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**STATE CONDUCT IN DISPUTED  
MARITIME AREAS:  
THE GUYANA V. SURINAME CASE**

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# Introduction

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**Legal Framework**

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**Guyana v. Suriname**

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# UNCLOS – Maritime Zones

## UNCLOS

Adopted in 1982 – Entered into force in 1994 – 167 Parties

Legal basis for the establishment of all maritime zones, including the territorial sea, contiguous zone, EEZ and continental shelf

# UNCLOS – Delimitation

## Overlapping Maritime Areas

Overlapping areas shall  
be delimited in  
accordance with UNCLOS

## Overlapping EEZ/Continental Shelf (Articles 74 and 83)

Delimitation shall be effected  
by agreement on the basis of  
international law, as referred  
to in Article 38 of the ICJ  
Statute in order to achieve an  
equitable solution.

# UNCLOS - Non Use of Force



# UNCLOS - Provisional Arrangements

Articles 74(3) and 83(3):

**Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation shall:**

- 1. Make every effort to enter into provisional arrangements of a practical nature; and**
- 2. During this transitional period, not jeopardize or hamper the reaching of the final agreement.**

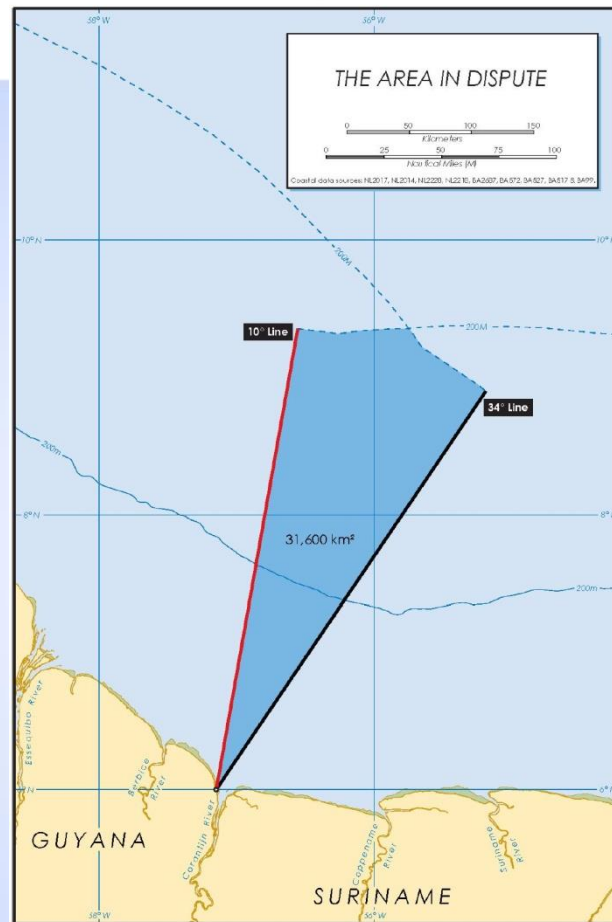
**Such arrangements shall be without prejudice to the final delimitation.**

# Guyana v. Suriname



**Guyana Suriname Map – Source: World Site Atlas**

Map 1



**The Area in Dispute - Counter-Memorial of Suriname**



# Guyana v. Suriname



**A CGX Oil Rig Licensed by Guyana – Source: Guyana Times**

**1982 UNITED NATIONS CONVENTION  
ON THE LAW OF THE SEA**

**IN THE DISPUTE CONCERNING  
THE MARITIME BOUNDARY  
BETWEEN GUYANA AND SURINAME**

**GUYANA v SURINAME**

**NOTIFICATION UNDER ARTICLE 287  
AND ANNEX VII, ARTICLE 1 OF UNCLOS**

**AND THE STATEMENT OF CLAIM  
AND GROUNDS ON WHICH IT IS BASED**

**24 FEBRUARY 2004**

**Notification and Statement of Claim of Guyana - 24 February 2004**



**The Arbitral Tribunal (from left to right): Dr. Kamal Hossain, Professor Hans Smit, H.E. Mr. Dolliver Nelson (President), Professor Thomas Franck, Professor Ivan Shearer – Source: PCA**

# Conduct of Parties: Use of Force

Guyana

CGX incident  
constituted a use of  
force.

Suriname violated  
Article 279 of  
UNCLOS and  
Articles 2(3) and 2(4)  
of the UN Charter.

Suriname

Act was reasonable  
law enforcement to  
preclude  
unauthorized drilling  
in disputed area.

Act was lawful  
countermeasures  
responding to an  
internationally  
wrongful act by  
Guyana

# Conduct of Parties: Use of Force



## TRIBUNAL

- Suriname's action seemed more like a military threat rather than a law enforcement activity.
- Countermeasures may not involve the use of force.
- Instead of threatening to use force, Suriname should have invoked compulsory dispute resolution under Part XV, Section 2.

# Conduct of Parties: Provisional Arrangements

## Articles 74(3) and 83(3)

Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation shall make every effort to enter into provisional arrangements of a practical nature.

### Guyana

Suriname, both before and after the CGX incident, failed to make serious efforts to negotiate provisional arrangements.

### Suriname

Guyana violated this obligation as it demanded that Suriname accept Guyana's concessions in the disputed area.

# Conduct of Parties: Provisional Arrangements

‘shall make every effort’

- imposes on the Parties a *duty*, not merely a recommendation, to negotiate in *good faith*.

‘in a spirit of understanding and cooperation’

- requires that the Parties take a *conciliatory approach* to negotiations and *be prepared to make compromise*.

‘provisional’

- The arrangements are temporary and will be without prejudice to the final delimitation.

# Obligation on Provisional Arrangements

## TRIBUNAL

### Suriname

Suriname violated the obligation as it did not actively engage in negotiation in good faith on provisional arrangements.

### Guyana

Guyana violated the obligation as it did not (i) inform Suriname *directly, earlier and in more details*; (ii) seek cooperation; (iii) offer to share information and invite Suriname to observe the activity and (iv) offer to share benefits from the activity.



# Obligation not to Hamper the Reaching of Final Agreement

## Articles 74(3) and 83(3)

During this transitional period, the States concerned shall not jeopardize or hamper the reaching of the final agreement.

### Suriname

- Guyana breached this obligation by authorizing CGX to undertake exploratory drilling in the disputed area.

### Guyana

- Suriname violated this obligation by its use of force to respond to Guyana's exploratory drilling.

## Obligation not to Hamper the Reaching of Final Agreement

### TRIBUNAL

- Unilateral acts that **cause a permanent physical change to the marine environment** is not permissible. They can be undertaken only jointly or by agreement between the parties.
- Unilateral **seismic survey** is permissible because it would not lead to permanent physical change.

# Conclusion

## UNCLOS DSM

- UNCLOS DSM is a positive means of resolving maritime disputes.

## Non Use of Force

- Threats and use of force are clearly held unacceptable.
- The bar for determining a violation of this obligation is very low.

## Provisional Arrangements

- There is a clear obligation to negotiate in good faith on provisional arrangements.

## Unilateral Activities

- Parties are not to take unilateral action that may cause physical change to environment. There are steps a state must follow if it wants to undertake permissible unilateral activities.
- States facing unilateral activities by the other party should invoke DSM.

**Thank you!**

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