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International Implications on Rising Sea Levels and Changing of Maritime Borders

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Abstract

Sea levels are expected to rise at a significant rate of twelve inches between now and 2050.¹ As the sea levels rise, borders are bound to change due to the erosion of the existing land borders. The United Nations (“UN”) sets the limits for how far a nation may extend its borders into the sea,² setting a maximum extension of twelve nautical miles from a nation's land borders.³ The International Court of Justice (“ICJ”), the judicial branch of the UN, is the ruling authority when disputes arise regarding maritime borders and the high seas. However, the ICJ only has the authority to rule on cases that are brought to them.⁴ Between now and 2050, countries are going to experience the impacts of these water level changes firsthand.⁵ Many land disputes concerning boundaries will likely arise. These disputes will have grave implications for the legal, political, and economic climate of the world.

BACKGROUND

A nation's borders in the seas are set forth by the UN, however, they tend not to stray too far from the land territories with a required limit of twelve nautical miles from the nation's land borders.⁶ These borders are called territorial borders.⁷ In addition to territorial borders, nations have exclusive economic zones (“EEZ”).⁸ An EEZ is a zone in which the country that has territorial jurisdiction, also has jurisdiction over the natural resources and “sovereign rights for

¹ Sally Younger, *NASA Study: Rising Sea Level Could Exceed Estimates for U.S. Coasts*, NASA GLOBAL CLIMATE CHANGE (Nov. 15, 2022), [https://climate.nasa.gov/news/3232/nasa-study-rising-sea-level-could-exceed-estimates-for-us-](https://climate.nasa.gov/news/3232/nasa-study-rising-sea-level-could-exceed-estimates-for-us-coasts/#:~:text=By%202050%2C%20sea%20level%20along,three%20decades%20of%20satellite%20observations.)

[coasts/#:~:text=By%202050%2C%20sea%20level%20along,three%20decades%20of%20satellite%20observations.](https://climate.nasa.gov/news/3232/nasa-study-rising-sea-level-could-exceed-estimates-for-us-coasts/#:~:text=By%202050%2C%20sea%20level%20along,three%20decades%20of%20satellite%20observations.)

² RONGXING GUO, *CROSS-BORDER RESOURCE MANAGEMENT* 429-450 (4th ed. 2021).

³ John P. Rafferty, *Are There Laws on the High Seas?*, *ENCYCLOPEDIA BRITANNICA*, <https://www.britannica.com/story/are-there-laws-on-the-high-seas/#:~:text=Generally%20speaking%2C%20the%20law%20of,resources%2C%20and%20either%20encourage%20or> (last visited Feb. 2, 2024).

⁴ INTERNATIONAL COURT OF JUSTICE, *How the Court Works*, www.icj-cij.org/how-the-court-works, (last visited Feb. 20, 2024).

⁵ Younger, *supra* note 1.

⁶ Rafferty, *supra* note 3.

⁷ SCHECHTER, SHAFFER & HARRIS, LLP, *How Does Maritime Law Enforcement Work in International Waters?*, <https://maintenanceandcure.com/maritime-blog/maritime-law-enforcement-in-international-waters/#:~:text=No%20one%20country%20has%20legal,certain%20rates%20to%20claim%20jurisdiction> (last visited Feb. 2, 2024), [hereinafter *Maritime Law in International Waters*].

⁸ NATIONAL OCEANIC ATMOSPHERIC ADMINISTRATION, *What is the EEZ?*, (Jan. 20, 2023), <https://oceanservice.noaa.gov/facts/eez.html>.

the purpose of exploring, exploiting, conserving and managing natural resources.”⁹ In these zones, the nation’s law applies and the nation has rights to the resources in the territorial sea.¹⁰

The National Aeronautics and Space Administration (“NASA”)’s Sea Level Change Team has determined that “by 2050, sea levels along contiguous U.S. coastlines could rise as much as 12 inches (30 centimeters) above today’s waterline.”¹¹ As a result of rising sea levels, there will be high-tide flooding which will cause changes to the physical land borders of nations.¹²

Beyond the nation's nautical territory are the “high seas,” which fall into international waters. In international waters, the laws of the country to which a ship is registered are applicable.¹³ While no single country has jurisdiction in international waters, the United Nations Convention on the Law of the Sea (“UNCLOS”) provides a framework for addressing conflicts that occur in international waters.¹⁴

Despite UN mechanisms, including the ICJ, to help navigate conflicts regarding international waters,¹⁵ disputes still arise. Recent cases, like *Costa Rica v. Nicaragua* (2018)¹⁶ demonstrate the impact of rising sea levels on maritime borders. In this case, the Court held that previous nautical borders could cease to exist, leading to that area becoming international waters.¹⁷ Continued rising sea levels will likely have a major impact on maritime borders in the future.

AUTHORITY: WHO HAS IT?

In 1982, the UN hosted the UNCLOS at which over 150 nations met to establish the basis for maritime laws and borders of the sea.¹⁸ UNCLOS created a foundation for addressing conflicts that occur in international waters.¹⁹ Typically, the law of the flag state or country where the ship is registered governs the ship’s activities.²⁰

As of now, the UN is the only authority on maritime laws. When a country does not respect the baseline of laws provided by the UN, the country could face repercussions, including

⁹ *Id.*

¹⁰ Jackie Gu, *Changing Tides*, REUTERS (Mar. 30, 2023), <https://www.reuters.com/graphics/GLOBAL-ENVIRONMENT/OCEANS/jnvwyjomdvw/>.

¹¹ Younger, *supra* note 1.

¹² *Id.*

¹³ Maritime Law in International Waters, *supra* note 7.

¹⁴ United Nations Convention on the Law of the Sea, Dec. 19, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

¹⁵ *Id.*

¹⁶ Certain Activities Carried out by Nicaragua in the Border Area (*Costa Rica v. Nicar.*), Judgment, 2018 I.C.J. (Feb. 2) (This case was regarding a land dispute on the border between the countries. Borders changed over time and created confusion as to which country was the rightful owner of that area.).

¹⁷ Sierra Garcia, *What Happens When Rising Seas Shift Maritime Borders?*, JSTOR DAILY (June 11, 2021), <https://daily.jstor.org/what-happens-when-rising-seas-shift-maritime-borders/>.

¹⁸ UNCLOS, *supra* note 14.

¹⁹ *Id.*

²⁰ Maritime Law in International Waters, *supra* note 7.

removal from the UN or international enforcement actions.²¹ Failing to adhere to the UN's laws and regulations can result in severe, and unforeseeable consequences.

The UN, through its judicial arm the ICJ, handles two forms of cases: contentious cases, involving "legal disputes between States submitted to it by" the parties involved, and advisory proceedings, wherein it provides "opinions on legal questions referred to it by United Nations organs and specialized agencies."²² The ICJ is the binding authority on a majority of international disputes.²³ However, the ICJ can only step into international disputes when they are brought before it by the states involved; without the consent of the states, the ICJ cannot intervene.²⁴

DISPUTES: THE ICJ AND ITS GLOBAL IMPACT

The main mechanism that is utilized when countries cannot nullify a dispute themselves is the ICJ.²⁵ The ICJ acts as a neutral third party between the disputing countries and attempts to find the most equitable solution.²⁶ Each country has the opportunity to present evidence and present oral arguments on its own behalf.²⁷ In recent years, numerous territorial disputes have been brought to the ICJ.²⁸

Among the notable disputes over the years include *Qatar v. Bahrain* and *Cameroon v. Nigeria*.²⁹ In *Qatar v. Bahrain*, Qatar questioned Bahrain's territorial control of two sets of islands on the Qatar peninsula.³⁰ The ICJ reviewed evidence of settlements on the islands, acts of piracy, as well as *uti possidetis juris*.³¹ Ultimately, the ICJ awarded one set of islands to Bahrain and the other to Qatar, since these borders were assigned in this manner in colonial times.³²

The case of *Cameroon v. Nigeria* received scrutiny towards the ICJ, with some critics even advocating that the ruling should be ignored.³³ This dispute, concerning land and maritime boundaries in an area of the "Bokassi Peninsula and territories in the Lake Chad region," was brought forward by Cameroon.³⁴ The ICJ reviewed evidence based on *uti possidetis juris*, rooted in a colonial agreement between Britain and France.³⁵ Nigeria countered Cameroon's claim by

²¹ U.N. Charter art. 39.

²² INTERNATIONAL COURT OF JUSTICE, *supra* note 4.

²³ *Id.*

²⁴ INTERNATIONAL COURT OF JUSTICE, *Basis of the Court's Jurisdiction*, <https://www.icj-cij.org/basis-of-jurisdiction>.

²⁵ THE CARTER CENTER, *APPROACHES TO SOLVING TERRITORIAL CONFLICTS* 1 (2010).

²⁶ *Id.* at 1-2.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ THE CARTER CENTER, *supra* note 25.

³¹ *Id.* (*Uti possidetis juris* is a legal doctrine that allows the territorial boundaries of newly independent territories to be the same as they were before the territory gained independence).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ THE CARTER CENTER, *supra* note 25.

citing the principle of *effectivités*, asserting that title could be acquired through occupation or effective control.³⁶ Ultimately, the ICJ ruled in favor of Cameroon upholding the doctrine of *uti possidetis*.³⁷ This holding was coined as “one of the most controversial decisions reached by the Court in recent times,” by many Africans, specifically Nigerians,³⁸ who called for military action and rejection of the ruling.³⁹

The ICJ looks at the evidence provided and makes a ruling based on the principles of equity.⁴⁰ However, what happens when countries refuse to accept the ICJ’s ruling? The case of *Cameroon v. Nigeria* could have had a negative outcome if the ruling was not accepted by Nigeria. While the ICJ serves as a great tool utilized by the UN to resolve disputes, it still may not be enough, especially considering the potential unprecedented changes, such as those attributed to rising sea levels that could occur between now and 2050.⁴¹

FUTURE IMPLICATIONS

As the sea levels rise, the land territories' borders will change, and some island territories may completely cease to exist. The rise in sea levels brings change to the twelve nautical mile border, which results in the EEZs and the sovereignty associated with those areas changing as well.⁴²

In 2023, the United Nations passed the “High Seas Treaty,” formally known as the “Marine Biological Diversity of Areas Beyond National Jurisdiction Treaty” to protect the ocean from climate change and threats to its biodiversity.⁴³ The Treaty marks off certain areas as protected and bars human interference.⁴⁴ The goal is to increase protected areas of the high seas from one percent to thirty percent by 2030.⁴⁵

Activities such as mining, agricultural activities, or scientific research are examples of human interference barred by the Treaty.⁴⁶ However, this new infrastructure in the oceans is likely to create disputes over the permissibility of such interference, potentially leading to additional challenges in managing oceanic resources.⁴⁷

There seems to be a need for more beneficial policies or laws to act as a preventative measure to help reduce the potential harm caused by rising sea levels. The UN has the resources

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ INTERNATIONAL COURT OF JUSTICE, *supra* note 4.

⁴¹ Younger, *supra* note 1.

⁴² Rafferty, *supra* note 3.

⁴³ Directorate-General for Maritime Affairs and Fisheries, *A Win for the Ocean: High Seas Treaty Signed at United Nations*, EUROPEAN COMMISSION (Sept. 20, 2023), https://oceans-and-fisheries.ec.europa.eu/news/win-ocean-high-seas-treaty-signed-united-nations-2023-09-20_en.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Gu, *supra* note 10.

⁴⁷ *Id.*

to address these issues and act preventatively. This could include identifying areas of particular risk and taking preemptive action.

For example, if a country has very shallow beaches, then it is likely that it would face more risk than a country with steeper shorelines. In theory, water level changes could either rise or recede miles if the beaches are shallow and the shorelines are at a low elevation. On the other hand, countries that have steep shorelines may be unaffected by these water level changes. The UN should identify at-risk countries and develop plans in advance to prevent conflicts from arising. The UN could easily create a committee to look into these issues and address the problem head-on.

Overall, these issues need to be addressed before further conflicts arise. Resources need to start being allocated to identify at-risk countries and develop plans to address changing water levels. If the UN does not start acting now, by the year 2050, it will likely be too late.

CONCLUSION

In conclusion, as the sea levels rise, the United Nations continues to combat the changing of borders by passing treaties such as the High Seas Treaty. However, not all countries have signed or ratified the Treaty. The result of this is a rise in conflict between countries in international waters and territorial waters.

Looking forward, the UN can continue to make proposals and treaties to protect the high seas. The primary entity on dispute resolution is the ICJ. In its role, the ICJ functions as a mediator among conflicting nations, seeking the fairest resolution. However, individual countries are charged with the responsibility for bringing cases of country's violations to the ICJ.

Furthermore, as the EEZs change, so does the access to natural resources. Concurrently, countries may be changing the mapping of their EEZs creating conflicts between old EEZs and new EEZs. The significance of these conflicts would likely have a major impact on international relations. Changes need to be made now to prevent major issues from arising in the future.