

World Oceans Day 2010 - Our oceans: opportunities and challenges

Roundtable discussion on the United Nations Convention on the Law of the Sea
fifteen years after its entry into force

THE RIGHT OF STATES TO ESTABLISH MARITIME ZONES UNDER THE
UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

By Bernard H. Oxman *

I would like to thank the organizers of this panel for inviting me to participate. It is an honour to be here.

I have been asked to make some brief remarks at the outset regarding the Right of States to establish Maritime Zones under the United Nations Convention on the Law of the Sea.

As of the start of this year there were 160 parties to Convention. Many of the non-parties regard its provisions as generally declaratory of customary international law.

While the Convention is rooted in the outcome of earlier codification efforts, it effected a major transformation of the law of the sea. The most important changes in the legal geography of the sea entailed substantial expansions of sovereignty and more limited sovereign rights and jurisdiction of coastal states:

- more liberal rules on baselines enclosing internal waters;
- a new regime of archipelagic waters that may be enclosed by archipelagic baselines;
- definitive abandonment of the traditional 3-mile limit of the territorial sea in favour of a 12-mile maximum limit;¹

* Richard A. Hausler Professor of Law, University of Miami School of Law.

- extension of the maximum limit of the contiguous zone to 24 miles from the coastal baselines;
- establishment of an exclusive economic zone (EEZ) embracing both the water column and the seabed and subsoil to a maximum distance of 200 miles from the coastal baselines; and
- definition of the legal continental shelf as extending well beyond the geographic shelf to the outer edge of the continental margin or 200 miles from the coastal baselines, whichever is further seaward.

Coastal states are not required to exercise these rights. Some have refrained for policy reasons from extending their jurisdiction to the maximum limits permitted by the Convention or from claiming all of the competences permitted by the Convention within those limits.

A UN Secretariat compilation of maritime claims indicates that approximately:

- 20 island states have drawn archipelagic baselines and another 88 states have drawn closing lines or straight baselines;
- 137 states claim territorial seas of 12 miles;
- 77 states claim contiguous zones of 24 miles;
- 108 states claim EEZs of 200 miles.

Over a dozen other states have established EEZs of lesser breadth because they do not face the open sea and cannot claim a full 200 miles. In addition, some states have chosen to exercise only particular competences permitted by the regime of the EEZ, notably with respect to fisheries, by establishing only fishing zones. This is most apparent in the claims of some states in the Mediterranean Sea.

Rights to the continental shelf do not require express declarations. However, the Convention's parties are required to make submissions to the Commission on the Limits of the Continental Shelf with respect to the limits of the continental shelf seaward of 200 miles. It is important to bear in mind however that the rights of the coastal state over the continental shelf do not depend on Commission action. The significance of the Commission procedure is that the seaward limits of the continental shelf beyond 200 miles become final and binding on all Parties to the Convention under article 76, paragraph 8, when those limits are established by the coastal state on the basis of Commission recommendations.

The Commission has reported an enormous backlog of work: "Under the current *modus operandi* of the CLCS, the consideration of 51 Submissions received to date will extend to 2030. This scenario does not include the consideration of new and revised submissions from existing submissions, submissions from States for which the deadline has not arrived, submissions in disputed areas, submissions from new States Parties to UNCLOS and submissions stemming from 44 Preliminary Information Notes."²

Do all of the coastal state claims that I recounted represent success? That depends on how we define success. Some people regard territorial and similar claims as their own *raison d'être*. Other people regard such claims as the best way to facilitate achievement of particular substantive objectives. Whatever the political power of the first group, the policy question is whether, and if so to what extent, the second group is right. I look forward to the observations of my fellow panellists that may bear on this question.

¹ The references throughout are to nautical miles (1,852 meters or 6,076 feet).

² Presentations of 1 September 2009 to MSP Bureau and 14 April 2010 to MSP Informal Working Group.