

The Venezuelan Atlantic Front

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ABSTRACT

The Essequibo territory - situated in the extreme east of the Bolivarian Republic of Venezuela- its sovereignty is the reason for the dispute with the Cooperative Republic of Guyana. Since the land border has not been established, the maritime projection corresponding to the Atlantic coast is under the shadow of the dispute. The inexistence of delimitation of the maritime spaces and the negotiations to reach agreements on such delimitation increase the conflict in regard to the unilateral authorizations of oil and gas concessions granted by the Cooperative Republic of Guyana in the disputed maritime areas. This paper analyzes the situation of the Atlantic Front in relation to the decisions of the International Tribunal of the Sea establishing precedents on maritime delimitations of States with adjacent coasts through arbitration processes that involve the interests of Venezuela, considering that Venezuela has not subscribed to the United Nations Convention on the Law of the Sea.

Introduction

The centuries-old dispute over the Essequibo territory is currently in litigation at the International Court of Justice, where a final and unappealable decision will be pronounced regarding the validity of the Paris Arbitral Award of 1899 and its boundary between the eastern land border that divides the Bolivarian Republic of Venezuela and the Cooperative Republic of

Guyana. This article analyzes the legal repercussions that compromise the marine and submarine areas of the Venezuelan Atlantic front, added to the unilateral authorizations of oil and gas exploitation-production by the Cooperative Republic of Guyana and also the requests for the extension of the continental platform by the States of the Cooperative Republic of Guyana and the Republic of Barbados, due

to their adjacent or opposite coasts, respectively.

The absence of bilateral negotiations of the maritime limits between the Bolivarian Republic of Venezuela and the Cooperative Republic of Guyana on areas with abundant hydrocarbon reserves generates the presumption that there is no disposition to create agreements under the obligation of conduct to negotiate in good faith, according to articles 83 numeral 1 of the UNCLOS, to know: Article 83: “Delimitation of the continental shelf between States with adjacent or opposite coasts 1. The delimitation of the continental shelf between States with adjacent or opposite coasts shall be made by agreement between them on the basis of international law, referred to in Article 38 of the Statute of the International Court of Justice, in order to arrive at an equitable solution”. (UNCLOS, 1994, p.66¹)

The doctrine of inherent right implies that coastal States can exercise sovereign rights on adjacent coasts in the merit of the country’s development, in the use of the principle of good faith, an inherent right that does not oppose the obligation to make every effort to establish practical arrangements with the neighbouring country. Thus, the inherent right does not imply that prospecting and exploitation activities can be granted unilaterally to the detriment of the adjacent State since there must be the absolute conviction that the sovereignty exercised is not subject to discussion, even when the maritime boundaries are not yet established. Otherwise, it only presumes the absence of good faith conduct and exacerbates the dispute by obstructing the achievement of a practical arrangement between the two parties.

¹ United Nations Convention on the Law of the Sea, UNCLOS (1994), p. 66 Retrieved from: https://www.un.org/depts/los/convention_agreements/texts/unclos/convemar_es.pdf

Maritime activities over an undelimited and disputed maritime area may be subject to international liability in the absence of the principle of good faith, considering the realization of activities that jeopardize a bilateral negotiation, such as prospecting activities, oil exploitation in the maritime projection of the State of Delta Amacuro “and its large continental shelf product of the sediments dragged by the Orinoco”², which are not subject to controversy and have even been previously delimited through the Treaty of Delimitation of Marine and Submarine Areas signed with the Republic of Trinidad and Tobago in 1990. (Donis, M, 2023, p.90)

“An important event in the Essequibo Claim by Venezuela was the signing of the Geneva Agreement of February 17, 1966, by which the governments of Great Britain and British Guiana, today the Cooperative Republic of Guyana, recognized the Venezuelan claim over said territory, lost through an arbitration sentence that Venezuela considered null and void, product of a compromise between the judges that made up the Court of Arbitration in 1899. As of the Geneva Agreement, Great Britain, Guyana and Venezuela committed to searching for “satisfactory solutions for the practical settlement of the dispute” (Donis, M, 2023). (Donis, M, 2023, p.88)³

The need for cooperation and the claim to act under the principle of good faith is fundamental in order to avoid obstacles to concluding negotiations or practical arrangements on the delimitation of the maritime spaces in dispute between the two States. Therefore, it is imperative to highlight the stipulations of the “Geneva

² Donís Ríos, Manuel A., (2023), “Venezuela and the Exercise of Sovereignty over its Maritime Spaces (1500-2022)”, Universidad Católica Andrés Bello (UCAB).

³ *Ibíd*em

Agreement”, the Agreement to Settle the Dispute between Venezuela and the United Kingdom of Great Britain and Northern Ireland on the Boundary between Venezuela and British Guiana (1966), as proof that the Bolivarian Republic of Venezuela has requested and insisted on a bilateral negotiation that would produce a practical and satisfactory settlement for both parties considering its historical contention before the vitiated Arbitral Award of 1899, in the conviction that the marine areas of the Essequibo territory are under the sovereignty of Venezuela, “through its legitimate historical titles of the Captaincy General of Venezuela, in 1777”. (Venezuelan Association of Maritime Law, n.d., p.1.)⁴

Therefore, a presumption of violation of sovereign rights of the Bolivarian Republic of Venezuela on the Atlantic front on behalf of the Cooperative Republic of Guyana, evidences the interest in the marine and submarine areas projected by the Essequibo territory and extends to the adjacent area of the continental shelf of the Delta Amacuro State (Deltaic Shelf), being an area of absolute Venezuelan sovereignty that is not subject to dispute. The above considerations generate a study on the international responsibility for the activities unilaterally authorized by the Cooperative Republic of Guyana on the continental shelf comprising the Atlantic front, actions that may modify the physical conditions of these areas or cause irreversible damages that are not susceptible to economic compensation.

⁴ Venezuelan Association of Maritime Law, (s.f.), "Creation of the General Captaincy of Venezuela-September 8, 1777". Recovered from: <https://www.avdm-cmi.com/single-post/2020/09/08/creaci%C3%B3n-de-la-capitan%C3%ADa-general-de-venezuela-8-de-septiembre-de-1777>

Considering the absence of good faith negotiations regarding the impossibility of delimitation, it is evident that the Cooperative Republic of Guyana is not completely convinced that the maritime areas corresponding to the Atlantic coast are under its legitimate sovereignty. Therefore, in 2018, the Cooperative Republic of Guyana filed to the International Court of Justice the resolution of the conflict. The absence of supervision and control of the Venezuelan State over offshore oil activities implies a violation of the sovereign right of the other State due to the absence of the principle of good faith, cooperation and negotiation to achieve practical arrangements, including the absence of notification and information necessary for the control of both States in order to prevent or avoid possible damage to the environment.

“In classical international law, the concept of state sovereignty is its independence and equality with other states, and the rule of distinguishing the State from non-state communities is the absolute Sovereignty of the State; In the sense that the government’s power is supreme, unlimited and non-submissive. (...) Sovereignty and political stability throughout the country’s inner territory. However, it should be able to fulfill the country’s international obligations. As a result, the need for mutual respect of states for each other’s independence and sovereignty is essential (...) the principle of cooperation is rooted in customary international obligation and is one of the integral principles of the current international law. This principle is based on the fact that the environment does not have borders. However, environmental pollutions and degradations are transboundary; therefore, protecting the environment and dealing with environmental challenges is beyond one or more states’ power and requires the cooperation of the international community (...) Since the environment has

no boundaries and all States have a shared responsibility to protect the global environment, the commitment to international cooperation includes a wide range of cooperation, from providing the necessary resources and technology and holding training courses to exchanging information and consultation, helping during environmental emergencies. Because dealing with ecological problems is beyond one or more states' power and requires international cooperation to care for, prevent, reduce and eliminate the harmful effects of environmental pollution and destruction". (Poorhashemi, Abbas, CIFILE (2023), pp.82-91)⁵

The land border between both countries is not established due to the centennial controversy undertaken by the then British Guiana colony, but due to the Venezuelan contention on the legitimacy of the Arbitration Award of 1899, and as a result of these denunciations in 1966⁶, it was established under the Geneva Agreement, the creation of a mixed commission to establish the border between both countries in a friendly and acceptable method for both parties, as stipulated in Article 1 of the referred Agreement, and in accordance with customary norms of international law.

1. Atlantic Front

⁵ Poorhashemi, Abbas, Canadian Institute for International Law Expertise CIFILE, (2023), "Principles of International Environmental Law".

Recovered from: https://www.cifilejournal.com/article_168013_980c735a78f322d24ede02a6ab2b7512.pdf

⁶ Agreement to resolve the dispute between Venezuela and the United Kingdom of Great Britain and Northern Ireland on the border between Venezuela and British Guiana, known as the "Geneva Agreement". Recovered from: <http://www.consulvenevigo.es/subido/ACUERDO%20GINEBRA%20ONU%201966.pdf>

The Atlantic Frontage comprises the marine and submarine areas located in the northern area of the Venezuelan extreme east between the sectors of the Gulf of Paria, the Orinoco River Delta and the maritime projection belt of the Essequibo territory, this last one not yet delimited due to the aforementioned controversy with the Cooperative Republic of Guyana. This sector is of crucial importance for Venezuela's foreign trade due to the possibility of interconnection with Europe, Africa and Asia, among other aspects.

This is a prolific area for fishing and contains numerous natural resources, such as oil, gas, minerals, marine ecosystems and great biodiversity. The continental shelf comprises the submerged geological extension of the seabed and subsoil of the Coastal State, being the cause of its extension the mouth of the Orinoco River, projecting an extension of 200 nautical miles that may reach up to 350 nautical miles according to the provisions established in Chapter IV, Article 56 of the Organic Law of Aquatic Spaces⁷ (Official Gazette No. 6.153 Extraordinary of November 18, 2014) in accordance with international law under the regime on continental shelf⁸ provided in Part VI, Articles 76 to 85 of the United Nations Convention on the Law of the Sea (UNCLOS).

Venezuela's Atlantic front is compromised by decisions of the International Tribunal of the Sea in which maritime limits were set without the participation of the Bolivarian Republic of Venezuela as an interested third party, a situation that originated unilateral oil prospections by adjacent neighboring States, that compromising and endangers practical maritime delimitation agreements,

⁷ Organic Law of Aquatic Spaces, Official Gazette No. 6,153 Extraordinary of November 18, 2014

⁸ United Nations Convention on the Law of the Sea, UNCLOS, Part VI, Articles 76 al 85.

due to the absence of good faith, since these are overlapping and superposed areas due to the sediments dragged by the Orinoco River.

Consequently, in 2008, the Republic of Barbados requested in the United Nations (UN) Commission on the Limits of the Continental Shelf to extend its continental shelf beyond 200 nautical miles. On the other hand, the Cooperative Republic of Guyana also requested the extension of its continental shelf in 2011, both nations basing their requests on the provisions of Article 76 of the UNCLOS⁹ on the right of coastal States to extend their continental shelf, based on rights granted through the formation of Arbitral Tribunals, which will be discussed in more detail below.

2. Continental Shelf

The Continental Shelf comprises the submarine seabed surface that refers to the bed and subsoil of the marine and submarine areas before they reach a great depth, in the margin that comprises the transition from the coast to the ocean and ends at the rupture of the outer edge known as the continental slope, which is a pronounced slope or slip of meters in depth under the sea level that at the end joins with the abyssal plain or deep ocean floor.

In this order of ideas, the Continental Shelf covers the marine and submarine bottoms of the geomorphological continuity of the coastal State, in which the coastal State exercises exclusive sovereignty rights to approve and regulate the exploration, exploitation and development of the natural resources in the continental shelf. In the case of the Bolivarian Republic of Venezuela, the

⁹ United Nations Convention on the Law of the Sea, UNCLOS (1994). Recovered from: https://www.un.org/depts/los/convention_agreements/texts/unclos/convemar_es.pdf

continental shelf extends as a result of the dragging of the sediments thrown by the Orinoco River, being numerous the discharges of sediments that are poured into the Atlantic Ocean generating the Orinoco Delta Shelf, a situation that can generate overlapping rights between adjacent States, due to the superposition of the external limits of the seabed.

The Orinoco River Delta is located in the corner of the continental territory on the northeastern coast of the Bolivarian Republic of Venezuela with large fluvial contributions by the action of tides and sediment dragging originating the Orinoco Delta Platform. In fact, the Orinoco Delta is a protected natural area through a special regime of protection and conservation in marine areas according to the Orinoco Delta Biosphere Reserve (ODBR¹⁰), emphasizing that biosphere reserves are natural protected areas that balance ecological conservation and sustainable economic use or exploitation of these natural resources, which are subject to the exclusive sovereignty of the State in which they are located according to the Statutory Framework of the UNESCO World Network of Biosphere Reserves.¹¹

The extractive activity authorized, unilaterally, by the Cooperative Republic of Guyana on the seabed and submarine areas in the maritime projection of the Essequibo territory and also extended in the marine and submarine areas of the Orinoco Delta

¹⁰ Orinoco Delta Biosphere Reserve (RBDO). promulgated by decree No. 1,633 dated 06-05-1991 in Official Gazette No. 34,812, of 10-03-1991-UNESCO Biosphere Reserve approved within the framework of the XV meeting of the Consultative Committee on Biosphere Reserve, held from February 9-11, 2009, at the Organization's headquarters in Paris. Retrieved from: <https://news.un.org/es/story/2009/05/1164871>

¹¹ The United Nations Educational, Scientific and Cultural Organization, known for short as UNESCO. Recovered from: <https://www.unesco.org/es>

constitute temerarious actions, which could be framed in bad faith, given the absence of communication and transparency for the concessions granted and where there is still no definitive delimitation. The doctrine of inherent rights that allows the exercise of control over the seabed of coastal States should not be interpreted as exclusive and unilateral rights in the exploitation and use of the resources of the continental shelf, the inherent rights to which the coastal States are entitled are not unlimited since they require a healthy and necessary counterbalance between planning/supervision and planning/execution/operation, therefore, in the absence of cooperation to reach practical arrangements, it is presumed that the Cooperative Republic of Guyana is acting in bad faith.

To this effect, Article 83 of UNCLOS¹² on the Delimitation of the Continental Shelf between States, paragraph 3, states: “... Pending the agreement provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements with adjacent or opposite coasts of a practical nature and, during this transitional period, shall do nothing which might jeopardize or hamper the conclusion of the final agreement. Such arrangements shall be without prejudice to the final delimitation.”

Under Article 300 of UNCLOS¹³, “Good faith and abuse of rights. The States Parties shall fulfill in good faith the obligations assumed under this Convention and shall exercise the rights, powers and freedoms recognized in this Convention in a manner

which would not constitute an abuse of rights”.

It is evident that the spirit of the Cooperative Republic of Guyana in the exercise of unilateral powers over the maritime projection of the Essequibo, which comes to extend over areas that have not been subject to dispute such as the marine and submarine areas of the coasts that generate the State of Delta Amacuro¹⁴ (Venezuela), a situation that exacerbates the tension and compromises the geographic spaces of the Bolivarian Republic of Venezuela. In view of the above, the international criterion of institutionalizing the coordination of delimitation of the seabed of the Atlantic coast through deconfliction mechanisms is supported, considering that this is a controversy of geopolitical connotation.

In addition to the above, there is a potential environmental risk of transboundary contamination as a result of offshore exploitation activities, that is, extraction activities in the Atlantic coast of Venezuela. The licenses granted by the Cooperative Republic of Guyana and the public licitation processes in course on Venezuela’s Atlantic front generate uncertainty for the society, the environment and also for indigenous communities, due to the proximity of these high-risk exploitation activities that cover not only the disputed area of the Essequibo territory but also the Orinoco Delta platform, which is not subject to controversy, and comprises Venezuela’s Atlantic front as a whole.

¹² United Nations Convention on the Law of the Sea, UNCLOS (1994), Retrieved from: https://www.un.org/depts/los/convention_agreements/texts/unclos/convemar_es.pdf

¹³ *Ibidem*

¹⁴ The Delta Amacuro state, located in eastern Venezuela, is home to the Orinoco River delta. It is bordered to the north by the Gulf of Paria and the Atlantic Ocean, to the south by Bolívar state, to the east by the Atlantic Ocean and the claimed territory of Guayana Esequiba, and to the west by Monagas state. Information extracted from “Venezuela Tuya” portal. Retrieved from: https://www.venezuelatuya.com/estados/delta_amacuro.htm

It is insisted that the offshore extractive activity is not only limited to the maritime projection of the Reclamation Zone, but it is also operating in the marine and submarine areas of the continental platform of the Orinoco Delta. The fact that the depths of the offshore oil and gas drilling fields require prospecting and perforation methods with the objective of finding and extracting hydrocarbons being extremely high-risk activities due to the pressures underground and the pumping of fluids that occurs in deep and ultra-deepwater scenarios, which makes the process even more dangerous in the event of an eventual spill due to the maximum pressures that could potentially cause a contingency, which means a danger to the marine environment.

To this effect quote “... that, on the Atlantic coast of the Bolivarian Republic of Venezuela in the marine and submarine areas that generate the coasts of the State of Delta Amacuro and the Guayana Esequiba in which, without being the object of the dispute before the International Court of Justice, the Cooperative Republic of Guyana has been transgressing the rights of Venezuela by granting concessions for the exploitation of natural resources of our country, especially those related to oil” (Venezuelan Association of Maritime Law, 2023, p. 2)¹⁵

“... the overlapping claims over the vast majority of the seabed means that several States simultaneously claim exclusive rights to manage the continental shelf and its resources (...) some investors and States may embark on unilateral investment or research projects in areas of overlapping rights over the shelf before delimitation can occur (...) it

could heighten suspicions and the sense that some States are acting in bad faith. Transparency and communication are essential to allow research and investment to proceed (...) a deconfliction mechanism (...) would be the best means to institutionalize this coordination. According to Article 300 of UNCLOS, States must exercise the rights, jurisdiction and freedoms recognized in UNCLOS in good faith, in a manner which does not constitute an abuse of rights. In the absence of such an initiative (...) States should use bilateral and trilateral channels to ensure that any research, drilling or pipeline laying in areas of overlapping rights is considered and approved by the relevant states”. (Antsygina, E. 2022, p.3)¹⁶

3. Treaty on the Delimitation of Marine and Submarine Areas signed between Venezuela and Trinidad and Tobago.

It is necessary to emphasize the Treaty of Delimitation of Marine and Submarine Areas signed between Venezuela and Trinidad and Tobago on April 18, 1990, establishing the limits of the marine and submarine areas where both States exercise sovereignty and jurisdiction, establishing a precise maritime limit regarding the marine and submarine delimitations of Venezuela with respect to Trinidad and Tobago, that is, the limits of the territorial seas (12 nautical miles), the exclusive economic zones (200 nautical miles), continental shelves (200 nautical miles). It is important to mention that regarding the Exclusive Economic Zone, the State exercises jurisdiction and rights of exploration, economic exploitation of living

¹⁵ Venezuelan Association of Maritime Law, (2023), p.2. Recovered from: <https://www.avdm-cmi.com/single-post/comunicado-de-la-avdm-a-ra%C3%ADz-de-las-decisiones-de-la-cij-en-relaci%C3%B3n-con-la-guayana-essequiba>

¹⁶ Ekaterina Antsygina, Cornell Overfield, (2022), “Overlapping Governance Issues on Arctic Continental Shelves Awaiting Delimitation and Delineation”, 2022, p.4. <https://site.uit.no/nclos/2022/10/04/the-problems-of-overlapping-governance-on-the-arctic-continental-shelves-pending-delineation-and-delimitation/>

(fishing) and non-living (mining) natural resources in accordance with Article 45 of the Organic Law of Aquatic Spaces¹⁷, also in accordance with the provisions of international law in Article 56 of the United Nations Convention on the Law of the Sea (UNCLOS).¹⁸

Furthermore, it is important to summarize the legal situation related to the arbitration awards made between Guyana-Suriname, Barbados and Trinidad-Tobago respectively, which compromise the marine and submarine areas that project towards the Atlantic Ocean of the Bolivarian Republic of Venezuela. These States invoked Article 287 paragraph 3 in accordance with the arbitration procedure provided for in Annex VII of the UNCLOS¹⁹, which establishes that in the absence of consensus on the border delimitation between neighboring States, dispute settlement mechanisms may be used, where a State interested in resolving a border dispute may unilaterally submit to a judge or arbitrator the resolution of the dispute.

4. Arbitration Award between the Republic of Barbados and the Republic of Trinidad and Tobago

Thus the arbitration award between Barbados and Trinidad-Tobago on April 11 2006, where through an arbitration tribunal the delimitation line of the marine and submarine areas between Barbados and Trinidad-Tobago was established, setting the limit between both countries at Point No. 11; this Point No. 11 is located on the geodesic

lines that join the points of the geographic coordinates related to the prolongation of the continental shelf of the coasts of the State of Delta Amacuro determined by Point No. 22 of the Treaty of April 18 1990 between Venezuela and Trinidad-Tobago, which had previously established the delimitation between both countries, which means that the arbitration tribunal of 2006 (Barbados and Trinidad-Tobago) disregarded the delimitation between both countries. This means that the 2006 arbitration tribunal (Barbados and Trinidad-Tobago) did not recognize Point No. 22 located on the outer edge of the continental margin that was previously established in the aforementioned 1990 Treaty (Venezuela and Trinidad-Tobago).

This intersection of Point No. 11 with the maritime boundary previously established and delimited in the 1990 Treaty (Venezuela and Trinidad and Tobago) represents a short distance of approximately 100 kilometers. Therefore, between Point No. 11 and Point No. 22, the sovereignty rights over the extension of the continental shelf generated by the coasts of the State of Delta Amacuro (Venezuela), which was previously established in the 1990 Treaty through the aforementioned Point No. 22, are clearly shown that Venezuela's rights were ignored, due to the limits of the marine and submarine areas established in the aforementioned 1990 Treaty (Venezuela and Trinidad-Tobago).

This situation also generates a tri-point where the rights over the continental shelves between Barbados, Trinidad-Tobago and Venezuela converge, given the intersection of Point No. 11 established by the 2006 arbitration tribunal (Barbados and Trinidad-Tobago) on previously delimited limits, which is evidence of the disregard of the rights that had been established in 1990 (Venezuela and Trinidad-Tobago), thus

¹⁷ Organic Law of Aquatic Spaces (Official Gazette No. 6,153 Extraordinary of November 18, 2014)

¹⁸ United Nations Convention on the Law of the Sea, UNCLOS (1994). Recovered from: https://www.un.org/depts/los/convention_agreements/texts/unclos/convemar_es.pdf

¹⁹ *Ibidem*

insisting and ratifying that the limit established in the Treaty signed between Venezuela and Trinidad-Tobago on April 18 1990 was not respected and ignored.

This disregard for the Treaty on the Delimitation of Marine and Submarine Areas signed between Venezuela and Trinidad and Tobago in 1990, which established the limits of marine and submarine areas between the two countries, generated an area of overlapping of the continental margin. Thus, this 2006 arbitration award (Barbados and Trinidad-Tobago) placed the baseline for the marine and submarine limitation between Barbados and Trinidad-Tobago without considering that a baseline had previously been drawn to the north between Venezuela and Trinidad-Tobago in the 1990 treaty, generating overlapping rights on the continental shelf and exacerbating the conflict in relation to the control and exercise of sovereign rights of exploration and exploitation of the seabed.

Thus, the Arbitral Tribunal for the Law of the Sea established an international maritime boundary between Barbados and Trinidad and Tobago without considering the rights of Venezuela by establishing an intersection of Point No. 11, which means that in its judgment it recognizes those countries' rights to explore and exploit natural resources in marine and submarine areas that involve the Bolivarian Republic of Venezuela without the Venezuelan Republic having been a party to the arbitration proceedings. In this regard, it is essential to study the effects of Terminal Point No. 11, given that Trinidad-Tobago ceases to exercise its rights from Point No. 11 agreed with Barbados due to the previous delimitation that had been carried out in 1990, thus constituting a triforium point subject to discussion of the marine and submarine areas on the outer limits of the

continental shelves that converge between Trinidad-Tobago, Barbados, and Venezuela.

Therefore, the 2006 arbitral award (Barbados and Trinidad-Tobago)²⁰, by establishing an intersection of boundaries set at Point No. 11, could generate resource exploitation rights for these three States over the economic exploitation of the seabed by virtue of the doctrine of the inherent right recognized by customary law as the power of the coastal State. Therefore, by establishing an intersection of limits at Point No. 11, the arbitration award 2006 (Barbados and Trinidad and Tobago) could generate resource exploitation rights for these three States on the economic exploitation of the seabed by virtue of the doctrine of the inherent right recognized by customary law as the power of the coastal State to explore, conserve and exploit the natural resources of the sea adjacent to its coasts, as provided for in the Declaration of the Latin American States on the Law of the Sea - Lima 1970 and originating in the Proclamation of the President of the United States of America Harry S. Truman in September 1945, through a proclamation of the President of the United States of America Harry S. Truman in September 1945, through a proclamation of the President of the United States of America Harry S. Truman in September 1945. Truman on September 28 1945,²¹ through Presidential Proclamation No. 2667 on the sovereignty and control of the natural

²⁰ Peña Acevedo, Julio Alberto, (2011), "Barbados and Trinidad-Tobago Maritime Border: its effect on the Venezuelan Atlantic Facade" Retrieved from: <https://elespacioacuaticovenezolano.com/2011/10/03/602/>

²¹ The Truman Proclamation on the Continental Shelf (Chapter 5) <https://www.cambridge.org/core/books/abs/customary-international-law-in-times-of-fundamental-change/truman-proclamation-on-the-continental-shelf/DCA6E5222CC3384158F2E9EF3BE3B2D1>

resources of the subsoil and seabed of the continental shelf.

5. The Doctrine of Inherent Right

The doctrine of inherent right should not be interpreted as discretionary and unlimited rights of the coastal States, in attention to the restrictive principle of the exercise of public power of the States, who can only carry out those powers that are expressly consecrated to them, since the rights of neighbouring coastal states must be respected. There is no implicit and imaginary general power of public order subject to the ruling political fluctuations, being the obligation of the States to make known the exact limits of their jurisdiction through the publicity of letters or lists of geographic coordinates of their outer limits of platform continental according to article 84 of the United Nations Convention on the Law of the Sea (UNCLOS), not doing so constitutes a violation of international law.

Although it is true that the United Nations Convention on the Law of the Sea²² in its part VI on the Continental Shelf, in article 77, numeral 3, establishes that: “The rights of the coastal State on the continental shelf are independent of its actual occupation or fictitious, as well as any express declaration”, that is, that the coastal States can assert their rights and jurisdiction in their continental shelf for the exploration and exploitation of natural resources, extendable to the areas of overlapping rights; however, it is important to insist, emphasize that there is an obligation to publicize the limits of the jurisdiction of the States through the publication of their geographical coordinates of the outer limits of the

continental shelf with respect to the exploitation of living and non-living resources of the continental shelf.

In this order of ideas, the decision of the arbitration award of 2006 (Barbados and Trinidad-Tobago) allowed Barbados to request before the Commission on the Limits of the Continental Shelf the recommendation to extend its shelf beyond 200 nautical miles, justifying the existence of sovereign rights beyond and below the aforementioned limit. In fact, in 2007 Barbados offered an international tender to assign blocks for the exploration and exploitation of hydrocarbon deposits on marine and submarine areas that had previously been delimited between Venezuela and Trinidad-Tobago in the 1990 Treaty, without mediating agreements of delimitation with Venezuela generating uncertainty and legal uncertainty.

To this effect, “... the Commission on the Limits of the Continental Shelf examines the data submitted by a coastal State based on the criteria established in article 76 to formulate a recommendation on the outer limits, however it is not empowered to resolve overlaps nor do anything prejudicial in relation to the final delimitations (...) since the Commission on the Limits of the Continental Shelf will not examine submissions challenged by an interested State if there is a dispute. The Commission on the Limits of the Continental Shelf may consider submissions when several States cover the same area, provided that all States do not oppose such consideration” (paragraph 5-a Annex I of the Regulations of the Commission on the Limits of the Continental Shelf et Ekaterina Antsygina, Cornell Overfield, 2022, p.4)²³ underlining mine.

²² United Nations Convention on the Law of the Sea, UNCLOS (1994). Recovered from: https://www.un.org/depts/los/convention_agreements/texts/unclos/convemar_es.pdf

²³ Ekaterina Antsygina, Cornell Overfield, (2022), “Overlapping Governance Issues on Arctic

In addition to the above, it is necessary to point out that although there is freedom of navigation for the purposes of uninterrupted and expeditious transit through marine areas called the right of passage in transit or innocent passage, however, this is limited due to the regulations that imposed by the coastal States regarding the entrance to ports or accesses and in customs matters, subject to the conditions of that coastal State in its maritime spaces in terms of immigration, security, public health, ports and customs matters. For these reasons, in the event of the loss of the Essequibo claim area, Venezuela's direct access to the Atlantic Ocean would be limited to a narrow corridor subject to the jurisdiction of the Cooperative Republic of Guyana.

6. Arbitration award between the Cooperative Republic of Guyana and Suriname

The arbitration award on the limits of marine and submarine areas between the Cooperative Republic of Guyana and Suriname, dated September 17, 2007, affects Venezuela because it ignores the 1966 Geneva Agreement. This arbitration award between Guyana and Suriname harms Venezuela by not recognizing that the border between Venezuela and Guyana has not yet been established, ignoring the century-old controversy, by proceeding to establish a delimitation line under equidistance principles at the Devonshire Castle Flats²⁴ point, which is in the area where claimed by the Essequibo territory.

Continental Shelves Pending Delimitation and Delineation, 2022, p.4. Available at: <https://site.uit.no/nclos/2022/10/04/the-problems-of-overlapping-governance-on-the-arctic-continental-shelves-pending-delineation-and-delimitation/>

²⁴ Peña Acevedo, Julio, (2011), "The Venezuelan Aquatic Space". Recovered from: <https://elespacioacuaticovenezolano.com/2011/10/03/>

The 2007 arbitral tribunal (Guyana-Suriname) set the Devonshire Castle Flats point-located within the claimed area- as the base point to demarcate the borders between Suriname and Guyana without taking into account the border dispute between the Cooperative Republic of Guyana and the Bolivarian Republic of Venezuela, taking as true the unilateral allegations of Guyana in relation to the fact that the land border was established in the controversial arbitration award of Paris of 1899. In that Award of 2007 (Guyana-Suriname), equidistance principles were applied to divide in equal parts and establish the border limits between Guyana and Suriname, taking as valid and as a baseline for the delimitation of marine and submarine waters determined at the Devonshire Castle Flats point, located in the disputed area of the western coast of the Essequibo River. (Mirabal, Y., Valecillo, N. 2015, p.6)²⁵

The 2007 Arbitral Award (Guyana-Suriname) recognizes the border limits that Guyana, at its convenience, alleges to be valid by using the Devonshire Castle Flats point in the land zone of the Atlantic coast of the Essequibo disputed area as a reference point to calculate the equidistant line, and considers these limits as valid, which are the underlying cause of the current controversy and must be resolved in accordance with the Geneva Agreement of 1966. It is thus observed that the Geneva Agreement of

[frontera-maritima-guyana-y-surinam-efecto-sobre-los-derechos-venezolanos-de-soberania-y-jurisdicion-en-la-fachada-atlantica/](#)

²⁵ Mirabal Montiel, Yennybel; Valecillo Jaimes, Norma (2015), "The delimitation of marine and submarine areas between Barbados and Trinidad-Tobago and, between Guyana and Suriname, on the rights of jurisdiction of Venezuela in the Atlantic Ocean", Terra Nueva Etapa, vol. XXXI, no. 49, Central University of Venezuela Caracas, Venezuela. Retrieved from: https://ve.scielo.org/scielo.php?script=sci_arttext&pid=S1012-70892015000100002

1966 is disregarded and the delimitation limits of the controversial Arbitral Award of Paris of 1899 (currently subject to review by the International Court of Justice) were considered as certain. The controversial Arbitral Award of Paris of 1899 propitiated a historical territorial dispossession of which the Bolivarian Republic of Venezuela was victim, generating erroneous beliefs in the Cooperative Republic of Guyana that finally affect the projection of the maritime areas of Venezuela on the Atlantic front, and the granting of unilateral concessions that may cause irreparable damage to the environment, the indigenous community, biodiversity and cultural heritage.

Prevention of environmental damage is considered a golden rule. The extinction of a plant or animal species, soil erosion, loss of human life, and the leakage of persistent pollutants in the sea create a situation which can not be restored or compensated. The wide variety of legal documents makes the concept of prevention complex and complicated. Therefore, it is appropriate to mention this concept as a significant achievement that has led to the formation and growth of a large number of legal mechanisms such as environmental risk assessment, licensing or authorization. The principle of prevention in international environmental law is to prevent environmental damages before they occur. This principle is based on evaluating ongoing activities and controlling and monitoring the environmental situation. (...) One of the other essential principles of international environmental law is the principle of notification and information. (...) This principle is interpreted and defined as such, if a State becomes aware of a danger that may put other governments in an emergency situation, it is obliged to inform other States of that danger. In other words, the principle obliges States to provide notification and information about the risks

that may affect other countries' environments. (Poorhashemi, Abbas, CIFILE (2023), pp.88-98)²⁶

Conclusions

As has been explained throughout this paper, the Venezuelan Atlantic front is an area of geopolitical interest due to the incalculable resources of oil and gas offshore and the important presence of other natural resources such as fishing and minerals. It is emphasized that the fluvial currents of the Orinoco River originate deltaic sedimentation in the continental shelf, caused by the discharge of sediments in these areas, expanding over increasingly larger surfaces.

“The Venezuelan deltaic system contributes to the formation of the Continental Shelf through the sedimentary discharge of the Orinoco River, which represents the natural extension of the Venezuelan territory and guarantees the formation of resources of great strategic importance for the economy of neighbouring countries. In this way, they generate a progressive approach between adjacent territories, generating an overlapping of the continental shelf, due to the dragging of these sediments from the Orinoco River, so Venezuela is increasing its territory in a natural way through the deltaic growth”. (Cedeño, R. Chacare, A. 1999, p. 26).²⁷

Therefore, the delimitation of the marine and submarine areas in the Atlantic Front of

²⁶ Poorhashemi, Abbas, CIFILE, (2023), “Principles of International Environmental Law”. Recovered from: https://www.cifilejournal.com/article_168013_980c735a78f322d24ede02a6ab2b7512.pdf

²⁷ Cedeño Remigio, Chacare, Arlibeth, “The sedimentation of the Orinoco River Delta and its geopolitical implications” in the relations between Venezuela and Trinidad-Tobago Terra Nueva Etapa, vol. XV, no. 24, 1999, p. 33-62 Central University of Venezuela Caracas, Venezuela. Recovered from: <https://www.redalyc.org/pdf/721/72102403.pdf>

Venezuela is in a complicated situation due to the defiant actions undertaken by neighbouring States through arbitral awards, and even though the dispute with the Cooperative Republic of Guyana is pending resolution at the International Court of Justice, this Court will not pronounce on the maritime delimitation in the Atlantic Front. Therefore, it is considered that the Bolivarian Republic of Venezuela should search for a mechanism of conflict resolution with the mediation of International Organizations, State mediators to negotiate the delimitation of marine and submarine areas in order that these extractive activities do not modify the characteristics of the continental shelf or cause irreversible damage to the environment.

Considering that international environmental law mandates the protection of the marine environment, which is threatened by pollution from shipping, oil exploration activities, ocean noise from the offshore exploration and exploitation of oil and gas, as well as the extraction of minerals. This has, as a consequence, direct damage to the seas, which requires joint action of the States to cooperate and implement strategies to avoid possible damages to the environment, in the merit of the conduct of negotiating in good faith the delimitation of the maritime areas between both States.

The concessions granted by the Cooperative Republic of Guyana for offshore oil exploration and exploitation demonstrate that there is no willingness to cooperate or intention to reach an agreement on the delimitation with respect to its marine and submarine zones. Without taking into account that there is an overlapping of continental shelves in the maritime projection towards the Atlantic Ocean due to the sedimentation of the Orinoco delta, generating a continental shelf that extends

and produces an approach that comes to join the coasts of adjacent States. For this reason, it is considered pertinent that both States initiate negotiation processes to reach agreements for the common development of these maritime spaces, which will allow both countries to monitor the activities to prevent environmental damage.

The situation described in this article is not only limited to the oil and gas activities resulting from a unilateral authorization by the Cooperative Republic of Guyana over an undelimited and disputed area occurring on the Venezuelan Atlantic coast. Furthermore, this offshore extractive activity does not only operate in the maritime projection of the Zone in Reclamation of the Essequibo territory but has extended and occurs in the continental shelf of the Orinoco Delta according to the geographical coordinates of published offshore oil concessions, despite the repeated protests of the Venezuelan State and civil organizations, regarding the extractive activity in a maritime area that is not subject to controversy.

It is important to be noted that the unitization of fields is considered relevant as the most appropriate solution for the joint management of natural resources offshore, based on the principles of information, cooperation and good faith, which make it possible to reach practical arrangements, considering the difficulties involved in the delimitation of overlapping rights on the continental shelf.

It is observed that the unitization of transboundary fields is a suitable mechanism that allows “concerted exploitation of natural resources located in the same geological structure among several States or several licensee operators, to ensure their conservation and better economic use (...) prevents competitive drilling and the construction of unnecessary infrastructure, by maximizing the recovery factor of

resources, minimizes the environmental impact and performs a better control over waste. (Méndez, Tahio, 2021)²⁸

(...omissis...)

Being one of its main characteristics that the area of joint exploitation or development can be carried out between countries where there are no agreed maritime delimitations, border limits, where the pretensions of both States are recognized and the dissipation of large volumes of gas and oil migration is avoided and allows for greater planning. There is a precedent in Venezuela for the development of common fields in the Framework Treaty on the Unification of Hydrocarbon Fields that extends through the Delimitation line between the Bolivarian Republic of Venezuela and the Republic of Trinidad and Tobago published in Official Gazette No. 39.104 dated January 22, 2009” (Méndez, Tahio, 2021).²⁹

The sovereignty of a State over the continental shelf should not be considered a mere declarative expression; it is a priority right strictly related to the obligation of conduct to negotiate in good faith over maritime areas that are indisputably under the sovereignty of the coastal State, in accordance with the principle of inherent rights. This would not imply exacerbating a conflict of areas that are not delimited and that are in dispute, thereby obstructing the achievement of a practical arrangement, rigorously enforcing the aforementioned actions in good faith, Therefore, it is imperative that the Bolivarian Republic of Venezuela takes action in order to negotiate practical arrangements, given that the International Court of Justice has determined that it does not have jurisdiction

²⁸ Méndez, Tahio, (2021), “Development of offshore fields”. Legal and Strategic Consultant. Professor Simón Bolívar University, Professor Andrés Bello Catholic University.

²⁹ *Ibidem*

to hear matters occurring after 1966 (Geneva Agreement), for which reason it will pronounce on the arbitration award regarding the land border between the then colony of British Guiana and the United States of Venezuela dated October 3, 1899.

CONFLICT OF INTEREST

The author (s) declares that there is no conflict of interest regarding the publication of this manuscript. In addition, the ethical issues, including plagiarism, informed consent, misconduct, data fabrication and/or falsification, double publication and/or submission, and redundancy, have been completely observed by the authors.

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