

# Spain and the Law of the Sea: 20 years under LOSC

## Pending delimitations

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### (A) INTRODUCTION

The conclusion and entry into force of the United Nations Convention on the Law of the Sea (LOSC) impacted the establishment and breadth of Spain's maritime zones<sup>1</sup> and, thus, the gradual increase in the number of cases in which it was necessary to draw sea borders with the country's neighbours. The situation resulting from the maritime zones claimed by Spain and its neighbours<sup>2</sup> shows that delimitation issues exist on all the country's coasts, that they affect all types of maritime

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<sup>1</sup> At the third United Nations Conference on the Law of the Sea (UNCLOS), breadths of 12 and 188 nautical miles were established for the territorial sea (TS) and the exclusive economic zone (EEZ), respectively, prompting Spain to expand its maritime areas (see Articles 1 and 3 of Law 10/1977, 4 January, on the Territorial Sea ([BOE No. 7](#), 8 January 1977) and Article 1 of Law 15/1978, 20 February 1978, on the Economic Zone ([BOE No. 46](#), 23 February 1978)). Following the entry into force of the LOSC for Spain, the country established an EEZ with limited jurisdiction in the Mediterranean (Royal Decree 1315/1997, 1 August 1997, establishing a Fisheries Protection Zone in the Mediterranean ([BOE No. 204](#), 26 August 1997), amended by Royal Decree 431/2000, 31 March 2000 ([BOE No. 79](#), 1 April 2000)), which, in response to French actions, it subsequently transformed into an EEZ with full recognition of the rights provided for under the Convention (Royal Decree 236/2013, 5 April 2013, establishing the Spanish Exclusive Economic Zone in the North-West Mediterranean ([BOE No. 92](#), 17 April 2013)); it requested extensions of the CS beyond 200 nm wherever the geography so allowed (Bay of Biscay, area of Galicia, and to the west of the Canary Islands); and it joined the group of states in favour of recognizing the archipelago principle for state archipelagos by means of Law 44/2010, 30 December 2010, on the Canary Island Waters ([BOE No. 318](#), 31 December 2010). These actions have impacted the delimitation of Spain's maritime zones, as they have increased the number of cases and zones pending an agreement on the drawing of the boundaries and introduced additional factors impeding the reaching of such agreements.

<sup>2</sup> For a more detailed analysis of the issue, see the E. Orihuela Calatayud, "La delimitación de los espacios marinos en España: perspectivas futuras", in *España y la práctica del Derecho Internacional. LXXV Aniversario de la Asesoría Jurídica Internacional del MAEC* (Ministerio de Asuntos Exteriores y de Cooperación, 2014) 121-141, at 123-127. The only new development with regard to the analysis presented there has been in relation to France, which, by means of Order no. 2016-1687, 8 December 2016, on maritime zones under the sovereignty or jurisdiction of the French Republic (JORF, 9 December), has equipped itself with a contiguous zone (CZ) adjacent to the TS and up to 24 nautical miles from the baselines (Art. 10) that it had previously lacked. The following table shows Spain's maritime zones and those claimed by its neighbours.

STATE	TS	CZ	EEZ	CS	CS beyond 200 nm
Algeria	X	X	EFZ (limited extension)	X	
France	X	X	X	X	X
Italy	X		EPZ	X	
Morocco	X	X	X	X	
Portugal	X	X	X	X	X
Spain	X	X	X	X	X

areas, and that they have only increased since the Convention's entry into force.

In the case of France, in addition to the need to define the boundary of the territorial sea (TS) and continental shelf (CS) in the Mediterranean, there is the issue of the delimitation of the exclusive economic zone (EEZ) in the Mediterranean and in the Cantabrian Sea (southern Bay of Biscay),<sup>3</sup> as well as those related to the establishment of an extended CS (ECS) —CS beyond 200 nautical miles (nm)— in the Bay of Biscay.<sup>4</sup> In the case of Portugal, in addition to the delimitation of the EEZ and CS at the mouth of the River Miño and between the Canary Islands and Madeira, as well as the definition of the boundaries of the TS, EEZ, and CS at the mouth of the River Guadiana, it is now also necessary to consider the delimitation of the ECS in the Atlantic Ocean.<sup>5</sup> The establishment of a Spanish EEZ in the Mediterranean further requires the drawing of boundaries with Italy's ecological protection zone (EPZ) and Algeria's exclusive fishing zone (EFZ), although in these two cases, the limits established in each case minimize the need for delimitation. As for Morocco, the space to be delimited in the Canary Islands area could be expanded beyond 200 nm.<sup>6</sup>

The established rules for the drawing of maritime boundaries<sup>7</sup> call for an agreement between the parties and/or the achievement of an equitable solution. The parties have an obligation of conduct to negotiate in good faith the conclusion of an agreement resulting in an equitable solution. Should these negotiations fail, the parties are to have recourse to the procedures provided for in Part XV of the Convention. In the case of judicial procedures, an equitable solution is the goal to be achieved by the

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<sup>3</sup> Including those related to the delimitation of the respective contiguous zones.

<sup>4</sup> On 19 May 2006, France, Ireland, the United Kingdom and Spain submitted to the Commission on the Limits of the Continental Shelf, in accordance with Article 76, paragraph 8, of the LOSC, information on the limits of the CS appurtenant to the four coastal states that lie beyond 200 nm from the baselines from which their respective TSs are measured corresponding to the area of the Celtic Sea and the Bay of Biscay. On 24 March 2009, the Commission on Limits adopted its recommendations and the four states must now reach an agreement on the delimitation of their respective CSs beyond 200 nm. Both the request and the Commission's recommendations are available in the United Nations Oceans and Law of the Sea Database. On this question, see the contribution in this volume by de Faramiñán on the "[Continental shelf and its extension](#)".

<sup>5</sup> On 11 May 2009, Portugal submitted to the Commission on Limits information on the limits of its ECS in three areas: the eastern region (mainland Portugal and the Madeira Archipelago), the western region (the Azores Islands), and the Galicia Bank. This information was subject to [observations by Spain](#). The same day, Spain submitted to the Commission on Limits information regarding the area of Galicia. As for the delimitation at the mouths of the rivers Miño and Guadiana, on 30 May 2017, Spain and Portugal signed an agreement drawing closing lines across the mouths of the rivers and delimiting their international sections, which constitutes a basis for negotiating the delimitation of their respective maritime areas. Information about this treaty is available [here](#).

<sup>6</sup> On 11 May 2009, Spain submitted to the Commission on the Limits a preliminary information on the limits of the Spain's ECS to the west of the Canary Islands, which was completed on 17 December 2014. On 3 August 2015, Morocco submitted a preliminary information with the intention of completing it by 31 May 2017, which it ultimately failed to do. On 20 June 2017, the North African kingdom sent a notification to the United Nations Secretary General that it reserves the right to make a definitive submission later. On this question, see again the contribution in this volume by de Faramiñán on the "[Continental shelf and its extension](#)".

<sup>7</sup> Both conventional and customary rules apply to the delimitation of these maritime areas. With regard to the former, in particular to Arts. 15, 74, and 83 LOSC, it should be noted that both Spain and its neighbours are parties to the Convention. The first to express its consent to be bound by the Convention was Italy, which deposited its instrument of ratification on 13 January 1995. In 11 April and 11 June 1996, respectively, France and Algeria became Contracting Parties. Spain and Portugal ratified the LOSC in 1997, on 15 January and 3 November respectively. Undoubtedly, the most reluctant to accept the text resulting from the third UNCLOS was Morocco, which did not ratify it until 31 May 2007.

arbitral tribunal or court.<sup>8</sup>

Despite the commitment assumed, the delimitation of most of Spain's maritime boundaries is still pending. Since 19 February 1974, when the country signed an agreement with Italy delimiting the CS,<sup>9</sup> the contacts made have not resulted in the opening of a negotiation process with prospects for success,<sup>10</sup> nor is there much enthusiasm for the possibility of recourse to a third party.

This paper aims to determine the causes of this paralysis. To this end, it will examine the challenges preventing the parties from reaching agreements and consider the possibilities, in the absence of such an agreement, of suing or being sued before an international court.

## (B) THE CHALLENGES OF CONCLUDING DELIMITATION AGREEMENTS

A wide variety of circumstances have, to date, prevented Spain from making progress on the drawing of its maritime boundaries through the signing of agreements with its neighbours. Notwithstanding the political considerations, the analysis of which falls beyond the scope of this paper,<sup>11</sup> the main circumstances are geographical and/or legal in nature.

### (1) Geographical Circumstances in the Pending Delimitations

The geographical circumstances hampering the definition of these boundaries include the existence of concave coasts, the concurrence of both lateral and frontal delimitations with a single state in a single area, the existence of cases in which the establishment of the definitive boundary requires the participation of more than two states, and islands.

Coastal concavity is often cited as a circumstance leading to the rejection or modification of an equidistant boundary. The Spanish coast curves inward near the mouth of the River Guadiana, as does the French coast in the Gulf of Lion; likewise, Morocco considers the concavity of its coast between Cape Ghir and Cape Juby relevant to the drawing of its boundary with the Canary Islands.<sup>12</sup> Although Spain does not seem to have taken a particularly belligerent stance on this point with regard to the delimitation of the boundary with Portugal at the mouth of the Guadiana, France and Morocco

<sup>8</sup> On the content of the international rules on the delimitation of maritime areas, see E. Orihuela Calatayud, "La delimitación de espacios marinos entre Estados y la jurisprudencia internacional" in *Cursos de Derecho Internacional y Relaciones Internacionales de Vitoria/Gasteiz 2016* (UPV, Bilbao, 2017) 487-568, at 499-510.

<sup>9</sup> BOE No. 290, 5 December 1978. On this question, see the contribution in this volume by Gutiérrez del Castillo on "[Delimited maritime zones](#)".

<sup>10</sup> The drawing of Spain's maritime boundaries thus remains stalled, and the borders drawn are the same as those that existed prior to the adoption of the LOSC. In this regard, see: V. Gutiérrez del Castillo, "Delimited Maritime Zones" in this same section.

<sup>11</sup> Specifically, those arising from the presence of Spanish cities and islands in Moroccan territory or off the Moroccan coast and Morocco's claims to them, as well as to the territory of the Sahara, all of which circumstances are unrelated to the Convention's conclusion and entry into force.

<sup>12</sup> In this regard, see: A. Lahlou, *Le Maroc et le droit des pêches maritimes* (LGDJ, Paris, 1983) 310-311; E. Orihuela Calatayud, *España y la delimitación de sus espacios marinos* (Universidad de Murcia, Murcia, 1989) 224; and V.L. Gutiérrez del Castillo, *El Magreb y sus fronteras en el mar. Conflictos de delimitación y propuestas de solución* (Huygens, Barcelona, 2009) 217-218.

have cited the concavity of their coasts to oppose the establishment of an equidistant boundary.<sup>13</sup> Solving these discrepancies is not simple and involves determining whether their existence necessarily renders an equidistant boundary unfair, whether that is only true in certain cases and which ones, or whether they should be deemed to have no impact on how the boundary is drawn at all. International jurisprudence is of little assistance in these matters, as the only thing that seems clear to the international courts is that this assessment depends on the position of the coasts of the states involved in the delimitation and that concavity should only be a factor when the coasts are adjacent.<sup>14</sup> But should coastal concavity lead to a rejection or modification of the equidistance line in all cases of lateral delimitation? Apparently not, as according to international case law, to have such a consequence, the concavity of a coast must produce a cut-off effect on the parties' maritime rights. Nevertheless, beyond qualifying the concavity as particular or well-marked, and requiring the concurrence of the requirements of disadvantage and seriousness, the international courts have not specified when this effect occurs.<sup>15</sup>

Other geographical circumstances hampering the delimitation of Spain's maritime areas and on which the decisions of the international courts shed little light are related to the concurrence in a single zone and with a single state of a lateral and a frontal delimitation and the existence of border points involving three or more states. The first of these circumstances affects the delimitation between Spain and France in the Mediterranean, as the change in direction of the French coast at Cap d'Agde and the presence of the Balearic Islands, thereafter opposite the French coast, turn the lateral border into a frontal one.

Delimitation points of interest to more than two states<sup>16</sup> can be found in the Mediterranean and the Atlantic. In the Mediterranean, such tri-border areas affect three groups of states: France, Italy,

<sup>13</sup> With regard to France, this rejection is clear when one considers that the limits established by the French for their EEZ. The article 1 of the Decree no. 2012-1148, 12 October 2012, on the Creation of an Exclusive Economic Zone off the Coast of the Republic's Territory in the Mediterranean (JORF, 14 October 2012) defines a space that overlaps with the EEZ established by Spain in accordance with the equidistance line (Royal Decree 236/2013, 5 April 2013, establishing the Spanish Exclusive Economic Zone in the North-West Mediterranean ([BOE No. 92](#), 17 April 2013)).

<sup>14</sup> The difference between adjacent and opposite states in relation to the effects of a concave coast on the drawing of the equidistance line was highlighted by the arbitral tribunal tasked with delimiting the French-British CS, which endorsed the ICJ's statements in the *North Sea Continental Shelf* case on the effects that the presence of concavity has on the delimitation of maritime zones far from the coast by means of the drawing of a line of equidistance (ICJ, *Reports*, 1969, pars. 57-59). In the arbitral tribunal's opinion, "clearly, this characteristic of the equidistance method marks a material difference between a geographical situation of opposite States and one of adjacent States in the delimitation of the continental shelf boundaries" (par. 86 of the decision of 30 June 1977). This distinction had been assumed by the parties, as the court showed, stating that "in the present proceeding, both the Parties have recognised the significance of the distinction drawn by the International Court of Justice between 'opposite States' and 'adjacent States' situations in relation to the use of the equidistance method, whether under Article 6 or under customary law. They are agreed that throughout the English Channel where the coasts of the French Republic and the United Kingdom are opposite each other the boundary should, in principle, be the median line" (par. 87 of the decision).

<sup>15</sup> In this regard, see the analysis of the decisions of the international courts in E. Orihuela Calatayud, "La delimitación..." *op. cit.* n. 8, pp. 547-551.

<sup>16</sup> Until claims to ECSs off the Atlantic Ocean coasts led to the emergence of cases concerning four states—Ireland, the United Kingdom, France and Spain—in the Spanish delimitation, these were tripoints. On this point, see, for example, L. Pérez-Prat Durbán, *La frontera triangular* (Dykinson Madrid, 1999) or C.G. Lathrop, "Tripoint Issues in Maritime Boundary Delimitation", in D.A. Colson and R.W. Smith (eds.), *International Maritime Boundaries* (The American Society of International Law, The Hague, 2005) 3305-3375, also available in C.G. Lathrop, *International Maritime Boundaries Online*.



and Spain; Italy, Algeria, and Spain; and Algeria, Morocco, and Spain. In the Atlantic, the triangle is formed by the maritime boundaries of Morocco, Portugal, and Spain. The clear and effective identification of these multiple points requires the agreement of all parties involved, which conditions and impedes the definitive delimitation. The bilateral delimitation agreements reached between some of the parties identifying the end of their boundary as the terminal point for the pending delimitation between them and a third state may serve as a proposal for the future delimitation with that third state, but in no way, may they be invoked against it. The recent delimitation agreement signed by France and Italy delimits the boundary up to a point presented as a tripoint between France, Italy, and Spain, but the point's location does not coincide with the end of the boundary drawn between Italy and Spain in 1974.<sup>17</sup>

Spain's pending delimitations also include cases involving islands. On the one hand, there are islands whose location requires a boundary to be drawn; on the other, there are islands located in the area to be delimited, making it difficult for the parties to reach an agreement. Both situations can concur in a single case.

The Canary Islands require delimitation with Morocco and Portugal (Madeira Archipelago), and the Balearic Islands with Italy and Algeria. The challenges these cases pose for the drawing of maritime boundaries are not, in principle—with one exception—related to the islands themselves, but rather to other factors.<sup>18</sup> The exception is the delimitation between Portugal and Spain of the CS and EEZ between Madeira and the Canary Islands.

The main obstacles to the drawing of the EEZ and CS boundaries between Madeira and the Canary Islands are the existence and location of the Savage Islands and the Portuguese and Spanish positions regarding the effect they should have on the delimitation. Although they belong to the Community of Madeira, the Savage Islands are geographically separate from the archipelago, and their impact on the drawing of the boundary is controversial. Whilst Portugal considers that the equidistance line should be drawn from these uninhabited islands in the zone opposite the Canary Islands, Spain maintains that the boundary should be drawn between Madeira and the Canary Islands, and that the Savage Islands are a circumstance to be assessed in the drawing of the dividing line between the Portuguese and Spanish archipelagos.<sup>19</sup> This difference of opinion is related to the other aspect to be examined in the analysis of the pending delimitation of Spain's maritime zones, i.e. islands as a circumstance to be considered in the drawing of maritime boundaries.

Determining what role islands should play in how a boundary is drawn is unavoidable not in those cases in which the islands and their seaward projection are what originate the delimitation problem,

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<sup>17</sup> See the report on this agreement contained in C.G. Lathrop, *International Maritime*, *supra* n. 16.

<sup>18</sup> The drawing of the boundaries between Spain and Italy and between Spain and Algeria need not be complicated given the boundaries drawn by these states for their economic zones. However, it must be recalled that the limits of the Italian EPZ include some points that do not match those established in the delimitation of the CS and that, at the UNCLOS Algeria argued in favour of minimizing the maritime zones of dependent islands and archipelagos. The case of Morocco is always more controversial, due to the concurrence of a variety of factors that permanently muddy the relations.

<sup>19</sup> On the matter of the Savage Islands, Portugal's ownership of them, and the challenges they pose to the delimitation of the EEZ and CS between Madeira and the Canary Islands, see: F. Baeza Betancourt, *Las Islas Canarias ante el nuevo Derecho Internacional del Mar* (Las Palmas, 1987) 81 and 93-94, and, more recently, A. Sereno, "El nuevo mapa marítimo de Portugal y el caso de las Islas Salvajes", 28 REEI (2014) (doi: 10.17103/reei.28.01).

but rather when these elevations are located in the zone to be delimited. The presence of islands and rocks in the zone to be delimited is often one of the factors impeding the plotting of a maritime boundary, as the party harmed by their presence tends to minimize their effects on the delimitation and seeks to impose a reduction of their spaces.

The determination and weighting of the impact islands will have on the final boundary affects the drawing of the maritime boundary between the Canary Islands and Madeira; is one of the obstacles hampering the agreement between France and Spain in the Gulf of Lion; is a circumstance that may hinder an agreement with Algeria; and is certainly one of the main challenges in drawing the boundary between Spain and Morocco in both the Strait and the Alboran Sea.

Despite the difficulties that islands and rocks pose to delimitation, no international legal provisions set out the effects such land elevations should have on the delineation of maritime boundaries, nor do the arbitral and court decisions offer an objective assessment criterion.<sup>20</sup> The only thing that is clear is the zones that can be established from their coasts (Article 121 LOSC); in this regard, rocks are irrelevant to the configuration of the maritime boundaries related to the EEZ and CS, except where they were used to draw the baselines.<sup>21</sup>

## (2) Legal Difficulties in the Pending Delimitation

The issues of a markedly legal nature affecting the pending delimitation of Spain's maritime zones include those related to the drawing of baselines by the states involved in the delimitation and the extension of the application of a delimitation agreement signed with regard to a given maritime zone to another zone that did not exist at the time of its conclusion.

With regard to the baselines, the discrepancies have to do with the drawing itself, as some of those established, especially by Morocco, are contrary to the rules provided for under the law of the sea.<sup>22</sup> Furthermore, the establishment of baselines closing the perimeter of the Canary archipelago could also be an obstacle to reaching a delimitation agreement with Morocco.<sup>23</sup>

In the context of Spain's pending delimitations, consideration has been given to the appropriateness of drawing a boundary agreed for a given maritime zone toward another that, at the time of its conclusion, did not exist or was *in statu nascendi*, i.e. to extending a CS delimitation agreement to all or part of the EEZ. A possibility that can be entertained in terms of the equity of the solution, but that in no case can be considered automatic. This extension could affect the delimitation

<sup>20</sup> On this issue, see: E. Orihuela Calatayud, "La delimitación...." *supra* n. 8, pp. 541-547.

<sup>21</sup> What it says with regard to islands, to which one can add low-tide elevations (Art. 13 LOSC), close to the coast of the state to which they belong.

<sup>22</sup> Although in recent months the media have reported the possibility of changes to the Moroccan law governing its TS, EEZ and CS, and to the drawing of the baselines from which those areas are measured, the situation is unlikely to change substantially from the present, as the fact that these proposals state that waters located on the land side of the baselines are all interior waters suggests that Morocco will continue to deny maritime zones to the Spanish territories located on or opposite its coast whose sovereignty it claims. In this regard, see the declaration with which Morocco accompanied its declaration of consent to be bound by the LOSC, available in the database of treaties deposited with the Secretary-General of the United Nations. On the irregularity of the straight baselines drawn by Morocco, see: E. Orihuela Calatayud, *España...*, *op. cit* n. 12, pp. 213-219, and V.L. Gutiérrez del Castillo, *El Magreb...*, *supra* n. 12, pp. 80-95.

<sup>23</sup> On this issue, see E. Orihuela Calatayud, "La delimitación....", *supra* n. 2, pp. 137-139.

of the EEZ between Spain and France in the Bay of Biscay and the configuration of the boundary between Spain (Balearic Islands) and Italy (Sardinia) with regard to the Spanish EEZ and the Italian EPZ.

As concerns the Bay of Biscay, the main discrepancy regarding the delimitation of the Spanish-French EEZ is due to both states' desire to draw a single dividing line for the CS and the EEZ, and to France's interest in using the dividing line established by agreement on 29 January 1974 for the CS for this purpose<sup>24</sup> versus Spain's interest in revising that treaty.

As for the delimitation of an EEZ and EPZ boundary between the Balearic Islands and Sardinia, the extension of the agreement signed in 1974 for the CS should not pose any particular problem. However, it must be remembered that the boundary drawn under that agreement differs slightly from that established in the Italian law establishing the new EPZ and that the final point thereof is not the same as that established by France and Italy in their 2015 agreement.

### (C) RECOURSE TO A JUDICIAL PROCEDURE: A REAL POSSIBILITY?

In light of the current state of paralysis of the configuration of Spain's maritime boundaries and the commitment assumed by the parties to the LOSC regarding recourse to the settlement procedures provided for in Part XV of the Convention should the negotiations fail, the possibility of submitting the delimitation to a judicial procedure should be examined.

So far, the parties have evinced little consensus regarding the option of recourse to arbitration or judicial settlement. This reluctance may be due to the unpredictability of the outcome, as each case of delimitation is unique, a situation that encourages the parties to seek to retain control of the solution to their delimitation problems. However, it is necessary to ask whether it would be possible for any of the states involved in the delimitations, including Spain, to use a judicial procedure, asking the court to draw the boundary or, at least, to indicate the principles to guide the agreement between the parties and how they should be applied when it comes time to establish it. In the context of this hypothesis, it is necessary to examine the consent that these states may have given to the jurisdiction of an arbitral tribunal, ITLOS or the ICJ itself.

Given that, except for the arbitration regulated in Annex VII LOSC, the treaty does not contain an arbitration clause whereby the parties agree *a priori* to submit disputes concerning the interpretation and application of the Convention to a judicial procedure, but rather that this possibility is made subject to an *ad hoc* declaration, the commitments assumed by the states involved in the delineation of Spain's maritime boundaries are unequal. Whilst some states have not made the written declaration provided for in Article 287 LOSC and, thus, could only be sued before an arbitral tribunal, others have.

Spain, Italy, and Portugal have all made a declaration in accordance with Article 287, choosing as the means for the settlement of disputes either judicial settlement —ICJ and ITLOS<sup>25</sup>— or all means

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<sup>24</sup> BOE No. 163, 9 July 1975.

<sup>25</sup> Case of Spain and Italy.

mentioned in the said provision.<sup>26</sup> The rest of the states with which Spain still has to define a boundary have not made a choice. However, the LOSC offers the parties the possibility of excluding disputes relating to sea boundary delimitations from this commitment (Article 298(1)(a)(i)). This has been done by all the states that have made a declaration based on Article 287, as well as France, which, despite not having made such a declaration and, therefore, having consented only to the arbitration provided for in Annex VII, has excluded delimitation disputes from judicial procedures.

Given this state of affairs, on the basis of the LOSC there are no grounds for submitting a dispute over the drawing of Spain's maritime boundaries to the arbitral or judicial (ITLOS and ICJ) procedures provided for therein.

However, insofar as the potential submission of a delimitation dispute to the ICJ is concerned, it is necessary to ask whether any of the country's neighbours could find a different basis for the Court's jurisdiction. Needless to say, to answer that question it is necessary to look at the declarations made under the optional clause of the Statute of the ICJ and the possible existence of arbitration clauses that might offer a basis for the Court's action.

The analysis of the declarations made under the optional clause included in Article 36(2) of the Statute must focus on the relations with Portugal and Italy, as, along with Spain, they are the only states to have subscribed to the optional clause. In the case of the former, the amendment made by Portugal to its declaration in 2005 prevents it from serving as a basis for the Court's jurisdiction, as Portugal excluded from the Court's jurisdiction disputes with one or more parties to a treaty regarding which the ICJ's jurisdiction has, under the applicable rules, been explicitly excluded, irrespective of whether the scope of the dispute refers to the interpretation and application of the treaty provisions or to any other source of international law.<sup>27</sup> With regard to Italy, which recently subscribed to the optional clause,<sup>28</sup> none of the limitations established in the Italian or Spanish declarations refers to delimitation disputes; however, given that both states excluded these disputes in the declarations they made under the LOSC, recourse to the Court seems unlikely.

As for the arbitration clauses, the result is the same, since the arbitration clause included in Article 3 of the Convention, of 19 February 1974, on the delimitation of the CS between Italy and Spain, would not apply in the event of a dispute concerning the extension of the Convention to the delimitation of the EEZ, as Article 4 of the Convention provides that none of its provisions shall affect the status of the waters.

We are thus dealing with a situation in which the submission of delimitation disputes affecting Spain will require the signing of a commitment or arbitration agreement and in which Spain, for the time being, controls the recourse to judicial procedures.

#### (D) CONCLUSION

The conclusion and entry into force of the LOSC have not facilitated the signing of delimitation

<sup>26</sup> Case of Portugal.

<sup>27</sup> See para. 1(iv) of the [Declaration](#) of 18 February 2005.

<sup>28</sup> Italy made its [Declaration](#) on 25 November 2014.



agreements that might have put an end to the situations of juxtaposition to which the establishment of the maritime zones recognized under the Convention has given rise. The reason for this lies in the lack of agreement between the parties involved, whether to draw a boundary once the circumstances present in each case have been identified and assessed, or to use a settlement procedure to definitively settle the matter. This situation should not be considered detrimental to the interests of Spain, as long as the country is able to build bridges of cooperation that enable the use and enjoyment of the sea and its resources.