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To what extent do you believe that international law establishes stable maritime boundaries?

Introduction

The ocean is the birthplace of all life on our planet, and it covers well over 70% of the entire surface of the planet. In that vein, the ocean has been one of the most important commodities for all nations. In particular when it comes to food, and trader in general the ocean is a significant place in world economics even in contemporary times. There are studies that even propose the idea that an acre of the sea is worth far more than the same area on the land. The existence of oil, gals on the seabed has contributed to that factor highly over the past 50 years. In that manner, the creation of maritime boundaries becomes an imperative issue. Stipulations highlighted within International law establishes are noted to be the governing force leading to much the division being taking place when it comes to maritime boundaries. In particular, the "UN Law of the Sea Convention" (UNCLOS) is seen to have an excess of authority over the matters of the sea (Siswandi, 2017). The given document will evaluate the limitations/boundaries to which the concerned international law is responsible for the establishment of maritime borders.

The United Nations Convention on the Law of the Sea

On the 10th of December 1982, the UN opened the Convention on the Law of the Sea for signatures in Montego Bay (Siswandi, 2017). The convention was the accumulation of more than a decade of work and the participation of over 150 nations representing their region of the world. Thus, people from all over the world from different political systems, legal frameworks, and socio-economic backgrounds came together and were in harmony on the given issue (Siswandi, 2017). The UNCLOS offers an all-inclusive framework that is aimed to enact law and

order within the ocean and seas around the globe, thus creating rules that apply to individuals and entities that look to use these bodies of water for their resources.

The convention proposed that all issues related to ocean space are interlinked with one another, as such, they are required to be viewed as part of a larger issue (Siswandi, 2017). The convention proposed various new legal legislatures that were to oversee the use of the world's oceans while being the embodiment of traditional rules regarding the use of the oceans. In that manner, the convention was able to address new concerns while dialling down on old legal concepts that were seen as beneficial (Siswandi, 2017). The guidelines further divided complex issues in order to push development in specific areas regarding international law of the sea. The document in question became active under ***"Article 308"*** in 1994.

The UNCLOS and Maritime Zones

In accordance with the UNCLOS, it is noted that all coastal nations rights over their maritime zones in the water columns that surround their land along with the seabed that extends from their coastlines. As noted under ***"Articles 15, 74, and 83"*** of the Convention there are limitations placed on the maximum width that each maritime zone a state can have (Østhagen, 2020). Furthermore, the same articles are seen to dictate the bounders of the maritime zone if the rights of adjacent or opposite coastal nations are noted to overlap. Furthermore, the aforementioned provisions are only applicable if an agreement is reached on the basis of international law between the neighbouring nations as highlighted in ***"Article 38"*** of the ***"Statute of the International Court of Justice"*** (Østhagen, 2020). In regard to a territorial sea, it is held that the body of water has to be delimited by reference to an equidistance line, or a median.

However, this idea can be overlooked under special circumstances for instance if the historic title is seen to justify the use of a different tactic (Østhagen, 2020). Delimitation of a continental shelf or exclusive economic zone has to conclude as an equitable solution.

UNCLOS and Vienna Convention's implication on Boundary Related Disputes

"Part XV" of the "UNCLOS" dictates the boundaries in a case where any efforts aimed at negotiating maritime boundaries fail (Erlina, and Siswandi, 2020). For instance, if a case of judicial settlement where the nations in question have opted out of the mandatory settlement of the dispute regarding the maritime boundaries under ***"Article 298(1) (b)"*** of the Convention (Erlina, and Siswandi, 2020). On the other hand, the requirements to establish an agreement regarding boundaries can be met through negotiations or by submitting the dispute to an international court or a tribunal.

When it comes to established maritime boundaries that have been agreed upon, they are seen as both binding and final. In the process of obtaining them whether it be a judicial decision or negotiations between the two states, the boundaries are subject to the notion of ***"pacta sunt servanda,"*** as noted in ***"Article 26"*** of the ***"Vienna Convention"*** (Erlina, and Siswandi, 2020; Árnadóttir, 2020). The article states all treaties to be binding on the parties in question and states that they are to be implemented in good faith. In general, treaties as seen to be reliant on the assumption of specific conditions, those that are seen as being essential for reaching a conclusion in regard to the treaty, are not subject to change (Erlina, and Siswandi, 2020; Talaie, et al. 2020). Parties are noted to reach an agreement on the very basis of said circumstances, specifying shared expectations. Where the principle of "pacta sunt servanda" is seen to act as a safeguard for the aforementioned prospects (Talaie, et al. 2020). Yet, it is noted that the principle of "pacta

sunt servanda" does not have the ability to ensure that all agreements will remain uninfringeable till the specified time (Árnadóttir, 2020; Talaie, et al. 2020).

Nevertheless, it is seen that in cases where the obligations, as well as the circumstances of the treaty that would have led to the conclusion, are no longer the constant, the nations in question have the ability to be free from their duties as described by the treaty (Árnadóttir, 2020). The nations can simply choose to negotiate through peaceful means under the principle of ***"rebus sic stantibus"*** (Yoshida, 2018). As held in ***"Article 62"*** of the ***"Vienna Convention of the Law of Treaties"*** the given doctrine offers the right to unilateral termination of a treat in a scenario where unforeseen changes, that have influenced the circumstances affecting the foundations of the treaty, arise (Yoshida, 2018).

Additionally, ***"Article 62 (2) (a)"*** noted that treaties that establish boundaries due to their application are excluded from the abovementioned unilateral termination. Therefore, it can be assumed that maritime boundaries cannot be set aside because of any core changes that influence the circumstances (Yoshida, 2018; Østhagen, 2020). For instance, if the case was cantered on an island that submerged, or if a new volcanic island has recently emerged. However, indicators alluding to the original customary law leading to the exclusion of maritime boundary treaties do not exist. Additionally, if a member of the ***"International Law Commission"*** discounts treaties that establish boundaries with the application of ***"Article 62"*** of the "VCLT" they are not noted to discuss even the possibility of the idea of excluding maritime boundaries (Yoshida, 2018; Østhagen, 2020).

Difference between Land and Sea zones

When it comes to the fundamentals of maritime zones, they are noted to be quite different as compared to the land territory. The need for not including treaties that aim to establish land

boundaries and stability are not obligated by the maritime frontiers, which are noted to fluctuate with changes to the coastal front usually (Mann, 2016; Strating, 2018). Rather, the article in question is one that offers the assessment of ***"Article 62,"*** and has an emphasis on the issue of boundary (Strating, 2018). Both the origins, as well as the principle of ***"travaux préparatoires"*** of the noted provisions are evaluated. The application of the provisions in relation to the treaties, those that establish the maritime boundaries, are evaluated (Mann, 2016).

As indicated by the analysis, the particular types of boundaries might be set aside under the aforementioned article. Given that the coastal geography underwent a radically unexpected change. The change in question would have led to an essential transformation of the maritime rights as noted under UNCLOS (Strating, 2018). Furthermore, when excluding treaties that establish boundaries it is important to note that this exclusion only applies to boundaries that are delimiting sovereign territory (Strating, 2018). Therefore, exclusive economic and fisheries zone or even continental shelf do not count.

Application of Article 62 of VCLT concerning Boundaries

"Article 62" of the VCLT cannot be appealed to extract, dismiss, or suspend the application of the treaty establishing land borders, but this is not always the case with treaties separating maritime borders (Xiaolu, 2013). There is a unique difference between the boundary that separates the land and the boundary that separates the ocean. Marston stressed that the maritime boundary and the land boundary are indeed and legally different. One of the differences is that some maritime borders are only distribution lines and therefore are not considered borders under ***"Article 62 (2) (a)"*** of the VCLT (Xiaolu, 2013). According to Marston, the term border aptly describes the line that separates adjacent areas of land within a state, said "Jennings," the former president of the "International Court of Justice," to distinguish the border and establish

the border. These definitions mean that borders only separate land territories, so-called maritime borders are actually borders, not borders.

Caflisch also said that the term “border” only applies to land and other areas with full sovereignty, and the term “border” applies to the waters in which the country lives (Mann, 2016). They exercise their powers and do not exercise complete sovereignty. The arbitral tribunal reflected this peculiarity in ***“Guinea v Guinea-Bissau arbitration,”*** and the treaty establishing the maritime border usually uses terms like “maritime border” and “sea frontier” to do the same thing (Vidas, Freestone, and McAdam, 2019). The sovereignty of the country extends to the external borders of the territory or of the archaeological waters. For that reason, the boundary separating these areas is a concept that may be influenced by ***“Article 62 (2) (a)”*** of the VCLT (Vidas, Freestone, and McAdam, 2019). Nonetheless, the country enjoys only sovereignty over the exploration and use of specific resources in the exclusive economic zone and continental shelf, rather than full sovereignty, thereby terminating or terminating the borders separating these areas (Vidas, Freestone, and McAdam, 2019). This is another possible reason is noted for suspension is the emergence of a fundamental change in the situation.

The method and basis for setting the land-sea boundary are also different. The location of the land boundary is completely arbitrary, but once established, the significance of the land boundary is due to its duration (Gates, 2017; Kliot, 2018). After all, the treaty establishing the boundaries of the land belongs to the category of the treaty requiring stability. On the other hand, maritime borders are maritime rights guaranteed to all coastal countries in accordance with the Convention on the Law of the Sea (Gates, 2017; Kliot, 2018). These rights depend on the existence of geographical features and their exact location. The maritime border is a fair, unstable solution. Indeed, maritime rights change regularly with changes in coastal geography,

and maritime restrictions are generally regarded as an outpatient. Therefore, the reasons for excluding the border treaty from ***"Article 62"*** of the VCLT do not appear to justify the general segregation of maritime borders (Kliot, 2018).

Few legal precedents are applying "Article 62" of the VCLT. Kabbaj, Morocco's representative to the UN General Assembly, warned during the drafting of "Article 62" of the Vienna Convention that it was included in strict requirements, meaning that the country would not be afraid of its application (Kliot, 2018). There is the possibility that these strict requirements may be the reason the court is obviously reluctant to make a decision under "Article 62" of the VCLT (Árnadóttir, 2016; Al-Zhrani, 2018). Though, in spite of the strict provisions of this clause and the negative expression of this clause, the International Labour Conference believes that this clause frees countries from treaties that have become too cumbersome and irrelevant due to political changes. This may be a necessary tool (Al-Zhrani, 2018). This article is still valid and rarely used, but it may indicate that the courts are willing to adopt it, however, it will affect the interpretation and applicability of its important content.

Lisztwan assumed from the story of the drafting of the article that the term "borders" includes maritime borders, however, admitted that the history of the drafting of "Article 62" of the VCLT hardly indicated the scope of the exception (Árnadóttir, 2016). Lisztwan said a Ukrainian delegation said the border exclusion treaty would cover the conflict on the island. However, this does not explicitly mention the waters surrounding the island. Indeed, the mention of island conflicts is likely to be related to disputes over island sovereignty. This conflict affects the borders of the territory and is therefore excluded (Árnadóttir, 2016). Indeed, ILC members and national representatives have never mentioned maritime borders in lengthy discussions on

“Article 62” of the VCLT Convention. When speaking of islands, they refer only to the land and territory that make up the island.

Regarding the history of the drafting of “Article 62” of the VCLT, Lisztwan mentioned the definition of the border proposed by Oppenheim, however, the representative of the United States Kearney pointed out that the treaty established territorial status in the provisions was not included (Árnadóttir, 2016; Pratomo, 2018). Oppenheim defined a state border as “a virtual line on the surface of the earth that separates the territory of one state from the territory of another state, the territory of another state or the high seas.” Oppenheim distinguished two borders between the territories of multiple states, the borders between states and inappropriate territories, and the borders between state territories and the sea.

This definition means delimiting the borders between national territories or territories based on the fact that the territorial sea is part of the territory. This is the baseline of the coastal state or the outer limit of the territorial sea (Árnadóttir, 2016; Pratomo, 2018). It is still unclear whether Oppenheim's reference to “high seas” applies to specific waters, high seas or general waters outside the jurisdiction of the country, but whether the term “territory” covers these waters, which would be completely unnecessary (Árnadóttir, 2016; Pratomo, 2018). Because it can be classified as an "inappropriate area" in the reference sea. Therefore, maritime borders belong to the first category (which separates the territories of the two countries), while maritime and high seas borders belong to the second class. (This will separate the area from the inappropriate area) (Árnadóttir, 2016).

In the same way, if “high seas” refers only to the high seas and the concept of boundary includes all lines between sea zones, the fourth category (boundaries between different water zones) is required (Vidas, Freestone, and McAdam, 2019). Therefore, in Oppenheim's definition,

"territory" is assumed to be: (A) Territory. Or (b) Land, inland waters, and territorial waters. In addition, "high seas" includes: (A) All waters above the baseline (i.e., territorial waters cannot be territory) or (B) Only the sea other than the sea of the territory (Árnadóttir, 2016; Al-Zhrani, 2018). In reference to the Maritime Borders Agreement, it is not excluded from "paragraph 2 (a)" (Árnadóttir, 2016; Al-Zhrani, 2018).

Conclusion

The nature of land-sea boundaries is essentially different because they have different functions and follow different doctrines. The land border is for stability, but the maritime border is a fair solution. Land rights are arbitrary and based on permanent occupations, but maritime rights are subject to the continued application of UNCLOS. Unlike all maritime boundaries, except those maritime boundaries that separate territorial seas, land boundaries separate all sovereignty. The term most commonly used to describe the line that separates marine areas is itself. Maritime border in the same category as the land border. Climate-related changes are currently changing the geography of coasts around the world. Some of these changes are predictable, however, forecasts change rapidly, so it is difficult to predict the exact impact of sea-level rise, coastal erosion, coastal sedimentation, and land rise. Furthermore, if certain changes occur suddenly, such as extreme weather events like hurricanes, floods, volcanic eruptions, seismic activity, and the establishment of all ocean boundaries, such fundamental changes are often catastrophic. The fundamental change in the situation may demonstrate that the reasonable conclusion of ending the maritime border always depends on the details of each case. However, as the French government argues in nationality legislation, it is applicable to justify ***"rebus sic stantibus"*** the change in the situation has become more evident concerning "***d'être***."

The convention that guarantees national rights and obligations based on coastal features must lose its reason for existence, therefore, if the relevant coastal features disappear or otherwise stop the creation of maritime rights. This is especially true when overlapping claims are formed in coastal areas and therefore the demand for maritime borders suffers. The "International Labour Conference" once stated: In addition to further agreements between the same parties, international law does not allow for legal means to terminate or amend treaties, which can put serious pressure on relations between the countries concerned. Dissatisfaction can eventually be reversed as illegal behaviour.

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