

**CIL**

**CENTRE FOR INTERNATIONAL LAW**  
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# MARITIME BOUNDARY DISPUTES AND ARTICLE 298 OF UNCLOS

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## ARTICLE 298

### Optional Exceptions to Applicability of Section 2

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a **State may**, without prejudice to the obligations arising under section 1, **declare in writing that it does not accept any one or more of the procedures provided for in section 2 [compulsory dispute settlement]** with respect to one or more of the following categories of disputes:

# WEB OF PEACEFUL DISPUTE SETTLEMENT

UNCLOS Part XV

Compulsory  
Third-party  
Adjudication

Compulsory  
Conciliation

Optional  
Conciliation

Exclusion from  
dispute  
settlement

# SEA BOUNDARY DELIMITATIONS

**Exclusion of interim obligations?**

# ARTICLE 298

## Sea Boundary Delimitations

**(a) (i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that ...**

## QUESTION 1

Whether Obligations of Restraint and Cooperation under Articles 74(3) and 83(3) of UNCLOS may be excluded from compulsory dispute settlement by an Article 298 declaration

# ARTICLES 74 & 83

## Delimitation of the EEZ / CS

- 1. The delimitation of the EEZ / CS 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.
- 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.

# ARTICLES 74 & 83

## Delimitation of the EEZ / CS

Negotiating “package”:

- delimitation methodology,
- dispute settlement and
- interim arrangements pending delimitation.

1958 Convention on the Territorial Sea and Contiguous Zone,  
Article 12(1):

“1. 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”.



# ARTICLE 298

## Exclusion from Jurisdiction of Courts and Tribunals

- ▶ “disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitation”
- ▶ **1980**

## ARTICLES 74 & 83

### Delimitation of the EEZ / CS

- ▶ delimitation of the exclusive economic zone and continental shelf “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”
- ▶ **1982**

# ARTICLE 298

## Dispute on the Interpretation of Article 298

- ▶ Article 286  
any dispute concerning the interpretation or application of this Convention shall...be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.
- ▶ A dispute on the interpretation of Article 298:  
Does Article 298's reference to Articles 74 and 83 exclude compulsory dispute settlement for breaches of interim obligations under Articles 74(3) and 8(3)?

# COMPULSORY CONCILIATION

**When does a dispute arise?**

## ARTICLE 298

### Compulsory Conciliation

- ▶ **... provided that** a State having made such a declaration shall, when such a dispute **arises subsequent to the entry into force of this Convention** and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, **accept submission of the matter to conciliation under Annex V, section 2;**

## QUESTION 2

For compulsory conciliation, what criteria should be used to decide if the dispute arose subsequent to the entry into force of UNCLOS

# COMPULSORY CONCILIATION

## Entry into Force

### *Timor Leste / Australia Conciliation*

- ▶ entry into force of the Convention as a whole on 16 November 1994 or
- ▶ entry into force of the Convention as between Australia and Timor-Leste on 7 February 2013.

# ARTICLE 298

## Compulsory Conciliation

- Large discretionary element about the critical date when a dispute is deemed to have arisen
- *Mavrommatis*  
‘it must be shown that the claim of one party is positively opposed by the other’
- *South West Africa*  
a purely theoretical disagreement on a point of law or fact are alone not conclusive of the existence of a dispute



# MIXED DISPUTES

**Can a conciliation commission  
deal with “mixed disputes”?**

## ARTICLE 298

### 'Mixed' Land and Maritime Disputes

- ▶ **... and provided further that** any dispute that necessarily involves the concurrent consideration of **any unsettled dispute concerning sovereignty or other rights over continental or insular land territory** shall be excluded from such submission;

## QUESTION 3

Whether the court, arbitral tribunal or conciliation commission has jurisdiction to consider “mixed disputes” involving land sovereignty or other rights

# MIXED DISPUTES

## Necessity Criteria

- ▶ **necessarily involves** the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory

# RETURN TO COMPULSORY DISPUTE SETTLEMENT

**What does “shall, by mutual  
consent” mean?**

## ARTICLE 298

### Return to Compulsory Dispute Settlement

- (ii) after the conciliation commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report;
- if these negotiations do not result in an agreement, the parties **shall, by mutual consent, submit the question to one of the procedures provided for in section 2 [compulsory dispute settlement]**, unless the parties otherwise agree;

## QUESTION 4

Whether when conciliation fails to reach an agreement, parties are bound to refer their dispute back to compulsory third party dispute settlement

# SHALL, BY MUTUAL CONSENT,

Failure to settle the dispute  
by conciliation

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graph TD; A[Failure to settle the dispute by conciliation] --> B[Compulsory dispute settlement procedures  
UNCLOS Part XV,  
Section 2]; A --> C[Interpretation of "shall,  
by mutual consent"  
UNCLOS Article 286];
```

Compulsory dispute  
settlement procedures  
UNCLOS Part XV,  
Section 2

Interpretation of "shall,  
by mutual consent"  
UNCLOS Article 286



# MARITIME BOUNDARY DISPUTES



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