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RESOLUTION OF BOUNDARY AND NAME DISPUTES UNDER THE UN CONVENTION ON LAW OF THE SEA

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ABSTRACT

Maritime Boundary is a conceptual division of the earth's water surface areas using physiographic or geopolitical criteria. It usually bounds areas of exclusive national rights over mineral and biological resources. The power of a State over its territory is not limited to the terrestrial area but extends also to the sea area adjacent to it therefore maritime boundary are very important. As states formed, developed, and expanded, the need to define and uphold maritime boundaries became increasingly relevant, in order to avoid unnecessary maritime boundary disputes. Notwithstanding the fact that disputes are inevitable in the international community, there was need for the UNCLOS to regulate transactions of states in the seas. These international law efforts subsisted in regulating maritime transactions. It is against this background that the authors argued whether unilateral declaration by the President of the US changing the name of Gulf of Mexico to Gulf of America constitutes a maritime boundary disputes notwithstanding the fact the declaration related only to change of name but not contentions relating to a portion of sea, sea-bed, or even marine resources. The paper therefore maintained that there was research 'evidence gap' supporting the traditional claims of states to marine environments bearing names derivative of the coastal state. The authors therefore concluded that maritime name change constituted maritime boundary dispute.

Keywords: maritime, marine environment, coastal state, boundary dispute, law of the sea.

I. Introduction

The sea is a large body of water that is crucial to human trade, voyage, mineral extraction, and power generation and thus essential to the economy. In years past the marine environment was free from regulation for all marine activities inclusive of fishing and exploitation of marine resources.[1] Initially, navigation on the high sea was open to everyone and all, inclusive of harvesting fisheries. However, during the 15th and 16th centuries,[2] period of navigations, claims were laid by the powerful maritime states to the exercise of sovereignty and ownership of specific portion of the open sea, For example, Portugal claimed maritime sovereignty over the whole of the Indian Ocean and a very great proportion of the Atlantic, Spain arrogated rights to herself over the 'Pacific' and the 'Gulf of Mexico' and even Great Britain laid claim to the 'Narrow Seas' and the 'North Sea.'[3] This navigation 'pick and choose' practiced by states was in the long run having reverberating effect by way of control over the sea territory by different States. Actually, disputes over control arose. The main challenges associated with these zones are how variations in geography affect where zones end and where new zones begin.[4] These variations often led to maritime boundary[5] as well as naming disputes. It has recently been observed the pronouncement by the US President renaming the Gulf of Mexico to Gulf of America in early part of 2025.[6] This pronouncement has stirred widespread disparagement against the policy of the US government in renaming the traditional Gulf of Mexico to Gulf of America. The paper strives to examine and accommodate agitations by Mexico as well as other South American states as to whether renaming the traditional maritime Gulf of Mexico to Gulf of America constitutes a maritime boundary disputes in international law.

The paper extends to such regimes as history, nature and scope of maritime boundary disputes, legal framework on maritime boundary dispute, relationship between maritime name change and maritime boundary dispute, and thereafter, conclusion.

[1] National Oceanic and Atmospheric Admiration's Office of Coast Survey, 'History of the Maritime Zones under International Law-From Cannon Shot Rule to UNCLOS <http:www.nautical charts.noaa.gov/staff/law-of=sea-html.>
[2] This was the period of great maritime discovery by Europe.
[3] J.G. Starke, *Introduction to International Law* (Butterworth & Co, Florida 1984) 234
[4] ibid
[5] Victor Prescott observed that states seek to use the oceans for precisely the same reasons as they use their territory to provide security and the opportunity for development. See generally, V. Prescott, *The Geography of the Oceans*,(David & Charles, Plymouth, 1975) <Google Scholar > accessed January 2023.
[6] US President, Donald Trump.

2. Theoretical Background

The controversy surrounding the boundary name dispute between Mexico and the US over change in the historical but traditional name of Gulf of Mexico to Gulf of America is necessitated by research evidence gap. The dominant theory as established by the provisions of the UNCLOS is that names of coasts traditionally reflect the coastal states. This has been a dominant theory until the emerging international affairs evidence of dispute over 'name' of a subsisting historical heritage. The appropriateness or otherwise of the 'gap in research,' flows from and is associated with the international law controversy on the emergent Presidential order of the President of the US President Donald Trump. Can this name dispute from Gulf of Mexico to Gulf of America be conveniently accommodated within the ambit of maritime boundary dispute? A maritime boundary dispute refers to a conflict between two or more countries in respect of the demarcation of the affected states maritime boundaries. Evidence shows that these disputes often arise due to overlapping claims of territorial waters, exclusive economic zones or continental shelves.

3. History, nature and scope of maritime boundary dispute

It has been observed that during the 15th and 16th century period of navigations, some powerful maritime nations claimed certain portions of the marine environments as part and parcel of their territorial marine space, in which they exercised sovereignty and, therefore ownership of the specific portion of that affected open sea. Recall that Portugal claimed maritime sovereignty over the whole of the Indian Ocean and a very great proportion of the Atlantic, Spain laid claim of rights to herself over the 'Pacific' and the 'Gulf of Mexico' as well as the Great Britain's claim to the 'Narrow Seas' and the 'North Sea.[7]

Consequent on that, there was need for a balance of control by states, and this eventually led to different debates as to whether the sea is free for all or not. In the forefront of this debate were Hugo Grotius and John Selden. Hugo Grotius in his work, '*Mare Liberum* or Open Sea' was of the opinion that the sea cannot be the property of any nation and that nature does not give any nation the right to appropriate things which may be used by everybody. He maintained that the open sea is *res gentium* or *res extra commercium.*[8] However, John Selden, a British citizen on the other hand was of the

[7] J. G. Starke, supra.
[8] Hugo Grotius, supra.

opinion that the sea was closed.[9] In times past, the marine environment was free for all until the nations began to exert authority to control their coastal waters in the seventeenth century.[10] This led to the adoption of maritime rules and regulations with the aim of guaranteeing security and order at sea.[11]

Maritime boundary has universal significance in the society. It determines the shape and sizes the marine territory within which states can exercise jurisdiction. It enables all to maintain order at sea. For this order to be maintained by different states, the marine environment is demarcated and or delimited into various compartments known as maritime zones. They are the internal waters, the territorial zone, the contiguous zone, the Exclusive Economic Zone (EEZ), the Continental shelf, the Area and the High Sea.

Further tussle for authority over the sea led to the need to delineate the maritime zones. Series of Conventions were held to tackle the problems/disputes that arose.[12] The UNCLOS III defined maritime zones and took effect from November 16, 1994.[13] The Law of the Sea Convention 1982 allows coastal States to establish different maritime zones. These maritime zones exist in the context of internal waters, territorial waters, contiguous zones, Exclusive Economic Zone,[14] and Continental shelf. These zones gave States different jurisdictional rights to regulate and exploit areas of the ocean under their jurisdiction.[15] Although a State has more rights in zones near to its coastline than it does further into the sea, for these rights to be balanced with the freedom of navigation and access to resources outside state control the law of the Sea incorporated the opinions of Hugo Grotius and John Selden view, while some portions of the sea may be appropriated there is also the freedom of the high seas.

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[9] That is, '*Mare Clausum* or Closed Sea,' states can claim ownership over portion of the sea.

[10] American Library Guide,'Maritime zones Under International Law' <httsp:// wcl.american.libguides.com/c.php?g=563260 > accessed 28 August 2022

[11] A. Abuah, & A.S. Malkudi 'Principles of Delimitation of Maritime Zones: Need for Definite Approach', *BIU Law Journal[2020] (6)183*

[12] Such conventions like UNCLOS I held from February 24 – April, 1958 which adopted the 1958 Geneva Convention though successful left out the issue of the breadth of territorial sea, UNCLOS II held from March17-April 26, 1960 which did not result in any international agreement and failed to fix a uniform breadth for territorial sea and finally UNCLOS III held from 1973 – 1982..

[13] J. A. Ordoyo, United Nations Convention on Law of the Sea https://www.slideshare.net/justinordoyo/united-nations-convention-on-the-law-of-the-sea-unclos accessed 12 March 2023

[14] [Hereafter, the EEZ]

[15] Md Monjur Hasan & others, 'Protracted maritime boundary disputes and maritime law's, <https://doi.org/10.1080/25725084.2018.1564184> accessed 10 January 2023.

Recall that at the turn of the millennium, certain global trends contributed in amplifying the role of the oceans in regime of international affairs. Technological developments, increased seaborne trade, growing demand for marine resources, and climate-change effects on the oceans and the location of those resources were all factors that led to a renewed focus on maritime space, as well as states' rights and responsibilities within this domain.[16] Significantly, countries were becoming very much concerned with their maritime boundary in the process of exploring and exploiting both the mineral and food resources deposited therein. The significance of these maritime boundaries in current international relations did grow with the expansion of national limits of maritime jurisdiction over the years and as such acres of sea with natural resources of oil or gas in subsoil or on the seabed was considered much more than an acre of barren land. Therefore boundary-making has become a major task for coastal states and relatively few of them have a full set of maritime boundaries.[17] However, even though these boundaries are set, disputes over where the boundary should did arise from time to time resulting to what we term maritime boundary disputes.

Maritime boundary disputes occur mostly due to ‘overlapping claims between states over maritime zones’ and ‘claims over sovereignty over maritime’ space. This type of dispute hinders adequate and proper use of marine resources for coastal states because in time of such dispute no one can exploit the resources in a disputed area and if the dispute is not well managed it could lead to armed conflict. A defined maritime boundary is therefore necessary for every coastal state to use their maritime zones.[18]

Maritime boundary disputes arise when the interest of two or more states clash in trying to assert their interests. Disputes can involve two states or more than two states. Many disputes arise over natural resources because natural are exploited for economic interest, claim over sovereignty and overlapping boundaries. These disputes also destroy the political harmony in international relation therefore there is need, for rapid settlement by coastal states. Unfortunately, most of these disputes are usually delayed to be settled.

Maritime boundary dispute is a dispute relating to demarcation of the different maritime zones between or among states. It occurs mostly over commercial, economic, and security interest .It

[16] A. Osthagen, Maritime Boundary Disputes: What are they and why do they matter? <https://doi.org/10.1016/j.marpol.2020.104118> accessed 20 January 2023

[17] David Anderson CMG**, at** a meeting of the International Law Discussion Group at ChathamHouse on 14thFebruary,2006<https:www.chathamhouse.org/sites/default/files/public/Research/International%20Law/ilp140206.d> accessed 20 November 2023.

[18] ibid

relates to the delineation of the baseline and delimitation of the territorial sea, the EEZ, and the continental shelf.

Maritime boundary dispute has to do with delineation of the baseline and delimitation of maritime zones among the coastal states. The discovery of oil and other valuable resources in the marine environment ignited interest and tussle over ownership of maritime zones among coastal states.[19] The ensuing scramble to assert jurisdiction over maritime regimes that might harbour precious resources rapidly gave rise to a new frontier that, to the naked eye at least, possessed none of the natural barriers that often define land boundaries.[20] Also the effect of climate change on the sea causing sea level rise and coastal erosion have become increasingly apparent in recent times that it may influence the delineation of maritime zones with changes in the baselines from which boundaries are determined. This could cause further tension leading to boundary disputes.

Maritime boundary dispute is a universal problem, which also extends to African continent as well as coastal states. Africa's borders are bestride with many challenges ranging from religious and terrorist movements to cattle rustling, military conflicts to human trafficking.[21] The challenges are endless, but whether the boundary disputes are terrestrial or maritime, they are mostly about security and prestige.[22] At the moment, the African continent is characterized by lots of maritime boundary disputes. It is even more of a problem considering the fact that delimitation of most boundaries in Africa dates back to colonial times.[23] And unless these are resolved through negotiation or other diplomatic measures and acceptable means, it will jeopardize the continent's short and long term implementation of maritime policies and strategies.[24] Notwithstanding the provisions of UNCLOS, Africa has several unresolved maritime boundary disputes.

UNCLOS entered into force in order to curb these maritime boundary disputes by creating maritime zone and the rights of coastal states in this zones and one major purpose of the United Nations Convention on the Law of the Sea (UNCLOS), which entered into force in 1994, was to provide guidance for the delimitation of maritime boundaries. The rights of coastal states need to be

[19] J. A. Roach., supra.
[20] M.A. Fentress. Maritime Boundary Dispute Settlement: The Non-emergence of Guiding Principles. <https://digitalcommons,law.uga.edu/cgi/viewcontent.cgi?referer> accessed 12 January 2023
[21] T. Okonkwo, 'Maritime Boundaries Delimitation and Dispute Resolution in *Africa', Beijing Law Report* [2017] (8) (1) 55-78 < https://doi.org/10.4236/blr.2017.81005.> accessed 8 April 2023.
[22] ibid
[23] ibid
[24] ibid

balanced with the freedom of navigation and access to resources outside State control – the freedom of the seas. The theory of maritime delimitation is to demarcate the proverbial rules of the road; the UNCLOS permits coastal States to establish several different maritime zones. These zones give coastal States different jurisdictional rights.

The importance of the ocean cannot be under-rated as resources embedded in the sea serve to enrich coastal states. In other to regulate states' activities at seas, series of conventions have been held from time to time in order to come up with laws that will oversee states' activities in the water. One of such conventions is the United Nations Convention on the Law of the Sea which is the prime international instrument that deals with the procedures for maritime boundary delimitation of maritime zones in the sea and regulates states' activities at sea. Although there have been a lot of other laws that sought to address this nagging problem. The law of the sea however, travels across the public and private domain, between state actors and non-state actors.[25] It deals in ways individuals are affected on a number of issues, for example security, navigation, environmental protection and conservation, exploitation of natural resources, scientific research, civil and criminal jurisdiction.[26]

The first conference concerning the Law of the Sea was held in 1930 in Hague and named 'The Hague Conference for the Codification of International Law 1930.'[27] It was initiated by the League of Nations between 13 March and 12 April 1930 and was attended by 47 governments and an observer. The Conference was unable to adopt a convention concerning territorial waters as no agreement could be reached on the question of the breadth of territorial waters and the problem of the contiguous zone. There was, however, some measure of agreement regarding the legal status of territorial waters, the right of innocent passage, and the baseline for measuring the territorial waters.[28]

The First UN Conference on the Law of the Sea was held in Geneva in 1958[29] in which 86 states participated. The following four Conventions were adopted during the conference: the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the Continental Shelf, the

[25] K. Alam, 'Dispute settlement mechanism under the UNCLOS 1982'< https://www.thedailystar.net/views/in-focus/news/disputes-settlement-mechanisms-under-the-unclos-1982-2169151 > accessed 12 January 2023
[26] ibid
[27] J.A. Ordoyo, supra
[28] ibid
[29] A. Ahmed, 'International Law Of the Sea: An Overlook and Case Study', *Beijing Law Review{2017}(8)21-40* https://www/researchgate.net/pulication/314292546_International_Law_of_the_Sea_An_Overlook_and_Case_Study > accessed 20 September 2022

Convention on the High Sea, the Convention on Fishing and the Conservation of the Living Resources of the High Sea. Through these Conventions, the Law of the Sea began to change from customary law to codified international law although it supported the interest of the western world than that of the developing world.[30]

There was also the Second UN Conference on the Law of the Sea which was held in Geneva in 1960.[31] The aim of the Conference was to settle the issue of what the breadth of territorial sea should be, however because of economic, political, and military conflicts among the states on the oceans the six miles territorial proposal failed.

Finally, the third UN Conference on the Law of the Sea was held from 1973 to 1982 in which 167 independent states and more than 50 independent territories participated; the Movement for the Liberation of National Liberation and international organizations were represented by observers. In this Conference, The United Nations Convention on the Law of the Sea was adopted by voting of 167 independent states. One hundred and thirty states voted in favour of this convention, four states (USA, Israel, Turkey, and Venezuela) were against this, and 17 states abstained. [32]

The Convention provided the legal framework to be followed for the conduct of various maritime activities and it is the most important international legal instrument of the twentieth century following the Charter of the United Nations. As at date, 168 countries and the European Community have joined in the Convention, and the UNCLOS has become part of the larger framework of international politics and law[33] of which many of its provisions today reflect customary international law, which is universally binding on all states, and not limited to UNCLOS parties only.[34]

The Law of the Sea Convention[35] purpose is to comprehensively regulate virtually all aspects of the law of the seas, set rules on the formation of Baselines and all the maritime zones which are Internal waters, Territorial Sea, Contiguous Zone, Exclusive Economic Zone,[36] Continental Shelf, High Seas and the Area. It also addressed the issue generated by island, rocks and islet by providing the

[30] K. Alam, supra.
[31] J.A. Ordoyo, supra.
[32] ibid
[33] M. Finnemore, S.J. Toope, Alternatives to 'legalization': richer views of law and politics Int. Organ., 55 (3) [2001] 743-758 Google Scholar accessed 20 February 2023
[34] J.A. Roach, Today's customary international law of the sea , *Ocean Dev. Int. Law*, 45 (3) [2014] 239-259 <Google .Scholars> accessed 20 February 2023.
[35] [Hereafter, UNCLOS]
[36] [Hereafter, EEZ]

definition and specifying the maritime zones of an island. Furthermore, that an island has the capacity to generate some or all of the maritime zones under Article 121 of the UNCLOS. An "island" is a naturally created form of land that is above the water at high tide and can generate all maritime zones if it can sustain human habitation and economic life. However, an island that cannot sustain human habitation and economic life on its own only generates Territorial Seas.

Africa's maritime boundaries, in accordance with the international law include territorial waters, **co**ntiguous zones, continental shelf and exclusive economic zones. There are 57 States in Africa, 41 of these are coastal states, abutting the Mediterranean Sea, Atlantic Ocean, Indian Ocean, and the Red Sea.[37] Of approximately 90 potential maritime boundaries, only 29 can be considered established. The count of 70 yet-to-be-established maritime boundaries is approximate due to the large number of disputed islands[38]. The following are some established Colonial Maritime Boundaries-The oldest established African maritime boundary is from 1913 between modern-day Cameroon and Nigeria.[39] In 1913, the colonial powers of Germany and the United Kingdom, respectively, established a land boundary separating their African territories. The territorial frontier ends in the thalweg of the Akpa Yafe River, and the colonial powers agreed to extend this to the sea.[40] In 1971, independent Cameroon and Nigeria formalized the colonial border so that it continued from the land boundary terminus in the mouth of the Akpa Yafe River for 11 nautical miles and then, in 1975, the two Parties again extended their maritime frontier for an additional 15 Nautical miles (NM) The runner-up for oldest established African maritime boundary is between Guinea-Bissau and Senegal, which was established by Portugal and France in 1960.[41]

The Maritime boundaries are divided based on their legal status;

i. Maritime zones based on the sovereignty and authority of a coastal state. The zones in this category include the internal waters, territorial sea, and the archipelagic waters.

ii. Maritime boundary with mixed legal regime which fall under the jurisdiction of coastal state and international law they are the contiguous zone, continental shelf and exclusive economic zone, and

[37] M. Woods, An Examination of Africa's Maritime Boundaries, < https:://soverignlimits.com/blog/an-examination-of-africas-maritime-boundaries > accessed 20 February 2023
[38] ibid
[39] ibid
[40] ibid
[41] ibid

iii. Maritime zones that can be used by both coastal states and landlocked states i.e. high seas.

The increasing economic and political interdependence among African countries and the world at large has attracted interests on the management of the international waters beyond national jurisdictions, and this has heightened tensions and conflicts for countries in the continent.[42] Some of these disputes are as a result of issues around definition of maritime boundaries; others arose from overlapping territorial claims and issues connected with contested sovereignty. Hence, there is the need for the delimitation of the maritime environment. The process which essentially concerns with the establishment of these maritime boundaries in situations where there are competing claims between different coastal states is known as delimitation which is provided under the UNCLOS 1982.[43] The ICJ found that delimitation is a process which involves establishing the boundaries of an area already, in principle, appertaining to the coastal State and not the delimitation de novo of such an area.[44] The essence of maritime delimitation is that it helps to fix and identify the boundaries of the territorial sovereignty of a State.[45] In most cases maritime boundary may overlap and there is need to separate in such a way to distinguish the rights of coastal states. This delimitation is created first through agreements; States have to agree on the delimitation of their maritime boundaries. A maritime space is delineated at the distance from the coastline. The UNCLOS established that of the territorial sea at 12 nautical miles from the low tide of the sea, contiguous zone at 24 nautical miles, and a distance not exceeding 200 nautical miles for exclusive economic zone and the continental shelf.[46]

The United Nations Convention on the Law of the Sea, 1982 is the core framework on the different maritime disputes. Therefore the parties to a dispute on maritime boundary are to seek solution under the Convention for such dispute to be solved. There are guiding principles for delimitation of maritime zones provided under the Convention and also methods of resolving these disputes provided under the Convention to wit: negotiation, mediation, conciliation, arbitration, judicial settlement. Also any of the following means for the settlement of disputes concerning the interpretation or application of this Convention may be employed which are compulsory resolution mechanism provided under Section 2 of Part XV:

[42] T. Okonkwo, supra
[43] The method of delimitation for different zones under Articles 15, 74 and 83.
[44] M. A. Fentress, supra.
[45] ibid
[46] Articles 3, 33(2), 57, and 76 of UNCLOS 1982.

a. The International Tribunal for Law of the Sea (ITLOS) established in accordance with Annex VI,

b. The International Court of Justice (ICJ),

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

e. The categories of disputes specified in UNCLOS.

The UNCLOS specifically defines the various maritime zones and features. However, there are on-going controversies around the world over the definition of those features and the zones they should produce. It is easy to see why, depending on the type of feature.[47] The dispute over the Gulf of Sidra illustrates the challenges posed by bays and straight baselines. Located between the eastern and western halves of Libya, the Libyan government under Muammar Gadhafi in the 1970s attempted to draw a straight baseline across the Gulf of Sidra and declare it as internal waters. This would have allowed Libya a much larger area to restrict navigation and over flight. Most nations did not recognize the claim because, under the LOSC, the baseline did not conform to the shape of the coast. These nations also opposed Libya's claim to historical use due to a lack of demonstrated usage and its large size.

The first step in determining the limits of maritime boundary of a coastal state is to establish the starting point from which the measurement of maritime zones start which is the baseline. When states began expanding their maritime zones, the concept of straight baselines came to the fore. The baseline is the line from which the outer limits of the territorial sea and other coastal zones are measured. So, it is the foundation for measuring maritime zones to the Sea (e.g. territorial sea is 12 N.M from the baseline). Article 5 of the UNCLOS provides for normal baseline, it is the low water line along the coast and straight baseline as shown in article 7 above can be drawn in two circumstances: first situation is where the coastline is deeply indented or if there is a fringe of islands along the coast in its immediate vicinity; second is where because of the presence of a delta and other natural conditions, the coastline is highly unstable. In both cases, the appropriate points may be selected along the furthest seaward extent of the low waterline for the purpose of drawing

[47] Law of the sea, Policy Polimer, supra.

the straight baseline.[48] Demarcation of baseline is very important for delimitation of the subsequent maritime zones and the settlement of maritime boundary delimitation dispute with coastal states. In the Bay of Bengal Maritime Arbitration between Bangladesh and India, delineation of straight baseline following the depth method by Bangladesh was opposed by India and Myanmar.[49] So, Bangladesh's claim was valid under "other natural conditions" because the highly unstable coastline as a result of cumulative effects of river floods, monsoon rainfall, cyclonic storms, and tidal surges which have contributed to a continuous process of erosion and shoaling. The tribunal awarded Bangladesh nearly eighty percent of the area.

The different types of baseline notion was given different interpretation by states whether or not to base the boundary on a median principle or a sector principle putting into consideration the shape of the geographical attributes of the land from which the maritime boundary is derived. So instead of drawing the baseline of a country's maritime zone along its coast following all features, some states with indented coastlines or with multiple fringing islands started to draw straight lines along the coast, in essence claiming more maritime space (territorial sea) than a country with an even coastline. It was for this reason the UK took a case against Norway to the ICJ, which in 1951 endorsed the Norwegian approach regarding straight baselines with the *Anglo-Norwegian fisheries case.*[50]

As states expanded their maritime zones, a number of maritime boundary disputes between neighbouring States came up. Some of these boundary disputes were settled immediately, but a large number remain today. Some notable African maritime disputes include the case of Maritime Delimitation in the Indian Ocean (Somalia v Kenya)[51] on the location 0f the maritime boundary between Somalia and Kenya, which judgment was recently delivered on 12 October 2021 by the International Court of Justice (ICJ). There are also overlapping maritime claims between *Morocco and Western Sahara* (Morocco claims all of Western Sahara)[52] and between *Namibia and South*

[48] ibid
[49] ibid
[50] ICJ Reports [1951] 116
[51] Maritime Delimitation in Indian Ocean,< https://www.icj.cij.org/case/161> accessed 10 February 2023
[52] H. Chograni, 'The Polisario Front, Morocco and the Western Sahara conflict' https://arabcenterdc.org/resource/the-polisario-front-morocco-and-the-westernsahara-conflict> accessed 25 March 2023.

Africa 1971,[53] who have an extremely small maritime dispute that is an offshoot of their unsettled land boundary in the Orange River.[54]

There is the definition of island rocks and low-tide elevation in delimitation of maritime boundary which is also a problem because these are a frequent, complicating factor in delimitation. The distinction between island, rock and low-tide elevation is very necessary because coastal states maritime rights may change depending on the category into which the maritime feature falls. Also some of these islands are threatened by erosion/flood resulting from climate change as climate change continues to contribute to the retreat and in the case of low-lying islands, there could be complete disappearance of coastlines. It is therefore important for a state to have a well-defined maritime boundary and maritime zones to avoid incessant maritime boundary dispute.

The UNCLOS outlined some governing principles of international law which are relevant to the delimitation of maritime boundaries. The rule of delimitation is believed to have originated from the principles enunciated in the Truman Proclamation of September 28, 1943. The principles include equidistance, equity, and special circumstances.

Equidistance entails a boundary that corresponds with the median line at an equal distance (equidistance) at every point from each state's shoreline.[55] It is for the delimitation of the territorial sea between adjacent or opposite states. First, there has to be an agreement between states on the delimitation of their boundaries but when there is none the court applies the principle of equidistance, example demarcating the boundary at the median line equal at every point from the shoreline. The court in applying the equidistance principle may also consider some special or relevant circumstance (equidistance/special circumstance). It is believed that this principle of equidistance was drawn from Article 6 (2) of the 1958 Geneva Convention on the Continental Shelf (Geneva Convention)[56], which directs states to settle overlapping claims by reference to the equidistance principle if they fail to an agreement. It is also provided for under Article 12 of the Geneva Convention on Law of the Sea, 1958 and Article 15 of 1992 UNCLOS. It says where no agreement has been reached neither state may extend its territorial sea beyond the median line from the nearest points on the baseline from which the states' territorial sea is measured. The second part of Article 15 allows the limit of the territorial sea beyond median line if it is necessary by reason of

[53] Cour international de Justice<https:ww.ici-cii.org> case
[54] M. Kamundu, The Orange River Boundary Dispute Between Namibia and South Africa <https:// digital, unam.edu.na/bitstream/handle/11070.1/989/kamundu_orang_2011.pdf?sequence >
[55] A. Osthagen, supra.
[56] ibid

historic title or other special circumstances. The principle has been given judicial backing as the court said 'the most logical and widely practiced approach is first to draw provisionally an equidistance line and then to consider whether that line must be adjusted in the light of the special circumstances'. The ICJ clarified the method of drawing delimitation boundaries in *Namibia and South Africa*, it said that,

> The Court has on various occasions made it clear what the applicable criteria, principles and rules of delimitation are when a line covering several zones of coincident jurisdiction is to be determined. They are expressed in the so-called equitable principles/relevant circumstances method. This method…involves first drawing an equidistance line, then considering whether there are factors calling for the adjustment or shifting of that line in order to achieve an "equitable result."

This equidistance/special circumstance method was applied by the Annex VII Arbitral Tribunal of UNCLOS in *Guyana and Suriname* in 2007.[57] The relevant circumstances recognized by the Courts and the international tribunals include the following in different cases include:

i. The general configuration of the coasts of the parties;
ii. General geomorphological, geological, and geographical factors;
iii. The incidence of natural resources (usually oil and natural gas) in the disputed area and the principle of equitable access to these resources;
iv. Defence and security interests of the states that are party to the dispute; and
v. Consistency with the general direction of the land boundary.

In the maritime boundary dispute of *Nicaragua v. Honduras*,[58] the ICJ considered a number of factors to "achieve an equitable result." First, the Court recognized that although the equidistance method is "widely used in the practice of maritime delimitation," it "does not automatically have priority over other methods of delimitation and, in particular circumstances; there may be factors which make the application of the equidistance method inappropriate." Second, noting the highly unstable nature of the mouth of the River Coco at the Nicaragua-Honduras land boundary terminus, the Court decided that fixing base points on either bank of the river and using them to construct a provisional equidistance line would be "unduly problematic.[59]" Therefore, the Court used the bisector line method instead.

The delimitation of the Continental shelf is based on agreement in accordance with equitable principles. The court in the *North Sea Continental Shelf* considered the principle equidistance

[57] *Guyana v Suriname-cases* < https:://pca-cpa.org/en/cases/a9> accessed 20 February 2023
[58] ICJ Reports [1988]
[59] ibid

according to article 6 of the Continental Shelf Convention held that the relevant rule was that delimitation is to be effected by agreement in accordance with equitable principles, and taking into account relevant circumstances. .This has been termed 'equity', as a principle distinct from 'equidistance'. Equity thus acquired importance in delimiting disputes in the maritime domain. In the *North Sea Continental Shelf Cases between Denmark, West Germany and the Netherlands* from 1969 pitted the principle of equity and equidistance against each other.[60] Denmark and the Netherlands argued for the use of equidistance, whereas West Germany argued for a 'just and equitable share' of the disputed area. Outlining its approach to maritime boundary dispute settlement in general, the Court held that delimitation must be 'effected in accordance with equitable principles … taking account of all the relevant circumstances'. States were thus not deemed to be obliged to apply the equidistance principle: equity was seen as extending beyond mere equidistance. This means that it's not equidistance, but fairness on its own was introduced as a guiding principle for delimitation. A case that illustrates this was in 1980, when Denmark extended its 200-mile fisheries zone northwards along the east coast of Greenland (Denmark being the colonial power operating on behalf of Greenland), creating an overlap with the Norwegian zone on the northwest side of the island of Jan Mayen . Denmark argued that it deserved a larger proportion of this disputed zone because Greenland's coast is longer than that of Jan Mayen, and because the population of Greenland deserved access to fish stocks. Norway held firm to the equidistance principle; after several negotiations failed, Denmark submitted the dispute to the ICJ in 1988. The Court concluded that the longer length of the Greenland coast required a delimitation that was closer to Jan Mayen and that the maritime boundary line should be shifted somewhat eastwards to allow Greenland equitable access to fish stocks.[61] However, the Court rejected other arguments that had to do with the size of the population and socio-economic conditions, saying they are not relevant to delimitation of boundary. The North Continental Shelf cases in general discussed the relevance of the use of equitable principles in the context of the difficulty of applying equidistance rule in specific geographical situations where inequity might result

The importance of equitable principles, natural prolongation, and proportionality was further endorsed in the *Anglo-French Continental Shelf Case*[62]**.** This case involved a dispute between two

[60] A. Osthagen, supra.
[61] R.R. Churchill, 'The Greenland–jan mayen case and its significance for the international law of maritime boundary delimitation, *Int. J. Mar. Coast. Law.*, 9 (1) [1994]<https://brill.com/view/journals/estu/9/1/article-p1-1.xml?language=en > accessed 20 March 2023.
[62] *Anglo-French Continental Shelf Case* supra

parties to the 1958 Convention over the delimitation of the English Channel and the adjacent area of the Atlantic Ocean. Both France and England agreed that equidistance should be applied to divide the English Channel, but there was no agreement as to base points median line should be. Great Britain advocated a strict application of equidistance under the 1958 Convention with the Scilly Islands treated as a continuation of the English mainland. France, on the other hand, advocated that the Sicily Islands should be considered as a "special circumstance" and advocated delimitation by the bisector of the angle formed by the lines continuing the general direction of the two coastlines. The Court of Arbitration found that, contrary to the contentions of Great Britain, there was no presumption in favor of equidistance that required rebuttal by a party claiming special circumstances. The judges reasoned that article 6 of the 1958 Convention provided a combined equidistance-special circumstances rule with emphasis on an equitable result: "the equidistance-special circumstances rule and the rules of customary law have the same object- the delimitation of the boundary in accordance with equitable principles. The Court of Arbitration went on to limit the principle of equidistance to only one possible method of arriving at an equitable result, stating that "geographical and other circumstances" might justify the principle's use "as the means of achieving an equitable solution" but also discounting "the inherent quality of the method as a legal norm of delimitation."

The Court of Arbitration further noted that the distinction between opposite and adjacent states might provide guidance in determining when equidistance will apply because opposite coasts more often present a situation where equidistance provides an equitable division. When applied to adjacent coasts, however, distortions caused by geographical irregularities often are magnified as the delimitation line extends away from the shore, so that equidistance will not provide an equitable delimitation." One such possible distorting factor that confronted the Court of Arbitration in the *Anglo-French Continental Shelf Case* [63]was the treatment of the Sicily Islands. The judges found the islands to be a "special circumstance" because they would have a distorting effect on the delimitation line if they were given the same treatment as the mainland for the purpose of constructing baselines. Noting the economic significance of the islands, however, the Court of Arbitration felt that their presence could not be ignored. To arrive at an equitable delimitation, the Sicily Islands were given half effect, essentially splitting the difference between treating them as part of reasonable result is reached the mainland and completely ignoring their presence.[64] The

[63] ibid
[64] P.R. Hensel & other, Bones of Contention: comparing Territorial, Maritime and River issues cited in A. Osthagen, Maritime Boundary Disputes: What are they and why do the matter?

Court in the *Anglo-French Continental Shelf Case* also discussed natural prolongation as a possible theory of delimitation, utilizing this principle primarily as a means of rejecting the French approach to the delimitation of the Atlantic region. The Court found that the French method of drawing two lines to reflect the general direction of the two opposite shores, then splitting the area between the two lines as they extended into the Atlantic, was unacceptable.[65] Such delimitation failed to maintain the necessary nexus between the delimiting line and the adjacent land mass as mandated **by** the natural prolongation principle.[66] Natural prolongation was of little importance in the affirmative construction of a delimitation line, however, because the continental shelf in the area was found to be an extension of the land mass of both countries. Finally, the Court of Arbitration discussed proportionality, stating that the principle is not so general as to be applied in all cases. It is a factor considered after delimitation line to determine if the result reached is equitable.[67]

The principle of equity is also enshrined in 1982 UNCLOS in the delimitation of the EEZ and in the delimitation of the continental shelf. UNCLOS provides that '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 … in order to achieve an equitable solution'.[68] In applying this to the Guinea/Guinea-Bissau case, with regard to delimitation of a single line delimiting the territorial sea, continental shelf and EEZ of the countries involved, the Tribunal emphasized that the aim of delimitation process was to achieve an equitable solution having regard to special circumstances. It is important to note that the choice of the method of delimitation, whether equidistance or any other method depended upon the pertinent circumstance of the case.[69]

In determining maritime boundaries, the Court has also taken the equity principle into account. For example, in the *North Sea Continental Shelf* case, the Court said: In fact, there is no legal limit to the considerations which states may take account of for the purpose of making sure that they apply equitable procedures, and more often than not it is the balancing-up of all such considerations that will produce equitable result rather than relying on one to excluding other factors. More recently, the ICJ clarified the method of drawing delimitation boundaries in *Cameroon v. Nigeria*[70]: The Court has on various occasions made it clear what the applicable criteria, principles and rules of

[65] ibid
[66] ibid
[67] ibid
[68] Article 74 UNCLOS
[69] M. Shaw, *International Law*, 5th ed. (Cambridge University Press, UK, 2003) 539
[70] *Cameroon v. Nigeria* supra

delimitation are when a line covering several zones of coincident jurisdiction is to be determined. They are expressed in the so-called equitable principles/relevant circumstances there are factors calling for the adjustment or shifting of that line in order to achieve an "equitable result."

Articles 15, 74 and 83 which deals with delimitation of the territorial sea, exclusive economic zone and continental shelf between States with opposite or adjacent coasts respectively establishes that sea boundary delimitations are to be effected first by agreement between the parties, rather than dictating substantive rules that must be followed when determining such boundaries.

In sum, courts have applied different theories in the delimitation of maritime boundaries, that is, the equidistance, equity, proportionality theory. The standard adopted by the courts basically allows the construction of any line that the judges perceive to be fair, with the only limit being that the result may not be radically inequitable to either side. The certainty that might encourage other states to arbitrate their similar disputes is lacking, and it appears unlikely that many nations will be amenable to binding arbitration under such circumstances.[71]

4. Framework on Maritime Boundary Dispute

The Convention provides the legal framework to be followed for the conduct of various maritime activities and it is the most important international legal instrument of the twentieth century following the Charter of the United Nations.

The UNCLOS is the legal framework and was aimed at regulating the affairs of the sea in order to prevent and minimize maritime boundary dispute among states. The UNCLOS applied to definition of maritime zones, the means and method for the resolution of disputes. It defined the right and responsibilities of states with respect to their use of world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources by the International Seabed Authority (ISA) with its own dispute tribunal. UNCLOS provided what the baseline should be, the various maritime zones such as territorial sea, contiguous zone, and etcetera, as well as the commencement of the measurement from the baseline.

The UNCLOS 1982 comprehensively regulated virtually all aspects of seas; it set out rules on the formation of Baselines and internal waters, and on the several maritime zones (Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone, the Continental Shelf and the Extended

[71] M. A. Fentress, supra.

Continental Shelf, the High Seas and the Deep Seabed Area). It further provided for rules pertaining to straits, archipelagos landlocked states, rules on jurisdiction over ocean vessels. Some of these rules are not very clear, such as the rules on delimitation of the zones between States. In case of maritime disputes on zones, the UNCLOS 1982 provided that the process to delineate the Economic Zone, Exclusive Economic Zone, Continental Shelf "shall be affected by agreement on the basis of international law in order to achieve an equitable solution," which is a fairly indeterminate way of saying that states should get together to reach agreements and be guided by equitable ideas, but does not provide how the delimitation process should go forward.

Article 15 UNCLOS 1982 made provision for the delimitation of the territorial sea by providing that the territorial sea may not extend beyond the median line which is equidistant from the nearest points of the baselines of the coastal states, except by an agreement between the parties by reason of historic title or other special circumstances.[72] This was applied in *St Pierre and Miquelon Case (Canada/France)*[73] where the ad hoc arbitration court was asked to setup single maritime line for the division of the territorial sea.

The Contiguous zone is of 24 nautical miles from the baseline from which the territorial waters is measured. In the contiguous zone, coastal states exercise control for preventing infringement of customs, fiscal, immigration and sanitary regulations illustrated in *St Vincent and the Grenadines v. Guinea*, [74] the International Tribunal for Law of the Sea opined that a coastal state has the power to enforce customs law in its contiguous zone. Hence, the contiguous zone can give a coastal state certain additional jurisdiction. However, the dispute arises when the coastal state claims contiguous zone for security purposes which can cover a broader view to increase the jurisdiction of the coastal state. The delimitation rules that apply to the contiguous zone are same with the territorial zone between the opposite and adjacent states.

Article 76 of the UNCLOS defined the continental shelf as follows, '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. Under Article 6 of the Continental Shelf Convention, 1958 delimitation must be done by an agreement or in absence of it; it shall be done by median line equidistant from the

[72] Article 15 UNCLOS 1982
[73] 31 ILM [1992]1145
[74] Law of the Sea, (n.90)

nearest points of the baselines of the territorial sea, subject to exceptions in special circumstances. Therefore, a state with concave coast could distort a median line resulting to unequal delimitation; it must be by natural prolongation of the land territory by an equitable mode. *In Tunisia v. Libya* the ICJ was asked to identify the rules of delimitation in continental shelves and the ICJ endorsed the fact that in absence of any agreement, the delimitation must be by equidistant principles to achieve equitable result for the opposite and adjacent nations considering the overall geographical aspects of the coasts of Tunisia and Libya.[75] But according to Article 83(1) of UNCLOS 1982, states have to go for an equitable approach, the limitation lies in the mode of executing it as the statutory provision does not provide for it. Due to this a flexible approach has been adopted in the delimitation rules and procedure which is, equitable solution must be made for delimitation by agreement in accordance with international law.

All of the above definitions and delimitations are done in a bid to set rules guiding the ocean. These rules offer a template to know if a conduct at sea is permissible or not. Sadly, the provisions regarding maritime boundary delimitation are not well defined and clear. The UNCLOS merely provides that process of delimitation of different maritime zones between states is affected by agreement on the basis of international law in order to achieve an equitable solution. States are directed to reach an agreement as to the delimitation of the maritime boundary. If the parties of the dispute fail to reach an agreement, they can move toward the dispute settlement procedure under the Law of Sea Convention stated in Part XV of the Convention.

This is an independent judicial body created by the mandate of the third UNCLOS. ITLOS is one of the significant creations of UNCLOS 1982 for resolving contentious or non-contentious maritime disputes. It is the latest judicial institution that came after UNCLOS. The office of the tribunal is situated in Hamburg, Germany. The Tribunal has a set of 21 serving judges who are elected for 9 years by the state parties. Each state party can nominate up to two candidates. It has different chambers such as the Seabed Disputes Chambers, Special Chambers (chamber for summary procedure and Standing chamber to deal with particular categories of disputes), Chamber for fisheries Disputes, etcetera.[76]

ITLOS' jurisdiction covers all disputes concerning the interpretation or application of the convention. The tribunal can give an advisory opinion through its Seabed Dispute chamber on

[75] ICJ Reports [1982]18
[76] Article 35, Section 4, Annex VI

matters concerning the activities of the Assembly or Council of the International Seabed Authority, for example, on responsibilities and obligations of States sponsoring persons with respect to activities in the Area as was decided in CASE No. 17.[77] Also the Tribunal may also give an advisory opinion on a legal question if this is provided by an international agreement related to the purposes of the convention. For example, case No 31, ITLOS is a request for an advisory opinion submitted by Small Island States on Climate Change and International Law.[78]

ICJ is the head judicial body of the United Nations and is an integral part of the United Nations established in 1945 in pursuit of pacific settlement of disputes. It is foremost forum for states seeking judicial settlement regarding the Law of the Sea. It does not only deal with matters relating to the Law of the Sea affairs but also may decide both maritime and sovereignty issues. ICJ is entitled to exercise its jurisdiction over any dispute concerning the interpretation or application of LOS Convention which is submitted to it under Article 287 and Article 288, UNCLOS 1982. It has dealt with a lot of cases bordering on maritime boundary disputes some of which are ; *Maritime Delimitation and Territorial Questions* (Qatar v. Bahrain),1998; *Land and Maritime Boundary* (Cameroon v. Nigeria: Equatorial Guinea intervening), 2002; *Territorial and Maritime Dispute in the Caribbean Sea* (Nicaragua v. Honduras), 2007; *Territorial and Maritime Dispute* (Nicaragua v. Colombia), 2012; *Maritime Delimitation in the Black Sea* (Romania v. Ukraine), 2009; *Maritime Dispute* (Peru v. Chile), 2014.[79]

According to article 287 UNCLOS 1982, one state has the right to choose one or more of the compulsory means of settlement of dispute mechanisms. But when they fail to choose one, arbitration shall be applied to their disputes. It has no appellate jurisdiction.

5. Interrelatedness between maritime name change and maritime boundary dispute

The causes of maritime boundary dispute are endless but whether the boundary disputes are terrestrial or maritime, they are mostly about political interest, increase in human population resulting in growing demand for marine resources, technological developments, prestige, security, political awareness, environmental challenges and economic interest.

[77] Md Monjur Hassan & others, supra.
[78] ibid
[79] Md Monjur Hassan, supra.

The issue remains whether the change of name from Gulf of Mexico to Gulf to America falls within a maritime name dispute? A maritime name dispute is said to have emerged between Mexico and the US regarding the Gulf of Mexico. This followed the signing of the Executive Order 14172 on January 20, 2025, directing federal agencies to adopt the name Gulf of America against the background of the fact that the name Gulf of Mexico has been widely used since the Mid-17th Century and was associated with Mexica, the Nahuati-speaking people of the valley of Mexico.[80]
It should be noted that the Gulf of Mexico has been a shared body of water, with Mexico and the US having established maritime boundaries through agreements in 1970, 1976, and 1978. These boundaries extend from the eastern and western land boundaries, with the Gulf of Mexico boundary stretching from the eastern land boundary.

The dispute reveals the complexities of maritime naming conventions and the potential for conflicts over territorial identity and geographic designations. It is significant to note that the International Hydrographic Organization[81] is responsible for standardizing geographic names, inclusive of bodies of water.[82] The 'name' dispute operates to erase the historical significance of the Gulf to Mexico. There has been a rich history associated with the 'Gulf' and the change if effected, will erase this maritime cultural heritage. Furthermore, the 'name' dispute has raised questions about national sovereignty and the rights of countries to name their territorial waters.[83]

6. Conclusion

It has been demonstrated that one of the major purpose of the United Nations Convention on the Law of the Sea (UNCLOS), which entered into force in 1994, was to provide guidance for the delimitation of maritime boundaries. UNCLOS does not have a definite governing rules and principles as provisions to UNCLOS relevant to boundary delimitation are indeterminate and conflicting, leaving much room for disagreement and providing little guidance for negotiation.

It was observed that even the decisions of the International Court of Justice and international arbitral tribunals have not been able to provide much clarification. The problem is associated with the complex interaction of principles underlying the regimes of the continental shelf, the territorial sea

[80] That is the Aztecs.
[81] [Hereafter, The IHO]
[82] The IHO has not recognized the change.
[83] It has been argued whether boundary name change falls within the ambit of the UNCLOS maritime boundary dispute?

and contiguous zone, and the exclusive economic zone, combined with the unique factual circumstances of each particular delimitation such as differing resource, economic, and strategic considerations, different geographical and geological configurations, and differing political factors and historical experiences. It was demonstrated the subsisting boundary 'name' dispute between the US and Mexico over the Gulf of Mexico, is remains a maritime boundary dispute, more particularly, a maritime boundary 'name' dispute.