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Thank you.



IBRU Workshop

Preparing for Third-Party Settlement of Boundary & Sovereignty Disputes

Dispute Resolution under International Law

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OUTLINE OF PRESENTATION

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- II. Modalities of Dispute Resolution**
- III. The Principle of Consent**
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I. The UN Charter and Dispute Resolution

THE UN CHARTER AND DISPUTE RESOLUTION

A. Chapter I

- Article 1(1) enshrines as one of the most important aims the maintenance of peace and security.
- Article 2 (3) sets out one of the fundamental principles that “all Members [of the UN] shall settled their international disputes in such a manner that international peace and security, and justice are not endangered.
 - Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the UN Charter reiterates the principle of the peaceful settlement of disputes.
- Article 2(4) no recourse to the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

THE UN CHARTER AND DISPUTE RESOLUTION

B. Chapter VI

- Article 33(1): The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
- Article 33(2): The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.
- Article 37(1): Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

C. Chapter XIV

- the UN Charter not only requires States to solve their disputes in a peaceful way; it also provides a forum for the judicial settlement of disputes in accordance with international law. This is the principal function of the ICJ.
- *Article 94*
 1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.
 2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

II. Modalities of Dispute Resolution

The four modalities of dispute resolution can be classified by the level of control retained by the parties over the process and the outcome

A. Negotiation

- Direct talks between the parties
- Parties control the process
- Parties control the outcome
 - Agreement in the form of a treaty
 - Less formal agreement
 - No agreement

B. Mediation

- Negotiations guided by a mediator
- Informal procedures that can be influenced by the parties
- Mediator may or may not issue a report or recommendation
- Final agreement depends on the parties

C. Conciliation

- More formal process with greater control from the conciliator
- Normally ends with formal non-binding findings of the conciliator
- Parties can accept or reject findings

D. Litigation and arbitration (binding third-party dispute resolution)

- Process dictated by rules of procedure
- Outcome is a binding decision of the court or tribunal

III. The Principle of State Consent

A. The principle of consent

- Because States are sovereign, they cannot be sued in an international court or forced to submit to international arbitration without their consent

B. Types of consent

- The consent of a State to international litigation or arbitration may be of a general and free-standing nature (creates compulsory jurisdiction)
 - Article 36 of the Statute of the International Court of Justice
 - Part XV of UNCLOS
 - Other treaties
- Consent can also be specific to a particular dispute by special agreement (“compromis”).

IV. Failure to Appear in Judicial or Arbitration Proceedings

FAILURE TO APPEAR IN JUDICIAL OR ARBITRATION PROCEEDINGS

A. Non-Appearence

1. Non-appearance by one party does not bar a court or tribunal from adjudicating or arbitrating a dispute:
 - Article 53 of the ICJ Statute
 - Article 28 of the ITLOS Statute
 - Article 9 of Annex VII to the UNCLOS
2. A court or tribunal must satisfy itself not only that it has jurisdiction over the dispute, but also that the claim is well founded in fact and law.
3. A judgment or award is still binding on a non-appearing party.

FAILURE TO APPEAR IN JUDICIAL OR ARBITRATION PROCEEDINGS

A. Non-Appearance (continued)

4. Non-appearing parties ultimately comply with judgments or awards:

- *Nicaragua v. United States*
- *The Arctic Sunrise case*
- *The South China Sea Arbitration*

V. Dispute Resolution under UNCLOS

A. UNCLOS Part XV

– *Article 279 Obligation to settle disputes by peaceful means*

States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter

– *Article 280 Settlement of disputes by any peaceful means chosen by the parties*

Nothing in this Part impairs the right of any States Parties to agree at any time to settle a dispute between them concerning the interpretation or application of this Convention by any peaceful means of their own choice

A. UNCLOS Part XV (continued)

– *Article 287 Choice of procedure*

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

- (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;
- (b) the International Court of Justice;
- (c) an arbitral tribunal constituted in accordance with Annex VII;
- (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

A. UNCLOS Part XV (continued)

– Article 287 *Choice of procedure* (continued)

2. A declaration made under paragraph 1 shall not affect or be affected by the obligation of a State Party to accept the jurisdiction of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea to the extent and in the manner provided for in Part XI, section 5.

3. A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII.

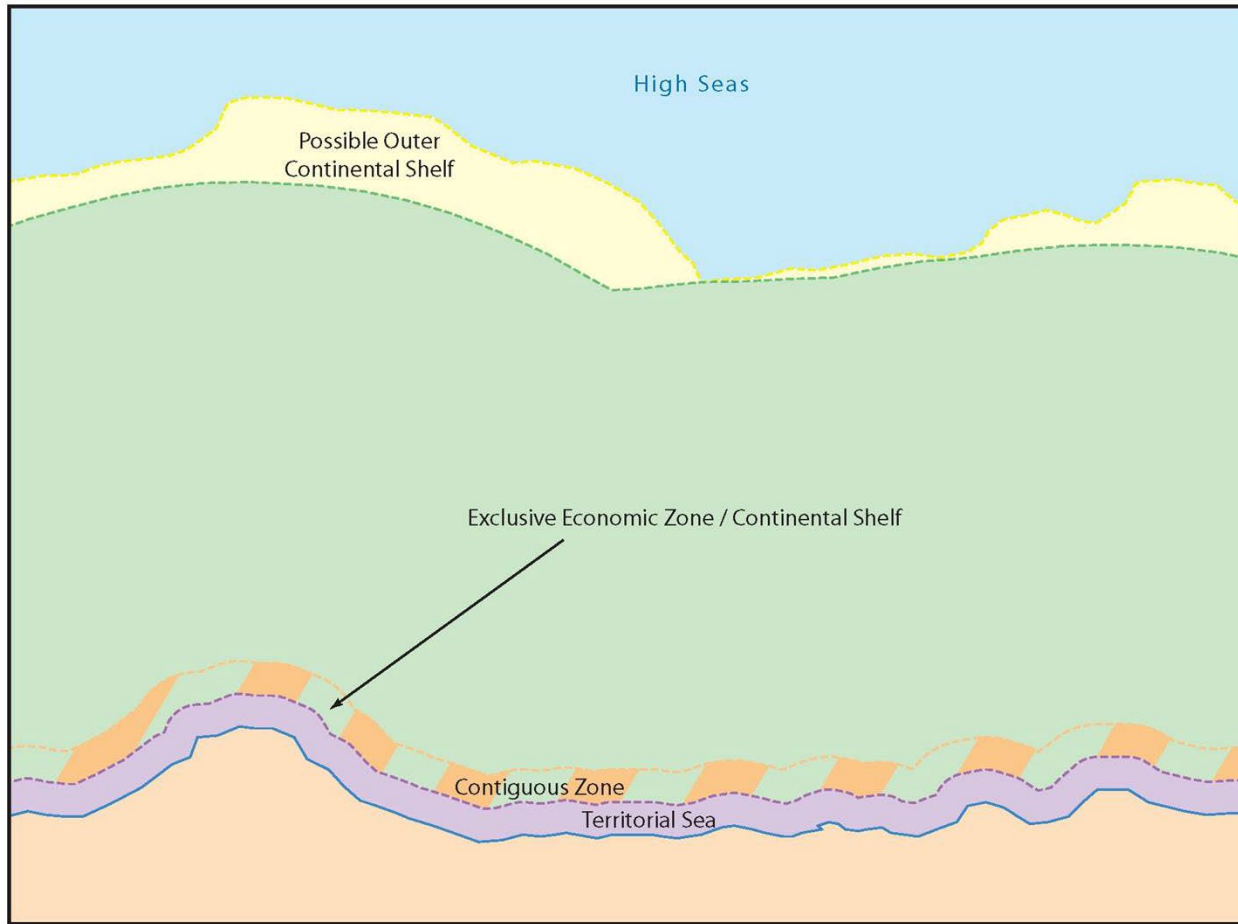
A. UNCLOS Part XV (continued)

– Article 287 *Choice of procedure* (continued)

4. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.

5. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree.

B. Maritime zones



C. UNCLOS delimitation

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.

C. UNCLOS delimitation (continued)

Article 74 [83]

*Delimitation of the **exclusive economic zone [continental shelf]**
between States with opposite or adjacent coasts*

1. The delimitation of the exclusive economic zone [continental shelf] between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, **in order to achieve an equitable solution.**
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.