

## International Law Discourse in Southeast Asia

Volume 1 Issue 2 (July-December 2022), pp. 185-216

ISSN: 2830-0297 (Print) 2829-9655 (Online)

<https://doi.org/10.15294/ildisea.v1i2.58392>

Published biannually by the Faculty of Law, Universitas Negeri Semarang, Indonesia and managed by Southeast Asian Studies Center, Universitas Negeri Semarang, INDONESIA

Available online since July 31, 2022

# How to Resolve the Overlapping Maritime Claims in International Law? Comparing Barbados Trinidad vs Tobago case and Indonesia-Malaysia Cases

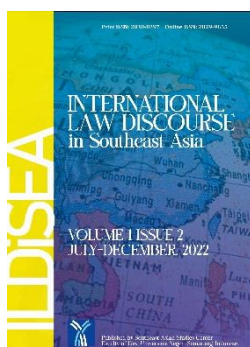
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**ABSTRACT:** Barbados and Republic of Trinidad and Tobago are two states that are facing each other and located in the Caribbean Sea. Since along long time ago, these two states often mixed up with dispute about maritime boundaries or about the shape of each state, such as when the shape from Barbados reputedly infringe the boundaries of Republic Trinidad and Tobago. Like this case above was often happened they usually must be resolved with help by international law. As we know that in that Continental shelf with drawn must 200 nm from the outer state's boundaries, and both of them has claimed that they had been followed the rules, but there are still happen

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Submitted: 22/12/2021 Reviewed: 11/02/2022 Revised: 24/05/2022 Accepted: 10/06/2022

an argue between them. How this dispute happened until reached the agreement, how the steps and how the result of the agreement will be explained in this paper.

**KEYWORDS:** Barbados, Trinidad, Arbitration, International Law of the Seas, Maritime Claims

**HOW TO CITE:**

Ramadhan, Arifn, and Mohammad Abdul Latief Kareem. "How to Resolve Overlapping Maritime Calins in International Law? Comparing Barbados Trinidad vs Tobase case and Indonesia-Malaysia Case". *International Law Discourse in Southeast Asia* 1, No. 2 (2022): 185-216. <https://doi.org/10.15294/ildisea.v1i2.58392>.



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## I. INTRODUCTION

Territorial disputes in countries since ancient times have indeed become very important for all countries in the world, both on land, sea and air. That's the way from time to time, it is necessary to have special legal regulations governing the territorial rights of a country that apply internationally. An example is the law of the sea which is a set of legal norms governing relations between States and dealing with the coast. the study of international law of the sea legal aspects in maritime affairs and the law that goes hand in hand with the existence that continues to grow until it reaches the United Nations Conference on the Law of the Sea I in 1958 (UNCLOS I), UNCLOS II 1960 and UNCLOS III 1982, which UNCLOS III replaced international treaties another at sea in 1958.

However, there are still many countries that experience conflict disputes over ownership of rights in terms of coastlines, islands etc.

And one of them is the Barbados Versus Trinidad and Tobago dispute which I will discuss in this paper. The two disputing countries are countries whose coastlines face each other, according to UNCLOS in articles 74 and 83<sup>1</sup>, Where if any country has opposite or adjoining coasts, an agreement must be made in accordance with applicable international law and this is where the problem point arises, where there are still many misunderstandings and claims between the two countries concerned about what has just occurs in the coastal zone, and as we know that the country is very sensitive to the territorial lines of a country.

The interesting thing that makes me want to raise this dispute is because disputes between countries regarding territorial boundaries will never be resolved and will be a lesson for us in the future in dealing with this problem and then analyzing further about the dispute between Barbados and Trinidad and Tobago seen from Kum's international maritime law perspective.

## II. METHOD

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<sup>1</sup> 1982 UNCLOS Article 74 concerning the determination of the boundaries of the exclusive economic zone between States with adjacent or adjoining coasts, and article 83 concerning the determination of the continental shelf line between States whose coasts are facing or adjoining. See Salawati Mat Basir, and Saidatul Nadia Abd Aziz. "Undelimited Maritime Areas: Obligations of States Under Article 74 (3) and 83 (3) of UNCLOS." *Indonesian Journal of International Law* 18, No. 1 (2020); Sam Bateman, "UNCLOS and its limitations as the foundation for a regional maritime security regime." *The Korean Journal of Defense Analysis* 19, No. 3 (2007): 27-56; Esther Christie Erlina, and Raden Ahmad Gusman Catur Siswandi. "Law Enforcement Issues and Regulations in Undelimited Maritime Boundaries: An International Law Perspective." *Lentera Hukum* 7, No. 1 (2020): 1-16.

This study used the historical and descriptive method. The historical method has a main function, namely, to be able to reconstruct information from past events objectively and systematically. This method uses a way of collecting data, assessing, proving and synthesizing from field evidence. This is done in order to obtain a strong conclusion in the relationship between the hypotheses. This method has a goal to be able to collect detailed, in-depth and actual data. In a study usually will be explained about the symptoms that already exist, for example about the problem and examine the conditions that still apply. This research also makes comparisons about what can be done to determine a solution in dealing with a problem.

### **III. THE DISPUTE BETWEEN BARBADOS AND TRINIDAD AND TOBAGO**

Barbados on February 16, 2004 claimed the continental shelf and the Exclusive Economic Zone based on articles 74 and 83 of UNCLOS, where an EEZ boundary delimitation between countries with opposite or adjacent coasts must be concluded by an agreement in accordance with international law. Barbados which consists of an island with a surface area of 411 km<sup>2</sup> with a population of 272,200 Barbados is located in the northeastern part of Trinidad at a distance of 166 miles and 80 miles from St. Lucia, the Republic of Trinidad and Tobago consists of the islands of Trinidad, with an area of 4,828 sq km and an estimated population of 1,208,300 and, 19 miles to the northeast, the island of Tobago with an area of 300 km<sup>2</sup> and an estimated population of 54,100, and a number of islands which much smaller ones close to the main island. Trinidad declared its country as an archipelagic state in accordance with the provisions of UNCLOS. During the three decades prior to the commencement of

this arbitration, the Parties held high-level diplomatic meetings and negotiated over the maritime resources claiming each regarding fisheries and hydrocarbons. Barbados adopted the "Act to provide for the establishment of Marine Boundaries and Jurisdiction" to expand its jurisdiction beyond its territorial sea and claim the EEZ, while Trinidad in 1986 adopted the Archipelagic Waters and Exclusive Economic Zone Act as a form of declaring Trinidad as an archipelagic state and claiming the EEZ zone. The parties hold high-level diplomatic meetings and negotiate on maritime resources that each other claims regarding fisheries and hydrocarbons. Barbados adopted the "Act to provide for the establishment of Marine Boundaries and Jurisdiction" to expand its jurisdiction beyond its territorial sea and claim the EEZ, while Trinidad in 1986 adopted the Archipelagic Waters and Exclusive Economic Zone Act as a form of declaring Trinidad as an archipelagic state and claiming the EEZ zone. The parties hold high-level diplomatic meetings and negotiate on maritime resources that each other claims regarding fisheries and hydrocarbons. Barbados adopted the "Act to provide for the establishment of Marine Boundaries and Jurisdiction" to expand its jurisdiction beyond its territorial sea and claim the EEZ, while Trinidad in 1986 adopted the Archipelagic Waters and Exclusive Economic Zone Act as a form of declaring Trinidad as an archipelagic state and claiming the EEZ zone.<sup>2</sup>

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<sup>2</sup> Barbara Kwiatkowska, "The 2006 Barbados/Trinidad and Tobago Award: A landmark in compulsory jurisdiction and equitable maritime boundary delimitation." *The International Journal of Marine and Coastal Law* 22, No. 1 (2007): 7-60; Barbara Kwiatkowska, "The Landmark 2006 Unclos Annex VII Barbados/Trinidad and Tobago Maritime Delimitation (Jurisdiction & Merits) Award." *The George Washington International Law Review* 39, No. 3 (2007): 573; Irina Buga, "Territorial sovereignty issues in maritime disputes: a

In 1990 an agreement was made between Barbados and Trinidad, namely an agreement on fisheries, namely the "Fishing Agreement" with the stipulation that Barbados takes fish in the Exclusive Economic Zone of Trinidad and Barbados is obliged to free up the Barbados market for Trinidad. Differences of opinion occur on the part of the maritime boundary, whether the boundary agreement is incorporated or separated from the memorandum of understanding. On February 6, 2004, Barbados fishermen were arrested by Trinidad and accused of being the perpetrators of illegal fishing activities.

On 16 February 2004 Barbados filed a Notice of Arbitration and a Statement of Claims concerning the boundaries of the exclusive economic zone and continental shelf in accordance with articles 74 and 83 of UNCLOS. With specifications, namely 12 miles from the territorial sea boundary of Trinidad and 12 miles from the southeast of the island of Tobago.

Trinidad and Tobago in its Counter-Memorial Letter states: As a coastal State with an unhindered east coast on the Atlantic sector, Trinidad and Tobago is entitled to a full maritime zone, including its continental shelf. And Barbados claims a section right in front of the beaches of Trinidad and Tobago.

### *1. Barbados: An Overview*

Barbados is a country consisting of a small island in the Atlantic Ocean with a total area of 430 km<sup>2</sup> with a population distribution of about 281,968 people in 2008. Barbados is located in the northeastern part of Trinidad, which is 166 miles and 80 miles from St Lucia, which

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jurisdictional dilemma for law of the sea tribunals." *The International Journal of Marine and Coastal Law* 27, No. 1 (2012): 59-95.

is also located southeast 2,585km from Miami, United States and located 860km from Caracas, Venezuela. For more information on the description of the State of Barbados according to Microsoft Encarta in 2008 states:

Barbados, an island nation in the West Indies. It is the easternmost of the Caribbean archipelago, bordered on the east by the Atlantic Ocean. Barbados was a British colony for more than 300 years, until it gained independence from Britain in 1966. Signs of British heritage in everywhere, from the island's Anglican churches to the national sport of cricket. Today, most of the country's population is of African descent brought to Barbados to work on sugar plantations. The capital, major city, and head of the harbor is Bridgetown, situated on the coast southwest of Barbados Barbados lack mineral resources, but small quantities of petroleum and natural gas have been discovered. Petroleum production began in 1973. The petroleum and natural gas produced is used locally. The island has good clay and stone for making bricks and building blocks."

## *2. Trinidad and Tobago: An Overview*

Trinidad and Tobago are an island nation located in the Atlantic Ocean, to the north of South America. Trinidad and Tobago have an area of about 5,128km<sup>2</sup> with a population of about 1,047,366 people in 2008. Trinidad and Tobago declare that they are an archipelagic country bound by UNCLOS laws. But not only that, can be seen on the map below the Caribbean Island in southwest Trinidad and also Trinidad and Tobago are a separate island. For further details, the explanation from the State of Trinidad and Tobago in Microsoft Encarta in 2008 stated that: which draws support from mostly black Africans. The Trinidadians of Asian descent generally support

opposition parties. Deposits of petroleum and natural gas give Trinidad and Tobago one of the highest per capita income levels in Latin America. However, the petroleum industry employs relatively few people, and unemployment has plagued the island nation. Sugarcane was the main industry, and Africans were brought as slaves to work on sugar plantations. After the abolition of slavery, contract laborers came from India and other countries to work on plantations. The first European to reach Trinidad and Tobago was Christopher Columbus. He was named Trinidad (which means "Trinity" in Spanish) after the three peaks he saw from his ship. The name she gave Tobago, *Bella Forma* ("Beautiful Shape"), not stick. The island's present name derives from the word tobacco, which the Indian sidekick grew on Tobago. Columbus claimed Trinidad for Spain, and it remained a Spanish colony until 1802, when the British took it. Tobago's history remained separate until the British joined Trinidad in 1889. Before that, Tobago changed hands many times. Trinidad and Tobago gained independence from Britain on August 31, 1962, and became a republic on August 1, 1976." Tobago changed hands many times. Trinidad and Tobago gained independence from Britain on August 31, 1962, and became a republic on August 1, 1976." Tobago changed hands many times. Trinidad and Tobago gained independence from Britain on August 31, 1962, and became a republic on August 1, 1976."

According to international law, each country has its own rights including island countries. This is also provided for in part IV of the



Convention in articles 46 and 47.<sup>3</sup> Article 46 explains: "*As an archipelagic state, it is a country consisting of a group of islands.*"

However, according to article 47 it explains: "*An archipelagic state can draw a straight arch (straight archipelagic baseline) from the outermost point*". The American Archipelago can establish maritime archipelagic lanes (ASL) and flight routes intended for the delicate passage of foreign ships and aircraft. Ships of all countries have the right to cross archipelagic sea lanes.<sup>4</sup>

#### IV. COASTAL STATE RIGHTS

The following are the rights of a coastal state with other states within continental boundaries under the 1982 Law of the Sea Act providing that: *A coastal state with sovereign rights based on continents aimed at exploring and exploiting its natural resources in exclusive rights, which means that if the coastal state does not explore the bottom of the continent or*

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<sup>3</sup> Retno Windari, *Hukum Laut, Zona-Zona Maritim Sesuai UNCLOS 1982 dan Konvensi-Konvensi Bidang Maritim* (Jakarta: Badan Koordinasi Keamanan Laut, 2009), pp. 23-24

<sup>4</sup> Sudjarmiko Sudjarmiko and Rudi Ridwan, "Batas-Batas Maritim Antara RI Mencari Google Artikel Negara Tetangga", *Jurnal Hukum Internasional* (Jakarta: Lembaga Pengkajian Hukum Internasional Fakultas Hukum Universitas Indonesia, 2004). *For further discussion and comparasion, please also see* Seguito Monteiro, "Yurisdiksi Negara Pantai di Wilayah Delimitasi Maritim Zona Ekonomi Eksklusif yang Belum Ditetapkan Berdasarkan Ketentuan Hukum Laut Internasional (Study di Timor Leste-Indonesia)." *Jurnal Komunikasi Hukum (JKH)* 6, No. 1 (2020): 303-334; Fahrul Hidayat, and Florence Elfriede S. Silalahi. "Analisis garis alternatif batas kewenangan pengelolaan wilayah laut antara Provinsi Papua Barat dengan Provinsi Maluku Utara secara kartometrik." *Jurnal Ilmiah Geomatika* 23, No. 1 (2017): 17-26.

*exploit natural resources, and no one can carry out such activities without the consent of the coastline.*

This coastal state also has the exclusive right to construct artificial islands, installations and structures on the continental shelf, for which article 60 *mutatis mutandis* and this coastal state also has the exclusive right to build an artificial island, drilling based on the continent by digging a tunnel, regardless of the depth of the water above the ground beneath the continental shelf.

The right of the coastal state to the continental shelf does not depend on the population (occupation), whether it is effective or impermanent (national) or on a clear proclamation. As for the rights of other countries on the continental shelf and requirements for submarine cables and pipelines, based on the 1982 Law of the Sea, which can determine: *All countries have the right to lay underwater cables and pipes on the continental shelf*

In order to take appropriate measures to explore the continental shelf, to explore natural resources and to reduce, prevent and control pollution of pipelines, these coastal States must also not prevent the installation or maintenance of cables or pipelines. Determine the path to finance the installation of deep-sea pipelines in such a way that on the continental shelf such approval of the coastline must be obtained. Coastal states also have the right/authority to determine requirements for cables/pipes entering their territory or territorial sea and have jurisdiction for financial cables and pipelines installed or used in connection with the exploration of the continental shelf or exploration of natural resources or operations to finance artificial plying, constructing installations under its jurisdiction. Countries that install submarine cables and pipes must also pay attention to

existing cables and pipes and not harm the interests of other countries that will carry out repairs to other submarine cables and pipes.

## V. DISPUTE RESOLUTION

The case of Barbados *vs* Trinidad and Tobago is a disputed case of the Continental Boundary and Exclusive Economic Zone, which on February 16, 2004 Barbados claimed that the Continental Shelf and Exclusive Economic Zone of a country reaches the Atlantic which coincides with the coastline of Tobago, which they say advanced in articles 74 and 83 UNCLOS, whereas according to Trinidad and Tobago the Continental basis is determined by offending the Barbados State for their continental base, so it is this right that causes these disputed cases to continue and many cases occur simultaneously with conflicts that occur over continental boundaries.<sup>5</sup> As there are still many sensitive conflicts between the two countries, an agreement was made in 1990 regarding fisheries midwives known as the "*Fishing Treaty*".<sup>6</sup>

However, after the two made an agreement, it turned out that the two countries were still in conflict with each other. Is an agreement on shared or separate boundaries from the memorandum of understanding. Not only that but this conflict has also been unresolved for years and completely subsided, even in 2004 around 6 February when there were fishermen from Barbados who were

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<sup>5</sup> Arif Al-Ghafiqi "Analisis KASUS Mengenai Sengketa Internasional KASUS Barbados *vs*. Trinidad and Tobago", *Online Paper Academia*, (2015). Online at [https://www.academia.edu/25599580/Analisis\\_Sengketa\\_pulau\\_Trinidad\\_vs\\_Barbados](https://www.academia.edu/25599580/Analisis_Sengketa_pulau_Trinidad_vs_Barbados)

<sup>6</sup> Dimiyati Hartono, *Hukum Laut Internasional*. (Jakarta: Bhratara Karya Aksara, 1997).

caught and accused of illegal fishing by people from Trinidad and Tobago.<sup>7</sup>

In my analysis, the problems faced by archipelagic countries with neighboring countries actually cannot be separated from continental boundaries and Exclusive Economic Zones between countries, because the territory within an archipelagic country is "fragmented" land and is delimited by continental lines. Therefore, continental boundaries and the Exclusive Economic Zone are very sensitive matters for an archipelagic country. In the case of a dispute between the States of Barbados and Trinidad and Tobago, causing this dispute will result in a very prolonged resolution in which the two countries will blame each other, because there are many small misunderstandings, and this is not only happening in Just an island nation but there are also several neighboring countries.

The main purpose of the State is to tighten the issue regarding the boundaries of the continents which is none other than because they will use the natural resources for the welfare of their own people. Both the sea and the coast that have the potential to be associated with abundant natural resources will not be in vain, because they also help the rotation of the economy in this country. Not only is this natural wealth abundant, the sea or waters also provide tourist attractions that will not be less abundant so that it also contributes to the economic turnover of a country, so this is what makes a country very sensitive to boundary watersheds.

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<sup>7</sup> Anwar, Donnilo. *Potensi dan Nilai Strategis Batas antarnegara: Ditinjau dari Aspek Hukum Perjanjian Internasional. dalam Mengoptimalkan Peran dan Fungsi Survei Pemetaan dalam Pengelolaan Batas Wilayah*. (Jakarta: Forum Komunikasi dan Koordinasi Teknis Batas Wilayah, 2002).

The rights and obligations of the coastal state in the exclusive economic zone in the 1982 UNCLOS are regulated as follows:

- a. Within the exclusive economic zone, the coastal state has:
  - 1) sovereign rights to carry out exploration and exploitation, conservation and management of living or non-living natural resources from the waters, seabed and subsoil in connection with other activities for the purpose of exploration and exploitation of the zone, such as energy production from water, currents and wind;
  - 2) jurisdiction as defined in the relevant provisions of this Convention with respect to:
    - manufacture and use of artificial islands, installations and structures;
    - marine scientific research;
    - protection and preservation of the marine environment.
  - 3) other rights and obligations as defined in this convention.
- b. In exercising its rights and fulfilling its obligations under this Convention in the EEZ, the coastal State must take due account of the rights and obligations of other States and must act in a manner in accordance with the provisions of this Convention.
- c. the rights stated in this article with respect to the seabed and the subsoil thereof must be implemented in accordance with chapter VI (on the continental shelf).

It is further determined that if a coastal State constructs artificial islands, installations and structures, then this:

- a. does not have island status
- b. does not have its own territorial sea; and
- c. its presence does not affect the delimitation of the territorial sea, EEZ or continental shelf.

Furthermore, it is emphasized the rights and obligations of other countries in the EEZ. Regarding this matter, UNCLOS 1982 regulates as follows:

- a. in the exclusive economic zone, all countries, whether coastal or non-coastal, enjoy (subject to relevant provisions), the freedoms of navigation and overflight, as well as the freedom to lay submarine cables and pipelines referred to in article 87 and other uses of the sea legal under international law relating to these freedoms, such as the use of the sea in connection with the operation of ships, aircraft, and submarine cables and pipelines, and in accordance with other provisions of this Convention.
- b. Articles 88 to 115 and other provisions of international law apply to the EEZ as long as they do not conflict with this chapter.
- c. In exercising their rights and fulfilling their obligations under this convention in the EEZ, states must pay due attention to the rights and obligations of the coastal state and must comply with the laws and regulations established by the coastal state in accordance with this convention and other international legal regulations insofar as these provisions do not conflict with the provisions of this chapter.

Basis for Settlement of Disputes Regarding the Granting of Jurisdictional Rights and Obligations in the EEZ. In the case where this convention does not give rights or jurisdiction to the coastal state or other countries in the EEZ, and a dispute arises between the interests of the coastal state and other countries or other countries, the dispute must be resolved based on justice and with consideration. all relevant circumstances by taking into account each priority of the interests involved for the parties and for the international community as a whole (UNCLOS Article 59).

Determination of Exclusive Economic Zone Boundaries. The boundaries of the EEZ between countries whose coasts are connected or opposite can be made by agreement according to international law in order to obtain a just and equitable solution. In the event that such an agreement is not reached within a reasonable time, the State may resolve this issue through the dispute resolution procedure under this Convention.

Regarding the method used to determine the boundaries of the waters which are included in the EEZ, several matters relating to the technique of determining the boundaries of the waters have been proposed by the international law commission in 1951, regarding national baselines and water boundaries between countries.

Experts said that drawing a boundary line through the continuous territorial sea of two adjoining countries, *first*, the boundary of the territorial sea—if it is determined otherwise, it should be done using the principle of equidistance from the relevant coastline, and *second* in some cases, this method does not give satisfactory results and in this case the problem must then be negotiated.

There is no one method of determining boundaries that is proven to be satisfactory for all circumstances, and therefore the determination of borders must be carried out by entering into agreements on an equal distribution basis. The problem of determining borders, including the determination of borders in the Exclusive Economic Zone between the countries concerned, if an international agreement is not reached, can choose the procedure for resolving international disputes according to this convention.

The continental shelf in UNCLOS 1982 is regulated in chapter VI articles 76-85 which defines the continental shelf of a coastal state as covering the seabed and subsoil thereof from the area below sea level which lies outside its territorial sea throughout the natural prolongation of its land area to the outer edge of the continental margin, or up to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, in the event that the outer edge of the continental margin does not extend to that distance.”

That information regarding the boundaries of the continental shelf beyond 200 nautical miles from the baselines used to determine the breadth of the territorial sea must be submitted by the coastal State to the basis of equitable geographical representation. The coastal state is also required to deposit relevant maps and information including geodetic data permanently delineating the outer limits of its continental shelf with the Secretary-General of the United Nations.

Regarding the legal status of the waters and air space above the continental shelf and the rights of freedom of other countries, the 1982 UNCLOS determines as follows:

- a. The rights of the coastal State over the continental shelf do not affect the legal status of the waters above it or the air space above the waters.
- b. The exercise of the rights of the coastal State over the continental shelf shall not reduce or cause any unreasonable interference with navigation and other rights and freedoms of other States as provided for in this Convention.

The rights of the coastal state and other states to the continental shelf



UNCLOS 1982 determines as follows:

- a. the coastal state exercises sovereign rights over the continent for the purpose of exploring and exploiting its natural resources. These sovereign rights are exclusive, in the sense that if the coastal state does not explore the continental shelf or exploit its natural resources, no one can carry out these activities without the consent of the coastal state.
- b. The coastal state has the exclusive right to build artificial islands, installations, and buildings on the continental shelf, for this article 60 applies *mutatis and mutandis*.
- c. the coastal state has the exclusive right to build artificial islands, drilling on the continental shelf for all purposes.
- d. the right of the coastal State to exploit the land under the continental shelf by digging tunnels, regardless of the depth of the waters above the land under the continental shelf.
- e. The rights of the coastal state over the continental shelf do not depend on occupation, whether effective or not permanent (notional) or on any express proclamation.

As for the rights of other countries on the continental shelf and the requirements for laying submarine cables and pipes, the 1982 UNCLOS determines as follows:

- a. all countries have the right to lay submarine cables and pipelines on the continental shelf.
- b. subject to its right to take appropriate measures to explore the continental shelf, explore its natural resources and for the prevention, reduction and control of pollution from pipelines, the coastal State may not prevent the installation or maintenance of such cables or pipelines

- c. the determination of the direction of the installation of such sea pipelines on the continental shelf must be approved by the coastal state
- d. the coastal state has the right/authority to determine requirements for cables or pipes entering its territory or territorial sea, and has jurisdiction over cables and pipes installed or used in connection with the exploration of its continental shelf or exploration of its natural resources or the operation of artificial islands, the installation of structures is under its jurisdiction.
- e. Countries that install submarine cables and pipes, must pay attention to existing cables and pipes, and not harm the interests of other countries that will make repairs to their submarine cables and pipes.

## VI. LEGAL FORMS OF MARITIME DISPUTE SETTLEMENT

### 1. *Negotiations*

Detailed rules under contemporary law of the sea, increasing interest in exploiting resources and the threat of mandatory dispute resolution mechanisms prompted America to enter into negotiations. Identifying the fact that negotiations are going forward is difficult because Americans often keep them calm. However, research has reported 16 negotiations from 1994 to 2012, some of them were successful, such as the 2003 Negotiations between Azerbaijan, Kazakhstan and the Russian Federation, the 2004 Negotiations between Australia and New Zealand, the 2008 Mauritius-Seychelles EEZ Delimitation Agreement, etc.

Negotiations sometimes lead to dispute resolution in the form of agreements or other forms of dispute resolution mechanisms.

Negotiation is by far the preferred method of dispute resolution by Americans and other avenues are considered only when negotiations stall.

In the context of delimitation, there are some obvious drawbacks to pursuing mandatory dispute mechanisms and considerable advantages in negotiations. During negotiations, the parties maintain control over a series of very important issues including the precise outcome of delimited boundaries, the way in which lines are being defined, the terms and timing of the agreement and the way the agreement is presented publicly. It is generally believed that litigation always carries risks for the parties and that the range of legal findings available to court is more limited than the range of options open to negotiators. Also, when appearing before courts apply international law, parties operate within certain frameworks that lack flexibility and leave little room for creativity and tend to always favor one side while failing to consider the interests of all actors. However, during the negotiations, the parties pursued a joint development process in the maritime space and were able to set aside legal disputes to focus on practical measures to secure each party's underlying objectives, particularly when each side wishes to pursue different types of exploitation.

## *2. Mediation*

In contrast, States rarely resort to mediation or good offices. For example, the 2015 OAS Belize-Guatemala Border Dispute Mediation has not resolved the dispute and has led the parties to take the matter before the International Court of Justice.

### *3. Peace*

Conciliation is provided for in Section 15 of the Law of the Sea Convention but is almost never used by States. The 1981 Iceland/Norway Continental Shelf Dispute Regarding Jay Mayen Island is one of the few conciliations ever recorded.

States do not tend to use conciliation because once they decide to give up control over a dispute and allow for a formal decision by a third-party body, States prefer to go all the way to an eventual binding decision. There is not much to gain from a process that looks a lot like arbitration without the legal certainty benefits flowing from the issuance of an arbitral award. Also, States would also prefer to forfeit the arbitration and have reasons to set aside the award rather than lose conciliation and have no legal basis to regulate the by-product.

### *4. Arbitration*

Sometimes, parties will reach a stalemate during negotiations however it is necessary to resolve the dispute as they are unlikely to otherwise make use of resources. They will then move on to mandatory dispute resolution. Some countries, such as Nicaragua, are very familiar with the process and have appeared on several occasions before the ICJ on various occasions. The more familiar Americans become with the process, the more likely they are to prefer the Law of Mandatory Maritime Dispute Resolution in the future.

Since 1994, arbitration has been the most popular way to resolve maritime disputes. Under Annex VII of the Law of the Sea Convention, the court consists of 5 arbitrators, each party to the dispute appoints one arbitrator and they jointly appoint the remaining three. In case it is required, the President of ITLOS serves

as the appointing authority. The arbitral tribunal decides on its own procedure which provides for a great deal of flexibility.

Some examples of LOSC Annex VII arbitrations include:

- 1) Australia and New Zealand *v.* Japan (“Southern Bluefin Tuna Arbitration”)
- 2) Ireland *v.* UK (“Mox Crop Arbitration”)
- 3) Malaysia *v.* Singapore (“Land Reclamation of Arbitration”)
- 4) Barbados Trinidad and Tobago Maritime Delimitation Arbitration
- 5) Guyana *v.* Suriname Maritime Delimitation Arbitration
- 6) Bangladesh *v.* India (“Gulf of Bengal Maritime Boundary Arbitration”)
- 7) Mauritius *v.* UK (“Chagos Archipelago Arbitration”)
- 8) Argentina *v.* Ghana (“ARA Libertad Arbitration”)
- 9) Philippines *v.* China (“South China / West Philippines Sea Arbitration”)
- 10) Malta *v.* Sao Tome and Principe (“Duzgit Integrity Arbitration”)
- 11) Netherlands *v.* Russian Federation (“Arctic sunrise Arbitration”)
- 12) Denmark in relation to the Faroe Islands *v.* European Union (“Atlanto-Scandian Herring Arbitration”)

The Law of the Sea Convention does not, by itself, seek to address the issue of sovereignty over territory. It is therefore important to remember, in the Annex VII analysis of arbitrations, that jurisdictional issues arise whenever courts are asked to decide whether a state has sovereignty over a particular territory.

For example, in the Arbitration of the Chagos Archipelago, Mauritius claimed that the government of the UK archipelago was unlawful, and that the territory of Mauritius should include the Chagos Archipelago. When Mauritius brought trial in 2010, he tried to frame

it in a way that only indirectly touched on issues of sovereignty. However, in March 2015, the court found that it did not have jurisdiction as the dispute directly concerned sovereignty, which was not within its jurisdiction. The court nevertheless held that some minor issues of sovereignty, in addition to the underlying claims, could be set aside.

In the Philippines v. China arbitration, the Philippines challenged China's activities in the South China Sea and Seabed Territories and argued that China's claims to the territory bounded by the "Nine-Dash Line" were invalid under the Law of the Sea Convention. The Philippines is therefore seeking findings that China's claims to this territory are unlawful. The Philippines also asked the court to determine whether some features claimed by both the Philippines and China qualify as islands, and findings regarding the Philippines' rights outside the exclusive economic zone. China rejects the jurisdiction of this court, among others, on the grounds that the essence of the subject matter of the dispute is sovereignty. A hearing on jurisdiction is scheduled for July 2015 and, if jurisdiction is found, a hearing on merits will take place later in 2015.

Countries are using arbitration more and more because of the speedy courts that issue decisions and give parties a lot of control over the procedure. A downside of arbitration is the fact that it is more expensive than litigation.

After confirming the jurisdiction, the Arbitration established a Maritime Line between the two by dividing the overlapping space at sea into three areas. *First*, in the West there are similarities between parties who are found on equidistant lines, so that while their shores are opposite lines. However, the party can be divided to determine

whether the equidistance line that previously had to shift took a very relevant situation. While Trinidad and Tobago maintain that lines of equidistance must exist between lines in the West. Barbados itself also claims that the line had to be adjusted due to the activities carried out by traditional Barbados fishermen. And in this case, the prosecution also found that the equidistance line was west of the line between Barbados *vs* Trinidad and Tobago.

*Second*, the problem of returning the center point extends from point D of Barbados claiming point A of the claims of Trinidad and Tobago. In this segment briefly maybe only about 16 nautical miles. The parties here do not argue about the equidistance line which ultimately the Assembly can conclude that the equidistance line agrees on this.

*Third*, in this eastern part of Barbados there are parties who do not agree to ask for a boundary between countries with a single Maritime boundary. And although Barbados has asked the courts to define a single maritime boundary for a unilateral and exclusive Economic Zone, then it is from Trinidad and Tobago that the Continent and its EEZ are separate and distinct, so there may be several distinct lines between each country. And in the end the court stated that first we will determine the boundaries of the continent and the EEZ as far as the claims overlap, without seeing any separate law between the EEZ and the continent. In this area, the Assembly establishes the Maritime location by adjusting the temporary equidistance line by taking the relevant situation.

## VII. COMPARISON

### 1. *Areas of Consideration*

The geodetic maritime boundary line is set in the charter, and this is shown in the V map which is then attached to the charter. Finally, the Panel of Judges applied proportionality, and concluded that there was a bending of the equidistance line, which then led to reciprocity resulting in some form of injustice.<sup>8</sup>

Then regarding the verdict in the case of Barbados VS Trinidad and Tobago which was established in The Hague, London on April 11, 2006, with Stephen M. Schwebel as the presiding judge who stated that: *This claim from Barbados is rejected*

Barbados *vs* Trinidad and Tobago shall exercise good faith to conclude a memorandum of understanding regarding hydrocarbons, which are extracted from the fishery resources in the EEZ of Trinidad and Tobago and are subject to all outcomes of the agreement.

In the judge's consideration, it established the consideration that the claims of each country would overlap with territorial boundaries and would affect the state of Barbados, so to resolve that, the Tribunal encouraged the parties to re-do the Deed of Compromise and submit it to the deed.

### 2. *Arbitration and Jurisdiction Measures*

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<sup>8</sup> Yoshifumi Tanaka, "Barbados / Trinidad and Tobago maritime delimitation", *Hague Justice Journal* 2, No. 1 (2007): 54-57. Online access at [http://www.haguejusticeportal.net/Docs/HJJ-JJH/Vol\\_2\(1\)/Barbados\\_arbitration.pdf](http://www.haguejusticeportal.net/Docs/HJJ-JJH/Vol_2(1)/Barbados_arbitration.pdf)



Arbitration is one way or alternative dispute resolution that has been known for a long time in international law. Arbitration itself is also a form of justice that is held based on the good faith of the disputing parties so that the resolution of this problem can be resolved by a judge they will choose and appoint themselves. With a final decision binding on both parties to implement. And for settlement through arbitration, it can be done in several ways, namely settlement by an institutionalized arbitrator (institutionalized) or ad hoc arbitration body (temporary).<sup>9</sup>

International law also always monitors countries in the world such as whether there are problems or disputes, including in disputes about sovereign boundaries that very often occur between two neighboring countries.<sup>10</sup> Then in the case between Trinidad and Tobago and Barbados, this arbitration in international law continues to mediate between the two neighboring countries to avoid something happening in the future.<sup>11</sup> Based on the United Nations document containing funding for the "Report of International Choice

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<sup>9</sup> Gunawan Widjaja and Ahmad Yani, *Hukum Arbitrase Jilid I* (Jakarta: PT Raja Grafindo Persada, 2000) pp. 16-17.

<sup>10</sup> Boer Mauna, *Hukum Internasional Pengertian Peranan dan Fungsi Era Dinamika Global*. (Bandung: PT. Alumni, 2003).

<sup>11</sup> Mochtar Kusumaatmadja. *Masalah Lebar Laut Teritorial Pada Konprensi-Konprensi Hukum Laut Jeneva Tahun 1958 dan 1960*. (Bandung: Penerbit Universitas Bandung, 1962). See also Mochtar Kusumaatmadja, "Konsepsi Hukum Negara Nusantara Pada Konperensi Hukum Laut Ke-III." *Jurnal Hukum & Pembangunan* 33, No. 1 (2017): 89-105; Yoyon Mulyana Darusman, "Pengaruh Konvensi Hukum Laut Internasional Tahun 1982 Terhadap Wilayah Laut Indonesia." *Jurnal Cita Hukum* 6, No. 2 (2018): 343-360; Tommy Hendra Purwaka, "Tinjauan Hukum Laut Terhadap Wilayah Negara Kesatuan Republik Indonesia." *Mimbar Hukum* 26, No. 3 (2015): 355-365; Luh Putu Sudini, "Penetapan Alur-Alur Laut Kepulauan Menurut Konvensi Hukum Laut 1982." *Jurnal Hukum & Pembangunan* 32, No. 3 (2017): 303-327.

Arbitration" regarding Arbitration between Barbados and the Republic of Trinidad and Tobago in chapter IV: Jurisdiction occurring at 30 points of the Jurisdiction result.

## IX. CONCLUSION

From the case, it can be concluded that any country will be very sensitive to its territorial boundaries, this is also for classic reasons which are the sovereignty of the state and the natural resources that exist in the region. And according to my analysis from the start, Barbados acted arbitrarily to draw their boundaries by claiming their boundaries until they reached the Atlantic which coincided with the Atlantic line which coincided with the Tobago coastline. This is also not in accordance with the UNCLOS decision on article 52 paragraph (15) which explains in a country where it is allowed to draw a maximum line of 200nm, and when viewed from the picture which shows the lines of claims of the two countries, and the territory can also be said wholly owned by Tobago. Between Trinidad and Tobago and Barbados often violate the boundaries claimed by each party so that if this is done it will intentionally become a political tactic, but in fact situations often occur so international law must be a mediator between the two parties. Then, here the role of Arbitration in my opinion is only as a mediator because maybe after the decision of the Stipulation between the two countries there will be no repetition of similar cases will occur in the future.

The case that occurred between Barbados and Trinidad was a dispute over the exclusive economic zone and the continental shelf, in exploring and exploiting the resources therein as a state, Trinidad and Barbados had made a memorandum of agreement that Barbados had the right to explore in the territorial sea of Trinidad and Barbados was

obliged to open the market. Barbados for Trinidad freely. However, Barbados fishermen are caught by Trinidad and are considered illegal fishing, we think Trinidad is only doing political action here to become a powerful country, because since 1988-2004 this has been happening and has been repeated from both Barbados and Trinidad. Barbados claims Barbados that reaches the Atlantic to coincide with the Tobago coastline. My analysis here is that Barbados makes a claim that is not in accordance with the provisions of the 1982 Law of the Sea Convention article 52, which should be an exclusive economic zone that should be 200 miles from the baseline and that Barbados claim is entirely the property of Trinidad and Tobago. Barbados and Trinidad are archipelagic areas that face each other and are side by side, according to the geographical situation, a bilateral agreement has been made between Barbados and Trinidad, and each of these countries should have very understanding and good cooperation in good faith to comply with the agreement (Deed of Compromise) them for the delimitation of a continental shelf and an Exclusive Economic Zone.

In the agreement Barbados and Trinidad do not determine the boundaries of the EEZ and its continental shelf, starting from this I say that there should be renegotiation between Barbados and Trinidad for the determination of these boundaries in accordance with articles 74 and 83. In this case, the role of arbitration is only as a polling place and a mediator (3rd party) in this dispute. Because the problem is long enough, and the authority of arbitration to decide the territorial boundaries of each country has not been carried out (there has been no state action to enter into the agreement), in accordance with the 1982 UNCLOS article 283 "If a dispute arises between the Contracting States regarding the interpretation or application of this

Convention, the parties to the dispute must immediately exchange opinions regarding a settlement by negotiation or other peaceful means "and carried out as soon as possible. In each EEZ jurisdiction and the continental shelf, the state has the exclusive right, namely, to regulate everything related to the exploitation of its natural resources except with the consent of the coastal state. Here the author agrees with the decision of the judges that the compromise deed must be updated in great detail with good faith, understanding, and high cooperation to each country, starting from the determination of boundaries, and other agreements. Talking about the hydrocarbons contained in the compromise deed, there is an arrangement in the 1982 UNCLOS which states that the exploration and exploitation of natural resources is. Trinidad reserves the right to allow Barbados to drill for hydrocarbons on its continental shelf (article 81).

## ACKNOWLEDGMENT

None

## CONFLICT OF INTEREST

None

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*You must not lose faith  
in humanity. Humanity  
is an ocean; if a few  
drops of the ocean are  
dirty, the ocean does not  
become dirty.*

**Mahatma Gandhi**