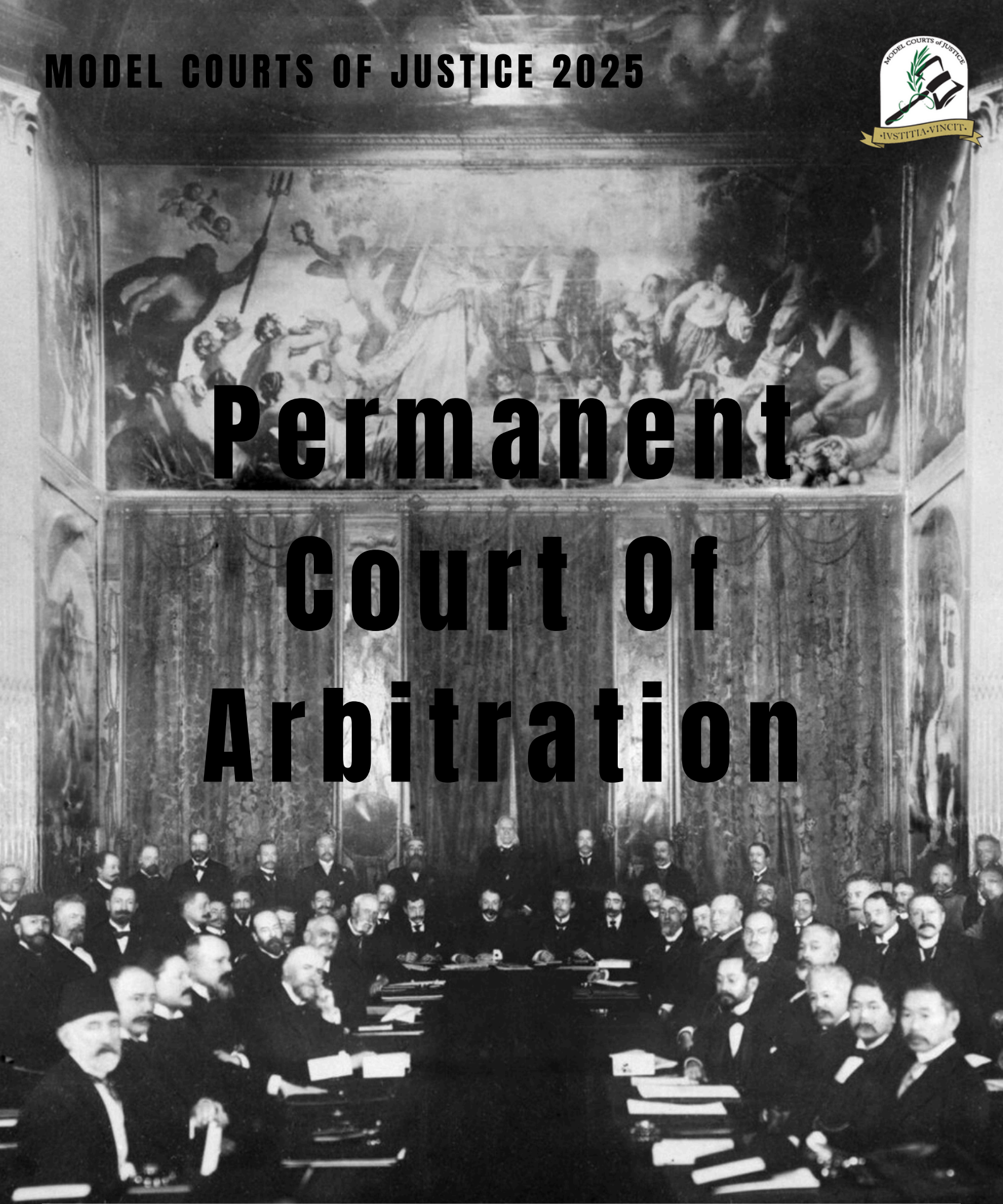
MODEL COURTS OF JUSTICE 2025



Permanent Court Of Arbitration

Written by Zeynep Kalkan
Supervised by Aydan Seyidaliyeva

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LETTER FROM THE SECRETARY-GENERAL

Highly Esteemed Participants,

It is my pleasure to welcome you all to the 13th Edition of the Model Courts of Justice as the Secretary-General. My name is Aydan Seyidaliyeva and I am a junior law student at Ankara University, currently on her Exchange Program at Utrecht University Law School.

The participants of the Model Courts of Justice 2025 will be focusing on the fields of law of the sea with a particular focus on the scope of historical rights to the field of law in the Permanent Court of Arbitration. The case that will be simulated this year is *' The South China Sea Arbitration (Philippines v.. The Republic of China)'*. In this regard, the participants, particularly those planning to participate in the Willem C. Vis International Commercial Arbitration Moot will have the opportunity to practice their subjects and improve their written and oral skills.

I would first like to express my gratitude to Miss Zeynep Kalkan for excelling in the writing of the entire academic material for this court considering the arbitral nature of the proceedings and the circumstances of her position. Second, I appreciate the trainee of the Permanent Court of Aritration Miss Ece Selin Sağır for her progress and dedication to the Academic Team of the Model Courts of Justice 2025. Last, I would like to thank the Director-General of the Model Courts of Justice 2025 and the most valuable source of our motivation throughout the entire preparation process, Miss Elfin Selen Ermiş for enduring organizational excellence and professionalism with her wonderful organization team despite uncountable obstacles and the given conditions.

Before attending the sessions, I highly recommend that all the participants read the Study Guide and Rules of Procedure and prepare the printed versions of these documents with them to refer to during the Conference.

If you have any questions or hesitations about the Conference, please do not hesitate to contact me at secretarygeneral@modelcj.org

Sincerely,

Aydan Seyidaliyeva

Secretary-General of the Model Courts of Justice 2025

LETTER FROM THE UNDER-SECRETARY GENERAL

Highly Esteemed Participants,

I am Zeynep Kalkan, junior law student at Ankara University, Faculty of Law. This is my first year at Model Courts of Justice. It will be an honor to serve as an Under-Secretary-General of The Permanent Court of Arbitration. I'm thrilled to be a part of our esteemed conference and it is honour for me to welcome you all to the this years Model Courts of Justice, the most prestigous Conference in Türkiye simulating international court proceedings.

One of the most important conflicts in maritime law, the South China Sea Arbitration, will be discussed at this conference by the Arbitral Tribunal registered by the Permanent Court of Arbitration in order to make its final decision based on merits. The case presents an in-depth analysis of international law principles and their practical implications by examining the intricate relationship between territorial sovereignty, marine rights, and the implementation of United Nation on Convenion of the Law of the Sea. Although the issue at hand and this document are both very complex and detailed, I genuinely hope you enjoy the process and learn more about a number of legal topics as thoroughly as I did.

First and first, I would like to thank Ms. Elfin Selen Ermiş, Director General of Model Courts of Justice. The Conference's Academic Team, on the other hand, has been an immeasurable provider of inspiration and support underneath the extraordinary commitment of Secretary General Ms. Aydan Seyidaliyeva. I want to express how privileged our team is and appreciate the Secretary General, Ms. Aydan Seyidaliyeva, for her support and compassion every time I came across a challenge. I would like to convey my gratitude to the team that has provided me with this experience, as I have thoroughly appreciated their friendship and support through this process. Last but not least, I truly appreciate and be proud of my Academic Intern Ece Selin Sağır for her outstanding effort, which proved to be valuable in every component.

Please do not hesitate to contact me at pca@modelcj.org for ınquiries you may have regarding the document or proceedings.

Yours faithfully,

Zeynep Kalkan

Under-Secretary-General of the Permanent Court of Arbitration

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I. INTRODUCTION TO THE LAW OF THE SEA

The origin of the law of the sea goes back to the time of the Roman Empire. It is considered old as international law. Historically disputes over territorial seas and resources led to conflict between states. This conflicts show to the world's need of codification in some activities such as navigation, fishing, resource exploitation and environmental protection.The Law of the Sea was established to create a comprehensive legal framework governing the use and manangement of the world's seas. The United Nations Convention on the Law of the Sea (UNCLOS), adopted in 1982 regulated such these activities and setting a descriptions maritime zones such as territorial seas, exclusive economic zones (EEZ), the high seas, and sets rules on the rights and responsibilities of states.[1] Accordingly, the development of technology and science in the sea has made it easier and more accessible to the states than in the times of the Roman Empire. This situation exposes the need to set rules for the usage of the seas. Law of the Sea progress is continuing due to development and the changes in the modern world.

1. History of the Law of the Sea

a) Early Development of the Law of the Sea

The origin of the Law of the Sea goes far back to the ancient era. Phoenicians and Greeks have been making rules to be able to execute shipping trade and ensure security during sea travels In the Ancient Roman Era, a series of laws called Lex Rhodia applied for maritime trade. In medieval times the law of the sea has been developed. Lex Rhoadia can be described as a roman Law that governs the subject of jettison.[2] It is the Rhodian law that requires all consigors and the shipmaster to hare equally. It is also known as lex Rhodia de jactu.[3] The Lex Rhodia is a collection of laws that contain legal regulations related to shipping and maritime trade during the Roman Empire. It takes its name from Rhodes Island, which was a trade center in ancient times. In particular, it has guided the resolution of disputes that may arise on these issues with the regulations it has introduced on issues such as maritime receivables, accidents and joint average. The joint average, organized by the Lex Rhoadia, is about the fair sharing of the cost

[1] United Nations, *United Nations Convention on the Law of the Sea,* 1982.
[2] A voluntary sacrifice of cargo to lighten a ship's load in time of distress
[3] Lex Rhodia, https://www.lsd.law/define/lex-rhodia, Acessed on December 2024.

of sacrifices made to protect the ship or cargo between the ship's owners and other beneficiaries.[4] In the regulations for maritime accidents, the rights and obligations of the ship owner and cargo owners are determined in case the ship is damaged or sinks. In case of damage to the ship, compensation is envisaged according to the fault rate.[5] In its regulation on maritime trade, it specifies who owns the goods transported by sea and their responsibilities during their transportation, and the powers and obligations of the ship captain during transportation.[6] Conflicts between states over exclusive control of trade routes, productive fishing grounds, and more money from taxes on foreign vessels and later the nearby coastal areas escalated after the fall of the Roman Empire.[7] Some of the trading confederations have been making the law of the sea .The Hanseatic League had set a system for securing sea trading. In this era, the law of the sea codes have been used between the city government and trading facilities.[8]

In this regard have been made to create a system for security and maritime trade in the past, the main formation of maritime law has been the desire of states to use the sea in line with their interests. These national interests have given rise to an extensive variety of claims throughout history, from contentions of that specific state to claims of sovereignty over extensive ocean areas that are far from being near to its elevations. Following Columbus' the beginning expedition in 1492, there is a distinguished historical line demonstrating the realization of the above- mentioned goals.[9] With the Bull[10] Inter Caetera of May 14, 1493, Pope Alexander VI granted Spain jurisdiction over all lands found or to be found west of an imaginary line drawn on the Atlantic Ocean from pole to pole at a distance of 100 leagues west of Cape Verde and the Azores, and all lands east of that line to Portugal. At Tordesillas, a year later on June 7, 1494, the two States signed an agreement clarifying the terms of the 1493 donation. This fact is important as the example of the extensive claims of the sea which has no legal ground and led to political issues, particularly between England and the Dutch Republic. However, there

[4] Abulafa, D. The Great Sea : A Human History of the Mediterranean. Oxford University Press, 2011.

[5] Hopper, C. Roman Maritime Law and Its Legacy. Cambridge Journal of Law , 2017.

[6] Besta, E.'' Lex Rhodia de Lactu ve Roma Hukuku.'' Antik Hukuk Araştırmaları, 1934.

[7] Pardo,8.

[8] Deniz hukukunun tarihsel gelişimi, https://efegokduman.av.tr/deniz-hukukunun-tarihsel-gelisimi/, Accessed on November 2024.

[9] Reed, M. National and International Jurisdiction and Boundaries. Ocean and Coastal Law and Policy, 5-7.

[10] The bull refers to the edict of the Pope which was issued to resolve conflicting jurisdictional claims of Portugal and Spain. See 1 Daniel Patrick O'Connell, The International Law of the Sea 2 (Ivan Anthony Shearer ed., 1982) for more information.

were further conflicts in the seventeenth century. On the other hand contributions of the scholars in this century made a great impact on the doctrine of the law of the sea. Dutch jurist Huig de Groot (Hugo Grotius) published a booklet called Mare Liberum[11] and John Selden published Mare Clausum[12] in this century. Hugo Grotius who has been seen as father of the law of the sea composed the principle of the freedom of the seas. The idea he worked on was that the sea must be unrestrained as it cannot be occupied. Thus, the defense that all states can use the seas freely has emerged. This idea formed the basis of modern maritime law and the concept of 'High Seas' has gained international acceptance.[13] Selden argued that countries, like England, might and do occupy the seas. The political claims of the seventeenth century were reflected in their reciprocal arguments, despite the fact that they appear to be theoretical.

Cornelius van Bynkershoeck elaborated on the idea of the freedom of the seas in 1702 when he pointed out that though the seas are not possessed by anyone, they can be occupied in principle.[14] This knowledge shaped the maritime regime for the next two centuries within the concept of 'cannon shot rule'[15]. The concept established a common understanding that a State might occupy and exert ownership over the waters that are three miles within the low water line. At the time, a cannon carried approximately three miles.[16]

In the nineteenth and twentieth centuries, coastal distance was generally considered to be 3 miles, although several states considered the it to be 4, 6, and 12 miles. Despite the principle of coastal area protection, the idea of freedom of the seas was the best practice for states that

[11] Free Sea

[12] Closed Sea

[13]Brief History of the Law of the Sea, Alexei Zinchenko, https://www.oocities.org/enriquearamburu/CON/col4.html, Acessed on November 2024.

[14] C van Bynkershoeck, 'De Dominio Maris Dissertatio' in Opera Minora (2nd edn Apud Joannem van Kerckhem Lugduni Batavorum 1744) ch VIII, 401, reproduced with an English translation in Carnegie Classics of International Law (Oxford University Press New York 1923) 111, 89.

[15] The rule by which a state has territorial sovereignty of that coastal sea within three miles of land. Its name derives from the fact that in the 17th century this limit roughly corresponded to the outer range of coastal artillery weapons and therefore reflected the principle *terrae dominum finitur, ubi finitur armorium vis* (the dominion of the land ends where the range of weapons ends). The rule is now not widely recognized: many nations have established a 6- or 12-mile coastal limit. See also territorial waters.See oxfordreference.com

[16] Selden, J. (1985). Mare Clavsvm, Sev De Dominio Maris Libri Duo. Apud Joannem, & Theodorvm Maire.

wanted to trade freely on the seas. This situation led the late establishment of the International Maritime Organization (IMO).[17]

By the end of the nineteenth century, however, the principle of maritime freedom was limited both in doctrine and eventually in local regulations. This was provided most prominently by the British Hovering Act of 1736 and later the Act of 2 March 1799 of the United States. The main goal of the restrictions was to restrict illegal activity, especially smuggling, outside of the territorial waters. The "Liquor Treaties" were signed by the US, UK, and Norway in order to promote the implementation of criminal charges over international waters. In fact, the reason for these restrictions is the problem of certainty in the boundaries of the maritime areas that constitute the sovereignty areas of the states. With the limitations imposed to solve this certainty problem, the scope of territorial waters was clearly defined as 3 nm[18]. Despite the clear definition, the maximum coverage of the territorial sea still remains a controversial issue.

b) Modern Understanding of the Law of the Sea

Maritime law evolved in two separate stages throughout the 19th century, which have an impact on the current framework even though contemporary rules of the sea are more adaptable and impose less restrictions on legal claims over complete sovereignty. Customary international law was developed in the early 19th century to regulate the high seas and territorial seas. The term "territorial seas" first appeared to describe a small area of the sea next to the coast where coastal governments had sovereignty, though with some limitations, such as the need to acknowledge foreign ships' "right of innocent passage."[19] Ensuring freedom of navigation and preserving coastal governments' functional rights in areas like resource management and security were the key concerns at the time.

These ideas changed throughout time, especially after World War I, when international organizations like the League of Nations[20] started to regulate territorial seas and the more general management of marine resources. The extent of territorial seas became an important

[17] Simmonds, K. R. (1963). The Constitution of the Maritime Safety Committee of IMCO. International & Comparative Law Quarterly, 12(1), 56-87.

[18] Nautical Mile

[19] Klein, N. (2011). Maritime Security and the Law of the Sea. Oxford University Press, USA, 74.

[20] League of Nations, an organization for international cooperation established on January 10, 1920, at the initiative of the victorious Allied powers at the end of World War I., Britannica

topic of discussion during the Hague Codification Conference in 1930. However, because of conflicts of interest, the Conference built little progress, as nations were refusing to agree on essential recommendations related to territorial borders.

President Harry Truman of the United States made two important proclamations in 1945. Known as the Truman Proclamations, they marked a turning point towards the acceptance of the exclusive rights of the coastal State beyond the limit of the territorial sea. This exclusivity was a point that many States and scholars opposed.[21] While the second proclamation addressed the control of fishing in nearby waters, the first established the exclusive rights of coastal governments over natural resources located on the continental shelf's seabed and subsoil. Though initially beneficial to the United States, Truman's policies generated discussions about extending jurisdiction over the sea zones, particularly among Latin American countries.

These declarations thereby established a standard for the equitable concept in the determination of maritime borders. Similar actions were afterward taken by several coastal states, extending their authority over continental shelves and starting disputes that eventually led to the Formation modern maritime law. Combination of these claims caused to the formation of the customary law on Exclusive Economic Zones (EEZs).[22]

After the Second World War, with a focus on the definition and development of international law under Article 13 of the UN Charter, the United Nations proceeded on the League of Nations' goal after World War II. The International Law Commission and the Special Rapporteur appointed by the UN General Assembly worked on matters concerning maritime law. This framework was used to address two major outstanding concerns at the First United

[21] See most importantly G Gidel, Le droit international public de la mer: Le temps de paix (Mellottée Chateauroux 1932)

[22] The Declaration as well did not in any way object to the status of the high seas, specifically regarding the innocent passage. Although it caused certain political tensions, international disputes (most prominently the Peru v. Chile case), and political protests, the aim behind the declarations and proclamations was achieved. The *Maritime Dispute* case of ICJ brought before the International Court of Justice was related to the maritime boundary dispute arising from the Santiago Declaration. For further information see Scovazzi, T. (2016). Maritime Dispute (Peru v. Chile), 2008. In Latin America and the International Court of Justice (pp. 259-271). Routledge.

Nations Conference on the Law of the Sea (UNCLOS I)[23] in 1958: The breadth of the terriorial sea and the extent of fishing limits.[24]

Due to procedural difficulties and the challenge in obtaining an agreement among the 86 participating governments, these concerns continued to be unsettling. A proposal to expand the territorial sea by an additional six miles was not approved at the plenary session of UNCLOS II (1960), which was held in Geneva.[25]

UNCLOS established four conventions and an optional protocol to bring international maritime law united and solve unresolved problems. Among these conventions were: The Convention on the Territorial Sea and the Contiguous Zone (TSC); the Convention on the High Seas (HSC); the Convention on Fishing and Conservation of the Living Resources of the High Seas (CFCLR); the Convention on the Continental Shelf (CSC); and the Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes (OPSD) was designed for resolving the conflicts.To be able to apply the OPSD, parties needed to sign and ratify all relevant conventions. Due to this difficulty OPSD rarely be able to applied the conflicts.

The lack of procedures for effectively managing unresolved disputes was an essential issue with these conventions. For instance, in cases like the Corfu Channel Case between the United Kingdom and Albania[26], Article 15 of the TSC—which addressed marine border disputes—failed to provide clarification. This brought to light the weaknesses of these standards as well as the complexity of maritime dispute resolution. The Third United Nations Conference on the Law of the Sea (UNCLOS III) aimed to fill these gaps by creating an extensive and commonly accepted agreement by 1982. Many unresolved concerns, particularly those regarding archipelagic seas, were ignored or discarded in the earlier conventions, which were seen as insufficient.

To look at peaceful uses of the ocean floor and seabed outside of national borders, the UN formed an ad hoc commission in 1967. In 1973 and 1974, the Committee, which served as the preparatory body for the Third United Nations Conference on the Law of the Sea (UNCLOS

[23] Convened by the United Nations General Assembly (UNGA) Resolution 1105(XI) of 21 February 1957.

[24] Fitzmaurice, G. (1959). Some Results of the Geneva Conference on the Law of the Sea: Part I—The Territorial Sea and Contiguous Zone and Related Topics. International & Comparative Law Quarterly, 8(1), 73.

[25] For more information regarding the procedural rules see Treves, T. (1984). The 1958 Geneva Conventions on the Law of the Sea. United Nations Audiovisual Library of International Law, 5.

[26] Corfu Channel Case (United Kingdom v. Albania), Judgment, 1949, International Court of Justice

III), requested that the Secretary-General host the first two sessions of the Conference.[27] With the Conference's last contribution, the United Nations Convention on the Law of the Sea (UNCLOS), was adopted in 1982 after nine years and eleven sessions.

It may be assumed that the conference had reached an agreement on previously unresolved issues, since there were conflicting views, reaching consensus became the primary goal. However, when a consensus could not be reached, a voting procedure was made with the suggestion of the United States so that the Convention could be accepted. [28] The Convention was adopted with 130 votes in favour, four votes against (Israel, Turkey, USA, and Venezuela), and 17 abstentions (mainly developed States).

2. Sources of the Law of the Sea

The authoritative framework for identifying the formal foundations of international law is provided by the Statute of the International Court of Justice (ICJ). In considering this, Article 38 of this Act is widely accepted as the foundation for understanding the establishment and enforcement of international laws and regulations. According to Article 38 (1) of the Charter of the ICJ, the formal sources of international law are:

"a) international convention, whether general or particular, establishing rules expressly recognised by the contesting States;

(b) international custom, as evidence of a general practice accepted as law;

c) the general principles of law recognised by civilised nations."[29]

[27] Pedrozo, R. P. (2022). Reflecting on UNCLOS Forty Years Later: What Worked, What Failed. International Law Studies, 99(1), 876-877.

[28] Churcill, R. R. (2016). The Oxford Handbook of the Law of the Sea. Edited by Donald R. Rothwell, Alex G. Oude Elferink, Karen N. Scott, and Tim Stephens. Oxford, New York: Oxford University Press, 2015. Pp. lxx,

[29] Charter of the United Nations 1945, s 38 (1).

a) International Conventions

The United Nations Convention on the Law of the Sea (UNCLOS) serves as the main legislative source for the law of the sea because it provides a comprehensive legal framework governing all aspects of ocean use and maritime activities. UNCLOS, which was adopted in 1982, provides new regulations covering topics including territorial seas, exclusive economic zones (EEZs), and the continental shelf while codifying important concepts of customary international law. It ensures equitable access to marine resources and promotes environmental conservation by establishing a balance between the rights and obligations of coastal states and the international community. The almost unanimous acceptance of UNCLOS by 168 governments emphasizes its importance in sustaining peace, stability, and collaboration on marine issues, making it widely accepted as the "constitution of the oceans." Its dispute resolution processes also offer a legally binding and peaceful means to resolve disputes at sea. For the reason of regulating and integrating marine law globally, UNCLOS becomes fundamental.

UNCLOS aims to create a framework that includes an international standards for the use of the oceans. The framework would also have to be widely accepted. In order to equally usage of the oceans. Convention which consists of 320 articles, is divided into 17 sections and supported by nine annexes, has been considered as Achieving its original purpose, although it has unsufficiencies regarding the specific topics and regulations.[30]

The contract contains definitions of the terms used in the document. In particular, Certain terms comprising maritime law may be subject to state sovereignty. These include: territorial waters, contiguous territory, exclusive economic zone (EEZ) and continental shelf, passage through straits that are partially or wholly within territorial waters; delimitation of coastal state maritime zones from islands and issues related to the islands that make up the archipelago; As well as regime for the high seas. Although these issues were regulated by previous conventions, they were not as clear and precise as in the 1982 Convention.

[30] See for instance among many others Tuerk, H. (2021). Some Developments and Issues after the Adoption of UNCLOS. The Korean Journal of International and Comparative Law, 9(1), 35-59.

UNCLOS has defined and clarified maritime areas that have an important place in maritime law. However, it is possible to say that the regulations made by the Geneva Conventions on maritime law issues are not as successful as UNCLOS.

As read with the 1994 Implementation Agreement, Part XI, as was previously mentioned, and Annexes III and IV lay out an extensive system based on the idea of mankind's common heritage that regulates the mining of mineral resources found in the seabed and subsurface outside of national borders. Part XI of the UNCLOS established the International Seabed Authority as well.

Based on the significant influence[31] of the Declaration and Action Plan adopted at the UN Conference on the Human Environment held in Stockholm in 1972 Part XII regulates the area that was ignored throughout the history of the law of the sea: "Protection and Preservation of the Marine Environment". Regulations and requests for state collaboration in maritime science, research, and technology are included in Parts XIII and XIV. Annexes VI to the Convention outline yet another crucial point: in addition to the ICJ, the International Tribunal for the Law of the Sea (ITLOS) has been established as a second court of law.

Currently, as the 'constitution for the oceans'[32], Regarding the law of the sea, the UNCLOS offers a general and clear framework that overrules previously international agreements. As a result of the following agreements and practices, the claims and particular interests of the State parties define and influence how the Convention's provisions are interpreted. In this manner, the Convention evolves through the actions of intergovernmental organizations and State Parties in ways that do not go above the idea of interpretation and thus the *ratio legis*[33]of the provisions.

Article 311 sets out the relation to other conventions and international agreements and establishes in the first paragraph as follows:

"This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958."

[31] Churchill, 28.

[32] Scott, S. V. (2005, January). The LOS Convention as a constitutional regime for the oceans. In Stability and Change in the Law of the Sea: The Role of the LOS Convention (pp. 9-38). Brill Nijhoff.

[33] The purpose behind a legal norm.

It can be said that the Convention has acquired a customary status, however, not all the provisions of the UNCLOS are to be considered as international customary law of the sea. As explained below in detail, the agreements entered into by the state parties and regarding certain provisions, even those between the states that have neither signed nor ratified the UNCLOS; must be in compliance with the Convention.[34]

b) International Custom

International custom can be described as those areas of state practice which arise as a result of a belief by states that they are obliged to act in the manner described.[35] In some cases, no agreement covering the dispute can be found, and in the absence of such resources, these sources are consulted.

International customary law of the sea has been addressed extensively by the states, the International Court of Justice, and other UNCLOS dispute resolution processes as the proceedings before the PCA and ITLOS.[36] The vast majority of these rules are enshrined in UNCLOS itself, as determined by judicial bodies, international organizations, and governments.

In its decisions, the ICJ did not provide a criterion for the legal necessity of international maritime law to be a customary rule of law.[37] The Court clearly asserted the necessity of the state parties to accept the norm as law in its application.

Contrary to this, international customary law similarly uses the two-element approach. The subjective component of uniform state practice, often known as opinio juris[38], and the objective

[34] UNCLOS – Curtis Law Firm, https://www.curtis.com/glossary/public-international-law/unclos, Accessed on 17 December 2023.

[35]The Question of Sources of Law Concerning International Watercourses, Yrd. Doç. Dr. İbrahim KAYA.

[36] Treves, T. (2017). 15 unclos and Non-Party States before the International Court of Justice. In Ocean Law and Policy (pp. 367-378). Brill Nijhoff.

[37] Military and Paramilitary Activities an and against Nicaragua (Nicaragua v. United States of America),

[38] An opinion or belief of the necessity of law.

component. i.e. the extensive belief that the practice is rendered obligatory by the existence of a rule of law requiring it.[39]

Furthermore, contracts established between objects of international law cannot violate or change certain standards of the law of the sea (and international law in general). *Jus cogens*[40] is the body of rules accepted and applied by international subjects with prohibitory character.[41]

UNCLOS provides definitions of terms in the Convention. Similarly, decisions of the courts and relevant arbitral tribunals, clarify the above-mentioned issues. However, in the light of today's developments and there are many issues that are ignored by the relevant authorities. Although the issues are currently developing and progressing every day, they are nonetheless regulated by the UNCLOS. This aspect demonstrates the 'constitutional' character of the Convention since it comprises the general framework of the majority of subjects the law of the sea, also comprising the Geneva Conventions.

c) General Principles

General principles of law are legal norms existing among the majority of nations.[42]. this can be found in Statue of the ICJ, Article 38 (1)(c), Which states as follows: *"general principles of law recognized by civilized nations*." Despite this widespread belief, the law of the sea contains specific principles that require thorough investigation due to its unique structure with terms of state sovereignty and territory. Internal waters, archipelagic waters, territorial seas, contiguous zones, EEZs, continental shelf, high seas, and the Area are some of the categories into which the oceans are separated.[43]

In order to understand the general principles, it is very important to develop an understanding of the basic functions this field of law . The basic functions can be divided into two groups, that are, the spatial distribution of national jurisdiction (i.e. the zonal distribution approach)

[39] Tanaka, Y. (2023). The international law of the sea. Cambridge University Press, 10.

[40] Compelling law, the norms of law that cannot be set aside.

[41] Georg Schwarzenberger, 'International Jus Cogens' (1965) 43 Tex L Rev 455.

[42] Library of Congress, Public International Law: A Beginner's Guide, General Principles

[43] Advocate, S. J. (2021). General Principles of the Law of the Sea. International Law Studies, 97(1), 6.

and ensuring international cooperation between States.[44] The first approach allows states tospecify and assert their rights to the ocean. Issues such as inland waters, territorial waters, adjacent region, the EEZs fall under the function of this area. Its second function consists of a universal and environmental approach that is necessary between states. In particular, the activities of states in the maritime sector are necessary to prevent marine pollution and protect biodiversity while balancing the economic and political demands of states with the effects of their regional distribution. In this regard, the fundamental rights and obligations of the states concerning the law of the sea are inter alia navigation and overflight of the oceans, exploration, exploitation, and conservation of ocean-based living and non-living resources, protection of the marine environment, and marine scientific research.[45]

According to Article 5 of the United Nations Convention on the Law of the Sea (UNCLOS), the baseline for establishing maritime zones are the low-water line along the coastline, shown in official charts. Straight baselines may be used in some circumstances, however, such as river mouths, unstable coastal deltas, firmly indented coastlines,and even bay gaps that are fewer than 24 nautical miles wide.[46]

Although the general principles of international law regulating the law of the sea have a limited value, they have an important place for the field.

3. Basic Principles of the Law of the Sea

a) The Principle of Freedom

This is a international principle for non-territorial waters. It aims to ensure the freedom of various uses of the oceans.[47] All states have equal rights to use this the non-territorial waters,open seas, for navigation, fishing, exploring, researching trading and so on.[48] Also non-

[44] Tanaka, Y. (2023). The international law of the sea. Cambridge University Press, 4.

[45] Advocate, 28.

[46] United Nations Convention on the Law of the Sea arts. 7,9,10 Dec. 10, 1982.

[47]IILSS-International Institute for Law of the Sea Studies, Principle of Freedom in the law of the sea, 9th April 2021.

[48] What You Need to Understand About Freedom of the Seas,https://maintenanceandcure.com/maritime-blog/need-understand-freedom-seas/, 17th January 2018.

territorial water connot be a subject of acts of war, establishment of military facilities ,military weapon testing and any actions toward another country.

The freedom of navigation on the high seas is regulated, *inter alia*, under Article 87 of the UNCLOS along with other fundamental freedoms. In this sense, the contiguous zone is the final maritime area enclosed by the coastal states before reaching the high seas. In order to prevent or punish violations of its economic, immigration, health or customs laws and regulations within its territory or territorial sea, the coastal state may assert a 24 nm contiguous zone measured from the baseline.[49]

b) The Principle of Sovereignty

The basic principle in this regard is the sovereign equality of States which is included in Article 2 of the Convention in General Provisions of Part II (Territorial and Contiguous Zone) as follows:

"1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.

2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil. ..."

All waterways along the coast that are landward of the baseline are considered internal waters. The internal waterways of the coastal states are under their sovereignty. The superjacent airspace is likewise under this sovereignty, and foreign planes or ships are not allowed to enter interior seas without the coastal state's permission. This principle aims to ensure the interest of coastal States. It is the ground of sovereignty rights for coastal states. They have sovereignty over a territorial sea from their 12 nautical miles measured from their baselines.[50]

The right of innocent passage and distress at sea are the two UNCLOS exceptions to the so concept of sovereignty. It is also important to recall that, in compliance with UNCLOS Articles

[49] United Nations Convention on the Law of the Sea art. 33, Dec. 10, 1982.

[50] International Law Studies,General Principles of the Law of the Sea, https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=2942&context=ils, Accessed on November 2024.

27 and 28, merchant and government ships functioning for commercial purposes are subject to certain regulations within the territorial sea that restrict the coastal state's civil and criminal jurisdiction.

Under Article 17 the innocent passage must be continuous and expeditious but may include stopping and anchoring if incidental to ordinary navigation, if rendered necessary by *force majeure*[51] or distress, or to render assistance to persons, ships, or aircraft in danger or distress at sea. Passage is innocent so long as it is not prejudicial to the peace, good order, or security of the coastal State.

According to Article 77 of the UNCLOS, coastal states also have the sovereign right to explore and use their natural resources, including biological beings from sedentary species as well as non-living resources of the seabed and subsoil. The seabed and subsurface of the underwater regions that stretch past the territorial sea during the natural extension of its land area to the outer border of the continental margin are included in the continental shelf. In cases when the outer edge of the continental margin does not extend up to 200 nm from the baselines, the outer limit can also be specified up to that distance.[52]

In order for the Commission on the Limits of the Continental Shelf, an independent technical international body, to examine and recommend coastal states regarding problems related to continental shelf claims that extend beyond 200 nm, the coastal states must submit the claims they have made. Overflight and high seas freedom of navigation are protected in the area by the continental shelf regime. The regime states that the status of the superjacent waters or the airspace above those waters is not impacted by the coastal State's rights over the seabed.[53]

c) The Principle of the Common Heritage of Mankind

This principle aims to achieve the best usage of the common spaces and their resources. It states that some localities belong to all humanity and that their resources are avaible for everyone’s use and benefit. The implementation for law of the sea is: the seabed and ocean floor and its

[51] Force majeure is a clause employed to refer to an unexpected event such as war, crime, or an earthquake that prevents someone from performing the obligation under the law or the agreement.

[52] Ibid art. 76.

[53] United Nations Convention on the Law of the Sea art. 78, Dec. 10, 1982.

resources are considered as a common heritage of mankind. According to this information these areas and their resources can be used by any state with equality and without any permisson.

The legal status of the EEZ is perhaps the most suitable symbol of the principle of the common heritage of mankind. A 200-nm EEZ measured from the baseline may be claimed by coastal states. The coastal state has sovereign rights within this area that allow for the exploration, exploitation, conservation, and management of both living and non-living natural resources. It also has jurisdiction over offshore installations and structures related to resources, marine scientific research (henceforth referred to as MSR), and the preservation and protection of the marine environment. The coastal state is also responsible for producing energy from the water, currents, and winds. The EEZ was established specifically to provide coastal states more authority over the resources that are located 200 nm off their borders, as was thoroughly described above.

The coastal state's sovereign rights over the EEZ are restricted to managing, conserving, and economically exploring and exploiting the biological and non-biological resources of the seabed and its subsurface as well as the waters near to the seabed. Since no one can participate in economic exploration and exploitation activities or declare claims to the EEZ without the express consent of the coastal State, it is clear from the customs of the law of the sea and various articles of the UNCLOS that the sovereign rights in the EEZ are exclusive.[54] The coastal State does not exercise sovereignty over its contiguous zone and the mentioned cases of State control are subject to the principle of *numerus clausus*. In the contiguous zone, military and commercial ships and aircraft form every state have the same freedom of navigation and overflight on the high seas as well as other internationally recognized uses of the seas relevant to those freedoms as those in the EEZ and on the high seas.

Beyond the 200 nm EEZ that is accessible to all States is the high seas, which are the center of the freedom principle. On the high seas, no state is entitled to exclusive sovereignty.

Freedom of the high seas includes the following rights: freedom of fishing, freedom of scientific research, freedom of overflight and navigation, freedom to construct artificial islands and other facilities, freedom to establish pipelines and submarine cables, and other

[54] Krueger, R. B., & Nordquist, M. H. (1978). The evolution of the 200-mile exclusive economic zone: State practice in the Pacific Basin. Va. J. Int'l L., 19, 321.

internationally permitted uses of the sea.[55] On and over the high seas, all vehicles, including ships and military aircraft, are free to move around and execute operation. Task force movement, exercises, submarine operations, integrated acquisition activities like intelligence, surveillance, and reconnaissance, military marine data collection, and ordnance testing and firing are only a few examples of this freedom.

The maritime zone known as the Area is comprised up of the deep seabed and its natural resources that are situated outside of the continental shelf and EEZ. The International Seabed Authority is in charge of managing the Area's resources. UNCLOS protects the freedoms of the high seas, including the freedom of navigation, as well as other freedoms like the freedom of scientific research in the Area. It states that neither Part XI nor any rights granted shall impact the legal status of the air space above the Area or the waters near to it.[56]

Within the framework of the high seas freedom principle, the flag's exclusive jurisdiction principle—which includes both legislative and enforcement authority over its ships—must be taken into account.[57]The flag state jurisdiction means that a ship on the high seas is subject to the exclusive jurisdiction of the state whose flag it flies. This jurisdiction includes both legislative and enforcement powers, guaranteeing that the flag state oversees and enforces international safety, environmental, and crew welfare regulations. Enforcing laws on its ships and ensuring that sure they respect international standards, including those set stated by the United Nations Convention on the Law of the Sea (UNCLOS), were the responsibilities of the flag state. While maintaining law and order in areas outside of national borders, the flag state's exclusive jurisdiction preserves the concept of state sovereignty on the high seas.[58]

II. INTRODUCTION TO THE PERMANENT COURT OF ARBITRATION

1. History

The Permanent Court of Arbitration is an intergovernmental organization established at the First Hague Conference held in 1899 to ensure the peaceful resolution of disputes, especially

[55] Ibid, arts. 87 and 89.

[56] Ibid, art 135.

[57] Tanaka, 152.

[58] United Nations, *United Nations Convention on the Law of the Sea,* 1982.

between states and international organizations. One of the important aims of the Conference is an establishment of an international arbitration practice for solving international disputes by arbitration process and in a peaceful method. PCA was the first intergovermental organization institution dedicated to resolving the disputes through arbitration and other peaceful means. The PCA provides several services beyond arbitration such as : conciliation, mediation, fact-finding and ınquiry, support for ad hoc proceedings, administrative support for tribunal, training and capacity building , research and publication. The PCA offers conciliation services under the Optional Rules for Conciliation of Disputes. Third-party conciliators helping parties to resolve their disputes in peaceful means. [59]Within mediation, the PCA assist parties in mediation, a voluntary and non-binding process where a neutral mediator aids in researching a mutually acceptable agreement. The administrative and procedural aspects of mediation are facilitated by the PCA. [60]When disputes involve disputed facts, the PCA organizes commissions of inquiry or fact-finding missions.[61]Ad hoc arbitration or conciliation processes are administered by the PCA in accordance with a number of regulations, including the UNCITRAL Arbitration Rules. This assistance includes the appointment of arbitrators, secretarial assistance, including legal expertise. [62] The PCA acts as a registry and provides logistical support for international courts and tribunal, including those formed under bilateral or multilateral treaties.[63] The PCA offers training programs and workshops on international arbitration, mediation, and dispute resolution methods to improve practitioners' and

[59] Permanent Court of Arbitration, ‘’Services Offered.’’, https://pca-cpa.org/en/services/arbitration-services/#:~:text=The%20PCA%20can%20also%20provide,general%20secretarial%20and%20linguistic%20support, Accessed on January 2025.

[60]United Nations, UNCITRAL Arbitration Rules, https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration, Acessed on January 2025.

[61] Permanent Court of Arbitration, ‘’Services Offered.’’, https://pca-cpa.org/en/services/arbitration-services/#:~:text=The%20PCA%20can%20also%20provide,general%20secretarial%20and%20linguistic%20support, Accessed on January 2025.

[62] Permanent Court of Arbitration, Optional Rules for Conciliation of Disputes, https://docs.pca-cpa.org/2016/01/Permanent-Court-of-Arbitration-Optional-Conciliation-Rules.pdf, Accessed on January 2025.

[63] Permanent Court of Arbitration, ‘’Services Offered.’’, https://pca-cpa.org/en/services/arbitration-services/#:~:text=The%20PCA%20can%20also%20provide,general%20secretarial%20and%20linguistic%20support, Accessed on January 2025.

stakeholders' skills.[64] The PCA contributes to the development of international law by publishing reports, awards, and research on dispute resolution processes.[65] Additionally, the PCA has been a very important institution for solving the disputes which diplomacy has failed to settle it.[66] The Tribunal's headquarters is in the Peace Palace in the Hague where facilities are provided for arbitration, mediation and conciliation proceedings. Outside the headquarters, the PCA operates offices in regions such as Singapore, Mauritius, Buenos Aires, and Hanoi, facilitating its accessibility in different parts of the world.These offices promote regional arbitration and provide venues for PCA- administered proceedings, often free of charge. The PCA's secretary general is Dr. Hab. Marcin Czepelak.

2. Structure

The PCA aims to solve the disputes by peaceful methods. In order to achieve this goal it has different structure than the other institutions. The main distinguishing feature is that it does not consist of permanent judges. The Arbitral proceedings structure consists of Administrative Council, International Bureau, Members of the Court, Contracting Parties and Secretary-General.Administrative Council Council is responsible for the general functioning and administration of the PCA. This board provides financial supervision of the International Bureau. It provides this control with the Finance Committee. However, there is a Budget Committee and works with the Finance Committee. The Budget Committee is open to all parties. In this way, financial expenditures can be transparently reviewed and evaluated by all members.[67] International Bureau is a secretary of the PCA. It is ruled by the Secretary-General. The bureau provides administrative support to courts and commissions. In particular, it serves as a secure storage of documents and an official communication channel. It also provides

[64] Permanent Court of Arbitration, ''Services Offered.'', https://pca-cpa.org/en/services/arbitration-services/#:~:text=The%20PCA%20can%20also%20provide,general%20secretarial%20and%20linguistic%20support, Accessed on January 2025.

[65] Permanent Court of Arbitration, ''Services Offered.'', https://pca-cpa.org/en/services/arbitration-services/#:~:text=The%20PCA%20can%20also%20provide,general%20secretarial%20and%20linguistic%20support, Accessed on January 2025.

[66] History, Permanent Court of Arbitration, https://pca-cpa.org/en/about/introduction/history/, Acessed on December 2024

[67] Administrative Council, https://pca-cpa.org/en/about/introduction/administrative-council/, accessed November 18 2024

administrative support to PCA inmates located outside the Netherlands.[68]Members of the Court are appointed for a six-year term. There is no permanent membership. The contracting parties may nominate a maximum of four persons to the court whose level of legal competence is determined to be sufficient to resolve the dispute. [69] PCA has 124 contracting parties which are acceded to one or both of the 1899 or 1907 Hague Conventions.[70] Secretary-General is the head of the PCA. Today Dr.Hab.Marcin Czepelak is the secretary-general of the PCA. He was selected on 14th February 2022 for a year term.

3. Jurisdiction

The PCA provides dispute solvency to the states, states entities, international organizations and private parties. The jurisdiction of the PCA is not mandatory. Parties can refuse the dispute to be resolved the tribunal. Accordingly , jurisidiction of the PCA can arise only the when the both parties submit their dispute to the PCA.[71] Fundamentally deriving from Artcicle 288 (1) of the UNCLOS[72], the jurisdiction of the Court is established under Article 1 of the PCA Arbitration Rules (2012). The aforementioned phrase indicates that the PCA's primary function is that of an arbitral tribunal, and as such, the Court's primary jurisdiction is found in either a separate arbitration agreement or the arbitral clause of the parties' agreement. The principle of independence for parties in arbitral proceedings, which is protected by the Court's jurisdiction, is based on these conditions, which are also known as the compromissory clause and *compromis*, respectively. To put it differently, the parties to the dispute have to determine without uncertainty the arbitral tribunal's makeup, the applicable law, the arbitration's refuge, and other issues. The doctrine of party autonomy in arbitration and other legal interactions

[68] International Bureau, https://pca-cpa.org/en/about/introduction/international-bureau/ , accessed November 18 2024

[69] Members of the Court, https://pca-cpa.org/en/about/introduction/members-of-the-court/ , accessed November 18 2024

[70] Contracting Parties, https://pca-cpa.org/en/about/introduction/contracting-parties/ accessed November 18 2024

[71] PCA Arbitration Rules, https://pca-cpa.org/en/services/arbitration-services/pca-arbitration-rules-2012/ , accessed November 18 2024

[72] *A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part."*

reflects the nature of international law, which requires the states' consent on each issue that affects them.

As a result, the arbitrators are usually equally chosen by the parties whereas the president arbitrator is decided on jointly by both sides.[73] The appointing authority is supposed to offer support in situations when there is a dispute about the impartiality or personality of the arbitrators. In interstate arbitrations, the president of the ICJ or the secretary-general of the PCA typically serves as the appointing authority. This fact highlights the PCA's significant role in interstate arbitration once more.

The Court provides mediation and conciliation as well as other forms of alternative conflict resolution. In addition, the PCA has the jurisdiction to conduct Fact-Finding Commissions of Inquiry, and as previously stated, the Secretary-General may serve as an establishing authority or nominate one at the parties' request.[74] The conditions outlined in the regulations are also negotiable with regard to the PCA's subjects. The Hague Conventions do not need the State consenting to the Court's dispute settlement to be a party, and both Conventions actually created the concept of a "Special Board of Arbitration."[75] According to this rule, the 1899 and 1907 Conventions permit the parties to be private parties as well as international individuals, or intergovernmental organizations. In arbitrations conducted in accordance with the rules of the United Nations Commission on International Trade Law (UNCITRAL), private parties may consent to use the PCA's administrative and other resources.

In order to prevent confusing the concept with advisory jurisdiction, like other ICJ jurisdictions, it is also essential to take into account the character of the arbitral ruling. Arbitration is inherently a controversial process because the parties must abide by the rulings. Artbitral awards are binding for parties.

The particular arbitration agreement governs the topic and deadline of each arbitral case before the PCA. Article 21(1) of the UNCITRAL Arbitration Rules is implemented in the event that any arguments against the Arbitral Tribunal's jurisdiction arise due to the PCA Arbitration

[73] Although the number of arbitrators is under the scope of the principle of party autonomy, there are certain accepted numbers based on the types of arbitrations. For instance, while in investor-state arbitrations the number of arbitrators is usually three, interstate arbitral proceedings in most cases involve 5 arbitrators.

[74] Services, https://pca-cpa.org/en/services/ , accessed November 18 2024

[75] 1899 Convention, Art. 26; 1907 Convention, Art. 47.

Rules' flexibility, granting the tribunal the authority to decide on the objections to its jurisdiction. However, as the arbitration agreements are regarded as distinct or separable from the contract itself, the Court's jurisdiction is not halte *ipso facto*[76] in circumstances where the contracts or other comparable instrument are found to be illegal.

1. Applicable Sources of Law

a) Procedural Sources

The arbitration's procedural laws includes clauses regarding to the tribunal's composition and power, the structure of the arbitral award, and additional aspects of the procedure. Strict rules of procedure do not preclude the parties' requests as long as they are treated with equality and provided equal chances to state their case before the tribunal. The procedural law of the particular instance is highly flexible because a number of PCA procedural rules, including the optional regulations, comply with UNCITRAL.[77] They can be selected by the parties. While in interstate disputes the arbitral tribunal has the discretion to fill the *lacunae* [78] after the parties, in private arbitral cases the *lex loci arbitriri*[79] are more prone to be taken into consideration by the arbitral tribunal.[80]

Although there are specific sets of procedural rules as an option, the parties to the dispute have to decide on the procedural law in ad hoc arbitrations.[81] The institutional arbitration operates in a distinct manner. The PCA is a unique example in this respect since it gives the parties the ability to choose the procedure, whereas in other circumstances, the parties agree to the procedural legislation set by the organization serving as the tribunal.

[76] Based on the established facts.

[77] United Nations Commission On International Trade Law Arbitration Rules 1976, Art. 15.

[78] Gaps in legal provisions and regulations. The gaps in the arbitral procedure rules are deliberate. They are left by the drafting body for the parties or arbitrators to fill.

[79] Local (i.e domestic) arbitration law.

[80] Goode, R. (2021). The role of the lex loci arbitri in international commercial arbitration. In Lex Mercatoria, Informa Law from Routledge, 245.

[81] For instance, the Annex 7 of the UNCLOS and the procedural rules provided by the UNCITRAL.

Procedural Sources of the Court can be listed as the are UNCITRAL Arbitration Rules ,PCA Arbitration Rules, PCA Optional Arbitration Rules, PCA Environmental Arbitration Rules, PCA Outer Space Rules ,customized rules by parties and Hague Conventions of 1899 and 1907.[82]

b) Substantive Sources

As compared to the practice ahead of the present understanding of arbitration, tribunals are typically not allowed to use their authority to issue a based on equity decision, or *ex aequo et bono*[83] unless specifically requested by the parties. According to Article 15 of the 1899 Convention and Article 3 of the 1907 Convention the dispute resolution is to be concluded *"on the basis of respect for law."* More specifically, in private disagreements, the applicable trade treaties and contracts must be the substantive law, whereas in interstate disputes, the tribunal must take into account international law as well as the particular needs or regulations of the connected organization. They can be chosen by the parties. The sources are: international law applicable for the dispute, domestic law, the terms between the parties and general principles of international law.Once again, the principle of party autonomy is essential, and the parties typically ask the tribunal to make a decision based on the selected body of international agreements and, if required, soft law. According to several arbitration rules, notably the 2012 Rules of the PCA under Article 35(1), the tribunals have the power to determine the relevant substantive law in the event that the parties are unable to do it.The Article provides as follows: "*The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall: (a) In cases involving only States, decide such disputes in accordance with international law by applying:*

i. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

[82] Resources, Permanent Court of Arbitration, https://pca-cpa.org/en/resources/other-conventions-and-rules/, Acessesed on November 2024.

[83] Also referred to as amiable compositeur, this principle refers to a tribunal's consideration of a dispute according to what is fair and just given the particular circumstances, rather than strictly according to the rule of law. This type of consideration, primarily utilized in international law, typically requires the consent of allparties.

ii. International custom, as evidence of a general practice accepted as law;

iii. The general principles of law recognized by civilized nations;

iv. Judicial and arbitral decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

III. KEY CONCEPTS

1. Maritime Zones

The use of the seas has always been important for human beings. The world's seas have historically played two key roles: firstly, as a means of communication, and secondly, as an immense reservoir of both living and non-living natural resources. Both of these roles have encouraged the development of legal rules. The first modern principle of the law of the sea law emerged in the 17th century and survived until the 19th century. This is the principle of 'the freedom of seas'. This principle had minimal national rights and jurisdiction over the oceans to narrow sea belts surrounding a nation's coastline and the rest of the seas were declared free for all and belonged to none.System of the usage of the sea set by freedom of the seas continued until the 20th century and the middle of it. Technological and scientific development has revealed concerns such as the security of states, the use of natural resources of the sea and the protection of the seas. States' concerns for the security, the aims of the coastal states the extend their national claims over the offshore resources and their desire to benefit from the seas with the highest efficiency have led to the establishment of rules for the use of the seas by states and the formation of today's international maritime law. The basis of today's maritime law is the 1982 United Nations Convention on the Law of the Sea. In addition to comprehensively merging the rules of the law of the sea, the Convention specifically regulates the areas of the sea that mark the boundary of the sovereignty of coastal states over the seas. Thus, the claims of coastal states regarding the right of excessive sovereignty over the seas are limited. Law of the sea is concerned with the public order at sea and much of this law is codified in the UN Convention on the Law of the Sea

The first United Nationn Conference on the law of the sea was held in 1958 in Geneva. In this conference four multilateral conventions covering various aspects of the law of the sea were adopted: 1) Convention on the Territorial Sea and Contiguous Zone; 2) Convention on the High

Seas; 3) Convention on Fishing and Conservation of Living Resources; and 4) Convention on the Continental Shelf. These Conventions are still valid. However, they cannot unite the law of the sea in a comprehensive manner. Due to this lack of codification of the law of the Sea and the developments of the technology, there was a need for another regulation. Thus, in 1982, the United Nations Convention on the Law of the Sea was signed. It establishes guidelines for all uses of the oceans and their resources and establishes an integrated framework of law and order through the world's seas and oceans.[84]

Maritime zones are regions of the ocean where states have rights, jurisdiction, and obligations under international law. Under both the Geneva Convention on Territorial Sea, 1958 and the UN Convention on the Law of the Sea, 1982 there are following seven maritime areas over which the States can exercise their jurisdiction:Baseline, Inland waters, Territorial Sea, Contiguous Zone, Exclusive Economic Zone (EEZ), High Seas and Continental shelf.[85]

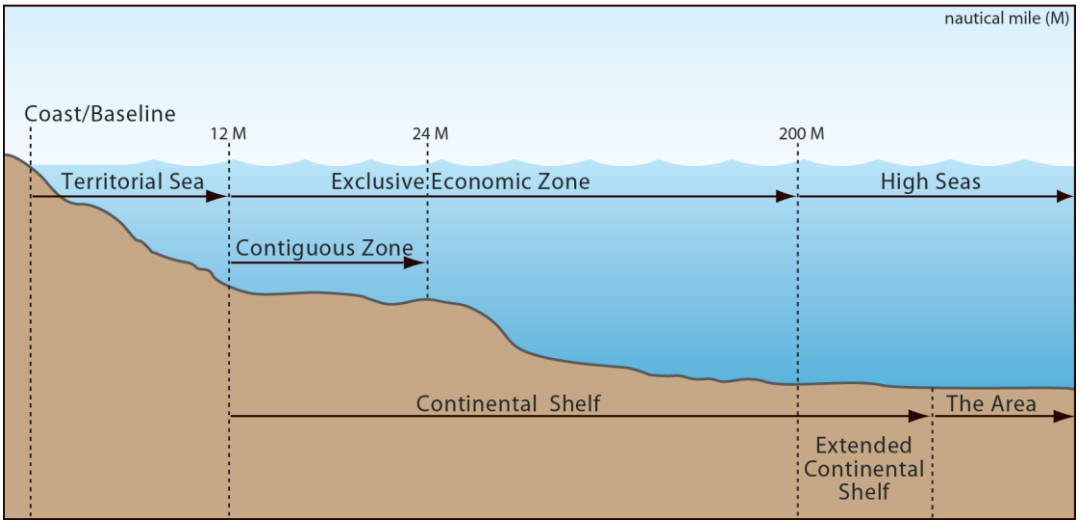

Image I: Maritime Zones under International Law[86]

[84]International Maritime Organization(IMO), Legal Affairs, United Nations Conventions on the Law of the Sea, https://www.imo.org/en/ourwork/legal/pages/unitednationsconventiononthelawofthesea.aspx#:~:text=The%20United%20Nations%20Convention%20on,the%20oceans%20and%20their%20resources., Accesed on December 8, 2024.

[85] Ahmed, A. (2017) International Law of the Sea: An Overlook and Case Study

[86] Ibid.

Baseline is an important concept under the UNCLOS due to its mission of measuring the breadth of maritime zones. It is a reference point for measuring the breadth of various maritime zones.[87] The baseline is the line from which the seaward extent of a coastal state's maritime zones is measured; the default baseline corresponds to the low-water line along the coast, but straight baselines enclosing fringes of coastal islands or deeply indented coastlines are also permissible.[88] Types of the baselines are: Normal Baseline[89], Straight Baseline[90], Closing Baseline and Archipelagic Baseline[91].

Inland waters are the waters identified within a coastal state that extend from the baseline to the landward side area. Article 8(1) and Article 5 of the 1982 UNCLOS provide that the water laid before the baseline is a part of the territorial sea and states have full sovereignty over it. [92]

The territorial sea (also called territorial waters) is a maritime area beyond and adjacent to the internal waters, that shall not extend beyond twelve nautical miles ('nm') from the baselines.[93] In this zone, the coastal State has full sovereignty over airspace, seabed and subsoil.[94] Under the sovereignty rights, coastal states have right to benefit from all the sources of internal waters and the the territorial seas. Although the territorial seas are under the full sovereignty rights of the coastal state, the ships of all countries have the right for innocent passage[95] through these seas.

The contiguous zone is an area of sea contiguous to and extending seaward of the territorial sea, in which the coastal State may exercise the control necessary to prevent and punish infringements of its customs, fiscal, immigration, and sanitary laws within its territory or

[87] National Oceanic and Atmospheric Administration(NOAA), Maritime Zones and Boundries, https://www.noaa.gov/maritime-zones-and-boundaries#:~:text=The%20maritime%20zones%20recognized%20under,high%20seas%2C%20and%20the%20Area., Accesed on December 8, 2024.

[88] Canadian Online Legal Dictionary, Baseline, https://irwinlaw.com/cold/baseline/, Acessed on 8 December, 2024.

[89] United Nations Convention on the Law of the Sea art. 5, Dec. 10, 1982

[90] United Nations Convention on the Law of the Sea art. 7, Dec. 10, 1982

[91] United Nations Convention on the Law of the Sea art. 47, Dec. 10, 1982

[92] Ahmed, A. (2017) International Law of the Sea: An Overlook and Case Study

[93] Territorial Sea, Oxford Public International Law.

[94] United Nations Convention on the Law of the Sea art. 2, Dec. 10, 1982

[95]United Nations Convention on the Law of the Sea art. 19, Dec. 10, 1982

territorial sea.[96] The regulation of the contigous zone have been adopted at the First UN Conference on the Law of the Sea and regulated by UNCLOS Articles 33 and 303.The contigous zone can be up to 24 miles breadth from the baseline. If the coastal state wants to exercise its rights on the sea and seabed over the contigous zone, state must declare contigous zone in order to exercise its rights on the se and seabed . The use of contiguous zones gives the coastal state an additional area of jurisdiction for limited purposes.[97]

The exclusive economic zone (EEZ) is an area beyond and adjacent to the territorial sea within which the coastal State's sovereign rights and jurisdiction are limited to the exploration and exploitation of the natural resources and related activities.[98] If coastal state wants to use rights on the sea, seabed and subsoil over EEZ; it must proclaim it.

The high seas are the sea area that all parts of the mass of saltwater surrounding the globe and not part of the territorial sea or internal waters of a state.[99] In addition to the right of sovereignty over the seas, with the principle of freedom of the high seas, coastal states and non-coastal states have the right to benefit from the high seas. However no state can claim sovereignty over any part of the high seas. Thus, all states have the freedom to navigate the high seas, the freedom to fly, the freedom to lay submarine cables and pipelines, the freedom to build artificial islands and other facilities permitted by international law, the freedom to fish, the freedom to conduct scientific research. The freedom of all states to enjoy the high seas is intended to be kept in the interests of all states and for peaceful purposes.[100]

The technical term of the continental shelf is a the part of a continent that lies under the ocean and slopes down to the ocean floor.[101] The legal definition of the continental shelf lays down at the Article 76 of the UNCLOS :

[96]Oxford Public International Law, Contigous Zone , https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1151, Accesed on December 8,2024.

[97] Dixon, M. (2005). Textbook on International Law. New York, NY: Oxford University Press.

[98]United Nations, Maritime Zones annd Jurisdiction, https://www.un.org/Depts/los/nippon/MaritimeZonesPresentation.pdf, Accesed on December 8,2024.

[99] Britannica, 'High seas'

[100] United Nations Convention on the Law of the Sea art. 88, Dec. 10, 1982

[101] Britannica, Continental-Shelf

”*1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance*.”.[102]

Based on this definition, the continental shelf is the maritime area that resources of the underwater areas beyond the territorial waters but adjacent to the coast, gives coastal states exclusive sovereign rights to explore and exploit the non-living on the seabed and under the ground. Thus, the coastal state can benefit from the piece of land that geographically constitutes its country, although it is not in the water zone.

The determination of maritime areas by legal standards and the drawing of the boundaries of the use of these areas prevent states from claiming excessive sovereignty while benefiting from the seas. For this reason, it is important that maritime areas are subject to legal standards and regulated by international law.

2. Nine-Dash Line

The nine-dash line refers to a demacration used by China to assert its territoril clsimd in the South China Sea . This line, represent as a U-shaped boundary on Chinese maps, encompasses approximately 90% of the sea, including areas also claimed by other nations such as Vietnam, the Philippines, and Malaysia.[103]Nine-dash line also referred to as the eleven-dash line, the U-shaped line and the dotted line) is a debatable Chinese maritime claim in the South China Sea. It is a representation of China’s claims over South China by a statement of their historical rights that gives a visualisation of China’s territorial claims in the South China Sea.[104]

The nine-dash line overlaps with the maritime zones of several countries and encompasses the entirety of the South China Sea. The Pratas Islands, Paracel Islands, Macclesfield Bank, and Spratly Islands are the main island features of the SCS that are enclosed by the line, which has been referred to as a "traditional maritime boundary line." From 1947 until the 1970s, no

[102] United Nations Convention on the Law of the Sea Part VI., Dec. 10, 1982

[103] ‘’What Does the Nine_dash Line Actually Mean?”, The Diplomat, Accessed on December 2024.

[104] Alec Carcuana, Maritime Affairs Program(MAP), Nine-dash line ,(July 25,2023)

nation—not even Southeast Asian nations or their former leaders—opposed or contested the legitimacy of the 9-dash line.[105]

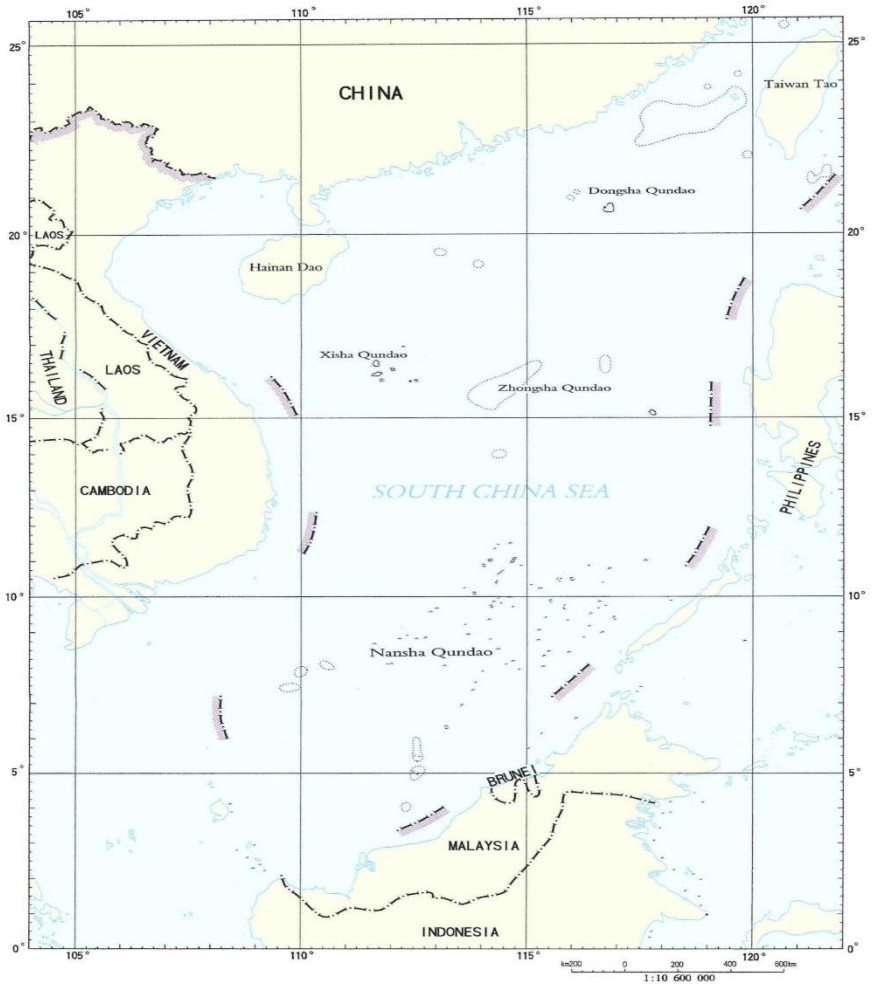

Image II :Map of the South China Sea featuring the 'nine-dash line' attached to a May 7, 2009 note verbale from the People's Republic of China to the Secretary-General of the United Nations in protest of an extended continental shelf declaration by the Socialist Republic of Vietnam.[106][107]

The origin of the nine-dash line goes back to 1947. It was originally an eleven-dash line, drawn by Chinese geographer Yang Huarein to show the geographical scope of Rebuplic of China's

[105] Hong Nong, Interpreting the U- shape Line in the South China Sea, China US Focus (May 15, 2012)

[106] CML/17/2009, Accessed on December 11, 2024

[107] Commission on the Limits of the Continental Shelf

authority over the South China Sea. In 1949, the Republic of China (ROC) government continued to claim Spratly and Paracel Islands. In 1953, two dashes were removed from the eleven-dash line due to the territorial title transfer of the Bach Long Vi Island (Gulf Of Tonkin) from China to Vietnam.[108] In 2009, as an attempt to expand their continental shelf, Malaysia and Vietnam jointly submitted claims to the UN Commission on the Limits of the Continental Shelf. China protested those claims by using the nine-dash line map. The objection of the Permanent Mission of the People's Republic of China gave two Notes Verbales to the UN Secretary-General. These Notes Verbales stated that ''*China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof"* [109].The above position is consistently held by the Chinese government and is widely known by the international community.[110] Since the Statement of China, the nine-dash line earned widespread attention. Other coastal states have made statements and applications questioning China's rights to prevailing the South China Sea. However, it is clear from China's behaviour that it still accepts the line as a boundary and is trying to establish an indisputable dominance in the maritime area by the lines.[111]

Whether the Nine-Dash line has a legal basis is still controversial today. China's allegations Consist of the Notion that its historical rights serve as the nine-dash line's legal basis, but this is debatable as well. Because the drawn line covers almost the entirety of the South China Sea. China therefore demonstrates complete sovereignty over the seabed and over the South China Sea. It also encompasses the areas that are the borders of other coastal nations with maritime sovereignty. All of these variables make the nine-line line's position crucial to the resolution of the South China Sea sovereignty dispute.

[108]Professor of Doshisha University Shigeki Sakamoto, Historic Waters and Rights Revisited: UNCLOS and Beyond ?, https://www.mofa.go.jp/files/000074505.pdf, Accessed on December 12 , 2024

[109] See the Image II

[110] Permanent Mission of the People's Republic of China, Notes Verbales CML/17/2009 and CML/18/2009

[111] Bill Hayton ,The South China Sea: Historical and legal background, Council on Geostrategy China Observatory, Explainer No.2024/27 September 2024. Accessed on 12 December 2024.

3. *Exculusive Economic Zone*

Exculusive Economic Zone(EEZ), defined under Articles 55–75 of the United Nations Convention on the Law of the Sea constitutes a maritime area adjacent to a coastal state's territorial sea, extending up to 200 nautical miles from its baseline.[112] This legal regime was first formalized through UNCLOS as a result of the Third United Nations Conference on the Law of the Sea, primarily to reduce disputes over the utilization of marine resources.[113] The EEZ grants coastal states sovereign rights for the exploration, exploitation, conservation, and management of both living and non-living resources, including the seabed, subsoil, and water column.[114] While the EEZ gives coastal states significant economic privileges, it stops short of conferring full sovereignty, limiting jurisdiction to economic activities and environmental protection.[115] This *sui generis*[116] zone serves as a transition between the high seas and territorial waters, offering a balance between state rights and international freedoms.[117]

The EEZ's importance lies in its role in promoting sustainable resource use while preserving international navigation rights. UNCLOS Articles 56 and 60 establish the coastal state's jurisdiction over economic activities, including constructing artificial islands, managing fisheries, and extracting seabed minerals.[118] Coastal states also have the responsibility to conserve marine biodiversity and prevent marine pollution under Articles 192 and 194.[119] However, these rights are subject to the principle of "due regard" for the freedoms of other states, as specified in Article 58. This ensures that activities such as navigation, overflight, and the laying of submarine cables remain permissible in the EEZ, provided they do not infringe upon the coastal state's rights.[120] For example, UNCLOS Article 79 emphasizes that submarine cables and pipelines are protected within the EEZ, allowing all states to lay them without

[112] Oxford Reference, Exclusive Economic Zone (EEZ)

[113] Britannica, *Exclusive Economic Zone*.

[114] United Nations, Maritime Zones and Jurisdiction (https://www.un.org/Depts/los/nippon/MaritimeZonesPresentation.pdf), accessed on 8 December 2024.

[115] Model Courts of Justice, 2024 Edition, Rights and Duties in the Exclusive Economic Zone.

[116] Of its/their own kind, in class by itself

[117] NOAA Ocean Exploration, What is the EEZ? (https://oceanexplorer.noaa.gov/facts/eez.html), accessed December 2024.

[118] James Scovazzi, Exclusive Economic Zone, (1985) 14 Polish YB Int'l L 43.

[119] R.R. Churchill and A.V. Lowe, The Law of the Sea, (3rd ed., 1999), 160-163.

[120] Ibid., pp. 180-184.

discrimination.[121] However, disputes often arise when coastal states overreach their regulatory authority, leading to international arbitration to determine the boundaries of permissible actions.[122]

The declaration of an EEZ is not automatic; it requires coastal states to define its boundaries and notify the United Nations with appropriate geographical coordinates.[123] Such declarations help mitigate conflicts by clarifying the extent of resource rights. However, overlapping claims in regions with closely located states, such as the South China Sea, continue to pose significant challenges.[124] These disputes often involve issues like the exploitation of hydrocarbon resources, fishing quotas, and the construction of artificial installations, all of which are regulated under UNCLOS to ensure equitable access and conservation.[125] For instance, the regulation of fisheries in the EEZ underscores the principle of sustainable development, requiring states to determine allowable catch levels and provide access to other states in cases where the resource exceeds their harvesting capacity.[126] Such provisions reflect the emphasis of the UNCLOS on balancing economic development with environmental protection.[127]

Coastal states' rights within the EEZ are accompanied by obligations to respect the rights of other states.[128] Article 58 outlines the freedoms retained by other states, emphasizing the importance of maintaining international navigation and communication.[129] These freedoms are critical for global trade and security, particularly for landlocked countries reliant on maritime routes.[130] However, the hybrid nature of the EEZ often creates tensions, as seen in cases of unauthorized fishing, unregulated seabed mining, and environmental degradation caused by foreign vessels.[131] Coastal states may enforce regulations to protect their economic and

[121] United Nations, Marine Biodiversity Beyond National Jurisdiction Frameworks, 2023.

[122] Lenanza, U., & Caracciolo, M. C. (2014). The Exclusive Economic Zone, IMLI Manual on International Maritime Law, 1, 177

[123] Wall, I. R. (2023), The Right to Protest, International Journal of Human Rights, 1–16.

[124] UNHRC, General Comment 37, (CCPR/C/GC/37, 17 Sept 2020), para. 7.

[125] NOAA Ocean Exploration, Marine Conservation in the EEZ, 2024.

[126] James Harrison, Making the Law of the Sea, Cambridge University Press, 2011.

[127] United Nations, Sustainable Development Goals and the Oceans, 2022.

[128] Scovazzi, op. cit., p. 45.

[129] Churchill and Lowe, op. cit., p. 170.

[130] United Nations, Framework for Landlocked States and Maritime Access, 2023.

[131] Model Courts of Justice, 2024 Edition, Disputes in the EEZ.

environmental interests, but such actions must comply with UNCLOS provisions to avoid accusations of overreach.[132]

One of the most debated aspects of the EEZ is its role in addressing new challenges such as deep-sea exploitation and climate change.[133] With advancements in technology, states are increasingly exploring the economic potential of seabed resources, including rare earth minerals essential for renewable energy technologies.[134] However, such activities raise concerns about ecological damage and equitable benefit sharing, particularly for developing and landlocked states.[135] Climate change further complicates the EEZ regime by altering marine ecosystems and threatening low-lying coastal areas.[136] These challenges highlight the need for international cooperation to adapt the EEZ framework to evolving circumstances while maintaining its foundational principles of equity and sustainability.[137]

Despite its limitations, the EEZ represents a significant achievement in the development of international maritime law. By delineating the rights and responsibilities of coastal and non-coastal states, it reduces conflicts over resource use and promotes sustainable management of marine resources.[138] The EEZ also fosters economic development for coastal states, allowing them to harness resources critical for their growth.[139] However, the effectiveness of the EEZ depends on robust enforcement mechanisms and international collaboration to address unresolved issues and emerging threats.[140] Ultimately, the EEZ strikes a delicate balance between the sovereign rights of coastal states and the freedoms of the international community, reflecting the vision of the UNCLOS in terms of promoting peace and cooperation in the world's oceans.[141]

[132] Lenanza and Caracciolo, op. cit., p. 180.

[133] Churchill and Lowe, op. cit., p. 210.

[134] NOAA Ocean Exploration, Deep-Sea Mining in the EEZ, 2023.

[135] Ibid.

[136] United Nations, Climate Change and Maritime Boundaries, 2024.

[137] Scovazzi, op. cit., pp. 60-62.

[138] Model Courts of Justice, 2024 Edition, EEZ and Sustainable Development.

[139] United Nations, Blue Economy Report, 2023.

[140] Churchill and Lowe, op. cit., pp. 220-225.

[141] United Nations, Law of the Sea Frameworks, 2023.

4. Historical Rights

Before making the definition of historical rights it is essential to know what is a 'right'. A right is a power or privilege held by the general public, usually as the result of a constitution, statute, regulation or judicial precedent.[142] They are not obligations which a person is entitled to follow. They are responses to the society where they exist.[143] We can claim that rights have been established as a result of human existence as a response to society. We evaluate the right from a historical perspective as a result of the accumulation of history. Historical examination of the rights establish the Historical Theory. The concept of historical rights has its foundation in this theory.

Human civilizations have long developed traditions and conventions for the benefit of all, which ultimately served as the foundation for written laws and the acknowledgement of individual rights.[144]According to the historical theory of rights, also known as the point of view theory, rights are derived from enduring traditions and conventions that gain legitimacy through consistent implementation over time. It was established by Edmund Burke in the 18th century and maintains that everyone has a right to anything they have used or enjoyed for a considerable amount of time without interruption. These traditions eventually solidify into official rights that represent accepted social standards. However, the theory is attacked for failing to explain contemporary rights that have no basis in past conventions, such as social security, and for not being able to defend unfavourable activities[145]

Historical rights differ from the histocial seas. In some cases cliams of the states can be brought for 'historic waters' or 'historic rights'. Also historical sea definition is important to be able to understand coastal states's historical claims over the seas. Under the international law, there is no primary definition for 'historic waters'. However Article 10 (6) defines 'historic bay':

"The foregoing provisions do not apply so-called 'historic' bays, or in any case where the system of straight baselines provided for in Article 7 is applied."

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[142] Legal Information Institute, Right, https://www.law.cornell.edu/wex/right, Accessed on 13 December 2024.

[143] UNIT 3 RIGHTS, https://egyankosh.ac.in/bitstream/123456789/23670/1/Unit-3.pdf, Accessed on 13 December 2024.

[144]Vidisha Surve, Theories of Rights, Roll No.:126,

[145] UNIT 3 RIGHTS, https://egyankosh.ac.in/bitstream/123456789/23670/1/Unit-3.pdf, Accessed on 13 December 2024.

Within this regulation, UNCLOS has acknowledged only the existence of such concept under the public international law. Professor O'Connell states that there is three catagories of seaward areas which have been claimed as historic waters:

'' (*1) bays which are greater than standard bays provided for an Article 10 of the UNCLOS, (2) areas of waters linked to a coast by offshore feature which are not enclosed under the aşıstandard rules; (3) areas of seas which would, but for the claim, be high seas because not covered by any rules specially concerned with bay sor delimitation of coastal water."*[146]

Also in the 1982 Continental Shelf (Tunisia v. Libya) case[147], International Court of Justice ruled that:

"It seems clear that the matter continues to be governed by general international law which does not provide for a single 'regime' for 'historic waters' or 'historic bays'. It is cleary the case that, basically, the Notion of historic rights or waters and that of the continental shelf are governed by distinct legal regimes in customary international law. The first regime is based on acquisition and occupation, while the second is based on the existence of rights'ipso facto and ab initio'."[148]

Within statement made by Professor O'Connel and the judgment which is made by ICJ there is no legal regulations for historic waters and historical rights.

In conclusion, in international law, historical waters and historical rights are two different concepts the fact differ mainly in their legal recognition and extent. Historical waters, which sometimes include bays or gulfs like Canada's Hudson Bay, are marine areas over which a state proclaims sovereign rights based on long-standing use and consent by other governments. These claims are typically regarded as state-controlled territorial seas or internal waters and are founded on customary international law.[149] Historical rights, on the other hand, are based on customary traditions and include particular rights, like fishing or navigation, in regions beyond

[146] United Nations, United Nations Convention on the Law of the Sea, 1982, Article 10.

[147] Continental Shelf, (Tunisia v. Libyan Arab Jamahiriya), 1982

[148] ICJ Reports, 1982, p.74, para.100 and Historic Waters and Rights Revisited: UNCLOS and Beyond, Miniistry of Foreign Affairs of Japan, https://www.mofa.go.jp/files/000074505.pdf , Accessed on 24 December 2024.

[149] United Nations Convention on the Law of the Sea,1982, Articles 10(6) and 15.

of a state's territorial seas. Historical rights, in comparison with historical waters, offers specific usage within maritime zones but are not equivalent to sovereignty.[150] Historical rights are limited to accordance with the Convention, even though UNCLOS acknowledges historical waters under certain conditions (such as Article 10(6) on historic bays). As a result, historical waters constitute sovereignty, while historical rights prioritize on usage, both of them are determined by UNCLOS regulations and customary law.[151]

5. Island

Article 121(1) of United Nations Convention on the Law of the (UNCLOS)

Regulates the regime of the islands as follows:

(1) An island is a naturally formed area of land, surrounded by water, which is above water at hight tide (2) Except as provided for in paragraph 3, the territorial sea, the contigous zone, the exculusive economic zone and the continental shelf of an island are determined in accordance with provisions of the Convention applicable to the other land territory. (3) Rocks which cannot sustain human habitation or economic life of their own shall have no excuusive economic zone or continenal shelf.'

Within these regulation islands can constitute territorial sea, exculusive economic zone (EEZ), continental shelf, contigous zone and continental shelf. Islands can extending a state's jurisdiction and making accesses to the valuable resources like oil, fishering and gas reserves. However Article 121(3) restricts those constitution to'rocks which cannot sustain human habitation or economic life of their own'. With this article, it is aimed to prevent states from establishing excessive dominance over the seas by giving island status to the rocks. This restriction has crutial place for many disputes between states which are seeking to expend their sovereignity rights over the seas and their territorial seas. Also islands can be used as military bases and resource searching area.

[150] Churchill, R.R., and Lowe, A.V, The Law of the Sea, 3rd Edition, Manchester University Press, 1999,pp. 39-41.

[151] South China Sea Arbitration(Philippines v. China), Parmanent Court of Arbitration, Award of 12 July 2016.

Understanding the ısland structures and idenification of the ıslands has a very important place in the International Law of the Sea as it determines the maritime zones, boundaries and resource use rights of the islands. In particular, the sovereignty dispute that arises due to the desire of the littoral states to benefit from the seas in the most efficient way and to create a large area of dominance over the seas shows the necessity of interpreting the legal position of the islands on the spot. In this regard, determining the legal status of the structures on the sea, which do not have the status of an island despite having island characteristics, will provide the solution of multiple sovereignty disputes.

IV. CASE BEFORE THE COURT: THE SOUTH CHINA SEA ARBITRATION (PHILIPPINES VS. THE REPUBLIC OF CHINA)

1. Overview

a) South China Sea History

The South China Sea is located in the western Pacific Ocean. This marginal sea[152] is bound to the north by China, to the east by Taiwan and the Philippines, to the south by Borneo, and to the west by the Malay Peninsula and Vietnam. Approximately 3.7 million square kilometres comprise the total surface area. Being one of the world's largest waters, the South China Sea serves as an essential maritime route that connects the Pacific and Indian oceans. Within the western connection to the Indian Ocean is the long Strait of Malacca and also there is Taiwan Strait on the north, while the Luzon Strait lies between Taiwan and Phillipines. There are many disputed islands and archipelagos in the South China Sea. That includes Scarborough Schoal, Paracel, Paratas, and Spartly Islands. Also the South China Sea has rich marine life. It possesses rich biodiversity, oil,gas resources and fishery resources, which are making the area a highyly valuable economic zone for coastal states. Moreover it has basins which are very deep and continental shelves. For these reasons, the South China Sea is the subject of disputes due to both its resources and strategic location.[153]

[152] A semi-enclosed body of water adjacent to, and widely open to, the ocean (e.g. the Gulf of Mexico, Caribbean Sea, and Gulf of California)., Oxford Reference, Accessed on 23 December 2024

[153] South China Sea, Eugene C. LaFond, Britannica , https://www.britannica.com/place/South-China-Sea, Acessed on 23 December 2024.

The South China Sea has a long and contentious history tied to its strategic importance and abundant resources. Historically, it has been a vital trading and maritime center, with territorial disputes intensifying over time. In 1947, China began asserting its claims with the introduction of the "nine-dash line" and the occupation of properties on the Paracel and Spratly Islands.[154] Post-World War II tensions escalated, with Vietnam, the Philippines, Malaysia, and Brunei also laying claim to various parts of the sea, citing geographical proximity and historical use.[155] The discovery of significant oil and gas reserves in the 1970s further fueled these disputes.[156] The Parcel and Spartly Islands, strategically located and and have rich resources. Moreover these islands provides not only Access to vast energy reserves also crucial control over international shipping lanes and fishing grounds, vital to economies of claimant states.Military conflicts such as the Battle of the Paracel Islands in 1974 and the Johnson Reef Clash in 1988 marked key moments in conflicts in the region, especially with China and Vietnam.[157] While diplomatic efforts such as the 2002 ASEAN-China Declaration on the Conduct of the Parties have sought to ease tensions,

China and South Vietnam interfered over control of the Paracel Islands during the Battle of the Paracel Islands in 1974. Chinese forces successfully took the islands after a battle on the sea, establishing de facto sovereignty. As it established China's military presence in the South China Sea and demonstrated that it had the intent to use force to uphold its claims, the battle represented an enormous change in regional geopolitics. The defeat emphasized for Vietnam the significance of territorial concerns in the area.[158] A dispute between China and Vietnam arose in 1988 over the Johnson Reef in the Spartly Islands. Following an attack by Chinese naval forces, Vietnamese sailors lost their lives in the conflict. The event highlighted China's increasing naval competency and resolve to strengthen its dominance over the Spartly Islands. The conflict demonstrated Vietnam's continued vulnerability of its claims against a more

[154]China's Maritime Disputes, Council On Foreign Relations, https://www.cfr.org/timeline/chinas-maritime-disputes , Accessed on 23 December 2024

[155] Understanding the South China Sea Dispute, https://www.chinausfocus.com/south-china-sea/ , Accessed on 23 December 2024.

[156]The South China Sea Dispute:A Brief History, Sean Mirski, https://www.lawfaremedia.org/article/south-china-sea-dispute-brief-history , Accessed on 23 December 2024.

[157] Understanding the South China Sea Dispute, https://www.chinausfocus.com/south-china-sea/ , Accessed on 23 December 2024.

[158] Zou, Keyuan, ''The Chinese Traditional Maritime Boundary Line in the South China Sea and Its Legal Consequences,'', The International Journal of Marine and Coastal Law, Vol.14, No. 1 (1999), p. 30.

assertive China.[159] These disputes highlight the wider struggle for dominance in the South China Sea. The region is a potential point of tension for regional and international tensions as well as to serving as strategically significant for trade. Since claimant authority, particularly China, have constructed artificial islands with military facilities, these disputes have ended up in an increase in militarization.[160] Efforts to manage these tensions have included diplomatic initiatives such as the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea, which aimed to establish peaceful dispute resolution mechanisms. However, the declaration remains non-binding and has done little to prevent further militarization or conflicts.[161]

China's construction of artificial islands and its implementation of controversial maritime claims in recent years have come under harsh international criticism, positioning the South China Sea as a focal point of global geopolitical competition.

b) Maritime Features and Their Legal Status

A maritime feature is a part of the earth's surface comprising in the ocean that not that is not covered by water. Under the UNCLOS there are three kinds of maritime features: islands, rocks, low-tide elevations (LTEs).[162] Their legal status and maritime entiltments are established by UNCLOS. Islands definition made by the Article 121(1) of UNCLOS, '*'islands are 'naturally formed areas of land, surrounded by water, which are above water at hight tide*." Islands can determine all kind of maritime zones. However under the Article 121(3) of UNCLOS, if an island cannot sustain human habitation or economic life their own they can only determine a territorial sea.Accordingly to the Article 121(3) of UNCLOS rocks are: '*'Maritime feautures which are 'connot sustain human habitation or economic life of their own shall have no exculusive economic zone or continental shelf'.* Also Article 13 of UNCLOS reguates the Low-Tide Elevations(LTEs). Low-Tide Elevations are:" *is a naturally formed area*

[159] Valencia, Mark J., China and the South China Sea Disputes, *Adelphi Papers,* Vol. 298 (1995), pp. 10-15.

[160] Zou, The Chinese Traditional Maritime Boundary Line in the South China Sea, pp. 33-35.

[161] Valencia, China and the South China Sea Disputes, p. 14.

[162] Freedom of Navigation in the South China Sea: A Practical Guide, Belfer Center for Scienc and International Affairs, Harvard Kennedy School, https://www.belfercenter.org/publication/freedom-navigation-south-china-sea-practical-guide#:~:text=A%20maritime%20feature%20is%20a,low%2Dtide%20elevations, Accessed on 23 December 2024

of land which is surrounded by and above water at low tide but submerged at hight tide. Where a low tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from mainland or an island, the low-water line on that elevation may be used as the baseline for measuring breadth of the territorial sea." They can determine their own maritime zones if they are within the territorial sea of a mainland or island.

The states' maritime jurisdictions are established by these maritime features. Despite the establishment of these areas, disputes between states arise due to their claim greater authority within the area and neglect the boundaries. These disputes mainly revolve around economical goals.

2. Facts of the Case

1. The South China Sea is a strategically important and resource-rich region bordered by several states, including the Philippines, China, Vietnam, Malaysia, Brunei, and Indonesia. The area contains significant maritime features, such as the Spartly Islands, Scarborough Schoal, and other reefs and rocks.[163]

2. China has claimed much of the South China Sea according to its claim of historical rights. This historical right is called the 'nine-dash line'. This line encompassed almost entirety of the South China Sea and overlaps within the exclusive economic zones (EEZs) of neighboring states, including the Philippines.[164]

3. Nine-dash line overlaps with the maritime zones of several countries. This line has been drawn by China against the Japanese occupation in 1947. Nine-dash line has fallen under domination between the end of the civil war and the formation of The Republic of China in 1949. In 2009 China has submitted to the United Nations a map with the nine-dash line which covers almost the all of the South China Sea and claiming it. The nine-dash line does not have any official legal base.[165] However, it is currently recognized by only certain institutions.

[163] Parmenent Court of Arbitration(PCA) , The South China Sea Arbitration (Philippines v. China), Award of 12 July 2016, para. 22-23.

[164] Ministry of Foreign Affairs of China, *Position Paper of the Government of the People's Republic of China on Matter of Jurisdiction in the South China Sea Arbitration,* December 7, 2014, para. 12.

[165] https://time.com/4412191/nine-dash-line-9-south-china-sea/

4. Several features in the South China Sea were at the center of the dispute between the Philippines and China , including Scarborough Shoal, Mischief Reef, and Second Thomas Schoal. These feaures were contested in terms of their classification (island, rock, or low-tide elevation) and the maritime zones they could fall under UNCLOS.[166]

5. Philippines is questioning China's sovereignty claim within the nine-dash line under the United Nations Convention on the Law of the Sea (UNCLOS)[167]. Both states are parties of the Convention.

6. The Philippines questions these features of legal statutes by the provisions of the UNCLOS. Under the UNCLOS all islands, except reefs and unsuitable for human habitation or having no economic life of their own, have the right to territorial waters and the right to establish a continental shelf and exclusive economic zone. This questioning is important because if these features are legally islands this grants the opportunities to the states such as searching and using the maritime sources.

7. The South China Sea has rich fishing grounds, biodiverse coral reef ecosystem and substantial oil and gas resources. The southern portion of the South China Sea is location for the Spratly islands which are the base of the territorial dispute of the China and Phillipines.[168]

8. China had been engaged in activities such as building artificial islands on disputed features which are subject of the China's military facilites on these structures, interference in the Philippines' Fishing activities and preventing their fishermen access to traditional fishing grounds, conducting oil exploration and patrols within areas claimed by the Philippines.[169]

9. China's interference in the Philippines' Fishing activities and blockage of the Philippine oil exploration in the Philippines' exclusive economic zone and continental shelf, is in violation of its sovereign right under UNCLOS. Specific indicents included Chinese construction of Philippine fishing vesssels.[170]

[166] PCA, The South China Sea Arbitration, para. 140-148.

[167] United Nations Convention on the Law of the Sea (UNCLOS)

[168] PCA, *The South China Sea Arbitration*

[169] PCA, *The South China Sea Arbitration*, para. 963.

[170] PCA, The South China Sea Arbitration, para.

10. This case is brought by the Philippines before the registry of the Permanent Court of Arbitration as a result of the events that took place. Philippine's application to the court does not aim at the sovereignty dispute on the island structures and limitation of authority over insular structures.

11. The Philippines initiated arbitration in January 2013 under Annex VII of UNCLOS. China rejected the proceedings, asserting that the tribunal lacked jurisdiction and that bilateral negotiations were appropriate means of resolving disputes. Despite China's refusal to participate, the tibunal continued the case, appointing legal experts to represent China's position.[171]

3. Claims of the Parties

a) Claims of the Philippines

1. China's ''Nine-Dash Line'' claim was inconsistent wit UNCLOS, which does not recognize historic rights as a basis for maritime entitlements beyond those established by the convention. The China's claims exceeded the maritime zones under UNCLOS.

2. Historic rights over the South China Sea within the nine-dash line had no legal basis under UNCLOS and for a maritime entitlements beyond those established by the Convention. The Philippines contended that China's claims exceeded the maritime zones allowed under UNCLOS. [172]

3. The island structures are not legally islands as determined under Article 121 UNCLOS. They are rocks and they cannot sustain human habitation and economic life on their own. According to Article 121, they cannot have an exclusive economic zone or continental shelf. The Philippines requests the Tribunal to classify specific features in the South China Sea (Mischeef Reef, Scarborough Schoal, and others) as low-tide elevations, rocks, or islands under

[171] PCA, *The South China Sea Arbitration,* Summary of Award, pp. 3-6.

[172] United Nations Convention on the Law of the Sea (UNCLOS), 1982.

UNCLOS. This classification would determine the features' entitlement to maritime zones such as territorial seas or exclusive economic zones.[173]

4. China has been restricting the Philippines fishing activities in areas like Scarborough Shoal and exploring for oil and hydrocarbons areas like Reed Bank. China's interference in the Philippines' economic zone is not lawful and it is violating the Philippines' rights under international law which is defined under Article 56 UNCLOS. China's actions such, patrols and confrontations, violated UNCLOS provisions requiring peaceful dispute resolution.[174]

5. China causing severe environmental damage coral reefs in the South China through its construction of artificial islands and land reclamation on maritime features violated international law and China's activities violated the obligations under Article 192, 194 UNCLOS to protect and preserve the marine environment.[175]

b) Claims of the Republic of China

1. China has full sovereignty rights over the maritime features in the South China Sea, including islands, rocks, reefs, and low-tide elevations. That sovereignity disputes over these features are beyond the jurisdiction of the tribunal under the United Nations Convention on the Law of the Sea (UNCLOS).[176]

2. Historic rights to resources and navigation in the South China Sea, based on China's history and maps highligthed with nine-dash line .These rights, predate UNCLOS and coexist with its provisions.[177]

3. The issues raised by the Philippines were not within the tribunal's jurisdiction under UNCLOS. China maintained that the disputes involved questions of teritorial sovereignity and

[173] Permanent Court of Arbitration(PCA), The South China Sea Arbitration (Philippines v. China), Award of 12 July 2016 , para. 161.

[174] Dupuy, F. and Dupuy, P.M., ''A Legal Analysis of the Claims in the South China Sea Arbitration, '' American Journal International Law, Vol.110(2016), pp. 658-682.

[175] PCA The South China Sea Arbitration, para. 205-2012.

[176] Ministry of Foreign Affairs of the People's Republic of China, Position Paper of Government of the People's Republic of China on the Matter of Jurisidiction in the South China Sea Arbitration, December 7, 2014.

[177] Ibid., para. 17-22.

maritime delimitation, both of which fall outside the scope of arbitral proceedings provided for under UNCLOS .[178]

4. Bilateral agreements and the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC), signed between China and ASEAN members, required parties to resolve disputes through negotation. By initiating arbitration unilaterally, the Philippines, according to China, violated these agreements.[179]

5. China's activities, including land reclamation and construction on features it claims sovereignty over, were lawfull and consistent with international norms, China maintained that these activities did not harm the marine environmentt or infringe on the rights of other states.[180]

4. Established Agenda of the Tribunal

1. What is the legal status of the maritime features in the South China Sea ?
2. What is the legal basis for each claimant's territorial and maritime entitlements under the United Nations Convention on the Law of the Sea (UNCLOS) ?
3. Can we specify the maritime features in the area as islands?
4. Is the nine-line line, which is based on China's historical rights, valid and does it have a basis in international law?
5. Is it possible for China to limit the activities of the Filipinos, such as fishing?
6. Can China build military bases in the region?

[178] Parmenent Court of Arbitration (PCA), The South China Sea Arbitration (Philippines v. China), Jurisidiction Award, para. 144-148.

[179] Declaration on the Conduct of Parties in the South China Sea, 2002, Articles 4-5.

[180] Ministry of Foreign Affairs of China, White Paper on the South China Sea Disputes, July 2016.

V. APPLICABLE LAW

a. United Nations Convention on the Law of the Sea

Article 2-Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil

1. *The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.*

2. *This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.*

3. *The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.*

Article 5- Normal baseline

Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

Article 7- Straight baselines

1. *In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.*

2. *Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.*

3. *The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.*

4. *Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of baselines to and from such elevations has received general international recognition.*

5. *Where the method of straight baselines is applicable under paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage.*

6. *The system of straight baselines may not be applied by a State in such a manner as to cut off the territorial sea of another State from the high seas or an exclusive economic zone.*

Article 8- Internal waters

1. *Except as provided in Part IV, waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.*

2. *Where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.*

Article 9- Mouths of rivers

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-water line of its banks.

Article 10- Bays

1. *This article relates only to bays the coasts of which belong to a single State.*

2. *For the purposes of this Convention, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.*

3. *For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water mark of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be*

drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

4. *If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 nautical miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.*

5. *Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 nautical miles, a straight baseline of 24 nautical miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.*

6. *The foregoing provisions do not apply to so-called "historic" bays, or in any case where the system of straight baselines provided for in article 7 is applied.*

Article 13- Low-tide elevations

1. *A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.*

2. *Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.*

Article 15- Delimitation of the territorial sea between States with opposite or adjacent coasts

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

Article 17- Right of innocent passage

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

Article 19- Meaning of innocent passage

1. *Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.*

2. *Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:*

(a) *any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;*

(b) *any exercise or practice with weapons of any kind;*

(c) *any act aimed at collecting information to the prejudice of the defence or security of the coastal State;*

(d) *any act of propaganda aimed at affecting the defence or security of the coastal State;*

(e) *the launching, landing or taking on board of any aircraft;*

(f) *the launching, landing or taking on board of any military device;*

(g) *the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;*

(h) *any act of wilful and serious pollution contrary to this Convention;*

(i) *any fishing activities;*

(j) *the carrying out of research or survey activities;*

(k) *any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;*

(l) *any other activity not having a direct bearing on passage.*

Article 33- Contiguous zone

1. *In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:*

   (a) *prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;*

   (b) *punish infringement of the above laws and regulations committed within its territory or territorial sea.*

2. *The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.*

Article 47- Archipelagic baselines

1. *An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.*

2. *The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.*

3. *The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.*

4. *Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.*

5. *The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.*

6. *If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected.*

7. For the purpose of computing the ratio of water to land under paragraph l, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.

8. The baselines drawn in accordance with this article shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted.

9. The archipelagic State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

Article 56- Rights, jurisdiction and duties of the coastal State in the exclusive economic zone

1. In the exclusive economic zone, the coastal State has:

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) *the establishment and use of artificial islands, installations and structures;*

(ii) *marine scientific research;*

(iii) *the protection and preservation of the marine environment;*

(c) *other rights and duties provided for in this Convention.*

2. *In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.*

3. *The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.*

Article 58- Rights and duties of other States in the exclusive economic zone

1. *In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships,*

aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

2. *Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.*

3. *In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.*

Article 60- Artificial islands, installations and structures in the exclusive economic zone

1. *In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:*

   (a) *artificial islands;*

   (b) *installations and structures for the purposes provided for in article 56 and other economic purposes;*

   (c) *installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.*

2. *The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.*

3. *Due notice must be given of the construction of such artificial islands, installations or structures, and permanent means for giving warning of their presence must be maintained. Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organization. Such removal shall also have due regard to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed.*

4. *The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures.*

5. *The breadth of the safety zones shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres around them, measured from each point of their outer edge, except as authorized by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given of the extent of safety zones.*

6. *All ships must respect these safety zones and shall comply with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations, structures and safety zones.*

7. *Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation.*

8. *Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.*

Article 76- Definition of the continental shelf

1. *The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.*

2. *The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.*

3. *The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf,*

the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

4.

(a) *For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:*

(i) *a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or*

(ii) *a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.*

(b) *In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.*

5. *The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth*

of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. *Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.*

7. *The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.*

8. *Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.*

9. *The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.*

10. *The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.*

Article 77- Rights of the coastal State over the continental shelf

1. *The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.*

2. *The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.*

3. *The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.*

4. *The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.*

Article 78- Legal status of the superjacent waters and air space and the rights and freedoms of other States

1. *The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters.*

2. *The exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention.*

Article 80- Artificial islands, installations and structures on the continental shelf

Article 60 applies mutatis mutandis to artificial islands, installations and structures on the continental shelf.

Article 87- Freedom of the high seas

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:

(a) freedom of navigation;

(b) freedom of overflight;

(c) freedom to lay submarine cables and pipelines, subject to Part VI;

(d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;

(e) freedom of fishing, subject to the conditions laid down in section 2;

(f) freedom of scientific research, subject to Parts VI and XIII.

2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

Article 121-Regime of islands

1. *An island is a naturally formed area of land, surrounded by water, which is above water at high tide.*

2. *Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.*

3. *Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.*

Article 192- General obligation

States have the obligation to protect and preserve the marine environment.

Article 194- Measures to prevent, reduce and control pollution of the marine environment

1. *States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.*

2. *States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.*

3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, inter alia, those designed to minimize to the fullest possible extent:

(a) the release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping;

(b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;

(c) pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices;

(d) pollution from other installations and devices operating in the marine environment, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.

4. *In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Convention.*

5. *The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.*

VI. CONCLUSION

The dispute of the South China Sea between the Philippines and the China has a significant place for the South China Sea. The conflict not only concerns parties of the South China Sea Arbitration. It also in regard of the coastal states of the South China Sea such as Vietnam, Malaysia and Indonesia. Since states are seeking to broaden their sovereignty claims over the sea, the region has been highly contentious throughout history. In addition to exposing discrepancies in the behavior of states under the law of the sea, environmental rules, and more general principles of international law, this conflict has raised a number of difficult legal and political concerns that keep triggering discussion in the field of international law. Two major conflicts arise from the extensive historical background, which includes claims to sovereignty, marine entitlements, and the impact of environment. First, there is the fundamental dispute over the United Nations Convention on the Law of the Sea (UNCLOS) regulations and the goals of state sovereignty. The second point of dispute is maintaining the international community's commitment to environmental sustainability and freedom of navigation while maintaining the rights and responsibilities of coastal states.

The superficial difficulties, such as whether particular features are islands, rocks, or low-tide elevations, only reference to deeper underlying problems, as is the case with many controversies regarding the law of the sea. These extend not just to legal issues but also to the broader objectives of preserving peaceful dispute resolution processes, protecting maritime environments, and maintaining maritime freedoms. Therefore, it was the responsibility of the Arbitral Tribunal, operating under the Permanent Court of Arbitration, to proceed beyond these immediate issues of conflict. While taking into account environmental effects and the obligations States have to one another in intricate, shared maritime domains, the Tribunal aimed to clarify the legal standing of maritime features and the regulations governing entitlements in challenged seas by granting its Award.

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