Obligations of States in a Disputed Continental Shelf Area

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**Eight Basic Rules**

1. generally, the States concerned shall act in good faith
2. the States concerned shall negotiate in good faith toward a final agreement on delimitation
3. pending a final agreement, the States concerned shall seek a practical arrangement
4. pending reaching a practical arrangement, the States concerned shall not take steps that jeopardize the reaching of a final agreement
5. the States concerned shall abide by any order on interim measures by a competent tribunal
6. the States concerned shall use only permissible counter-measures
7. the States concerned shall not threaten or use force in violation of the U.N. Charter
8. third States shall not knowingly assist a disputing State that is acting wrongfully
“States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.”
# Good Faith & State Responsibility for Acts in Disputed Area Prior to Delimitation

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<tr>
<th>State Acts in Good Faith</th>
<th>State Acts in Disputed Area Later Found to Be Its Continental Shelf</th>
<th>State Acts in Disputed Area Later Found Not to Be its Continental Shelf</th>
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</thead>
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| **Scenario #1 (easiest case):** Imposition of State responsibility very unlikely | **Scenario #2:** Imposition of State responsibility unlikely  
*Ghana/Côte d’Ivoire, 2017, para. 592*  
Land boundary analogue: Nigeria in *Cameroon v. Nigeria* |

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<thead>
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<th>State Acts in Bad Faith</th>
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| **Scenario #4 (hardest case):** Imposition of State responsibility possible  
*Guyana v. Suriname, 2007*  
Land boundary analogue: Eritrea conduct in Ethiopian-administered territory (1998-2000) | **Scenario #3:** Imposition of State responsibility very likely  
Land boundary analogue: Iraq in Kuwait territory (1990-1991) |
“In the view of the Special Chamber, … maritime activities undertaken by a State in an area of the continental shelf which has been attributed to another State by an international judgment cannot be considered to be in violation of the sovereign rights of the latter if those activities were carried out before the judgment was delivered and if the area concerned was the subject of claims made in good faith by both States.”
#2 Negotiate toward Final Delimitation Agreement

*Law of the Sea Convention, Article 83(1)*

“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.”
“The Special Chamber notes that the obligation under article 83, paragraph 1, of the Convention to reach an agreement on delimitation necessarily entails negotiations to this effect. The Special Chamber emphasizes that the obligation to negotiate in good faith occupies a prominent place in the Convention, as well as in general international law, and that this obligation is particularly relevant where neighbouring States conduct maritime activities in close proximity.”
#3-4 Pursue Practical Arrangements & Don’t Jeopardize Final Agreement

_Law of the Sea Convention, Article 83(3)_

“Pending agreement ... 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.”
“[T]he transitional period referred to means the period after the maritime delimitation dispute has been established until a final delimitation by agreement or adjudication has been achieved. Article 83, paragraph 3, covers two situations in this transitional period, namely the situation where a provisional arrangement has been reached which would regulate the conduct of the parties in the disputed area and the situation where no such provisional arrangement has been reached. … ”
Ghana/Côte d’Ivoire, 2017, para. 630

...The obligations States encounter in respect of a disputed maritime area for which no provisional arrangement exists are described by the words ‘not to jeopardize or hamper the reaching of the final agreement’. In interpreting these words, account has to be taken of the general obligation under article 83, paragraph 3, of the Convention that in the transitional period States have to act ‘in a spirit of understanding and cooperation’.”
“The Special Chamber notes that, pursuant to article 290 of the Convention, its Order for the prescription of provisional measures is obligatory in nature, creating legal obligations with which parties have to comply. In this regard, the Special Chamber draws attention to paragraph 6 of [LOSC] article 290, according to which ‘[t]he parties to the dispute shall comply promptly with any provisional measures prescribed under this article’.”
#6 Only Permissible Counter-Measures

*ILC Articles on State Responsibility, Arts. 49-54*

-- unlawful act in response to antecedent unlawful act so as to induce compliance
-- call upon other State to comply
-- provide advance notice of intended counter-measures
-- must be reversible
-- must be proportionate
-- still must follow any applicable dispute settlement procedures
-- terminate if other State complies
#7 Do Not Use or Threaten to Use Force in Violation of the U.N. Charter

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) That State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) The act would be internationally wrongful if committed by that State.