agreements that Timor-Leste concluded with Australia following its attainment of independence in 2002. The first agreement, the Timor Sea Treaty,⁴⁶ describes itself (in its preamble and Article 2), in accordance with the terminology of Article 83(3) of UNCLOS, as a provisional arrangement of a practical nature pending, and without prejudice to, delimitation of a continental shelf boundary between the two States. The Treaty establishes a Joint Petroleum Development Area (“JPDA”). A second treaty deals with the exploitation of two hydrocarbon fields that straddle the eastern boundary of the JPDA.⁴⁷ The third treaty, the Treaty on Certain Maritime Arrangements in the Timor Sea (“CMATS Treaty”),⁴⁸ like the Timor Sea Treaty, describes itself (in its preamble) as a provisional arrangement of a practical nature pending, and without prejudice to, delimitation of a continental shelf boundary. However, it is a provisional arrangement of a peculiarly enduring nature, as it precludes its parties from seeking delimitation of their maritime boundary by a court or tribunal for the lifetime of the Treaty, envisaged as 50 years.⁴⁹ Nevertheless, the Treaty does create a kind of temporary boundary for the water column as it provides that Australia is to exercise jurisdiction over the water column to the south of the southern limit of the JPDA (which largely coincides with the median line) and Timor-Lester jurisdiction to the north of that limit.⁵⁰ The validity of the 2006 CMATS Treaty is currently being challenged in arbitral proceedings instituted by Timor-Leste against Australia.⁵¹

⁴³ DH Anderson, ‘Report No 9-5(3)’ in C Lathrop (ed), *International Maritime Boundaries*, Vol VII (Brill Nijhoff, 2016); and C Whomersley, ‘Current Legal Developments: United Kingdom’ (2015) 30 *International Journal of Marine and Coastal Law*, 383.

⁴⁴ 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 (signed 21 February 2001; entered into force 16 January 2003) 50 *LOS* 43.

⁴⁵ *Ibid.*, Art 51.

⁴⁶ Timor Sea Treaty (signed 20 May 2002, entered into force 2 April 2003) 2258 *UNTS* 3.

⁴⁷ Agreement relating to the Unitization of the Sunrise and Troubador Fields (signed 6 March 2003, entered into force 23 February 2007) 2483 *UNTS* 317.

⁴⁸ Treaty on Certain Maritime Arrangements in the Timor Sea (signed 12 January 2006, entered into force 27 June 2006) 2483 *UNTS* 359 (hereafter *CMATS Treaty*).

⁴⁹ *CMATS Treaty*, Arts 4 and 12.

⁵⁰ *CMATS Treaty*, Art 8.

⁵¹ For details of the arbitration, see <http://www.pcacases.com/web/view/37>.

54. Arguably, any treaty that establishes a joint exploitation or management zone as a substitute for a maritime boundary, even if it makes no reference to Articles 74(3) and/or 83(3) of UNCLOS and indeed was concluded before the adoption of UNCLOS, should be regarded as a provisional arrangement within the meaning of those articles unless it is envisaged as being a permanent substitute for a boundary. There are quite a number of examples of such treaties, eg a 1974 agreement between Japan and the Republic of Korea.⁵² Provisional arrangements of this nature (even those of long duration) should be distinguished from joint development zones that have been adopted as part of a boundary settlement and straddle the definitive boundary that has been agreed.
55. In some cases States have concluded joint management or exploitation zones for fisheries as a form of provisional arrangement. A good example, albeit concluded before the adoption of UNCLOS, is the Agreement between Norway and the then USSR on an Interim Practical Arrangement for Fishing in an Adjoining Area in the Barents Sea, concluded in 1978.⁵³ The Agreement applied to an area in the southern part of the Barents Sea where the EEZs of Norway and the USSR overlapped. Within that area total allowable catches, quotas and other regulatory measures were to be adopted by a bilateral Norwegian/Russian Fishery Commission. Each party had jurisdiction in the area only in respect of its own fishing vessels and such third State vessels as it had licensed to fish against its quota. The Agreement was originally concluded for one year only, but contained an option for annual renewals thereafter. That option was exercised continuously until the entry into force in 2011 of a 2010 treaty establishing a definitive maritime boundary between Norway and Russia, when the Agreement lapsed.
56. In some cases joint management or exploitation zones as a form of provisional arrangement have been established to deal with a number of different matters. A good example is an agreement between Barbados and Guyana, concluded in 2003, that establishes a “co-operation zone for the exercise of joint jurisdiction, control, management, development, and exploration and exploitation of living and non-living natural resources, as well as all other rights and duties established in” UNCLOS, in a small area where their EEZs overlap and which is beyond the EEZ of any third State.⁵⁴ The preamble to the agreement recognises “the relevance and applicability” of Article 74(3) of UNCLOS. Article 2(1) of the agreement states that “the parties contemplate that they may, by agreement at a later date, delimit an international maritime boundary between them,” and Article 1(2) provides that the agreement is without prejudice “to the eventual delimitation of the Parties’ respective maritime zones in accordance with generally accepted principles of international law” and UNCLOS.
57. The review of State practice divided on a regional basis set out in Section 3 of this report contains further examples of provisional arrangements of a practical nature.

⁵² Agreement concerning Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries (signed 30 January 1974, entered into force 22 June 1978) 1225 UNTS 113. The agreement is due to last for at least 50 years (Article XXXI). See section 3.7.2 below.

⁵³ Agreement between Norway and the Soviet Union on a Temporary Practical Arrangement for Fishing in an Adjacent Area in the Barents Sea with Attached Protocol (11 January 1978) [1978] *Overenskomster med fremmede Stater* [Norwegian Treaty Series] 436. English translation in *Case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v Norway)* [1993] ICJ Rep 38, Counter-Memorial of Norway, Vol II, Annex 62. The Agreement is also discussed in section 3.3.1 below.

⁵⁴ Exclusive Economic Zone Co-operation Treaty between the State of Barbados and the Republic of Guyana concerning the exercise of jurisdiction in their exclusive economic zones in the area of bilateral overlap within each of their outer limits and beyond the outer limits of the exclusive economic zones of other States (signed 2 December 2003; entered into force 5 May 2004) 2277 UNTS 201. It should be noted that the co-operation zone is not necessarily beyond the continental shelf of any third State. See section 3.2.5, section A, para 242 below.

58. Turning now to the consequences of a provisional arrangement, such consequences may depend on what is stipulated in the arrangement. For example, the Australia-Timor Leste arrangement referred to above precludes the parties from seeking delimitation of their maritime boundary by a court or tribunal for the lifetime of the arrangement, envisaged as being 50 years.⁵⁵ On the other hand, the arrangements establishing provisional boundaries concluded between Algeria and Tunisia and between Ireland and the UK, discussed above, both envisage that negotiations to try to establish a definitive boundary will continue. That will also be the position if nothing is said in the arrangement. Neither, unless there is a stipulation to the contrary in the arrangement, will a provisional arrangement preclude either or both of the parties from referring the determination of a definitive maritime boundary to a court or tribunal if agreement cannot be reached after a “reasonable period of time”. The consequences of provisional arrangements for the obligation not to jeopardise or hamper are discussed in section 2.4.3 below.

2.4.2 THE TEMPORAL SCOPE OF PROVISIONAL ARRANGEMENTS

59. The temporal scope of provisional arrangements has two distinct aspects: first, when does an obligation to “make every effort to enter into” a provisional arrangement arise? Second, how long is a provisional arrangement to last? Neither of these questions is answered directly in UNCLOS. As for the first question, in principle the obligation would seem to arise as soon as it becomes evident that the States concerned have entitlements to maritime zones that overlap, or may overlap, and therefore require delimitation.⁵⁶ In practice, it may well be that the obligation will not arise unless and until it becomes evident that the parties are unlikely to reach agreement on a maritime boundary easily and quickly.⁵⁷ If they are likely to reach agreement easily, it might be pointless to hold up negotiations by discussing possible provisional arrangements. Furthermore, if in practice no maritime activities are taking place in the undelimited area, or at least in that part of the undelimited area that is in dispute, it might be unnecessary to seek an agreement on provisional arrangements.

60. As for the duration of a provisional arrangement, that matter may be specified in the arrangement. For example, the Algeria/Tunisia arrangement discussed above provided that it was to remain in force for six years, after which the parties undertook to agree on a definitive maritime boundary or extend or revise the agreement;⁵⁸ while the Nigeria/ São Tomé e Príncipe arrangement is to remain in force for 45 years, with a review after 30 years.⁵⁹ If nothing is said in the arrangement about its duration, it would seem, especially given the opening phrase of paragraph 3 of Articles 74 and 83 (“pending agreement”), that the arrangement will continue until a definitive maritime boundary is established, either by agreement between the parties or by a court.⁶⁰ However, Lagoni argues that it should be assumed that there is a right to denounce or withdraw from an arrangement that is implied from their “provisional” nature. This argument is based on applying by analogy Article 25(2) of the Vienna Convention on the Law of Treaties (“VCLT”), which provides that where a treaty is being applied provisionally pending its entry into force, such provisional application to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.⁶¹ Whether this is a sufficiently apt analogy is doubtful. The ILA Committee on the Exclusive Economic Zone also takes the view that

⁵⁵ CMATS Treaty, Arts 4 and 12.

⁵⁶ So, too, ILA Report (n 40) 545.

⁵⁷ Lagoni takes a different view, arguing that the obligation “can arise before the States concerned initiate [boundary] negotiations”: Lagoni (n 29) 357.

⁵⁸ Agreement, (n 41), Arts 9 and 10.

⁵⁹ Agreement, (n 44), Art 51.

⁶⁰ See also text at (n 29) above, Lagoni (n 29) 358 and ILA Report (n 40) 545.

⁶¹ Lagoni (n 29) 358–9.

there is a right of denunciation or withdrawal, but immediately qualifies this heavily by adding that as “the very purpose of [provisional] arrangements is to regulate certain matters in the absence of a boundary, one can normally assume that their nature would not imply such a right to termination.”⁶² If a party did withdraw from a provisional arrangement, the obligation to make every effort to enter into provisional arrangements would still apply, and therefore one would expect such a party to seek in good faith to propose and negotiate alternative arrangements.

2.4.3 THE LEGAL STATUS OF PROVISIONAL ARRANGEMENTS AND THEIR EFFECT ON STATES’
OBLIGATIONS IN RESPECT OF UNDELIMITED AREAS

61. The legal status of a provisional arrangement will depend on the nature of the instrument that establishes that arrangement. All the examples of provisional arrangements given in sub-section 2.4.1 above are contained in treaties and therefore are obviously legally binding. An arrangement contained in a less formal instrument such as a memorandum of understanding may not be legally binding. Whether the arrangements are binding or not does not depend upon the title or form of the document but is a question of interpretation. Even an apparently informal document may contain binding commitments. If the legal status of the document falls to be determined by a court of tribunal, it will be interpreted objectively on the basis of its wording and the circumstances surrounding its conclusion that indicate whether the parties intended the instrument to be legally binding.⁶³
62. As for the effect of provisional arrangements on States’ obligations in undelimited areas, the effect on the obligation to seek to agree on a maritime boundary was discussed in sub-section 2.4.1 above. The effect on the obligation not to jeopardise or hamper the reaching of a maritime boundary agreement, discussed in section 2.6 below, would seem to be to replace, or at least to render inapplicable, that obligation in relation to the subject matter of the arrangement. However, an arrangement would have no effect on that obligation in relation to matters that were not dealt with in the arrangement. Thus, if two States were to conclude a provisional arrangement concerning fisheries, the obligation not to jeopardise or hamper would not apply to fisheries for so long as the arrangement remained in effective operation, but the obligation would continue to apply to non-fisheries matters, such as seabed activities. Another way of looking at it might be to say that so long as the parties are complying with their provisional arrangement on fisheries, they are fulfilling the obligation not to hamper or jeopardise in relation to fisheries.
63. A further legal effect of a provisional arrangement, as pointed out by Lagoni, is that because such an arrangement, according to Articles 74(3) and 83(3), is “without prejudice to the final delimitation”, the arrangement, and activities undertaken thereunder, cannot, unless the States concerned expressly agree otherwise, create acquired rights to the undelimited area or its resources, require the States concerned to take the arrangement into account in their negotiations on a maritime boundary, or prevent them from taking a position in those negotiations that is inconsistent with the provisional arrangement.⁶⁴

⁶² ILA Report (n 39) 546–7. Interestingly, the report was drafted by Lagoni.

⁶³ VCLT, Article 2(1)(a). See further on the question of when less formal instruments may be legally binding the *Arbitration between the Philippines and the People's Republic of China*, (Annex VII tribunal), (hereafter *Philippines v China* case), Award on Jurisdiction and Admissibility (2015), paras 213-218, available on the PCA website.

⁶⁴ Lagoni (n 29) 359.

2.5 An obligation to exercise restraint in respect of undelimited areas under customary international law?

64. A treaty obligation to exercise restraint in respect of undelimited areas – namely the obligation not to jeopardise or hamper the reaching of final agreement – is found in UNCLOS and will be discussed in sub-section 2.6 below. Apart from this treaty obligation, it is possible that there may be a similar obligation in relation to undelimited maritime areas under customary international law. Section 3 of this report includes State practice in undelimited areas which may contribute to determining whether any such customary obligation exists. It is also possible that customary obligations of restraint could be derived from more general principles, which will be considered in this sub-section. There would seem to be two such possible principles – the principle of good faith (discussed in sub-section 2.5.1 below) and the “no harm” principle (discussed in sub-section 2.5.2).

2.5.1 THE OBLIGATION OF GOOD FAITH AND A GENERAL DUTY OF RESTRAINT?

65. It follows from the *North Sea Continental Shelf* cases and Articles 74 and 83 of UNCLOS that two States whose maritime zones overlap are under an obligation to negotiate a maritime boundary in good faith.⁶⁵ Article 300 of UNCLOS, which requires its parties to “fulfil in good faith the obligations assumed under [the] Convention”, is also relevant. It can be argued that the obligation of good faith requires the States concerned to abstain from acts in an undelimited area that show an unwillingness to negotiate with an open mind as to where the boundary should lie, in short a lack of good faith. Such acts would include, for example, drilling in the seabed for oil and gas and arresting vessels of the other State fishing in the area concerned. Less intrusive activities, such as seismic testing and other forms of marine scientific research, may be permissible, but may require the State conducting or authorising the testing or research to share the information obtained thereby at some stage with the other State. The very general and abstract nature of the principle of good faith, together with the fact that its application in the present context has never been considered by an international court, means that it is impossible to be more precise as to exactly what forms of restraint the principle requires to be exercised in, or in respect of, an undelimited area.

66. An argument that restraint is required and that is closely related to the principle of good faith, or perhaps a specific application of the principle, has been put forward by Lagoni. He persuasively argues, relying on a dictum in the *Electricity Company of Sofia and Bulgaria* case⁶⁶ and certain provisions of the General Act for the Pacific Settlement of Disputes of 1928,⁶⁷ that there is a general rule of customary international law that parties to a dispute must not take any steps that would aggravate or extend the dispute.⁶⁸ That would mean that States that were in disagreement as to the course of the boundary dividing their overlapping maritime zones should abstain from acts that would be perceived as aggravating the dispute. Such acts are likely to include, for example, drilling in the seabed and arresting foreign fishing vessels.

2.5.2 THE “NO HARM” PRINCIPLE

67. The ICJ has held that under customary international law States are obliged to “ensure that activities within their jurisdiction and control respect the environment of other States”.⁶⁹ This is a specific

⁶⁵ See sub-section 2.2.1 above.

⁶⁶ PCIJ, Series A/B No. 79 (1939), 199.

⁶⁷ 93 LNTS 343.

⁶⁸ R Lagoni, ‘Oil and Gas in Continental Shelf Areas which are disputed or where the delimitation has not been effected’, paper given at BIICL’s Conference on Joint Development of Offshore Oil and Gas, 1989 [on file with RR Churchill].

⁶⁹ *Advisory Opinion on the Legality on the Use by a State of Nuclear Weapons in Armed Conflict*, [1996] ICJ Rep 226, para 29. Subsequently endorsed in *Pulp Mills on the River Uruguay (Argentina v Uruguay)* [2010] ICJ Rep 14, para 101.

application of a more general principle of good neighbourliness in international law, often stated in the Latin maxim “*sic utere tuo, ut alienum non laedas*”.⁷⁰ It could be argued that States must ensure that activities under their jurisdiction and control respect not only areas where another State undoubtedly exercises sovereignty or sovereign rights but also areas where arguably it may have such rights, for example in an area where a maritime boundary is yet to be delimited. This would imply that a State should exercise caution when conducting activities in the undelimited area, on the basis that such activities may cause harm to the environment in the maritime zones of a neighbouring State, which may prove to extend further than anticipated.

68. It may also be considered that a State must refrain from committing an act amounting to an exercise of sovereign rights if the area where the act was committed should turn out, following delimitation of the boundary, to be part of the maritime zone of another State.⁷¹ In *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v Nicaragua)*, the ICJ considered the legality of dredging and other activities carried out by Nicaragua in territory claimed by both Nicaragua and Costa Rica.⁷² The Court held that the disputed territory fell under the sovereignty of Costa Rica and that the activities carried out by Nicaragua were thus in breach of Costa Rica’s territorial sovereignty. The Court did not find it necessary to examine whether the acts were unlawful in themselves, finding it sufficient to note that the unlawful character of the activities stemmed from the fact that they had been carried out on the territory of another State, without that State’s consent. Nicaragua was held to be responsible for these breaches and was obliged to make reparation for the damage caused by its unlawful activities.⁷³
69. By analogy, if a State carried out acts in a maritime zone in the belief that it had sovereign rights over the resources therein, and the zone was later determined (whether by agreement or judicial award) to pertain to a neighbouring State, the activities would constitute a violation of the sovereign rights of that State. At least, that may be the position as far as the continental shelf is concerned, where title to the continental shelf vests *ab initio* in the coastal State according to the ICJ⁷⁴ and the coastal State has the exclusive right to explore and exploit the natural resources of the shelf.⁷⁵ The position may be different in relation to the exercise of EEZ rights, since an EEZ must be claimed and arguably a coastal State cannot definitively claim an EEZ in an undelimited area until the boundary has been delimited. Thus, an act that would be a violation of a coastal State’s EEZ rights after the boundary has been delimited, might not be a violation of those rights before the boundary is delimited.
70. In the case of the continental shelf, some doubt has been cast on the absolute nature of the argument above by the case law of courts and tribunals. In the *Aegean Sea Continental Shelf* case the ICJ found that it did not need to order provisional measures in respect of seismic testing by Turkey because even if the area where Turkey was conducting such testing turned out to be part of Greece’s continental shelf and therefore would have infringed Greece’s exclusive right to exploration, any such breach could be remedied by compensation.⁷⁶ A similar approach was taken by the Special Chamber of

⁷⁰ P Birnie, A Boyle and C Redgwell, *International Law and the Environment* (3rd edn, OUP 2009) 137. See also BD Smith, *State Responsibility and the Marine Environment* (Clarendon 1988), especially Chapters 5 and 6.

⁷¹ This argument has been put forward by, inter alia, M Miyoshi, ‘The Basic Concept of Joint Development of Hydrocarbon Resources on the Continental Shelf’ (1988) 3 *International Journal of Coastal and Estuarine Law* 1 at 10; and Lagoni (n 56).

⁷² *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v Nicaragua)*, ICJ Judgment of 16 December 2015, available at <http://www.icj-cij.org/docket/files/150/18848.pdf>.

⁷³ *Ibid*, para 93.

⁷⁴ *North Sea Continental Shelf* cases, para 19. Although different language is used, this position is essentially confirmed in UNCLOS, Art 77(3).

⁷⁵ UNCLOS, Art 77(2).

⁷⁶ *Aegean Sea Continental Shelf case (Request for Interim Measures of Protection)* [1976] ICJ Rep 3 at 10–11.

ITLOS in the *Ghana/Côte d'Ivoire* case. It found that some potentially unlawful acts could be remedied by compensation, but that acts that resulted “in a modification of the physical characteristics” of the continental shelf could not be and risked causing irreparable prejudice to the rights of Côte d'Ivoire.⁷⁷ This jurisprudence needs to be treated with caution. The two cases both concerned provisional measures, where judicial bodies were concerned with preserving the rights of the parties pending an eventual determination as to their respective entitlements to exercise sovereign rights over the disputed area.

71. It does not necessarily follow that the criteria that a court or tribunal applies in deciding whether to make an order of provisional measures equally apply by analogy to the conduct required of States in an undelimited area. A State may therefore be unwise to assume that it need not abstain from acts in an undelimited area of continental shelf if the breach of international law that such acts would represent, if subsequently found to have been committed on another State's continental shelf, would be capable of being remedied by compensation. A breach of international law is still a breach, and entails the responsibility of the State committing it, whether or not that breach may be remedied by compensation. The fact that a breach of international law may be remedied by compensation does not excuse it.⁷⁸

2.6 The obligation to make “every effort . . . Not to jeopardize or hamper the reaching of final agreement” pursuant to Articles 74(3) and 83(3) of UNCLOS

72. It will be recalled that the identical first sentence of Articles 74(3) and 83(3) provides as follows:⁷⁹

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.

73. This sentence is awkwardly drafted, combining as it does both an obligation relating to provisional arrangements and an “obligation not to jeopardize or hamper the reaching of a definitive boundary agreement” (sometimes abbreviated in this report as “the obligation not to jeopardize or hamper”). Disentangling the latter obligation from the former is not altogether straightforward, but the obligation appears to be as follows: “Pending agreement [on a maritime boundary], the States concerned, in a spirit of understanding and cooperation, shall make every effort . . . during this transitional period, not to jeopardize or hamper the reaching of the final agreement.” This provision raises three main questions: (1) what is the substantive (or material) scope of the obligation; (2) what is its geographic scope; and (3) what is its temporal scope? These three questions are discussed in turn in the following three sub-sections.

2.6.1 THE SUBSTANTIVE SCOPE OF THE OBLIGATION

74. The obligation requires States to “make every effort” not to engage in conduct during the period prior to agreeing a maritime boundary that would “jeopardize or hamper” the reaching of such an

⁷⁷ *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, (Pending) 2015 ITLOS Case no 23; Order of 25 April 2015, paras 88–90, available at: <https://www.itlos.org/en/cases/list-of-cases/case-no-23/> (hereafter *Ghana/Côte d'Ivoire* case).

⁷⁸ Cf the list of circumstances that preclude wrongfulness in Chapter V of the International Law Commission's Draft Articles on State Responsibility, available at: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

⁷⁹ The second sentence of Arts 74(3) and 83(3) is not relevant here, as it relates only to provisional arrangements.

agreement. The meaning of the phrase “make every effort” was discussed in section 2.4.1 above, and nothing further need be said about it here. Accordingly, we focus on the meaning of the phrase, “jeopardize or hamper”, and on what kinds of conduct would be likely to “jeopardize or hamper” the reaching of a maritime boundary agreement. UNCLOS does not define the terms “jeopardize” and “hamper”, nor does it suggest what types of conduct are included in the obligation not to jeopardise or hamper.

75. Accordingly, it is necessary to interpret the obligation by employing the means of interpretation set out in Articles 31–33 of the VCLT. Article 31(1) provides 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.” Beginning first with the ordinary meanings of “jeopardize” and “hamper”, the Concise Oxford Dictionary defines “jeopardize” as meaning “put into a situation in which there is a danger of loss, harm or failure” and “hamper” as “hinder or impede the movement or progress of”.⁸⁰ Turning next to the context, this includes the remainder of Articles 74 and 83 (discussed above) specifically, and UNCLOS generally.
76. Turning next to Article 31(3)(b) VCLT, “[t]here shall be taken into account, together with the context” various matters including “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation”. The ILC has defined “subsequent practice” in this context as “conduct in the application of a treaty, after its conclusion, which establishes the agreement of the parties regarding the interpretation of the treaty”.⁸¹ As will be seen in Section 3 below, there has been a considerable amount of practice relating to the exercise of restraint. Such practice that predates the “conclusion” of UNCLOS is clearly not “subsequent practice”. Post-conclusion practice is most commonly between pairs of States. It is difficult to say that bilateral practice, even if considerable in extent, could be said to “establish the agreement of the parties regarding the interpretation of” UNCLOS. The ILC has said that the identification of subsequent practice requires “a determination whether the parties, by . . . a practice, have taken a position regarding the interpretation of the treaty.”⁸² Furthermore, Article 31(3)(b) VCLT and the ILC draft conclusions appear to suggest that practice must evidence a *collective view of the parties* as to the meaning of a provision.⁸³ It must be doubted whether the practice examined in Section 3 is sufficiently homogeneous to meet this test, but we return again to this matter towards the end of this report.
77. The final element of treaty interpretation referred to in Article 31(1) VCLT, after the ordinary meaning and context, is the object and purpose of the treaty. On the latter, the tribunal in the *Guyana v Suriname* case has commented that the obligation “to make every effort . . . not to jeopardise or hamper the reaching of final agreement” is:

an important aspect of the [Law of the Sea] Convention’s objective of strengthening peace and friendly relations between nations and of settling disputes peacefully. However, it is important to note that this obligation was not intended to preclude all activities in a disputed maritime area.⁸⁴

⁸⁰ *Concise Oxford Dictionary* (10th edn, OUP 1999), 759 and 644, respectively.

⁸¹ International Law Commission, *Subsequent agreements and subsequent practice in relation to the interpretation of treaties*, Draft Conclusion 4(2), adopted by the Commission at its 65th Session, 2013, UN Doc. A/CN.4/L.813 (2013).

⁸² International Law Commission, *Subsequent agreements and subsequent practice in relation to the interpretation of treaties*, Draft Conclusion 6(1), adopted by the Commission at its 66th Session, 2014, UN Doc. A/CN.4/L.833 (2014).

⁸³ This is also the view of Aust, who argues that for practice to fall within Art 31(3)(b) VCLT it must be “consistent and . . . common to, or accepted, expressly or tacitly, by both or all parties” to a treaty: A Aust, *Modern Treaty Law and Practice* (3rd edn, CUP 2013) 215.

⁸⁴ *Guyana v Suriname* case, (n 14), para 465.

78. Applying Article 31(1) VCLT, the obligation not to jeopardise or hamper in Articles 74(3) and 83(3) appears to mean that States whose maritime zones overlap but have not yet been delimited must make every effort not to engage in conduct that would endanger the prospects of reaching agreement on a maritime boundary or impede the progress of negotiations to that end. However, that does not necessarily prohibit all activities concerning undelimited areas.

79. Turning now to Article 32 VCLT, this provides that:

[r]ecourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.

80. Condition (b) is clearly not relevant, but it seems permissible to refer to supplementary means to confirm or clarify the meaning resulting from the application of Article 31 set out in the previous paragraph. The ILC has concluded that the supplementary means referred to in Article 32 include subsequent practice other than that referred to in Article 31(3)(b),⁸⁵ which it defines as “conduct by one or more parties in the application of the treaty, after its conclusion”.⁸⁶ Thus, it is necessary to examine both subsequent practice in this sense and the *travaux préparatoires*. The latter are rather limited.⁸⁷ Van Logchem summarises the significance of the *travaux* well in stating that the drafting history gives “no clear indication of the intended meaning of the obligation not to jeopardise or hamper or the kinds of activities covered by it”.⁸⁸ There were two broad positions at UNCLOS III. Some States had “general concerns over the conduct of unilateral activities in disputed areas”; other States had concerns that “the introduction of a rule limiting activities within disputed maritime areas would impair the development of coastal States. Both positions shared the view that under certain circumstances, the conduct of activities needs to be limited in disputed maritime areas and that mutual restraint should be exercised by parties to the dispute.”⁸⁹ However, the intention was “not to completely exclude the conduct of all activities” in undelimited areas as can be inferred for the lack of support for a general moratorium on all such activities.⁹⁰

81. Turning now to the other kind of material to be consulted under Article 32, subsequent practice in the sense explained above, the ILC states that “[t]he identification of subsequent practice under Article 32 requires, in particular, a determination of whether conduct by one or more parties is in application of the treaty.”⁹¹ Practice may be defined as taking a wide range of forms, and may, under certain circumstances, include inaction.⁹² As mentioned when discussing subsequent practice in the context of Article 31, Section 3 of this report includes a examples of practice by States which show an exercise of restraint. In a number of these cases there is an acknowledgement, express or implied,

⁸⁵ International Law Commission (n 81 and 82), Draft Conclusions 1(4) and 7(2).

⁸⁶ Ibid, Draft Conclusion 4(3).

⁸⁷ For detailed discussions of the *travaux* of Arts 74(3) and 83(3), see *Virginia Commentary*, (n 13), 800–15 and 952–84 passim; Lagoni (n 29) 349–54; and Y van Logchem, ‘The Scope for Unilateralism in Disputed Maritime Areas’ in C Schofield, S Lee and M-S Kwon (eds), *The Limits of Maritime Jurisdiction* (Martinus Nijhoff 2014) 179–81.

⁸⁸ Van Logchem, (n 87), 179.

⁸⁹ Ibid.

⁹⁰ Ibid, 180–1.

⁹¹ International Law Commission (n 81), Draft Conclusion 6(3).

⁹² It is suggested that the ILC’s definition of “practice” in the context of identifying customary international law, may be applied here by analogy: International Law Commission, *Identification of Customary International Law*, ‘Draft conclusions 1 to 16 provisionally adopted by the Drafting Committee at the sixty-sixth and sixty-seventh sessions’, (A/CN.4/L.869); see Draft Conclusion 6 (2015). Available on the ILC website at: http://legal.un.org/ilc/summaries/1_13.shtml.

of an obligation to exercise restraint. It is not easy to determine how many of these examples can be said to “be in application” of Articles 74(3) and 83(3). As will be seen in Section 3, practice which demonstrates restraint typically does so without being accompanied by an express statement of legal motivation. There is rarely an explicit reference to the obligation in Articles 74(3) and 83(3) being the reason for a decision not to undertake an activity. When there *is* a reference to an obligation of restraint, it is commonly unspecific as to the source of the obligation. Each instance of practice therefore needs to be considered carefully, in its context, to assess whether it shows that the State or States concerned were acting, or refraining from acting, “in application of” Articles 74(3) and 84(3). In many of the instances recorded in this report, there is insufficient information on which to base such an assessment, and therefore the facts of the practice are set out with possible interpretations suggested, or it is left for the reader to decide whether to attach any weight to it, in light of any information that may be (or may become) available elsewhere. This is a matter to which we return later in this report.

82. That brings us to the final provision of the VCLT dealing with treaty interpretation, Article 33, which deals with treaties, like UNCLOS, that are drafted in two or more authentic languages. Article 33(3) provides that “the terms of a treaty are presumed to have the same meaning in each authentic text”. However, if there is a difference of meaning that the application of Articles 31 and 32 does not remove, Article 33(4) provides that “the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted”. We do not have the knowledge to appreciate whether there is any divergence in meaning between the English text and the Arabic, Chinese and Russian texts of Articles 74(3) and 83(3). We have, however, looked at the French and Spanish texts and consider that there is no difference in meaning with the English text.⁹³
83. The conclusion that emerges from the above application of the provisions of the VCLT concerning the interpretation of treaties is that the obligation not to jeopardise or hamper in Articles 74(3) and 83(3) means that States whose maritime zones overlap, but have not yet been delimited, must make every effort not to engage in conduct that would endanger the prospects of reaching agreement on a maritime boundary or impede the progress of negotiations to that end. However, that obligation does not necessarily prohibit all activities in the undelimited area. What the above analysis does not reveal is what kinds of activities in respect of undelimited maritime areas might be covered by the obligation not to jeopardise or hamper. Anderson and van Logchem counsel that it may not be possible to answer such a question in the abstract. As they put it, what kind of actions might amount to jeopardising or hampering “could depend on political and diplomatic factors, such as the general state of [relations between the States concerned], and an absolute standard may not exist”.⁹⁴ Nevertheless, they suggest that actions that jeopardise or hamper must “go beyond announcing diplomatic or legislative claims” and are those that “somehow alter the *status quo ante* or prejudice the outcome of boundary negotiations or involve taking (or attempting to take) resources, especially non-renewable resources, from the area of overlap.”⁹⁵ It could however be argued that in certain circumstances action at the diplomatic, legislative or executive level could “jeopardise” or at least “hamper” the reaching of a final agreement.

⁹³ The French text of Arts 74(3) and 83(3) reads: “En attendant la conclusion de l'accord visé au paragraphe I, les Etats concernés, dans un esprit de compréhension et de coopération, font tout leur possible pour conclure des arrangements provisoires de caractère pratique et pour ne pas compromettre ou entraver pendant cette période de transition la conclusion de l'accord définitif.” The Spanish text reads: “En tanto que no se haya llegado a un acuerdo conforme a lo previsto en el párrafo I, los Estados interesados, con espíritu de comprensión y cooperación, harán todo lo posible por concertar arreglos provisionales de carácter práctico y, durante ese período de transición, no harán nada que pueda poner en peligro u obstaculizar la conclusión del acuerdo definitivo.”

⁹⁴ Anderson and van Logchem, (n 32), 206.

⁹⁵ *Ibid*, 216.

84. In a similar vein, van Logchem argues that what actions will amount to jeopardising or hampering will depend on the circumstances applying to a particular undelimited area and the *subjective* views of the States concerned as to what conduct will be considered as jeopardising or hampering their ability to reach agreement on a maritime boundary.⁹⁶ Furthermore, as pointed out by some participants at the Roundtable, establishing too rigid criteria as to what conduct would constitute a breach of the obligation not to jeopardise or hamper would deprive the obligation of a desirable degree of flexibility.
85. Both Anderson and van Logchem, and van Logchem writing separately, appear implicitly to assume that the test of whether conduct jeopardises or hampers is a subjective one, ie if one of the States concerned regards the conduct of the other as jeopardising or hampering boundary negotiations, such conduct will breach the obligation not to jeopardise or hamper in Articles 74(3) and 83(32). Given the language of those articles and their purpose, this may be a reasonable assumption. However, a court or tribunal, faced with an allegation of a breach of the obligation, would probably apply an objective test, as the tribunal in the *Guyana v Suriname* case appears to have done, as will become evident from the discussion below.
86. Bearing all this in mind, one way of trying to identify the kinds of conduct relating to undelimited maritime areas that would breach the obligation not to jeopardise or hamper is to examine each of the rights that States possess on their continental shelves and in their EEZs.

A. Continental shelf

87. In the case of continental shelf rights, the question of what kind of conduct would breach the obligation not to jeopardise or hamper was discussed by the tribunal in the *Guyana v Suriname* case. The case concerned drilling in an area claimed by both parties. The tribunal found such drilling to be a breach of the obligation not to jeopardise or hamper, but the language in which it explained why that was so is not consistent. The tribunal began by stating that “unilateral acts which do not cause a physical change to the marine environment” would “generally” not breach the obligation, whereas “acts that do cause physical change . . . may hamper or prejudice the reaching of a final agreement on delimitation.”⁹⁷ However, the tribunal gives four further definitions of actions that (are likely to) breach the obligation of restraint. They are: “activities of the kind that lead to a permanent physical change”;⁹⁸ “unilateral activity that might affect the other party’s rights in a permanent manner”;⁹⁹ “activities having a permanent physical impact on the marine environment”;¹⁰⁰ and activities that “cause permanent damage to the marine environment”.¹⁰¹
88. This list of activities falls into two broad categories: activities that cause (permanent) physical change or damage to, or have a (permanent) physical impact on, the marine environment; and activities that might affect the other party’s rights in a permanent manner. While the activities in the first category are broadly similar, although they differ as to the permanency or otherwise of their adverse effects, the latter category is conceptually quite different and alludes to one of the requirements for the prescription of provisional measures.¹⁰² It is debatable whether such a test is appropriate to the

⁹⁶ Van Logchem, (n 87), 186.

⁹⁷ *Guyana v Suriname* case, para 467. The Tribunal found support for its view in the *Aegean Sea Continental Shelf case (Greece v Turkey)* (Request for the Indication of Interim Measures of Protection) [1976] ICJ Rep 3, para 30. Van Logchem criticises the tribunal for its reliance on this case: see van Logchem (n 87) 186–91.

⁹⁸ *Guyana v Suriname* case, para 467.

⁹⁹ *Ibid*, para 470.

¹⁰⁰ *Ibid*.

¹⁰¹ *Ibid*, para 481.

¹⁰² See further van Logchem, (n 87), 184–5.

obligation not to jeopardise or hamper in Articles 74(3) and 83(3),¹⁰³ and in any case the test is probably too strict, as it is possible to envisage conduct that does not affect the other party's rights in a permanent way, yet that would clearly seem to be jeopardising or hampering. The tribunal suggested that seismic exploration in a disputed area would not fall into either of these two broad categories and therefore "should be permissible".¹⁰⁴ However, as van Logchem points out, there could be situations where even seismic testing by one party could affect the other party's rights or would be regarded by it as jeopardising the prospects of a maritime boundary agreement.¹⁰⁵

89. At this point reference should be made to the order of provisional measures by the Special Chamber of the ITLOS in the *Ghana/Côte d'Ivoire* case, as it appears to depart from the approach of the tribunal in the *Guyana v Suriname* case. On 27 February 2015, Côte d'Ivoire filed a request for provisional measures with the Special Chamber, asking it to order Ghana to suspend all oil exploration and exploitation operations in the disputed area and to refrain from granting any new permits for oil exploration and exploitation in that disputed area. The Special Chamber ordered Ghana, inter alia, to "take all necessary steps to ensure that no *new* drilling either by Ghana or under its control takes place in the disputed area".¹⁰⁶ However, it did not order Ghana to suspend all exploration or exploitation activities in the disputed area, on the basis that such an order "would entail the risk of considerable financial loss to Ghana and its concessionaires and could also pose a serious danger to the marine environment."¹⁰⁷
90. Thus Ghana was permitted to continue certain hydrocarbon exploration or exploitation activities, even though presumably such activities would result in permanent change to the physical characteristics of the continental shelf. However, it is unwise to read too much into this decision when it comes to interpreting the obligation not to jeopardise or hamper in Articles 74(3) and 83(3). This was a case of provisional measures, for which the threshold for making an order is considerably higher than the threshold for finding a breach of Articles 74(3) and 83(3), as applied by the tribunal in the *Guyana v Suriname* case.¹⁰⁸ Interestingly, the Special Chamber makes no mention of Articles 74(3) and 83(3) in its order, although the parties did so in their pleadings. One possible explanation might be that the Special Chamber considered the obligations of Articles 74(3) and 83(3) not relevant in a provisional measures context, where a dispute has been taken to third party settlement. Furthermore, the circumstances in the *Ghana/Côte d'Ivoire* case were very different from those in the *Guyana v Suriname* case. Although the pleadings of the parties on the merits are not yet publically available, there are some indications in the Award of the Special Chamber on provisional measures that Ghana had been engaged in exploration for and exploitation of seabed resources in the area concerned well before Côte d'Ivoire claimed that that area was part of its continental shelf.
91. One writer, Becker-Weinberg, has suggested a rather different way of interpreting the obligation not to jeopardise or hamper in relation to hydrocarbon licensing from the approach of the tribunal in the *Guyana v Suriname* case, considering that:

¹⁰³ Ibid, 191.

¹⁰⁴ *Guyana/Suriname* case, para 481. Cf also para 467, where there is a less qualified statement as to the permissibility of seismic testing.

¹⁰⁵ Van Logchem, (n 87), 184–5.

¹⁰⁶ *Ghana/Côte d'Ivoire* case, (n 77), para 102 (emphasis added).

¹⁰⁷ Ibid, para 99.

¹⁰⁸ *Guyana v Suriname* case, para 469. Lagoni, writing long before the *Guyana/Suriname* case, broadly equated the conduct prohibited by the obligation of restraint with conduct that would justify the making of an order of provisional measures to prevent such conduct. See Lagoni, (n 29), 365–6.

[p]ending the delimitation of boundaries of a disputed maritime area, States must inform all legitimate claimant States of their intention to develop offshore hydrocarbon deposits found in a disputed maritime area, including the identification and location of such resources as it is known to that State. In this case, no exploitation or exploration activities, particularly drilling of the continental shelf, may be undertaken without the previous consent of all relevant States.¹⁰⁹

92. In our view, to interpret Articles 74(3) and 83(3) as *requiring* the *consent* of other States for *any* hydrocarbon-related activity would be reading too much into those provisions, as it is possible that some kind of exploration activities could be undertaken without consent that would not breach the obligation. However, a State that followed this very cautious approach would be very unlikely to breach the obligation not to jeopardise or hamper.
93. The provisions of UNCLOS in relation to seabed resources possibly straddling areas of national jurisdiction and the Area are also of interest in this regard. Article 142(2) of UNCLOS provides that where resource deposits in the Area straddle areas of national jurisdiction:

Consultations, including a system of prior notification, shall be maintained with the State concerned, with a view to avoiding infringement of such rights and interests. In cases where activities in the Area may result in the exploitation of resources lying within national jurisdiction, the prior consent of the coastal State concerned shall be required.

It is notable that no equivalent provision was included in UNCLOS regarding resources straddling EEZ/continental shelf boundaries. However, Article 142 may only apply after the outer limits of the continental shelf have been delineated, and so the usefulness of the analogy to undelimited areas within 200nm may be limited.

B. EEZ

94. Turning now to EEZ rights, which so far have not been the object of judicial consideration in the context of the obligation not to jeopardise or hamper, a first set of rights relates to the exploitation and management of living resources. Some requirements of restraint follow from provisions of UNCLOS other than Articles 74 and 83. For example, under Article 61(2) coastal States must ensure that the living resources of their EEZs are not endangered by over-exploitation. Under Article 63(1) States are required to co-operate over the management of shared stocks. In many, if not most, cases it is likely that the parties will share stocks once they have delimited a boundary. Arguably, the obligation in Article 63(1) should apply even before the States concerned delimit their maritime boundary. In the *Guyana v Suriname* case the tribunal stated, in relation to the obligation not to jeopardise or hamper, that:

[i]t should not be permissible for a party to undertake any unilateral activity that might affect the other parties' rights in a permanent manner. However, international courts and tribunals must 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.¹¹⁰

¹⁰⁹ V Becker-Weinberg, 'Seabed Activities and the Protection and Preservation of the Marine Environment in Disputed Maritime Areas of the Asia-Pacific Region', Papers from the Law of the Sea Institute, UC Berkeley–Korea Institute of Ocean Science and Technology Conference, held in Seoul, Korea, May 2012, available at: <https://www.law.berkeley.edu/files/Becker-Weinberg-final.pdf>.

¹¹⁰ *Guyana v Suriname* case, para 470.

95. It went on to say that the interpretation of the obligation not to jeopardise or hamper in Articles 74 and 83 “must reflect this delicate balance. . . [D]rawing a distinction between activities having a permanent physical impact on the marine environment and those that do not, accomplishes this.”¹¹¹ In the light of this dictum, the provisions of Articles 62 and 63 of UNCLOS referred to above and the renewable nature of fish stocks, it would seem that in general both States could permit their vessels to fish in the undelimited area, without the likelihood of jeopardising or hampering negotiations on a boundary, provided that they did so at a level that their combined activities did not lead to the over-exploitation of resources. That would require the States concerned to exchange information about the level of their fishing activities and to terminate fishing once a sustainable level of fishing was about to be exceeded.¹¹² However, any attempt by one State to arrest vessels of the other State that were fishing, whether before or after the fishery had been closed, would be likely to be regarded as provocative by the other State, and result in protest if not further responses. On one interpretation, this might suffice to constitute conduct which would jeopardise or hamper.¹¹³ If however an objective “reasonable State” standard is applied, the fact of an arrest might not, in itself, be considered sufficient to hamper or jeopardise; it might be relevant to look at all the circumstances, including the seriousness of the conduct of the fishing vessel, the conduct of the arresting officers, the promptness and manner of communication and co-operation with the other State about the incident, and the next steps taken. Certainly, any such law-enforcement activity against vessels of the other State must carry a very high risk that it would breach the obligation not to jeopardise or hamper.¹¹⁴
96. The question of third State vessels fishing in an undelimited area raises particular difficulties. Any attempt to license third State vessels to fish in the disputed area or to arrest third State vessels that are either unlicensed or breaching the conditions of their licence may well be regarded by the States concerned as provocative, and may breach the obligation not to jeopardise or hamper. On the other hand, if no action is taken against third State vessels, it is likely that such vessels will fish in the undelimited area and that this will lead to the over-exploitation of stocks, as has happened in some parts of the world. If the two States wish to prevent that happening, they may have little option but to enter into some form of provisional arrangement to address the issue of third State fishing in the undelimited area.
97. Turning to the next set of EEZ rights, the jurisdiction to erect installations, it would seem to follow from the *Guyana v Suriname* case that the erection of installations, whether for the purposes of exploring and exploiting the resources of the seabed or for the generation of energy from wind, waves or tides, is covered by the obligation not to jeopardise or hamper, as such erection causes “physical change” to the seabed (to use the language of the *Guyana v Suriname* case).
98. EEZ rights also include jurisdiction in respect of marine scientific research. Although such research requires the consent of “the coastal State” under Article 246 of UNCLOS, research by vessels belonging to one or other of the States that were seeking agreement on a maritime boundary would probably not breach the obligation not to jeopardise or hamper as long as consent had been given by the flag State and the research did not lead to any “physical change” to the marine environment

¹¹¹ Ibid.

¹¹² A similar approach was taken by the ILA’s Committee on the Exclusive Economic Zones in its 1992 report: see ILA, *Report of the Seventy-Sixth Conference* (1992), 275–6.

¹¹³ Para 85 above.

¹¹⁴ So, too, Anderson and van Logchem (n 32) 219 and van Logchem (n 87) 193. In the *Guyana v Suriname* case the tribunal regarded the threat of force by Suriname against a drilling rig licensed by Guyana as a breach of the obligation not to jeopardize or hamper (see para 484). The arrest of fishing vessels will often involve some threat of force to vessels that resist arrest. See also PJ Kwast, ‘Maritime Law Enforcement and the Use of Force: Reflections on the Categorisation of Forcible Action at Sea in the Light of the *Guyana/Suriname* Award’ (2008) 13 *Journal of Conflict and Security Law* 49.

or seabed.¹¹⁵ This tentative interpretation also receives support from the fact that under Article 246(3) consent is normally to be given for research that “increases scientific knowledge of the marine environment for the benefit of all mankind”. It would seem desirable, and possibly required by the obligation not to jeopardise or hamper, that the flag State of the research vessel share the results of its research with the other State. As with the arrest of fishing vessels, the arrest by one State of a vessel of the other State that was conducting research in the undelimited area would be likely to be regarded by the flag State as a breach of the obligation not to jeopardise or hamper. As far as research by third State vessels is concerned, for one State to authorise such research in the undelimited area would be likely to be regarded by the other State as breaching the obligation not to jeopardise or hamper. This suggests that neither State should authorise research by third States. Whether the exercise of enforcement jurisdiction by either State in respect of unauthorised third State vessels carrying out research in the undelimited area falls within the obligation not to jeopardise or hamper is less clear, although what was said above about the arrest of third State fishing vessels may well apply *mutatis mutandis*.

99. The last kind of EEZ rights concerns jurisdiction in respect of pollution. Since, as has already been seen, the exploration (at least if it involves drilling) and exploitation of seabed resources would breach the obligation not to jeopardise or hamper, the question of jurisdiction in relation to pollution from such activities does not in practice arise. In the case of dumping and pollution from vessels, the exercise of legislative jurisdiction should raise no problems, and would not be caught by the obligation not to jeopardise or hamper, as long as such jurisdiction did no more than apply the standards found in the relevant conventions. In the case of pollution from vessels, it is only exceptionally that a coastal State’s legislative jurisdiction in relation to the EEZ is permitted to go beyond international standards.¹¹⁶ As far as enforcement jurisdiction is concerned, any at sea enforcement, whether of third State or the parties’ vessels, would be likely to be regarded as provocative by the other State claiming EEZ jurisdiction, and, depending on the circumstances, runs a high risk of breaching the obligation not to jeopardise or hamper. On the other hand, the exercise of enforcement jurisdiction in port for alleged offences committed in the undelimited area of overlapping EEZs might not breach the obligation as far as vessels of third States and of the port State are concerned, provided that the alleged offence was an offence under the relevant international conventions. However, the matter is by no means free from doubt.

2.6.2 THE GEOGRAPHIC SCOPE OF THE OBLIGATION

100. Articles 74(3) and 83(3) do not contain any text limiting the geographic scope of the obligations contained therein. This is understandable given that, depending on the particular context, actions related to an undelimited area may take place outside it; for example acts which physically affect an undelimited area might take place outside it but in its vicinity (eg sucking out a straddling resource), and legislative or executive acts in respect of it would normally take place on land. Moreover, even an act unrelated to the undelimited area could, in theory, be considered to jeopardise or hamper the reaching of a final delimitation agreement, for example, the issuing of an arrest warrant for the Minister of Foreign Affairs of the neighbouring State. However, the location of the State activities concerned will be highly relevant to their propensity to jeopardise or hamper, depending on the type of activities and on the particular context.
101. If one takes the view that there *is* a geographic limitation to the obligation not to jeopardise or hamper, difficult questions arise as to how to define that limitation. Does the obligation apply to the

¹¹⁵ A similar position is taken by Anderson and van Logchem, (n 32), 220.

¹¹⁶ See UNCLOS, Art 211(5) and (6).

whole of the undelimited area or only to that part of it which is actively disputed by the States concerned? Some commentators consider that the obligation not to jeopardise or hamper applies only in the disputed area, but not in those parts of the undelimited area to which only one State makes a claim.¹¹⁷ This view is based on a narrow interpretation of the content of the obligation not to jeopardise or hamper. Moreover, there may be ambiguity as to what is meant by the “disputed area”, which may vary not only according to the context but also which party is making the assessment. It should be noted that the term “disputed area” is not used in Articles 74(3) or 83(3).

102. In an undelimited area, there are a variety of possible scenarios regarding the status of claims and disputes, and hence what may be meant by the “disputed area” by the parties concerned or others. To give some simplified examples:

- i. States A and B have each asserted the outer limits of their respective maritime entitlements and each has also advanced a position on where the boundary line should be. The difference between these putative boundaries could be called the disputed area;
- ii. States A and B have each asserted the outer limits of their respective maritime entitlements, they overlap and neither has suggested a possible boundary. The entire area of overlap of these zones could be called the “disputed area”, and could be a much larger area than under scenario (i), for example, where A and B have opposite coastlines much less than 400 nm apart and each claim their full 200 nm;
- iii. State A has asserted the limits of its maritime entitlement; State B has asserted the limits of its maritime entitlement and advanced a position on where the boundary line should be, while State A has not. State A may refer to the area between its claimed limits and State B’s proposed boundary as the disputed area, while State B may regard the whole area of overlap of the claimed zones as in dispute;
- iv. State A has asserted the limits of its maritime entitlement. State B has said nothing but it appears to have an entitlement based on UNCLOS that would overlap. Is there a disputed area and if so what does it consist of?

103. Scenario (i) is relatively common. There are likely to be areas that each State agrees belong incontestably to only one or other of them and therefore are not in dispute. Often a State will make it clear at an early stage of negotiations where it considers that the boundary should lie and will stick to that position until a compromise emerges in the negotiations or a court or tribunal determines the boundary. For example, Norway consistently took the view, prior to the conclusion of a maritime boundary agreement with Russia in 2010, that its continental shelf and EEZ boundary with Russia in the Barents Sea should be an equidistance line, whereas Russia took the view that the boundary should be a sector line, ie the line of longitude running northwards from the terminus of the land border. Where two States have advocated different delimitation lines in this way, the area between those lines may be referred to as the “disputed area”.

104. Scenario (i) typically occurs in the context of maritime boundary litigation or arbitration in which each party advances a clear position on how and where the boundary should be drawn. For example, Guyana and Suriname, which have adjacent coastlines, each set out its “Claim Line”, in its pleadings before the Tribunal. The Tribunal defined the area between these two asserted boundaries as “the area in dispute”.¹¹⁸ In the ongoing ITLOS litigation between Ghana and Côte d’Ivoire (also with

¹¹⁷ Lagoni (n 29) 356–7.

¹¹⁸ *Arbitration between Guyana and Suriname* (Annex VII Tribunal) (2007) 139 ILR 566; (2008) 47 ILM 166; (2007) XXX RIAA 1 (hereafter *Guyana v Suriname* case); see paras 157–163 and Map 1 (after para 163).

adjacent coastlines); Ghana submits that there is an agreed maritime boundary in existence drawn along an equidistance line, whereas Côte d'Ivoire asserts a different boundary based on "relevant circumstances". The two boundary lines overlap creating a triangular area which the Tribunal refers to as the 'disputed area'.¹¹⁹

105. Scenarios (ii), (iii) and (iv) raise the question of how the "disputed area" could be defined where only one or neither party has advocated a preferred boundary line or method of delimitation. They encompass a variety of scenarios which result in ambiguity with regard to the extent of the area in dispute. Some States insist upon their full 200 nm entitlement, or more, while refusing to acknowledge the existence of an overlapping claim. Some States declare an entitlement but do not specify where its limits are. The problems are heightened when the claim of one of the parties is plainly unreasonable, judged against the provisions of UNCLOS. In its order of provisional measures in the *Ghana/Côte d'Ivoire* case, the Special Chamber of the ITLOS applied a test of plausibility to determine whether Côte d'Ivoire had continental shelf rights that could be the object of protection by provisional measures.¹²⁰ If that reasoning may be applied by analogy, one could argue that the obligation not to jeopardise or hamper would not apply to those parts of the undelimited area that could not plausibly be claimed by more than one of them as its maritime zone. However, plausibility is a rather imprecise test. If there is doubt about a particular area, the States concerned would be best advised to exercise restraint. Moreover, it should be noted that this line of reasoning is based on the assumption that the obligations of Articles 74(3) and 83(3) have a territorial scope, an assumption that is not evident from the text of UNCLOS.
106. An alternative, and it is submitted, better, view is that there is no geographical limit to the obligation not to jeopardise or hamper. Rather, it is the propensity of the act to jeopardise or hamper the reaching of a final delimitation agreement that that must be considered. This approach accords more closely to the text of UNCLOS and may help avoid some of the definitional problems inherent in seeking to define a geographical scope of application of the obligation.
107. On this interpretation, when an act takes place in an actively disputed part of the undelimited area this is a factor which increases its propensity to jeopardise or hamper. The propensity of the same act to jeopardise or hamper may be low in an area where the competing claim is not plausible. Under this approach, the geographic scope of the obligation is not binary (ie it applies in certain areas but not in others) but varies qualitatively depending on the area concerned. Certain types of activities may be prohibited within an area where an opposite or adjacent State's claim to a maritime area is strongest, but may be permitted where the neighbouring State's claim is more subjective, and dependent, for example, on an evaluation of applicable relevant circumstances. Conversely, the obligation not to jeopardise or hamper may operate in a less restrictive manner for a State within the area where its own claims are squarely in accordance with the established law of maritime delimitation (as objectively assessed). Again this is a rather imprecise test, and so States would be well advised to err on the side of caution if they seek to apply it. An unsubstantiated characterisation of another State's overlapping claim as "implausible" would not serve to reduce the content of applicable obligations of restraint.

2.6.3 THE TEMPORAL SCOPE OF THE OBLIGATION

108. A first issue of temporal scope is at what point in time the obligation not to jeopardise or hamper in paragraph 3 of Articles 74 and 83 arises. The obligation appears to be governed by the phrase at the beginning of paragraph 3 "Pending agreement...". It is not clear exactly when the conclusion of a

¹¹⁹ See Section 3, para 313.

¹²⁰ *Ghana/Côte d'Ivoire* case, paras 58 and 62.

future agreement can be said to be “pending”: does it require negotiations to have been initiated, or the need for them to have been explicitly acknowledged by the States concerned; or simply that it is objectively apparent that their claimed zones do, or might potentially, overlap?¹²¹ It seems clear that the obligation applies when two States have legislated or exchanged communications in terms that make it clear to both of them that there is an overlap, giving rise to the need for delimitation.¹²² It is less clear whether it applies in a situation where one State has asserted the limits of its zone, but the neighbouring State has not, even though it is objectively apparent that its entitlement overlaps or could potentially overlap. If the other State does not protest about its neighbour’s asserted limits or to its exercise of continental shelf and/or EEZ rights in the potentially overlapping area, it seems unlikely such actions would jeopardise or hamper any eventual delimitation agreement; but account may need to be taken of circumstances such as a failed State’s temporary inability to defend its interests.

109. As for the duration of the obligation, the phrase “pending agreement” on a boundary “as provided for in paragraph 1” at the beginning of Articles 74(3) and 83(3) seems to govern the end point too. Paragraph 1 refers to delimitation being “effected by agreement” which, to be very precise, must refer to the date of entry into force of the agreement. This is because if an agreement is signed subject to ratification but not ratified, the delimitation has not been effected. Agreements can sometimes take years to ratify or never enter into force, so it is important that the obligation not to jeopardise or hamper is not assumed to cease merely because the text of an agreement has been adopted. On another point, it is suggested that “agreement” should not be interpreted literally as referring only to where a boundary is agreed by the parties but should also include the situation where the parties cannot agree and the boundary is determined by a court or tribunal. Logically, this must be so, as once a boundary is limited by a court or tribunal, paragraph 3 no longer has any application. The question is whether, in this latter situation, the obligation would last until the court or tribunal had delivered its final judgment, or cease as soon as third party settlement procedures had been invoked, or when the court or tribunal had decided that it has jurisdiction. It is submitted that, by analogy with the words in paragraph 1 “effected by agreement”, the obligation should continue until the delimitation is ‘effected by judicial decision’. Alternatively, or in addition, other obligations of restraint may apply to the litigating parties to avoid prejudice to the outcome of the proceedings, such as those linked to good faith.
110. The obligation not to jeopardise or hamper in the second limb of paragraph 3 is preceded by the phrase “during this transitional period”. It is not altogether clear what period is being referred to here. It could mean the period up until (or “pending”) the conclusion of a boundary agreement or the determination of a boundary by a court, but that is already covered by the opening phrase of Articles 74(3) and 83(3) and would therefore make this second phrase redundant.
111. It could be argued that the position of the phrase in the rather awkward single sentence containing obligations relating to both provisional measures and restraint suggests that “transitional period” may refer to the period before a provisional arrangement is agreed. If so, that provision would need to be read with some qualification. It was suggested in sub-section 2.4.2 above that, on one argument, the obligation not to jeopardise or hamper might be considered redundant where a comprehensive provisional arrangement, covering the exercise of all continental shelf and EEZ rights, had been concluded, but that if an arrangement covered only one kind of activity, such as

¹²¹ Anderson and van Logchem, (32), 208–9, and materials cited there.

¹²² Anderson and van Logchem, (n 32), 209. Lagoni, however, takes a stricter approach, arguing that the obligation arises “as soon as the claims overlap”: see Lagoni, (n 29), 364. The difference would seem to be no more than that between a practical and a theoretical approach.

fisheries, the obligation would continue to apply in respect of other activities, such as the exploitation of seabed resources. However, Anderson and van Logchem take a somewhat different approach, arguing that the obligation applies not only before any provisional arrangement is agreed but also while such an arrangement is in place;¹²³ and this is probably the better view.

2.6.4 HOW DOES THE OBLIGATION APPLY IN RESPECT OF UNDELIMITED MARITIME AREAS WHICH ARE ALSO SUBJECT TO DISPUTES OVER SOVEREIGNTY OR THE STATUS OF MARITIME FEATURES?

112. Difficult questions arise as to how the obligation not to jeopardise or hamper applies in respect of an undelimited maritime area where there are related disputes about sovereignty over land or about the legal status of maritime features. Maritime delimitation may depend upon the resolution of a dispute about sovereignty over coastal territory or over an island. The outcome of maritime delimitation may also depend upon resolving a dispute as to whether a maritime feature is an island, a rock or a low-tide elevation. At least five kinds of situations may be distinguished:¹²⁴

- 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 nm 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;
- 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;

113. In some of the five types of scenarios set out above, namely (i), (iii) and (v), it is clear there is a maritime boundary to be delimited between the two States, in any event and on any view. Therefore, it is also clear that the obligation in Articles 74(3) and 83(3) of UNCLOS must apply between the two States pending the delimitation.¹²⁵ The question is *how* it applies. In the absence of provisional arrangements, there are difficult questions as to which activities are covered by the obligation not to jeopardise or hamper, and, assuming the obligation has a geographical scope, how that would be defined in such a situation.

114. The activities which are covered by Articles 74(3) and 83(3) are those which would have the effect of jeopardising or hampering the reaching of a final delimitation agreement. Anderson and van Logchem suggest, in relation to a dispute over the status of a feature, that (in scenario (i)) the

¹²³ Anderson and van Logchem, (n 32), 209.

¹²⁴ Anderson and van Logchem (n 32) identify the situations described here as scenarios (i) and (ii) at 211, and the situation described here as scenarios (iii) and (iv) are discussed at 222–3.

¹²⁵ Anderson and van Logchem state that para 3 certainly applies if the two States clearly have a maritime boundary irrespective of the status of the feature, (n 32), 211.

“outstanding business” includes determining the status of the feature under Article 121, and also the weight to be accorded to it under Articles 74(1) and 83(1) in establishing the maritime boundary. It could be argued on this basis that activities that prejudice the status of the feature are also covered by the restraint obligation. However, if the argument were to be extended to scenarios (iii) and (v) it would be difficult to sustain; determining sovereignty over an island or a strip of coastal land may also be “outstanding business” that has to be resolved before the maritime delimitation can be effected, but is not itself a matter of maritime delimitation.

115. Where the dispute between the two States concerns sovereignty, whether over an island or a piece of mainland territory, general international law applies, according to which one of the modes of acquiring sovereignty over territory is by effective occupation.¹²⁶ Each claimant State therefore tends to seek to demonstrate its own acts of effective occupation, both physical and in terms of the exercise of legislative and executive authority. If the sovereignty dispute is taken to an international court or tribunal (if there is one with jurisdiction), it will assess which State has the stronger claim based on evidence of effective occupation with a particular emphasis on “effective and continuous display of State authority”.¹²⁷ The distinction between boundary questions and sovereignty disputes is noted in Article 298(1)(a) of UNCLOS, which refers to “any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory” and excludes such disputes from conciliation under Annex V, section 2. The meaning of this phrase was considered by the Arbitral Tribunal in the *Chagos Marine Protected Area arbitration*,¹²⁸ and will be considered further by a different Tribunal in the merits stage of the *Philippines v China* case.¹²⁹
116. The distinction between maritime boundary questions and related sovereignty disputes is crucial to determining what activities are covered by the restraint obligation in Articles 74(3) and 83(3). This is explained by Anderson and von Logchem as follows:

Where an island represents an element in a wider maritime boundary dispute in the sense that mainland to mainland boundaries cannot be drawn until sovereignty over offshore islets has been determined, *paragraph 3 of Articles 74 and 83 apply to the entire boundary dispute* ‘pending agreement’ on the boundary. However, paragraph 3 is confined to the question of the boundary; it does not apply to the sovereignty issue as such, with the result that *each side remains entitled, in principle, to seek by lawful means to strengthen its claim to sovereignty*.¹³⁰

117. A particular difficulty stems from the fact that the kinds of act conducted in the undelimited maritime area which might be capable of strengthening a claim to sovereignty may be very similar to those that could jeopardise or hamper a maritime boundary dispute. The difference may lie in the motivation for the act or the context in which it is carried out. The very same act might be capable of having the appearance of both, or even being both, and its characterisation may be difficult to determine without extrinsic evidence as to *opinio juris*. In litigation, there is the

¹²⁶ J Crawford, *Brownlie’s Principles of Public International Law* (8th edn, OUP 2012), 221–6.

¹²⁷ Ibid, 225; and Anderson and van Logchem, (n 32), 211.

¹²⁸ *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)*, (Annex VII Tribunal) Award, 18 March 2015, paras 213–221. Available on the website of the PCA at: <https://pcacases.com/web/view/11>. This was not a maritime delimitation case, but it concerned land sovereignty issues which were closely related to questions of interpretation of UNCLOS obligations.

¹²⁹ *Arbitration between the Republic of the Philippines and the People’s Republic of China* (Annex VII Tribunal), available at: <http://www.pcacases.com/web/sendAttach/1506>. See J Barrett, ‘UNCLOS: A “Living” Treaty?’, Chapter 1 in J Barrett and R Barnes, *Law of the Sea: UNCLOS as a Living Treaty* (BIICL 2016) 9–11.

¹³⁰ Anderson and van Logchem, (n 32), 222. Emphasis added.

potential for the acts of State A to be advanced as strengthening its sovereignty claim while State B advances evidence of the same act being a violation of the obligation not to jeopardise or hamper.¹³¹

118. In disputes where each State takes a different position on whether there is a maritime boundary between them, such as scenarios (ii) and (iv) as outlined above, there would be a disagreement between them as to whether Articles 74(3) and/or 83(3) of UNCLOS are applicable at all. In the view of one of the States, there is a maritime boundary to be delimited, from which it follows that both are bound by Articles 74(3) and 83(3) in relation to it. By contrast, the State which argues that there is no boundary would not accept that. Even on this view however, both States are bound by general international law on non-use of force and peaceful settlement of disputes.¹³²
119. For States to achieve the legal strengthening of their claim in such scenarios without risking a violation of the obligation not to jeopardise or hamper might require considerable legal and diplomatic expertise. For the research team to distinguish between such acts when instances of State practice are identified in areas of mixed sovereignty/status/delimitation disputes, but there is no accompanying legal commentary by the author of the act, is particularly difficult. In such cases our approach has been to present the practice, which the reader may interpret in light of any other information available elsewhere, to assess its relevance to obligations of restraint under UNCLOS (or customary international law).

2.7 The relationship between provisional measures and Articles 74(3) and 83(3)

2.7.1 COMPARISON AND CROSS-REFERENCE

120. The capacity of international courts and tribunals to grant provisional measures arises as a result of provisions in their constituent instruments, for example, Article 41 of the ICJ Statute or Article 25 of the ITLOS Statute.¹³³ The obligation of States not to jeopardise or hamper the reaching of the final agreement regarding the delimitation of maritime areas is set out in UNCLOS. Therefore, from the perspective of the origin of each system, it is difficult to find a relationship between them. Indeed they are completely different systems. However, immediately after the adoption of UNCLOS, commentators noted the similarity between the granting of provisional measures and the obligations of States in undelimited maritime areas. For example, Lagoni, in considering which acts or omissions of States would come under the prohibition of Articles 74(3) and 83(3), argued that “the interim measures of protection ordered by the ICJ may offer some assistance in finding convincing answers”, and referred to the order of provisional measures in the *Aegean Sea* case.¹³⁴ A similar approach has also been adopted by Miyoshi, Ong and Kim.¹³⁵

¹³¹ To date no international court or tribunal has considered the relationship between acts in support of a sovereignty claim and obligations under Articles 74(3) and 83(3).

¹³² See above, Section 2.5.1 and Anderson and van Logchem, (n 32), 223.

¹³³ The granting of provisional measures by ITLOS or other dispute settlement bodies established under Part XV and Part XI, Section 5 of UNCLOS is also set out in Art 290 of UNCLOS.

¹³⁴ Lagoni, (n 29), 365–6.

¹³⁵ M Miyoshi, ‘The Basic Concept of Joint Development of Hydrocarbon Resources on the Continental Shelf: With Special Reference to the Discussions at the East-West Centre Workshops on the South East Asian Seas’ (1988) 3 *International Journal of Estuarine and Coastal Law* 10–11; and DM Ong, ‘Joint Development of Common Offshore Oil and Gas Deposits: “Mere” State Practice or Customary International Law?’ (1999) 93 *AJIL* 798–9; and SP Kim, *Maritime Delimitation and Interim Arrangements in North East Asia* (Martinus Nijhoff 2004) 57–8.

121. The practice of referring to the requirements developed by international courts and tribunals for a grant of provisional measures when interpreting the obligations of Articles 74(3) and 83(3) has also been adopted by some judicial bodies. In the *Guyana v Suriname* case, the arbitral tribunal relied heavily on the *Aegean Sea* (provisional measures) case when applying Articles 74(3) and 83(3).¹³⁶ Moreover, in the *Ghana/Côte d'Ivoire* case, both parties referred to the *Guyana v Suriname* case in their submissions regarding the circumstances in which ITLOS may grant provisional measures, although it is noteworthy that the Tribunal did not.¹³⁷ This suggests that not only is the content of the Articles 74(3) and 83(3) obligations informed by the requirements for the granting of provisional measures as developed by the ICJ, but also that the practice of UNCLOS dispute settlement bodies regarding these paragraph (3) obligations could contribute to the development of the requirements for the granting of provisional measures.
122. Hence, for the purpose of clarifying the content of the obligation under Articles 74(3) and 83(3), it is worthwhile comparing those requirements and the obligation of restraint, bearing in mind however these two systems have been established independently and separately from each other, and so there may be limits to the extent to which the jurisprudence from one may be applied by analogy to the other.

2.7.2 THE RELATIONSHIP BETWEEN THE REQUIREMENTS OF PROVISIONAL MEASURES AND THE OBLIGATION OF RESTRAINT

123. The practice of international courts and tribunals indicates that several requirements must be met in order for the granting of provisional measures to be justified.¹³⁸ However, while some of these requirements seem to be applicable by analogy to the obligation not to jeopardise or hamper, other requirements do not. For example, a condition that the courts must have *prima facie* jurisdiction or that the measures requested must have a nexus with the rights which a party seeks to protect at the stage of merits, seem inapplicable. That is because those requirements are inherent in the procedural system of international courts and tribunals. This system is based on the consent of parties to the dispute, which may require the separation of the provisional measures stage and the merits stage of a dispute.
124. On the other hand, some of the applicable requirements serve the same purpose as the obligation not to jeopardise or hamper, namely, to protect the potential rights of the parties. In fact, as Article 41 of the ICJ Statute provides, and the ICJ has clarified, the purpose of provisional measures is to preserve the rights of each party to a dispute pending the final judgment.¹³⁹ Similarly, Articles 74(3) and 83(3) of UNCLOS seek “to limit the activities of the States” for the purpose of protecting the potential rights of each party.¹⁴⁰ The two requirements that directly work to protect the (putative) rights of each party will now be analysed.

A. Irreparable prejudice to the rights of the parties

125. The ICJ has repeatedly confirmed that when it indicates a provisional measure, there must be an

¹³⁶ *Guyana v Suriname* case, paras 468–9.

¹³⁷ *Request for the Prescription of Provisional Measures submitted by the Republic of Côte d'Ivoire under Article 290, paragraph 1 of the United Nations Convention on the Law of the Sea*, 27 February 2015, para 23; Written Statement of Ghana, 23 March 2015, para 104.

¹³⁸ H Thirlway, ‘The International Court of Justice’ in MD Evans (ed), *International Law* (4th edn, OUP 2014) 603–5.

¹³⁹ *Case concerning the Arbitral Award of 31 July 1989 (Guinea-Bissau v Senegal)* (Provisional Measures) Order of 2 March 1990 [1990] ICJ Rep 64 at 69.

¹⁴⁰ *Virginia Commentary*, Vol II (Martinus Nijhoff 1993), 984.

“urgent necessity to prevent irreparable prejudice to such rights, before the Court has given its final decision”.¹⁴¹ The ITLOS has applied a similar requirement in recent cases.¹⁴²

126. In *Guyana v Suriname*, the Annex VII arbitral tribunal applied this requirement by analogy when clarifying the obligation not to jeopardise or hamper, in the context of activities surrounding hydrocarbon exploration and exploitation. According to the tribunal:

It should be noted that the regime of interim measures is far more circumscribed than that surrounding activities in disputed waters generally. As the Court in the Aegean Sea case noted, the power to indicate interim measures is an exceptional one, and it applies only to activities that can cause irreparable prejudice. The cases dealing with such measures are nevertheless informative as to the type of activities that should be permissible in disputed waters in the absence of a provisional arrangement. 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. The criteria used by international courts and tribunals in assessing a request for interim measures, notably the risk of physical damage to the seabed or subsoil, therefore appropriately guide this Tribunal’s analysis of an alleged violation of a party’s obligations under Articles 74(3) and 83(3) of the Convention.¹⁴³

127. It was not explained why the exceptional character of provisional measures makes the threshold of “irreparable prejudice” higher than that of “jeopardize or hamper” provided in Articles 74(3) and 83(3). However, this seems to follow from the natural meaning of those words, and this analysis has gained a good deal of support.¹⁴⁴
128. Since the *Aegean Sea* case, the “irreparable prejudice” test has been referred to by several tribunals when deciding whether an activity in question can be conducted legally or not in an undelimited maritime area. However, while this formulation of the criterion has not changed, its substance appears at first sight to have done so. In the *Aegean Sea* case, physical change was considered as a requirement *sine qua non* for irreparable prejudice.¹⁴⁵ The arbitral tribunal in the *Guyana v Suriname* case said that it was guided by the same criteria, “notably the risk of physical damage to the seabed or subsoil”, in the context of hydrocarbon activities.¹⁴⁶ However, in its Provisional Measures order in the *Ghana/Côte d’Ivoire* case in 2015, the ITLOS seems to have recognised that the right to

¹⁴¹ *The Pulp Mills (Argentina v Uruguay) case, Provisional Measures*, Order of 23 January 2007 [2007] ICJ Rep 8, para 32.

¹⁴² *M/V ‘Louisa’ (Saint Vincent and the Grenadines v Kingdom of Spain) Provisional Measures*, Order of 23 December 2010) ITLOS Reports 2008–2010, 58, para 72; *The Delimitation of the Maritime Boundary (Ghana v Côte d’Ivoire)* (Provisional Measures, Order of 24 April 2015), para 41; *The “Enrica Lexie” Incident (Italy v India)*, (Provisional Measures, Order of 24 August 2015), para 87. But the requirement for “urgent necessity” was not applied in the *MOX Plant Case (Ireland v United Kingdom)* (Provisional Measures, Order of 3 December 2001) ITLOS Reports 2001, 95.

¹⁴³ *Guyana v Suriname* case.

¹⁴⁴ See K Hossain, ‘United Nations Convention on the Law of the Sea and Provisional Arrangements Relating to Activities in Disputed Maritime Areas’ in L del Castillo (ed), *Law of the Sea, From Grotius to the International Tribunal for the Law of the Sea* (Springer 2015) 678; Anderson and van Logchem (n 32), 220; and N Okuwaki, ‘Obligations of Self-Restraint and Cooperation of Coastal States in Maritime Areas pending Delimitation’ presentation at The International Symposium on the Law of the Sea ‘The Rule of Law in the Seas of Asia: Navigational Chart for Peace and Stability’, Japan, 2015, 88.

¹⁴⁵ *Aegean Sea Continental Shelf case (Greece v Turkey)* (Interim Protection, Order of 11 September 1976) [1976] ICJ Rep 3, para 32.

¹⁴⁶ *Guyana v Suriname* case, paras 466–9.

information can be infringed in an irreparable manner.¹⁴⁷ In other words, even without physical damage, the irreparable prejudice test can be fulfilled. This serves to emphasise that the primary test applied in provisional measures cases is that of “irreparable prejudice” to the *rights of the parties*, not irreparable damage to the marine environment. Irreparable environmental damage is an example of how the test may be satisfied in particular contexts such as hydrocarbon activity. This perhaps invites a comparison with the “jeopardize or hamper” test in Articles 74(3) and 83(3); the criterion of “risk of physical damage to the seabed or subsoil” was applied by the *Guyana v Suriname* tribunal as the appropriate one in the context of the activities in question. It does not follow that in other contexts there must be a risk of physical damage before the obligations of restraint in Articles 74(3) and 83(3) are engaged. The primary criterion is whether the activity in question would “jeopardize or hamper” the reaching of a final delimitation agreement, and more specific criteria may need to be developed in the context of each type of activity.¹⁴⁸

B. Plausibility of the rights

129. As well as the requirement of irreparable prejudice to the rights of a State, the prescription of provisional measures requires that the right to be protected must be plausible. Unlike the irreparability test, the requirement of plausibility is quite new and controversial. Some commentators had been negative about introducing a requirement of plausibility,¹⁴⁹ mainly because of the idea that substantive rights and obligations should not be assessed at the stage of provisional measures. However, in the *Belgium v Senegal* case,¹⁵⁰ the ICJ for the first time enunciated a requirement of plausibility which it reaffirmed in subsequent cases.¹⁵¹ At ITLOS, the test was first applied by the Special Chamber in the *Ghana/Côte d’Ivoire* case in 2015 and was subsequently applied in the *Enrica Lexie* case.¹⁵² It appears therefore that this requirement has now been established both in the practice of the ICJ and ITLOS when they prescribe provisional measures.¹⁵³
130. Given that this requirement was first introduced by the ICJ in the *Belgium v Senegal* case in 2009, it is not surprising that the arbitral tribunal did not refer to the plausibility test in *Guyana v Suriname*. Therefore, there are no precedents that apply by analogy the requirement of plausibility to the obligation of restraint in Articles 74(3) and 83(3) of UNCLOS. However, because of the perspectives of both necessity and permissibility, as shown below, it could be argued that a requirement of plausibility should be understood to apply to the obligation of restraint as well as the irreparability test.

¹⁴⁷ *Dispute Concerning Delimitation of the Maritime Boundary (Ghana/Côte d’Ivoire)* (Provisional Measures, Order of 24 April 2015) para 96.

¹⁴⁸ See Section 2.5.2 (A) above, especially paras 84–99.

¹⁴⁹ J Sztucki, *Interim Measures in the Hague Court* (Brill Archive 1983) 123; J Merrills, ‘Interim Measures of Protection in the Recent Jurisprudence of the International Court of Justice’ (1995) 44 ICLQ 114.

¹⁵⁰ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* (Provisional Measures, Order of 28 May 2009) [2009] ICJ Rep 139, 151.

¹⁵¹ *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v Nicaragua)* (Provisional Measures, Order of 8 March 2011) [2011] ICJ Rep 6, 18; *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica)* (Provisional Measures, Order of 22 November 2013) [2013] ICJ Rep 354; *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v Australia)* (Provisional Measures, Order of 3 March 2014) [2014] ICJ Rep 147, 153.

¹⁵² *Dispute Concerning Delimitation of the Maritime Boundary (Ghana/Côte d’Ivoire)* (Provisional Measures, Order of 24 April 2015), paras 58 and 62; *The “Enrica Lexie” Incident (Italy v India)* (Provisional Measures, Order of 24 August 2015) paras 84–5.

¹⁵³ Y Tanaka, ‘Unilateral Exploration and Exploitation of Natural Resources in Disputed Areas: A Note on the Ghana/Côte d’Ivoire Order of 25 April 2015 before the Special Chamber of ITLOS, (2015) 46 Ocean Development & International Law 318–9.

131. On this argument, if the purpose of the obligation not to jeopardise or hamper is understood as being to protect the future rights of a State within its maritime zones, then the obligation of restraint will only be applicable in respect of those zones where the future rights claimed have a plausible basis. There is a danger however that if a plausibility test is incorporated, it could lead to an argument that the content of the obligation of restraint varies depending on the strength of the maritime claim of the other State to the area in question. The counter-argument is however obvious; that the content of the obligation not to jeopardise or hamper is not intended to be tied directly to the merits of each party's claim, as this would defeat the purpose of paragraph 3 in preserving co-operative relations pending an agreement or adjudication on the boundary. If the concept of "plausibility" were to be developed as an element of the jurisprudence on the paragraph 3 obligations, it is important that it remain at the "prima facie" threshold level.¹⁵⁴
132. The way the ITLOS has applied the plausibility test in some recent provisional measures cases seems to bear some similarity with the concept that the lawfulness of an act in the undelimited area depends on its propensity to jeopardise or hamper. Here, the relationship between each State's rights and obligations must be conceived correlatively and relatively. On that point, the ITLOS interestingly applied the plausibility test to both parties to the dispute in the *Enrica Lexie* case, namely, Italy and India.¹⁵⁵ As Judge Heidar correctly pointed out, the requirements for the prescription of provisional measures should be satisfied by the applicant (in the *Enrica Lexie* case, Italy), but the other party does not need to do so.¹⁵⁶ However, the ITLOS put a burden on both parties to show the plausibility of their rights. That is probably because the Tribunal thought that both Italy and India could have the right to prosecute the Italian marines, and that it had equally to preserve those potential rights. In the same way, the obligation of restraint must preserve equally the potential rights of both States whose maritime zones overlap. As Tas argues, "the rationale for the traditional position is that the unilateral exercise of sovereign rights by a state in an overlapping area will breach the inviolability of the other state's sovereign rights, and deprive that other state of the profit which it may otherwise have made."¹⁵⁷
133. It is not yet clear whether "plausibility" will become accepted as an element in the interpretation of the obligation not to jeopardise or hamper. In most situations, where a government is assessing what it may or may not do unilaterally, in the absence of provisional arrangements or even active negotiations with its neighbour, it may be impractical to apply such a vague criterion to the other side's claims, and to attempt to do so might risk the credibility of its own legal position. However, in the event that a court or tribunal determines that there has been a violation of the obligation, the plausibility of the aggrieved State's maritime claim might be considered relevant to the type and level of reparations to which it is judged to be entitled.

¹⁵⁴ As applied by the ITLOS in the "*Enrica Lexie*" Incident (*Italy v India*) (Provisional Measures, Order of 24 August 2015) paras 84–5.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid, Dissenting Opinion of Judge Heidar, paras 19–20.

¹⁵⁷ D Tas, 'Oil and Gas in the East China Sea: Maritime Boundaries, Joint Development and the Rule of Capture', (2011) 29 International Energy Law Review 59.

State Practice Concerning States' Obligations in Undelimited Maritime Areas

134. The following seven sections set out relevant State practice in the regions studied by the research team. The research was divided into geographic regions for reasons of convenience and no weight should be attached to the manner in which the regions were divided. For pragmatic reasons, in particular constraints of time, it was decided to limit the study to materials published in English or Japanese (being the only native languages among the members of the research team). This was a factor in the decision to select certain regions (eg the Caribbean and Northern South America) and to omit others (eg the rest of South America).
135. The methodological approach used was “inductive” insofar as the team identified practice within their personal knowledge; discussed in the secondary literature; referred to in the proceedings of formal dispute settlement (awards, judgments, pleadings, annexes, exhibits, etc); and, particularly for contemporary practice, reported in news media and other sources such as specialist industry publications. Having identified relevant State practice, the aim was to develop a fuller picture of this practice, where possible with reference to other sources. This report does not claim to provide a comprehensive list of all potentially relevant practice, even in the regions selected for study. Moreover, the linguistic limitations (referred to in the previous paragraph) resulted unavoidably in some unevenness of materials studied in relation to boundaries between States whose official language is English or Japanese, and other States, where relevant materials could not be located in English translation.
136. In analysing the types of practice that may be relevant and its significance, the research was guided by, inter alia, the ongoing work of the ILC on “Identification of customary international law”¹⁵⁸ and on “Subsequent agreements and subsequent practice in relation to interpretation of treaties”.¹⁵⁹ Draft conclusion 6 of the Second Report on identification of customary international law by Sir Michael Wood, Special Rapporteur provides “State practice consists of conduct that is attributable to a State, whether in the exercise of executive, legislative, judicial or any other function.”¹⁶⁰ The report gives a non-exhaustive list of forms of State practice, including physical actions of States, acts of the executive branch, diplomatic acts and correspondence, legislative acts and practice in connection with treaties. The majority of relevant practice identified by the research team consists of physical acts, legislative acts and official statements, as set out in the seven sections below.
137. State inaction is a particularly important category of State practice in the context of this report. It is of particular relevance both to the determination of the existence of a customary international law obligation, and to the interpretation of UNCLOS obligations.

¹⁵⁸ http://legal.un.org/ilc/summaries/1_13.shtml. See also, eg J Crawford, (n 123), 23–30, and the literature cited therein.

¹⁵⁹ http://legal.un.org/ilc/summaries/1_11.shtml. See also, eg (n 123), 30–4 and 380–4, and the literature cited therein.

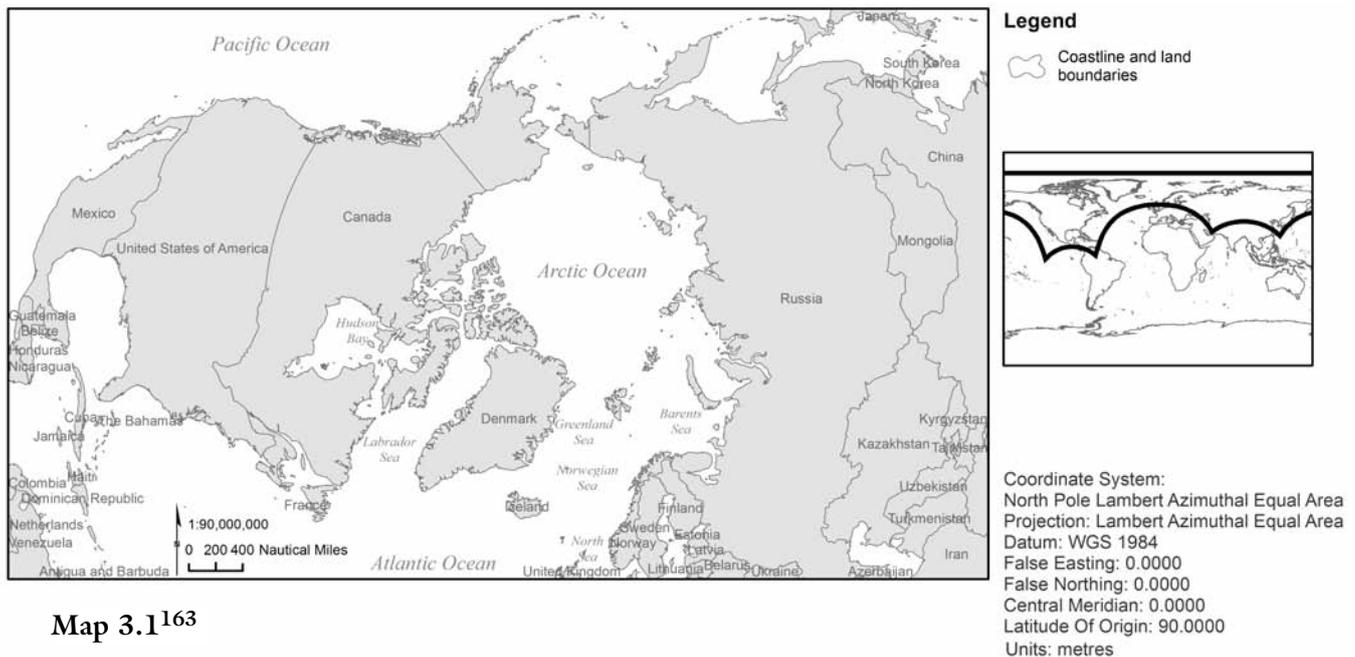
¹⁶⁰ Second report on identification of customary international law by M Wood, Special Rapporteur, UN Doc /CN.4/672, para 37.

138. Inaction “when general and coupled with acceptance as law” may give rise to a rule of customary international law.¹⁶¹ When evaluating the existence of a customary international law obligation of restraint, the absence of State activity is highly relevant. In analysing such practice, the research team were particularly concerned with establishing whether restraint was accompanied by any indication that a State considered itself bound by an obligation of restraint, ie evidence of “acceptance as law” of the obligation of restraint. Given the general tendency of States not to announce the legal motivation for their own decision not to undertake an activity, where a “non-acting” State protests against the equivalent activity by its neighbour, any legal argument contained within that protest is noted, as it could be relevant to its own decision to refrain from that activity in the disputed area.
139. When interpreting treaties, conduct by one or more parties in the application of the treaty, after its conclusion, may be relevant as a supplementary means of interpretation. As argued above, this is particularly relevant in the case of the obligation not to jeopardise or hamper.¹⁶² State conduct may, in certain circumstances, include inaction. Given that the main obligation in Articles 74 and 83(3) is to refrain from action, a positive decision to refrain is certainly highly relevant State conduct. Evidence of inaction is also very pertinent, even if there is no evidence that it resulted from a specific decision of a State body. However, the real difficulty lies in assessing whether the decision to refrain, or the inaction itself, is “in application of” the obligation not to jeopardise or hamper in Articles 74 and 83(3). As noted above, States rarely make public their legal reason for not taking action, even when they have one. Potentially relevant examples of restraint are recorded in this report, with or without evidence of legal motivation.
140. In most cases where evidence of the acceptance of, and substantive content of, an obligation of restraint was identified, it was difficult to determine whether the source of binding obligation was Articles 74(3) and 83(3) or a broader customary international law principle of restraint or non-aggravation. States’ references to legal obligations are commonly made in vague terms, which may not refer to UNCLOS even when the State concerned is a party and might be presumed, from the context, to have UNCLOS in mind. The State practice set out below therefore includes States Parties to UNCLOS and non-Party States and past practice relating to areas which are now delimited from the period when it was undelimited. Inferences are drawn where possible, from the available information, as to whether the source of the obligation underlying the practice appears to be Articles 74(3) and 83(3) UNCLOS or not, but where there is insufficient information, the practice is recorded without attempting to classify its legal significance.
141. Regarding practice in connection with provisional arrangements, as set out in Section 2.4 above, Articles 74(3) and 83(3) set out the obligation to make every effort to enter into provisional arrangements of a practical nature pending delimitation. In practice, such arrangements generally take the form of bilateral agreements (binding or non-binding), providing either for provisional boundary lines or areas of joint management or co-operation. Details of such arrangements were noted by the research team in each of the relevant regional sections for several reasons: primarily, to help identify the undelimited areas where there are no (or limited) provisional arrangements; secondly to highlight those arrangements which expressly refer to the paragraph 3 obligations; and thirdly, as part of general background information about that region. It should however be borne in mind that it is difficult to infer, from the contents of such arrangements, what view those parties might have taken on the content of the obligation not to jeopardise or hamper in the absence of them.

¹⁶¹ Third report on the identification of customary international law by M Wood, Special Rapporteur, UN Doc /CN.4/682, para 20.

¹⁶² See Section 2.5.2 above, especially paras 80–1.

3.1 The North America, Arctic and Sub-Arctic Region



Map 3.1¹⁶³

3.1.1 INTRODUCTION¹⁶⁴

142. There are 13 areas in the Arctic and North America where the fishing zones (FZs)/EEZs and continental shelves¹⁶⁵ of adjacent and/or opposite States overlap, or could overlap. In terms of the pairs of States involved, and moving from east to west, these 13 areas concern the following States: (1) Norway-Russia; (2) Norway (Svalbard)-Denmark (Greenland); (3) Denmark (Faeroe Islands)-Iceland; (4) Norway (Jan Mayen)-Iceland; (5) Norway (Jan Mayen)-Denmark (Greenland); (6) Iceland-Denmark (Greenland); (7) Denmark (Greenland)-Canada; (8) Canada-France (St. Pierre and Miquelon); (9) Canada-USA (Gulf of Maine); (10) Canada-USA (west of Juan de Fuca Strait, between the state of Washington and British Columbia); (11) Canada-USA (Dixon Entrance, between Alaska and British Columbia); (12) Canada-USA (Beaufort Sea); and (13) Russia-USA.

143. Of these 13 areas, a maritime boundary for the FZ/EEZ and continental shelf has been delimited in 10 cases. The exceptions are areas Nos 10–12 listed above. In seven areas the boundary was delimited by agreement between the States concerned. Two delimitations were effected by the ICJ (in areas Nos 5 and 9), and one by an arbitral tribunal (No 8). Nine of the ten boundaries are single maritime boundaries for both seabed (continental shelf) and superjacent waters (FZ or EEZ); the tenth (between Denmark (Greenland) and Canada) is formally a continental shelf boundary only, but has been treated by the two States concerned as also being the boundary for their FZs (later converted to EEZs).¹⁶⁶

¹⁶³ The map above is to give the reader a broad overview of the region discussed in this section, and no comment is made on the status of any lines represented therein, nor on any nomenclature. The region studied is described more precisely in the text which follows.

¹⁶⁴ The authors are grateful to Kevin Baumert, Office of the Legal Adviser, US Department of State, for his helpful comments on a draft of this section.

¹⁶⁵ In this section the term “continental shelf” (or “shelves”) refers only to the continental shelf within 200 nm of the baselines unless otherwise indicated.

¹⁶⁶ DH Gray, ‘Canada’s Unresolved Maritime Boundaries’ (1997) 5(3) IBRU Boundary and Security Bulletin 61 at 68; J Charney and L Alexander (eds), *International Maritime Boundaries*, Vol I (Martinus Nijhoff 1993) 372–3.

144. In three of the 13 areas in the region listed above, the maritime zones claimed by the States concerned were delineated in such a way that they did not overlap before the maritime boundary was determined, or in the case of one still undelimited boundary, do not overlap. Typically, this may happen when each State of a pair provides in its legislation that the maritime zone in question is not to extend beyond the median line vis-à-vis the other State and does not seek to go beyond that line in diplomatic negotiations: as long as there is no significant difference in the choice of base points used to calculate the median line, there will be no overlap, or at least no significant overlap, of the maritime zones of the States concerned. This was the position with Norway (Svalbard) and Denmark (Greenland) (area No 2 above), each party's legislation providing that the outer limit of their zones should not extend beyond the median line: that line subsequently became the agreed boundary so it is probably fair to assume that in the boundary negotiations neither party advocated a significantly different line.¹⁶⁷ The position is similar as regards the currently undelimited boundary between Canada and the USA in the area west of Juan de Fuca Strait (No 10).¹⁶⁸ In the area between the Norwegian island of Jan Mayen and Iceland (No 4), the situation was different. Norway did not establish a 200 nm zone around Jan Mayen until after the boundary had been agreed: furthermore, the continental shelves of Jan Mayen and Iceland did not overlap under the then law governing the outer limit of the continental shelf.¹⁶⁹ A mutual decision not to extend a maritime zone beyond the median line pending boundary delimitation (as in the case of areas Nos 2 and 10), or the action taken by Norway in relation to Jan Mayen, are in themselves arguably a form of restraint. It would therefore seem unrealistic to expect to find further practice of restraint in these three areas, and so they are not considered further in the discussion that follows.
145. Thus, there are 10, rather than 13, areas in the region that need to be examined further to try to discover whether or not the States concerned recognise, or, in the areas where a maritime boundary has already been established, recognised, an obligation of restraint in an undelimited area prior to the delimitation of a maritime boundary.
146. In carrying out the examination described, it is helpful to distinguish between the exercise of continental shelf rights and the exercise of FZ/EEZ rights.

3.1.2 CONTINENTAL SHELF RIGHTS

147. We have been able to discover some acknowledgment of an obligation to show restraint in the exercise of continental shelf rights in an undelimited area in four of the ten areas that require examination. All four cases predate the entry into force of UNCLOS and its obligation of restraint contained in paragraph 3 of Articles 74 and 83. Thus, the source of the obligation that has been recognised must be customary international law. The first case concerns the Barents Sea. Before Norway and Russia established a comprehensive maritime boundary by two agreements concluded in 2007 and 2010,¹⁷⁰ they recognised an obligation of restraint. According to the Norwegian government, "since the 1980s Norway and Russia have agreed not to explore for or exploit petroleum resources in the disputed area, a so-called moratorium".¹⁷¹ Furthermore, in 1982, the

¹⁶⁷ DA Colson and RW Smith (eds), *International Maritime Boundaries*, Vol VI (Martinus Nijhoff 2011) 4519.

¹⁶⁸ Gray (n 165), 62. There are a few very small areas of overlap, amounting to about 15 nm², due to differences in the parties' choice of basepoints.

¹⁶⁹ RR Churchill, 'Maritime Delimitation in the Jan Mayen Area' (1985) 9 *Marine Policy* 16–8.

¹⁷⁰ Agreement between the Russian Federation and Norway on the Maritime Delimitation in the Varangerfjord Area (signed 11 July 2007, entered into force 9 July 2008) 2526 UNTS 33; and Treaty between Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and Arctic Ocean (signed 15 September 2010, entered into force 7 July 2011) 2791 UNTS.

¹⁷¹ Norwegian government document Prop. 43 S (2010–2011), requesting the consent of the Storting (Parliament) to ratification of the 2010 agreement referred to in the previous note, 9 (translation from the Norwegian by RR Churchill).

Norwegian Minister for Oil and Energy stated, in reply to a question in the Norwegian Parliament (Storting) stated that “international law requires mutual restraint [in disputed areas]. The outcome of the boundary negotiations must not be anticipated through unilateral action.”¹⁷²

148. Although negotiations for a continental shelf boundary began in 1970, at that time, and for some time thereafter, the technology did not exist to allow the two States to exercise their continental shelf rights in the Barents Sea, nor at that time did the parties have much experience in the offshore exploitation of oil and gas: for example, production of hydrocarbons in the Norwegian sector of the North Sea, the first area of the Norwegian continental shelf to be exploited, did not begin until the early/mid 1970s. It is therefore not surprising that the parties did not acknowledge an obligation to exercise restraint until the 1980s: by this time, the two States were in a position to consider exercising their continental shelf rights in the Barents Sea, which was thought to have considerable hydrocarbon potential.
149. In practice, Norway and the Soviet Union/Russia largely complied with the obligation of restraint that according to the Norwegian government they recognised. In 1983 a Soviet drilling ship drilled 1.5 nm within the disputed area (ie the area between the equidistance line, advocated by Norway as the boundary, and the sector line, advocated by the Soviet Union/Russia), but it later transpired that this breach of the obligation had been accidental and in any case was within the 2-3 nm margin of error corridor recognised by the Norwegian government.¹⁷³ Both Norway and the Soviet Union engaged in some seismic testing in the disputed area.¹⁷⁴ Although each State protested the actions of the other, in view of what was said in the subsequent *Guyana/Suriname* case (see Section 2 above), it may be doubted whether such seismic testing would necessarily have represented a breach of the obligation of restraint.
150. The second and third areas where an obligation of restraint appears to have been recognised, although not without a degree of ambiguity and uncertainty, both concern Canada and the USA. The first is the Gulf of Maine. Here Canada and the USA began issuing licences for exploration of the continental shelf in the early 1960s. In 1969 the USA proposed a moratorium on exploration and exploitation of Georges Bank (the central area of the Gulf of Maine in dispute), but this was rejected by Canada. Nevertheless, thereafter the two States exercised a policy of restraint, issuing exploration licences for only the undisputed part of Georges Bank and not allowing any drilling activities to take place anywhere on Georges Bank.¹⁷⁵ Such restraint seems to have been motivated primarily by a wish not to make negotiations over a maritime boundary more difficult,¹⁷⁶ but it is not clear whether this constitutes *opinio iuris* relating to the recognition of a pre-existing obligation of restraint.
151. The second area involving Canada and the USA where an obligation of restraint may have been recognised concerns the Beaufort Sea. According to one writer, in this currently undelimited area the two States have “established a moratorium on exploration” in the disputed area (ie the area between the equidistance line, advocated by the USA as the boundary, and the line of longitude of 141° West, advocated by Canada).¹⁷⁷ Another writer has supplied a little more detail and qualified what is meant by a moratorium in this context. According to McDorman, both Canada and the USA have issued exploration licences in the disputed area but do not allow drilling activities to take place there.¹⁷⁸

¹⁷² *Stortingstidene*, 1981–2, 2678 (translation from the Norwegian by RR Churchill).

¹⁷³ D Scrivener, *Oil, Fish and Strategy: The USSR, Svalbard and the Barents Sea* (Aberdeen Studies in Defence Economics No 27, 1987), 14.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/USA)*, [1984] ICJ Rep 246 at 279–81. See also the US memorial, paras 139–40 and 143; and TL McDorman, *Salt Water Neighbors: International Ocean Law Relations between the United States and Canada* (OUP 2009), 134–5.

¹⁷⁶ *Gulf of Maine* case (previous note), at 282; US memorial, para 154; Canadian memorial, para 222.

¹⁷⁷ Gray (n 165) at 63. Unfortunately, Gray does not give any authority to support this statement.

¹⁷⁸ McDorman (n 175), 187–8.

Whether this is because of the recognition of a pre-existing obligation is not clear. If, as is arguably the case, Canada and the USA have recognised the existence of an obligation of restraint in the exercise of continental shelf rights in two undelimited areas, it might be reasonable to assume that they would also recognise the same obligation in the undelimited area in the Dixon Entrance.

152. The fourth area where there is some evidence of recognition of an obligation of restraint in the exercise of continental shelf rights concerns the former Soviet Union/Russia and the USA (area No 13). For many years preceding agreement on a boundary, both parties had accepted that they would not exercise maritime jurisdiction beyond their side of the line established as the western limit of the territory ceded by Russia to the USA (ie Alaska) by a treaty of 1867.¹⁷⁹ However, they disagreed on the method by which that line was drawn, the then Soviet Union arguing that it was a rhumb line, the USA that it was the arc of a great circle. This difference of view meant that there was an area of overlap between each party's location of the line of some 21,000 nm². In 1984 the USA instituted special procedures for placing in escrow lease bids from the highest bidder for hydrocarbon licences in the Navarin Basin Area of the overlapping claims.¹⁸⁰ The Soviet Union did not engage in any hydrocarbon activities in the overlapping area prior to the establishment of a maritime boundary, which was based on the 1867 line, in 1990.¹⁸¹ It is not clear how far the US action was motivated by a recognition that it was subject to an obligation of restraint.
153. In the remaining areas in the region, we have been unable to find any evidence of a recognition of an obligation of restraint. However, in three of those areas, Nos 5 (between Norway (Jan Mayen) and Denmark (Greenland)), 6 (between Iceland and Denmark (Greenland)) and 7 (between Denmark (Greenland) and Canada), there was no practical prospect of the exercise of continental shelf rights during the period before those areas were delimited, in 1993, 1997 and 1973, respectively. That was so for various reasons, including the belief that there was little prospect of finding hydrocarbons in the three undelimited areas; the fact that the depth of water in much of those areas was greater than offshore technology at that time was capable of exploiting; the presence of significant amounts of sea ice for part of the year; and the distance of the three areas from any possible base for offshore activities (for example, the coast of eastern Greenland opposite two of the disputed areas is barren and uninhabited and Jan Mayen has no permanent population). The undelimited area between Denmark (Faroe Islands) and Iceland also had some of those qualities before it was delimited in 2007. In an undelimited area having such qualities, it would be unrealistic to expect the States concerned publicly to recognise an obligation of restraint because it would have no prospect of practical application. It is suggested that the absence of practice relating to restraint in the exercise of continental shelf rights in disputed areas in which at the relevant time there was no prospect of such exercise because of technological, climatic and other factors should be regarded as neutral in terms of seeking to establish whether or not there is a rule of customary international law requiring such restraint, rather than being considered as negative practice.
154. The final area concerns France, in respect of the islands of St Pierre and Miquelon, which are situated just off the coast of Newfoundland, and Canada. According to the award of the arbitral tribunal that delimited the maritime boundary between the two States, both States began issuing hydrocarbon exploration licences for the undelimited area in 1966: however, "after reciprocal protests, no drilling was undertaken".¹⁸² The award does not indicate the reason for those protests. If it was because each

¹⁷⁹ Convention ceding Alaska between Russia and the United States (18/30 March, 1867), 134 CTS 331.

¹⁸⁰ Charney and Alexander (n 165), 450.

¹⁸¹ Agreement between the United States and the Soviet Socialist Republic on the Maritime Boundary (signed 1 June 1990) 29 ILM 941, applied provisionally in accordance with Agreement to abide by the terms of the Maritime Boundary Agreement of 1 June 1990, pending entry into force (1 June 2016, effective from 15 June 1990) 2262 UNTS 407).

¹⁸² *Decision in Case Concerning Delimitation of Maritime Areas (Saint Pierre and Miquelon)* (Court of Arbitration for the Delimitation of Maritime Areas between Canada and France) (1992) 31 ILM 1145, paras 8 and 89.

party considered that the other had breached an obligation of restraint in the undelimited area, then clearly this area should be added to those discussed above where there was an acknowledgment of a pre-existing obligation of restraint.

3.1.3 FZ/EEZ RIGHTS

155. The prospects of finding practice in relation to restraint in the exercise of EEZ rights (other than EEZ fisheries rights) in the region are limited. In two areas (Nos 5 and 7 in the list above), neither of the two parties had claimed an EEZ prior to the delimitation of the maritime boundary. In another four areas (Nos 3, 6, 8 and 9), only one of the two parties had claimed an EEZ prior to delimitation. In the case of those States that did claim an EEZ prior to delimitation of the maritime boundary, we have been unable to find any relevant practice in relation to EEZ rights other than fisheries rights. That is also the case with the currently undelimited areas involving Canada and the USA, both of which claim an EEZ. We have, however, found some limited practice relating to FZ rights and to the fisheries rights exercisable under the regime of the EEZ. As it happens, fisheries issues were (and in the case of the currently undelimited areas continue to be) at the heart of maritime boundary delimitation in most of the 10 areas, the main exception being the Beaufort Sea.
156. In four of these areas there has been or is some, admittedly ambiguous, evidence of an obligation of restraint. First, in the undelimited area between Canada and the USA in the Dixon Entrance (area No 11), each party has demonstrated a degree of restraint by refraining from exercising enforcement jurisdiction in respect of vessels of the other party fishing in that area.¹⁸³ Second, in the Gulf of Maine, the same kind of restraint was incorporated in a succession of short-term agreements between Canada and the USA that covered the period from the establishment of a 200 nm FZ by each party in 1977 until the judgment of the ICJ delimiting the boundary in the *Gulf of Maine* case in 1984.¹⁸⁴ Third, in the undelimited area between the then Soviet Union and the USA in the Bering Sea, enforcement difficulties arose after each party established a 200 nm zone of fisheries jurisdiction in 1977. In 1986 the parties agreed to refrain from exercising enforcement jurisdiction in respect of the vessels of the other party.¹⁸⁵ Fourth, in the undelimited area between Norway (Jan Mayen) and Denmark (Greenland), the parties did for a very short while (at the end of August 1981) exercise enforcement jurisdiction in respect of vessels of the other party fishing in that area, but thereafter they agreed on an interim arrangement that involved each party confining the exercise of enforcement jurisdiction to its own vessels and joint management of capelin stocks (at the time the only stock of commercial interest in the area). This arrangement lasted until the ICJ gave its judgment on delimitation of the maritime boundary in 1993.¹⁸⁶
157. In all four instances (in the last three of which the relevant practice preceded the entry into force of UNCLOS), it is not clear whether the restraint shown by the parties was motivated by an acknowledgement of some pre-existing obligation to show restraint or simply by more immediate and pragmatic considerations. In any case, in so far as the restraint described above was incorporated in more or less formal arrangements (as that in the Gulf of Maine certainly was), it is better regarded as a provisional arrangement rather than unilateral (or mutual) restraint as such.

¹⁸³ McDorman (n 175), 172.

¹⁸⁴ US Memorial in the *Gulf of Maine* case, paras 151–2 and 159. See also Charney and Alexander (eds), (n 165), 403.

¹⁸⁵ Charney and Alexander, (n 166), 448–50.

¹⁸⁶ See *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v Norway)* [1993] ICJ Rep 38, Memorial of Denmark, 17–8. The Counter-Memorial of Norway (75–6) gives a somewhat different and rather less positive version of developments at this time. The parties continued to maintain their differing accounts in their Reply and Rejoinder.

158. In the undelimited area between Iceland and Greenland (No 6), the parties did at times exercise enforcement jurisdiction against the fishing vessels of the other party prior to delimitation of the maritime boundary.¹⁸⁷ Unlike the situation involving Denmark and Norway, we have not discovered whether any agreement or arrangement was subsequently concluded between the parties to show restraint so as to avoid such incidents. In two undelimited areas, concerning Denmark (Faroe Islands) and Iceland, and France (St. Pierre and Miquelon and Canada), we have not been able to discover any relevant practice by the parties. In the case of the area between Denmark (Greenland) and Canada, the parties agreed on a continental shelf boundary, which (as pointed out earlier) is also the de facto EEZ boundary, several years before extending their fisheries jurisdiction to 200 nm, thus the issue of restraint did not arise.
159. That leaves the position in the Barents Sea (area No 1) and the Beaufort Sea (No 12) to be examined. In the Barents Sea, Norway and the then Soviet Union concluded an agreement establishing a provisional fisheries arrangement in January 1978, only a few months after they had established 200 nm zones of fisheries' jurisdiction.¹⁸⁸ The agreement regulated fishing, including the exercise of enforcement jurisdiction, in most of the disputed area (ie the area between the equidistance line, advocated by Norway as the boundary, and the sector line, advocated by the Soviet Union/Russia), as well as in two smaller areas of undisputed Norwegian and Soviet EEZ outside the disputed area. The agreement was originally concluded for one year, with the option of annual renewals thereafter. That option was exercised continuously until the entry into force in 2011 of the 2010 maritime boundary treaty, when the agreement lapsed.¹⁸⁹ In terms of a possible obligation of restraint in relation to the exercise of FZ/EEZ fisheries rights, the agreement clearly rendered such an obligation superfluous. As regards the short period between the initial overlap of the parties' 200 nm zones and the conclusion of the agreement, we have no information as to whether the parties recognised an obligation of restraint.
160. At present and for the immediate future the Beaufort Sea is of no real interest to commercial fishing vessels because of its location and the presence of ice for large parts of the year. Some limited fishing by native peoples takes place in coastal waters, but is unlikely to extend beyond the territorial sea. In 2009 the USA adopted an Arctic Fisheries Management Plan which prohibits any future commercial fishing in the US EEZ in the Arctic until sufficient information is available to support the sustainable management of a commercial fishery.¹⁹⁰ Clearly, this moratorium was prompted for reasons other than the acknowledgement of an obligation of restraint in undelimited boundary areas. Given the lack of commercial fishing in the Beaufort Sea, it would be unrealistic to expect the parties to acknowledge an obligation of restraint in regard to the exercise of EEZ fisheries rights. Thus, this area should be discounted in any assessment of practice to determine whether there exists a rule of customary international law on restraint in the exercise of FZ/EEZ rights in an undelimited area, in the same way as was argued above should be done in the case of undelimited areas where there are no realistic prospects of the exercise of continental shelf rights.

3.1.4 ANALYSIS

161. We have found evidence of restraint in the exercise of continental shelf rights in four areas in the region. It is not always clear whether such restraint stemmed from a sense of the States concerned being under a legal obligation to exercise restraint. If it did, the source of that obligation must have

¹⁸⁷ J Charney and R Smith (eds), *International Maritime Boundaries*, Vol IV (Martinus Nijhoff 2002), 2946.

¹⁸⁸ Agreement between Norway and the Soviet Union on a Temporary Practical Arrangement for Fishing in an Adjacent Area in the Barents Sea, signed 11 January 1978) [1978] *Overenskomster med fremmede Stater* [Norwegian Treaty Series] 436. English translation in the *Greenland/Jan Mayen* case, Counter-Memorial of Norway, Vol II, 230 (Annex 62).

¹⁸⁹ Prop. 43 S (2010–11) (n 170) 8.

¹⁹⁰ Fishery Management Plan for Fish Resources of the Arctic Management Area, available at: <http://www.npfmc.org/wp-content/PDFdocuments/fmp/Arctic/ArcticFMP.pdf>. 31.

been customary international law, as the restraint in question predated the entry into force of UNCLOS. In three or four areas, there was no prospect of continental shelf rights being exercised in practice prior to delimitation of a maritime boundary because of climatic and technological factors. It would therefore be unrealistic to expect to find any evidence of restraint in those areas.

162. We have also found evidence of restraint in the exercise of fisheries rights in four areas. In each case this restraint took the form of each State not exercising enforcement jurisdiction over fishing vessels of the other State in the disputed area. Again, it is not always clear whether such restraint stemmed from a sense of obligation. In one or two of the cases the restraint was the subject of some form of formal or informal agreement, and so may be better characterised as a provisional arrangement of the kind envisaged in Article 74(3) of UNCLOS, although UNCLOS had not entered into force at the time that these arrangements were concluded. That was also the case with the more formal provisional arrangement relating to fisheries in the Barents Sea. We have not been able to find any evidence of restraint being exercised in relation to EEZ rights other than fisheries rights.

3.2 The Caribbean and Gulf of Mexico Region



Map 3.2¹⁹¹

3.2.1 INTRODUCTION¹⁹²

163. This research zone includes the Caribbean Sea, the Gulf of Mexico and parts of the Pacific and Atlantic Oceans around the northern part of the South American continent. “The Caribbean Sea is an arm of the Atlantic Ocean partially enclosed to the north and east by the islands of the West Indies, and bounded to the south and west by South and Central America.”¹⁹³

¹⁹¹ The map above is to give the reader a broad overview of the region discussed in this section, and no comment is made on the status of any lines represented therein, nor on any nomenclature. The region studied is described more precisely in the text which follows.

¹⁹² The authors are grateful to Kevin Baumert, Office of the Legal Adviser, US Department of State, for his helpful comments on a draft of this section.

¹⁹³ *Territorial and Maritime Dispute (Nicaragua v Colombia)* (Merits) [2012] ICJ Rep 624 (hereafter *Nicaragua v Colombia* case) para 18.

164. The States and territories with maritime boundaries within this region are:

- Caribbean: Anguilla (UK), Antigua and Barbuda, The Bahamas, Barbados, British Virgin Islands (UK), Cayman Islands (UK), Dominica, Dominican Republic, Cuba, Grenada, Guadeloupe (France), Jamaica, Martinique (France), Montserrat (UK), Netherlands Antilles (Netherlands), Northern Saint-Martin (France), Puerto Rico (USA), Sint-Maarten (Netherlands), St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, Turks and Caicos Islands (UK), Virgin Islands of the United States (USA);
- Central America: Belize, Costa Rica, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Costa Rica, Panama, United States of America;
- South America: Venezuela, Colombia, French Guiana, Guyana, Suriname.

165. Most States in this region are party to UNCLOS. France, Netherlands and the UK are parties with respect to their overseas territories in the Caribbean. Four States in the region are not party to UNCLOS: Venezuela, Colombia, El Salvador and the USA.

166. There are over 30 sets of delimited boundaries in this region. Of these, four sets of boundaries have been delimited by judicial or arbitral award: Barbados/Trinidad and Tobago (arbitration, 2006);¹⁹⁴ Nicaragua v Colombia (ICJ, 2012);¹⁹⁵ Guyana v Suriname (arbitration 2007);¹⁹⁶ and Nicaragua v Honduras (ICJ, 2007).¹⁹⁷ One case is pending before the ICJ: Costa Rica/Nicaragua (ICJ, pending).¹⁹⁸ The other sets of boundaries are delimited by agreement.¹⁹⁹

167. There are a number of co-operative agreements in place in delimited areas of the Caribbean. Typically, the delimitation treaty itself sets up the co-operative arrangements. Notable examples include the following: the 1978 Agreement between Colombia and the Dominican Republic, which established the Joint Scientific Research and Common Fishing Exploitation Zone;²⁰⁰ the “Joint Regime Area” defined by the 1993 Maritime Delimitation Treaty between Colombia and Jamaica;²⁰¹ the 2001 Honduras/UK (Cayman Islands) delimitation agreement, which established co-operation on fishing by vessels of the Cayman Islands in the area of Misteriosa and Rosario Banks (within the EEZ of

¹⁹⁴ *Barbados v Trinidad and Tobago* (Annex VII Tribunal) (2006) 45 ILM 798.

¹⁹⁵ Up to 200 nm. *Nicaragua v Colombia* case, 624.

¹⁹⁶ Decided boundaries for the territorial sea, EEZ and continental shelf. *Arbitration between Guyana and Suriname* (Annex VII Tribunal) (2007) 139 ILR 566; (2008) 47 ILM 166 (hereafter *Guyana v Suriname* case).

¹⁹⁷ Determined a single maritime boundary that divides the territorial sea, continental shelf and exclusive economic zones, on the Caribbean side only. *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v Honduras)* (Merits) [2007] ICJ Rep 659 (hereafter *Nicaragua v Honduras* case).

¹⁹⁸ *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v Nicaragua)* (Pending) ICJ 2014. <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&case=157>.

¹⁹⁹ Agreement texts are cited in Annex I. It is difficult to give a precise number of delimited boundaries. We have identified 30 sets of maritime delimitation treaties, but in a few cases although a signed agreement has been published by one or other party, it has not been registered with the UN and we have not been able to ascertain whether it has been brought into force. The term “sets of boundaries” is used here to refer to two or more boundaries delimited by the same pair of States (or territories) whether in the same treaty or separate treaties. For example, there are two delimitation treaties between Costa Rica and Colombia, one for the Pacific side and one for the Caribbean side, and these are counted as one “set”. Non-sovereign territories are counted separately for this purpose.

²⁰⁰ Agreement on the Delimitation of the Marine and Submarine Areas and Maritime Cooperation between the Dominican Republic and the Republic of Colombia (signed 13 January 1978, entered into force 15 February 1979) 1275 UNTS 363. See D Freestone and C Schofield, ‘The Caribbean Sea and Gulf of Mexico’ in D Rothwell et al (eds), *The Oxford Handbook of The Law of the Sea* (OUP 2015) 693.

²⁰¹ Maritime delimitation treaty between Jamaica and the Republic of Colombia (signed 12 November 1993, entered into force 14 March 1994) 1776 UNTS 27. See D Freestone and C Schofield, ‘The Caribbean Sea and Gulf of Mexico’ in D Rothwell et al (eds), *The Oxford Handbook of The Law of the Sea* (OUP 2015) at (n 101), 693.

Honduras);²⁰² and the 2000 US/Mexico outer continental shelf delimitation agreement which makes provision for the possible future discovery of transboundary reservoirs, by prohibiting petroleum or natural gas drilling or exploitation of the continental shelf within 1.4 nautical miles of the agreed boundary, for agreed periods of time. The parties are also required to share any information about the possible existence of such transboundary reservoirs.²⁰³

168. This leaves around 50 sets of undelimited maritime boundaries in the region.²⁰⁴ In addition, some pairs of States which have certain boundaries delimited by agreement or award have other boundaries which were not included in the delimitation. For example, the *Honduras v Nicaragua* ICJ award delimited the boundary on the Caribbean side only, leaving their maritime zones on the Pacific Ocean side undelimited.²⁰⁵
169. The above figures include the Pacific Ocean side of the States within this region, in which there are nine maritime boundaries, three of which are delimited: Colombia/Panama (1976),²⁰⁶ Colombia/Costa Rica (1984)²⁰⁷ and Costa Rica/Panama (1980).²⁰⁸ The remaining six undelimited Pacific boundaries are: Honduras/Nicaragua, Costa Rica/Nicaragua, Nicaragua/El Salvador, El Salvador/Honduras, El Salvador/Guatemala and Guatemala/Mexico.
170. Normal baselines generally apply in the region. However, there are some issues in this regard. A number of Caribbean States have opted to draw straight baselines, some of which do not seem to be consistent with UNCLOS, eg those of Cuba and Venezuela.²⁰⁹ There are also a number of States which have defined archipelagic baselines pursuant to UNCLOS Article 47.²¹⁰ Not all of these are

²⁰² Treaty between the Government of the Republic of Honduras and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the delimitation of the maritime areas between the Cayman Islands and the Republic of Honduras (signed 4 December 2001, entered into force 1 March 2002), 2207 UNTS 497. See Annex B of the Treaty.

²⁰³ Treaty between the Government of the United States of America and the Government of the United Mexican States on the Delimitation of the Continental Shelf in the Western Gulf of Mexico beyond 200 Nautical Miles (signed 9 June 2000, entered into force 17 January 2001), 2143 UNTS 417. See Article IV of the Treaty.

²⁰⁴ The research team has compiled a list of the undelimited boundaries in this region, which is too long to include here. In counting "sets" of undelimited boundaries, the same method has been used as for delimited boundaries, ie each non-sovereign territory is counted separately, as a pair with each opposite or adjacent foreign State or territory; where the same pair of opposite or adjacent States/territories have more than one overlapping area to be delimited it is counted as one "set"; where the same pair of States/territories have delimited one or some of their boundaries but not others, they are counted in both the delimited list and the undelimited list. For example, the USA and Mexico have one treaty which delimited boundaries on the Pacific Ocean and Gulf of Mexico side and another which delimited the Continental Shelf in the western Gulf of Mexico beyond 200 nm, which are together counted as "one set" of delimited boundaries, but there is also an undelimited USA-Mexico continental shelf boundary beyond 200 nm in the Eastern area of the Gulf of Mexico. Therefore, the USA/Mexico is also counted once in the undelimited boundary list. The list contains around 45 sets of undelimited boundaries (excluding those between territories under the same sovereign State which do not require to be delimited under international law). However, it is possible that some others, tentatively counted as delimited, are in fact undelimited, eg because the treaty has been signed but not brought into force.

²⁰⁵ *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v Honduras)* (Merits) [2007] ICJ Rep 659.

²⁰⁶ Treaty on the delimitation of marine and submarine areas and related matters between the Republic of Panama and the Republic of Colombia (with maps), (signed 20 November 1976, entered into force 30 November 1977) 1074 UNTS 221.

²⁰⁷ Treaty on the Delimitation of Marine and Submarine Areas and Maritime Cooperation between the Republic of Colombia and the Republic of Costa Rica, additional to the Treaty signed at San José on 17 March 1977, (signed 6 April 1984, entered into force 20 February 2001) 2319 UNTS 401.

²⁰⁸ Treaty concerning delimitation of marine areas and maritime co-operation between the Republic of Costa Rica and the Republic of Panama, (signed 2 February 1980, entered into force 11 February 1982).

²⁰⁹ States in this region which have defined straight baselines include Belize, Colombia, Costa Rica, Cuba, Haiti, Honduras, Mexico, Nicaragua, Venezuela, TCI (UK): DOALOS website/database of claims.

²¹⁰ States in this region which have defined archipelagic baselines include Antigua & Barbuda, The Bahamas, Dominican Republic, Grenada, Jamaica, St Vincent & the Grenadines and Trinidad & Tobago: DOALOS website/database of claims.

necessarily consistent with UNCLOS, and where neighbouring States take a different view, this may give rise to complications in the delimitation process.²¹¹

171. There are numerous sovereignty disputes in the region, many of which concern ownership of small islands. In addition there are a number of disputes concerning the position of boundaries on the mainland of neighbouring States, with consequential disputes about the maritime boundaries extending from the disputed territory. There are relatively few incidents arising from pure maritime boundary disputes. This has made it difficult to identify which practice in the undelimited areas of this region is relevant to the interpretation of UNCLOS.²¹²
172. The Caribbean Sea and the Gulf of Mexico are semi-enclosed seas,²¹³ largely surrounded by continental coasts and subdivided by islands.²¹⁴ This means that most States in the region have additional duties of co-operation in accordance with Article 123 of UNCLOS. Article 123 provides that States bordering an enclosed or semi-enclosed sea “should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention.” It also requires States to “endeavour” to co-ordinate their activities in relation to certain specific areas, including conservation and exploitation of living resources, marine scientific research and protection and preservation of the marine environment. In a semi-enclosed sea, it is likely that the establishment of maritime zones and the delimitation of maritime boundaries will have an impact on several other States. It has been argued that in semi-enclosed seas, the obligations of Articles 74(3) and 83(3) must be interpreted in light of Article 123 of UNCLOS.²¹⁵
173. Another unusual factor to be taken into account in the Caribbean is the role of France, the Netherlands, the UK and the USA as the States responsible for the international relations of several territories in the region. It is for these States to claim maritime zones on behalf of their respective territories, and to take ultimate responsibility under international law for regulating certain activities within these zones. However, depending on their respective constitutional arrangements, the legislative, executive and judicial authority in respect of activities within the maritime zones of the territories may be exercised primarily by the authorities of the territory concerned. Relevant State practice may therefore be found at both State and territory levels.

3.2.2 LEGISLATIVE PRACTICE AND CLCS SUBMISSIONS

174. All States in the region have declared an EEZ. France and the Netherlands have declared an EEZ for their territories, while the UK has so far only declared a fishing zone in respect of its territories. Some EEZ declarations have provoked objections from neighbouring states. Venezuela's EEZ declarations, in particular, Decree No. 1.787 of 27 May 2015, are at the centre of a series of incidents between Venezuela and Guyana, both diplomatic and at sea.²¹⁶
175. The general practice of the US government is to declare unilaterally determined limit lines based on equidistance in the undelimited maritime area, ie it does not normally claim the full 200 nm zone to

²¹¹ See, for example, the views of the USA on the archipelagic baselines drawn by other States in this region, including some of its neighbours such as the Dominican Republic, on the website of the US Department of State at: <http://www.state.gov/e/oes/ocns/opa/cl6065.htm>.

²¹² See Section 2.6.4, paras 112–119.

²¹³ Art 122 of UNCLOS defines an “enclosed or semi-enclosed sea” as “a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States”.

²¹⁴ D Freestone and C Schofield, ‘The Caribbean Sea and Gulf of Mexico’ in D Rothwell et al (eds), *The Oxford Handbook of The Law of the Sea* (OUP 2015) 673.

²¹⁵ M Grbec, *Extension of Coastal State Jurisdiction in Enclosed and Semi-enclosed Seas* (Routledge 2014) 64.

²¹⁶ See below at paras 196–205.

which it has an entitlement where it would overlap with another State's entitlement.²¹⁷ This practice of not declaring a full 200 nm EEZ where there is a likelihood of overlap could be seen as a form of restraint, which makes clear that the USA will not exercise sovereign rights beyond the equidistance line, in the absence of a delimited boundary. It does not seem to constitute an assertion that the equidistance line should necessarily be the boundary or form the basis for delimitation. This is apparent from the "without prejudice" statement contained within the Federal Register Notice which reads:

The Government of the United States of America has been, is, and will be, engaged in consultations and negotiations with governments of neighboring countries concerning the delimitation of areas subject to the respective jurisdiction of the United States and of these countries.

The limits of the exclusive economic zone of the United States as set forth below are intended to be without prejudice to any negotiations with these countries or to any positions which may have been or may be adopted respecting the limits of maritime jurisdiction in such areas.²¹⁸

This practice has the effect of avoiding or reducing the area of overlapping exercise of jurisdiction, and thus reduces the risk of incidents which might jeopardise or hamper the final delimitation. It does not necessarily avoid all overlap, for example where the other State does not use the median line, uses it in a different way, or takes a different approach to the establishment of base lines.²¹⁹

176. Extended continental shelf submissions have been made by several States: The Bahamas, Barbados, Cuba, Guyana, Mexico, Nicaragua, Suriname, Trinidad and Tobago, and by France in respect of French Guiana.²²⁰

3.2.3 CONTINENTAL SHELF RIGHTS

177. There are numerous examples of States issuing hydrocarbon licences in undelimited maritime areas, followed by protests from neighbouring States. There is also a more limited practice of States refraining from issuing hydrocarbon licenses in undelimited areas pending delimitation, particularly in areas beyond 200 nm. Such practices, particularly where unilateral limits are established in domestic legislation, are likely to help serve the goals of Articles 74(3) and 83(3) whether done for that reason or not.

²¹⁷ This may be deduced from the US "Federal Register Notice" that establishes US EEZ limits, including in areas where there is no agreed boundary, in conjunction with published NOAA nautical charts: See: *Exclusive Economic Zone and Maritime Boundaries; Notice of Limits* [Public Notice 2237], 60(163) *Federal Register* (23 August 1995) 43825 et seq, available at: http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/USA_1995_eez_public_notice.pdf; and US State Department, Office of the Legal Adviser, 'Digest of United States Practice in International Law' (2013) 364–7; Expanded ASEAN Maritime Forum, Kuala Lumpur, 'Remarks of the Delegation of the United States' (3 October 2013), available at: <http://www.state.gov/documents/organization/226361.pdf>. Although this notice only refers to EEZ limits, it appears that the US government follows the same practice with regard to continental shelf rights.

²¹⁸ *Exclusive Economic Zone and Maritime Boundaries; Notice of Limits* [Public Notice 2237], second and third paragraphs, *ibid*.

²¹⁹ For example, the USA/Bahamas EEZs overlap. See Section 3.2.4, paras 224–6 below.

²²⁰ Submissions to the Commission on the Limits of the Continental Shelf, DOALOS website, available at: http://www.un.org/depts/los/clcs_new/commission_submissions.htm.

A. USA/Mexico

178. The USA and Mexico delimited the majority of their maritime boundaries in the Gulf of Mexico in two agreements in 1970²²¹ and 1978.²²² These agreements however left two areas of the continental shelf beyond 200 nm undelimited, known as the “Western Gap” and the “Eastern Gap”, or the “Doughnut Holes”.
179. In 2000, the USA and Mexico concluded a treaty which delimited the boundary between their respective continental shelves beyond 200 nm in the Western Gap.²²³ This treaty also established a 1.4 nm buffer zone along the continental shelf boundary line for the purpose of preserving any hydrocarbon deposits that may straddle the boundary and preventing any exploitation by one party prejudicing the non-living resource rights of the other. The treaty provided for a ten-year moratorium on drilling and exploitation activities within this area (later extended to 2014).²²⁴ In 2012, the parties signed a Transboundary Hydrocarbons Agreement,²²⁵ beginning a process of unitization and joint development in the Western Gap, and ending the buffer zone moratorium upon its entry into force in July 2014.
180. Before the entry into force of the 2000 agreement (in 2001), the USA had consistently refrained from issuing hydrocarbon leases in the undelimited area beyond 200 nm, even on the US side of the median line. Soon after the entry into force of the agreement the USA began to offer such leases for exploration and exploitation on the US side of the boundary beyond 200 nm, up to the buffer zone.²²⁶ To date only exploration activities have taken place.
181. The USA's practice of not issuing leases prior to that agreement's entry into force could be seen as a form of unilateral restraint pending the final delimitation agreement. Although this exercise of restraint may have been motivated by extra-legal factors – such as lack of commercial demand for licences outside a context of legal certainty – it also appears to be motivated by a desire to maintain the status quo and to preserve (friendly) relations pending the negotiation and entry into force of a delimitation agreement. As discussed below, this is of potential significance to establishing a customary law duty of restraint.
182. Further, although this practice was in respect of a pending delimitation of the continental shelf beyond 200 nm, it is arguably just as relevant to Article 83(3) as if it had taken place in the undelimited area within 200 nm. Article 83 of UNCLOS applies equally to delimitations within and beyond 200 nm, so there does not seem to be any logical reason for any similar customary obligation of restraint not to do so.

²²¹ Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary (completed 23 November 1970, entered into force 18 April 1972) 830 UNTS 55.

²²² Treaty on Maritime Boundaries between the United States of America and the United Mexican States (completed 4 May 1978, entered into force 13 November 1997) 2143 UNTS 405.

²²³ Treaty between the Government of the United Mexican States and the Government of the United States of America on the Delimitation of the Continental Shelf in the western Gulf of Mexico beyond 200 nautical miles (completed 9 June 2000, entered into force 17 January 2001) 2143 UNTS 417.

²²⁴ *Ibid.*, Art 4.

²²⁵ Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico (completed 20 February 2012, entered into force 18 July 2014).

²²⁶ Compare, for example, the licences issued in 2000 (lease sale 177) from those issued in 2001 (lease sale 180): US Bureau of Ocean Energy Management, ‘Lease Sale Information’, available at: <http://www.boem.gov/GOMR-Historical-Lease-Sale-Information>. The US practice after the entry into force of the 2000 agreement was to issue licences beyond 200nm, and up to the 1.4nm buffer zone straddling the continental shelf boundary.

B. USA/Mexico/Cuba

183. Most of the USA-Cuba boundary is delimited pursuant to an agreement concluded in 1977.²²⁷ However, the boundary beyond 200 nm remains undelimited in the eastern sector of the Gulf of Mexico in the area known as the “Eastern Gap”.
184. Whereas the boundary between the USA’s and Mexico’s continental shelves beyond 200 nm in the Western Gap has now been delimited, no such delimitation has yet²²⁸ occurred in the Eastern Gap, where the continental shelves beyond 200 nm of the USA, Mexico and Cuba potentially overlap.²²⁹
185. As in respect of the Western Gap prior to 2001, it appears that the USA has refrained from issuing leases in the Eastern Gap pending delimitation negotiations with Mexico and Cuba.²³⁰ This practice appears to be an example of unilateral restraint, rather than the result of a tacit or express provisional arrangement.
186. If this inference is correct, then since the USA is not party to UNCLOS, its practice in the Gulf of Mexico could be viewed as supporting the existence of a customary international law duty of restraint. However, and as with many instances of practice identified in the present report, we were unable to locate evidence of the reasons for the US practice of restraint that could constitute *opinio juris*. Further research is required to determine whether the practice of not offering or issuing licences is accompanied by *opinio juris* of a customary duty of restraint, or only guided by pragmatic considerations.
187. It is interesting to note that Cuba seems also to have exercised a form of unilateral restraint in its submission to the CLCS. Its submission states that “points have been calculated by applying the principle of equity and the method of equidistance, used earlier among the neighboring States for the definition of their maritime boundaries”, rather than Cuba’s full Article 76 entitlement. The submission further states: “The proposed outer limit does not prejudge the matter of the final demarcation of the extended continental shelf between neighboring coastal States.”²³¹

C. Guyana/Venezuela

188. There have been a number of incidents arising from Venezuelan objections to, and attempts to prevent, hydrocarbon licensing by Guyana in the waters off the Essequibo coast. Venezuela and Guyana have adjacent coastlines facing the Caribbean, and therefore delimitation of their respective maritime zones is required. This is however complicated by a dispute about the status of adjacent

²²⁷ Maritime Boundary Agreement Between the United States of America and the Republic of Cuba (completed 16 December 1977, applied provisionally from 1 January 1978).

²²⁸ But we understand trilateral delimitation talks may begin shortly.

²²⁹ See, eg the details of Mexico and Cuba’s submissions to the CLCS: Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission (25 April 2008) UN doc. CLCS/58, 7-8 16, paras 31–9; Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission (30 April 2010) UN doc. CLCS/66, 16, paras 82–6.

²³⁰ See, by way of illustration, the lease areas declared “deferred or unavailable” in lease sales 233, 231, 225: US Bureau of Ocean Energy Management, ‘Eastern Planning Area Lease Sale 225 Information’, available at: <http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Regional-Leasing/Gulf-of-Mexico-Region/Lease-Sales/225/Lease-Sale-Map—Bid-Distribution-for-Sale-225.aspx>.

²³¹ Republic of Cuba’s ‘Submission to the Commission on the Limits of the Continental Shelf to demonstrate the natural extension of the continental shelf of Cuba beyond 200 nautical miles in the Eastern Sector of the Gulf of Mexico’, May 2009, Executive Summary, 20–1 (text) and 23 (map, outer limit points 1-5). Available at: http://www.un.org/Depts/los/clcs_new/submissions_files/cub51_09/cub_2009execsummary.pdf.

land. Although this dispute regarding the Essequibo land and maritime area has “generally remained dormant for decades”, it seems that tensions have resurfaced in recent years following new oil discoveries.²³² Two major events are worth highlighting: the 2013 *Teknik Perdana* incident and the issue of the 2015 Decree No. 1.787 of Venezuela.²³³

189. Whereas only Guyana is party to UNCLOS, both states have declared a 200 nm EEZ from the baseline of the territorial sea (Venezuela in 1978²³⁴ and Guyana in 1991²³⁵). In 2011 Guyana also filed an extended continental shelf submission²³⁶ to which Venezuela objected because it “proposes a limit for the continental shelf formed by the territory west of the Essequibo river, which is the subject of a territorial sovereignty dispute...”²³⁷ Guyana responded that there was no “territorial dispute” between the two States, the land boundary having been settled by binding Arbitral Award.²³⁸
190. Most of the hydrocarbon licensing incidents relate to the coastal area where the Essequibo river, which runs south-north through Guyana, flows into the Atlantic Ocean. Venezuela has been claiming the western part of the Essequibo river region in Guyana (which comprises around two-thirds of Guyana’s territory within its current borders) for more than a century. An arbitral award from 1899²³⁹ set the current land boundary between the two States, but in 1962 Venezuela declared the award null and void²⁴⁰ and United Nations teams have been engaged for many years in assisting the two States to resolve this issue.²⁴¹ While the 1899 award does not address maritime delimitation, it does set the terminus of the land border on the coast at Point Playa. The underlying land boundary controversy is clearly a major complication in the way of achieving a final maritime delimitation.

²³² WA Sanchez, ‘A Non-violent Conflict: The Venezuela-Guyana Dispute’, 21 July 2015, *E-International Relations*, <http://www.e-ir.info/2015/07/21/a-non-violent-conflict-the-venezuela-guyana-dispute/>.

²³³ It should be noted that practice relating to these incidents has been studied on the basis of English language material only, and further research on Spanish language materials is merited.

²³⁴ Act establishing an Exclusive Economic Zone along the Coasts of the Mainland and Islands of 26 July 1978 (Venezuela). UN DOALOS website: <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/VEN.htm>; http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/VEN_1978_Act.pdf.

²³⁵ Exclusive Economic Zone (Designation of Area) Order 1991 (Guyana). UN DOALOS website: <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/GUY.htm>; http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/GUY_1991_Order.pdf.

²³⁶ DOALOS Communication of 7 September 2011 and Guyana’s Executive Summary of August 2011: http://www.un.org/depts/los/clcs_new/submissions_files/submission_guy_57_2011.htm; http://www.un.org/depts/los/clcs_new/submissions_files/guy57_11/clcs57_2011_e.pdf; http://www.un.org/depts/los/clcs_new/submissions_files/guy57_11/GUY_Executive%20Summary.pdf.

²³⁷ Letter from Foreign Minister of Venezuela to UN Secretary General, 9 March 2012. UN DOALOS website: http://www.un.org/depts/los/clcs_new/submissions_files/guy57_11/clcs57_2011_ven_e.pdf; and Venezuela Foreign Ministry website: http://guyana.embajada.gob.ve/index.php?option=com_content&view=article&id=170:venezuela-responde-a-la-luz-del-derecho-internacional-reclamo-de-guyana-sobre-fachada-maritima&catid=3:noticias-de-venezuela-en-el-mundo&Itemid=19&lang=en.

²³⁸ Letter from Minister of Foreign Affairs of Guyana to the UN Secretary General, 4 April 2012. UN DOALOS website: http://www.un.org/depts/los/clcs_new/submissions_files/guy57_11/clcs57_2011_guy_e2012.pdf.

²³⁹ *Award regarding the Boundary between the Colony of British Guiana and the United States of Venezuela*, 3 October 1899, XXVIII RIAA 331–540.

²⁴⁰ ‘Guyana-Venezuela: the “controversy” over the arbitral award of 1899’, 11 September 2015, *Council on Hemispheric Affairs*, <http://www.coha.org/guyana-venezuela-the-controversy-over-the-arbitral-award-of-1899/>.

²⁴¹ As recently as in 2015, the government of Guyana received a United Nations Mission to discuss options to solve the dispute. Efforts by the United Nations are carried out within the framework of the 1966 Geneva Agreement between the United Kingdom and Venezuela. For a reference, see: <http://gngny.com/un-team-returns-for-discussion-on-guyanavenezuela-controversy/>.

The 2013 MV Teknik Perdana incident

191. On 10 October 2013 the *PC 23 Yekuana* of the Ocean Patrol of the Bolivarian Navy Guard (of Venezuela) arrested the *MV Teknik Perdana*, a Panamanian-flagged survey ship which was contracted by US company Anadarko Petroleum Corporation and was operating under a Guyanese prospecting licence to search for hydrocarbons in the Roraima block offshore Guyana.²⁴² The arrest took place at latitude 10°20'30"N and longitude 057°30'07"W. It was reported that the *MV Teknik Perdana*'s crew explained that they were conducting a multi-beam survey of the seafloor in Guyana's EEZ²⁴³ but the ship's captain was charged with violating Venezuela's EEZ.²⁴⁴ The Venezuelan Foreign Ministry addressed a communiqué to the Guyanese Foreign Ministry on 11 October 2013, in which it stated that the ship was "carrying out scientific research with the support of sensors (sonar), without authorization from the Venezuelan authorities."²⁴⁵ The communiqué further stated:

The Government of the Bolivarian Republic of Venezuela expresses its strongest protest to the situation that arose with respect to scientific surveys and exploration of the continental shelf and the Venezuelan ocean floor, conducted by the vessel. The Bolivarian Republic of Venezuela expresses its deep concern for the way in which foreign vessels authorised by the Government of Guyana barge, without due authorization, into the territorial waters and exclusive economic zone of Venezuela. We reiterate that our Bolivarian National Armed Force would never venture into the territory of a neighbouring country, since we ardently respect the sovereignty of nations. Therefore, the Bolivarian Navy Ocean Patrol "Yekuana" was conducting sovereign patrol in our waters, when it detected the illegal incursion of the Panamanian-flagged ship [...].²⁴⁶

192. Guyana's Ministry of Foreign Affairs was reported to have issued a statement in response on 11 October 2013, expressing its grave concern about the incident and its intention "to employ all peaceful means to facilitate a prompt return to the *status quo ante* since neither the Venezuelan naval vessel, the agents of Venezuela, its Government nor any other State has the authority to exercise any action in Guyana's territorial waters, its continental shelf or its exclusive economic zone without its express consent."²⁴⁷ The statement was also reported to state:

Guyana maintains that since the *RV Teknik Perdana* was merely collecting seismic data, and it will be some time before actual exploration for hydrocarbons could take place, there

²⁴² 'Punta Playa commencement of point for Guyana's maritime boundary', 2 May 2014, *Stabroek News*, <http://www.stabroeknews.com/2014/news/stories/05/02/punta-playa-commencement-point-guyanas-maritime-boundary/>; 'Venezuela military seizes vessel in Guyana waters', 12 October 2013, *Kaieteur News*, <http://www.kaieteurnews.com/2013/10/12/venezuela-military-seizes-vessel-in-guyana-waters/>; 'Two British scientists on vessel held under "ship arrest" by Venezuela in territorial dispute with Guyana', 14 October 2013, *The Independent*, <http://www.independent.co.uk/news/world/americas/two-british-scientists-on-vessel-held-under-ship-arrest-by-venezuela-in-territorial-dispute-with-8879825.html>.

²⁴³ See: 'Guyana, Venezuela maritime boundary issue ...' 18 October 2013, *Kaieteur News*, <http://www.kaieteurnews.com/2013/10/18/guyana-venezuela-maritime-boundary-issuetechical-team-to-address-matter-within-four-months/>.

²⁴⁴ See: 'Oil search in disputed Guyana/Venezuela waters halted' 20 October 2013, *Kaieteur News*, <http://www.kaieteurnews.com/2013/10/20/guyanas-oil-search-halts-until-venezuelan-dispute-is-resolved/>.

²⁴⁵ Communiqué from the Ministry of the People's Power for Foreign Relations of the Bolivarian Republic of Venezuela to the Ministry of Foreign Affairs of the Republic of Guyana, Caracas, 11 October 2013, available at: http://guyana.embajada.gob.ve/index.php?option=com_content&view=article&id=649%3Avenezuela-pide-explicaciones-a-guyana-por-violacion-de-espacio-maritimo&catid=3%3Anoticias-de-venezuela-en-el-mundo&Itemid=19&lang=en [Unofficial translation].

²⁴⁶ *Ibid.*

²⁴⁷ 'Venezuela military seizes vessel in Guyana waters', 12 October 2013, *Kaieteur News*, <http://www.kaieteurnews.com/2013/10/12/venezuela-military-seizes-vessel-in-guyana-waters/>.

was and is ample time for Guyana and Venezuela to discuss any differences of view that may exist in relation to the provisional maritime boundary between the two States.²⁴⁸

193. It is noteworthy that this statement by Guyana, as reported,²⁴⁹ refers to a provisional maritime boundary thereby acknowledging that the area is pending final delimitation. In its reference to the vessel “merely collecting seismic data” the statement also seems, implicitly, to reference the 2007 award in the *Guyana v Suriname* case.²⁵⁰ It could be inferred from this that Guyana had in mind the provisions of Article 74(3) and/or 83(3) of UNCLOS (despite Venezuela not being party to UNCLOS). However, bearing in mind that this statement was issued only one day after the incident, it might be a stretch too far to consider this as evidence of *opinio juris* on the applicability of any obligation of restraint in respect of the maritime delimitation dispute. Guyana’s Minister of Foreign Affairs is also reported to have said in a telephone interview on 13 October 2013 that, “the hunt for oil by Guyana in the now disputed waters will have to halt until the maritime delimitation is formally settled with Venezuela, as there is no assurance that another vessel attempting to conduct a survey in that location will not meet the same fate”.²⁵¹
194. The *Teknik Perdana/Yekuana* incident prompted a meeting between the two Ministers of Foreign Affairs, and the release of a joint statement on 17 October 2013 which “recognised that the delimitation of maritime boundaries between [the] two States remains an unresolved issue and agreed that such delimitation will require negotiations.”²⁵²
195. In a statement to Parliament in 2015 Guyana’s President David Granger referred to the incident in the following, somewhat different, terms:

The expulsion of an unarmed, seismic survey vessel from Guyana’s exclusive economic zone by a Venezuelan naval corvette [...] was a dangerous and egregious exhibition of gunboat diplomacy. The corvette – PC 23 Yekuana – of the Bolivarian Navy of Venezuela entered Guyana’s exclusive economic zone [...] and, under the threat of force, prevented the unarmed vessel – Teknik Perdana – from conducting seismic surveys. The Yekuana incident was an extreme use of armed force. It violated the Charter of the United Nations. It threatened regional peace and security.²⁵³

²⁴⁸ ‘Talks expected today regarding seizure of Anadarko-Contracted Vessel’, 17 October 2013, *Oil & Gas Financial Journal*, <http://www.ogfj.com/articles/2013/10/talks-expected-today-regarding-seizure-of-anadarko-contracted-vessel-by-venezuelan-crew.html>; ‘Guyana boat crew exploring for oil arrested by Venezuelan authorities’, 11 October 2013, *Jamaica Observer*, <http://www.jamaicaobserver.com/latestnews/Guyana-boat-crew-exploring-for-oil-arrested-by-Venezuelan-authorities>; ‘Venezuelan navy illegally evicts vessel from Guyana: -Govt says action a serious threat to peace: -Granger backs Government’s position’, 22 October 2013, *Guyana Chronicle*, <http://guyanachronicle.com/venezuelan-navy-illegally-evicts-vessel-from-guyana-waters-govt-says-action-a-serious-threat-to-peace-granger-backs-governments-position/>.

²⁴⁹ The statement was widely reported by local media at the time, but the research team has been unable to find the original text of this note on the Foreign Ministry’s website. See (n 233) above.

²⁵⁰ *Arbitration between Guyana and Suriname* (Annex VII Tribunal) (2007) 139 ILR 566; (2008) 47 ILM 166.

²⁵¹ ‘Oil search in disputed Guyana/Venezuela waters halted’, 20 October 2013, *Kaieteur News*, <http://www.kaieteurnewsonline.com/2013/10/20/guyanas-oil-search-halts-until-venezuelan-dispute-is-resolved/>. See also D Figueira, *The Geo-Politics of LNG in Trinidad and Tobago and Venezuela in the 21st Century* (iUniverse LLC 2014) 194–5.

²⁵² Joint Statement by the Minister of the People’s Power for Foreign Relations of the Bolivarian Republic of Venezuela, Elías Jaua Milano and the Minister of Foreign Affairs of the Republic of Guyana, Carolyn Rodrigues-Birkett, Port of Spain, October 17, 2013. Published on the Venezuela Foreign Ministry’s website: http://guyana.embajada.gob.ve/index.php?option=com_content&view=article&id=655%3Avenezuela-y-guyana-acuerdan-explorar-su-delimitacion-maritima&catid=2%3Anoticias-de-venezuela-en-pais&Itemid=18&lang=en; See also ‘Guyana, Venezuela maritime boundary issue ...’ *Kaieteur News*, 18 October 2013, <http://www.kaieteurnewsonline.com/2013/10/18/guyana-venezuela-maritime-boundary-issuetechical-team-to-address-matter-within-four-months/>.

²⁵³ ‘The Caribbean ... a zone of peace’, Address by Brigadier David Granger, MSS, President of the Cooperative Republic of Guyana, to the 11th Parliament, Georgetown, 9 July 2015, http://www.minfor.gov.gy/docs/other-speeches/Address_to_Parliament_HE.pdf.

Decree No. 1.787 of 27 May 2015 of Venezuela

196. Venezuela's President Nicolas Maduro issued Decree No. 1.787 of 27 May 2015, which amends the previous decree setting out the limit of Venezuela's claimed EEZ, by including further areas off the coasts of Essequibo and Demerara that lie within Guyana's claimed EEZ.²⁵⁴ This decree was issued days after an announcement by Exxon Mobil that it had discovered oil in the region.²⁵⁵ Exxon Mobil had signed an agreement with the government of Guyana to explore the Stabroek Block sited off the Demerara coast (a 26,800 square kilometre block, 160 to 320 km offshore from Guyana) in 1999.²⁵⁶
197. In response, the Guyanese Ministry of Foreign Affairs issued a statement on 7 June 2015 objecting to the Venezuelan Decree No. 1.787 as a "flagrant violation of international law" which is "purporting to annex maritime spaces pertaining to the Cooperative Republic of Guyana."²⁵⁷
198. On 9 June 2015 the Venezuelan Foreign Ministry issued a statement which is reported to have demanded that Guyana halt the oil exploration being conducted by Exxon Mobil in the Stabroek Block,²⁵⁸ to have defined the Stabroek Block as "a maritime area in the process of delimitation that corresponds to [its] claim of territorial sovereignty"²⁵⁹ and to have complained that the start of exploratory activities by Exxon Mobil in the Stabroek Block was done without prior notification to the government of Venezuela.²⁶⁰
199. Guyana's President David Granger statement to Parliament on 9 July 2015 included the following references to Decree No. 1.787:

The Venezuelan government, therefore, had no right, either under the *Geneva Agreement* or in international law to oppose exploratory activities by Exxon Mobil and its subsidiary Esso Exploration and Production (Guyana) Limited in the 'Stabroek Block.' Venezuela had no right to demand 'prior notification' owing to the fact that the specific area of operations in the Stabroek Block is located in a new maritime area over which sovereignty has been claimed by Venezuela.

The action taken by the Venezuelan Foreign Minister in February [2015] to write to the country manager of Esso Exploration and Production (Guyana) Limited and to object to

²⁵⁴ Ibid; and 'Maduro turns up the heat – issues new decree against Guyana', 7 July 2015, *Guyana Chronicle*, <http://guyana-chronicle.com/maduro-turns-up-the-heat-issues-new-decree-against-guyana/>.

²⁵⁵ Ibid; and 'Guyana says Exxon discovers oil in offshore block', 7 May 2015, *Reuters*, <http://www.reuters.com/article/guyana-exxon-mobil-idUSL1NOXY28X20150507#>. See also WA Sanchez, 'A non-violent conflict: the Venezuela-Guyana dispute', 21 July 2015, *E-International Relations*, <http://www.e-ir.info/2015/07/21/a-non-violent-conflict-the-venezuela-guyana-dispute/>.

²⁵⁶ 'Guyana says Exxon to begin offshore drilling, Venezuela irked', 5 March 2015, *Reuters*, <http://www.reuters.com/article/guyana-exxon-mobil-idUSL1N0W72RE20150305>.

²⁵⁷ Statement by the Cooperative Republic of Guyana regarding the issuance of the Presidential Decree by Bolivarian Republic of Venezuela, 7 June 2015, <http://www.minfor.gov.gy/index.php/2014-12-20-01-58-16/press-releases>.

²⁵⁸ Official sources for these statements have not been located. This information is based on several English-language media sources: 'Venezuela recalls ambassador amid territory dispute', 6 July 2015, *Reuters*, <http://www.reuters.com/article/us-venezuela-guyana-idUSKCN0PH04P20150707>; 'Guyana says Venezuela deployed troops on border area', 23 September 2015, *BBC*, <http://www.bbc.co.uk/news/world-latin-america-34332366>; 'Exxon Discovery Pours Oil on Venezuela-Guyana Dispute', 10 June 2015, *PanAm Post*, <https://panampost.com/panam-staff/2015/06/10/exxon-discovery-pours-oil-on-venezuela-guyana-dispute/>; 'Venezuela accuses ExxonMobil of breaching international laws over Guyana drilling', 13 April 2015, *Stabroek News*, <http://www.stabroek-news.com/2015/news/stories/04/13/venezuela-accuses-exxonmobil-of-breaching-international-laws-over-guyana-drilling/>.

²⁵⁹ 'ExxonMobil: Venezuela says Guyana's response is "unacceptable, unjust"', 13 March 2015, *iNewsGuyana*, <http://www.inewsguyana.com/exxonmobil-venezuela-says-guyanas-response-is-unacceptable-unjust/>.

²⁶⁰ Ibid.

the dispatch of a rig to proceed with the exploration for petroleum in accordance with the concession granted by the Government of Guyana, therefore, constituted an unnecessary and unlawful interference in Guyana's sovereign jurisdiction...

...While the new Decree No. 1.859 does not contain the coordinates of Decree No. 1.787, it does contain a general description of all the defence zones, with the description of Eastern, Central, and Western regions, remaining consistent with previous versions of the Decree. It goes further to state that these 'defence zones' are spaces created to plan and execute integral defense operations. This portion remains offensive to Guyana since there continues to be a threat of the use of force in these areas. The Co-operative Republic of Guyana therefore rejects the description of its maritime territory as a 'defence zone' of the Bolivarian Republic of Venezuela.²⁶¹

200. President Granger is also reported to have said in a media interview in June 2015, commenting on Decree No. 1.787, that "[i]t is a legal absurdity for Venezuela to claim such a large portion of Guyanese territory including the coastline and to use that bogus claim to claim more sea space," that Exxon's operations were located in Guyana's exclusive economic zone, and would continue.²⁶²
201. Further exchanges of notes have been made public by the Guyanese Ministry of Foreign Affairs on its website. While most of their contents pertain to the sovereignty dispute over mainland territory, there are some references to the maritime aspects that might be indicative of the Ministry's views concerning the relevance of UNCLOS obligations of restraint. The following extract from a statement by the Guyanese Ministry of 13 March 2015, indicates the relationship between the land boundary and maritime boundary issues, from the Guyanese perspective:

While it is a fact that the delimitation of the maritime boundary between Guyana and Venezuela remains an outstanding matter, it is pellucid that there are maritime spaces that can legitimately belong to only one of the two States. That is fully recognised under both customary and codified international law. Venezuela's vain effort to link its spurious and illegal claim to Guyana's Essequibo to matters related to the continental shelf and the exclusive economic zone of Guyana within the context of the Geneva Agreement of February 17, 1966 therefore has no legal basis. The fact is that the Geneva Agreement does not relate to a boundary or territorial dispute, but to a unilateral and unsubstantiated claim by Venezuela that the Arbitral Award of 1899 is null and void. Guyana completely rejects this effort to conflate two separate matters within the context of the Geneva Agreement.²⁶³

202. There are also reports of incidents in other areas off the coast of Guyana. For example, the Pomeroon Block (west of the Stabroek Block) which is currently held by CGX Energy, was said in 2013 to have been placed effectively in *force majeure* due to this dispute.²⁶⁴ The Canadian mining company

²⁶¹ 'The Caribbean ... a zone of peace', (n 253), above. The official text of *Decree No. 1.787 of 27 May 2015 of Venezuela* has not been located. Information about it is based on the Guyanese President's statement, as well as the media sources cited above. See also 'Response to the Ministry of Foreign Affairs of Venezuela's communication to Exxon Mobil', Ministry of Foreign Affairs of Guyana, 28 February 2015, http://www.minfor.gov.gy/index.php/component/content/article?id=161#jun7_15.

²⁶² 'ExxonMobile to continue work as scheduled - Granger', 22 June 2015, *Stabroek News*, <http://www.stabroeknews.com/2015/news/stories/06/22/exxonmobil-to-continue-work-as-scheduled-granger/>.

²⁶³ Foreign Ministry of Guyana, <http://www.minfor.gov.gy/index.php/2014-12-20-01-58-16/press-releases>.

²⁶⁴ 'Testing the Atlantic Mirror theory', April 2013, *Oil and Gas Financial Journal*, 4, <https://www.lw.com/thoughtLeadership/testing-the-atlantic-mirror-theory>.

Goldfields, reported on 23 October 2015 that it had received a notification from the Venezuelan authorities, warning of legal action over its operations in the Aurora mine located in Guyana's Essequibo region, in the land area related to the disputed maritime zone.²⁶⁵ In addition, other apparently unrelated incidents were reported at times of heightened tensions over offshore oil exploration, such as a decision by Guyana in June 2015 to stop flights by Venezuela's state-owned airline and an announcement by Venezuela in July that it would not to renew a rice trade agreement with Guyana, due to expire in November 2015.²⁶⁶ Some commentators have suggested that these actions were related to the dispute about offshore oil exploration.²⁶⁷

203. It is difficult to draw inferences regarding the application of any obligation similar to Articles 74(3) and 83(3) from these governmental exchanges, as we have not found any express reference to such obligations in them. This difficulty is compounded by the fact that the research team has not been able to access original sources of statements by the government of Venezuela relating to these incidents in the Spanish language. It appears however from the joint communiqué reported in English on the Venezuelan Ministry's website, that both governments recognise that the maritime area is undelimited and that they have an obligation to negotiate a final delimitation (presumably under customary international law). It is however not clear whether either government recognises any customary international law obligation not to jeopardise or hamper the final delimitation as applicable between them. It appears that the Guyanese Foreign Ministry may have had these obligations in mind when it (apparently) responded on 13 October 2013 to the *Teknik Perdana* incident, saying it was "merely collecting seismic data" and not yet even exploring.
204. However, subsequent statements by both States have taken a more robust line, with Guyana insisting on the right of oil companies licensed by Guyana to continue "exploratory activities", and emphasising the "absurdity" of Venezuela's claims. These statements raise the issue of whether, if there is a customary law obligation not to jeopardise or hamper, parallel to or arising from Articles 74(3) and 83(3), it has a specific geographic application and if so how to define it; in particular whether it equates to the "disputed area" and if so how to determine that area when one State considers there to be a dispute over territory which, if taken into account, would greatly enlarge the disputed maritime area. It also raises the issue of the plausibility of claims, and the extent to which, if a claim lacks plausibility according to objective criteria, activities by the government with the sole plausible claim and effective jurisdiction over the area can be said to jeopardise or hamper the reaching of a final delimitation agreement with its neighbour.²⁶⁸
205. The actions concerning air services and trade agreements may or may not have any connection to the maritime boundary dispute, and are mentioned here only as examples of the kind of acts which some might argue to have the potential to jeopardise or hamper the reaching of an agreement. Whether such acts, taking place outside the maritime area, and not directly concerning the boundary, *could* come within the scope of application of Articles 74(3) and 83(3), or any similar customary law obligation, depends on how broad a view is taken of the scope of those obligations, both materially and geographically.²⁶⁹

²⁶⁵ 'Venezuelan opposition to mining developments in Guyana unlikely to constrain prospects in one-year outlook', 27 October 2015, *IHS Janes* 360, <http://www.janes.com/article/55550/venezuelan-opposition-to-mining-development-in-guyana-unlikely-to-constrain-prospects-in-one-year-outlook>.

²⁶⁶ 'A non-violent conflict: the Venezuela-Guyana dispute', 21 July 2015, *E-International Relations*, <http://www.e-ir.info/2015/07/21/a-non-violent-conflict-the-venezuela-guyana-dispute/>.

²⁶⁷ *Ibid.*

²⁶⁸ See Section 2.6.2, paras 100–6 above.

²⁶⁹ See Section 2.5 and Section 2.6, especially 2.6.1 and 2.6.2, above.

D. Guyana/Venezuela/Trinidad and Tobago

206. Trinidad and Tobago and Venezuela concluded a treaty in 1990 which delimits the maritime boundary between them with respect to the territorial seas, the Continental Shelf and the EEZ.²⁷⁰ Guyana argues that it encroaches on its maritime area and that pursuant to this treaty Trinidad and Tobago and Venezuela offer concessions for explorations in Guyana's maritime area.
207. In February 2002 Guyana sent protest notes to the governments of Trinidad and Tobago and Venezuela with respect to this treaty after both governments began to offer concessions for oil exploration in areas overlapping into Guyana's maritime space. The concessions areas offered by Venezuela initially attracted interest from foreign oil companies, but this subsequently waned, apparently because of the Guyanese protest. It is reported that a British oil company and the Norwegian state-owned Statoil, both of which initially were keen to formulate investment agreements with Venezuela to explore for oil in that area, pulled back after observing that the eastern part of the area marked as "Block 5" overlapped into Guyana's (claimed) "maritime space".²⁷¹

E. Guyana/Suriname

208. In 2007, an UNCLOS Annex VII Tribunal Award delimited both the continental shelf and the EEZ of the parties by means of a single maritime boundary. After identifying the relevant coasts, the Tribunal drew a provisional equidistance line and found no relevant circumstances that would justify any adjustment of this line. Prior to the Award, these areas were undelimited and there were no provisional arrangements in effect, despite efforts to negotiate some.²⁷²
209. Importantly for the present study, the Tribunal found that both Guyana and Suriname had violated the obligation to make every effort not to jeopardise or hamper the reaching of a final delimitation agreement.²⁷³ Guyana's violation was due to its unilateral authorisation of exploratory drilling in a disputed area.²⁷⁴ The Tribunal found that Suriname's threat of force in a disputed area in response to this drilling, while also threatening international peace and security, jeopardised the reaching of a final delimitation agreement.²⁷⁵ The Tribunal defined the "area in dispute for the determination of a single maritime boundary between the EEZ and the CS" as the overlap between Suriname's N10°E Claim Line and Guyana's N32°E Claim Line.²⁷⁶
210. Both parties had authorised concession holders to undertake seismic testing in disputed waters, and these activities had not given rise to objections from either side. The Tribunal did not consider that, in the circumstances at hand, unilateral seismic testing was inconsistent with a party's obligation to make every effort not to jeopardise or hamper the reaching of a final agreement.²⁷⁷

²⁷⁰ Treaty between the Republic of Trinidad and Tobago and the Republic of Venezuela on the delimitation of marine and submarine areas (signed 18 April 1990, entered into force 23 July 1991) reprinted in *The Law of the Sea – Maritime Boundary Agreements (1985–1991)* (Office for Ocean Affairs and the Law of the Sea, United Nations, New York 1992) 25–9.

²⁷¹ It is not clear (to the authors) whether Guyana's statement means it considers the whole of this area to be within its territorial sea or also to extend to its continental shelf. See O Ishmael, *The Trail of Diplomacy: A Documentary History of the Guyana-Venezuela Border Issue* (Xlibris 2013) Chapter 48 and Guyana's protests to Venezuela and Trinidad, see: http://www.guyana.org/features/trail_diplomacy_pt9.html#chap56.

²⁷² *Guyana v Suriname* case, para 473. Also explained in para 148.

²⁷³ *Ibid*, para 486. See also Section 2.6.1 above.

²⁷⁴ *Ibid*, para 480.

²⁷⁵ *Ibid*, para 484.

²⁷⁶ *Ibid*, para 162 and Map 1, following para 163.

²⁷⁷ *Ibid*, para 481.

211. Major incidents of State practice identified in the Award and pleadings include the following: Suriname issued a number of concessions to oil companies in the disputed area between 1957 and 2004, on occasion resulting in Guyanese protests; Guyana maintained that activities under Surinamese concessions in fact took place to the east of the Line;²⁷⁸ Suriname submitted that its oil concession practice demonstrated its consistent assertion of the Suriname Claim Line and rejected Guyana's suggestion that its conduct demonstrated respect for the Guyana Claim Line, distinguishing its restraint from 1999 onwards as reflecting a wish not to exacerbate the dispute and a lack of interest by concessionaires in disputed areas.²⁷⁹
212. Guyana (formerly British Guiana) granted exploration rights and licences in the disputed area to several companies between 1958 and 2000. Guyana maintained that the absence of protest from Suriname to certain of these, and to frequent requests for entry into Surinamese waters by seismic survey ships, was evidence of its respect for the Guyana Claim Line.²⁸⁰
213. Guyana ratified UNCLOS on 31 July 1996 and Suriname did so on 9 July 1998. UNCLOS came into force between the parties on 8 August 1998.²⁸¹

The CGX incident

214. In 1998 Guyana issued a concession for oil exploration in the disputed area of the continental shelf to CGX Resources Inc. ("CGX"), a Canadian company.²⁸² CGX arranged for seismic testing to be performed over the entire concession area. While it was conducting seismic testing in the disputed area in 1999, CGX announced publicly [in a CGX Press Release] that it had received approval from Guyana for its drilling programme. Suriname objected, and demanded through diplomatic channels that Guyana cease all oil exploration activities in the disputed area.²⁸³ On 3 June 2000 two patrol boats from the Surinamese navy approached CGX's oil rig and drill ship, the CE Thornton. The Surinamese patrol boats ordered the ship and its service vessels to leave the area within 12 hours. The crew members aboard the CE Thornton detached the oil rig from the sea floor and withdrew from the concession area. The Surinamese patrol boats followed them throughout their departure. CGX has not since returned to the concession area.²⁸⁴
215. It is interesting that both parties presented evidence of unilateral activities in order to strengthen their claims in respect of the delimitation line, yet also sought to make a virtue of the absence of unilateral activities at other times as evidence of restraint in the disputed area. Guyana maintained that it would be inequitable to ignore the conduct of the parties and not to take into account the existence of a *modus vivendi* between the parties for nearly 50 years reflected in the pattern of oil concessions when drawing the delimitation line.²⁸⁵ Suriname argued that oil concession or fisheries practice is not likely to be of any legal relevance unless it demonstrates express or tacit agreement as to the location of a boundary.²⁸⁶ With respect to this evidence, the Tribunal concluded:

²⁷⁸ Ibid, para 197.

²⁷⁹ Ibid, para 141, with its footnote 6 referencing Suriname's Counter-Memorial, paras 5.7-5.44; Guyana's Memorial, paras 4.9, 4.21-4.43; *ibid*, para 197; *ibid* para 236; and Suriname's Rejoinder para 3.130

²⁸⁰ Ibid, para 140, with its footnote 5 referencing Guyana's Memorial, paras 4.9, 4.21-4.43; Suriname's Counter-Memorial, paras 5.7-5.44; Award paras 197-8.

²⁸¹ Ibid, para 276.

²⁸² Ibid, para 150.

²⁸³ Ibid, section "*Historical Background*" para 150. *Ibid* para 475 footnoting Guyana's Memorial Annex 78; *ibid* para 150; *ibid*, para 201.

²⁸⁴ Ibid, paras 151; 438-39, 441, 445-6.

²⁸⁵ Ibid, paras 216, 378.

²⁸⁶ Ibid, para 218.

Having carefully examined the practice of the Parties with regard to oil concessions and oil wells, the Tribunal has found no evidence of any agreement between the Parties regarding such practice. The Tribunal takes the view that the oil practice of the Parties cannot be taken into account in the delimitation of the maritime boundary in this case.²⁸⁷

216. The Tribunal's decision not to allow this evidence of unilateral activity (or *modus vivendi*) to influence the final delimitation is consistent with the stipulation in Article 83(3) that provisional arrangements "shall be without prejudice to the final delimitation" and seems to reflect the fact that the dispute between Guyana and Suriname was only about maritime delimitation, not territorial sovereignty. It contrasts with the approach of courts and tribunals in some other cases with mixed sovereignty and delimitation disputes, where evidence of unilateral activity or tacit agreement has been accepted as strengthening one party's sovereignty claim over maritime features.²⁸⁸

F. Costa Rica/Nicaragua

217. There has been no maritime delimitation between Costa Rica and Nicaragua on either the Pacific or the Atlantic side. In February 2014 Costa Rica instituted proceedings against Nicaragua before the ICJ, and requested the Court to determine the course of a single maritime boundary between the two States in both the Caribbean Sea and the Pacific Ocean.²⁸⁹ In its application Costa Rica states:

The divergence between the two States' proposals demonstrated that there is an overlap of claims in the Pacific Ocean....

[The existence of a dispute] between the two States as to the maritime boundary in the Caribbean Sea has been affirmed [...] in particular by the views and positions expressed by both States during Costa Rica's request to intervene in [the ICJ case concerning] *Territorial and Maritime Dispute (Nicaragua v Colombia)*; in exchanges of correspondence following Nicaragua's submissions to the Commission on the Limits of the Continental Shelf; by Nicaragua's publication of oil exploration and exploitation material; and by Nicaragua's issuance of a decree declaring straight baselines in 2013.²⁹⁰

218. Details of Costa Rica's pleadings are not yet available. Some of the history relevant to activities in this area is reported in regional media. It is apparent that Costa Rica has objected to Nicaragua offering oil concessions in the disputed area. In 2013 Costa Rican foreign minister Enrique Castillo is reported to have sent a letter of protest to his Nicaraguan counterpart demanding the "immediate withdrawal" of all promotional materials relating to concessions listed in the publication "Petroleum Promotional Folder of Nicaragua", produced by the Nicaraguan Ministry of Energy and Mines. According to Castillo, a total of 18 blocks in the Pacific and 55 in the Caribbean offered by Managua, violate Costa Rica's borders.²⁹¹ According to media reports, in 2012 Costa Rica published a position paper on its embassy website objecting to Nicaragua's offerings for oil exploitation allegedly in Costa Rican maritime territory, and, in 2011, Costa Rica declared a three-year moratorium on oil exploration.²⁹²

²⁸⁷ Ibid, para 390.

²⁸⁸ Eg *Nicaragua v Colombia* case, see sub-section G, paras 221–3, below. See also section 2.6.4, paras 112–9.

²⁸⁹ *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v Nicaragua)*. Costa Rica's ICJ Application of February 2014, available at: <http://www.icj-cij.org/docket/files/157/18344.pdf>.

²⁹⁰ Ibid, para 9.

²⁹¹ 'Foreign minister decries Nicaraguan oil concessions in Costa Rican Waters', 20 July 2013, *The Tico Times*, <http://www.ticotimes.net/2013/07/21/foreign-minister-decries-nicaraguan-oil-concessions-in-costa-rican-waters>.

²⁹² Position of the Republic of Costa Rica on the offering of blocks for oil exploration by the Republic of Nicaragua, <http://www.costaricaembassy.com/CRposition.pdf>.

219. Nicaragua issued Decree No. 33-2013 of 19 August 2013 in which it declared straight baselines. Costa Rica sent a letter to the UN on 23 October 2013 protesting that the Decree would transform waters considered to be Costa Rican territorial sea and EEZ into Nicaraguan internal waters.²⁹³
220. When full texts of these Nicaraguan materials become available, through the pleadings or otherwise, it will be interesting to note the terms in which the government protested about the Costa Rican issue of promotional materials, including whether the objection extended to material on exploration as well as exploitation, and the terms of its apparently unilateral three-year moratorium on oil exploration, and any Costa Rican responses; in particular whether reference is made to the UNCLOS obligation not to jeopardise or hamper, or to a more general obligation or need for restraint.

G. Colombia/Nicaragua

221. In its award 19 November 2012, the ICJ delimited the maritime boundary between Colombia and Nicaragua, after ruling on sovereignty over certain maritime features located in the Caribbean sea. Colombia is not party to UNCLOS. It is therefore significant that:

The Court has recognised that the principles of maritime delimitation enshrined in Articles 74 and 83 reflect customary international law (Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain), Merits, Judgment, I.C.J. Reports 2001, p. 91, paras. 167 et seq.).²⁹⁴

222. In its pleadings, with reference to the maritime features in dispute, Colombia argued that it had exercised public, peaceful and continuous sovereignty over the cays in question, and presented evidence of its exercise of legislative and enforcement jurisdiction, including authorising third parties to prospect for oil in the maritime areas of the San Andrés Archipelago. Nicaragua disputed Colombia's interpretation of these activities and maintained that it had protested against them at the time.²⁹⁵ The Court considered the different categories of *effectivites* presented by Colombia, which dated back 180 years. By contrast, the date on which the dispute over maritime delimitation arose was accepted as being 1969.²⁹⁶ Neither party accused the other of a violation of Article 74/83(3) since 1969, nor did the Court refer to these provisions.
223. It was reported in the media that Nicaragua decided to invite bids for oil exploration in disputed waters in July 2002. Colombia said it "energetically rejected" Nicaragua's claims to the disputed areas.²⁹⁷

3.2.4 FZ/EEZ RIGHTS

A. USA/Bahamas

224. In accordance with its broader policy of transparency regarding its claimed maritime zones, the USA generally only issues fisheries licences in areas in which it has declared an EEZ.²⁹⁸ As outlined above,

²⁹³ Letter dated 23 October 2013 from the Permanent Representative of Costa Rica to the United Nations addressed to the Secretary-General, UN Doc A/68/548, http://www.un.org/ga/search/view_doc.asp?symbol=A/68/548.

²⁹⁴ *Nicaragua v Colombia* case, para 139.

²⁹⁵ *Ibid*, paras 74–9.

²⁹⁶ *Ibid*, para 69.

²⁹⁷ See F Bokhari and J Wilson, 'Nicaragua in hot water over oil exploration bids' 19 July 2002, *Financial Times*.

²⁹⁸ The licensing power is constrained in this regard by domestic legislation: http://www.nmfs.noaa.gov/sfa/laws_policies/msa/, See, eg: US State Department, Office of the Legal Adviser, 'Digest of United States Practice in International Law' (2013) 364–7; Expanded ASEAN Maritime Forum, Kuala Lumpur, 'Remarks of the Delegation of the United States' (3 October 2013), available at: <http://www.state.gov/documents/organization/226361.pdf>.

the general practice of the US government is to declare unilaterally determined limit lines based on equidistance in the undelimited maritime area.²⁹⁹ This usually avoids or minimizes the areas of overlap of claimed zones but part of the limit north of The Bahamas is an exception.

225. There is an area of overlapping EEZ claims between the USA's Florida coast and the northern limits of the Bahamian archipelago, in the proximity of the Blake Plateau, where the US limit goes from equidistance right out to 200 nm along an East-West azimuth. The USA has claimed this area as EEZ and has issued fishing licences within it.³⁰⁰ The Bahamas has declared a 200 nm EEZ, measured from its archipelagic base lines, with the proviso that the outer limit extends only to the median where the median line is less than 200 nm from the nearest baseline and no boundary has been delimited.³⁰¹
226. To date (and as far as research was able to discover) the Bahamas has not objected to this licensing practice. It is not clear what weight to place on the Bahamas' lack of protest, given that it itself is not currently attempting to exploit living resources in the area of overlap, nor is there any history of Bahamian fishing there.

B. Guyana/Venezuela

227. A number of incidents have been reported in which Guyana has exercised fisheries enforcement jurisdiction in respect of the area of its declared EEZ which overlaps with Venezuela's declared zone.
228. On 14 November 1983 six Venezuelan fishing trawlers are reported by Guyanese media to have been arrested by a Guyana Defence Force marine patrol for fishing illegally in Guyana's EEZ in the Atlantic off the Essequibo coast. The trawlers were brought to Georgetown where they were impounded. The captains were later charged by the Police under the Maritime Boundaries Act. On the 22 November, the Ministry of Home Affairs announced that one of the vessels along with its captain was released as a goodwill gesture to Venezuela. When the case came up for trial in Georgetown, the other five captains pleaded guilty and were fined G\$15,000 each. Upon payment of the fines, the boats were released.³⁰²
229. On 27 September 2002, as reported by a former Guyanese diplomat, a frigate of the Venezuelan Navy crossed the "international maritime median line" into Guyana's maritime space to demand the release of a Venezuelan fishing trawler seized by Guyana's Coast Guard after it was found fishing illegally in Guyana's waters. The commanding officer of the frigate withdrew when the commanding officer of the Guyana Coast Guard's vessel "Essequibo" warned him that he had trespassed into Guyanese territory and denied his demand for the release of the trawler. The trawler was impounded

²⁹⁹ This may be deduced from the US "Federal Register Notice" (publicly available) that establishes US EEZ limits, including in areas where there is no agreed boundary, in conjunction with published NOAA nautical charts: US State Department, Office of the Legal Adviser, 'Digest of United States Practice in International Law' (2013) 364–7; Expanded ASEAN Maritime Forum, Kuala Lumpur, 'Remarks of the Delegation of the United States' (3 October 2013), available at: <http://www.state.gov/documents/organization/226361.pdf>.

³⁰⁰ See, eg: US Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coast Survey, 'US Maritime Limits and Boundaries', available at: <http://www.nauticalcharts.noaa.gov/csdl/mbound.htm>.

³⁰¹ An Act (No 37 of 1993) respecting the territorial sea, archipelagic waters, internal waters and the exclusive economic zone. See in particular Art 8(3). Available on the DOALOS website: http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/BHS_1993_37.pdf. The US has not objected to the Bahamas' archipelagic baselines. As of January 2014, the governments of The Bahamas and the United States were engaged in maritime boundary negotiations: see 'Limits in the Seas', US State Dept website at: <http://www.state.gov/e/oes/ocns/opa/c16065.htm>.

³⁰² O Ishmael, *The Trail of Diplomacy: A Documentary History of the Guyana-Venezuela Border Issue* (Xlibris 2013), Chapter 44 H 'Arrest of Venezuelan Trawlers', available at: http://www.guyana.org/features/trail_diplomacy_pt9.html#chap56.

and its captain was later placed before the courts for illegal fishing. After he was penalised with a fine, the trawler and its crew were released and it sailed back to Venezuela.³⁰³ In October 2002 it was reported that a Venezuelan vessel fishing in the North West Region approximately 55 miles east of Guyana's western median line was intercepted by a Guyanese Coast Guard patrol.³⁰⁴ It is unclear whether this report relates to the same incident or not.

C. *Guyana/Suriname*

230. On 14 September 2000 (ie soon after CGX incident on 3 June 2000), Suriname apprehended Guyanese-licensed fishing trawlers in the disputed area. Guyana contended before the tribunal that this was Suriname's first action of this type.³⁰⁵
231. Both parties submitted in their pleadings that they had been issuing fishing licences and patrolling the waters belonging to the area of overlapping claims in these proceedings between 1977 and 2004.³⁰⁶ The exercise of fisheries jurisdiction by Guyana and Suriname between 1977 and 2004 was said by Guyana to reflect a recognition or acquiescence in a boundary along the Guyana Claim Line. Guyana referred, inter alia, to Suriname's alleged admission that it had not exercised fishing jurisdiction east of the line, to Guyana's establishment of a fishery zone, to its grants of fishing licences, and to its practices regarding the seizure of unlicensed fishing vessels as evidence of consistent conduct supporting its claim. Guyana also referred to the activities of its Coast Guard, Defence Force, and Transport and Harbours Department in areas west of the line, and claimed that Surinamese agencies had engaged in no such activities to the west of the line.³⁰⁷
232. Suriname disputed Guyana's contention that it refrained from carrying out enforcement west of the Guyana Claim Line, maintaining the converse to be true and also citing its conduct of marine biology research as supportive of its own claim.³⁰⁸ Suriname's position in respect of the CGX incident was that:

it was quite normal for coastal States to undertake law enforcement activities in disputed areas (usually in relation to fisheries) and also to do so against vessels under foreign flags including the flag of the other party to the dispute, unless specific arrangements exist. Suriname's practice in respect of fisheries enforcement in the disputed area is evidence of this.³⁰⁹

D. *Colombia/Venezuela*

233. The maritime area between Colombia and Venezuela is undelimited and there is a long-standing border dispute over the area known as the Gulf of Venezuela, or Gulf of Coquibacoa. In August 1987 the Colombian guided missile frigate *Caldas* refused to leave disputed waters at the mouth of the Gulf of Venezuela claimed by Venezuela. The Venezuelan government reacted by sending a fleet of F-16 fighter jets and almost engaging in combat.³¹⁰

³⁰³ Ibid, Chapter 48 J. April-December 2002.

³⁰⁴ 'Another Venezuelan trawler nabbed', 24 October 2002, *Stabroek News*, <http://www.landofsixpeoples.com/news022/ns210246.htm>.

³⁰⁵ *Guyana v Suriname* case, para 202 referencing Guyana Memorial para. 5.12.

³⁰⁶ Ibid, para 149.

³⁰⁷ Ibid, para. 200.

³⁰⁸ Ibid, para. 236.

³⁰⁹ Ibid, para 441.

³¹⁰ 'ICJ ruling requested in dispute with Venezuela', 14 August 1987, *Bogota Emisoras Caracol Network*, <http://web.stanford.edu/group/tomzgroup/pmwiki/uploads/2812-1987-08-17-FBIS-a-OEP.pdf>; J Charney and L Alexander (eds), *International Maritime Boundaries*, Vol 1 (Brill 1993) 282; R Guo, *Territorial Disputes and Resource Management* (Nova Science 2006) 168.

234. This dispute resurfaced when Venezuelan President Nicolas Maduro issued Decree No. 1.787 of 27 May 2015,³¹¹ which established this area as an “operating maritime and insular zone of integral defense”. The Ministry of Foreign Affairs of Colombia delivered a note of protest to the Venezuelan government regarding the decree’s implicit claim over the area, which it said had been in dispute for at least 200 years.³¹² It is also reported that Venezuela has recently constructed fishing installations in the disputed area order to exploit the local resource base.³¹³

E. Barbados and Trinidad and Tobago

235. Both Barbados and Trinidad and Tobago are UNCLOS parties. Arbitration was initiated by Barbados on 16 February 2004 under Part XV of UNCLOS before a Tribunal constituted in accordance with UNCLOS Annex VII. It resulted in an Award on 11 April 2006, which established a single maritime boundary between Barbados and Trinidad and Tobago that differs from the boundaries claimed by each of the parties in their pleadings before the Tribunal. The boundary for the most part follows the equidistance line between Barbados and Trinidad and Tobago, but, in its eastern, Atlantic sector, adjusts that line to take account of the coasts of Trinidad and Tobago that abut upon the area of overlapping claims.³¹⁴ Of interest to this study is the material in the Award and pleadings about activities in the disputed area prior to the Award, and, in particular, during the period when no provisional arrangements were in place.

236. On 30 April 1979 the parties entered into a Memorandum of Understanding on Matters of Co-operation between the Government of Barbados and the Government of Trinidad and Tobago, covering, inter alia, hydrocarbon exploration and fishing. In November 1990 the Parties concluded the “Fishing Agreement between the Government of the Republic of Trinidad and Tobago and the Government of Barbados” (the “1990 Fishing Agreement”), regulating, inter alia, aspects of the harvesting of fisheries resources by Barbadian fishing vessels in Trinidad and Tobago’s EEZ, and facilitating access to Barbadian markets for Trinidad and Tobago’s fish. The 1990 Fishing Agreement provided for a maximum of 40 Barbados fishing vessels through the issuance of maximum 40 licences.³¹⁵ The 1990 Fishing Agreement was concluded for only one year and never renewed, was subsequently ignored by the Barbadian fishing communities, and did not change local and traditional fishing patterns.³¹⁶ From that time, this area may be considered as one in which no effective provisional measures were in place.

237. In their pleadings both parties asserted that their enforcement of fisheries legislation and hydrocarbon licensing activities supported their respective claims to sovereign rights and jurisdiction.³¹⁷ For example, Barbados asserted that “it has conducted hydrocarbon activities in the area since 1978, particularly in the form of seismic surveys and oil concessions, and that the area has been regularly patrolled by its Coast Guard, and that at no time before 2001 did Trinidad and Tobago protest against these activities.” And “Trinidad and Tobago also claims to have exercised jurisdiction north of the equidistance line in connection with a proposed seismic shoot in 2003”.³¹⁸

³¹¹ See para 196 above.

³¹² ‘Colombia and Venezuela. The border dispute over the Gulf’, 13 August 2015, *Council on Hemispheric Affairs*, <http://www.coha.org/colombia-and-venezuela-the-border-dispute-over-the-gulf/>; ‘Venezuela accuses Colombia of “blackmail” amid maritime border dispute’, 23 June 2015, *Colombia Reports*, <http://colombiareports.com/venezuela-accuses-colombia-of-blackmail-and-media-lies-over-maritime-border-dispute/>.

³¹³ Atlas Caribbean website, at: <http://atlas-caraibe.certic.unicaen.fr/en/page-122.html>.

³¹⁴ PCA website: <https://pcacases.com/web/view/104> (Note: this case was being edited by PCA at time of access).

³¹⁵ *Barbados v Trinidad and Tobago* (Annex VII Tribunal) (2006) 45 ILM 798, para 261.

³¹⁶ *Ibid*, para 78.

³¹⁷ *Ibid*, paras 99, 103, 106, 108, 142, 143.

³¹⁸ *Ibid*, paras 361–2.

238. The Tribunal held that:

In examining the record of this case, the Tribunal does not find activity of determinative legal significance by Barbados in the area claimed by Trinidad and Tobago north of the equidistance line. Seismic surveys sporadically authorised, oil concessions in the area and patrolling, while relevant do not offer sufficient evidence to establish estoppel or acquiescence on the part of Trinidad and Tobago. Nor, on the other hand, is there proof of any significant activity by Trinidad and Tobago relevant to the exercise of its own claimed jurisdiction north of the equidistance line.³¹⁹....

The Tribunal accordingly does not consider that the activities of either Party, or the responses of each Party to the activities of the other, themselves constitute a factor that must be taken into account in the drawing of an equitable delimitation line.³²⁰

239. In the context of this litigation, it would seem that the question of the obligation not to hamper or jeopardise was not raised. On the contrary, evidence of activities which might have had this effect was advanced by each Party, claiming it to have “determinative legal significance” in support of their position on the delimitation (unsuccessfully as it turned out). In other words, the evidence was presented by the unilaterally acting party as strengthening its legal claim to the disputed area(s), not by the non-acting party as evidence of the other’s breach of Articles 74(3) and 83(3). It is worth noting that the Tribunal’s Award predated the award in the *Guyana v Suriname* case in 2007.³²¹

E. Colombia/Nicaragua

240. As mentioned above the ICJ delimited the maritime boundary between Colombia and Nicaragua in 2012, after ruling on sovereignty over certain maritime features located in the Caribbean sea.³²²

241. Colombia argued in its pleadings that it had exercised public, peaceful and continuous sovereignty over the cays in question for more than 180 years as integral parts of the San Andrés Archipelago. As part of the evidence to support this claim, it maintained that it had enacted laws and regulations concerning fishing. Nicaragua argued that they did not relate specifically enough to the archipelago to have this effect and anyway it had protested at the time. Colombia submitted that it had for many decades regulated fishing activities, conducted scientific exploration and conducted naval patrols throughout the area, whereas there was no evidence of any significant Nicaraguan activity there until recent times. Much of the evidence related to the period prior to the effective date of commencement of the maritime boundary dispute (1969); but it included evidence of naval patrols around that time. The Court took this evidence into account, and ruled that Colombia had sovereignty over the islands in dispute, which it then took into account in its determination of a single maritime boundary. There is no indication that either party modified its conduct in the undelimited area or the terms of its protests with reference to an obligation not to jeopardise or hamper, after the maritime delimitation dispute became active between them in 1969.³²³

³¹⁹ Ibid, para 363.

³²⁰ Ibid, para 366.

³²¹ Cf Section 2.5.6 above.

³²² *Territorial and Maritime Dispute (Nicaragua v Colombia)* (Merits) [2012] ICJ Rep 624, paras 218–9.

³²³ Ibid, paras 74–83. See also Section 2.6.4, paras 112–19, above.

3.2.5 PROVISIONAL ARRANGEMENTS AND AGREEMENTS

A. *Barbados/Guyana*

242. The 2003 EEZ Co-operation Treaty establishes a “co-operation zone for the exercise of joint jurisdiction, control, management, development, and exploration and exploitation of living and non-living natural resources, as well as all other rights and duties established in” UNCLOS, in a small area where their EEZs overlap and which is beyond the EEZ of any third State (but not necessarily beyond the continental shelf of any third State). The preamble to the agreement recognises “the relevance and applicability” of Article 74(3) of UNCLOS.³²⁴

B. *Trinidad & Tobago/Venezuela*

243. Provisional arrangements for traditional fishing activities have been and apparently still are in place in the “Area South of Trinidad and North of Venezuela” (not precisely delimited). A fishing agreement was signed in 1977, came into force in 1978 and expired in 1984.³²⁵ It was renegotiated in 1985 and expired in 1995.³²⁶ It is said to have catered for Trinidad and Tobago fishing permits to allow for fishing in the country’s waters and liberal access to Trinidad and Tobago waters by Venezuelan fishermen. A new agreement was adopted in 1997.³²⁷ Prior to these agreements there were numerous fishing-related incidents. Underlying these is a sovereignty dispute. The Trinidad & Tobago/Venezuela maritime boundary was delimited in 1989/1990.³²⁸

C. *El Salvador/Honduras*

244. In a peace treaty of 1980 the two states agreed on certain provisional obligations pending the delimitation of their disputed boundaries (see Articles 16, 30 and 37).³²⁹

³²⁴ Exclusive Economic Zone Co-operation Treaty between the State of Barbados and the Republic of Guyana concerning the exercise of jurisdiction in their exclusive economic zones in the area of bilateral overlap within each of their outer limits and beyond the outer limits of the exclusive economic zones of other States (with annex and figure), (signed 2 December 2003), entry into force 5 May) 2277 UNTS 201. Art 2(1) of the agreement states that “the parties contemplate that they may, by agreement at a later date, delimit an international maritime boundary between them,” and Art 1(2) provides that the agreement is without prejudice “to the eventual delimitation of the Parties’ respective maritime zones in accordance with generally accepted principles of international law” and UNCLOS.

³²⁵ ZK Chin-Yuen-Kee, ‘The Trinidad and Tobago/Venezuela Fishing Agreement’ (1985) University of Rhode Island Theses and Major Papers, Paper 347, available at: http://digitalcommons.uri.edu/ma_etds/347.

³²⁶ <http://www.fao.org/docrep/007/y2859e/y2859e12.htm>.

³²⁷ <http://www.ipsnews.net/1997/05/trinidad-and-tobago-politics-peace-reigns-for-the-moment/>.

³²⁸ Treaty between the Republic of Trinidad and Tobago and the Republic of Venezuela on the delimitation of marine and submarine areas (signed 18 April 1990, entered into force 23 July 1991) 1654 UNTS 301.

³²⁹ General Peace Treaty between the Republics of El Salvador and Honduras, (signed 30 October 1980, entered into force 10 December 1980) 1310 UNTS 226.

3.3 The Northern and Western Europe Region



Map 3.3³³⁰

3.3.1 INTRODUCTION

245. All States in Northern and Western Europe are parties to UNCLOS and thus bound by paragraph 3 of Articles 74 and 83.

246. There are 30 areas in Northern and Western Europe where the fishing zones (FZs)/EEZs and continental shelves within 200 nm of adjacent and/or opposite States overlap. The areas are to be found in three groups: (I) along the margins of the Atlantic Ocean, (II) in the North Sea (III), and in the Baltic Sea. Taking these three groups in turn and moving from north to south, the pairs of States involved are as follows:

- Group I (Atlantic margins): (1) Norway-Denmark (Faroe Islands); (2) Denmark (Faroe Islands)-UK; (3) Ireland-UK; (4) France-UK (including Guernsey and Jersey); (5) France-Spain (Bay of Biscay).
- Group II (North Sea): (6) Norway-UK; (7) Denmark-Norway; (8) Norway-Sweden; (9) Denmark-UK; (10) Denmark-Germany; (11) Germany-UK; (12) Germany-Netherlands; (13) Netherlands-UK; (14) Belgium-Netherlands; (15) Belgium-UK; (16) Belgium-France.
- Group III (Baltic Sea): (17) Finland-Sweden; (18) Finland-Russian Federation (formerly USSR); (19) Estonia-Finland; (20) Estonia-Russian Federation; (21) Estonia-Sweden; (22) Estonia-Latvia; (23) Lithuania-Russian Federation; (24) Latvia-Lithuania; (25) Poland-Germany; (26) Germany-Sweden; (27) Denmark-Germany; (28) Denmark-Sweden; (29) Poland-Russian Federation; (30) Poland-Sweden.

³³⁰ The map above is to give the reader a broad overview of the region discussed in this section, and no comment is made on the status of any lines represented therein, nor on any nomenclature. The region studied is described more precisely in the text which follows.

247. In all these areas, maritime boundaries have been established, usually by agreements (and in several instances, by a series of agreements relating to different sections of the boundary or boundaries). In four cases, the boundaries were directly influenced by decisions of the ICJ (Nos 10 and 12)³³¹ or ad hoc arbitral tribunals (Nos 4³³² and 8³³³). Two agreements provide for a joint area: they are No 2 (confined to fisheries) and No 5 (relating to the continental shelf). Many of the agreements that related initially to the continental shelf are now treated as EEZ or all-purpose boundaries by agreement or common consent.

3.3.2 CONTINENTAL SHELF RIGHTS

248. State practice has two aspects: first, legislative claims including the issue of licences and concessions; and, second, diplomatic claims advanced in connection with boundary negotiations. When the majority of the States in Northern and Western Europe began to exercise jurisdiction over the continental shelf (often in the mid-1960s), the legislation typically did not define precise outer limits, with the result that in the normal case overlaps of jurisdiction did not arise from the actual legislation or from licences issued thereunder. Areas were designated for licensing from time to time, often resulting in a “grey” or “white” corridor between two designated areas as two governments, faced with a future delimitation, both stood back. In other words, restraint was shown in making legislative claims to the continental shelf.

249. However, in certain places diplomatic claims to the continental shelf did overlap significantly. These overlaps arose where a State basing its claims on equidistance between base points was met with the claim that the equidistance method did not apply at all, notably in a concave coastal configuration (as in the case of Germany's North Sea coasts) or did not apply in particular areas where special circumstances existed (the French position in regard to the Channel Islands and the Isles of Scilly). In one instance between Belgium and France, a relatively minor overlap arose from the use of different chart datums, which meant that Banc Breedt was a low-tide elevation on one chart but no more than a submerged bank on another.³³⁴ More frequently, overlapping diplomatic claims arose from the pursuit of claims to accord full weight to small features such as low-tide elevations, rocks and islands – claims which other States considered to be unacceptable because they would result in boundaries that were not “equitable” as required by paragraph 1 of Articles 74 and 83.

250. The great majority of overlaps have now been resolved by agreements or the decisions of international courts, with the result that the region is now almost fully delimited within 200 nm.³³⁵ On a point of detail, restraint was typically shown as regards the establishment of tri-points. Rather than agree on a complete boundary, initial agreements stood back a few miles from a proposed tripoint and the consent of the third State was obtained. Poland, Sweden and the Soviet Union, for example, completed their three partial boundaries in the Baltic Sea by a trilateral Agreement concerning the Junction Point.³³⁶ Many agreements provide that, if in the future a discovery of oil or gas is made in the vicinity of the agreed line and it is considered likely that the field extends across

³³¹ *North Sea Continental Shelf Cases (Federal Republic of Germany/ Denmark; Federal Republic of Germany/ Netherlands) (Merits)* [1969] ICJ Rep 3.

³³² *Channel Arbitration (France/UK), relating to the continental shelf of the English Channel and the Channel Islands* (1979) 18 ILM 397.

³³³ *Grisbadarna case (Norway/Sweden), relating to the territorial sea* (1909) 11 RIAA 147.

³³⁴ DH Anderson, ‘Report No. 9-16’ in J Charney and L Alexander (eds), *International Maritime Boundaries*, Vol II (Martinus Nijhoff 1993), 1891.

³³⁵ The draft agreement for the delimitation of the continental shelf drawn up by Portugal and Spain in 1976 has not entered into force. Negotiations between Denmark and Poland for a boundary in the vicinity of Bornholm have proved to be protracted.

³³⁶ E Franckx, ‘Report No 10-12’ in J Charney and L Alexander (eds), *International Maritime Boundaries*, Vol II (Martinus Nijhoff 1993), 2096.

the boundary, the States Parties would negotiate an agreement for the efficient exploitation of the field based on unitisation and cooperation. For instance, Article 4 of the agreement of 10 March 1965 between Norway and the UK provides:

If any single geological petroleum structure or petroleum field, or any single geological structure or field of any other mineral deposit, including sand or gravel, extends across the dividing line and the part of such structure or field which is situated on one side of the dividing line is exploitable, wholly or in part, from the other side of the dividing line, the Contracting Parties shall...seek to reach agreement as to the manner in which the structure or field shall be most effectively exploited and the manner in which the proceeds deriving therefrom shall be apportioned.³³⁷

251. Examples of other boundary agreements containing such provisions include Nos 1, 2, 3, 5, 7, 9, 10, 11, 12, 22, 23, 26 and 27 (as numbered in paragraph 223 above).
252. There are several examples of the acceptance of obligations of restraint by States in Northern and Western Europe, both before and after the adoption of UNCLOS in 1982. The following are noteworthy:
253. First, during the unsuccessful negotiations in the 1960s for continental shelf boundaries between Denmark and the Federal Republic of Germany (FRG) and between the FRG and the Netherlands, the three governments discussed the idea of establishing an interim regime for the duration of proceedings before the ICJ in the *North Sea Continental Shelf* cases.³³⁸ According to Professor Oude Elferink, “Germany proposed that ...Denmark and the Netherlands would refrain from drilling on the German continental shelf...The Dutch delegation argued that an interim arrangement was not possible as long as it remained unknown what the German claim entailed...”³³⁹ After further contacts made little progress on account of the uncertainty over the German claim, both the Danish and Dutch governments acted upon their own proposal to notify the authorities in Germany in advance of activities to be undertaken by Danish and Dutch licensees in areas which, being close to the respective equidistance line, were considered likely to be claimed by Germany on equitable grounds. Germany routinely responded to these notifications to the effect that the activities were without prejudice to Germany’s contention that the method of equidistance was inapplicable to concave coasts such as those in the south-eastern part of the North Sea.³⁴⁰ In one case of proposed drilling by a Danish licensee, the German government responded to the notification by stating that the proposed drilling could not prejudice the pending delimitation and later by reserving its rights. The Danish authorities informed the licensee that it would be acting on its own risk, whereupon drilling was suspended.
254. Following the decision of the ICJ in the *North Sea Continental Shelf* cases, two agreements were negotiated in 1971 which not only defined maritime boundaries but also made arrangements in

³³⁷ Agreement relating to the delimitation of the continental shelf between the two countries (signed 10 March 1965, entered into force 29 June 1965) 551 UNTS 214. DH Anderson, ‘Report 9-15’ in J Charney and L Alexander (eds), *International Maritime Boundaries*, Vol II (Martinus Nijhoff 1993), 1886. This provision (and a similar one between the Netherlands and the UK) led to the conclusion of several agreements relating to the exploitation of the Frigg and similar cross-boundary fields in the North Sea (see Reports 9-15(2-4) by DC Smith in DA Colson and RA Smith (eds), *International Maritime Boundaries*, Vol V (Martinus Nijhoff 2005) 3944.

³³⁸ For a full account, see AG Oude Elferink, *The Delimitation of the Continental Shelf between Denmark, Germany and the Netherlands* (CUP 2013) 196–211. The case citation is at (n 331).

³³⁹ *Ibid*, 199.

³⁴⁰ AG Oude Elferink, ‘North Sea Continental Shelf cases,’ in R Wolfrum (ed), *The Max Planck Encyclopaedia of International Law* (OUP 2012) 808.

regard to Danish and Dutch licensees in areas that became German continental shelf. In simple terms, such licensees were entitled to apply for a German licence. Upon the signature, subject to ratification, of each boundary agreement, it was further agreed that the rights of Germany in the areas of continental shelf previously licensed by Denmark and the Netherlands should not be infringed pending entry into force; and that, accordingly, no new licences would be issued or new activities permitted by Denmark or the Netherlands.³⁴¹ These agreements regarding the rights of Germany pending entry into force of each delimitation agreement could be characterised as “provisional arrangements” of the type (subsequently) referred to in Article 83(3) of UNCLOS.

255. Second, in 1975, France and the UK concluded an agreement for the submission of their dispute over the delimitation of the continental shelf in the western part of the English Channel, including the seabed around the Channel Islands, to a Court of Arbitration. Article 11 of this agreement provided as follows:

1. A Party wishing to carry out...any activity in a portion of what it considers to be its continental shelf...shall...obtain the consent of the other Party.

256. Paragraphs 2 to 4 of Article 11 provided for the making of objections and for reference of issues to the Court for a ruling. Paragraph 6 provided that “The Court shall give ...a ruling... and may order such provisional measures as it considers desirable to protect the interests of either Party.” In the event, no such measures were ordered. These treaty provisions were provisional in nature, and expired when the Award was given. Whether provisions of this kind would now be considered as “provisional arrangements” within the meaning of Article 83(3) of UNCLOS is discussed above.³⁴²

257. Third, in 1985, Ireland and the UK resumed their deadlocked negotiations over the delimitation of the continental shelf in the Irish Sea and to the west of Scotland: the two governments did so on the basis of the then newly adopted UNCLOS, even though the UK had not signed it.³⁴³ In the discussions during the Conference, Ireland had supported the idea of observing a moratorium on activities pending agreement on a maritime boundary, and accordingly Ireland supported the terms of paragraph 3 of Article 83. The two delegations reached an understanding (one of several Guidelines) at the first stage of the resumed talks about the handling of any new claims and any new proposed activities in the areas under discussion.³⁴⁴ Such activities would include new designations of areas, new exploration licences, new seismic surveys and *a fortiori* any authorisations to drill. These understandings operated until agreement on two very long boundaries was reached in 1988: even so, the boundaries were incomplete in the Irish Sea. The understandings could be considered as “provisional arrangements” of the kind envisaged in Article 83(3).

258. Later, in 2001, a fourth example of practice took the form of a provisional delimitation of a small part of the continental shelf in the Irish Sea in order to allow for the laying of a new pipeline across the small undelimited area. In an exchange of letters which referred expressly to Article 83(3), the authorities in Dublin and London agreed to a provisional boundary without prejudice to the

³⁴¹ Texts in J Charney and L Alexander (eds), *International Maritime Boundaries*, Vol II (Nijhoff 1993) 1813 (Denmark) and 1849 (Netherlands).

³⁴² Section 2.4.3

³⁴³ For reasons confined to the terms of its Part XI.

³⁴⁴ Anderson sets out some typical guidelines, including “Each side will exercise restraint over activities within, or relating to, the area under discussion. These activities include defining claims in legislation, issuing licences for resource or research purposes, designating areas for administrative purpose under national legislation, or authorising exploratory fishing or drilling in areas of overlapping claims. Each side will inform the other in advance of authorising any new activities in that area.” DH Anderson, ‘Negotiating Maritime Boundary Agreements’ in R Lagoni and D Vignes (eds), *Maritime Delimitation* (Nijhoff 2006) 121, 129.

definitive boundary. This was clearly a provisional measure of a practical nature and a clear application of the first limb of Article 83(3) of UNCLOS. The provisional agreement was terminated by the Agreement establishing a Single Maritime Boundary between the Exclusive Economic Zones of the Two Countries and Parts of their Continental Shelves of 28 March 2013.³⁴⁵

3.3.3 FZ/EEZ RIGHTS

259. Although concerning a unilateral claim to a 50 nm fisheries zone rather than a maritime boundary, an aspect of the dispute between Iceland and the UK may be relevant also in the present study. After the dispute was referred to the ICJ, negotiations continued and resulted in the adoption in 1973 of a two-year interim agreement on a without prejudice basis. In other words, this was a provisional arrangement of a practical nature without prejudice to legal positions in the dispute. Certain judges considered that this agreement, in operation at the time of judgment and so determining the legal relations between the parties, had rendered moot the case before the Court. The majority of the judges held to the contrary, stating that:

if the Court were to come to the conclusion that the interim agreement prevented it from rendering judgment, or compelled it to dismiss the Applicant's claim as one without object, the inevitable result would be to discourage the making of interim arrangements in future disputes with the object of reducing friction and avoiding risk to peace and security. This would run contrary to the purpose enshrined in the provisions of the United Nations Charter relating to the pacific settlement of disputes.³⁴⁶

260. In other words, the Court upheld the "without prejudice" clause in the interim agreement. Given the Court's link with the UN Charter's principle of dispute settlement and the terms of Article 279 of UNCLOS, the same result could be expected in regard to the interpretation and application of the "without prejudice" clause in paragraph 3 of Articles 74 and 83.

261. When (most often in 1977) European States established fishery zones or EEZs extending to 200 nm, the legislation typically provided that the zone in question would not extend beyond the median or equidistance line with neighbouring States. In other words, restraint was again shown in the legislative claims. At the same time, there were many overlapping median lines. For instance, difficulties arose in delimitation talks wherever low-tide elevations, rocks or small islands were accorded full weight by a State and a neighbouring State regarded such claims as excessive and unacceptable. In some instances, overlaps between two Member States of the European Community/Union were of less practical significance on account of the Common Fisheries Policy.

262. In 1977, at a time when they had been negotiating a boundary of the continental shelf for several years without any provisional arrangements or agreement, the Soviet Union and Sweden wished to extend their respective fishing zones. After negotiations, they failed to agree on any type of boundary in the Baltic Sea. Accordingly, they concluded a Protocol to the Agreement on Mutual Relations in the Fishery Sector on 22 December 1977 in which they agreed not to take any unilateral measures which would prejudice the result of future negotiations on the boundary of their fishery zones.³⁴⁷ This meant that neither State would extend its fishery jurisdiction into the disputed area, resulting

³⁴⁵ DH Anderson, 'Report No 9-5(3)' in C Lathrop (ed), *International Maritime Boundaries*, Vol VII (Brill/American Society of International Law 2015). See also C Whomersley, 'Current Legal Developments: United Kingdom' (2015) 30 *International Journal of Marine and Coastal Law*.

³⁴⁶ *Fisheries Jurisdiction (United Kingdom v Iceland)* [1974] ICJ Rep 3, para 41.

³⁴⁷ At the Conference on the Law of the Sea, the Soviet delegation was an active supporter of provisional arrangements.

in a “white zone.” The area referred to by the parties as “disputed” consisted of the difference between their asserted median lines, not the full extent of the overlap of their 200 nm entitlements (the difference arising due to the Soviet Union’s position that zero weight should be given to the Swedish island of Gotland).

263. In 1986, the Soviet Union inspected and objected to fishing by vessels from both Sweden and a third State, Denmark, in this disputed zone. Denmark took the view that the zone remained high seas. This development appears to have put pressure on the Soviet Union and Sweden to reach agreement. They did not wish to determine a provisional boundary on account of the risk that it would become permanent or make a final agreement more difficult to reach. Later, the Soviet Union and Sweden agreed that, reciprocally, they would not inspect the other’s vessels in the zone. In 1987 an agreement establishing a single maritime boundary was concluded.³⁴⁸
264. In 1977, Ireland and the UK claimed fishery zones of 200 nm, both subject to median lines. However, the two States had different views as to what were the appropriate base points for measuring the 200 nm zones: Ireland wished to discount many UK base points on off-shore islands and rocks; whereas the UK wished to use them all. At that time, no agreement had been reached in negotiations for the delimitation of the continental shelf and no new negotiations were entered into for a fisheries or single maritime boundary. The fisheries authorities in Ireland and the UK reached some informal understandings whereby, in areas of overlapping claims, “each would have exclusive jurisdiction to take enforcement action against vessels of its own State, but either could take enforcement action against vessels of third States.”³⁴⁹ Patrols were notified informally in advance so as to reduce the risk of encounters between patrol vessels. These arrangements operated until 2013 when the Agreement on a Single Maritime Boundary was concluded.
265. An overlap arose in 1977 between the two fisheries zones measured from Scottish and Faroese base points, respectively. In particular, the Danish authorities did not accept the Flannan Islands, North Rona and Sule Skerry as base points. Informal understandings were reached concerning continued fishing by Scottish and Faroese vessels fishing in this area of overlapping claims. In the Agreement of 1999 between Denmark (Faroe Islands) and the UK establishing a maritime boundary, this area of overlapping claims became a Special Area subject to a defined regime.³⁵⁰ As regards fisheries jurisdiction, Article 5 provides that each Party will continue to apply its rules and regulations to the Special Area and that each will refrain from inspecting or controlling vessels licensed by the other party. With regard to jurisdiction over the continental shelf in the Special Area, each party is bound, in particular, to avoid unnecessary interference with fishing and to give notice of activities that may impact negatively on fisheries.
266. In 1977, Denmark and Sweden could not agree on the weight to be accorded to islands in the Kattegat and no boundary agreement was concluded at that time. In an Exchange of Notes, they agreed that:

Pending the conclusion of...an agreement...the area of the Kattegat situated outside the present 12 nautical miles fishery limits should be placed under joint Danish-Swedish

³⁴⁸ H Danelius, ‘The Law of the Sea: A Swedish Point of View’ (1980) 36 *Revue Egyptienne du Droit International* 35, 45–46; E Franckx, ‘Report No 10–9’; in J Charney and L Alexander (eds), *International Maritime Boundaries*, Vol II (Nijhoff 1993) 2060; AG Oude Elferink, *The Law of Maritime Delimitation: A Case Study of the Russian Federation* (Martinus Nijhoff 1994) 209.

³⁴⁹ CA Whomersley (n 345), 379–80.

³⁵⁰ DH Anderson, ‘Report No. 9-23’, in J Charney and L Alexander (eds), *International Maritime Boundaries*, Vol IV (Martinus Nijhoff 2002) 2955.

fisheries jurisdiction. Detailed regulation concerning the exercise of such fisheries jurisdiction in respect of fishing by third countries shall be established by agreement...³⁵¹

The provisional arrangement was terminated in 1984 upon the conclusion of a boundary agreement.

267. In 1978, Denmark and Poland were unable to reach agreement on a fisheries boundary in the area to the southeast of Bornholm, but they did agree to exercise joint fisheries jurisdiction in the area of overlapping claims, excluding vessels of third States from the white zone. The absence of a maritime boundary in this part of the Baltic Sea later led to the Nord Stream pipeline, running from the Russian Federation to Germany, being routed around the area of overlapping claims.³⁵²

3.4 The Mediterranean Region



Map 3.4³⁵³

3.4.1 INTRODUCTION³⁵⁴

268. The Mediterranean is a semi-enclosed sea, connected to the Atlantic Ocean through the Straits of Gibraltar, where it is 7.7 nm wide at its narrowest part.³⁵⁵ Twenty-three States claim maritime zones

³⁵¹ Cited by SP Kim, *Maritime Delimitation and Interim Arrangements in North East Asia* (Martinus Nijhoff 2004) 115.

³⁵² S Vinogradov, 'Challenges of Nord Stream: Streamlining International Legal Frameworks and Regimes for Submarine Pipelines' (2009) 52 German YBIL 241.

³⁵³ The map above is to give the reader a broad overview of the region discussed in this section, and no comment is made on the status of any lines represented therein, nor on any nomenclature. The region studied is described more precisely in the text which follows

³⁵⁴ The authors are grateful to Chris Whomersley, former Deputy Legal Adviser, Foreign and Commonwealth Office, UK, for his helpful comments on a draft of this section.

³⁵⁵ Art 122 of UNCLOS defines an "enclosed or semi-enclosed sea" as "a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States".

in the Mediterranean Sea, of which nine are EU Member States (Spain, France, Italy, Slovenia, Malta, Greece, Croatia, Cyprus and the UK).³⁵⁶

269. Notably, very few States in the region have declared an EEZ and a significant part of the waters of the Mediterranean are high seas. If all States in the region claimed EEZs to the maximum of their entitlement, none of the Mediterranean would be high seas. Several Mediterranean States have proclaimed functional *sui generis* zones in the water column beyond the territorial sea for the protection of fisheries and/or the environment without claiming full sovereign rights amounting to an EEZ. Such zones are not provided for under UNCLOS but their validity has not been challenged by other States in the region, presumably on the basis that the coastal States are claiming less than the EEZ to which they are entitled.
270. The fact that the Mediterranean is a semi-enclosed sea means that States in the region have additional duties of co-operation in accordance with Article 123 of UNCLOS. Article 123 provides that States bordering an enclosed or semi-enclosed sea “should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention.” It also requires States to “endeavour” to coordinate their activities in relation to certain specific areas, including conservation and exploitation of living resources, marine scientific research and protection and preservation of the marine environment. Due to the character of the Mediterranean as a semi-enclosed sea, it is likely that the establishment of maritime zones and the delimitation of maritime boundaries will have an impact on several other States. It has been argued that in semi-enclosed seas, the obligations of Articles 74(3) and 83(3) must be interpreted in light of Article 123 of UNCLOS.³⁵⁷
271. Another notable factor to be taken into account in the Mediterranean is the competence of the EU to regulate certain activities within the maritime zones of EU Member States. It is for the EU Member States to claim maritime zones. However, the proclamation of an EEZ by an EU Member State will mean that the EU will have certain competences to act in that area once proclaimed.³⁵⁸ Conservation of marine biological resources falls within exclusive EU competence. This means that only the EU can legislate in this area and Member States can only act to the extent that the rules adopted by the EU authorise them to. The fact that the EU does not have enforcement competence within the maritime zones of Member States means that Member States have the power to decline to pursue prosecutions of foreign fishermen in the interests of maintaining good international relations.³⁵⁹
272. All marine fisheries issues which do not relate to the conservation of marine biological resources are matters of shared competence between the Member States and the EU. This means that both the EU and the Member States can legislate on these issues, which include aquaculture and freshwater fisheries. However, where the EU has adopted rules, the Member States can generally only act in accordance with those rules. Beyond the territorial sea, there is a principle of “freedom of access” for all EU Member States within waters under the sovereignty of other Member States.

³⁵⁶ This figure includes Palestine, a State Party to UNCLOS, but does not include the Turkish Republic of Northern Cyprus, whose establishment was declared invalid by the United Nations Security Council in UNSC Resolution 541(1983). The UK claims a territorial sea of 3 nm for Gibraltar and for the Sovereign Base Areas of Akrotiri and Dhekelia.

³⁵⁷ M Grbec, *Extension of Coastal State Jurisdiction in Enclosed and Semi-enclosed Seas* (Routledge 2014) 64.

³⁵⁸ *Ibid.*, 125.

³⁵⁹ R Long ‘Stepping over Maritime Boundaries to Apply New Normative Tools in EU Law and Policy’ in MH Nordquist and JN Moore (eds), *Maritime Border Diplomacy* (Martinus Nijhoff 2012).

3.4.2 LEGISLATIVE PRACTICE

273. The practice of Mediterranean States regarding the declaration of EEZs and other zones may be relevant to the interpretation of the obligation of self-restraint. There has been limited declaration of EEZs in the Mediterranean.³⁶⁰ While several Mediterranean States have enacted national legislation regarding an EEZ, only France, Lebanon, Israel and Monaco have taken further steps and officially notified the UN of the coordinates of their claimed EEZs.³⁶¹ This has been explained by reference to the existence of “tacit agreement” not to declare EEZs on a reciprocal basis so as to preserve the character of the waters of the Mediterranean as high seas.³⁶² Scovazzi refers to the phenomenon as “EEZ phobia” and ascribes it in part to the prioritization by Mediterranean States of “interests such as free access to fisheries or mobility of commercial and military ships.”³⁶³
274. This practice must be understood in the context of the Mediterranean, that is, a semi-enclosed sea where the declaration of full EEZs would mean that all of the waters of the Mediterranean would fall within the jurisdiction of the bordering States and be subject to the exercise of their sovereign rights. While States are entitled to declare EEZs, their preference has been to maintain the character of the Mediterranean as high seas. However, the declaration by France of an EEZ in 2012 may signal a shift in this practice.
275. Four States in the Mediterranean claim Fisheries Protection Zones (“FPZs”), of varying size and character, namely Spain, Algeria, Libya and Tunisia. Palestine is entitled to a fishing zone under the Israeli-Palestinian Interim Agreement of 1995, which has been historically restricted in extent by Israel on security grounds.³⁶⁴ Three countries, France, Italy and Slovenia, have declared ecological protection zones while Croatia has established an ecological and fisheries protection zone.³⁶⁵ Several States have also established archaeological zones for the protection of underwater cultural heritage.³⁶⁶ The following section will set out State practice in relation to several of these zones.

A. Spain

276. Spain established an FPZ in 1997.³⁶⁷ The FPZ established by Spain does not extend to the Alboran Sea, that is, the narrower stretch of the Mediterranean along the southern coast of Spain, bordered by Spain and Morocco. The fact that Spain did not include the Alboran Sea may be considered to constitute an exercise of self-restraint by Spain, on the basis that the declaration of a zone in the area bordered by Morocco could have been considered to aggravate the existing dispute over the location of the maritime boundary between the two States.

³⁶⁰ EEZs have been declared by Albania, Morocco, Egypt, Syria, Cyprus, Tunisia, Libya, Lebanon, France, Monaco and Israel. However, not all of these States have taken measures to implement their rights and jurisdiction within the EEZ.

³⁶¹ Cyprus and Egypt have notified the UN of the coordinates of their agreed EEZ delimitation, as have Monaco and France. Libya, Morocco and Tunisia have notified of the UN of their EEZ legislation without supplying coordinates.

³⁶² M Grbec, *Extension of Coastal State Jurisdiction in Enclosed and Semi-enclosed Seas* (Routledge 2014) 75.

³⁶³ T Scovazzi, ‘The Mediterranean Sea maritime Boundaries’, in D Colson and R Smith (eds), *International Maritime Boundaries*, Volume V, (Martinus Nijhoff 2005) 3482–3.

³⁶⁴ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, (28 September 1995). Under the ceasefire agreement of 26 August 2014, it was agreed that Palestinian fishermen would be allowed to sail within 6 nm of the Gaza Strip, see <http://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/Israel-accepts-Egyptian-ceasefire-26-Aug-2014.aspx>.

³⁶⁵ The French ecological protection zone has now been replaced by an EEZ.

³⁶⁶ I Papanicolopulu, ‘The Mediterranean Sea’ in D Rothwell et al (eds), *The Oxford Handbook of The Law of the Sea* (OUP 2015) 609.

³⁶⁷ By Note No 448 of 9 June 1998, Spain deposited with the UN the list of geographical coordinates defining the limits set by Spain for the Fisheries Protection Zone established by Decree 1313/1997 of 1 August. Corrections to this list of coordinates were notified to the UN by Note Verbale No 256 of 13 April 2000 from the Permanent Mission of Spain to the United Nations, http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/mzn_s/mzn34.pdf.

277. France protested against what it described as a “delimitation” initiative by Spain, and the use by Spain of an equidistance line to indicate the northern limit of the FPZ.³⁶⁸ Grbec indicates that there were no consultations by Spain with other States before declaring the zone, concluding that Spain did not “endeavour to co-operate with other potentially affected States.”³⁶⁹

B. France

278. France declared an Ecological Protection Zone in the Mediterranean in 2003 and then an EEZ in 2012. Spain protested against the declaration of the EEZ by France, which extended beyond the limits of an equidistance delimitation line with Spain, recognising the right of all States in the Mediterranean to an EEZ “but not when that right is exercised in a unilateral manner”.³⁷⁰ Spain also expressed its surprise at the “unilateral” declaration of an EEZ “at a time when both countries are involved, on the one hand, in informal talks on maritime delimitation that would affect the Mediterranean, among other areas, and, on the other, in finding ways to improve the environmental protection of the area”.

C. Libya

279. In 2005 Libya established a FPZ which extends for 62 nm from the limit of the territorial sea.³⁷¹ The Libyan law establishing the FPZ stated that it was to exist until a Libyan EEZ had been declared.³⁷² Grbec considers that the FPZ can be understood as a provisional measure pending the establishment and delimitation of an EEZ.³⁷³ Libya declared an EEZ in 2009. However, to date, Libya has not declared the geographic coordinates of its claimed EEZ and the relevant Libyan law states that the “outer limits of this zone shall be established together with neighbouring States in accordance with instruments concluded on the basis of international law.”³⁷⁴

D. Croatia

280. Croatia declared an Ecological and Fisheries Protection Zone in 2003. Prior to establishing the zone, Croatia consulted with neighbouring and other European States.³⁷⁵ The relevant Croatian law states that the outer limit of the Ecological and Fisheries Protection Zone “shall be determined through delimitation agreements” with the neighbouring states and that pending the conclusion such agreements, the provisional outer limits of the zone will temporarily follow the delimitation line established under the 1968 Agreement on the delimitation of the continental shelf between the SFRY

³⁶⁸ Communication from the Government of France dated 22 September 1998, containing “Statement of the position of the French Government with respect to the Spanish communication concerning the deposit of a list of geographical coordinates”, 38 LOSB 54.

³⁶⁹ M Grbec, *Extension of Coastal State Jurisdiction in Enclosed and Semi-enclosed Seas* (Routledge 2014) 82.

³⁷⁰ Note Verbale from the Ministry of Foreign Affairs and Cooperation of Spain addressed to the Embassy of the Republic of France in Madrid dated 23 October 2012 (transmitted to the United Nations by a communication dated 27 March 2013). http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn94_2013_esp_e.pdf

³⁷¹ General People’s Committee Decision No 37 of 24 February 2005. The geographical co-ordinates of the FPZ are set out in General People’s Committee Decision No 105 of 21 June 2005.

³⁷² General People’s Committee Decision No 105 of the year 1373 from the death of the Prophet (AD 2005) concerning the delimitation of the Libyan fisheries protection zone in the Mediterranean Sea, 59 LOSB 19.

³⁷³ M Grbec, *Extension of Coastal State Jurisdiction in Enclosed and Semi-enclosed Seas* (Routledge 2014) 118.

³⁷⁴ General People’s Committee Decision No 260 of AJ 1377 (AD 2009) concerning the declaration of the exclusive economic zone of the Great Socialist People’s Libyan Arab Jamahiriya, 72 LOSB 78.

³⁷⁵ Note from the Prime Minister of Montenegro to the Prime Minister of the Republic of Croatia, 15 October 2003, http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/MNG_note20150619en.pdf at 22.

and Italy and the 2002 Protocol on the Interim regime along the Southern Border between the Republic of Croatia and Serbia and Montenegro.

281. Slovenia objected to the “unilateral” declaration of the zone by Croatia considering that it represented “interference into the area where the Republic of Slovenia has the sovereign rights and jurisdiction, and means the attempt to prejudice the final solution of the border issues between the two States.”
282. Italy also objected to the unilateral delimitation of the zone claimed by Croatia. Citing Article 74 of UNCLOS, the Italian note states “Croatia, in violation of Article 74 of the United Nations Convention on the Law of the Sea, did not involve Italy in the setting of the provisional limit, despite the provision on the need for cooperation contained in the aforementioned article”. In contrast when Italy adopted national legislation extending its claimed continental shelf in 2012 it noted that the declared limits of its continental shelf did not “prejudice against the final demarcation of Italy’s continental shelf in the Strait of Sicily and in the southern expanse of the Ionian Sea, as envisaged in Article 83 paragraph 3”.
283. Montenegro also responded to the declaration of the Ecological and Fisheries Protection Zone by Croatia, noting that the 2002 Protocol on the Interim regime along the Southern Border between the Republic of Croatia and Serbia and Montenegro had only delimited the territorial sea.³⁷⁶ Montenegro later described this note as a protest against Croatia’s unilateral extension of jurisdiction beyond the territorial sea.³⁷⁷

E. Analysis

284. The declaration of functional zones (rather than full EEZs) may constitute evidence of self-restraint by the States concerned. Papanicolopulu describes the creation of *sui generis* zones as serving “the interest of friendly relations”, concluding that the “practice derives consideration and might serve as an example for other contested regions.”³⁷⁸
285. The protests by States against the unilateral declaration of EEZs and other zones may also be relevant. This practice indicates that some States consider that consultations with neighbouring States should occur before maritime zones are declared. It is not contested that all States are entitled to EEZs, however, in the particular context of a semi-enclosed sea, the declaration of an EEZ could be considered to jeopardise the reaching of a final agreement on maritime delimitation. The protest against unilateral declaration of maritime zones suggests that obligations under Articles 74(3) and 123 of UNCLOS may include consultation on with neighbouring States before the declaration of maritime zones. Grbec concludes that recent extension of jurisdiction by States in the Mediterranean Sea provide evidence that there has not been enough cooperation with regard to provisional or final delimitation of maritime zones.³⁷⁹
286. It is unclear whether this obligation would also apply to continental shelf claims. Article 77(3) of UNCLOS provides that the rights of the coastal State over the continental shelf are inherent, and do not depend on occupation or declaration. In contrast, sovereign rights in the EEZ are not inherent

³⁷⁶ Note from the Prime Minister of Montenegro to the Prime Minister of the Republic of Croatia, 15 October 2003.

³⁷⁷ Communication from the Government of Montenegro, dated 18 May 2015 concerning exploration and exploitation of resources in the Adriatic Sea by the Republic of Croatia, http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/MNG_note20150619en.pdf.

³⁷⁸ I Papanicolopulu, ‘The Mediterranean Sea’ in D Rothwell et al (eds), *The Oxford Handbook of The Law of the Sea* (OUP 2015) 611.

³⁷⁹ M Grbec, *Extension of Coastal State Jurisdiction in Enclosed and Semi-enclosed Seas* (Routledge 2014) 133.

or automatic; their existence was agreed upon by States participating in the Third United Nations Conference on the Law of the Sea, and they require action on the part of the coastal State to become effective. It may be that the obligation of cooperation outlined above only applies prior to the declaration of an EEZ as a result of the different juridical character of States rights over the continental shelf and EEZ.

3.4.3 CONTINENTAL SHELF RIGHTS

287. There are numerous examples in the Mediterranean of States issuing hydrocarbon licences in disputed maritime areas, followed by protests from neighbouring States. There are also some examples of States which have not carried out hydrocarbon licensing in disputed areas and have referred to the character of an area as disputed as reason for doing so.

A. *Libya/Malta*

288. In 1973, Malta issued invitations for hydrocarbon licences in an area of the continental shelf disputed with Libya.³⁸⁰ The southern boundary of the blocks concerned was the equidistance line with Libya and the official invitation noted that certain of the blocks on offer were subject to alteration following agreement of a median delimitation line with Libya.³⁸¹ Libya also granted concessions in the continental shelf in the disputed area, and some of the blocks offered projected north of an equidistance line with Malta and overlapped with the blocks offered by Malta. In July 1974, Malta published a notice in a national newspaper warning ships and fishing boats to stay away from a ship which would be carrying out a seismographic survey within a certain area. Libya sent several Notes Verbales to Malta seeking further information about the activities and setting out its position that the area concerned was also claimed by Libya. In its Counter-Memorial in the *Libya/Malta* case before the ICJ, Libya noted that when a Special Agreement was concluded between the two States, there was an understanding between the parties that no further drilling would take place until the ICJ had delivered its decision.³⁸² On 20 August 1980, an oil rig drilling under a licence granted by Malta in an area 50 nm southeast of Malta was surrounded by Libyan warships and forced to stop drilling.³⁸³

289. A Report by the Secretary-General of the UN to the Security Council of 13 November 1980 noted Malta's understanding that when the Special Agreement was signed in 1976, Malta "had accepted an implicit understanding" that it would not begin any drilling operations until the ICJ had reached a decision.³⁸⁴ However Malta considered that since Libya had failed to ratify the Agreement, it was legally entitled to begin drilling operations.³⁸⁵ As UNCLOS had yet to be concluded at this point, Libya could not rely on Article 83(3) of UNCLOS.

290. On 3 March 2008, Libya wrote to Heritage Oil, a company that had been granted a licence for hydrocarbon exploration by Malta in 2007, warning the company not to do any drilling in an area

³⁸⁰ Notice inviting Applications for Production Licences, annexed to the Memorial of Malta, 26 April 1983 submitted to the ICJ in *Continental Shelf (Libyan Arab Jamahiriya/Malta)* (Merits) [1985] ICJ Rep 13.

³⁸¹ Memorial of Malta, 26 April 1983 submitted to the ICJ in *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case.

³⁸² Counter-Memorial of the Libyan Arab Jamahiriya submitted in the ICJ *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case, 26 October 1983, paras 1.23–24.

³⁸³ Memorial of Malta, para 104; TL McDorman, 'The Libya Malta Case: Opposite States confront the Court', (1986) 24 Canadian Yearbook of International Law 337.

³⁸⁴ Report by the Secretary-General on the Mission of his Special Representative to Malta and the Libyan Arab Jamahiriya, 13 November 1980, UN Doc S/14256, para 6.

³⁸⁵ Report by the Secretary-General on the Mission of his Special Representative to Malta and the Libyan Arab Jamahiriya, 13 November 1980, UN Doc S/14256, para 6.

claimed by Libya (Area 7).³⁸⁶ It was reported that Heritage Oil was denied permission to drill a well in Area 7 by the Maltese Government in 2012, due to the ongoing dispute with Libya.³⁸⁷

B. *Malta/Italy*

291. In 2007, Italy protested against the grant of hydrocarbon exploration licences by Malta stating that “no unilateral actions shall be taken by Malta and Italy in the disputed area”.³⁸⁸ In October 2011, Italy is reported to have issued a diplomatic note in protest against Malta’s tender for oil exploration in disputed continental shelf areas of the Ionian Sea, stating that Malta’s actions violated the “spirit and letter” UNCLOS which committed all states to reach “equitable solutions” in delimiting their zones.³⁸⁹

C. *Turkey/Cyprus*

292. Practice regarding hydrocarbon licensing in the area disputed between Turkey and Cyprus takes place in the context of a territorial dispute related to the establishment of the Turkish Republic of Northern Cyprus.

293. Cyprus opened a first licensing round in 15 February 2007 and a second round on 23 November 2011.³⁹⁰ Turkey claimed that the licensing would threaten peace and security in the region and used warships to harass ships carrying out surveys under Cypriot licence. In 2011, Turkey sent a research vessel and warships into the Cypriot EEZ to “protect Turkey’s interests”. Russia then sent naval forces into the area.³⁹¹ Between 12 December 2013 and 14 January 2014, a Turkish seismic vessel conducted seismic survey operations within the maritime zones of Cyprus.³⁹² Cyprus sent a letter of protest to the UN on 13 February 2014 and Italy also protested against Turkey’s seismic survey activities in Cyprus’s EEZ.³⁹³

D. *Montenegro/Croatia*

294. From September 2013 to January 2014, Croatia carried out geological and seismic exploration in an area south of an azimuth of 231° in the Adriatic Sea. In November and December 2014, Montenegro protested against Croatia’s “unilateral” conduct of seismic exploration in the area.³⁹⁴ Montenegro noted that it had not been notified of such activity either by Croatia or the company hired to carry out the surveying. Montenegro stated that the use of the information collected without its consent as the basis

³⁸⁶ The full text of the letter is printed in R Vassallo, ‘Updated | Castille Requests Clarifications from Heritage Oil on Libyan Cease and Desist’, 5 January 2011, *Malta Today*, <http://www.maltatoday.com.mt/news/national/7697/updated-castille-requests-clarifications-from-heritage-oil-on-libyan-cease-and-desist>.

³⁸⁷ ‘Government refused well drilling licence to Heritage Oil in 2012’, 15 October 2015, *Times of Malta*, <http://www.timesofmalta.com/articles/view/20151015/local/government-refused-well-drilling-licence-to-heritage-oil-in-2012.588294>.

³⁸⁸ ‘OPM tight-lipped on “oil moratorium” in Malta-Italy dispute’, 8 October 2015, *Times of Malta*, <http://www.timesofmalta.com/articles/view/20151008/local/opm-tight-lipped-on-oil-moratorium-in-malta-italy-dispute.587410>.

³⁸⁹ I Camelleri, ‘Italy joins rush for oil and gas rights’, 10 October 2011, *Financial Times*, <http://www.ft.com/cms/s/0/6de40bce-f358-11e0-b11b-00144feab49a.html#axzz3uVOzzP6V>.

³⁹⁰ I Kouskouvelis ‘Smart Leadership in a Small State: the Case of Cyprus’ in S Litsas and A Tziampiris (eds), *The Eastern Mediterranean in Transition: Multipolarity, Politics and Power* (Ashgate 2015) 98.

³⁹¹ *Ibid*, 99.

³⁹² Letter dated 13 February 2014 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General, http://www.un.org/ga/search/view_doc.asp?symbol=A/68/759.

³⁹³ ‘Italy protests Turkish actions in EEZ’, 15 October 2014, *Cyprus Mail*, <http://cyprus-mail.com/2014/10/15/italy-protests-turkish-actions-in-eez/>.

³⁹⁴ Communication from the Government of Montenegro to the United Nations, dated 1 December 2014, concerning exploration and exploitation of resources in the Adriatic Sea by the Republic of Croatia; Note from the Ministry of Foreign Affairs and European Integration to the Ministry of Foreign Affairs and European Affairs of the Republic of Croatia, 19 November 2014, http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/MNG_note20150619en.pdf at 11 and 14.

of a hydrocarbon licensing round was a breach of international law, and requested that originals of any seismic imagery and processed data given to potential concessionaires be given to Montenegro. Montenegro referred to the requirement under UNCLOS “to search for mutually acceptable interim provisional arrangements, as the best instrument to avoid escalation of the dispute”.³⁹⁵

295. In January 2015, Croatia issued hydrocarbon licences for several blocks in the South Adriatic. Montenegro protested against these “unilateral activities” by Croatia.³⁹⁶ The protest notes states that negotiations were underway regarding the drafting of a Memorandum of Understanding whereby the parties would agree that no exploration or exploitation of hydrocarbons would take place in the disputed area pending the delimitation of the boundary. Croatia and Montenegro had also exchanged drafts of a Special Agreement to refer the dispute to the ICJ. In May 2015, Montenegro lodged a further protest with the UN against Croatia’s “unilateral acts and activities” in the disputed maritime area. In this note, Montenegro noted that it had “refrained from unilateral measures in the area around the line of azimuth of 231°, although it would be fully entitled to exercise jurisdiction.”³⁹⁷

E. Morocco

296. In March 2015, it was reported that Morocco had signed an agreement with the Mubadala Petroleum Company, a subsidiary of Abu Dhabi’s state-owned Mubadala Development Company, granting them an exclusive reconnaissance licence to carry out geological survey of the hydrocarbon potential of an area off Morocco’s Mediterranean coast.³⁹⁸

F. Analysis

297. As States both carry out hydrocarbon licensing and exploration in disputed areas and protest against such acts when carried out by neighbouring States, it is difficult to draw any conclusions as to the compatibility of hydrocarbon licensing and exploration with the obligations of Article 83(3). As a spokesperson of Malta noted in the context of a dispute with Libya “[W]hen claims overlap it is usual for the relative countries to issue notes regarding claims by other countries.”³⁹⁹ It is in the interest of States to protest against any activity in a disputed area in light of any possible future recourse to third party dispute settlement. It is thus difficult to ascertain what weight should be accorded to such protests when analysing the obligations of Article 83(3).

3.4.4 PROVISIONAL ARRANGEMENTS AND AGREEMENTS

A. Tunisia/Algeria

298. The Agreement on provisional arrangements for the delimitation of the maritime boundary between the Republic of Tunisia and the People’s Democratic Republic of Algeria (“the Tunisia/Algeria

³⁹⁵ Communication from the Government of Montenegro to the United Nations, dated 1 December 2014, concerning exploration and exploitation of resources in the Adriatic Sea by the Republic of Croatia, http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/MNG_note20150619en.pdf at 11.

³⁹⁶ Note from the Ministry of Foreign Affairs and European Integration to the Ministry of Foreign Affairs and European Affairs of the Republic of Croatia, 5 January 2015, http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/MNG_note20150619en.pdf at 8.

³⁹⁷ Communication from the Government of Montenegro, dated 18 May 2015 concerning exploration and exploitation of resources in the Adriatic Sea by the Republic of Croatia, http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/MNG_note20150619en.pdf.

³⁹⁸ C Coats, ‘Morocco Eyes Mediterranean Oil & Gas with Offshore Deal’, 31 March 2015, *Forbes*, <http://www.forbes.com/sites/christophercoats/2015/03/31/morocco-eyes-mediterranean-oil-gas-with-offshore-deal/#6de886aa3a3d>.

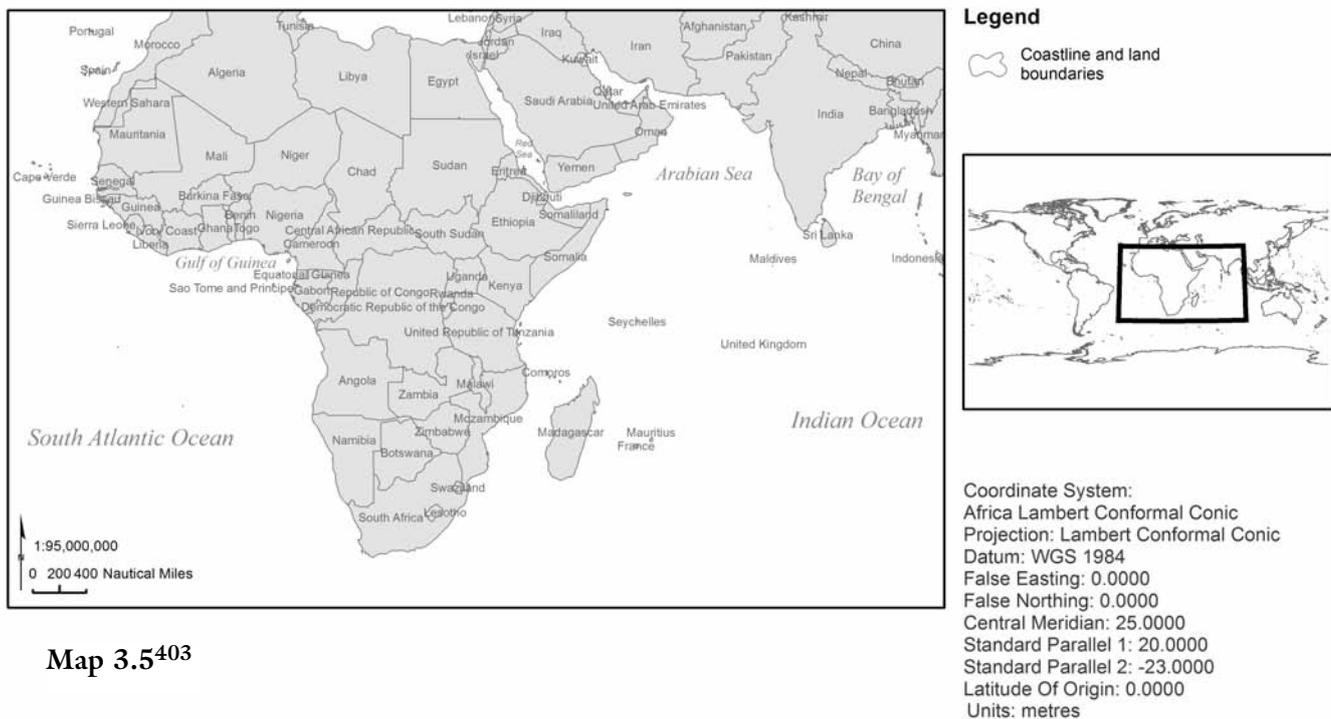
³⁹⁹ K Sansone, ‘Malta and Libya’s Oil “Waltz”’, 7 January 2011, *Times of Malta*, <http://www.timesofmalta.com/articles/view/20110107/local/malta-and-libya-s-oil-waltz.344200>.

interim agreement”) is a bilateral agreement containing an explicit reference to obligations under Articles 74(3) and 83(3). The Tunisia/Algeria interim agreement establishes a provisional single maritime boundary between the two States for a period of six years from the entry into force of the agreement (2003). The parties are reported to have concluded a final delimitation agreement in 2009 based on the interim agreement, though the final agreement is not publically available.⁴⁰⁰

B. Italy/Malta

299. In October 2015, Italy and Malta were reported to have agreed on a moratorium on oil exploration and exploitation in a disputed area south of the island of Sicily.⁴⁰¹ Both States had previously issued hydrocarbon licences in the area and are reported to have carried out negotiations regarding the establishment of a joint development zone.⁴⁰² The agreement is described as “informal” and is not publically available. It is understood to have been concluded in the context of broader negotiations between Italy and Malta regarding responsibility for individuals rescued in the Maltese search and rescue area.

3.5 The Sub-Saharan Africa and the Greater Indian Ocean Region



Map 3.5⁴⁰³

⁴⁰⁰ H Slim and T Scovazzi, *Study of the current status of ratification implementation and compliance with maritime agreements and conventions applicable to the Mediterranean Sea Basin, Part 2: Regional Report* (European Commission, Europe-Aid Cooperation Office, December 2009) 11.

⁴⁰¹ I Camilleri, ‘Italy, Malta agree oil drilling moratorium in disputed area’, 4 October 2015, *Times of Malta*, <http://www.timesofmalta.com/articles/view/20151004/local/italy-malta-agree-oil-drilling-moratorium-in-disputed-area.586807>.

⁴⁰² ‘Malta proposes joint exploration after Italy protests at new exploration blocks’ 17 October 2011, *Energy-pedia News*, <http://www.energy-pedia.com/news/malta/malta-proposes-joint-exploration-after-italy-protests-at-new-exploration-blocks>.

⁴⁰³ The map above is to give the reader a broad overview of the region discussed in this section, and no comment is made on the status of any lines represented therein, nor on any nomenclature. In particular, the authors make no comment on the status of Western Sahara.

3.5.1 INTRODUCTION⁴⁰⁴

300. The region includes all of Africa (except the Mediterranean coast), the Red Sea and the Arabian Sea. Approximately 60 per cent of maritime boundaries in this region are completely undelimited, while several have been only partially delimited.⁴⁰⁵ Recent discoveries of offshore hydrocarbons and deadlines for submission of preliminary information to the UN Commission on the Limits of the Continental Shelf ("CLCS") have provided the impetus for the publication of co-ordinates of maritime zones and the negotiation of maritime boundaries.⁴⁰⁶
301. Two maritime boundary disputes in the region are currently pending third party settlement, namely the *Somalia v Kenya* dispute at the ICJ and *Ghana/Côte d'Ivoire* dispute at ITLOS. Somalia filed its application instituting proceedings in the *Somalia v Kenya* case with the ICJ on 28 August 2014. Somalia's observations on the preliminary objections submitted by Kenya were due on 5 February 2016. The ICJ has announced that public hearings on the preliminary objections will take place in September 2016.⁴⁰⁷ In December 2014, Ghana and Côte d'Ivoire concluded a Special Agreement to transfer the dispute concerning the delimitation of their maritime boundary to a special chamber of ITLOS. The Reply of Ghana is due on 25 July 2016 and the Rejoinder of Cote d'Ivoire is due on 14 November 2016.⁴⁰⁸
302. Other maritime boundaries in the region which have been delimited by international courts and tribunals are: Dubai/Sharjah (1981);⁴⁰⁹ Guinea/Guinea-Bissau (1985);⁴¹⁰ Guinea-Bissau/Senegal (1989);⁴¹¹ Eritrea/Yemen (1999);⁴¹² Qatar/Bahrain (2001);⁴¹³ Cameroon/Nigeria (2002);⁴¹⁴ and India/Bangladesh (2014).⁴¹⁵

⁴⁰⁴ The authors are grateful to Chris Whomersley, former Deputy Legal Adviser, Foreign and Commonwealth Office, for his helpful comments on a draft of this section

⁴⁰⁵ An intergovernmental conference for the purpose of establishing maritime boundaries between African States is due take place in June 2016 on the initiative of Côte d'Ivoire.

⁴⁰⁶ Art 4 of Annex II to UNCLOS provides that details on the outer limits of the continental shelf beyond 200 nm should be submitted to the Commission on the Limits of the Continental Shelf within ten years of the entry into force of the Convention for that State.

⁴⁰⁷ *Maritime Delimitation in the Indian Ocean (Somalia v Kenya)*. ICJ website at: <http://www.icj-cij.org/docket/index.php?p1=3&p2=1&k=00&case=161&code=SK>.

⁴⁰⁸ *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, ITLOS Case no 23 (Merits), <https://www.itlos.org/en/cases/list-of-cases/case-no-23/case-no-23-merits/>.

⁴⁰⁹ Arbitral Award of 19 October 1981, (1993) 91 ILM 543.

⁴¹⁰ *Guinea/Guinea-Bissau: Dispute Concerning Delimitation of the Maritime Boundary*, Award of 14 February 1985, (1986) XXV ILM 2, March 1986, 251–305.

⁴¹¹ *Arbitration Tribunal for the Determination of the Maritime Boundary (Guinea-Bissau/Senegal)* Award of 31 July 1989. Guinea-Bissau subsequently filed an application before the ICJ, requesting that the Arbitral Award of July 1989 be declared null and void. The Arbitral Award was upheld by the ICJ in November 1991, however the Court noted that the Arbitral Award had not brought about a complete delimitation of the maritime boundary. Guinea-Bissau then instituted proceedings regarding the maritime delimitation dispute before the ICJ. However, the case was withdrawn following the conclusion by the parties of a Management and Cooperation Agreement in 1993. This agreement provided, inter alia, for joint exploitation of resources in the disputed area. The case was subsequently removed from the list of the ICJ.

⁴¹² *Award of the Arbitral Tribunal in the second stage of the proceedings between Eritrea and Yemen (Maritime Delimitation)*, 17 December 1999, XXII RIAA 335–410.

⁴¹³ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, (Merits), Judgment, [2001] ICJ Rep, 40.

⁴¹⁴ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria, Equatorial Guinea Intervening)* (Merits) [2002] ICJ Rep 303.

⁴¹⁵ *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v India)* (Annex VII Tribunal) (Award of July 2014), available at: http://www.pca-cpa.org/showpage_5a3b.html?pag_id=1376.

3.5.2 LEGISLATIVE PRACTICE AND CLCS SUBMISSIONS

A. Angola/Democratic Republic of Congo

303. The territorial and maritime boundary between the Democratic Republic of Congo (“DRC”) and Angola is disputed between the two countries. DRC’s coastline (of approximately 40 km) lies between the Angolan province of Cabinda to the north and Angola to the south. In May 2009, the DRC enacted legislation delimiting its territorial sea, EEZ and continental shelf.⁴¹⁶ Prior to this, DRC had not given any coordinates for its claimed maritime zones. The boundary claimed by the DRC is formed by two parallel horizontal lines projecting from the land boundaries with Cabinda to the north and Angola to the south. The DRC claims several areas which are the subject of hydrocarbon licences issued by Angola.
304. In May 2009, both the DRC and Angola submitted preliminary information on the extent of their respective continental shelves beyond 200 nm to the CLCS. Angola filed its full submission on 6 December 2013. In its preliminary information the DRC stated “the area of the continental shelf... is under de facto occupation by Angola”.⁴¹⁷ Angola responded to the DRC’s CLCS submission with a letter of protest describing the DRC submission as “aimed at the unilateral delimitation of all maritime areas” and stating that it remained “ready at any time to resolve the dispute arising from this situation through the relevant machinery provided for in international law.” The continental shelf claimed by Angola includes all of the area claimed by DRC, and reserves only a small triangular area of territorial sea to the DRC.
305. The DRC has protested against the Angolan submission, most recently on 17 September 2015, where it noted that the lateral lines drawn up unilaterally by Angola continued to contravene UNCLOS Article 7(6) and Article 77(1) and (2).⁴¹⁸ Neither the DRC nor Angola mention obligations of restraint under Articles 74(3) nor 83(3) in their protest notes.

B. Somalia/Yemen

306. The EEZ boundary between Somalia and Yemen is undelimited. In 1972, Somalia enacted the “Territorial Sea and Ports Law” extending its territorial sea to 200 nm.⁴¹⁹ In addition, on 26 January 1989, Somalia declared a 200 nm territorial sea and EEZ. On 30 June 2014, the coordinates of the EEZ were deposited with the United Nations. Yemen objected to the deposit of coordinates, stating that the Somalia EEZ violated Yemen’s territorial waters and EEZ.⁴²⁰ On 10 September 2014, Yemen sent a further letter of protest to the United Nations, noting that Somalia’s claimed EEZ encompasses islands under the sovereignty of Yemen.⁴²¹
307. In 2015, vessels registered in Yemen and Iran were reportedly seized by the Coast Guard of Puntland,

⁴¹⁶ http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/cod_2009_law09.pdf.

⁴¹⁷ Democratic Republic of Congo, Preliminary information submitted to the CLCS, 7 May 2009, available at: http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/cod2009informationpreliminaire1.pdf.

⁴¹⁸ Note Verbale No. 130/322/4035/122/2015 addressed to the UN Secretariat from the Ministry of Foreign Affairs and International Cooperation of the Democratic Republic of the Congo, 17 December 2015, http://www.un.org/depts/los/clcs_new/submissions_files/ago69_2013/cod_re_ago_oct_2015e.pdf.

⁴¹⁹ Law No. 37 on the Territorial Sea and Ports, available at: http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/SOM_1972_Law.pdf.

⁴²⁰ Note Verbale of 25 July 2014, http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/yen_re_som_2014eez.pdf.

⁴²¹ Note Verbale of 10 September 2014, <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/yemen.pdf>.

a self-declared autonomous region of Somalia.⁴²² Yemeni fishermen have been detained in Puntland on the grounds of violation of the territorial waters of Somalia.⁴²³

3.5.3 CONTINENTAL SHELF RIGHTS

A. Mauritania/Senegal

308. Mauritania signed production sharing contracts with Kosmos Energy for several offshore hydrocarbon blocks in 2012.⁴²⁴ Two of these blocs are adjacent to Senegalese waters. In May 2015, Kosmos Energy announced a significant gas discovery in one of these blocks.⁴²⁵

309. Senegal also granted licences for the exploration of oil and gas to Kosmos Energy in maritime blocks adjacent to those granted to Kosmos by Mauritania.⁴²⁶ In January 2016, Kosmos Energy announced that it had discovered gas offshore Senegal.⁴²⁷ The gas field straddles the blocks granted by Mauritania and Senegal.⁴²⁸ Kosmos announced that it had entered into a Memorandum of Understanding with the national oil companies of both Senegal and Mauritania, which sets out the principles for an intergovernmental cooperation agreement for the development of the cross-border resource.⁴²⁹

B. Sierra Leone/Liberia

310. Sierra Leone has authorised exploration and drilling activities in areas adjacent to Liberia.⁴³⁰ Liberia has granted permits for exploration activities in a block adjacent to Sierra Leone, but to date, only seismic data acquisition activity has been reported.⁴³¹

C. Angola/DRC

311. Angolan oil production includes blocks offshore the enclave of Cabinda which lie within the DRC's claimed EEZ. For example, Block 14, located approximately 100 km off the coast of Cabinda, started production in 1999. Production thus predates the DRC's publication of the coordinates of its claimed maritime zones in 2009. Since June 2003, the DRC has officially claimed a proportion of the oil extracted from the deep-water Angolan production blocks.

⁴²² A Abdirahman, 'Somalia: Puntland Coast Guard seize Yemeni & Iranian Illegal Fishing Vessels', 17 October 2015, *Horseed Media*, <https://horseedmedia.net/2015/10/17/somalia-puntland-coast-guard-seize-yemeni-iranian-illegal-fishing-vessels/>; 'Somaliland seizes Yemeni and Egyptian vessels' 17 December 2014, *BBC News*, <http://www.bbc.co.uk/news/world-africa-30513110>. See also, 10 years before, 'Somaliland Says Arrests 84 Yemeni Fishermen', 20 February 2006, *Planet Ark*, <http://www.planetark.org/dailynewsstory.cfm/newsid/35201/story.htm>.

⁴²³ 'Somalia releases dozens of Yemeni fishermen', 4 June 2014, *Almotamar.net*, <http://www.almotamar.net/en/9119.htm>.
⁴²⁴ See: <http://www.kosmosenergy.com/operations-mauritania.php>.

⁴²⁵ 'Kosmos Energy Makes Significant Gas Discovery Offshore Mauritania', <http://investors.kosmosenergy.com/phoenix.zhtml?c=238878&p=irol-newsArticle&cid=2040106>.

⁴²⁶ See: <http://www.kosmosenergy.com/operations-senegal.php>.

⁴²⁷ See: 'Découverte d'un important gisement de gaz naturel au Sénégal', 28 January 2016, *Le Monde.fr avec AFP*, http://www.lemonde.fr/afrique/article/2016/01/28/decouverte-d-un-important-gisement-de-gaz-naturel-au-senegal_4855469_3212.html; 'Kosmos annonce une découverte de gaz au Sénégal', 27 January 2016, *Jeune Afrique*, <http://www.jeuneafrique.com/297378/economic/kosmos-annonce-une-decouverte-de-gaz-au-senegal/>.

⁴²⁸ L. Elston, 'Kosmos's Senegal find boosts LNG prospects' 2 February 2016, *Interfax Global Energy*, <http://interfaxenergy.com/gasdaily/article/19124/kosmos-senegal-find-boosts-lng-prospects>.

⁴²⁹ 'Kosmos Energy Announces Significant Gas Discovery Offshore Senegal', available at: <http://investors.kosmosenergy.com/phoenix.zhtml?c=238878&p=irol-newsArticle&ID=2132585>.

⁴³⁰ See: 'Anadarko Finds Hydrocarbons Offshore Sierra Leone' 21 February 2012, *Offshore Energy Today.Com*, <https://www.offshoreenergytoday.com/anadarko-finds-hydrocarbons-offshore-sierra-leone/>.

⁴³¹ See: National Oil Company of Liberia, <http://www.nocal.com.lr/operations/block-status/lb17>.

312. DRC signed a Production Sharing Agreement with the company Nessergerg in 2006 for the Congo Deep Offshore Maritime Corridor, which falls within the disputed area.⁴³² This contract was approved by presidential order in March 2008. This agreement was made at a time when negotiations on provisional arrangements were already underway.

D. Somalia/Kenya

313. The maritime boundary claimed by Kenya dates from a presidential proclamation of 2005. Somalia published the co-ordinates of its EEZ in 2009 and both States submitted preliminary information to the CLCS in 2009.⁴³³ Kenya has awarded exploration contracts to various international companies within the disputed area. In its application to the ICJ instituting proceedings, Somalia states that certain of the blocks licensed by Kenya lie either entirely or predominantly on the Somali side of an equidistance line. Certain blocks on the Somalia side of an equidistance line were awarded by Kenya to the company Eni in July 2012.⁴³⁴ The Eni website indicates that these blocks are still in the seismic survey stage.

314. Somalia has commissioned seismic surveys in the area disputed with Kenya. The seismic data collected was delivered in December 2015 and the contractor has submitted a submitted a Notice of Application for Production Sharing Agreements.⁴³⁵

E. Ghana/Côte d'Ivoire

315. The discovery of oil and gas offshore Ghana in 2006 led to a maritime boundary dispute between Ghana and Côte d'Ivoire. Ghana submits that there is an agreed maritime boundary in existence between the parties drawn along an equidistance line. Côte d'Ivoire denies that there is any agreed maritime boundary between the parties and asserts a boundary running south-east based on "relevant circumstances". These areas within the asserted boundary lines overlap in a triangular disputed area of roughly 30,000 km².

316. Ghana has granted several hydrocarbon licences in the dispute area. The request for provisional measures submitted by Côte d'Ivoire to ITLOS identified 9 blocks lying partially or totally in the disputed area and stated that Ghana had authorised 34 exploration and development drilling operations in the disputed area and that new ones were planned.⁴³⁶ Côte d'Ivoire granted concessions for seismic exploration in the disputed area. Materials submitted by Côte d'Ivoire refer to concessions for seismic exploration granted in two blocks lying partially on the Ghanaian side of an equidistance line.⁴³⁷ In its oral pleadings Côte d'Ivoire stated:

⁴³² http://mines-rdc.cd/fr/documents/Hydro/contrat_rdc_nessergerg_cohydro.pdf.

⁴³³ http://www.un.org/depts/los/clcs_new/submissions_files/submission_ken_35_2009.htm; http://www.un.org/depts/los/clcs_new/submissions_files/submission_som_74_2014.htm.

⁴³⁴ 'Eni enters Kenya with the acquisition of three exploration blocks', ENI Press Release, 2 July 2012, available at: http://www.eni.com/en_IT/attachments/media/press-release/2012/07/PR-Kenya.pdf.

⁴³⁵ <http://www.somaoilandgas.com/delivery-of-data-to-federal-government-of-somalia-notice-of-application-for-production-sharing-agreements-change-of-chief-executive-officer/>.

⁴³⁶ Request for the prescription of provisional measures submitted by the Republic of Côte d'Ivoire under Art 290, para 1, of the United Nations Convention on the Law of the Sea, 27 February 2015.

⁴³⁷ *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, ITLOS Special Chamber, Provisional Measures, Verbatim record of Public sitting held on Sunday, 29 March 2015, at 10.00, footnote 19.

whilst it is true that Côte d'Ivoire took the precaution of generally not granting licences, whether for exploration or for exploitation, in the disputed area it did not always do so in fact. This is normal restraint in this sort of case.⁴³⁸

E. Eritrea/Yemen

317. Practice in this region prior to delimitation took place in the context of a dispute over territorial sovereignty over certain islands lying between the two States. The sovereignty issue was settled by an arbitral tribunal in 1998.⁴³⁹ The maritime boundary was delimited by a second arbitral award in 1999.⁴⁴⁰
318. Both Yemen and Ethiopia (which had sovereignty over the territory of Eritrea prior to the independence of Eritrea in 1991) had granted hydrocarbon concession contracts in the disputed area prior to the award on sovereignty and maritime delimitation. Yemen concluded several oil agreements for areas including the dispute islands within their scope.⁴⁴¹ Ethiopia concluded a Production Sharing Agreement with International Petroleum/Amoco in 1998 including within the contract area certain disputed islands and referred to the "offshore median line". Prior to Eritrean independence, the practice of the parties was thus to limit hydrocarbon licensing up to a median line, which was drawn discounting the presence of islands in the channel.
319. Eritrea concluded offshore petroleum contracts with Anadarko for the Zulu block, which overlapped with Yemen's block 23.⁴⁴² Yemen protested both against this agreement and a further concession granted by Eritrea in 1996, on the basis that the areas overlapped with areas claimed by Yemen.⁴⁴³

G. Nigeria/Cameroon

320. The maritime boundary between Nigeria and Cameroon was delimited by the ICJ in 2002.⁴⁴⁴ Prior to the judgment, Nigeria had granted hydrocarbon concessions in the undelimited area. Cameroon began drilling for offshore oil in the undelimited area in 1967. Concessions granted by Nigeria, Cameroon and Equatorial Guinea overlapped in the undelimited area. The delimitation line claimed by Cameroon cut through several concessions granted by both Nigeria and Equatorial Guinea that were in production at the time of the ICJ proceedings.
321. Before the ICJ, Nigeria argued "[I]n the absence of express agreement to that effect, a State is not obliged to refrain from carrying on existing activities in relation to an area under dispute".⁴⁴⁵ Cameroon noted that it had refrained from granting any concessions in the disputed area south of

⁴³⁸ *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, ITLOS Special Chamber, Provisional Measures, Verbatim record of Public sitting held on Sunday, 29 March 2015, at 10.00, 12, line 31.

⁴³⁹ *Award of the Arbitral Tribunal in the first stage of the proceedings between Eritrea and Yemen (Territorial Sovereignty and Scope of the Dispute)*, 9 October 1998, XXII RIAA 209–332.

⁴⁴⁰ *Award of the Arbitral Tribunal in the second stage of the proceedings between Eritrea and Yemen (Maritime Delimitation)*, 17 December 1999, XXII RIAA 335–410.

⁴⁴¹ *Ibid.*, para 76f.

⁴⁴² 'Anadarko to explore tract off Eritrea', 10 September 1995, Oil and Gas Journal, <http://www.ogj.com/articles/print/volume-93/issue-41/in-this-issue/exploration/anadarko-to-explore-tract-off-eritrea.html>.

⁴⁴³ Yemen Objects To Eritrean Red Sea Exploration Plans, 3 November 1997, Vol XL MEES 44, <http://archives.mees.com/issues/766/articles/29959>.

⁴⁴⁴ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria, Equatorial Guinea Intervening)* (Merits) [2002] ICJ Rep 303.

⁴⁴⁵ *Ibid.*, rejoinder of the Federal Republic of Nigeria, para 12.2.

point G, due to the negotiations between the parties and the present proceedings and its concern not to aggravate the dispute. This attitude of restraint was linked to its commitment to respect an agreement reached at a meeting of boundary experts from both States in 1991 that each State could continue its exploitation of transboundary resources while making every effort to inform the other party of its activities that would cause nuisance.⁴⁴⁶

H. *Guinea/Guinea-Bissau*

322. Portugal (the former administrator of Guinea-Bissau) first granted oil concessions in the area offshore Guinea-Bissau in 1958.⁴⁴⁷ France (the former administrator of Guinea) did not protest in the name of Guinea, and when Guinea became independent, it did not protest either.⁴⁴⁸ In 1975, Guinea-Bissau denounced all of the Portuguese oil concessions off the Guinean coast and started its own seismic research operations in the area.⁴⁴⁹

I. *Guinea-Bissau/Senegal*

323. State practice in relation to this boundary prior to 1989 took place in the context of a dispute regarding the validity of a Franco-Portuguese Agreement of 26 April 1960, which Senegal claimed had effected a maritime boundary delimitation.⁴⁵⁰ In 1977, 1978 and 1984, Senegal authorised the construction of drilling platforms in the disputed zone, which prompted a protest on the part of the Government of Guinea-Bissau.⁴⁵¹

J. *Qatar/Bahrain*

324. State practice in relation to this boundary took place in the context of a territorial dispute over certain maritime features, which was settled by the ICJ in its judgment of 2001.⁴⁵² Bahrain had control over the disputed maritime features. Prior to the ICJ decision, Bahrain had granted an oil concession including some of the disputed features.⁴⁵³ However, no drilling had taken place in the disputed area. Following the ICJ judgment, both Qatar and Bahrain began hydrocarbon licensing in the area, and exploratory drilling commenced shortly afterwards.⁴⁵⁴

⁴⁴⁶ Ibid, Cameroon Reply, para 9.115.

⁴⁴⁷ *Guinea/Guinea-Bissau: Dispute Concerning Delimitation of the Maritime Boundary*, Award of 14 February 1985, (1986) XXV ILM 2, para 26.

⁴⁴⁸ Ibid, para 26.

⁴⁴⁹ K McLlarky, 'Guinea/Guinea-Bissau: Dispute Concerning Delimitation of the Maritime Boundary, February 14, 1985', (1987) 11 Md Int'l Law 93, 95.

⁴⁵⁰ Arbitration Tribunal for the Determination of the Maritime Boundary (Guinea-Bissau/Senegal) Award of 31 July 1989, attached as an Annex to the Application instituting proceedings of the Government of the Republic of Guinea-Bissau (Arbitral Award of 31 July 1989) before the ICJ, 23 August 1989.

⁴⁵¹ Ibid, para 25.

⁴⁵² *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v Bahrain)* (Merits) [2001] ICJ Rep 40.

⁴⁵³ Bahrain Memorial, para 576.

⁴⁵⁴ 'Qatar to start gas exploration following ICJ ruling', 20 March 2001, *Agence France Presse*, <http://www.albawaba.com/business/qatar-startgas-exploration-following-icj-ruling>; 'ChevronTexaco to Start Drilling Bahrain's Offshore Area for Oil and Gas', 17 April 2002, *Rigzone*, http://rigzone.com/news/oil_gas/a/3109/ChevronTexaco_to_Start_Drilling_Bahrains_Offshore_Area_for_Oil_and_Gas; 'Bahrain invites oil majors to start drilling', 19 March 2001, *AP*, <http://www.gasandoil.com/news/2001/04/ntml1481>.

3.5.4 FZ/EEZ RIGHTS

A. Guinea/Guinea-Bissau

325. In 1964, Guinea established a territorial sea of 130 nm (later extended to 200 nm) and granted fishing concessions in the area.⁴⁵⁵ Portugal did not publically protest even after the conclusion of UNCLOS, though internal government documents indicate that Portugal considered the zone to be in violation of UNCLOS.⁴⁵⁶ The Guinean navy did not encounter any Portuguese or Guinea-Bissau boats fishing in the area it patrolled.⁴⁵⁷ However, a Portuguese hydrographic vessel was not prevented from collecting data in the area.⁴⁵⁸ Portugal claimed fishing jurisdiction in a zone overlapping that claimed by Guinea.⁴⁵⁹ The Arbitral Award of 1985 notes that in the period from 1978 onwards, both sides carried out oil exploration and fishing activities in the disputed area, “which occasionally gave rise, on either side, to protests and the arrest of fishing vessels”.⁴⁶⁰

B. Eritrea/Yemen

326. Prior to the delimitation by award of the arbitral tribunal, Eritrea applied its fishing laws prescribing licensing and other requirements for fishing in the surrounding waters of the Zuqar Hanish islands, lying approximately halfway between the two States.⁴⁶¹

C. British Indian Ocean Territory/Maldives

327. British Indian Ocean Territory (“BIOT”) is an overseas territory of the UK. In September 2003, the UK declared a 200 nm Environmental (Protection and Preservation) Zone around BIOT, excluding a 3 nm zone around each of the islands.⁴⁶² The Proclamation provided that within the zone “[h]er Majesty will exercise sovereign rights and jurisdiction enjoyed under international law, including the United Nations Convention on the Law of the Sea, with regard to the protection and preservation of the environment of the zone.”⁴⁶³ This zone overlaps with the EEZ of the Maldives.

328. A draft agreement on the boundary between the Maldives EEZ and the BIOT Fishery Zone was agreed at technical level in 1992, but it has never been signed and is not in force.⁴⁶⁴ On 1 April 2010, the UK government announced the designation of a Marine Protected Area (“MPA”) around BIOT. The BIOT MPA encompasses the archipelago’s EEZ and territorial waters. From 1 November 2010, the waters of BIOT became a no-take MPA to commercial fishing.⁴⁶⁵

⁴⁵⁵ Guinea/Guinea-Bissau: Dispute Concerning Delimitation of the Maritime Boundary, Award of 14 February 1985, (1986) XXV ILM 2, March 1986, at para 28.

⁴⁵⁶ Ibid, para 29.

⁴⁵⁷ Ibid, para 28.

⁴⁵⁸ Ibid, para 29.

⁴⁵⁹ See, (n 449), 95.

⁴⁶⁰ *Guinea/Guinea-Bissau* case, para 33.

⁴⁶¹ *Award of the Arbitral Tribunal in the first stage of the proceedings between Eritrea and Yemen (Territorial Sovereignty and Scope of the Dispute)*, 9 October 1998, XXII RIAA 221, paras 259–60.

⁴⁶² BIOT, Proclamation No 1 of 17 September 2003 establishing the Environment (Protection and Preservation) Zone for the British Indian Ocean Territory.

⁴⁶³ Ibid, Art 3.

⁴⁶⁴ HC Deb 9 January 2008, Vol 470 c559W.

⁴⁶⁵ Mees, Pearce and Moir (Clark MRAG Ltd for the BIOT Authority) ‘UK (British Indian Ocean Territory) National Report to the Scientific Committee of the Indian Ocean Tuna Commission, 2012 – Information On Fisheries, Research And Statistics’, 23 November 2012, OTC–2012–SC15–NR29[E].

329. The BIOT MPA extends to the median line with the Maldives EEZ. The position of the UK is that even though no delimitation agreement with the Maldives is in place, delimitation using the median line has been agreed “at a technical level”.⁴⁶⁶ The UK thus enacted legislation regulating fishing extending to an undelimited area on the basis that it does not consider the undelimited area to be disputed. However, the fact that the CLCS submission of the Maldives does not take the BIOT fisheries zone into account calls this assumption into question.⁴⁶⁷ Following the submission by the Maldives, the Maldives agreed to amend its submission to take into account the co-ordinates of the EEZ claimed by Mauritius for the territory of BIOT.⁴⁶⁸ In March 2015, an Annex VII arbitral tribunal held that in establishing the MPA, the UK had breached its obligations to Mauritius under UNCLOS, for reasons unrelated to the obligation of restraint set out in Article 74(3) or to its undelimited boundary with the Maldives.⁴⁶⁹

3.5.5 PROVISIONAL ARRANGEMENTS AND AGREEMENTS

A. Democratic Republic of the Congo/Angola

330. In August 2003, the DRC and Angola signed an MOU establishing joint technical committees mandated to prepare proposals to resolve maritime border disputes, including issues related to offshore oil production by Angola. In 2004, the two countries created, in principle, the Common Interest Zone (“CIZ”) as a new special exploration area located in the southern part of Angolan oil production blocks. The CIZ is stated to be a 10 km corridor but exact boundaries of the zone have not been disclosed. The agreement was ratified by the DRC in 2007 and by Angola in 2008. Under the CIZ arrangement, Angola and the DRC would share oil revenues from the zone equally. The arrangement included unitisation agreements for the oil fields that straddle the border.

331. In 2012, the DRC and Angolan governments signed an agreement to buy the rights jointly that had been granted by the DRC to Nesserly Ltd in a block within the CIZ, in order to negotiate a new production sharing agreement.⁴⁷⁰ In January 2015, Sonangol EP, Angola’s state oil company, and Cohydro of DRC signed an agreement to jointly develop the Congo Deepwater-Maritime Corridor block in the CIZ.⁴⁷¹ The DRC/Angola continental shelf boundary remains undelimited.

B. Congo/Angola

33. The Angolan-Congolese shared zone of 696 square kilometres in the undelimited area is a result of protocol and participation agreements signed by Angola and Congo in September 2001 and March

⁴⁶⁶ In response to the Maldives CLCS submission in July 2010, the UK noted that the submission did not take full account of the BIOT fisheries zones, which “respect boundaries agreed with the Maldives at a technical level”. Note verbale dated 9 August 2010 from the Permanent Mission of the United Kingdom to United Nations to the Secretary General of the United Nations http://www.un.org/depts/los/clcs_new/submissions_files/mdv53_10/gbr_re_mdv_2010.pdf.

⁴⁶⁷ Submission by the Republic of the Maldives, July 2010, http://www.un.org/depts/los/clcs_new/submissions_files/mdv53_10/MAL-ES-DOC.pdf.

⁴⁶⁸ Note Verbale dated 24 March 2011 from the Permanent Mission of Mauritius to the United Nations, http://www.un.org/depts/los/clcs_new/submissions_files/mdv53_10/mus_re_mdv_2011.pdf.

⁴⁶⁹ *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)*, (Annex VII Tribunal) Award of 18 March 2015. The tribunal held that in establishing the MPA surrounding the Chagos Archipelago the United Kingdom breached its obligations under Arts 2(3), 56(2) and 194(4) of UNCLOS.

⁴⁷⁰ ‘Congo fails to reveal loss-making oil deal with controversial businessman’s offshore firm’, *Global Witness*, January 2014, <https://www.globalwitness.org/en/archive/congo-fails-reveal-loss-making-oil-deal-controversial-businessmans-offshore-firm/>.

⁴⁷¹ ‘Sonangol and Congolaise Des Hydrocarbures sign deal’, *ANGOP*, 30 December 2015, http://www.angop.ao/angola/en_us/noticias/economia/2015/0/5/Sonangol-and-Congolaise-Des-Hydrocarbures-sign-deal,4dfa7f7b-b787-412f-8922-c7b24d4dded70a.html.

2002, respectively. Under the agreement, revenues from Congo's Haute Mer and Angola's Block 14 are shared equally.⁴⁷²

C. Mauritius/Seychelles

333. In March 2011, the CLCS issued recommendations on the joint continental shelf claim submitted by Mauritius and the Seychelles. Mauritius and the Seychelles then entered into two agreements providing for the joint development of natural resources within the area of overlapping continental shelf beyond 200 nm.⁴⁷³ Article 3 of the Treaty concerning the Joint Exercise of Sovereign Rights Over the Continental Shelf in the Mascarene Plateau Region provides:

Nothing contained in this Treaty, and no act taking place whilst this Treaty is in force, shall be interpreted as prejudicing or affecting the legal position or rights of the Contracting parties concerning any future delimitation of the continental shelf between them in the Mascarene Plateau Region.

334. A similar without prejudice clause is included in the second agreement, the Joint Management Treaty.

a) Others

335. Other joint development agreements in the undelimited area of this region include the Iran/Sharjah MOU on revenue sharing in the territorial sea (1971) and the Saudi Arabia/Sudan Agreement Relating to the Joint Exploitation of the Natural Resources of the Seabed and Subsoil of the Red Sea in the Common Zone (1974).⁴⁷⁴ On 14 October 1993, Senegal and Guinea-Bissau concluded a Management and Cooperation Agreement on the joint exploitation, management and administration of both petroleum and fishing activities, followed by a further agreement in 1995 to set up a joint Management and Co-operation Agency.⁴⁷⁵ This agreement provides, inter alia, for the joint exploitation, by the two Parties, of a 'maritime zone situated between the 268° and 220° azimuths drawn from Cape Roxo'.⁴⁷⁶

336. In 2001, Nigeria and Sao Tomé and Príncipe signed a Joint Development Treaty, which provides that petroleum and other living maritime resources of the EEZ to be shared on a 60 per cent

⁴⁷² See 'Angola and Congo-Brazzaville sign agreements for cross border oil exploration', 19 March 2012, *Macauhub*, <http://www.macauhub.com.mo/en/2012/03/19/angola-and-congo-brazzaville-sign-agreements-for-cross-border-oil-exploration/>.

⁴⁷³ Treaty concerning the Joint Exercise of Sovereign Rights Over the Continental Shelf in the Mascarene Plateau Region between the Government of the Republic of Seychelles and the Government of the Republic of Mauritius, (signed 13 March 2012, entered into force 18 June 2012) 2847 UNTS; Treaty concerning the joint management of the continental shelf in the Mascarene Plateau region between the Government of the Republic of Seychelles and the Government of the Republic of Mauritius (signed 13 March 2012, entered into force 18 June 2012), 2847 UNTS.

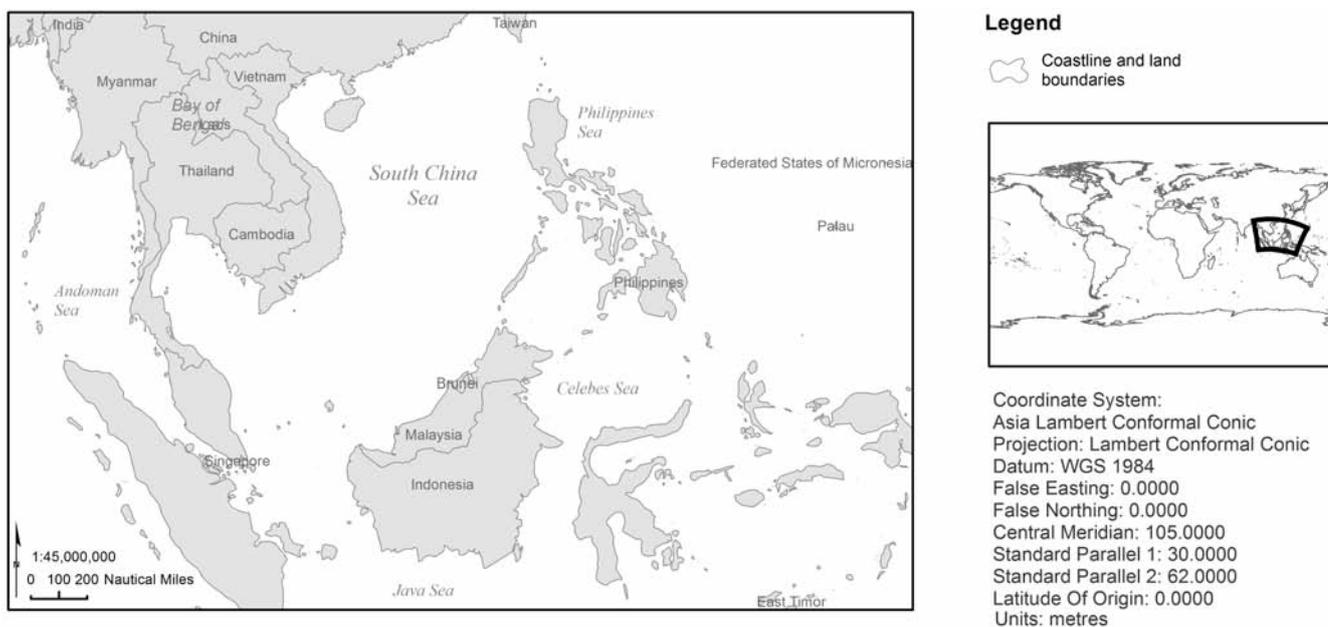
⁴⁷⁴ Agreement between Sudan and Saudi Arabia relating to the Joint Exploitation of the Natural Resources of the Sea Bed and Subsoil of the Red Sea in the Common Zone (16 May 1974, ST/LEG/Ser.B/18 (1976), 452.

⁴⁷⁵ Management and Cooperation Agreement between the Government of the Republic of Senegal and the Government of the Republic of Guinea-Bissau, (signed on 14 October 1993, entered into force on 21 December 1995), 31 LOSB 40 (1996); Protocol of the Agreement having reference to the organisation and operation of the Agency of Management and Cooperation between the Republic of Senegal and the Republic of Guinea-Bissau instituted by the Accord of 14 October 1993, (signed on 12 June 1995, entered into force on 21 December 1995) 1903 UNTS 3

⁴⁷⁶ Part I, Title I, Art 1 (1.3) of Protocol of the Agreement having reference to the organisation and operation of the Agency of Management and Cooperation between the Republic of Senegal and the Republic of Guinea-Bissau instituted by the Accord of 14 October 1993, *ibid*.

(Nigeria) and 40 per cent (Sao Tomé and Príncipe) basis.⁴⁷⁷ Also in 2001, Saudi Arabia and Kuwait concluded an Agreement on common ownership of resources in the submerged area adjacent to the divided zone.⁴⁷⁸ In 2004, Gabon and Equatorial Guinea concluded an agreement allowing joint oil exploration in disputed territories until a final resolution is worked out under UN mediation. In 2012, Sierra Leone and Guinea concluded an agreement on submissions to the CLCS.

3.6 The South East Asia and South China Sea Region



Map 3.6⁴⁷⁹

3.6.1 INTRODUCTION⁴⁸⁰

337. The seas in South East Asia are a series of semi-enclosed seas bordered by a number of States. The South China Sea represents a large portion of the maritime area in the region, and is bordered by Brunei, China, Indonesia, Malaysia, the Philippines, Singapore, Taiwan and Vietnam. This research area includes several smaller seas including the Sulu Sea, Celebes Sea and the Gulf of Thailand, which have also been subject to overlapping claims from the coastal States.

⁴⁷⁷ Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe on the Joint Development of Petroleum and other Resources, in respect of Areas of the Exclusive Economic Zone of the two States, (signed on 21 February 2001, entered into force 16 February 2003), 50 LOSB 42.

⁴⁷⁸ Agreement between the Kingdom of Saudi Arabia and the State of Kuwait concerning the submerged area adjacent to the divided zone, (signed on 2 July 2000, entered into force on 31 January 2001), 2141 UNTS 251.

⁴⁷⁹ The map above is to give the reader a broad overview of the region discussed in this section, and no comment is made on the status of any lines represented therein, nor on any nomenclature. The region studied is described more precisely in the text which follows.

⁴⁸⁰ The authors are grateful to Professor Keyuan Zou, University of Central Lancashire, United Kingdom, for his helpful comments on a draft of this section.

338. Brunei, China, Indonesia, Malaysia, the Philippines, Singapore, and Vietnam are parties to UNCLOS. Taiwan is not.⁴⁸¹
339. The South China Sea has been the subject of long-standing inter-State disputes. The disputes have been complicated by the combination of disputes over territorial sovereignty and disputes arising from overlapping entitlements to maritime spaces. The fact that sovereignty over a large number of islands in the region is disputed creates different perceptions between States of their legitimate entitlement to maritime areas. The situation is further complicated by the fact that States in the region do not necessarily agree on whether certain insular features may generate a continental shelf and an EEZ under Article 121 of UNCLOS. China's contested "nine-dash line" claims encompassing most of the South China Sea is still another factor that has added to the confusion. The ongoing Annex VII arbitral proceedings initiated by the Philippines against China may be seen as an attempt to clarify some of the premises of the overall dispute, especially with respect to the scope of legitimate entitlements under UNCLOS to be delimited between the parties to the dispute.
340. The situation in the South China Sea is different from that in regions where coastal States have common understandings with respect to the land territory as the basis of maritime entitlements, and are in dispute only with respect to how the overlapping entitlements are to be delimited. In most of the maritime areas in the South China Sea region, activities at sea inevitably have implications for underlying assumptions with respect to territorial sovereignty over disputed islands. States in the region have not held back from undertaking activities based on their own view of maritime zone entitlements, and other States have protested against them as an infringement of their sovereignty or sovereign rights based on their positions. Due to political sensitivities, this pattern is also observable in some cases even where it is relatively clear where territorial sovereignty and maritime entitlements reside.

3.6.2 CONTINENTAL SHELF RIGHTS

341. China, the Philippines and Vietnam have been actively engaged with each other in the ongoing South China Sea dispute. All three States have unilaterally awarded oil concession blocks in areas potentially subject to overlapping claims, and have allowed exploration (including the drilling of exploratory wells) and exploitation activities to take place. China has protested against activities by other States and has taken measures aimed at blocking them within the limits of what it regards as its jurisdiction under international law. The Philippines and Vietnam have also protested against activities by China and have attempted to stop unilateral activities by China within what they regard as their respective EEZs and continental shelves.
342. Caution is necessary, however, with regard to the characterisation of certain maritime areas as "disputed". In the South China Sea, there are three types of areas that may be regarded as disputed in the eyes of at least one party to the dispute: (1) areas within 200 nm of the mainland (including Hainan Island for China) of two or more coastal States; (2) areas within 200 nm of the mainland of a coastal State and within 200 nm of an insular feature (whose sovereignty and/or its capacity to generate a 200 nm zone may be disputed); and (3) areas within 200 nm of the mainland of a State which overlap with the extent of China's contested "nine-dash line". This line, also referred to as the

⁴⁸¹ Taiwan is not generally recognised as a State, and is not a member of the UN. The PRC claims Taiwan as an integral part of its territory and has asked every State which establishes diplomatic ties with PRC to recognise or acknowledge this. Art 305 of UNCLOS allows for certain entities other than States to join the Convention. Entities other than States must fulfil two essential criteria, namely have competence over matters falling within the scope of the convention and have competence to conclude treaties. Taiwan has concluded agreements with a number of States, usually acting in the name of the "Republic of China". The authors of this report make no comment on whether any of these has the status of a treaty.

“U-shaped line”, extends southwards from the south coast of mainland China, so as to enclose most of the South China Sea.⁴⁸²

A. China

343. In the South China Sea, China has signed concession contracts and has allowed exploratory activities to be undertaken. Its first concession contract with a foreign firm in 1992 was between China National Offshore Oil Cooperation (“CNOOC”) and the US-based Crestone Energy in the Vanguard Bank (Tu Chinh) area. The area designated in the contract is located between the Spratly Islands and mainland Vietnam, approximately 600 nm from mainland China and 135 nm from the Vietnamese coast.⁴⁸³ China based its activities on the fact that this area was adjacent to its Nansha (Spratly) Islands.⁴⁸⁴ Vietnam protested, stating that the area lies outside the periphery of the Truong Sa (Spratly Islands) and lies within its continental shelf. When Crestone commenced its seismic surveys in China’s Wan’an Bei-21 (WAB-21) block in 1994, Vietnam protested further stating that:

No other country or company is allowed to carry out exploration and exploitation of resources on the continental shelf and [in] the special economic zone of Vietnam without the permission of the Vietnamese government.⁴⁸⁵

A similar pattern of unilateral exploration followed by protests has been repeated up to the present.

344. China has also started exploratory drilling in disputed areas, such as the drilling by the Chinese oil rig *Kantan-3* in 1997. The drilling was in an area Vietnam calls Block 113, located 64 nm from Vietnam and 71 nm from China’s Hainan Island.⁴⁸⁶ The Spokesperson for Vietnam’s Ministry of Foreign Affairs stated that:

According to international laws, particularly the 1982 United Nations Convention on the Law of the Sea, this area lies entirely within the exclusive economic zone and continental shelf of Vietnam. That China puts its oil drilling rig into operation in this area is a serious violation against the sovereign rights and national jurisdiction of Vietnam.⁴⁸⁷

345. No mention was made of a possible Chinese entitlement to the relevant area, although the location was well within 200 nm of both States and relatively close to the equidistance line between the two States.

346. Measures have been taken by China to prevent other States from undertaking exploration activities unilaterally, even in areas within 200 nm of the mainland of the other State. In a number of incidents, exploratory activities by other States have been interfered with at sea. For example, in an incident on

⁴⁸² The line is shown on the map attached to the Note verbale addressed to the Secretary General of the United Nations by the Permanent Mission of the People’s Republic of China. CML/17/2009 7 May 2009. Available at: http://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf. See K Zou, ‘China’s Approach to UNCLOS and its Application to Disputed Issues in the South China Sea’ in J Barrett and R Barnes (eds), *Law of the Sea: UNCLOS as a Living Treaty* (BIICL 2016) 366–8.

⁴⁸³ Do Thanh Hai, ‘Vietnam’s Evolving Claims in the South China Sea’ in L Buszynski and CB Roberts (eds), *The South China Sea Maritime Dispute: Political, Legal and Regional Perspectives* (Routledge 2014) 95.

⁴⁸⁴ Hong Thao Nguyen, ‘Vietnam’s Position on the Sovereignty over the Paracels & the Spratlys: Its Maritime Claims’, (2012) 5 *Journal of East Asia and International Law*, 198.

⁴⁸⁵ ‘Chronicle’, (1994) 4 *Asian Yearbook of International Law*, 514.

⁴⁸⁶ K Zou, ‘A New Model of Joint Development for the South China Sea’, in MH Nordquist, JN Moore and K Fu (eds), *Recent Developments in the Law of the Sea And China* (Nijhoff 2005) 156.

⁴⁸⁷ Ministry of Foreign Affairs of Vietnam, ‘Nanhai 215 Vessel has hauled oil drilling platform KANTAN 3 of China to the continental shelf of Vietnam’, available at: http://www.mofahcm.gov.vn/mofa/tt_baochi/pbnfn/ns041119160109/view.

26 May 2011, Chinese marine surveillance vessels are reported to have interfered with the operation of a Vietnamese seismic vessel *Binh Minh 02* and cut the cables of its equipment.⁴⁸⁸ In response to protests from Vietnam, China replied that “[w]hat relevant Chinese departments did was completely normal marine law-enforcement and surveillance activities in China’s jurisdictional sea area.”⁴⁸⁹ It has also been reported that China has issued private warnings to oil companies that have entered into concession contracts with other coastal States.⁴⁹⁰

B. Vietnam

347. Vietnam has also unilaterally awarded concessions to foreign oil companies in the South China Sea. In response to Crestone’s activities under concession from China in China’s WAB-21 block in 1994, Vietnam signed an exploration contract with Mobil in the adjacent Thanh Long (Blue Dragon) oil field. Drilling activities have taken place pursuant to this contract. China has protested about these activities, asserting that the area is within “adjacent waters” of the Nansha (Spratly) islands.⁴⁹¹ Located 600 nm from mainland China, it would only be possible for China to claim entitlement to this area on the basis that it is within 200 nm from the Spratly islands (over which China claims sovereignty) or on the basis of the “nine-dash line” claim.

348. In 2014, tensions between Vietnam and China were heightened due to the deployment of China’s oil rig Haiyang Shiyou 981 to the waters near the Paracel Islands. The Paracel Islands are under China’s control but sovereignty is also claimed by Vietnam.⁴⁹² Its first location on 2 May 2014 was 130 nm from the coast of Vietnam, 17 nm from Triton Island of the Paracel Islands, and about 180nm from Hainan Island of China. The second location on 27 May 2014 was about 23M from the first location, 25 nm from Triton Island and 190 nm from Hainan Island.⁴⁹³ China has justified its operations as “normal operation within China’s territorial sea” and “in the water south to the Zhongjian [Triton] Island.”⁴⁹⁴ China has also described the location as “totally within the waters off China’s Xisha [Paracel] Islands.”⁴⁹⁵ In response to the operation, Vietnam sent *Note verbales* to China characterising the operation as “a continued serious violation of Viet Nam’s sovereign rights and jurisdiction over its exclusive economic zone and continental shelf as defined in accordance with the 1982 United Nations Convention on the Law of the Sea.”⁴⁹⁶

349. In this incident, patrol boats were sent by Vietnam to prevent personnel on the oil rig from conducting drilling activities, which resulted in a standoff between China and Vietnam.⁴⁹⁷ The

⁴⁸⁸ ‘Chinese marine surveillance ships violate VN’s sovereignty’, Online Newspaper of the Government of Vietnam, 17 May 2011, <http://news.gov.vn/Home/Chinese-marine-surveillance-ships-violate-VNs-sovereignty/20115/10640.vgp>.

⁴⁸⁹ ‘China opposes Vietnam oil, gas exploration in China’s jurisdictional sea area: FM spokeswoman’, *Xinhua News*, 28 May 2011, http://news.xinhuanet.com/english2010/china/2011-05/28/c_13899118.htm.

⁴⁹⁰ Do, (n 484), 98.

⁴⁹¹ Ibid.

⁴⁹² K Zou, (n 486), 364.

⁴⁹³ Pham Lan Dung, ‘Some legal aspects of the drilling rig incident in the South China Sea in 2014’, JIIA Research Paper, available at: https://www2.jiia.or.jp/pdf/fellow_report/150630_Ms_Dung_oil_rig.pdf.

⁴⁹⁴ Remarks by Foreign Ministry Spokesperson Hua Chunying in Regular Press Conference on 12 May 2014, available at: http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2535_665405/t1155154.shtml.

⁴⁹⁵ Remarks by Chinese Foreign Ministry Spokesperson Hua Chunying in the Regular Press Conference on 6 May 2014, available at: http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1153131.shtml.

⁴⁹⁶ Note Verbale No 359/NGUBBG of MFA Vietnam to MFA China over China’s illegal deployment of the oil rig Haiyang Shiyou 981 in the exclusive economic zone and continental shelf of Vietnam, available at: <http://www.vietnam-un.org/en/vnun.php?id=268>.

⁴⁹⁷ CA Thayer, ‘China, the Claimant States, ASEAN and the Major Powers’, in Tran Truong Thuy and Le Thuy Trang (eds), *Power, Law, and Maritime Order in the South China Sea* (Lexington Books, 2015) 9–10; Office of the Secretary of Defense of the United States, Annual Report to Congress: Military and Security Developments Involving the People’s Republic of China 2015, 7.

actions of China and Vietnam during this incident seem to take no account of the fact that the area is subject to overlapping maritime claims. In this regard, the location of this incident is of interest, since this area is within 200 nm of Hainan Island, creating a clear overlap of entitlements in this area. China did not invoke its claims to the waters within the “nine-dash lines” with regard to this incident, although some commentators have suggested that its actions were taken to strengthen this claim.⁴⁹⁸

C. *The Philippines*

350. Continental shelf resource development activities by the Philippines in the South China Sea started early in the 1970s.⁴⁹⁹ The first concession was concluded with respect to the Reed Bank area. In 1973, drilling of a test well was undertaken under this contract by Chevron. Seismic surveys and exploratory drilling continued in the area until 1977. China protested against the unilateral activities, based on its claim to the Nansha (Spratly) Islands including the Reed Bank. There is a sovereignty dispute between the Philippines and China with respect to the Spratly Islands. The Philippines claims part of the islands as its Kalayaan Island Group, and China has rejected this claim.⁵⁰⁰ The location of Reed Bank is such that China would only have an entitlement to the EEZ and continental shelf in the area if an island in the Spratlys generated a 200 nm zone for China, or if China could justify its entitlement under its “nine-dash line” claim. Reed Bank is currently subject to a contract known as Service Contract 72 (“SC 72”) between the government of the Philippines and the UK-based company Forum Energy. In March 2011, seismic surveys were conducted by Forum Energy under SC 72, which led to an incident where the survey vessels were harassed by Chinese marine surveillance vessels.⁵⁰¹
351. In relation to the ongoing Annex VII arbitration between the Philippines and China on the South China Sea, the Philippines government has unilaterally suspended exploration activities conducted under SC 72. On 2 March 2015, Forum Energy announced that the Philippine Department of Energy (“DOE”) would not allow the company to commence exploratory drilling activities until further notice. The reason given in the announcement was that “this contract area falls within the territorial disputed area of the West Philippine Sea which is the subject of an United Nations arbitration process.”⁵⁰²
352. This action by the Philippines has been cited by Côte d’Ivoire in the provisional measures stage of the *Ghana/Côte d’Ivoire* case as State practice showing that States “refrain from activities in a disputed area pending resolution of the dispute.”⁵⁰³ The fact that the Philippines had allowed seismic surveys to take place, but decided not to allow exploratory work to proceed to drilling, may also be considered as consistent with the distinction made in the *Guyana v Suriname* award between unilateral acts that cause a permanent physical change to the marine environment and those that do not, in the context of hydrocarbon activity.⁵⁰⁴ However, there are doubts as to whether the suspension may be regarded as State practice directly relevant to the obligation under Articles 74(3)

⁴⁹⁸ Pham, (n 488), 3.

⁴⁹⁹ K Woodard, *The International Energy Relations of China* (Stanford University Press 1981) 160.

⁵⁰⁰ Note CML/6/2011 dated 14 April 2011 by China to the Commission on the Limits of the Continental Shelf, available at: http://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2011_re_phl_e.pdf.

⁵⁰¹ R Amer and L Jianwei, ‘Recent Developments in the South China Sea: Assessing the China-Vietnam and China-Philippines Relationships’, in Wu Shicun and Hong Nong (eds), *Recent Developments in the South China Sea Dispute: The Prospect of a Joint Development Regime* (Routledge 2014) 37.

⁵⁰² Forum Energy Plc, ‘SC72 Update’ (2 March 2015), available at: <http://www.philexpetroleum.com.ph/images/stories/philex/corporatedisclosures/2015-03-03%20sc72%20force%20majeure.pdf>.

⁵⁰³ *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)* 2015 ITLOS Case no 23, Verbatim Record, ITLOS/PV.15/C23/1, at 18.

⁵⁰⁴ *Arbitration between Guyana and Suriname* (Annex VII Tribunal) (2007) 139 ILR 566; (2008) 47 ILM 166, para 467.

and 83(3). Although the announcement from the company refers to the area as “disputed”, their terminology may or may not be legally accurate or reflect the position of the government of the Philippines. The position of the Philippines has been that the Reed Bank area is not subject to overlapping claims, and as such is not “disputed”.⁵⁰⁵ This position was maintained in the Philippines’ arguments in the hearing on the merits in the South China Sea arbitration.⁵⁰⁶ This makes it difficult to assess whether this suspension of drilling was an act “in application of” the obligation not to jeopardise or hamper in Articles 74/83(3), or a measure taken so as not to prejudice the ongoing arbitral procedure, or both.

D. Indonesia/Malaysia

353. An area in the Celebes Sea off the northeast coast of the island of Borneo is subject to an ongoing dispute between Indonesia and Malaysia known as the Ambalat dispute. The first oil prospecting licences in this area granted by both States in the 1960s did not cover overlapping areas. The northern limit of the Indonesian licence area and the southern limit of the Malaysian licence area are located 30' to each side of the 4°10 N parallel.⁵⁰⁷ There are conflicting views on whether this indicates recognition of the 4°10 N line as a maritime boundary, or whether the limits were chosen to keep clear of the area of overlapping claims.⁵⁰⁸ Indonesia and Malaysia began negotiations on the continental shelf boundary in 1969, which later led both States to bring the issue of sovereignty over two islands in the undelimited area to the ICJ in the *Sovereignty over Pulau Ligitan and Pulau Sipadan* case.⁵⁰⁹
354. Not being able to reach an agreement on the maritime boundary, the dispute intensified due to overlapping designation of concession blocks. In 1999, Indonesia granted a contract to the oil company ENI in the Ambalat Block, and on 30 December 2004, Indonesia signed a contract with the US oil company Unocal for the East Ambalat block.⁵¹⁰ The contract with Unocal in 2004 attracted protest from Malaysia, and a few months later on 16 February 2005, the Malaysian State-owned oil company Petronas approved a production sharing contract with Shell in the ND 6 and ND7 blocks which partly overlap with the Ambalat and East Ambalat Blocks.⁵¹¹ In response, a spokesman for the Foreign Ministry of Indonesia is reported to have declared that “the granting of the concession ... is an inappropriate and unlawful act. ... Malaysia has no right to give any concession to anyone to operate in Indonesian territorial waters”.⁵¹² Although the areas under dispute are beyond the limits of the territorial waters of both States, political sentiments have caused the dispute to be argued as a matter of territorial sovereignty.⁵¹³

⁵⁰⁵ AF Del Rosario, ‘Philippine Policy Response and Action, read at the Forum on The Spratly Islands Issue: Perspective and Policy Responses (Department of Political Science, Ateneo De Manila University, 5 August 2011), available at: <http://www.aganapcg.dfa.gov.ph/index.php/embassy-news/482-speech-of-secretary-albert-f-del-rosario-entitled-philippine-policy-response-and-action>; R Beckman, ‘Legal Framework for Joint Development in the South China Sea’, in S Wu, M Valencia and N Hong (eds), *UN Convention on the Law of the Sea and the South China Sea* (Ashgate 2015) 259.

⁵⁰⁶ *Philippines v China* case, Hearing on the Merits and Remaining Issues of Jurisdiction and Admissibility, Transcript for Day 2, available at: <http://www.pcacases.com/web/sendAttach/1548>, 141.

⁵⁰⁷ *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)* [2002] ICJ Rep 3, para 31.

⁵⁰⁸ A Torla, S Yusof and MHM Kamal, ‘The Dispute between Malaysia and Indonesia over the ND6 and ND7 Sea Blocks: A Malaysian Perspective’, (2015) 8 *Journal of East Asia and International Law* 1, 181.

⁵⁰⁹ See (n 502).

⁵¹⁰ IBR Supancana, ‘Maritime Boundary Disputes between Indonesia and Malaysia in the Area of Ambalat Block: Some Optional Scenarios for Peaceful Settlement’, (2015) 8 *Journal of East Asia and International Law* 1, 196.

⁵¹¹ *Ibid.*

⁵¹² JG Butcher, ‘The International Court of Justice and the Territorial Dispute between Indonesia and Malaysia in the Sulawesi Sea’, (2013) 35 *Contemporary Southeast Asia*, 249.

⁵¹³ *Ibid.*, 250.

E. Analysis

355. State practice where a party has refrained from undertaking activities unilaterally in acknowledgement of an obligation under UNCLOS or customary international law is difficult to find in the region. On the other hand, the region is abundant with well-publicised incidents between States where at least one party has protested against a unilateral activity by another party. However, the language used in the protests depicts the situation as an infringement of their sovereignty or sovereign rights, and does not take into account the possibility of a legitimate overlapping maritime claim. No mention is made of the rules of international law that apply in respect of an undelimited area subject to overlapping claims. This arguably limits the value of protests as State practice relevant to the obligation not to jeopardise or hamper under Articles 74(3) and 83(3).
356. Practice in the region raises some questions, however, as to the scope of the obligation not to jeopardise or hamper where States have fundamentally different views about the basis of their maritime entitlements. Except for the area in the northwest corner of the South China Sea between Vietnam and Hainan Island, China's entitlement is based either on zones of 200 nm from islands in the South China Sea over which it claims sovereignty or on its "nine-dash line" claim. While the former raises genuine issues concerning the interpretation of Article 121 of UNCLOS, it seems safe to say that the latter has found little support outside China.⁵¹⁴ Although all of the parties have undertaken some unilateral activities and have also protested to other States about their activities, without any express recognition of the relevant area as subject to overlapping claims, the pattern of activities begs the question whether the obligation not to jeopardise or hamper requires a State to restrain itself from taking certain acts when the supposedly overlapping claim is of a dubious or an excessive character.⁵¹⁵

3.6.3 FZ/EEZ RIGHTS

A. China/Philippines & Vietnam

357. The South China Sea has historically been a fishing ground for all the coastal States, which has continued to the present day. On numerous occasions, however, China has taken enforcement measures against fishing vessels from the Philippines and Vietnam, sometimes leading to incidents such as the Scarborough Shoal standoff in 2012. China has also enacted fishery regulations such as the seasonal fishing moratorium introduced in 1999 to conserve fishery resources. On 29 November 2013, China enacted a new fishing regulation that applies to the areas where China claims its jurisdiction.⁵¹⁶ According to Article 35 of the Hainan Province's implementation regulations of China's national fishery law, all foreign fishing activities and fishery resource surveys require prior approval. These regulations and enforcement measures do not take any account of overlapping entitlements of other States in the undelimited area. The Philippines and Vietnam have made protests to China, arguing that their sovereignty and rights have been violated.⁵¹⁷
358. In the South China Sea Annex VII arbitration proceedings, the Philippines has presented its dispute with China as a question of entitlement over maritime areas, and not as a dispute in an area subject to valid overlapping claims. While this characterisation would seem to diminish the relevance of the proceedings with respect to the obligation of self-restraint, a relevant point was addressed in the oral

⁵¹⁴ K Zou in J Barrett and R Barnes (eds), *Law of the Sea: UNCLOS as a Living Treaty* (BIICL 2016), 366.

⁵¹⁵ See Section 2.6.2 above, para 105 and section 2.6.4 above, para 117.

⁵¹⁶ W Wan-Chun Ho, 'Conflict or Cooperation? The Implications of China's New Fishing Regulations', (2015) 1 *Maritime Safety and Security Journal*, 33–8.

⁵¹⁷ *Ibid.*

proceedings. Responding to a question from the arbitral tribunal on the “source of a state’s duty to prevent its nationals and vessels from exploiting the living resources of the EEZ of another state”, and whether this duty is applicable “pending the resolution of a dispute concerning the scope of maritime entitlements”, the Philippines stated that Article 56 of the Convention is the source of such duties, and that “[t]here is nothing in the Convention ... to indicate that such a duty does not continue to apply pending the resolution of a dispute”.⁵¹⁸ What was meant by this interesting exchange is somewhat difficult to understand, especially with respect to the significance of the term “EEZ of another state” in this context. If this term simply refers to the area within 200 nm of another State, this position seems to imply that no resource exploitation activities may take place pending a “dispute concerning the scope of maritime entitlements” in areas of overlap. In this regard, a related question is whether the concept of “dispute concerning the scope of maritime entitlements” was specifically used to describe situations as distinguished from maritime delimitation disputes where the “scope of the maritime *entitlements*” is not disputed.

B. Taiwan/Philippines

359. Disputes have also arisen due to the operation of Taiwanese fishing vessels in the area of the Luzon Strait between Taiwan and the Philippines, near the Batanes group of islands. On 9 May 2013 the Taiwanese fishing boat *Guang Da Xing No 28* was pursued and fired upon by a Philippine Coast Guard vessel in the area in which EEZs claimed by Taiwan and the Philippines overlap, causing the death of one Taiwanese fisherman.⁵¹⁹ Taiwan condemned the incident as a violation of international law. However, the obligation to exercise self-restraint in undelimited maritime areas was not mentioned in Taiwan’s argument in its press release on the incident.⁵²⁰ After the incident, both sides moved to negotiate an agreement on maritime law enforcement.⁵²¹

360. In another incident on 25 May 2015, a Taiwanese fishing vessel *Ming Jin Cai No 6* was arrested for illegal fishing by the Philippines Coast Guard, leading to a standoff with the Taiwanese Coast Guard. The fishing vessel was released after four hours of negotiations. A Statement by the Taipei Economic and Cultural Office (“TECO”) in the Philippines identified the location of the incident as the disputed waters of the overlapping EEZs between Taiwan and the Philippines, at a distance of 21.6 nm from Batanes.⁵²² It stated also that since “the location is part of the EEZs (contiguous zone), it is lawful for the Taiwanese fishing vessels to engage in fishing activities in the EEZs.” It stated further that:

it is not in conformity with the international law, for the Philippine agencies to arrest or detain the fishing vessels in the EEZs. Therefore, the Taiwanese Coast Guard is entitled to exercise its rights and to do its obligation to protect Taiwanese fishing vessels in the EEZs.

⁵¹⁸ *Republic of Philippines v People’s Republic of China*, Transcripts of the Oral Arguments, Hearing on the Merits and Remaining Issues of Jurisdiction and Admissibility, Day 2, available at: <http://www.pcacases.com/web/sendAttach/1548>, 47.

⁵¹⁹ Ministry of Foreign Affairs, Republic of China (Taiwan), ‘Philippines violated international law in Guang Da Xing No 28 incident’, available at; http://www.mofa.gov.tw/en/News_Content.aspx?n=2C62458194137213&s=97B8486A61EC2693; Department of Justice of the Philippines, Balintang Channel Incident Report, available at: <http://www.gov.ph/2013/08/07/balintang-channel-incident-report/>.

⁵²⁰ *Ibid.*

⁵²¹ See para 367 below.

⁵²² Republic of China (Taiwan), ‘TECO’s Official Statement on the May 25th incident’, available at: <http://www.roc-taiwan.org/ct.asp?xItem=621191&ctNode=2237&mp=1>.

361. The statement appears to indicate a Taiwanese view that fishing activities may be conducted unilaterally in undelimited areas, and that States may not arrest or detain fishing vessels of the other party in an undelimited area.

3.6.4 PROVISIONAL ARRANGEMENTS

A. Development of Hydrocarbon Resources

362. There are at least three provisional agreements concerning the development of hydrocarbon resources in the region: Malaysia-Thailand (1979/1990),⁵²³ Malaysia-Vietnam (1992),⁵²⁴ and Cambodia-Thailand (2001).⁵²⁵ However, these agreements are joint development agreements, and none of them contain provisions relevant to the obligation of restraint pending delimitation.⁵²⁶
363. In 2005, an agreement on joint seismic surveys was concluded between China, the Philippines and Vietnam.⁵²⁷ The agreement was structured as an agreement between the national oil companies for the three States (China National Offshore Oil Corporation (“CNOOC”), Vietnam Oil and Gas Corporation (“Petrol Vietnam”), and Philippine National Oil Company (“PNOC”), although the text indicates that the companies have an exclusive right to sign the agreement under the authorisation of their respective governments. The agreement establishes a “Joint Operating Committee”, and creates a mechanism for undertaking joint surveys. It also requires the parties to give mutual assistance in conducting surveys, inter alia, by taking reasonable efforts to obtain necessary approvals from their respective governments and facilitate entrance of vessels and personnel to relevant areas.
364. Setting aside its irregular structure, the purpose of the agreement is to function as a provisional arrangement designed to overcome difficulties in conducting seismic surveys in highly contested waters. The agreement contains explicit reference to the commitment made by the parties’ respective governments to fully implement UNCLOS and the 2002 ASEAN-China Declaration on the Code of Conduct in the South China Sea (“DOC”). However, whether the parties considered the agreement in the context of an obligation under UNCLOS is not clear. The duration of the agreement was set to three years, and the agreement is no longer in force.

⁵²³ Memorandum of Understanding between the Kingdom of Thailand and Malaysia on the Establishment of a Joint Authority for the Exploitation of the Resources of the Sea-Bed in a Defined Area of the Continental Shelf of the Two Countries in the Gulf of Thailand, reproduced in J Charney and L Alexander (eds), *International Maritime Boundaries* Vol I (Martinus Nijhoff, 1993) 1107–10; Agreement between the Government of Malaysia and the Government of the Kingdom of Thailand on the Constitution and Other Matters Relating to the Establishment of the Malaysia-Thailand Joint Authority, reproduced in J Charney and L Alexander (eds), *International Maritime Boundaries* Vol I (Martinus Nijhoff, 1993) 1111–23.

⁵²⁴ Memorandum of Understanding between Malaysia and the Socialist Republic of Vietnam for the Exploration and Exploitation of Petroleum in a Defined Area of the Continental Shelf Involving the Two Countries, reproduced in J Charney and L Alexander (eds), *International Maritime Boundaries* Vol III (Martinus Nijhoff, 1998) 2341–4.

⁵²⁵ Memorandum of Understanding Between the Royal Government of Cambodia and the Royal Thai Government Regarding the Area of Their Overlapping Maritime Claims to the Continental Shelf, reproduced in D Colson and R Smith (eds), *International Maritime Boundaries* Vol V (Martinus Nijhoff, 2005) 3745–6.

⁵²⁶ In addition, a tripartite agreement between Malaysia, Thailand and Vietnam is also reported to have been agreed in 1999. Nguyen Hong Thao, ‘Vietnam and Joint Development in the Gulf of Thailand’, (1998–1999) 8 *Asian Yearbook of International Law*, 138–9.

⁵²⁷ An unofficial version of the text is available at: http://ngghiencuubiendong.vn/en/dabase-on-south-china-sea-study/doc_download/386-a-tripartite-agreement-for-joint-marine-scientific-research-in-certain-areas-in-the-south-china-sea.

B. Fisheries

365. The Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of Malaysia in Respect of the Common Guidelines Concerning the Treatment of Fishermen by Maritime Law Enforcement Agencies of Malaysia and the Republic of Indonesia (“2012 Indonesia/Malaysia MOU”),⁵²⁸ signed on 27 January 2012 is a unique agreement concerning law enforcement activities against fishermen in “all unresolved maritime boundary areas between the Parties” (Article 5). The agreement was concluded in reaction to issues in the undelimited maritime boundary in the Northern Malacca Strait, where only a continental shelf boundary has been agreed.⁵²⁹
366. The 2012 Indonesia/Malaysia MOU emphasises the wellbeing of the fishermen of the parties, and, inter alia, that any violence should be avoided (Article 2(b)), and that fishing vessels should be inspected and then requested to leave the area unless they are using illegal fishing gears (Article 3(b)). It also establishes a coordinating scheme between the relevant agencies (Article 4). These provisions provide a framework for avoiding escalation of disputes by mutually refraining from taking law enforcement measures against the other parties’ fishing vessels.
367. On 5 November 2015, the Philippines and Taiwan signed the “Agreement Concerning the Facilitation of Cooperation on Law Enforcement in Fisheries Matters between the Taipei Economic and Cultural Office in the Philippines and the Manila Economic and Cultural Office in Taiwan”.⁵³⁰ The agreement is a result of the negotiations held after the Guang Da Xing No. 28 incident in 2013. The two governments have agreed, inter alia, to avoid the use of violence or unnecessary force, and to establish a cooperation mechanism, an emergency notification system, and a prompt release mechanism.

C. Multilateral agreements on conduct

368. The 2002 DOC was adopted by the foreign ministers of ASEAN and the People’s Republic of China, with the aim not to escalate disputes in the South China Sea. The parties have undertaken, inter alia:

to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner” (paragraph 5).

369. It is however unclear as to whether the parties regarded this “self-restraint” as connected to the obligation not to jeopardise or hamper under UNCLOS, although the declaration includes a reaffirmation of the parties’ commitment to the “purposes and principles of ... the 1982 UN Convention on the Law of the Sea” (para.1), and an undertaking:

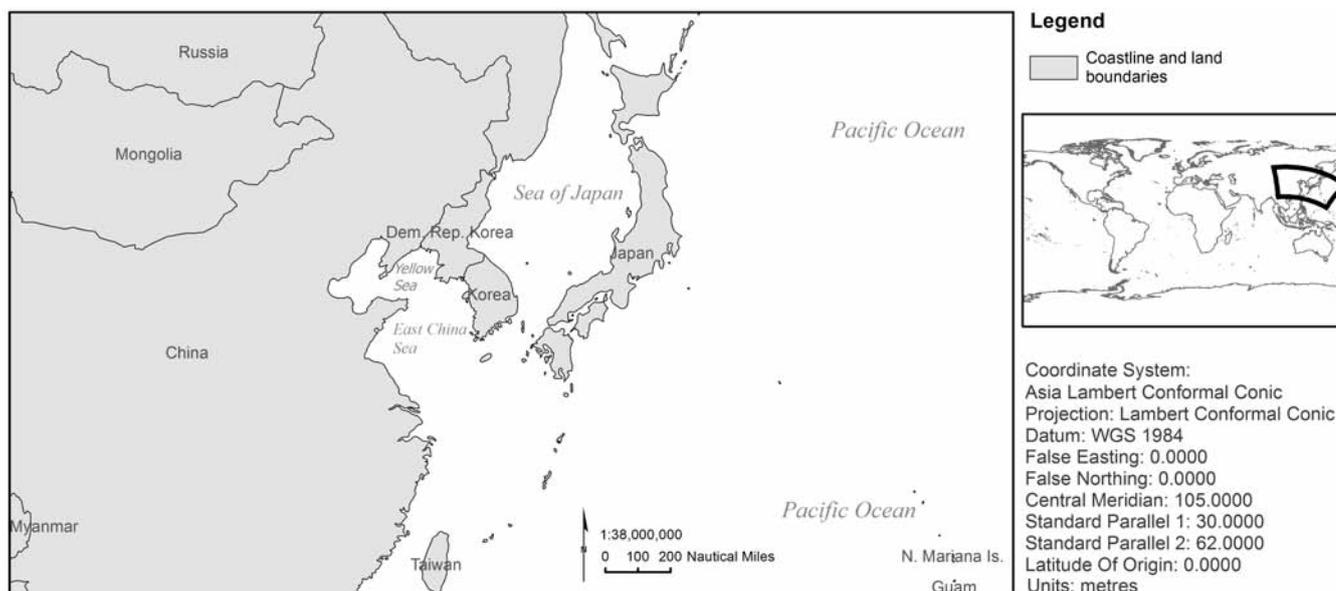
to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognised principles of international law, including the 1982 UN Convention on the Law of the Sea. (emphasis added).

⁵²⁸ The Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of Malaysia in Respect of the Common Guidelines Concerning the Treatment of Fishermen by Maritime Law Enforcement Agencies of Malaysia and the Republic of Indonesia, available at: <http://treaty.kemlu.go.id/index.php/treaty/download/1273>.

⁵²⁹ I Made Andi Arsana, ‘Indonesia-Malaysia Deal Is Good News for Fishermen’, 30 April 2012, *Jakarta Post*, available at: <http://www.thejakartapost.com/news/2012/04/30/indonesia-malaysia-dealgood-news-fishermen.html>.

⁵³⁰ Ministry of Foreign Affairs of the Republic of China (Taiwan), http://no06.mofa.gov.tw/mofatreatys/ShowPicOut.aspx?FileFolder=21&FileName=211041104_E.pdf.

3.7 The East Asia Region



Map 3.7⁵³¹

3.7.1 INTRODUCTION⁵³²

370. This research zone includes the Yellow Sea, the East China Sea and the Sea of Japan.

371. There are nine areas where the claimed fishing zones (FZs)/EEZs and the continental shelves within 200 nm of adjacent and/or opposite States (or State/region) overlap. These nine areas concern the following States and region: (1) Russia-Japan; (2) Russia-Democratic People's Republic of Korea (DPRK); (3) DPRK-Republic of Korea (RoK); (4) Japan-RoK; (5) DPRK-People's Republic of China (PRC); (6) RoK-PRC; (7) Japan-PRC; (8) Japan-Taiwan⁵³³ (or "Republic of China"); and (9) Taiwan-PRC.⁵³⁴

372. Russia, Japan, the RoK and the PRC are parties to UNCLOS. The DPRK and Taiwan are not.⁵³⁵

3.7.2 AGREEMENTS AND PROVISIONAL ARRANGEMENTS

373. Within these nine areas, except for the partial agreements between Japan and the RoK (1974)⁵³⁶ and

⁵³¹ The map above is to give the reader a broad overview of the region discussed in this section, and no comment is made on the status of any lines represented therein, nor on any nomenclature. The region studied is described more precisely in the text which follows.

⁵³² The authors are grateful to Professor Keyuan Zou, University of Central Lancashire, United Kingdom, and to Mr Tomohiro Mikanagi, International Legal Affairs Division, MOFA, Japan, for their helpful comments on a draft of this section.

⁵³³ Taiwan is here referred to as a "region". See (n 483) above regarding the status of Taiwan and its eligibility to accede to UNCLOS.

⁵³⁴ It should be noted that the study of this region was limited to materials in English and Japanese; further research using materials in the Chinese, Korean and Russian languages is merited. See para 134–135 above.

⁵³⁵ Ibid.

⁵³⁶ Agreement between Japan and the Republic of Korea concerning the establishment of boundary in the northern part of the continental shelf adjacent to the two countries (with map and agreed minutes), (signed 30 January 1974, entered into force 22 June 1978) 1225 UNTS 103.

between Russia and the DPRK (1985, 1986 and 1990)⁵³⁷ no treaties have been concluded to delimit maritime boundaries for FZs/EEZs or the continental shelf within 200 nm of the base lines. On the other hand, five sets of fishing agreements (1) Japan-Russia (1984, 1985 and 1998);⁵³⁸ (2) Japan-RoK (1998);⁵³⁹ (3) PRC-Japan (1997);⁵⁴⁰ (4) RoK-PRC (2000);⁵⁴¹ (5) Japan-Taiwan (2013)⁵⁴² and three joint development agreements for petroleum resources (1) Japan-RoK (1974)⁵⁴³ and (2) PRC-DPRK (2005)⁵⁴⁴ and (3) PRC-Japan (2008)⁵⁴⁵ have been concluded in respect of undelimited areas.

⁵³⁷ Agreement between the Union of the Soviet Socialist Republics and on the Delimitation of the Soviet-Korean National Border (signed 17 April 1985; entry into force information not available); Agreement between the Union of Soviet Socialist Republics and the Democratic People's Republic of Korea on the Delimitation of the Economic Zone and the Continental Shelf (signed 22 January 1986; entry into force information not available); Agreement between the Government of the Union of Soviet Socialist Republics and the Government of the Democratic People's Republic of Korea concerning the Regime of the Soviet-Korean State Frontier (signed 3 September 1990; entry into force information not available), 22 LOSB 6 (1993). On the basis that the 1986 Agreement refers to the boundary established under the 1985 Agreement, Charney and Alexander consider it safe to assume that the 1985 Agreement had entered into force by the time the 1986 Agreement was concluded. Regarding the 1990 Agreement, Charney and Alexander note "it is assumed that the instant agreement came into force not long after it was signed". 'Report Number 5-15(1) North Korea-Soviet Union (Territorial Sea)' and 'Report Number 5-15(3) North Korea-Soviet Union (Territorial Sea)' in JI Charney and LM Alexander (eds), *International Maritime Boundaries*, 1135–44 and 2299–321. See also DJ Dzurek "Deciphering the North Korean Soviet (Russian) Maritime Boundary Agreements", (1992) 23 *Ocean Development & International Law*, 31–54. However, due to uncertainty about the entry into force status of these treaties, the boundary delimited therein is not shown on the regional map for this section. See information on the UN DOALOS website at: <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/RUS-PRK1990SEPDE>.

⁵³⁸ Agreement on mutual relations in the field of fishing off the sea frontages of both countries (Japan/USSR), (signed 7 December 1984, entered into force 14 December 1984) 1402 UNTS 259; Agreement on co-operation in the field of fisheries (Japan/USSR), (signed 12 May 1985, entered into force 13 May 1985) 1402 UNTS 279; Agreement between the Government of Japan and the Government of the Russian Federation on certain aspects of cooperation in the fishing of marine living resources (signed 21 February 1998; entered into force 21 May 1998) 2718 UNTS 323.

⁵³⁹ Agreement between Japan and the Republic of Korea concerning fisheries (with agreed minutes and annexes), (signed 28 November 1998, entered into force 22 January 1999) 2731 UNTS 345, available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%202731/Part/volume-2731-I-48295.pdf>.

⁵⁴⁰ Agreement between the People's Republic of China and Japan concerning fisheries (with annexes and agreed minutes) (signed 11 November 1997, entered into force 1 June 2000) 2731 UNTS 208.

⁵⁴¹ Fisheries Agreement between the Government of the Republic of Korea and the Government of the People's Republic of China (signed 3 August 2000, entered into force 30 June 2001) 2486 UNTS 259.

⁵⁴² Agreement concerning the establishment of fishery order between the Interchange Association of Japan and Taiwan's Association of East Asian Relations, 10 April 2013. See Webpage of MOFA of Taiwan, "Republic of China (Taiwan) signs fisheries agreement with Japan", available at: http://www.mofa.gov.tw/en/News_Content.aspx?n=539A9A50A5F8AF9E&sms=37B41539382B84BA&cs=E80C25D078D837BB. (Note: this text does not appear to be regarded by Japan as a treaty).

⁵⁴³ Agreement concerning Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries, (with map, appendix, agreed minutes and exchanges of notes), (signed 30 January 1974, entered into force 22 June 1978) 1225 UNTS 114, available at: <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/jap-kor1974south.pdf>. The agreement is without prejudice to the delimitation of the continental shelf (Art XXVIII) and is to remain in force for a period of 50 years and shall remain in force thereafter unless terminated by either party (Art XXXI). See also Agreement between Japan and the Republic of Korea concerning the establishment of boundary in the northern part of the continental shelf adjacent to the two countries (with map and agreed minutes), (signed 30 January 1974, entered into force 22 June 1978) 1225 UNTS 103.

⁵⁴⁴ Agreement between the government of China and the Government of North Korea on the Joint Development of Offshore Petroleum, 12 December 2005. 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', 2, fn 5, available at: http://www.un.org/depts/los/nippon/unff_programme_home/fellows_pages/fellows_papers/tanga_0910_cameroon.pdf.

⁵⁴⁵ Two agreements were concluded together with a bilateral Joint Statement on 18 June 2008: Understanding on Japan-China Joint Development in the East China Sea and Understanding on the Development of the Shirakaba/Chunxiao Oil and Gas Field. See para 382 and (n 562).

374. One of the reasons that maritime boundaries have not been delimited is disagreement over the method of delimitation applicable to the continental shelf. While Japan emphasises the median line approach, according to which maritime delimitation is based on the median line with reference to relevant circumstances, the PRC does not accept it. According to the Chinese proposal presented at the meeting of the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction held on 16 July 1973, “[b]y virtue of the principle that the continental shelf is the natural prolongation of the continental territory, a coastal State may reasonably define [it], according to its specific geographical conditions...”⁵⁴⁶ This statement suggests that China considers that the natural prolongation of the continental shelf plays a significant role in its delimitation. Whether the RoK supports the median line approach or the natural prolongation approach is not clear. This disagreement over the method of delimitation has been maintained despite the fact that all three States have ratified UNCLOS.
375. Clearly, those of the above-mentioned fisheries agreements which were concluded before UNCLOS was adopted were not made with Articles 74(3) and 83(3) in mind. If they do reflect any obligation not to jeopardise or hamper, or any other obligation of restraint, it must be based on pre-existing customary international law. Although there is no express reference in those treaties to customary law obligations, it could be argued that some aspects of them, especially of the agreements relating to the East China Sea, reflect an obligation of this nature.
376. In the East China Sea, of the fisheries agreements referred to above,⁵⁴⁷ those between PRC-Japan (1997), Japan-RoK (1999) and RoK-PRC (2000) were concluded after the adoption of UNCLOS. Although they were negotiated and concluded bilaterally, they share the following two characteristics: (i) all of them provide a system over the zones of overlapping claims in which both parties exercise their jurisdiction collaboratively;⁵⁴⁸ and (ii) all three agreements have a “without-prejudice clause” and emphasise the limited temporal character of the agreements pending the final delimitation.
377. With regard to the first characteristic, Article 7 of the Japan-PRC agreement provides for “Provisional Measures Waters”, an area which straddles the median line of the two States. According to the agreement, both parties shall take proper conservation measures in accordance with the decisions by the Japan-China Joint Fisheries Committee. In a similar way, Article 7 of the Japan-RoK agreement provides for “Provisional Waters” and paragraph 3 of its Annex I obliges both parties to take necessary measures for the conservation of fisheries, subject to the determination of the Japan-Korea Fisheries Committee. Furthermore, Article 7 of the RoK-PRC agreement provides for a “Provisional Measures Zone” which also straddles the median line of the two parties. Article 13 of the Agreement establishes a Korea-China Fisheries Committee and authorises it to decide on issues related to fisheries regulation. In this way, all three agreements similarly establish zones for the joint management of fisheries and joint committees in order to facilitate this management.
378. To complicate matters, some areas of the East China Sea are claimed by three coastal States: Japan, the PRC, and the RoK. Therefore, if any two of those States establish a fisheries zone under their joint management by bilateral agreement, it may constitute a violation of the obligation not to jeopardise or hamper, from the perspective of the third State with a claim to the zone. In fact, all three bilateral agreements establish such zones over the overlapping area. As a result, the “Intermediate Zone” under

⁵⁴⁶ SP Kim, *Maritime Delimitation and Interim Arrangements in North East Asia* (Martinus Nijhoff 2004) 186.

⁵⁴⁷ Para 373 and (nn 537–45).

⁵⁴⁸ In terms of the map concerning the respective zones provided by the each fishing agreement, see C Kataoka, ‘The New Fisheries Regime and Fisheries Adjustment among Japan, China, and Korea’, (2011) 77 *Nippon Suisan Gakkaishi* 4, 700 (in Japanese).

the Japan-PRC agreement,⁵⁴⁹ the “Provisional Waters” under the Japan-RoK agreement, and the “Provisional Measures Zone” under the RoK-PRC agreement all include areas claimed by a third State. However, as the Agreed Minutes attached to the Japan-RoK fisheries agreement implicitly stipulates co-operation with China,⁵⁵⁰ and due to the mutual due diligence among the three States, so far, this overlapping framework has not caused any serious problems among them.

379. In terms of the second characteristic, Article 12 of the Japan-PRC agreement provides that the agreement shall be without prejudice to any “Law of the Sea issues”.⁵⁵¹ Moreover, paragraph 1 of the Agreed Minutes attached to the agreement states that both parties will continue to hold consultations on the delimitation of the EEZ and continental shelf. In a similar vein, Article 15 of the Japan-RoK agreement clearly limits the scope of its application to fisheries. Furthermore, paragraph 1 of Annex I of the agreement obliges Japan and the RoK to continue to negotiate on the final delimitation of the EEZ. In terms of the RoK-PRC agreement, its Article 14 provides “No provision in this Agreement shall be interpreted in such a way as to prejudice the position of either Contracting Party on Law of the Sea issues.”⁵⁵² The tendency to emphasise the provisional character of the fishing agreement implies that these agreements were concluded in the context of Article 74(3) of the UNCLOS.

3.7.3 CONTINENTAL SHELF RIGHTS

380. In terms of continental shelf rights, the respective positions of Japan and the PRC are worth noting. The area in which their respective shelves overlap is located in the East China Sea, which according to the United Nations Economic Commission for Asia and the Far East (“ECAFE”) holds substantial quantities of hydrocarbons.⁵⁵³ Since the ECAFE’s finding in 1969, the importance of maritime rights in the area has been evident. As UNCLOS parties, Japan and the PRC take differing positions on how delimitation should be carried out in accordance with UNCLOS. As mentioned above, while the PRC advocates the natural prolongation approach, Japan takes the median line approach.⁵⁵⁴ Considering the significant discrepancy over the States’ respective approaches to delimitation, it would appear that reaching agreement on delimitation may be very challenging.
381. There have been several incidents between the PRC and Japan. For example, Japan reacted to reports of new developments in China indicating preparations for unilateral hydrocarbon exploitation in the Shirakaba/Chunxiao oil and gas field, which some (Japanese) sources indicate is highly likely to straddle the median line.⁵⁵⁵ It was reported that China National Offshore Oil Corporation (“CNOOC”), China Petrochemical Corporation (“Sinopec”) and Royal Dutch Shell plc (“Shell”) had concluded Strategic Alliance Agreements in 2000.⁵⁵⁶ Based on these agreements,

⁵⁴⁹ ‘Intermediate Waters’ was established by Ministerial Meeting in February 2000, see Fisheries Agency of Japan, White Paper on Fisheries 2013, 137 (in Japanese).

⁵⁵⁰ The Agreed Minutes are published with the treaty text, (n 539) above, at 356.

⁵⁵¹ SP Kim, *Maritime Delimitation and Interim Arrangements in North East Asia* (Nijhoff 2004) 353.

⁵⁵² Ibid.

⁵⁵³ KO Emery et al, ‘Geological Structure and Some Water Characteristics of the East China Sea and the Yellow Sea’, (1969) 2 CCOP Technical Bulletin.

⁵⁵⁴ Section 3.7.2 above, especially para 274. See also AM Peterson, ‘Sino-Japanese Cooperation in the East China Sea: A Lasting Arrangement’, (2009) 42 Cornell Journal of International Law, 454–5.

⁵⁵⁵ Japan Coast Guard, Japan Coast Guard Annual Report 2006, available at: <http://www.kaiho.mlit.go.jp/info/books/report2006/tokushu/p034.html>, (in Japanese).

⁵⁵⁶ A Endo, ‘Background of the Development of Oil-gas Field in the East China Sea: The Role of CNOOC Seen as ‘Interest Groups’’, (2012) 2 Japan Maritime Self-Defence Force Command and Staff College Review 1, 101, footnote 70 (in Japanese).

on 19 August 2003, these three companies together with Unocal Corporation (of the USA) entered into a joint venture agreement to exploit gas reserves on the Chinese side of the median line in the East China Sea.⁵⁵⁷ Japan requested information from the PRC with respect to its project and requested the PRC to refrain from unilateral exploitation.⁵⁵⁸ In 2004, both Shell and Unocal Corporation withdrew from the development, considering that it no longer made business sense from their perspectives.⁵⁵⁹ For its part, in 2005 Japan issued temporary permits to Teikoku Oil Co Ltd for trial exploration on the Japanese side of the median line.⁵⁶⁰ However the rights have not yet been exercised.⁵⁶¹

382. In 2008, due to the co-operative efforts made by both parties to resolve these issues concerning oil and gas exploration, two arrangements were completed and attached to a bilateral Joint Press Statement, which stated that the co-operation between Japan and China in the East China Sea was “without prejudice to the legal positions of both countries during the transitional period pending arrangement on the delimitation”.⁵⁶² The two agreements concluded are: (1) Understanding on Japan-China Joint Development in the East China Sea and; (2) Understanding on the Development of the Shirakaba/Chunxiao Oil and Gas Field. The first understanding designates the joint development zone and provides that both sides will conduct joint development at selected sites based on the principle of mutual benefit. In addition, the understanding says “the two sides will continue consultations in order to attain joint development in other waters of the East China Sea”. The second understanding makes a compromise on Shirakaba/Chunxiao: while it states that “Japanese corporation(s) will participate, in accordance with Chinese laws” in the development (ie the PRC will continue to apply its legislation to the development project), it also states that “Chinese enterprises welcome” the participation of Japanese corporations and that the PRC government confirms this.⁵⁶³ Although both understandings were intended to promote co-operation between the two parties with respect to this oil field, they have not yet proved successful. The government of Japan has stated that it has requested the resumption of negotiations on the implementation of the understandings which have been stalled since 2010, and presented evidence that Chinese development has proceeded unilaterally.⁵⁶⁴
383. Against this background, it is worth noting the Japanese objection to Chinese unilateral development made in 2015, and the terms in which it was made. On 22 July 2015, the Japanese Chief Cabinet Secretary, in a press release, stated that the PRC had established 12 new installations for developing oil and gas in the East China Sea since June 2013, and that there were currently 16 installations in total.⁵⁶⁵ Furthermore, he added:

⁵⁵⁷ Xie Ye, ‘Oil Giants Depart Xihu Trough Gas Project’, 30 September 2004, *China Daily*.

⁵⁵⁸ Japanese Ministry of Economy, Trade and Industry, Annual Report on Energy 2005, (Energy White Paper), available at: http://www.enecho.meti.go.jp/about/whitepaper/2005html/intro1_6.html (in Japanese).

⁵⁵⁹ Xie Ye, ‘Oil Giants Depart Xihu Trough Gas Project’, 30 September 2004, *China Daily*.

⁵⁶⁰ Press release of Teikoku Oil Co. Ltd, ‘About the Exploitation Title in the East China Sea’, available at: <http://www.inpex.co.jp/news/teikokuoil/press/050714.pdf>, (in Japanese).

⁵⁶¹ Web Page of Agency for Natural Resources and Energy, http://www.enecho.meti.go.jp/about/whitepaper/2005html/intro1_6.html, (in Japanese).

⁵⁶² Japan - China Joint Press Statement of 18 June 2008 ‘Cooperation between Japan and China in the East China Sea’ and two accompanying Understandings. Available on the website of MOFA, Japan, at: <http://www.mofa.go.jp/files/000091726.pdf>, (in English).

⁵⁶³ Ibid.

⁵⁶⁴ ‘The Current Status of China’s Unilateral Development of Natural Resources in the East China Sea’, Information on the website of the Ministry of Foreign Affairs, Japan, last accessed 13 June 2016: ‘http://www.mofa.go.jp/a_o/c_m1/page3e_000356.html’, (in English).

⁵⁶⁵ Webpage of the Prime Minister of Japan and His Cabinet, http://www.kantei.go.jp/jp/tyoukanpress/201507/22_p.html, (in Japanese). Translation by Dr M Seto.

in the East China Sea, Japan and China have not agreed on the delimitation of the EEZ and the CS, and Japan takes the position that the delimitation should be based on the median line. It is highly regrettable that, under such an undelimited situation, China proceeded with its unilateral development of resources even though it was conducted in the Chinese side of the median line.⁵⁶⁶

384. In response to this statement, on 24 July 2015, the Ministry of Foreign Affairs of the PRC stated on its webpage:

Japan made public China's oil and gas exploration activities in the East China Sea on its Foreign Ministry website, and requested China to stop the exploration in the waters on the Chinese side of the 'geographical equidistance line' unilaterally claimed by Japan. Japan's request is groundless and China's relevant oil and gas exploration activities in the East China Sea are absolutely rightful and legitimate."

385. The Chinese statement continued:

China does not recognise the "geographical equidistance line" unilaterally drawn by Japan China advocates the convention of the 200 nautical mile exclusive economic zone and its continental shelf in the East China Sea naturally extends to the Okinawa Trough. As to the maritime delimitation in the East China Sea between China and Japan, China is willing to reach an agreement to solve this issue on the basis of the international law including the United Nations Convention on the Law of the Sea and in the principle of justice.

China has for long borne in mind the general picture of bilateral relations and *exercised restraint* and never carried out oil and gas exploration in *the disputed waters*. China proposes to conduct joint exploration with Japan without affecting their respective legal stance."⁵⁶⁸

On 27 July 2015, the PRC made another, almost identical, statement on its Foreign Ministry website.⁵⁶⁹

386. Several points are worth noting about these exchanges. First, they seem to reveal different perspectives on which part of the undelimited area is "in dispute". The activities in question took place on the Chinese side of the median line. The PRC characterised the area as "the undisputed waters". At the same time, the PRC stated that it did not recognise the median line. Its claim that the area is undisputed seems therefore to be based, not on its location being on the Chinese side of the median line, but simply on it being within its own claimed entitlement, without reference to any overlapping Japanese claimed entitlement. As noted in the Chinese statement cited in the previous paragraph, China's continental shelf claim extends to the Okinawa Trough, which is beyond 200 nm from the Chinese coast. On the other hand, Japan's position is that Japan is entitled to a continental shelf of 200 nm from its baseline which extends beyond the median line and towards the Chinese

⁵⁶⁶ Ibid.

⁵⁶⁷ 'China's Oil and Gas Exploration in the East China Sea Is Rightful and Legitimate', Website of the Ministry of Foreign Affairs of the PRC, 24 July 2015, available at: http://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/t1285037.shtml (in English).

⁵⁶⁸ Ibid. The emphasis has been added by the authors of this report.

⁵⁶⁹ 'China's Oil and Gas Development in the East China Sea is Justified and Legitimate'. Website of the Ministry of Foreign Affairs of the PRC, 27 July 2015: available at http://www.fmprc.gov.cn/mfa_eng/wjbxw/t1284278.shtml (in English).

side, and that China is likewise entitled to a continental shelf within 200 nm from its base line and not beyond.⁵⁷⁰ Japan argues that the maritime delimitation should be based on the median line, not that its own claim stops at the median line. Hence, from Japan's perspective, all the overlapping areas which are within 200 nm of both States, on both sides of the median line, are under dispute.

387. The exchanges have also been interpreted by some commentators as indicating differing views on the question of the geographical scope of the obligation not to jeopardise or hamper.⁵⁷¹ The reference in the Chinese statement to China having "exercised restraint" in "the disputed waters" could be interpreted as recognition of an obligation of restraint, which is applicable to "the disputed waters", apparently defined by China as not including areas on the Chinese side of the median line. One commentator has argued that the 2008 Understanding on Joint Development in the East China, under which the joint development zone extends to the west side of the median line, indicates that at the time of its conclusion in 2008, the Chinese government acknowledged the existence of Japanese claims there, because States usually do not design joint development in undisputed areas.⁵⁷² On this basis, the Chinese positions in 2008 and in 2015 seem contradictory.⁵⁷³ By contrast, Japan's protest seems to imply an expectation of restraint over the whole area of overlap of the claims.
388. Two observations may be drawn from these respective statements: (1) both Japan and the PRC seem to view the location of the development and the concept of disputed waters as relevant to the obligation to exercise restraint; but (2) each defines the area in dispute differently. In particular they differ over the relevance of the median line to the definition of the disputed area, and to the application of the obligation not to jeopardise or hamper the reaching of final delimitation agreement.
389. More generally, these exchanges appear to illustrate the possibility of a variety of differing views regarding the geographical scope of the obligation not to jeopardise or hamper, assuming that it has a geographic scope. On one view, the disputed area is the whole area of overlap of the respective claims. On another view, if two States have both asserted a boundary line, they may view the area in dispute as confined to the area between the two asserted lines, and they may consider this (smaller area) to be where the obligation not to jeopardise or hamper applies. This approach may be complicated in a case where one State has proposed a boundary while the other simply maintains its claim; if the area in dispute is treated as the difference between a median line and a claim line, the geographic scope of the obligation would be reduced on one side only. Yet another possible view is that the obligation applies to a larger area; perhaps the whole undelimited area up to the limits of the territorial sea of each State. The interpretational difficulties illustrated by these exchanges were considered more fully in Section 2.6.2 above.⁵⁷⁴

⁵⁷⁰ 'Japan's legal position on the development of natural resources in the East China Sea', http://www.mofa.go.jp/a_o/c_m1/page3e_000358.html, (in English): The government of Japan says that "As the distance between the respective territorial sea baselines of Japan and China which have opposite coasts in the East China Sea is less than 400 nm, the maritime area where the entitlements (note: the basis of exercising legitimate rights under international law) of the two states to EEZ and continental shelf up to 200 nm overlap needs to be delimited upon their agreement."

⁵⁷¹ S Murase, 'Issues concerning the Delimitation of Continental Shelf between Japan and China' (2007) 565 *International Affairs* 2 (in Japanese).

⁵⁷² See V Becker-Weinberg, *Joint Development of Hydrocarbon Deposits in the Law of the Sea* (Springer 2014) 2.

⁵⁷³ A similar observation could be made that the fact that the Provisional Measures Waters under the Japan-PRC fishing agreement straddles the median line implies Chinese government acknowledgement that the Japanese claimed entitlement extends to the west side of the median line.

⁵⁷⁴ Paras 100–6.

3.7.4 FZ/EEZ RIGHTS

A. Marine Scientific Research

390. Marine scientific research (“MSR”) conducted by the RoK in the Sea of Japan and by the PRC in the East China Sea, raised tensions between those States and Japan. On 5 July 2006, the RoK conducted MSR in waters where the EEZ claims of Japan and the RoK overlap. The Japanese government, having been informed by the RoK of this survey, repeatedly requested the RoK to halt or postpone the research.⁵⁷⁵ In addition, after MSR had been conducted, Japan protested through a statement on its MOFA website⁵⁷⁶ as well as through diplomatic channels.⁵⁷⁷ It is not clear to what extent Japan’s protest was based on any obligation of restraint under UNCLOS. However, it should be noted that Japan expressly recognised the need for negotiations to conclude a maritime delimitation agreement.
391. In 2001, Japan and the PRC concluded a framework for mutual prior notification of marine scientific research.⁵⁷⁸ According to this understanding, each party has to notify the other party before conducting a MSR on the opposite side of the median line in the East China Sea.⁵⁷⁹ It is however said to have been violated on numerous occasions.⁵⁸⁰ For instance, the PRC is reported to have conducted MSR on the Japanese side of the median line without notifying the Japanese government.⁵⁸¹ Furthermore, it is reported by Japanese commentators that in 2010 and 2012 the Chinese government deployed its patrol vessel against Japanese government vessels conducting MSR in the East China Sea, on the Japanese side of the median line.⁵⁸²
392. It is unclear to what extent these MSR survey practices can be regarded as State practice relevant to the obligation not to jeopardise or hamper, or any other obligation of restraint. Such surveys do not normally cause physical change to the area, and may not necessarily be inconsistent with the obligation not to jeopardise or hamper.⁵⁸³ However, the conclusion of the framework may itself be an instance of State practice in formalising an element of restraint.

B. Fishing Activities in the Yellow Sea

393. In the Yellow Sea where the distance between the nearest coasts of the PRC and the RoK is less than

⁵⁷⁵ ‘Statement by the Press Secretary/Director-General for Press and Public Relations, Ministry of Foreign Affairs, on the Marine Scientific Research by the Government of the Republic of Korea in the Waters where Claim of the Exclusive Economic Zones (EEZ) Overlap between Japan and the ROK and the Territorial Sea around Takeshima Islands’, available at: <http://www.mofa.go.jp/announce/announce/2006/7/0703-2.html> (in English).

⁵⁷⁶ Webpage of MOFA of Japan, <http://www.mofa.go.jp/announce/announce/2006/7/0705-4.html> (in English).

⁵⁷⁷ At that time, the Japanese Vice Minister of MOFA protested and urged an immediate halt to the research directly to the RoK’s Ambassador to Tokyo, and Japan’s Foreign Minister did the same to his counterpart through a teleconference. This information is stated on the website of the MOFA of Japan, available at: http://www.mofa.go.jp/mofaj/press/kaiken/fuku/f_0607.html (in Japanese) Accessed 13 June 2016.

⁵⁷⁸ Webpage of MOFA of Japan, http://www.mofa.go.jp/mofaj/press/release/13/pdfs/rls_0213d.pdf (in Japanese).

⁵⁷⁹ Y Anami, ‘Japan-China Discord and Cooperation over East China Sea’, <http://www.japanpolicyforum.jp/archives/diplomacy/pt20121108175540.html> (in English). The outline of the framework can be found at: http://www.mofa.go.jp/mofaj/press/release/13/pdfs/rls_0213d.pdf (in Japanese).

⁵⁸⁰ T Enoki, ‘Marine Scientific Research in the Exclusive Economic Zones and Continental Shelf’, *Aspects of Maritime Development*, (2013), 134 (in Japanese).

⁵⁸¹ The *Mainichi Newspaper* says that according to the Japan Coast Guard, the PRC conducted MSRs 22 times in 2015, 9 in 2014 and 7 in 2013; ‘Illegal Surveys have Doubled’, 16 December 2015, *The Mainichi Newspaper*, <http://mainichi.jp/articles/20151216/dde/041/030/035000c> (in Japanese). See also Japan Coast Guard, Japan Coast Guard Annual Report 2013, http://www.kaiho.mlit.go.jp/info/books/report2013/html/tokushu/toku13_02-6.html (in Japanese).

⁵⁸² Y Nishimura, ‘Problems with regard to Sabotage to Maritime Survey in Exclusive Economic Zones and Continental Shelf’, *Report on the Problems of Maritime Law Enforcement*, (2015), 36 (in Japanese).

⁵⁸³ See Section 2.5.2 above, especially para 98.

400 nm, both States claim EEZs and a continental shelf. Therefore, their claims overlap and they started bilateral negotiations in 1996 with the aim of delimiting the maritime boundary.⁵⁸⁴

394. Recently, as the number of Chinese fishing vessels has been increasing, the tension between the PRC and two Koreas has run high. Although the RoK's Coast Guard routinely arrests Chinese fishing vessels which violate RoK legislation, there are two significant events which have led to deterioration in the relationship between the PRC and the RoK: (1) On 12 December 2011, an officer of the RoK Coast Guard was killed by a Chinese fisherman;⁵⁸⁵ (2) On 14 October 2014, a RoK Coast Guard officer shot and killed a Chinese national in the RoK's claimed EEZ.⁵⁸⁶
395. In the first incident, the Chinese fisherman concerned was arrested and taken to the RoK where he faced criminal proceedings. His fishing vessel was also arrested and detained. Five months later, on 19 April 2012, though the prosecutor sought the death penalty, the Incheon District Court sentenced the Chinese captain to 30 years in prison and a 20 million won fine. The other crew members also received sentences of imprisonment from 18 months to two years.⁵⁸⁷ Following this judgement, Liu Weimin, spokesman for the Chinese Foreign Ministry, stated:
- Beijing and Seoul have not achieved an agreement on the definition of related exclusive economic zones, and China does not accept the unilateral resort to the law of exclusive economic zones. Beijing will keep a close watch on the case's development and provide necessary assistance to the Chinese citizens involved in the case to ensure their justified and legal rights.⁵⁸⁸
396. In this way, after confirming the fact that the EEZ was not delimited, the PRC applied pressure on the RoK to refrain from exercising law enforcement jurisdiction. Although it does not refer to any obligation of restraint, the PRC statement could be interpreted as implicitly made on such a basis.⁵⁸⁹ With a view to solving this conflict, the PRC and the RoK have started to hold a biannual RoK-China Meeting on Fisheries Co-operation. Although eight such meetings had been held by the end of 2015, the RoK has complained about continuing illegal, unreported and unregulated fishing by PRC vessels.⁵⁹⁰
397. As for the relationship between the PRC and the DPRK, on 8 May 2012, (just one month after the judgment of the Incheon District Court arising from the first incident), three Chinese fishing trawlers and their 29 crew members were captured and detained by DPRK forces "roughly 10 nautical miles inside China's waters".⁵⁹¹ According to the BBC, "Chinese Ambassador Liu Hongcai and other diplomats worked on securing the release 'through negotiation and close contact'" with the DPRK.⁵⁹²

⁵⁸⁴ SP Kim, *Maritime Delimitation and Interim Arrangements in North East Asia* (Nijhoff 2004) 206.

⁵⁸⁵ 'South Korean Coastguard "killed by Chinese Fisherman"', 12 December 2011, *Reuters*, <http://www.reuters.com/article/2011/12/12/us-korea-china-idUSTRE7BB03Z20111212> (in English).

⁵⁸⁶ 'Foreign Ministry Spokesperson Hong Lei's Regular Press Conference on October 10, 2014', http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1199361.shtml (in English).

⁵⁸⁷ T Roehrig, 'Republic of Korea Navy and China's Rise', <http://belfercenter.ksg.harvard.edu/files/rok-navy-chinas-rise-roehrig.pdf>.

⁵⁸⁸ *Ibid.*

⁵⁸⁹ T Roehrig similarly points out "China's concerns appear to be based on the court's use of the disputed EEZ as a foundation for the decision." *Ibid.*

⁵⁹⁰ Webpage of Ministry of Foreign Affairs of Republic of Korea, "8th ROK-China Meeting on Fisheries Cooperation Takes Place", http://mofa.go.kr/ENG/press/pressreleases/index.jsp?menu=m_10_20&sp=/webmodule/htsboard/template/read/engreadboard.jsp%3FtypeID=12%26boardid=302%26seqno=315900 (in English).

⁵⁹¹ BS Glaser, B Billingsley et al, 'Recording Chinese Priorities on the Korean Peninsula', http://csis.org/files/publication/121217_Glaser_ReOrderingChinese_web.pdf (in English).

⁵⁹² 'Chinese Fishermen and Boats Held in North Korea "freed"', *BBC News* website, 21 May 2012, available at: www.bbc.co.uk/news/world-asia-china-18141009.

Conclusions and Directions

4.1 Overview of State Practice

398. Section 3 above sets out instances of State practice in undelimited maritime areas where they are, or could be, overlapping EEZ and/or continental shelf entitlements. First, it is necessary to point out that for the most part, the research team has not discussed undelimited areas in which no relevant State activities were carried out. An absence of State activity in a disputed area might be highly relevant to the obligations of Articles 74(3) and 83(3), but might be due to numerous other factors including the absence of any natural resources. For example, in some areas in the North American, Arctic and Sub-Arctic Region, there was no prospect of continental shelf rights being exercised in practice prior to delimitation of a maritime boundary because of climatic and technological factors. It would therefore be unrealistic to expect to find any evidence of restraint being exercised due to UNCLOS obligations in these areas.
399. As anticipated at the outset of the project, explicit statements by States that they are not undertaking a particular activity in the undelimited area in order to comply with their obligations under Articles 74(3) and 83(3) are rare. In several cases, States have made public statements regarding their exercise of restraint in a disputed maritime area, without explicitly referring to Articles 74(3) and 83(3) of UNCLOS. For example, Cameroon, in its pleadings before the ICJ in the *Cameroon v Nigeria* case, noted that it had refrained from granting any hydrocarbon concessions in a certain part of the disputed area, due to the negotiations between the parties and the ICJ proceedings.⁵⁹³ In a note to the UN protesting over Croatia's activities in the disputed maritime area, Montenegro noted that it had refrained from unilateral measures "although it would be fully entitled to exercise jurisdiction."⁵⁹⁴ Côte d'Ivoire in its oral pleadings at the preliminary measures stage of the *Ghana/Côte d'Ivoire* case before ITLOS, stated that though it had taken "the precaution of generally not granting licences, whether for exploration or for exploitation, in the disputed area it did not always do so in fact. This is normal restraint in this sort of case."⁵⁹⁵ These examples indicate the variety of reasons given by States when explaining an exercise of restraint in undelimited areas.
400. However, the vast majority of State practice analysed occurred in the absence of *any* accompanying statements as to what States consider to be their rights or duties in the undelimited area. For example, in the North American, Arctic and Sub-Arctic Region, of the ten relevant areas examined the research team identified evidence of restraint in the exercise of continental shelf rights and

⁵⁹³ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria, Equatorial Guinea intervening)* (Merits) [2002] ICJ Rep 303, para 283.

⁵⁹⁴ Communication from the Government of Montenegro, dated 18 May 2015 concerning exploration and exploitation of resources in the Adriatic Sea by the Republic of Croatia.

⁵⁹⁵ *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, ITLOS Special Chamber, Provisional Measures, Verbatim record of Public sitting held on Sunday, 29 March 2015, at 10.00, 13.

fisheries rights in four areas, but it was not possible to ascertain clearly whether it stemmed from any sense of legal obligation by the States concerned.

401. It is thus difficult to draw any general trends from the practice collated regarding the content of the obligations of Articles 74(3) and 83(3) or any applicable customary international law obligations of restraint. However, the review of State practice indicates that States carry out a wide variety of activities in undelimited areas, which have been met with protest by neighbouring States to varying degrees. The widespread practice of licensing for hydrocarbon exploration and collecting seismic data even in actively disputed areas may indicate that States consider such activity to comply with their obligations under Article 83(3). On the other hand, such activity is invariably objected to by the neighbouring State, and in some cases even activity which stops short of exploration has been considered unacceptable, for example, the issue of promotional material pertaining to exploration.
402. Some of the State practice identified by the research team pre-dated the conclusion of UNCLOS in 1982. This raised the question of what conclusions could be drawn from State practice pre-dating UNCLOS regarding the existence of a customary international law obligation of restraint in the undelimited maritime area. In the Northern and Western Europe Region, this practice appeared to be based on the general principles of negotiating in good faith, non-abuse of rights and peaceful settlement of disputes, as well as the duty to avoid aggravating or extending disputes.⁵⁹⁶ With effect from 1982, paragraph 3 of Articles 74 and 83 can be considered to have given particular expression to those principles in the context of the delimitation of the EEZ and the continental shelf. Paragraph 3 influenced State practice during the period between 1982 and entry into force of the Convention in 1994, after which its terms became binding as treaty law on UNCLOS States Parties. In the North American, Arctic and Sub-Arctic, although pre-UNCLOS practice indicating restraint was identified, it was not possible to ascertain whether this was accompanied by any sense of obligation on behalf of the States concerned. However, it may be deduced that if such a sense of obligation existed, the source of that obligation must have been customary international law, as the restraint in question predated the entry into force of UNCLOS.

4.2 AREAS OF CONTINUED UNCERTAINTY AND FURTHER RESEARCH

403. The State practice collated by the research team raises numerous questions, both in terms of how the practice should be interpreted as well as jurisprudential questions as to the applicable law. This section sets out some of these issues with a view to inviting comments from States and interested practitioners and scholars, to indicate directions for further research.

A. Interpretation of State Practice

404. There is significant practice of States concluding agreements and arrangements on mutual restraint in disputed areas. However, it is unclear what this practice demonstrates about the content of the duty not to jeopardise or hamper in Articles 74(3) and 83(3) or any duties of restraint under customary international law. For example, in 2001 Japan and the PRC concluded a framework for mutual prior notification of marine research activities.⁵⁹⁷ Another example is the informal moratorium on hydrocarbon activities in the disputed area agreed upon by Norway and Russia in the 1980s.⁵⁹⁸ In 1982, the Norwegian Minister for Oil and Energy stated that “international law requires mutual restraint [in disputed areas]”.⁵⁹⁹ However, even when an agreement is accompanied

⁵⁹⁶ *Electricity Company of Sofia and Bulgaria* case, PCIJ Series A/B No 79 (1939), 199.

⁵⁹⁷ http://www.mofa.go.jp/mofaj/press/release/13/pdfs/rls_0213d.pdf (in Japanese).

⁵⁹⁸ See Section 3.1.2 above.

⁵⁹⁹ *Stortingstidene*, 1981–82, 2678 (RR Churchill’s translation from the Norwegian).

by an explicit statement as to the applicable legal obligations, it is difficult to ascertain whether this is because States consider that they are obliged to do so because of Articles 74(3) and 83(3) or whether they conclude such agreements because otherwise they would not be obliged to act in the manner set out therein. This practice thus raises the question of whether agreements which provide for mutual prior notification or other forms of co-operation should be interpreted as evidence that it forms part of an obligation of restraint, or as evidence that it does not, or simply treated as neutral in this regard.

405. Some of the practice identified by the research team relates to undelimited areas in semi-enclosed seas. As noted in Section 3.1.4 above, Article 123 of UNCLOS provides that States bordering an enclosed or semi-enclosed sea “should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention.” This raises the question of whether practice in areas lying within semi-enclosed seas should be interpreted differently due to the application of Article 123 of UNCLOS. Several commentators at the expert roundtable queried whether Article 123 in fact created binding obligations for States.⁶⁰⁰ Further research into the application of Article 123 may be required in order to understand its possible impact on obligations of restraint in undelimited areas in semi-enclosed seas.

B. *Jurisprudential Questions*

(a) Character of the disputed area

406. As noted in Section 1, the research team took note of the existence of sovereignty disputes in the areas referred to and adopted a cautious approach when assessing the relevance of related State practice. Practice related to areas where the validity of the maritime entitlement is disputed raises the question of whether the scope of the obligation not to jeopardise or hamper is any different for such areas, as compared to areas where the disputes concern the delimitation of entitlements. This is an area that merits further research.⁶⁰¹
407. A particular difficulty in areas where a land sovereignty dispute underlies the maritime delimitation dispute is that the State which is in possession of the land commonly denies that there is a dispute, in the belief that admitting it might weaken its claim. In some instances a State which exercises settled jurisdiction over the disputed territory has accused the other State of inventing an “absurd” land claim in order to justify objecting to its legitimate hydrocarbon activities on its continental shelf. This appears to raise the question whether the advancement of an obviously implausible land claim could be an act which would “jeopardize or hamper” the reaching of a final maritime delimitation agreement. However, since the implausibility issue may not be objectively assessed unless/until there is adjudication, this seems a risky jurisprudential avenue to go down as it risks undermining the purpose of Articles 74 (3)/83(3).
408. A further difficulty in areas where land sovereignty disputes are mixed with maritime delimitation disputes is that States typically seek to demonstrate their exercise of sovereignty and sovereign rights in the maritime area in order to strengthen their legal claim to the adjacent territory; yet the same conduct may also constitute evidence of actions that might jeopardise or hamper a final delimitation, possibly in breach of Articles 74(3) or 83(3).⁶⁰² Prior to the *Guyana v Suriname* award less attention seems to have been directed to the latter issue; now it may be expected that States will be more aware of their obligations in this regard. This begs the question how they may manage the tension between

⁶⁰⁰ Summary report of the Expert Roundtable, Annex III, para 34.

⁶⁰¹ See, (n 32), 222–3.

⁶⁰² See Section 2.6.4, paras 112–9.

these two legal imperatives. This issue is very pertinent in a number of regions, especially the South East Asian and Caribbean regions, and would merit further study to find examples of the effective management of these parallel and sometimes competing legal requirements.

(b) Geographic scope of obligations of restraint

409. State practice is inconsistent as to the geographical scope of the obligations of Articles 74(3) and 83(3). Some States limit their activities (whether by tacit agreement or otherwise) to within a median line of overlapping claims. Others carry out activities throughout the disputed area, or with respect to the whole area. It is thus not possible to discern from the practice of States whether there is general agreement as to any geographic limitation to the obligation in Articles 74(3) and 83(3) not to jeopardise or hamper the reaching of the final agreement. Experts at the roundtable noted that there is no geographical limitation expressly mentioned in Articles 74(3) and 83(3). Some suggested that this means that there is no geographical limitation on the activities that might be covered, the test being their propensity to “jeopardize or hamper” the reaching of a final agreement.

410. As set out in Section 2.5 above, the “plausibility test” developed by international courts and tribunals in the provisional measures context may be relevant to understanding the geographical scope of the obligations of Articles 74(3) and 83(3). However, experts at the roundtable emphasised the distinct nature of provisional measures from obligations of restraint and considered that caution was required when applying any findings from provisional measures jurisprudence in the context of obligations of restraint. The question as to the relationship between the location of activities and the application of obligations of restraint is thus ripe for further research.

(c) Test of permanent physical change

411. The adoption of a cautious approach towards the applicability of provisional measures jurisprudence is also relevant when considering the status of the test of permanent physical change developed by the tribunal in *Guyana v Suriname* in relation to the obligation not to jeopardise or hamper. We invite comment on whether the provisional measures order by the ITLOS Special Chamber in *Ghana/Côte d’Ivoire* requires a re-evaluation of the approach of the tribunal in *Guyana v Suriname*, or whether it should be distinguished, on the facts, or on the basis that it was a provisional measures order.

(d) Permissible responses

412. Although outside the scope of the research project, the practice analysed by the research team raised the related question of what States can do when other States violate the obligation not to jeopardise or hamper the reaching of a final agreement. At the expert roundtable it was observed that States, under certain circumstances, could take countermeasures in response to a violation of Article 74(3) and/or Article 83(3). Differing views were expressed with regard to what kind of countermeasures States could resort to. It was concluded that in any case countermeasures may not include actions that could be irreversible. Given the numerous examples of States acting without notable restraint in undelimited areas, this is a question with important practical consequences and merits further consideration.

413. The research team invites comments by States and other interested parties both on the interpretation of the State practice identified and the jurisprudential questions outlined above. Further information on relevant State practice in any part of the world would also be welcomed.

414. Comments or information may be sent by email to j.barrett@biicl.org or by post to:

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If comments on this report are published elsewhere, the research team would be grateful to be informed, and if possible, to receive a copy.

ANNEX I

Biographies of the Research Team

David Anderson

David H Anderson CMG was a Judge of the International Tribunal for the Law of the Sea (1996–2005), after retiring as Second Legal Adviser to the Foreign & Commonwealth Office. Whilst with the FCO (1960–1996), he advised on all aspects of international law, including the law of treaties and the law of the sea. Between 1973 and 1995, he played an active part in the Third UN Conference on the Law of the Sea, the Secretary General’s Consultations about Part XI and the Straddling Fish Stocks Conference; he negotiated over a dozen maritime boundary treaties; and spent three years with the UK Mission to the UN in New York. He acted as UK Agent in the *Fisheries Jurisdiction* case (*UK v Iceland*) before the ICJ in 1972. Presently, he is listed as an Arbitrator under Annex VII of UNCLOS. He has published extensively on law of the sea matters.

Jill Barrett

Jill Barrett is the Arthur Watts Senior Research Fellow in Public International Law at BIICL, where she leads the Watts programme of international law research and events. She specialises in the law of treaties, the polar regions, international environmental law and law of the sea. Her recent publications include Barrett and Barnes (eds), *Law of the Sea: UNCLOS as a Living Treaty*, (BIICL 2016) and ‘Securing the Polar Regions through international law’ in Footer et al (eds) *Security and International Law* (Hart 2016). She was Visiting Professor at Kobe University, Japan, in 2013, where she taught international law to postgraduate students.

She was previously Legal Counsellor at the Foreign & Commonwealth Office. During her 20-year FCO career she advised on legal aspects of UK foreign policy, and represented the UK at the United Nations and a variety of international conferences including Antarctic Treaty Consultative Meetings, CCAMLR, London Convention, International Whaling Commission and UN Commission on Environment and Development. She was Deputy Agent for the UK in the *Mox Plant* cases under UNCLOS and the OSPAR Convention. Before joining the FCO, she was Lecturer in Law at SOAS, London University, specialising in the People’s Republic of China, and Lecturer in Law at Durham University.

Naomi Burke

Dr Naomi Burke O’Sullivan is the Arthur Watts Research Fellow in Law of the Sea at BIICL. She joined BIICL in November 2015 to work on this project regarding the obligations of States in respect of undelimited maritime areas. She also teaches public international law to undergraduate students at Fitzwilliam College, University of Cambridge.

Naomi has particular expertise in law of the sea and international humanitarian law. Prior to joining BIICL she worked in private practice at a boutique law firm specialising in public international law. She has also worked at the Irish Department of Foreign Affairs and as a clerk at the International Court of Justice.

Naomi holds an LL.B. from Trinity College Dublin, a Masters from IEP Paris (Sciences Po) specialising in conflict and security studies, an LL.M. from NYU School of Law and a Ph.D. from the University of Cambridge. Her Ph.D. thesis entitled ‘The Maritime Zones of Non-Self-Governing and Occupied Territories’ examined issues related to the entitlement to maritime zones and the exploitation of marine resources where sovereignty over land territory is disputed. Her recent publications include ASIL Insight, ‘Annex VII Arbitral Tribunal Delimits Maritime Boundary between Bangladesh and India in the Bay of Bengal’, 22 September 2014 and ‘Nicaragua v Colombia at the ICJ: Better the Devil you don’t?’ 2 Cambridge Journal of International and Comparative Law 2 (2013).

Robin Churchill

Robin Churchill is Professor of International Law at the University of Dundee where he has taught a variety of modules in international and EU law. His main research interests are the law of the sea, international environmental law and human rights, on all of which he has published widely. His books on the law of the sea include *The Law of the Sea* (with Vaughan Lowe) (fourth edition currently in preparation) and *The EC Common Fisheries Policy* (with Daniel Owen) (OUP 2010). He was awarded the 2011 Mangone Prize of the International Journal of Marine and Coastal Law for his series of annual reviews of dispute settlement in the law of the sea.

Callum Musto

Callum Musto is Research Consultant in Law of the Sea, BIICL, engaged to work on this project. He is also pursuing a Ph.D. in public international law at the London School of Economics and Political Science. He holds masters degrees in public international law from the University of Oxford and undergraduate degrees in law, international relations and history from the Australian National University. Callum’s research interests span a range of topics in international law including law of the sea, international dispute settlement, trade and investment, and legal theory.

Callum is admitted as a lawyer in the Supreme Court of the Australian Capital Territory, and has previously worked in several roles in the Australian federal court system. He was previously a Public International Law Research Intern at BIICL, working on law of the sea.

Kentaro Nishimoto

Dr Kentaro Nishimoto is Associate Professor, School of Law, Tohoku University, Japan. He teaches international law to undergraduate and postgraduate students and conducts research on international law, specialising in the law of the sea. He has published many articles on law of the sea in Japanese. His publications in English include ‘The Role of International Organizations in Disaster Response: A Case Study of Recent Earthquakes in Japan’, in DD Caron et al (eds), *The International Law of Disaster Relief* (OUP 2014), 295–313. His conference presentations include “The Legal Issues of the East China Sea: A perspective from Japan”, The Sea in the Middle: Marine Security & Sino-Japanese Relations in the East China Sea, 21 March 2014, King’s College London, and “International Law Issues Relating to the Impact of Disasters on the Maritime Environment”, 6th Japan-Netherlands Law Symposium, 26–27 August 2013, Leiden, The Netherlands.

Dr Nishimoto was previously Project Lecturer at the Graduate School of Public Policy, and Project Researcher at the Graduate School of Law and Politics, University of Tokyo. He holds a Ph.D. in Law from the University of Tokyo, Japan, entitled ‘Territoriality and Functionality in the Historical Formation of the Modern Law of the Sea’, and an LL.M. and LL.B. from the University of Tokyo.

Makoto Seta

Dr Makoto Seta is Associate Professor of International Law at Yokohama City University, Japan. He conducts research on “The Development of International Law of the Sea”, “Maritime Crimes” and “State Jurisdiction” and teaches Public International Law. He has published several articles on law of the sea in Japanese. His work published in English includes ‘How do We Justify Unilateral Exercise of Port State Jurisdiction? The Challenge by the EU in Protecting the Marine Environment’, *International Environmental Law: Contemporary Concerns and Challenges in 2014*, 473–87 and ‘CIL Research Project on International Maritime Crimes: Japan’s Country Report’, available at <http://cil.nus.edu.sg/wp/wp-content/uploads/2010/10/Country-Report-Japan.pdf>, 1–26.

Dr Seta holds a Ph.D. in Public International Law from Waseda University, Japan, on ‘The Development of Universal Jurisdiction under the Law of the Sea’ (in Japanese), an LL.M. in Public International Law from the London School of Economics and Political Science and an LL.M. and an LL.B. in Public International Law from Waseda University. He won several awards for academic scholarship, most recently a Superior Thesis Award from the Yamagata Memorial Foundation in 2013.

Annex II

List of Agreements and Arrangements Relating to Maritime Delimitation

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Albania/Italy	<i>Agreement between Albania and Italy for the determination of the continental shelf of each of the two countries.</i>	18 December 1992	N/A	http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/ALB-ITA1992CS.pdf
Algeria/Tunisia	<i>Agreement on Provisional Arrangements for the Delimitation of the Maritime Boundaries between the Republic of Tunisia and the People's Democratic Republic of Algeria (with annex of 7 August 2002)</i> 2238 UNTS 197	11 February 2002	N/A	https://treaties.un.org/doc/Publication/UNTS/Volume%202238/v2238.pdf#page=217
Angola/Namibia	<i>Accord on the delimitation of the maritime border between Angola and Namibia</i>	4 June 2002	N/A	IMB 3719-3726
Argentina/Chile	<i>Act of Puerto Montt</i> 1088 UNTS 135	20 February 1978	20 February 1978	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/ARG-CHL1978PM.pdf
Argentina/Chile	<i>Exchange of notes between Argentina and Chile constituting an agreement relating to the Final Act approving the proposals of the First Joint Commission established by the Act of Puerto Montt (with Final Act of the First Joint Commission dated on 6 April 1978)</i> 1092 UNTS 241	2 May 1978	2 May 1978	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/ARG-CHL1978FJC.pdf

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Argentina/Chile	<i>Act of Montevideo by which Chile and Argentina request the Holy See to act as a mediator with regard to their dispute over the Southern region and undertake not to resort to force in their mutual relations (with supplementary declaration)</i> 1137 UNTS 219	8 January 1979	8 January 1979	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/CHL-ARG1979AM.PDF
Argentina/Chile	<i>Treaty of Peace and Friendship between Chile and Argentina</i>	29 November 1984	2 May 1985	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/CHL-ARG1984PE.PDF
Argentina/ Uruguay	<i>Treaty between Uruguay and Argentina concerning the Rio de la Plata and the corresponding maritime boundary</i> 1295 UNTS 293	19 November 1973	12 February 1974	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/URY-ARG1973MB.PDF
Argentina/ Uruguay	<i>Exchange of notes constituting an agreement between the Argentine Republic and the Eastern Republic of Uruguay entrusting the Rio de la Plata Administrative Commission with the delimitation of the boundary between Martin Garcia and Timoteo Dominguez Islands</i> 1519 UNTS 125	18 June 1988	18 June 1988	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/ARG-URY1988RP.PDF
Australia/ Indonesia	<i>Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia establishing certain Seabed Boundaries</i>	18 May 1971	8 November 1973	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-IDN1971SB.pdf
Australia/ Indonesia	<i>Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia establishing certain sea-bed boundaries in the area of the Timor and Arafura seas, supplementary to the Agreement of 18 May 1971</i>	9 October 1972	8 November 1973	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-IDN1972TA.pdf
Australia/ Indonesia	<i>Agreement between Australia and Indonesia Concerning certain Boundaries between Papua New Guinea and Indonesia</i>	12 February 1973	26 November 1973	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-IDN1973PNG.pdf

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Australia/ Indonesia	<i>Treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an exclusive economic zone boundary and certain seabed boundaries</i> 975 UNTS 3	14 March 1997	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-IDN1997EEZ.pdf
Australia/ Indonesia	<i>Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of Australia Concerning the Implementation of a Provisional Fisheries Surveillance and Enforcement Arrangement</i>	29 October 1981	1 February 1992	https://viewfroml2.files.wordpress.com/2014/03/provisional-fisheries-surveillance-and-enforcement-arrangement.pdf
Australia/ New Zealand	<i>Treaty between the Government of Australia and the Government of New Zealand establishing certain Exclusive Economic Zone and Continental Shelf Boundaries</i> 2441 UNTS 235	25 July 2004	N/A	http://www.un.org/Depts/los/doalos_publications/LOS_Bulletins/bulletinpdf/bulletin55e.pdf
Australia/Papua New Guinea	<i>Treaty between Australia and the Independent State of Papua New Guinea concerning sovereignty and maritime boundaries in the area between the two countries, including the area known as Torres Strait, and related matters</i>	18 December 1978	15 February 1985	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-PNG1978TS.PDF
Australia/ Solomon Islands	<i>Agreement between the Government of Solomon Islands and the Government of Australia establishing certain sea and seabed boundaries</i> 12 LOSB 19	13 September 1988	14 April 1989	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/aus-sol1988.tif
Australia/ Timor-Leste	<i>Memorandum of Understanding between the Government of the Democratic Republic of East Timor and the Government of Australia concerning an International Unitization Agreement for the Greater Sunrise field</i>	20 May 2002	20 May 2002	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-TLS2002SUN.PDF
Australia/ Timor-Leste	<i>Timor Sea Treaty</i> 2258 UNTS 3	20 May 2002	2 April 2003	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-TLS2002TST.PDF

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Australia/ Timor-Leste	<i>Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the Democratic Republic of East Timor concerning Arrangements for Exploration and Exploitation of Petroleum in an Area of the Timor Sea between Australia and East Timor</i>	20 May 2002	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-TLS2002EX.PDF
Australia/ Timor-Leste	<i>Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to the Unitization of the Sunrise and Troubadour fields</i> 2483 UNTS 317	6 March 2003	23 February 2007	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-TLS2003UNI.PDF
Australia/ East Timor	<i>Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS Treaty)</i> 2483 UNTS 358	12 January 2006	27 June 2006	http://www.laohamutuk.org/Oil/Boundary/CMATS%20treaty_120106.pdf
Bahamas/Cuba	<i>Agreement between the Commonwealth of the Bahamas and the Republic of Cuba for the delimiting line between their maritime zones</i> 2831 UNTS 1	3 October 2011	9 March 2012	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/BHS-CUB2011.pdf
Bahrain/Iran	<i>Agreement concerning delimitation of the continental shelf between Iran and Bahrain (with map)</i>	17 June 1971	14 May 1972	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/IRN-BHR1971CS.PDF
Bahrain/ Saudi Arabia	<i>Bahrain-Saudi Arabia Boundary Agreement</i>	22 February 1958	22 February 1958	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/BHR-SAU1958BA.PDF
Barbados/ Guyana	<i>Exclusive Economic Zone Co-operation Treaty between the State of Barbados and the Republic of Guyana concerning the exercise of jurisdiction in their exclusive economic zones in the area of bilateral overlap within each of their outer limits and beyond the outer limits of the exclusive economic zones of other States</i> 2277 UNTS 201	2 December 2003	5 May 2004	http://www.un.org/Depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulletin55e.pdf

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Barbados/ France	<i>Barbados/France Maritime Boundary Delimitation Treaty</i>	15 October 2009	N/A	http://www.foreign.gov.bb/ Userfiles/File/DELIMITATION %20TREATY.pdf
Belgium/France	<i>Agreement between the Government of the French Republic and the Government of the Kingdom of Belgium on the delimitation of the continental shelf</i>	8 October 1990	6 April 1989	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/FRA-BEL 1990CS.PDF
Belgium/France	<i>Agreement between the Government of the French Republic and the Government of the Kingdom of Belgium on the delimitation of the territorial sea</i>	8 October 1990	6 April 1989	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/FRA-BEL 1990TS.PDF
Belgium/ Netherlands	<i>Treaty between the Kingdom of the Netherlands and the Kingdom of Belgium on the Delimitation of the Continental Shelf</i> 2051 UNTS 169	18 December 1996	1 January 1999	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/NLD-BEL 1996CS.PDF
Belgium/ Netherlands	<i>Treaty between the Kingdom of the Netherlands and the Kingdom of Belgium on the Delimitation of the Territorial Sea</i> 2051 UNTS 185	18 December 1996	1 January 1999	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/NLD-BEL 1996TS.PDF
Belgium/UK	<i>Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Belgium amending the Agreement of 29 May 1991 relating to the Delimitation of the Continental Shelf under the North Sea between the Two Countries</i> 2494 UNTS 83	21 March 2005 and 7 June 2005	2 October 2006	https://www.gov.uk/government/ uploads/system/uploads/ attachment_data/file/243185/ 7204.pdf
Belgium/UK	<i>Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Belgium relating to the delimitation of the continental shelf between the two countries (with annex and exchange of letters)</i>	29 May 1991	14 May 1993	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/GBR-BEL 1991CS.PDF

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Brazil/Uruguay	<i>Exchange of notes constituting an Agreement between the Government of Brazil and the Government of Uruguay on the definitive demarcation of the sea outlet of the River Chui and the lateral maritime border</i>	21 July 1972	12 June 1975	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/BRA-URY1972MB.PDF
Bulgaria/Turkey	<i>Agreement between the Republic of Turkey and the Republic of Bulgaria on the determination of the boundary in the mouth of the Rezovska/Mutludere River and delimitation of the maritime areas between the two states in the Black Sea</i> 2087 UNTS 5	4 December 1997	4 November 1998	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/TUR-BGR1997MB.PDF
Cabo Verde/Mauritania	<i>Treaty on the Delimitation of the Maritime Frontier between the Islamic Republic of Mauritania and the Republic of Cape Verde</i>	19 September 2003	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/CPV_MRT2003MB.pdf
Cabo Verde/Senegal	<i>Treaty on the delimitation of the maritime frontier between the Republic of Cape Verde and the Republic of Senegal</i> 1776 UNTS 305	17 February 1993	25 March 1994	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/CPV-SEN1993ME.PDF
Cambodia/Thailand	<i>Memorandum of Understanding Between the Royal Government of Cambodia and the Royal Thai Government Regarding the Area of Their Overlapping Maritime Claims to the Continental Shelf</i>	18 June 2001		IMB 3743-3744
Canada/Denmark	<i>Agreement between the Government of the Kingdom of Denmark and the Government of Canada relating to the delimitation of the continental shelf between Greenland and Canada (with annexes)</i>	17 December 1973	13 March 1974	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-CAN1973CS.PDF
Canada/France	<i>Agreement between the Government of Canada and the Government of the French Republic on Their Mutual Fishing Relations</i>	27 March 1972	27 March 1972	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/CAN-FRA1972FR.PDF
Chile/Ecuador/Peru	<i>Agreement on the Special Maritime Boundary Zone</i>	4 December 1954	21 September 1967	

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Chile/ Ecuador/ Peru	<i>Declaration on the maritime zone</i> 1006 UNTS 323	18 August 1952	18 August 195	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/CHL-ECU-PER1952MZ.PDF
China/Japan	<i>Agreement on fisheries between the People's Republic of China and Japan (with annexes and exchange of notes and agreed minutes)</i> 1103 UNTS 68	15 August 1975	22 December 1975	https://treaties.un.org/doc/Publication/UNTS/Volume%201103/volume-1103-I-16924-English.pdf
China/Japan	<i>Agreement between the People's Republic of China and Japan concerning fisheries (with annexes and agreed minutes)</i> 2731 UNTS 208	11 November 1997	1 June 2000	https://treaties.un.org/doc/Publication/UNTS/Volume%202731/Part/volume-2731-I-48293.pdf
China/Vietnam	<i>Agreement between the People's Republic of China and the Socialist Republic of Vietnam on the Delimitation of the Territorial Seas, the Exclusive Economic zones and continental shelves in Beibu Bay/ Bac Bo Gulf</i> 2336 UNTS 179	25 December 2000	30 June 2004	http://www.un.org/Depts/los/doalos_publications/LOS_Bulletins/bulletinpdf/bulletin56e.pdf
Cook Isl./ Kiribati	<i>Agreement between the Government of the Cook Islands and the Government of the Republic of Kiribati concerning the Delimitation of Maritime Boundaries between the Cook Islands and the Republic of Kiribati</i>	29 August 2012	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/cok_mzn104_2014.pdf
Cook Isl./ New Zealand	<i>Agreement between the Government of the Cook Islands and the Government of New Zealand concerning the Delimitation of Maritime Boundaries between the Cook Islands and Tokelau</i>	4 August 2010	12 November 2012	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/cok_mzn105_2014.pdf
Cook Isl./Niue	<i>Agreement between the Government of the Cook Islands and the Government of Niue concerning the Delimitation of Maritime Boundaries between the Cook Islands and Niue</i>	29 August 2012	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/cok_mzn96_2013.pdf

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Colombia/ Costa Rica	<i>Treaty on delimitation of marine and submarine areas and maritime co-operation between the Republic of Colombia and the Republic of Costa Rica</i>	17 March 1977	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/COL-CRI1977MC.PDF
Colombia/ Costa Rica	<i>Treaty on the Delimitation of Marine and Submarine Areas and Maritime Cooperation between the Republic of Colombia and the Republic of Costa Rica, additional to the Treaty signed at San José on 17 March 1977</i> 2139 UNTS 401	6 April 1984	20 February 2001	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/COL-CRI1984MC.PDF
Colombia/ Honduras	<i>Maritime Delimitation Treaty between Colombia and Honduras</i> 2093 UNTS 291	2 August 1986	20 December 1999	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/COL-HND1986MD.PDF
Costa Rica/ Ecuador	<i>Agreement between the Government of Costa Rica and the Government of Ecuador Relating to the Delimitation of the Maritime Areas between Costa Rica and Ecuador</i>	12 March 1985	N/A	
Costa Rica/ Panama	<i>Treaty concerning delimitation of marine areas and maritime co-operation between the Republic of Costa Rica and the Republic of Panama</i>	2 February 1980	11 February 1982	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/CRI-PAN1980MC.PDF
Croatia/Bosnia and Herzegovina	<i>Treaty on the State Border between the Republic of Croatia and Bosnia and Herzegovina</i>	30 July 1999	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/HRV-BIH1999SB.PDF
Croatia/Italy	<i>Maritime boundary -- delimitation of the continental shelf between Italy and former Yugoslavia was established in 1968 by the Agreement between Italy and Yugoslavia concerning the delimitation of the continental shelf between the two countries in the Adriatic Sea</i>	1 August 1968 (27 May 2009)	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/ITA-YUG1968CS.PDF
Croatia/ Yugoslavia	<i>Protocol between Croatia On the Interim Regime along the Southern Border</i>	10 December 2002		

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Cuba/Haiti	<i>Agreement between the Republic of Haiti and the Republic of Cuba Regarding the Delimitation of Maritime Boundaries between the Two States</i>	27 October 1977	N/A	
Cuba/Honduras	<i>Maritime delimitation treaty between the Republic of Honduras and the Republic of Cuba</i>	21 August 2012	11 December 2013	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/cub_hnd2012_en.pdf
Cuba/Jamaica	<i>Agreement between the Government of the Jamaica and the Government of the Republic of Cuba on the delimitation of the maritime boundary between the two States</i>	18 February 1994	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/JAM-CUB1994.MB.PDF
Cuba/Mexico	<i>Exchange of notes constituting an agreement on the delimitation of the exclusive economic zone of Mexico in the sector adjacent to Cuban maritime areas</i> 1390 UNTS 49	26 July 1976	26 July 1976	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/mex-cub1976EEZ.tif
Cyprus/Israel	<i>Agreement between the Government of the State of Israel and the Government of the Republic of Cyprus on the Delimitation of the Exclusive Economic Zone</i> 2740 UNTS 55	17 December 2010	25 February 2011	https://treaties.un.org/doc/Publication/UNTS/Volume%202740/Part/volume-2740-I-48387.pdf
Denmark/ Germany	<i>Protocol to the Agreement between the Kingdom of Denmark and the Federal Republic of Germany concerning the delimitation, in the coastal regions, of the continental shelf of the North Sea</i>	9 June 1965	27 May 1966	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-DEU1965PCS.PDF
Denmark/ Germany	<i>Agreement between the Kingdom of Denmark and the Federal Republic of Germany concerning the delimitation, in the coastal regions, of the continental shelf of the North Sea</i>	9 June 1965	27 May 1966	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-DEU1965CS.PDF

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Denmark/ Germany	<i>Special agreement for the submission to the International Court of Justice of a difference between the Kingdom of Denmark and the Federal Republic of Germany concerning the delimitation, as between the Kingdom of Denmark and the Federal Republic of Germany of the continental shelf in the North Sea</i> 606 UNTS 97	2 February 1967	2 February 1967	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-DEU1967CS.PDF
Denmark/ Germany	<i>Exchange of notes constituting an agreement concerning the delimitation of the borderline between Denmark and the Federal Republic of Germany in the Flensburg Fiord area</i> 871 UNTS 183	22 and 28 October 1970	28 October 1970	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-DEU1970EX.PDF
Denmark/ Germany	<i>Treaty between the Kingdom of Denmark and the Federal Republic of Germany concerning the delimitation of the continental shelf under the North Sea (with annexes and exchange of letters)</i>	28 January 1971	7 December 1972	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-DEU1971CS.PDF
Denmark/ Germany	<i>Supplementary Protocol to the Exchange of notes constituting an agreement concerning the delimitation of the borderline between Denmark and the Federal Republic of Germany in the Flensburg Fiord area</i>	Signed at Flensburg on 25 August 1971 and at Abenra on 14 September 1971	14 September 1971	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-DEU1971SP.PDF
Denmark/ Germany	<i>Treaty between the German Democratic Republic and the Kingdom of Denmark on the Delimitation of the Continental Shelf and the Fishery Zones</i>	14 September 1988	14 June 1989	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DEU-DNK1988CS.PDF
Denmark/ Germany/ Netherlands	<i>Protocol to the Treaties of 28 January 1971 between the Federal Republic of Germany and Denmark and the Kingdom of the Netherlands, respectively, concerning the delimitation of the continental shelf under the North Sea</i> 857 UNTS 155	28 January 1971	28 January 1971	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DEU-DNK-NLD1971CS.PDF

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Denmark (Greenland)/ Iceland	<i>Agreement between the Government of the Kingdom of Denmark along with the Greenland Home Rule Government, on the one hand, and the Government of the Republic of Iceland, on the other hand, on the Delimitation of the Continental Shelf and the Fishery Zones in the Area between Greenland and Iceland</i> 2074 UNTS 43	11 November 1997	27 May 1998	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-ISL1997CS.PDF
Denmark (Faroe Islands)/ Iceland/Norway	<i>Agreed Minutes on Delimitation of the Continental Shelf beyond 200 Nautical Miles between the Faroe Islands, Iceland and Norway Southern Part of the Banana Hole of the Northeast Atlantic</i>	20 September 2006		
Denmark/ Netherlands	<i>Agreement between the Government of the Kingdom of the Netherlands and the Government of the Kingdom of Denmark concerning the delimitation of the continental shelf under the North Sea between the two countries</i>	31 March 1966	1 August 1967	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NLD-DNK1966CS.PDF
Denmark/ Norway	<i>Agreement between Denmark and Norway relating to the delimitation of the continental shelf</i>	8 December 1965	22 June 1966	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-NOR1965CS.PDF
Denmark/ Norway	<i>Agreement between Denmark and Norway relating to the delimitation of the continental shelf, 8 December 1965 – Exchange of notes constituting an agreement amending the above-mentioned Agreement. Copenhagen</i>	24 April 1968	24 April 1968	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-NOR1968CS.PDF
Denmark/ Norway	<i>Agreement between Denmark and Norway relating to the delimitation of the continental shelf, 8 December 1965 – Exchange of notes constituting an agreement amending the above-mentioned Agreement</i>	4 June 1974	4 June 1974	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-NOR1974CS.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Denmark/ Norway	<i>Agreement between the Government of the Kingdom of Denmark and the Government of the Kingdom of Norway concerning the delimitation of the continental shelf in the area between the Faroe Islands and Norway and concerning the boundary between the fishery zone near the Faroe Islands and the Norwegian economic zone</i>	15 June 1979	3 June 1979	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-NOR1979CS.PDF
Denmark/ Norway	<i>Agreement between the Kingdom of Denmark and the Kingdom of Norway concerning the delimitation of the Continental Shelf in the Area between Jan Mayen and Greenland and concerning the Boundary between the Fishery Zones in the Area</i> 31 LOSB 59	18 December 1995	27 May 1998	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-NOR1995CS.PDF
Denmark/ Norway	<i>Additional Protocol to the Agreement of 18 December 1995 between the Kingdom of Norway and the Kingdom of Denmark on the Delimitation of the Continental Shelf in the Area between Jan Mayen and Greenland and the Boundary between Fishery Zones in the Area</i> 2100 UNTS 180	11 November 1997	27 May 1998	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NOR-DNK1997CS.PDF
Denmark/ Norway	<i>Agreement between the Government of the Kingdom of Norway on the one hand, and the Government of the Kingdom of Denmark together with the Home Rule Government of Greenland on the other hand, concerning the delimitation of the continental shelf and the fisheries zones in the area between Greenland and Svalbard</i> 2378 UNTS 21	20 February 2006	2 June 2006	https://treaties.un.org/doc/Publication/UNTS/Volume%202378/v2378.pdf
Denmark/ Sweden	<i>Exchange of notes constituting an agreement between Denmark and Sweden concerning the delimitation of the territorial waters between Denmark and Sweden</i> 1183 UNTS 31	25 June 1979	21 December 1979	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-SWE1979TW.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Denmark/ Sweden	<i>Agreement between Sweden and Denmark on the delimitation of the continental shelf and fishing zones (with map, exchanges of notes and Protocol)</i>	9 November 1984	3 September 1985	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/SWE-DNK1984CS.PDF
Denmark/ Sweden	<i>Exchange of notes constituting an agreement between Denmark and Sweden concerning the delimitation of areas of responsibility in connection with the Convention of 22 March 1974 on the protection of the Marine Environment of the Baltic Sea Area</i>	21 November 1986	21 December 1986	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-SWE1986BS.PDF
Denmark/UK	<i>Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Denmark relating to the delimitation of the continental shelf between the two countries</i>	3 March 1966	6 February 1967	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GBR-DNK1966CS.PDF
Denmark/UK	<i>Agreement between the Government of the Kingdom of Denmark and the Government of the United Kingdom of Great Britain and Northern Ireland relating to the delimitation of the continental shelf between the two countries</i> 855 UNTS 209	25 November 1971	7 December 1972	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-GBR1971CS.PDF
Dominican Republic/ Colombia	<i>Agreement on the Delimitation of the Marine and Submarine Areas and Maritime Co-operation between the Republic of Colombia and the Dominican Republic</i> (1978) 1275 UNTS 363	13 January 1978	15 February 1979	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/COL-DOM1978MC.PDF
Dominican Republic/United Kingdom (Turks and Caicos Islands)	<i>Agreement between the Dominican Republic – the Government of the United Kingdom of Great Britain and Northern Ireland on Maritime concerning the Delimitation of the Maritime Boundary Between the Dominican Republic and the Turks and Caicos Islands</i>	2 August 1996		IMB 2242-2243
Dominican Republic/ Venezuela	<i>Treaty on the delimitation of marine and submarine areas between the Republic of Venezuela and the Dominican Republic</i>	3 March 1979	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/VEN-DOM1979SA.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Ecuador/ Colombia	<i>Agreement concerning delimitation of marine and submarine areas and maritime co-operation between the Republics of Colombia and Ecuador</i> 996 UNTS 237	23 August 1975	22 December 1975	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/COL-ECU 1975MC.PDF
Egypt/Cyprus	<i>Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone</i> 2488 UNTS 3	17 February 2003	7 March 2004	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/EGY-CYP 2003EZ.pdf
El Salvador/ Honduras	<i>General Peace Treaty between the Republics of El Salvador and Honduras</i> 1310 UNTS 226	30 October 1980		http://faolex.fao.org/docs/pdf/ bi-17438.pdf
Equatorial Guinea/Nigeria	<i>Treaty between the Federal Republic of Nigeria and the Republic of Equatorial Guinea concerning their Maritime Boundary</i> 2205 UNTS 325	23 September 2000	3 April 2002	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/NGA-GNQ 2000MB.PDF
Equatorial Guinea/Nigeria	<i>Protocol on implementation of article 6.2 of the Treaty between the Federal Republic of Nigeria and the Republic of Equatorial Guinea concerning their maritime boundary</i> 2220 UNTS 410	2 April 2002	29 June 2002	https://treaties.un.org/doc/ Publication/UNTS/Volume% 202220/v2220.pdf
Equatorial Guinea/Sao Tome and Principe	<i>Treaty concerning the Delimitation of the Maritime Boundary between the Republic of Equatorial Guinea and the Democratic Republic of Sao Tome and Principe</i>	26 June 1999	N/A	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/GNQ-STP 1999MB.PDF
Eritrea/Yemen	<i>Treaty Establishing the Joint Yemeni- Eritrean Committee for Bilateral Cooperation Between the Government of the Republic of Yemen and the Government of the State of Eritrea</i>	16 October 1998	N/A	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/ERI-YEM 1998BC.PDF
Estonia/Finland	<i>Exchange of notes constituting an agreement on the procedure to be followed in the modification of the limits of the territorial waters in the Gulf of Finland</i> 1887 UNTS 223	6 April and 4 May 1994	30 July 1995	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/EST-FIN 1994GE.pdf

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Estonia/Finland	<i>Agreement between the Republic of Finland and the Republic of Estonia on the Boundary of the Maritime Zones in the Gulf of Finland and on the Northern Baltic Sea</i>	18 October 1996	7 January 1997	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EST-FIN1996MZ.PDF
Estonia/ Finland/Swede	<i>Agreement between the Government of the Republic of Finland, the Government of the Republic of Estonia and the Government of the Kingdom of Sweden on the common maritime boundary point in the Baltic Sea</i> 2474 UNTS 37	16 January 2001	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FIN-EST-SWE2001BS.PDF
Estonia/Latvia	<i>Protocol to the Agreement between the Republic of Estonia and the Republic of Latvia on the Maritime Delimitation in the Gulf of Riga, the Strait of Irbe and the Baltic Sea, 12 July 1996, between the Prime Minister of the Republic of Estonia and the Minister President of the Republic of Latvia</i>	12 July 1996	10 October 1996	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EST-LVA1996PMD.PDF
Estonia/Latvia	<i>Agreement between the Republic of Estonia and the Republic of Latvia on the Maritime Delimitation in the Gulf of Riga, the Strait of Irbe and the Baltic Sea</i>	12 July 1996	10 October 1996	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EST-LVA1996MD.PDF
Estonia/Latvia	<i>Agreement between the Government of the Republic of Estonia, the Government of the Republic of Latvia and the Government of the Kingdom of Sweden on the Common Maritime Boundary Point in the Baltic Sea</i>	30 April 1997		http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EST-LVA-SWE1997MB.PDF
Estonia/Latvia/ Sweden	<i>Agreement between the Government of the Republic of Estonia, the Government of the Republic of Latvia and the Government of the Kingdom of Sweden on the Common Maritime Boundary Point in the Baltic Sea</i> 2474 UNTS 43	30 April 1997	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EST-LVA-SWE1997MB.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>International Maritime Boundaries</i> where URL unavailable)
Estonia/Russia	<i>Agreement between the Russian Federation and the Republic of Estonia regarding the delimitation of sea area in the Gulf of Narva and in the Gulf of Finland</i>	18 May 2005	N/A	http://www.ecolex.org/ecolex/ledge/view/RecordDetails?index=treaties&cid=TRE-151641 Text in Russian http://www.ecolex.org/server2.php/libcat/docs/TRE/Full/Other/TRE-151641.doc
Estonia/Sweden	<i>Agreement Between the Government of the Kingdom of Sweden and the Government of the Republic of Estonia on the Delimitation of the Maritime Zones in the Baltic Sea</i> 2474 UNTS 55	2 November 1998	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EST-SWE1998MZ.PDF
Finland/Russia	<i>Agreement between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics concerning the boundary of the continental shelf between Finland and the Soviet Union in the north-eastern part of the Baltic Sea</i>	5 May 1967	15 March 1968	LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FIN-RUS1967CS.PDF
Finland/Russia	<i>Agreement between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics regarding the delimitation of the areas of Finnish and Soviet jurisdiction in the field of fishing in the Gulf of Finland and the North-eastern Part of the Baltic Sea</i> 1227 UNTS 3	25 February 1980	9 July 1980	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FIN-RUS1980BS.PDF
Finland/Russia	<i>Agreement between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics regarding the delimitation of the economic zone, the fishing zone and the continental shelf in the gulf of Finland and in the North-Eastern part of the Baltic Sea</i> 1457 UNTS 257	5 February 1985	24 November 1986	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FIN-RUS1985EZ.PDF
Finland/Russia	<i>Agreement between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics concerning the boundaries of sea areas and of the continental shelf in the Gulf of Finland</i> 566 UNTS 31	20 May 1996	25 May 1966	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FIN-RUS1965CS.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Finland/Sweden	<i>Agreement between Sweden and Finland concerning the delimitation of the continental shelf in the Gulf of Bothnia, the Bothnian Sea, the Åland Sea and the northernmost part of the Baltic Sea (with Protocol and maps)</i>	29 September 1972	15 January 1973	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/SWE-FIN1972CS.PDF
Finland/Sweden	<i>Exchange of Notes constituting an Agreement between Finland and Sweden confirming part of the national frontier between the two States, as established in 1981</i>	14 June 1985	14 June 1985	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FIN-SWE1985NE.PDF
Finland/Sweden	<i>Exchange of Notes constituting an Agreement between Finland and Sweden confirming part of the national frontier between the two States, as established in 1981, 14 June 1985, AMENDMENT Effected by an agreement in the form of an exchange of notes</i>	19 June 1986	1 September 1986	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/fin-swe1986note.tif
Finland/Sweden	<i>Agreement between the Republic of Finland and the Kingdom of Sweden on the delimitation of the boundary between the continental shelf and fishery zone of Finland and the Economic Zone of Sweden in the Åland Sea and the Northern Baltic Sea (with protocol and map)</i> 1887 UNTS 229	2 June 1994	30 July 1995	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FIN-SWE1994CS.PDF
France/Australia	<i>Agreement on maritime delimitation between the Government of Australia and the Government of the French Republic (New Caledonia, Chesterfield Islands)</i>	4 January 1982	10 January 1983	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-FRA1982MD.pdf
France/Cook Islands	<i>Agreement on Maritime Delimitation between the Government of the Cook Islands and the Government of the French Republic (with map)</i>	3 August 1990	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/COK-FRA1990MD.PDF
France/ Dominica	<i>Agreement on maritime delimitation between the Government of the French Republic and the Government of Dominica (with map)</i> 1546 UNTS 308	7 September 1987	23 December 1988	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-DMA1987MD.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
France/Fiji	<i>Codicil modifying the Agreement of 19 January 1983 between the Government of the French Republic and the Government of Fiji relating to the delimitation of their economic zone</i>	8 November 1990	8 November 1990	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-FJI1990EZ.PDF
France (French Guiana)/ Brazil	<i>Maritime delimitation Treaty between the Federative Republic of Brazil and the French Republic (French Guyana)</i>	30 January 1981	19 October 1983	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/BRA-FRA1981MD.PDF
France/Italy	<i>Agreement between the Government of the French Republic and the Government of the Italian Republic on the Delimitation of maritime frontiers in the area of the straits of Bonifacio</i> 1549 UNTS 120	28 November 1986	15 May 1989	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-ITA1986MB.PDF
France/Kiribati		18 December 2000		
France/Madagascar	<i>Agreement between the Government of the French Republic and the Government of the Republic of Madagascar on the Delimitation of Maritime Areas situated between La Réunion and Madagascar</i> 2624 UNTS 17	14 April 2005	18 June 2007	http://www.un.org/Depts/los/doalos_publications/LOS_Bulletins/bulletinpdf/bulletin71e.pdf
France/Mauritius	<i>Convention between the Government of the French Republic and the Government of Mauritius on the delimitation of the French and Mauritian economic zones between the islands of Reunion and Mauritius</i> 1257 UNTS 59	2 April 1980	2 April 1980	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-MUS1980EZ.PDF
France/Monaco	<i>Exchange of letters on settlement of problems concerning the delimitation of Monegasque territorial waters constituting an agreement relating to article 4 of the Treaty of 17 July 1918 establishing the relations of France with the Principality of Monaco</i> 1516 UNTS 125	18 May 1963	18 May 1963	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/fra-mco1963.tif

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
France/Monaco	<i>Convention on Maritime Delimitation Agreement between the Government of His Most Serene Highness the Prince of Monaco and the Government of the French Republic</i> 1411 UNTS 289	16 February 1984	22 August 1985	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/MCO-FRA 1984MD.PDF
France/ New Zealand	<i>Agreement between the Government of the French Republic and the Government of New Zealand between Wallis and Futuna and Tokelau</i> 2281 UNTS 123	30 June 2003	12 November 2003	https://treaties.un.org/doc/ publication/unts/volume% 202281/v2281.pdf
France/ Saint Lucia	<i>Convention on delimitation between the Government of the French Republic (Martinique) and the Government of Saint Lucia</i>	4 March 1981	4 March 1981	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/FRA-LCA 1981AD.PDF
France(Glorioso Islands)/ Seychelles	<i>Agreement between the Government of the French Republic and the Government of the Republic of Seychelles concerning Delimitation of the Maritime Boundary of the Exclusive Economic Zone and the Continental Shelf of France and of Seychelles</i> 2162 UNTS 281	19 February 2001	19 February 2001	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/FRA-SYC 2001MB.PDF
France/Seychelles	<i>Agreement between the Government of the French Republic and the Government and the Government of the Republic of Seychelles on cooperation in the maritime zones adjacent to the scattered islands of Mayotte, Reunion and the Seychelles</i>	19 December 2006		
France/Solomon Islands	<i>Agreement on maritime delimitation between the Government of the French Republic and the Government of the Solomon Islands</i>	12 November 1990	12 November 1990	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/FRA-SLB 1990MD.PDF
France/Spain	<i>Convention between the Government of the French Republic and the Government of the Spanish State on the delimitation of the continental shelves of the two States in the Bay of Biscay (Golfé de Gascogne/Golfo de Vizcaya) (with annex, exchange of letters and map)</i>	29 January 1974	5 April 1975	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/FRA-ESP 1974CS.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
France/Spain	<i>Convention between France and Spain on the delimitation of the territorial sea and the contiguous zone in the Bay of Biscay (Golfé de Gascogne/Golfo de Vizcaya)</i>	29 January 1974	5 April 1975	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-ESP1974VZ.PDF
France/Spain	<i>Exchange of letters constituting an agreement amending Annex V of the Convention of 28 December 1858</i>	31 January and 7 February 1985	7 February 1985	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/esp-fra1985.tif
France/Spain	<i>Exchange of letters constituting an agreement between France and Spain amending Annex V of the Convention of 28 December 1858 supplementary to the Treaty on delimitation of 2 December 1856 delimiting the frontier from the mouth of the Bidassoa to the point where the department of Basses-Pyrénées adjoins Aragon and Navarre</i> 1437 UNTS 137	Paris, 22 September 1987 and Madrid, 10 June 1988	10 June 1988	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/esp-fra1988.tif
France/Tonga	<i>Convention between the Government of the French Republic (Wallis and Futuna) and the Government of the Kingdom of Tonga on the delimitation of economic zones</i>	11 January 1980	11 January 1980	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-TON1980EZ.PDF
France/Tuvalu	<i>Exchange of notes between the Ministry of Foreign Affairs of the Government of Tuvalu and the French Embassy in Suva constituting an Agreement concerning provisional maritime delimitation between the two countries</i>	6 August – 5 November 1985	5 November 1985	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-TUV1985MD.PDF
France/UK	<i>Agreement between the Government of the French Republic and the Government of the United Kingdom of Great Britain and Northern Ireland relating to the delimitation of the continental shelf in the area east of 30 minutes west of the Greenwich Meridian</i>	24 June 1982	4 February 1983	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-GBR1982CS.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
France/UK	<i>Convention on maritime boundaries between the Government of the French Republic (Tuamotu Archipelago) and the Government of the United Kingdom of Great Britain and Northern Ireland (Pitcairn, Henderson, Ducie, Oeno Islands)</i>	25 October 1983	12 April 1984	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-GBR1983MB.PDF
France/UK	<i>Agreement between the Government of the French Republic and the Government of the United Kingdom of Great Britain and Northern Ireland relating to the delimitation of the territorial sea in the Straits of Dover</i>	2 November 1988	6 April 1989	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-GBR1988TS.PDF
France/UK	<i>Exchange of notes constituting an agreement amending the above-mentioned Agreement, Paris</i>	21 and 27 March 1990	27 March 1990	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-GBR1990CS.pdf
France/UK	<i>Agreement between the Government of the French Republic and the Government of the United Kingdom of Great Britain and Northern Ireland relating to the completion of the delimitation of the continental shelf in the southern North Sea</i>	23 July 1991	17 March 1992	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-GBR1991CS.PDF
France/UK	<i>Exchange of notes constituting an agreement concerning the activities of fishermen in the vicinity of the Channel Islands and the French coast of the Cotentin Peninsula and, in particular, on the Schole Bank (with annex and lists)</i> 1772 UNTS 79	10 July 1992	10 July 1992	https://treaties.un.org/doc/Publication/UNTS/Volume%201772/v1772.pdf
France/UK	<i>Exchange of notes constituting an agreement concerning the creation and delimitation of an economic zone around the Islands of Pitcairn, Henderson, Ducie and Oeno</i> 1772 UNTS 95	17 December 1992	19 January 1993	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-GBR1993EZ.pdf
France/UK (Jersey)	<i>Exchange of notes constituting an agreement concerning negotiations on the line of maritime delimitation in the area lying between Jersey and France</i> 1775 UNTS 279	28 January 1994	28 January 1994	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GBR-FRA1994MD.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
France/UK	<i>Agreement on Maritime Delimitation between the Government of the French Republic and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Saint Martin and Saint Barthelemy on the one hand, and Anguilla, on the other hand</i> 2084 UNTS 72	27 June 1996	15 January 1997	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-GBR1996MB.PDF
France/UK	<i>Agreement on Maritime Delimitation between the Government of the French Republic and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Guadeloupe and Montserrat</i> 2084 UNTS 65	27 June 1996	15 January 1997	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-GBR1996GM.PDF
France/UK (Jersey)	<i>Agreement between the Government of the French Republic and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the Establishment of a Maritime Boundary between France and Jersey</i>	4 July 2000	1 January 2004	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/273230/6138.pdf
France (Guadeloupe)/ Venezuela	<i>Delimitation Treaty between the Government of the French Republic (Martinique and Guadeloupe) and the Government of the Republic of Venezuela (with map)</i> 1319 UNTS 220	17 July 1980	28 January 1983	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-VEN1980DT.PDF
France (New Caledonia)/Fiji	<i>Agreement between the Government of the Republic of France and the Government of Fiji relating to the delimitation of their economic zone (with annex and maps)</i>	19 January 1983	21 August 1984	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-FJI1983EZ.PDF
Gabon/ Sao Tome and Principe	<i>Agreement on the Delimitation of the Maritime Border between the Gabonese Republic and the Democratic Republic of Sao Tome and Principe</i> 50 LOSB 65	26 April 2001	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GAB-STP2001MB.PDF
Gambia/Senegal	<i>Treaty fixing the maritime boundaries between the Republic of the Gambia and the Republic of Senegal</i>	4 June 1975	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GMB-SEN1975MB.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Georgia/Turkey	<i>Protocol between the Government of the Union of Soviet Socialist Republics and the Government of the Republic of Turkey concerning the Establishment of the Maritime Boundary between Soviet and Turkish Territorial Waters in the Black Sea</i> 990 UNTS 201	17 April 1973	27 March 1975	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GEO-TUR1973MB.PDF
Georgia/Turkey	<i>Agreement between the Government of the Republic of Turkey and the Government of the Union of Soviet Socialist Republics concerning the Delimitation of the Continental Shelf Between the Republic of Turkey and the Union of Soviet Socialist Republics in the Black Sea</i>	23 June 1978	15 May 1981	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/TUR-RUS1978CS.PDF
Georgia/Turkey	<i>Exchange of Notes constituting an Agreement on the Delimitation of the USSR and Turkey Exclusive Economic Zone in the Black Sea</i>	23 December 1986 – 6 February 1987	6 February 1987	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/RUS-TUR1987EZ.PDF
Georgia/Turkey	<i>Protocol between the Government of the Republic of Turkey and the Government of Georgia on the Confirmation of the Maritime Boundaries between them in the Black Sea</i>	14 July 1997	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/TUR-GEO1997BS.PDF
Germany/ Netherlands	<i>Supplementary Agreement between the Federal Republic of Germany and the Netherlands to the Ems-Dollard Treaty</i> 606 UNTS 105	14 May 1962	N/A	https://treaties.un.org/doc/Publication/UNTS/Volume%20509/v509.pdf
Germany/ Netherlands	<i>Treaty between the Kingdom of the Netherlands and the Federal Republic of Germany concerning the lateral delimitation of the continental shelf in the vicinity of the coast</i>	1 December 1964	18 September 1965	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NLD-DEU1964CS.PDF
Germany/ Netherlands	<i>Special Agreement for the submission to the International Court of Justice of a difference between the Kingdom of the Netherlands and the Federal Republic of Germany concerning the delimitation, as between the Kingdom of the Netherlands and the Federal Republic of Germany, of the continental shelf in the North Sea</i> 606 UNTS 105	2 February 1967	2 February 1967	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NLD-DEU1967SA.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Germany/ Netherlands	<i>Treaty between the Kingdom of the Netherlands and the Federal Republic of Germany concerning the delimitation of the continental shelf under the North Sea (with annexes and exchange of notes)</i> 857 UNTS 155	28 January 1971	7 December 1972	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NLD-DEU1971CS.PDF
Germany/ Netherlands	<i>Exchange of notes constituting an agreement concerning delimitation of the frontier at the Molenbeek (Mühlenbach) and the Rammelbeek (Rammelbach) between the Netherlands and the Federal Republic of Germany</i>	29 September and 24 November 1975	10 July 1976	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NLD-DEU1975MO.PDF
Germany/ Poland	<i>Treaty between the Polish People's Republic and the German Democratic Republic concerning the delimitation of the continental shelf in the Baltic Sea</i>	29 October 1968	16 April 1969	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/POL-DEU1968CS.PDF
Germany/ Poland	<i>Treaty between the German Democratic Republic and the Polish People's Republic on the Delimitation of the Sea Areas in the Oder Bay</i>	22 May 1989	13 June 1989	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DEU-POL1989DS.PDF
Germany/ Poland	<i>Treaty between the Federal Republic of Germany and the Republic of Poland on the confirmation of the frontier between them</i>	14 November 1990	16 January 1992	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DEU-POL1990CE.PDF
Germany/ Sweden	<i>Treaty between the German Democratic Republic and the Kingdom of Sweden on the delimitation of the continental shelf (with protocol)</i>	22 June 1978	20 December 1978	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DEU-SWE1978CS.PDF
Germany/ Sweden	<i>Agreement on the delimitation of regions of responsibility and cooperation in combating pollution of the Baltic Sea by harmful substances</i> 1600 UNTS 3	25 November 1987	25 December 1987	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/SWE-DEU1987BS.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Germany/UK	<i>Agreement between the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany relating to the delimitation of the continental shelf under the North Sea between the two countries (with chart)</i> 880 UNTS 185	25 November 1971	7 December 1972	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GBR-DEU1971CS.PDF
Greece/Italy	<i>Agreement between the Hellenic Republic and the Italian Republic on the delimitation of the respective continental shelf areas of the two States</i> 1275 UNTS 428	24 May 1977	12 November 1980	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GRC-ITA1977CS.PDF
Greece/UK/ Cyprus/Turkey	<i>Treaty between the United Kingdom of Great Britain and Northern Ireland, the Hellenic Republic, the Republic of Turkey and the Republic of Cyprus concerning the Establishment of the Republic of Cyprus, 16 August 1960. Exchange of notes (with Declaration) between the United Kingdom of Great Britain and Northern Ireland and Cyprus concerning the administration of the Sovereign Base Areas referred to in Article 1 of the above-mentioned Treaty</i> 382 UNTS 4	16 August 1960	16 August 1960	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/cyp-gbr1960adm.tif
Greece/UK/ Cyprus/Turkey	<i>Treaty between the United Kingdom of Great Britain and Northern Ireland, the Hellenic Republic, the Republic of Turkey and the Republic of Cyprus concerning the Establishment of the Republic of Cyprus (Annex A of Original Agreement)</i> 382 UNTS 8	16 August 1960	16 August 1960	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GBR-CYP1960A.PDF
Guatemala/ Mexico	<i>Treaty on the delimitation of the border between Mexico and Guatemala</i> 1404 UNTS 323	27 September 1882	1 May 1883	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/MEX-GTM1882DB.PDF

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Guatemala/ Mexico	<i>Exchange of notes between Mexico and Guatemala constituting an agreement on the establishment of an international boundary and water commission</i> 1355 UNTS 187	9 November and 21 December 1961	21 December 1961	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/MEX-GTM1961BW.PDF
Guinea-Bissau/ Senegal	<i>Territorial sea and continental shelf boundary between Guinea-Bissau and Senegal (exchange of letters between Portugal and France)</i>	26 April 1960	N/A	
Guinea-Bissau/ Guinea	<i>Award by the Arbitral Tribunal on the Maritime Delimitation between Guinea and Guinea-Bissau</i>	14 February 1985	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GIN-GNB1985MD.PDF
Guinea-Bissau/ Senegal	<i>Management and Cooperation Agreement between the Government of the Republic of Senegal and the Government of the Republic of Guinea-Bissau</i> 1903 UNTS 3	14 October 1993	21 December 1995	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/SEN-GNB1993MC.PDF
Guinea-Bissau/ Senegal	<i>Protocol to the Agreement of 14 October 1993, concerning the organization and operation of the Management and Cooperation Agency</i> 1903 UNTS 7	12 June 1995	21 December 1995	https://treaties.un.org/doc/Publication/UNTS/Volume%201903/v1903.pdf
Haiti/Colombia	<i>Agreement on delimitation of the maritime boundaries between the Republic of Colombia and the Republic of Haiti</i>	17 February 1978	16 February 1979	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/COL-HTI1978MB.PDF
India/Indonesia	<i>Agreement between the Government of the Republic of India and the Government of the Republic of Indonesia relating to the delimitation of the continental shelf boundary between the two countries (with annexed chart)</i>	8 August 1974	17 December 1974	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/IND-IDN1974CS.PDF
India/Indonesia	<i>Agreement between the Government of the Republic of India and the Government of the Republic of Indonesia on the extension of the 1974 continental shelf boundary between the two countries in the Andaman Sea and the Indian Ocean</i>	14 January 1977	22 December 1980	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/IND-IDN1977CS.PDF

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India/Indonesia/ Thailand	<i>Agreement between the Government of the Kingdom of Thailand, the Government of the Republic of India and the Government of the Republic of Indonesia concerning the determination of the trijunction point and the delimitation of the related boundaries of the three countries in the Andaman Sea</i>	22 June 1978	2 March 1979	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-IND-IDN1978TP.PDF
India/ Maldives	<i>Agreement between India and Maldives on Maritime Boundary in The Arabian Sea and Related Matters</i>	24 July 1978	N/A	Document4 http://www.state.gov/documents/organization/59587.pdf
India/Maldives/ Sri Lanka	<i>Agreement between Sri Lanka, India and Maldives concerning the determination of the trijunction point between the three countries in the Gulf of Mannar</i>	23, 24 and 31 July 1976	31 July 1976	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/LKA-IND-MDV1976TP.PDF
India/Myanmar	<i>Agreement between the Socialist Republic of the Union of Burma and the Republic of India on the Delimitation of the Maritime Boundary in the Andaman Sea, in the Coco Channel and in the Bay of Bengal (with maps)</i> 1484 UNTS 163	23 December 1986	14 September 1987	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/MMR-IND1986MB.PDF
India/Myanmar/ Thailand	<i>Agreement between the Government of the Union of Myanmar, the Government of the Republic of India and the Government of the Kingdom of Thailand on the determination of the trijunction point between the three countries in the Andaman Sea</i>	27 October 1993	24 May 1995	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/MMR-IND-THA1993DT.PDF
India/Sri Lanka	<i>Agreement between Sri Lanka and India on the boundary in historic waters between the two countries and related matters (with map)</i>	26 and 28 June 1974	10 July 1974	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/LKA-IND1974BW.PDF
India/Sri Lanka	<i>Agreement between Sri Lanka and India on the maritime boundary between the two countries in the Gulf of Mannar and the Bay of Bengal and related matters (with map)</i> 1049 UNTS 44	23 March 1976	10 May 1976	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/LKA-IND1976MB.PDF

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India/Sri Lanka	<i>Supplementary Agreement between Sri Lanka and India on the extension of the maritime boundary between the two countries in the Gulf of Mannar from position 13 m to the trijunction point between Sri Lanka, India and Maldives (point T)</i> 1049 UNTS 46	22 November 1976	5 February 1977	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/LKA-IND1976TP.PDF
India/Thailand	<i>Agreement between the Government of the Kingdom of Thailand and the Government of the Republic of India on the delimitation of sea-bed boundary between the two countries in the Andaman Sea (with chart and exchange of notes)</i>	22 June 1978	15 December 1978	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-IND1978SB.PDF
Indonesia/ Malaysia	<i>Agreement between the Government of Malaysia and the Government of Indonesia on the delimitation of the continental shelves between the two countries</i>	27 October 1969	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/MYS-IDN1969CS.PDF
Indonesia/ Malaysia	<i>Treaty between the Republic of Indonesia and Malaysia Relating to the delimitation of the Territorial Seas of the Two Countries in the Strait of Malacca</i>	17 March 1970	N/A	
Indonesia/ Malaysia/ Thailand	<i>Agreement between the Government of the Republic of Indonesia, The Government of Malaysia and the Government of the Kingdom of Thailand Relating to the Delimitation of the Continental Shelf Boundaries in the Northern Part of the Strait of Malacca</i>	21 December 1971	N/A	http://www.state.gov/documents/organization/59574.pdf
Indonesia/ Singapore	<i>Treaty between the Republic of Indonesia and the Republic of Singapore relating to the delimitation of the territorial seas of the two countries in the Strait of Singapore</i> 2528 UNTS 3	25 May 1973	29 August 1974	http://www.un.org/Depts/los/doalos_publications/LOS_Bulletins/bulletinpdf/bulletin68e.pdf
Indonesia/ Singapore	<i>Treaty between the Republic of Indonesia and the Republic of Singapore relating to the Delimitation of the Territorial Seas in the Western Part of the Strait of Singapore</i>	10 March 2009		

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Indonesia/ Thailand	<i>Agreement between the Government of the Kingdom of Thailand and the Government of the Republic of Indonesia relating to the delimitation of the sea-bed boundary between the two countries in the Andaman Sea</i> 1103 UNTS 209	11 December 1975	18 February 1978	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-IDN1975SB.PDF
Indonesia/ Thailand	<i>Agreement between the Government of the Kingdom of Thailand and the Government of the Republic of Indonesia relating to the delimitation of a continental shelf boundary between the two countries in the northern part of the Straits of Malacca and in the Andaman Sea (with charts)</i> 1103 UNTS 195	17 December 1971	7 April 1973	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-IDN1971CS.PDF
Indonesia/ Vietnam	<i>Agreement between the Government of the Socialist Republic of Vietnam and the Government of the Republic of Indonesia concerning the delimitation of the continental shelf boundary</i> 2457 UNTS 155	26 June 2003	29 May 2007	http://www.un.org/Depts/los/doalos_publications/LOS_Bulletins/bulletinpdf/bulletin67e.pdf
Iraq/Kuwait	<i>Demarcation of the International Boundary between the Republic of Iraq and the State of Kuwait by the United Nations Iraq-Kuwait Boundary Demarcation Commission</i>	27 May 1993	N/A	http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/303/44/IMG/N9330344.pdf? OpenElement http://www.casi.org.uk/info/undocs/gopher/s93/34
Iran/Oman	<i>Agreement concerning Delimitation of the Continental Shelf between Iran and Oman</i>	25 July 1974	28 May 1975	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/IRN-OMN1974CS.PDF
Iran /Qatar	<i>Agreement concerning the boundary line dividing the continental shelf between Iran and Qatar</i> 787 UNTS 165	20 September 1969	10 May 1970	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/IRN-QAT1969CS.PDF
Iran/ Saudi Arabia	<i>Agreement concerning the sovereignty over the islands of Al-'Arabiyah and Farsi and the delimitation of the boundary line separating submarine areas between the Kingdom of Saudi Arabia and Iran (with exchanges of letters, map and English translation)</i> 696 UNTS 189	24 October 1968	29 January 1969	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/SAU-IRN1968SA.PDF

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Iran/United Arab Emirates	<i>Offshore Boundary Agreement between Iran and Dubai</i>	31 August 1974	N/A	
Israel/Jordan	<i>Maritime Boundary Agreement between the Government of the State of Israel and the Government of the Hashemite Kingdom of Jordan</i> 2043 UNTS 241	18 January 1996	17 February 1996	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/ISR-JOR 1996MB.PDF
Italy/Slovenia	<i>Agreement between Italy and Yugoslavia concerning the delimitation of the continental shelf between the two countries in the Adriatic Sea</i>	8 January 1968	N/A	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/ITA-YUG 1968CS.PDF
Italy/Spain	<i>Convention between Spain and Italy on the delimitation of the continental shelf between the two States</i> 1120 UNTS 357	19 February 1974	16 November 1978	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/ESP-ITA 1974CS.PDF
Jamaica/ Colombia	<i>Maritime delimitation treaty between Jamaica and the Republic of Colombia</i> 1776 UNTS 27	12 November 1993	14 March 1994	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/JAM-COL 1993MD.PDF
Japan/ Republic of Korea	<i>Agreement concerning joint development of the southern part of the continental shelf adjacent to the two countries (with map, appendix, agreed minutes and exchanges of notes)</i> 1225 UNTS 113	30 January 1974	22 June 1978	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/jap-kor1974 south.pdf
Japan/ Republic of Korea	<i>Agreement between Japan and the Republic of Korea concerning the establishment of boundary in the northern part of the continental shelf adjacent to the two countries (with map and agreed minutes)</i> 1225 UNTS 103	30 January 1974	22 June 1978	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/jap-kor1974 north.pdf
Japan/ Republic of Korea	<i>Agreement between Japan and the Republic of Korea concerning fisheries (with agreed minutes and annexes)</i> 2731 UNTS 345	28 November 1998	22 January 1999	https://treaties.un.org/doc/ Publication/UNTS/Volume% 202731/Part/volume-2731-I- 48295.pdf
Kazakhstan/ Russia	<i>Seabed Boundary Agreement between the Republic of Kazakhstan and the Russian Federation with Protocol</i>	6 July 1998		IMB 4022-4033

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Kenya/Somalia	<i>Memorandum of Understanding between the Government of the Republic of Kenya and the Transitional Federal Government of the Somali Republic to Grant to Each Other No-Objection in Respect of Submissions on the Outer Limits of the Continental Shelf beyond 200 Nautical Miles to the Commission on the Limits of the Continental Shelf</i> 2599 UNTS 35	7 April 2009	7 April 2009	http://www.un.org/Depts/los/doalos_publications/LOS_Bulletins/bulletinpdf/bulletin70e.pdf
Kiribati/Tuvalu	<i>Agreement between Tuvalu and Kiribati concerning their Maritime Boundary</i>	29 August 2012	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/tuv_mzn98_2013_AgreementBetweenTuvaluandKiribati.pdf
Kuwait/ Saudi Arabia	<i>Agreement between the Kingdom of Saudi Arabia and the State of Kuwait concerning the submerged area adjacent to the divided zone</i> 2141 UNTS 251	2 July 2000	31 January 2001	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/SAU-KWT2000SA.PDF
Latvia/Estonia	<i>Agreement between the Government of the Republic of Estonia, the Government of the Republic of Latvia and the Government of the Kingdom of Sweden on the Common Maritime Boundary Point in the Baltic Sea</i>	30 April 1997		http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EST-LVA-SWE1997MB.PDF
Latvia/Lithuania	<i>Agreement between the Republic of Latvia and the Republic of Lithuania on the Delimitation of the Territorial Sea, Exclusive Economic Zone and Continental Shelf in the Baltic Sea</i>	9 July 1999		IMB 3125-3127
Libya/ Malta	<i>Agreement between the Great Socialist People's Libyan Arab Jamahiriya and the Republic of Malta implementing Article III of the Special Agreement and the Judgment of the International Court of Justice</i>	10 November 1986	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/LBY-MLT1986ICJ.PDF
Libya/Tunisia	<i>Agreement between the Libyan Arab Socialist People's Jamahiriya and the Republic of Tunisia to Implement the Judgment of the International Court of Justice in the Tunisia/Libya Continental Shelf Case</i>	8 August 1988	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/LBY-TUN1988CS.PDF

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Lithuania/Russia	<i>Treaty between the Republic of Lithuania and the Russian Federation on the Delimitation of the Exclusive Economic Zone and the Continental Shelf in the Baltic Sea</i> 39 LOSB 26	24 October 1997	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/LTU-RUS1997CS.PDF
Malaysia/ Singapore	<i>Agreement between the Government of Malaysia and the Government of the Republic of Singapore to Delimit Precisely the Territorial Waters Boundary in Accordance with the Straits Settlements and Johore Territorial Waters Agreement 1927</i>	7 August 1995	N/A	IMB 2351-2353
Malaysia/ Singapore	<i>Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v Singapore): Settlement Agreement</i> 2324 UNTS 24	26 April 2005	N/A	http://www.un.org/Depts/los/doalos_publications/LOS_Bulletins/bulletinpdf/bulletin59e.pdf
Malaysia/ Thailand	<i>Memorandum of Understanding between the Kingdom of Thailand and Malaysia on the Establishment of a Joint Authority for the Exploitation of the Resources of the Sea-Bed on a Defined Area of the Continental Shelf of the Two Countries in the Gulf of Thailand</i>	21 February 1979	24 October 1979	https://cil.nus.edu.sg/rp/il/pdf/1979%20MOU%20between%20Malaysia%20and%20Thailand-pdf.pdf
Malaysia/ Thailand	<i>Memorandum of Understanding between the Kingdom of Thailand and Malaysia on the delimitation of the continental shelf boundary between the two countries in the Gulf of Thailand (with map)</i> 1291 UNTS 245	24 October 1979	15 July 1982	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-MYS1979CS.PDF
Malaysia/ Thailand	<i>Treaty between the Kingdom of Thailand and Malaysia relating to the delimitation of the territorial seas of the two countries</i>	24 October 1979	15 July 1982	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-MYS1979TS.PDF
Malaysia/ Thailand	<i>Agreement between the Government of Malaysia and the Government of the Kingdom of Thailand on the Constitution and Other Matters Relating to the Establishment of the Malaysia-Thailand Joint Authority</i>	30 May 1990		https://cil.nus.edu.sg/1990/1990-agreement-between-the-government-of-malaysia-and-the-government-of-the-kingdom-of-thailand-on-the-constitution-and-other-matters-relating-to-the-establishment-of-the-malaysia-thailand-joint-autho/

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Malaysia/ Vietnam	<i>Memorandum of Understanding between Malaysia and the Socialist Republic of Vietnam for the Exploration and Exploitation of Petroleum in a Defined Area of the Continental Shelf Involving the Two Countries</i>	5 June 1992	4 June 1993	https://cil.nus.edu.sg/1992/1992-memorandum-of-understanding-between-malaysia-and-the-socialist-republic-of-vietnam-for-the-exploration-and-exploitation-of-petroleum-in-a-defined-area-of-the-continental-shelf-involving-the-two-c/
Mauritania/ Morocco	<i>Convention concerning the State frontier line established between the Islamic Republic of Mauritania and the Kingdom of Morocco</i>	14 April 1976	10 November 1976	
Mauritius/ Seychelles	<i>Agreement between the Government of the Republic of Mauritius and the Government of the Republic of Seychelles on the Delimitation of the Exclusive Economic Zone between the Two States</i> 2595 UNTS 225	29 July 2008	19 November 2008	http://www.un.org/Depts/los/doalos_publications/LOS_Bulletins/bulletinpdf/bulletin69e.pdf
Mauritius/ Seychelles	<i>Treaty concerning the joint management of the continental shelf in the Mascarene Plateau region between the Government of the Republic of Seychelles and the Government of the Republic of Mauritius</i> 2847 UNTS	13 March 2012	18 June 2012	http://www.un.org/Depts/los/doalos_publications/LOS_Bulletins/bulletinpdf/bulletin79e.pdf
Mauritius/ Seychelles	<i>Treaty concerning the joint exercise of sovereign rights over the continental shelf in the Mascarene Plateau region between the Government of the Republic of Seychelles and the Government of the Republic of Mauritius</i> 2847 UNTS	13 March 2012	18 June 2012	http://www.un.org/Depts/los/doalos_publications/LOS_Bulletins/bulletinpdf/bulletin79e.pdf
Mexico/ Honduras	<i>Maritime Delimitation Treaty between the Government of the United Mexican States and the Government of the Republic of Honduras</i> 2416 UNTS 63	18 April 2005	30 November 2006	http://www.un.org/Depts/los/doalos_publications/LOS_Bulletins/bulletinpdf/bulletin65e.pdf
Micronesia/ Marshall Islands	<i>Federated States of Micronesia-Marshall Islands Maritime Boundary Treaty</i>	12 July 2006		
Micronesia/Palau	<i>Federated States of Micronesia-Palau Maritime Boundary Treaty</i>	12 July 2006		

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Mozambique/ Tanzania	<i>Agreement between the Government of the United Republic of Tanzania and the Government of the People's Republic of Mozambique regarding the Tanzania/Mozambique Boundary</i>	28 December 1988	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/TZA-MOZ1988TM.PDF
Myanmar/ Thailand	<i>Agreement between the Government of the Kingdom of Thailand and and the Government of the Socialist Republic of the Union of Burma on the delimitation of the maritime boundary between the two countries in the Andaman Sea</i> 1276 UNTS 447	25 July 1980	12 April 1982	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-MMR1980MB.PDF
Namibia/ South Africa	<i>Agreement between the Government of the Republic of Namibia and the Government of the Republic of South Africa with respect to Walvis Bay and the off-shore Islands</i> 2584 UNTS	28 February 1994	1 March 1994	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/ZAF-NAM1994OI.PDF
Netherlands/ UK	<i>Agreement between the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland relating to the delimitation of the continental shelf under the North Sea between the two countries</i> 595 UNTS 113	6 October 1965	23 December 1966	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NLD-GBR1965CS.PDF
Netherlands/ UK	<i>Agreement between the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland relating to the exploitation of single geological structures extending across the dividing line on the continental shelf under the North Sea</i> 595 UNTS 105	6 October 1965	23 December 1966	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NLD-GBR1965GS.PDF
Netherlands/ UK	<i>Protocol between the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland amending the Agreement of 6 October 1965 relating to the delimitation of the continental shelf under the North Sea between the two countries</i> 880 UNTS 185	25 November 1971	7 December 1972	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NLD-GBR1971CS.PDF

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Netherlands/ UK	<i>Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands amending the Agreement of 6 October 1965 relating to the Delimitation of the Continental Shelf under the North Sea between the Two Countries as amended by the Protocol of 25 November 1971</i> 2386 UNTS 261	28 January and 7 June 2004	10 January 2006	http://www.un.org/Depts/los/ doalos_publications/los_bult.htm
Netherlands/ Venezuela	<i>Boundary delimitation Treaty between the Republic of Venezuela and the Kingdom of the Netherlands (with map)</i>	31 March 1978	15 December 1978	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/VEN-NLD 1978BD.PDF
Nigeria/ Cameroon	<i>The Maroua Declaration</i>	1 June 1975	1 June 1975	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/CMR-NGA 1975MD.PDF
Nigeria/Sao Tome and Principe	<i>Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe on the Joint Development of Petroleum and other Resources, in respect of Areas of the Exclusive Economic Zone of the two States</i> 50 LOSB 43	21 February 2001	16 January 2003	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/STP-NGA 2001.PDF
Norway/Iceland	<i>Agreement between Iceland and Norway Concerning Fishery and Continental Shelf Questions</i> 2124 UNTS 225	28 May 1980	13 June 1980	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/isl-nor1980fcs.pdf
Norway/Iceland	<i>Agreement between Norway and Iceland on the continental shelf between Iceland and Jan Mayen</i> 2124 UNTS 247	22 October 1981	2 June 1982	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/ISL-NOR 1981CS.PDF
Norway/Iceland	<i>Additional Protocol to the Agreement of 28 May 1980 between Norway and Iceland concerning Fishery and Continental Shelf Questions and the Supplementary Agreement derived therefrom of 22 October 1981 on the Continental Shelf in the Area between Jan Mayen and Iceland</i> 2127 UNTS 227	11 November 1997	27 May 1998	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/NOR-ISL 1997FC.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Norway/Russia	<i>Agreement between the Royal Norwegian Government and the Government of the Union of Soviet Socialist Republics concerning the sea frontier between Norway and the USSR in the Varangerfjord</i> 312 UNTS 257	15 February 1957	24 April 1957	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NOR-RUS1957SE.PDF
Norway/Russia	<i>Agreement between Norway and the Soviet Union on a Temporary Practical Arrangement for Fishing in an Adjacent Area in the Barents Sea</i>	11 January 1978		
Norway/Russia	<i>Joint Protocol on Working Program for the development of contacts and cooperation between the Russian Federation and Norway</i>	8 March 1992	N/A	
Norway/Russia	<i>Agreement between the Russian Federation and the Kingdom of Norway on the Maritime Delimitation in the Varangerfjord area</i> 2526 UNTS 37	11 July 2007	9 July 2008	http://www.un.org/Depts/los/doalos_publications/LOS_Bulletins/bulletinpdf/bulletin67e.pdf
Norway/Russia	<i>Treaty between the Russian Federation and the Kingdom of Norway concerning maritime delimitation and cooperation in the Barents Sea and the Arctic Ocean</i> 2791 UNTS 1	15 September 2010	7 July 2011	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NOR-RUS2010.PDF
Norway (Svalbad)/ Russia	<i>Descriptive Protocol relating to the sea frontier between Norway and the Union of Soviet Socialist Republics in the Varangerfjord, demarcated in 1957</i>	29 November 1957	17 March 1958	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NOR-RUS1957DP.PDF
Norway/Sweden	<i>Agreement concerning the delimitation of the fishery areas of Norway and Sweden in the North-Eastern Skagerrak</i>	5 April 1967	29 June 1967	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/SWE-NOR1967SK.PDF
Norway/Sweden	<i>Agreement between Sweden and Norway concerning the delimitation of the continental shelf</i> 968 UNTS 219	24 July 1968	18 March 1969	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/SWE-NOR1968CS.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Norway/UK	<i>Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Norway relating to the delimitation of the continental shelf between the two countries</i> 551 UNTS 214	10 March 1965	29 June 1965	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GBR-NOR1965CS.PDF
Norway/UK	<i>Protocol supplementary to the Agreement of 10 March 1965 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Norway relating to the delimitation of the continental shelf between the two countries</i>	22 December 1978	20 February 1980	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GBR-NOR1978CS.PDF
Oman/Pakistan	<i>Muscat Agreement on the Delimitation of the Maritime Boundary between the Sultanate of Oman and the Islamic Republic of Pakistan</i> 2183 UNTS 3	12 June 2000	21 November 2000	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/OMN-PAK2000MB.PDF
Oman/Yemen	<i>International boundary agreement between the Sultanate of Oman and the Republic of Yemen</i>	1 October 1992	27 December 1992	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/OMN-YEM1992IB.PDF
Oman/Yemen	<i>Agreement on the delimitation of the maritime boundary between the Sultanate of Oman and the Republic of Yemen</i> 2309 UNTS 249	14 December 2003	3 July 2004	https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280071b2e
Panama/Colombia	<i>Treaty on the delimitation of marine and submarine areas and related matters between the Republic of Panama and the Republic of Colombia (with maps)</i> 1074 UNTS 221	20 November 1976	30 November 1977	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/PAN-COL1976DM.PDF
Papua New Guinea/Indonesia	<i>Agreement between the Government of Indonesia and the Government of Papua New Guinea Concerning the Maritime Boundary between the Republic of Indonesia and Papua New Guinea and Cooperation on related Matters</i>	13 December 1980	N/A	http://faolex.fao.org/docs/pdf/bi-1632.pdf

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Papua New Guinea/Solomon Islands	<i>Treaty between the Independent State of Papua New Guinea and Solomon Islands Concerning Sovereignty, Maritime and Seabed Boundaries between the Two Countries, and Cooperation on Related Matters</i>	25 January 1989	5 March 2004	IMB 1162-1165 (1998)
Peru/Ecuador	<i>Agreement by exchange of notes of identical content between the Republic of Peru and the Republic of Ecuador of 2 May 2011</i> 2756 UNTS 223	2 May 2011	20 May 2011	http://www.un.org/Depts/los/ doalos_publications/LOS Bulletins/bulletinpdf/ bulletin76e.pdf
Poland/Russia/ Sweden	<i>Agreement between the Government of the Kingdom of Sweden, the Government of the Polish People's Republic and the Government of the USSR concerning the Common Delimitation Point of their Maritime Boundaries in the Baltic Sea</i>	30 June 1989	10 May 1990	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/SWE-POL-RUS 1989MB.PDF
Poland/Russia	<i>Treaty (with annexed maps) concerning the demarcation of the existing Soviet-Polish State frontier in the sector adjoining the Baltic Sea</i> 274 UNTS 133	5 March 1957	4 May 1957	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/RUS-POL 1957SE.PDF
Poland/Russia	<i>Protocol between the Government of the Polish People's Republic and the Government of the Union of Soviet Socialist Republics concerning the delimitation of Polish and Soviet territorial waters in the Gulf of Gdansk of the Baltic Sea</i> 340 UNTS 89	18 March 1958	29 July 1958	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/POL-RUS 1958TW.PDF
Poland/Russia	<i>Treaty between the Polish People's Republic and the Union of Soviet Socialist Republics concerning the boundary of the continental shelf in the Gulf of Gdansk and the south- eastern part of the Baltic Sea</i> 769 UNTS 75	28 August 1969	13 May 1970	http://www.un.org/Depts/los/ LEGISLATIONAND TREATIES/PDFFILES/ TREATIES/POL-RUS 1969CS.PDF
Poland/ Russia	<i>Treaty between the People's Republic of Poland and the Government of the Union of Soviet Socialist Republics on the Delimitation of the Territorial Sea (Territorial Waters), the Economic Zone, the Fishery Zone and the Continental Shelf in the Baltic Sea</i>	17 July 1985	N/A	

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Poland/Sweden	<i>Agreement concerning the delimitation of the continental shelf and fishing zones between the Kingdom of Sweden and the Polish People's Republic. (with nautical chart)</i>	10 February 1989	30 June 1989	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/SWE-POL1989CS.PDF
Portugal/Spain	<i>Agreement between Portugal and Spain on the Continental Shelf</i>	12 February 1976	N/A	
Portugal/Spain	<i>Agreement between Portugal and Spain on the Delimitation of the Territorial Sea and Contiguous Zone</i>	12 February 1976	N/A	
Qatar/Saudi Arabia	<i>Agreement on the delimitation of the offshore and land boundaries between the Kingdom of Saudi Arabia and Qatar</i> 1733 UNTS 19	4 December 1965	31 May 1971	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/SAU-QAT1965OB.PDF
Qatar/ Saudi Arabia	<i>Minutes of meeting concerning land border demarcation and maritime border designation between Saudi Arabia and Qatar in Dawbat Salwa</i>	21 March 2001	N/A	
Qatar/ Saudi Arabia	<i>Joint Minutes on the land and maritime boundaries to the Agreement of 4 December 1965 between the State of Qatar and the Kingdom of Saudi Arabia on the delimitation of the offshore and land boundaries</i> 2575 UNTS 67	5 July 2008	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/sau_qat_2008jointminutes.pdf
Qatar/United Arab Emirates	<i>Agreement between Qatar and Abu Dhabi on the settlement of maritime boundaries and ownership of islands</i> 2402 UNTS 49	20 March 1969	20 March 1969	https://treaties.un.org/doc/Publication/UNTS/Volume%202402/v2402.pdf
Qatar/United Arab Emirates	<i>Communication from the Kingdom of Saudi Arabia</i>	11 April 2007	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/sau_re_qat_are1969mb.pdf
Romania/Ukraine		17 June 2003		
Republic of Korea/China	<i>Fisheries Agreement between the Government of the Republic of Korea and the Government of the People's Republic of China</i> 2486 UNTS 259	3 August 2000	30 June 2001	https://treaties.un.org/doc/Publication/UNTS/Volume%202486/v2486.pdf

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Russia/ DPR of Korea	<i>Agreement between the Union of the Soviet Socialist Republics and the Democratic People's Republic of Korea on the Delimitation of the Soviet-Korean National Border</i>	17 April 1985	N/A	IMB 1135-1144
Russia/DPR of Korea	<i>Agreement between the Union of Soviet Socialist Republics and the Democratic People's Republic of Korea on the Delimitation of the Economic Zone and the Continental Shelf</i>	22 January 1986	N/A	IMB 1145-1153
Russia/DPR of Korea	<i>Agreement between the Government of the Union of Soviet Socialist Republics and the Government of the Democratic People's Republic of Korea concerning the Regime of the Soviet-Korean State Frontier</i> 22 LOSB 6	3 September 1990	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/RUS-PRK1990SE.PDF
Russia/Ukraine	<i>Agreement on Cooperation in the Use of the Sea of Azov and the Strait of Kerch</i>	24 December 2003		
Saudi Arabia/ Jordan	<i>Agreement on the delimitation of the maritime boundaries in the Gulf of Aqaba between the Kingdom of Saudi Arabia and the Hashemite Kingdom of Jordan</i> 2710 UNTS 307	16 December 2007	10 June 2010	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/JOR_SAU_2007MB_e.pdf
Saudi Arabia/ Sudan	<i>Agreement between Sudan and Saudi Arabia relating to the Joint Exploitation of the Natural Resources of the Sea Bed and Subsoil of the Red Sea in the Common Zone</i>	16 May 1974		
Saudi Arabia/ United Arab Emirates	<i>Agreement on the delimitation of boundaries</i> 1733 UNTS 23	21 August 1974	21 August 1974	https://treaties.un.org/doc/Publication/UNTS/Volume%201733/v1733.pdf
Saudi Arabia/ Yemen	<i>International Border Treaty between the Republic of Yemen and the Kingdom of Saudi Arabia</i> 2389 UNTS 203	12 June 2000	4 July 2000	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/YEM-SAU2000IBT.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Serbia and Montenegro/ Italy	<i>Agreement between Italy and Yugoslavia concerning the delimitation of the continental shelf between the two countries in the Adriatic Sea</i>	8 January 1968	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/ITA-YUG1968CS.PDF
Seychelles/ Tanzania	<i>Agreement between the Government of the United Republic of Tanzania and the Government of the Republic of Seychelles on the Delimitation of the Maritime Boundary of the Exclusive Economic Zone and Continental Shelf</i> 2196 UNTS 13	23 January 2002	23 January 2002	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/TZA-SYC2002MB.PDF
Solomon Islands/ Australia	<i>Agreement between the Government of Solomon Islands and the Government of Australia establishing certain sea and sea-bed boundaries</i>	13 September 1988	14 April 1989	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/SLB-AUS1988SB.PDF
Sweden/Russia	<i>Agreement on principles for the delimitation of the sea areas in the Baltic Sea between the Kingdom of Sweden and the Union of Soviet Socialist Republics</i> 1557 UNTS 200	13 January 1988	13 January 1988	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/SWE-RUS1988DS.PDF
Sweden/Russia	<i>Agreement between the Government of the Kingdom of Sweden and the Government of the Union of Soviet Socialist Republics concerning the delimitation of the continental shelf and of the Swedish fishing zone and the Soviet economic zone in the Baltic Sea (with nautical charts and Protocol)</i> 1557 UNTS 283	18 April 1988	16 May 1988	
Tanzania/Kenya	<i>Exchange of Notes constituting an agreement on the territorial sea boundary</i> 1039 UNTS 147	17 December 1975 – 9 July 1976	9 July 1976	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/TZA-KEN1976TW.PDF
Tanzania/Kenya	<i>Agreement between the United Republic of Tanzania and the Republic of Kenya on the delimitation of the maritime boundary of the exclusive economic zone and the continental shelf</i> 2603 UNTS 37	23 June 2009	N/A	http://www.un.org/Depts/los/doalos_publications/LOSBulletins/Bulletinpdf/bulletin70e.pdf

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
Thailand/ Vietnam	<i>Agreement between the Government of the Kingdom of Thailand and the Government of the Socialist Republic of Viet Nam on the delimitation of the maritime boundary between the two countries in the Gulf of Thailand</i>	9 August 1997	27 February 1998	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-VNM1997MB.PDF
Trinidad and Tobago/Grenada	<i>Agreement between the Republic of Trinidad and Tobago and Grenada on the delimitation of Marine and Submarine Areas</i>	21 April 2010		
Tunisia/Italy	<i>Agreement between the Government of the Republic of Tunisia and the Government of the Italian Republic concerning the delimitation of the continental shelf between the two countries</i> 1129 UNTS 249	20 August 1971	6 December 1978	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/TUN-ITA1971CS.PDF
Turkey/Russia	<i>Agreement between the Government of the Republic of Turkey and the Government of the Union of Soviet Socialist Republics concerning the delimitation of the continental shelf between the Republic of Turkey and the Union of Soviet Socialist Republics in the Black Sea (with maps)</i>	23 June 1978	15 May 1981	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/TUR-RUS1978CS.PDF
Turkey/Russia	<i>Exchange of notes constituting an agreement on the delimitation of the USSR and Turkey economic zone in the Black Sea</i> 1460 UNTS 135	23 December 1986 – 6 February 1987	6 February 1987	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/RUS-TUR1987EZ.PDF
Turkey/Ukraine	<i>Agreement between the Government of the Republic of Turkey and the Government of the Union of Soviet Socialist Republics concerning the delimitation of the continental shelf between the Republic of Turkey and the Union of Soviet Socialist Republics in the Black Sea (with maps)</i>	23 June 1978	15 May 1981	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/TUR-RUS1978CS.PDF
Turkey/Ukraine	<i>Exchange of notes constituting an agreement on the delimitation of the USSR and Turkey economic zone in the Black Sea</i>	23 December 1986 – 6 February 1987	6 February 1987	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/RUS-TUR1987EZ.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
UK/Denmark (Faroe Islands)	<i>Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland, on the one hand, and the Government of the Kingdom of Denmark together with the Home Government of the Faroe Islands, on the other hand, relating to the Maritime Delimitation in the area between the Faroe Islands and the United Kingdom</i>	18 May 1999	21 July 1999	www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNKGBR1999MD.PDF
UK/Denmark (Faroe Islands)	<i>Protocol to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland, on the one hand, and the Government of the Kingdom of Denmark together with the Home Government of the Faroe Islands, on the other hand, relating to the Maritime Delimitation in the area between the Faroe Islands and the United Kingdom</i>	25 April 2012	31 March 2014	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/350906/42904_Cm_8934_print_ready.pdf
UK/Honduras	<i>Treaty between the Government of the Republic of Honduras and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the delimitation of the maritime areas between the Cayman Islands and the Republic of Honduras</i> 2207 UNTS 497	4 December 2001	1 March 2002	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/HND-GBR2001MA.PDF
UK/Ireland	<i>Protocol supplementary to the agreement between the Government of Ireland and the Government of the United Kingdom concerning the delimitation of areas of the continental shelf between the two countries</i>	7 November 1988	8 December 1992	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/IRL-GBR1992PCS.PDF
UK/Ireland	<i>Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland concerning the delimitation of areas of the continental shelf between the two countries</i>	7 November 1988	11 January 1990	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GBR-IRL1988CS.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
UK/Ireland	<i>Exchange of Notes dated 18 October 2001 and 31 October 2001 between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland constituting an agreement pursuant to Article 83 paragraph 3 of the United Nations Convention on the Law of the Sea 1982 on the provisional delimitation of an area of the continental shelf</i>	18 October 2001	31 October 2001	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/gbr-irl_2001.pdf
UK/Ireland	<i>Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing a single maritime boundary between the exclusive economic zones of the two countries and parts of their continental shelves</i>	28 March 2014	31 March 2014	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/IRL-GBR_2014EEZ.PDF
US/Canada	<i>Special Agreement between the Government of Canada and the Government of the United States of America to submit to a Chamber of the International Court of Justice the delimitation of the maritime boundary in the Gulf of Maine area</i> 1288 UNTS 33	29 March 1979	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/CAN-USA_1979MB.PDF
US/Canada	<i>Treaty to submit to binding dispute the delimitation of the maritime boundary in the Gulf of Maine area</i> 1288 UNTS 27	29 March 1979	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/CAN-USA_1979GM.PDF
US/Cook Islands	<i>Treaty between the United States of America and the Cook Islands on friendship and delimitation of the maritime boundary between the United States of America and the Cook Islands</i> 1676 UNTS 223	11 June 1980	8 September 1983	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/USA-COK_1980MB.PDF
US/Cuba	<i>Maritime Boundary Agreement Between the United States of America and the Republic of Cuba</i>	16 December 1977	Applied provisionally as from 1 January 1978	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/USA-CUB_1977MB.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
US/Mexico	<i>Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary</i> 830 UNTS 55	23 November 1970	18 April 1972	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/mex-usa_1970.pdf
US/Mexico	<i>Maritime Boundaries Agreement Effected by Exchange of Notes between the United States of America and Mexico</i>	24 November 1976	N/A	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/USA-MEX_1976MB.PDF
US/Mexico	<i>Treaty on maritime boundaries between the United States of America and the United Mexican States (Caribbean Sea and Pacific Ocean)</i> 2143 UNTS 405	4 May 1978	13 November 1997	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/MEX-USA_1978MB.PDF
US/Mexico	<i>Treaty between the Government of the United States of America and the Government of the United Mexican States on the Delimitation of the Continental Shelf in the Western Gulf of Mexico beyond 200 Nautical Miles</i> 2143 UNTS 417	9 June 2000	17 January 2001	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/USA-MEX_2000CS.PDF
US/Mexico	<i>Agreement Between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico</i>	20 February 2012	18 July 2014	http://www.state.gov/documents/organization/231802.pdf
US/New Zealand	<i>Treaty between the United States of America (American Samoa) and New Zealand (Tokelau) on the delimitation of the maritime boundary between Tokelau and the United States of America</i> 1643 UNTS 251	2 December 1980	3 September 1983	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/nza-usa_1980.tif
US/Niue	<i>Treaty between the Government of the United States of America and the Government of Niue on the Delimitation of a Maritime Boundary</i>	13 May 1997	8 January 2002	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/USA-NIUE_1997MB.PDF
US/Russia	<i>Agreement between the United States of America and the Union of Soviet Socialist Republics on the maritime boundary</i>	1 June 1990	Ratified by USA but not Russia	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/USA-RUS_1990MB.PDF

States Parties	Treaty title (UNTS or LOSB reference where available)	Date of adoption/ signature	Entry into force	URL (or reference to <i>Inter- national Maritime Boundaries</i> where URL unavailable)
US/UK	<i>Exchange of notes constituting an agreement between the United States of America and the United Kingdom of Great Britain and Northern Ireland relating to the delimitation of the area within territorial waters adjacent to the leased naval base at Argentina, Newfoundland (with annex)</i> 66 UNTS 278	13 August and 23 October 1947	23 October 1947	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/USA-GBR1947TW.PDF
US/UK	<i>Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America on the delimitation in the Caribbean of a maritime boundary between the US Virgin Islands and Anguilla</i>	5 November 1993	1 June 1995	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GBR-USA1993CMB.PDF
US/UK	<i>Treaty on the delimitation in the Caribbean of a maritime boundary relating to Puerto Rico/U.S. Virgin Islands and the British Virgin Islands</i> 1913 UNTS 67	5 November 1993	1 June 1995	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GBR-USA1993MB.PDF
US/Venezuela	<i>Maritime boundary Treaty between the United States of America and the Republic of Venezuela (with map)</i>	28 March 1978	24 November 1980	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/USA-VEN1978MB.PDF
US/Venezuela	<i>US/Venezuela Maritime Boundary Treaty, 1978</i>		N/A	
Venezuela/ Trinidad and Tobago	<i>Agreement between the Government of Trinidad and Tobago and the Government of the Republic of Venezuela on the Delimitation of Marine and Submarine Areas</i>	4 August 1989	N/A	
Venezuela/ Trinidad and Tobago	<i>Treaty between the Republic of Trinidad and Tobago and the Republic of Venezuela on the delimitation of marine and submarine areas</i> 1654 UNTS 301	18 April 1990	23 July 1991	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/TTO-VEN1990SA.PDF

ANNEX III

Summary Report of Expert Roundtable held on 22 January 2016

I. Introduction

1. This report summarises the proceedings of the Expert Roundtable on the subject of the obligations of States under Articles 74(3) and 83(3) of UNCLOS in respect of undelimited maritime areas, held on 22 January 2016 in London. The list of participants is appended at the end of the report. A draft discussion document with suggested discussion points outlining the preliminary findings of the research team was circulated prior to the event. Professor Catherine Redgwell, University of Oxford, chaired the event.
2. Jill Barrett opened the proceedings by introducing the project, explaining its aims and discussing its scope. She outlined the key questions raised by the obligation “not to jeopardize or hamper the reaching of a final agreement on delimitation” as being: (i) What kinds of activities amount to jeopardizing or hampering? (ii) In which areas does the obligation apply – the “undelimited” area, the “disputed” area or is the obligation not limited by any specific geographical scope? (iii) At what point in time does the obligation become applicable and when does it end?
3. She also noted that the terms “obligation of restraint”, “obligation of self-restraint” and “obligation not to jeopardize or hamper” had been used interchangeably throughout the draft report as shorthand for the obligation set out in the second limb of Articles 74(3) and 83(3), and sought the participants’ views on this terminology. She suggested that the term “obligations of restraint” might be useful as a generic term to encompass the obligation in the second limb of Articles 74(3) and 83(3) as well as other similar obligations in customary international law. She also raised three general issues that the research team had encountered, on which participants views would be especially welcome: the difficulty of seeking State practice of a negative kind, given the rarity with which States make public their reasons for not doing something; the problem of identifying which practice is relevant to UNCLOS in regions where disputes over maritime boundaries are closely related to land sovereignty disputes; and whether State treaty practice under Articles 74(3) and 83(3) was useful as an indication of States’ views on the content of the “obligation not to jeopardize or hamper”.

II. Discussion on the state of the law

A. PANEL 1 AND OPEN DISCUSSION

4. Professor Robin Churchill presented selected issues regarding the law on maritime delimitation and the content of Articles 74(3) and 83(3). He stated that there was clearly an obligation of restraint under UNCLOS but that it was more difficult to establish the existence of an obligation under customary international law. *Opinio juris* was crucial in this area; it was critical to see why States abstained from action.

5. Regarding the obligations under UNCLOS, Professor Churchill considered what kinds of conduct amounted to jeopardising or hampering a delimitation agreement and whether this was an objective or subjective standard. In the context of Article 31(3)(b) of the Vienna Convention on the Law of Treaties (“VCLT”), he sought the views of the participants on whether it was necessary that practice was consistent or expressed explicitly or tacitly by all the parties to UNCLOS, noting that the practice identified by the research team was that of pairs of States rather than larger groups of States parties.
6. Professor Churchill then outlined different views on the temporal and geographic scope of the obligations of Articles 74(3) and 83(3). In particular, he asked the participants to consider what the effect might be of incorporating by analogy the plausibility test (as developed by international courts and tribunals in the provisional measures context) into the obligation of restraint. He also raised the issue of the relevance of case law on provisional measures more generally, particularly as the tribunal in *Ghana/Côte d’Ivoire* did not mention Articles 74(3) or 83(3) of UNCLOS in its provisional measures order.
7. Discussant Ambassador Rolf Einar Fife drew attention to the context of the obligations of Articles 74(3) and 83(3), noting the identical language in Resolution III of the Final Act of the Law of the Sea Conference⁶⁰³ as well as the relevance of Articles 300 and 246(5) of UNCLOS. He noted that Norway was amongst those States that considered that there was a duty of restraint in relation to activities in undelimited areas. He also highlighted the need to distinguish between the dispute settlement framework and that of the duty to negotiate, citing the example of Russia and Norway, where the parties had agreed not to refer to the undelimited area as a disputed area even though there were overlapping claims.

B. SCOPE OF THE PROJECT

8. The initial title of the report as presented at the roundtable was “Rights and Duties of States in the Undelimited Maritime Area”. Several participants raised questions relating to the scope of the project as indicated by that title, considering that it was larger than the issues set out in the discussion document, and may need to be narrowed to become more manageable. Another participant advised that the scope of the normative basis of the obligations should not be narrowed down too much and the broader context of the Article 74(3)/83(3) obligations should also be considered.

C. INTERPRETATION OF CONTENT OF ARTICLES 73(3) AND 84(4)

9. Several comments were made on the language of Articles 74(3) and 83(3). It was noted that some States considered that acting in the undelimited area might help rather than hamper the reaching of a final agreement. It was noted that the purpose of the Articles was to allow some economic activity in undelimited maritime areas and that the drafting history of the provisions indicated that restraint does not mean a moratorium. Some participants suggested the obligation not to jeopardise or hamper was a negative one only, while others considered that there could be positive conduct in fulfilment of the obligation. It was suggested that an agreement to disagree constituted restraint as did positive obligations such as sharing information regarding natural resources. One participant considered that it was more useful to categorise permitted/prohibited activity by type of act, rather than maritime zone, ie EEZ, continental shelf.

⁶⁰³ Art 1(b) of Resolution III provides: “The States concerned shall make every effort to enter into provisional arrangements of a practical nature and shall not jeopardize or hamper the reaching of a final settlement of the dispute.”

10. The participants had different views as to the character of the obligations in Articles 74(3) and 83(3) and it was suggested that further analysis of the language “make every effort” should be carried out. One participant considered that the *Heathrow Airport User Charges* interpretation of “best efforts” might be of assistance.⁶⁰⁴ The context of the obligations within Articles 74 and 83 as a whole was noted, as well as the relationship between Articles 74(3) and 83(3) and the preceding sub-paragraphs. One participant considered that the obligations in sub-paragraphs 3 were an attempt to give some compulsory meaning to the two preceding non-compulsory sub-paragraphs. Another participant questioned whether any assistance would be provided by recourse to the *travaux préparatoires* to Articles 74(3) and 83(3) under Article 32 VCLT.
11. On the temporal scope of the obligations, it was queried whether the language “pending agreement” included all undelimited boundaries or only those where a process towards agreement was underway and whether the obligation of restraint would apply where judicial or arbitral settlement was pending. One participant suggested that the obligations apply when the parties are making a claim.
12. The geographic scope of the obligation not to jeopardise or hamper was a central theme of both general discussion and in responses to the panellists’ accounts of State practice. In the course of general discussion, Professor Redgwell raised the question of whether the research team had considered how – if at all – States have defined the areas in which a duty of restraint will apply, where they have entered into mutual arrangements in undelimited areas. She raised the question of whether States tend to define areas at all, or whether they tend to deal with certain categories of activities.
13. Another important issue raised by Professor Redgwell was how the obligation not to jeopardise or hamper in Articles 73(3) and 83(3) might relate to – or be strengthened or modified by – duties contained in other UNCLOS provisions. Professor Redgwell particularly highlighted the potential intercourse between the duty not to hamper or jeopardise and States’ duties to cooperate in respect of fisheries conservation or under Article 123 UNCLOS in respect of semi-enclosed seas.
14. The need for analytical clarity was highlighted, in particular in relation to the distinction between delimitation disputes, maritime entitlement disputes and sovereignty disputes. The character of UNCLOS as a package deal was also emphasised. It was also cautioned that setting out the precise content of the obligation of Articles 74(3) and 83(4) may restrict the flexibility that UNCLOS was designed to encourage.

D. PROVISIONAL MEASURES

15. Questions were raised as to the extent to which provisional measures jurisprudence could be used to shape our understanding of the obligations in Articles 74(3) and 83(3) and a generally cautious approach was taken towards incorporating concepts from the preliminary measures context when interpreting Articles 74(3) and 83(3). It was pointed out that provisional measures serve a different purpose to that of obligations of restraint, namely the prevention of unilateral harm to legal rights to be adjudicated upon. It was also suggested that the particular facts in *Ghana/Côte d’Ivoire*, where one State had had carried out activities in the undelimited area over a long period of time, should be borne in mind when comparing the provisional measures order in that case to the award of the tribunal in *Guyana v Suriname*.

⁶⁰⁴ United States-United Kingdom Arbitration concerning Heathrow Airport User Charges (United States-United Kingdom), Decision of 30 November 1992 (Revised 18 June 1993), XXIV RIAA, 1–359.

E. IDENTIFICATION OF CUSTOMARY INTERNATIONAL LAW

16. Several participants noted the inherent difficulties in interpreting State practice, particularly when looking for evidence that States did not act in a particular way because they believed they were under an obligation to refrain from doing so. It was difficult to isolate obligations of restraint from other obligations of States, for example, good faith. Some participants expressed the view that it was not practical or necessary to look too closely into the motivations behind State practice. However, one participant considered that State practice without *opinio juris* was meaningless in the context of establishing a prohibitive rule of customary international law. He noted that most customary international law rules have to do with permissions rather than prohibitions.
17. Another participant noted that a characterisation of obligations of restraint as obligations of conduct or obligations of result may be helpful in identifying how States might violate these obligations and when. Several participants considered that the way to get around difficulties in identifying *opinio juris* was to look for practice that goes against an assumption that such obligations exist. It was also suggested that an analysis of the practice of non-UNCLOS parties might provide insight into the customary international law character of the obligations. However, it also remarked that the practice of some non-UNCLOS parties is more in accordance with the obligations of UNCLOS than that of some of its States parties.
18. There was a discussion as to whether the practice of *all* States Parties needs to be in accordance for the purposes of applying Article 31(3)(b) of the VCLT, ie identifying “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation”. The general view was that it was not unnecessary to establish agreement by *all* the parties, but there would need to be a considerable number. Different views were expressed on when silence or inaction on the part of a State could be interpreted as acquiescence. The issue of latent disputes, for example Hans Island, was also raised and whether they should be considered examples of tacit restraint and given weight in the evaluation of the existence of customary international law obligations or not.
19. The problem of disentangling States’ pragmatic or political motivations from practice motivated by a State’s understanding of the requirements of Articles 74(3) and 83(3) UNCLOS or a customary duty of restraint was a reoccurring theme in discussion and was highlighted by Professor Redgwell in her introduction. Although by no means unique to the duty not to hamper or jeopardise, Professor Redgwell stressed how frequently the issue seems to arise in evaluating States’ practice in respect of undelimited maritime areas, both in considering UNCLOS parties’ “subsequent practice” under Article 31(3)(b) VCLT, and in identifying *opinio juris* in ascertaining the existence and content of any customary duty of restraint.
20. Professor Redgwell also raised the issue of whether if no uniform general customary duty of restraint could be established on current State practice, any regional – or special – customary rules could be established between groups of two or more States. She further raised the question of whether we might be seeing several emerging instances of regional State practice. It was queried whether it was helpful to draw conclusions about practice on a regional basis, since UNCLOS applies to all regions equally.
21. Professor Redgwell also suggested that in considering State practice and *opinio juris*, there is the potential that there are two parallel legal obligations stemming from customary and conventional law respectively. Professor Redgwell raised the question of whether, if there was a customary duty of restraint which pre-existed UNCLOS, whether such a customary duty still exists and remains unaffected, or whether the duty in Articles 74(3) and 83(3) has replaced or modified such an obligation. It was suggested that more work needed to be done in order to establish the existence of customary international law obligations of restraint.

III. Discussion on State practice

A. PANEL 2

22. Judge David Anderson presented selected State practice from the Northern and Western Europe Region. He outlined several examples of restraint in undelimited areas including agreements between Ireland and the UK. He underlined that to date, the State practice identified was not accompanied by strong evidence of *opinio juris* as to the source or character of any obligations of restraint. He noted the existence of other relevant customary international rules, namely those of good faith and peaceful settlement of disputes.
23. Dr Makoto Seta then presented selected State practice from the East Asian Region, including practice related to China's oil and gas exploration activities in the East China Sea. Regarding the geographic scope of the obligations of Articles 74(3) and 83(3), he contrasted the Chinese position, that the obligation not to jeopardise or hamper applies only to the "disputed" area and not to the whole undelimited area, with the alternative view that the character of this obligation would vary depending on the plausibility of the State's claims. Under this view, the geographic scope of the obligation is not binary but varies qualitatively depending on the area concerned.
24. The discussant Professor Alex Oude Elferink highlighted the distinction between disputes that are generated by maritime zones and those generated by disputed territories. He also noted examples of agreements between States in Western Europe such as in the Baltic Sea and queried whether such agreements should be regarded as provisional arrangements or as evidence of the application of a duty of restraint.
25. Several participants provided additional examples of relevant State practice, including the dispute between Poland and Denmark regarding the island of Bornholm and agreements between Norway and Russia and Norway and Iceland. The relevance of practice related to the laying of pipelines was also noted.
26. Regarding the question as to geographical scope raised by Dr Seta, one participant questioned whether it made sense to speak of geographic scope in such a context. He considered that the obligation of restraint was not just an obligation not to act but also involved positive obligations, including sharing information as to the location of natural resources, or simply making a statement that that State agrees or disagrees on a certain issue related to the delimitation. For this reason, he disagreed with the idea that the obligations of restraint could be considered to have a merely spatial scope.

B. PANEL 3

27. Dr Naomi Burke presented selected State practice from the Mediterranean region. She focused on two aspects of this practice, namely, obligations of restraint related to the declaration of maritime zones and practice in relation to hydrocarbon exploitation in disputed areas. Dr Burke noted the historic tendency not to declare EEZs in the region and gave examples of some shifts away from this practice. Protests against the unilateral declaration of maritime zones indicated that some States considered they had a right to be notified or consulted prior to declarations being made by neighbouring States. She discussed the provision of UNCLOS on semi-enclosed seas (Article 123) and its possible relevance to obligations of restraint. Dr Burke also outlined the difficulties in interpreting State practice regarding hydrocarbon exploitation in the region noting, for example, the political context of the agreement between Malta and Italy on a moratorium on hydrocarbon activities in the disputed area.

28. Dr Burke sought the views of the participants on whether State practice in the Mediterranean region indicates that States may have an obligation to consult neighbouring States prior to the declaration of an EEZ or other functional zone. If so, she raised the question of whether this obligation arises solely as a result of the provisions of Article 123 of UNCLOS or as a result of both the obligations of Article 74(3) and 123.
29. Dr Kentaro Nishimoto spoke about a general pattern of activities and protests in the South China Sea Region. Regarding the continental shelf, he discussed the unilateral conclusion of hydrocarbon concession contracts by China, the Philippines and Vietnam. In the fisheries context, he cited two interesting recent developments, namely, the agreement between Indonesia and Malaysia and the agreement between Philippines and Taiwan.
30. Dr Nishimoto tentatively concluded that the practice in the South China Sea sheds little light on the content of the obligation not to jeopardise or hamper and noted that questions as to the applicability and scope of the obligation where States' views differ on the validity of maritime entitlements remain. He sought the participants views on the following two questions: (1) Leaving aside sovereignty disputes, how does the scope of the obligation not to jeopardise or hamper apply where the validity of the maritime entitlement itself is contested, as compared to disputes concerning the delimitation of entitlements?; and (2) What can States do when other States violate the obligation not to jeopardise or hamper? Can they take action beyond protests without violating the obligation themselves?
31. The discussant Professor Alan Boyle gave a presentation on a geographical situation similar to that of the South China Sea and noted the possible "chilling effect" in applying obligations of restraint (in the sense of a moratorium on all activities) pending the delimitation of maritime areas. He noted that the benefits of such a moratorium to certain parties may in fact disincentivise them from reaching a final delimitation agreement.
32. Regarding the South China Sea region, a question was raised as to whether more general obligations such as good faith applied to the making of maritime claims, prior to the existence of a dispute. It was also noted that the existence of sovereignty disputes must be borne in mind when analysing practice in that region.

i. Countermeasures

33. It was observed that States, under certain circumstances, could take countermeasures to ensure compliance with Articles 74(3) and 83(3). Differing views were expressed with regard to what kind of countermeasures States could resort to. It was noted that countermeasures may not be irreversible. One participant suggested that in terms of oil and gas exploitation countermeasures would only be available if the dispute involved an area with very limited resources. The practice of certain Australian oil companies in Western Sahara was mentioned in this context. Other participants referred to *Guyana v Suriname*, where the arbitral tribunal held that Suriname, in responding to the acts of Guyana, should have resorted to Section 2 of Part XV of UNCLOS instead of acts it characterised as maritime enforcement. The issue of permissible countermeasures in this context was considered to be one that merited further research. One participant recommended an article by Patricia Jimenez Kwast on the distinction between maritime enforcement and the threat or use of force.⁶⁰⁵

⁶⁰⁵ PJ Kwast 'Maritime Law Enforcement and the Use of Force: Reflections on the Categorisation of Forcible Action at Sea in the Light of the Guyana/Suriname Award', *Journal of Conflict and Security Law* (2008) 13(1), 49–91.

ii. Article 123

34. The question was raised as to why the possible implications of Article 123 had been examined in the Mediterranean Region but not in other semi-enclosed seas. Some participants doubted the binding nature of the obligations in Article 123 but others considered that it did create additional obligations for States.

iii. European Union

35. Several participants referred to the competence of the EU in relation to the Mediterranean region and the relevance of the EU Directive on Marine Spatial Planning (2014/89/EU), which contains a non-prejudice clause with regard to activities and potentially impacts on boundary delimitation.

IV. Conclusion and Follow up

36. Participants considered that the collection of State practice in the final report would be a very useful resource for practitioners and academics, even if the report could not reach firm conclusions that this practice indicated general agreement on the content of the obligation not to jeopardise or hamper, or the on existence and content of a similar customary law rule.
37. The roundtable concluded with an invitation to participants to send any further feedback on the draft report, reflections on the roundtable discussion or additional information about relevant State practice. Following the roundtable, several participants sent further thoughts on the project by email.⁶⁰⁶ These emails were reviewed by the team, and along with issues raised during the event, were incorporated as appropriate into the final report. The research team would like to express its gratitude towards all those who participated in the roundtable.

⁶⁰⁶ The research team is grateful for feedback received by email following the event from Danae Azaria, Vasco Becker-Weinberg, Stephen Fietta, Erik Franckx, Steven Haines, Alex Oude Elferink, Bernard Oxman, Andrew Serdy, Declan Smyth and Chris Whomersley.

Participant List

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Dr Vasco Becker-Weinberg
Professor Alan Boyle
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Professor Alex Oude Elferink
Mr Stephen Fietta
Ambassador Rolf Einar Fife
Professor Sir Malcolm Evans
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Professor Malgosia Fitzmaurice
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Professor Erik Franckx
Professor Steven Haines
Ms Patricia Jimenez Kwast
Ms Constance Johnson
Mr Sotirios-Ioannis Lekkas
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