

Obligation of Self-Restraint and Cooperation of Coastal States in Maritime Areas pending Delimitation

境界未画定海域における沿岸国の自制と協力の義務

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① ASEAN and South China Sea

Declaration on the Conduct of Parties in the South China Sea (2002) 行動宣言

- express desire to enhance favorable conditions for a peaceful and durable solution of differences and disputes among countries concerned
- reaffirmed a commitment to international law (including the UN Convention on the Law of the Sea) and to the freedom of navigation in the South China Sea
- agreed to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force
- agreed to exercise self-restraint in taking actions that could “complicate or escalate disputes.”
- ASEAN and China agreed that adopting an official “code of conduct”

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② Maritime Delimitation UNCLOSの海洋境界画定規定

Article 74(1) EEZの境界画定

The delimitation of the exclusive economic zone 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.

Article 83(1) 大陸棚の境界画定

The delimitation of the 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.

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③ Negotiations and Clarification of Legal Position

North Sea Continental Shelf Cases (1969) 北海大陸棚事件

The parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement: they are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it.

(ICJ Reports 3, 47)

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④ Transitional Period and Spirit of Understanding and Cooperation

- provisional arrangements of a practical nature 実務的性質の暫定取極
- obligation not to jeopardize or hamper the reaching of the final agreement
合意阻害行為の禁止

Article 74 (3) 排他的經濟水域

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

Article 83 (3) 大陸棚

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⑤ Activities that Jeopardize or Hamper the Final Agreements 境界画定合意阻害行為とはなにか？

Aegean Sea Continental Shelf Case (1976)

エーゲ海大陸棚事件(暫定措置の申請)における音波探査

whereas the continued seismic exploration activities undertaken by Turkey are all of the transitory character just described, and do not involve the establishment of installations on or above the seabed of the continental shelf; and whereas no suggestion has been made that Turkey has embarked upon any operations involving the actual appropriation or other use of the natural resources of the areas of the continental shelf which are in disputes;

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⑥ Case of Continental Shelf Delimitation between Guyana and Surinam
(2007) ガイアナ・スリナム大陸棚境界画定事件(UNCLOS付属書VII 仲裁判断)

466. In the context of activities surrounding hydrocarbon exploration and exploitation, two classes of activities in disputed waters are therefore permissible. The first comprises activities undertaken by the parties pursuant to provisional arrangements of a practical nature. The second class is composed of acts which, although unilateral, would not have the effect of jeopardizing or hampering the reaching a final agreement on the delimitation of the maritime boundary.

(continue to Para. 467)

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⑦ (Guyana v. Surinam)

467. The Tribunal is of the view that unilateral acts which do not cause a physical change to the marine environment would generally fall into the second class. However, acts that do cause physical change would have to be undertaken pursuant to an agreement between the parties to be permissible, as they may hamper or jeopardize the reaching of a final agreement on delimitation. A distinction is therefore to be made between activities of the kind that lead to a permanent physical change, such as exploitation of oil and gas reserves, and those that do not, such as seismic exploration.

(continue to Para. 470)

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⑧ (Guyana v. Surinam 2007)

470. It should not be permissible for a party to a dispute to undertake any unilateral activity that might affect the other party's rights in a permanent manner. However, international courts and tribunals should also be careful not to stifle the party's ability to pursue economic development in a disputed area during a boundary dispute, as the resolution of such disputes will typically be a time-consuming process. This Tribunal's interpretation of the obligation to make every effort not to hamper or jeopardize the reaching of a final agreement must reflect this delicate balance. It is the Tribunal's opinion that drawing a distinction between activities having a permanent physical impact on the marine environment and those that do not, accomplishes this and is consistent with other aspects of the law of the sea and international law.

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⑨ Article 56 EEZにおける沿岸国の管轄権

Rights, jurisdiction and duties of the coastal State in EEZ

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

...

(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;...

⑩ Article 60 (EEZにおける人工島、経済的目的の海洋構築物)
Artificial islands, installations and structures in the EEZ
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.

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⑪ Article 246 (Marine scientific research in EEZ and on CS) 海洋科学調査

沿岸国の裁量により同意を与えなくてよい科学調査

5. Coastal States may however **in their discretion withhold their consent** to the conduct of a marine scientific research project of another State ...
if that project:

- (a) is of direct significance for the exploration and exploitation of natural resources, whether living or non-living
- (b) involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment;
- (c) involves the **construction, operation or use of artificial islands, installations and structures** referred to in articles 60 and 80;

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⑫ Article 123 (obligation to cooperate in the enclosed or semi-enclosed sea)
閉鎖海又は半閉鎖海における協力義務

States bordering an enclosed or semi-enclosed sea **should cooperate** with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they **shall endeavor, directly or through an appropriate regional organization**:

- (a) to **coordinate the management, conservation, exploration and exploitation of the living resources of the sea**;
- (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;

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