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Contributions
and Compromises

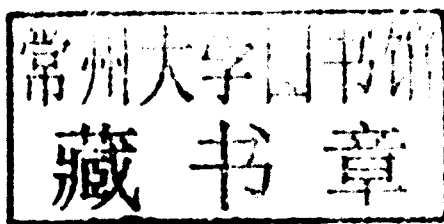
Jorge A. Vargas

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Mexico and the Law of the Sea

Contributions and Compromises

By
Jorge A. Vargas



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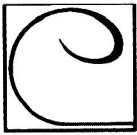
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Mexico and the Law of the Sea



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*A Series of Studies on
the International, Legal, Institutional and Policy Aspects
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With all my love to Lynda Grace,
and to our children Catherine,
Elisabeth and Jorge Alejandro

In *memory of*
Dr. Arvid Pardo
and
Dr. Elisabeth Mann Borghese

Foreword

This is an exceptionally important book about the law of the sea. The great bulk of scholarship about the law of the sea focuses on the interests and laws of permanent members of the Security Council or major developed states. This book, however, focuses on the interests and laws of Mexico, one of the most influential emerging economy participants in the negotiations leading to the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Further, the book is written by one of the top international scholars on law of the sea who served as one of Mexico's principal negotiators throughout UNCLOS and subsequently for three years as the Legal Adviser to the chairman of the Intergovernmental Oceanographic Commission (IOC).^{*} Jorge A. Vargas was Mexico's Representative to the Third Committee of UNCLOS which dealt with marine scientific research, the marine environment and technology transfer. In that capacity he made a great contribution to the success of UNCLOS and, of course, he also became one of the most knowledgeable experts in the world on these subjects. Indeed, the delegation of Mexico to UNCLOS, headed by Ambassador Jorge-Castañeda, was one of the most highly respected and influential delegations in the negotiation. This book then, both in its understanding of UNCLOS and of Mexican perspectives on law of the sea, is highly authoritative.

The 1982 Convention on the Law of the Sea is one of the most remarkable international accomplishments in history. It successfully obtained broad international agreement on a basic constitution for the oceans – quite literally governing an area over two-thirds of planet earth – dealing with the full range of crucial ocean issues, and overcoming four centuries of uncertainty and inability to reach agreement. Today the Convention is in force for 160 nations, as well as – for fisheries matters – the European Union. Crucial to the success of the Convention in providing a stable oceans law for development and conflict avoidance is compliance by nation states. In this respect, it is particularly important that all countries structure their oceans law to be in compliance with the Convention. The experience and leadership of Mexico in this connection is of great significance for other nations, particularly developing nations which

^{*} Among his many accomplishments, Professor Vargas is a *summa cum laude* graduate of the National Autonomous University of Mexico (UNAM) where he later taught; an Adlai E. Stevenson Fellow of the U.N. Institute for Training and Research (UNITAR); he headed the Law of the Sea Department at CESTEEM, Mexico City; and he was the Deputy-Director of the Mexican Office of International Fisheries Affairs.

played such a major role in the success of UNCLOS. As such, this volume deserves careful study by every foreign office in the world when addressing oceans law matters.

The United States is blessed with its major neighbors, Canada to the North and Mexico to the South. Americans have welcomed the strong democratic transition in Mexico and our shared North American Free Trade Agreement. The two countries have in recent years worked more and more closely together, whether in economic and trade matters, in seeking to control terrorism, or in seeking to control drug related lawlessness. And the Government of Mexico is leading the world in effective training within its educational system as to the importance of the rule of law. It is fitting then that two fellow law of the sea negotiators in UNCLOS were brought together in this superb SJD project of Jorge Vargas at Virginia. It is hoped that this will be one of many future collaborations between law of the sea experts of our two countries. Although serving as the principal adviser on the faculty of the University of Virginia for the SJD of Professor Jorge Vargas which resulted in this important book, I certainly learned as much from Jorge as anything he may have learned from me in this process. That seems likely to be the case for the future in relations between the two great nations of Mexico and the United States.

John Norton Moore
Charlottesville, Virginia
March 2011

Preface

My academic and personal interest in the law of the sea was seeded in me in the late 1960's by two truly leading figures in the field of international law: Dr. Arvid Pardo, then Ambassador of Malta to the United Nations, and Prof. Myres S. McDougal of Yale Law School.

On November 1, 1967, Dr. Pardo pronounced his long and now historical speech before the First Commission of the XXII General Assembly of the United Nations. At that time, I had just arrived in New York from Mexico's Secretaría de Relaciones Exteriores (Secretariat of Foreign Affairs) to begin an *Adlai E. Stevenson Fellowship* at the United Nations Institute on Training and Research (UNITAR). Dr. Oscar Schachter, UNITAR's Research Director, had assigned me to cover the activities of the First and the Sixth Commissions of the United Nations General Assembly. Listening to the eloquent and detailed speech pronounced by the Maltese ambassador made a most profound and indelible impression on me.

Dr. Pardo described how the major powers were threatening to extend the arms race into the deepest parts of the oceans, and even contemplating to emplace both conventional arms and nuclear weapons on the seabed and ocean floor. Pardo reiterated how imperative it was for the United Nations to put an immediate stop to this potential arms race by negotiating an international treaty. At the same time, he described in vivid detail the existence of important until then unknown deposits of polymetallic nodules lying on the deepest parts of the sea bed and ocean floor well beyond the limits of national jurisdiction. He concluded his speech by proposing that this brand new law of the sea space that he unveiled before the United Nations – the seabed and ocean floor beyond the limits of national jurisdiction – should be utilized exclusively for peaceful purposes, its mineral riches to be used principally for the benefit of poor and developing countries and that the entire seabed area be declared by the United Nations as the "Common heritage of humankind." The content of this original and powerful speech was to remain embedded in my mind for the rest of my life.

After UNITAR, I decided to pursue graduate studies at Yale Law School under the kind supervision of Prof. McDougal, my academic advisor. He introduced me to the legal intricacies of the Law of the Sea Conventions of 1958 and prepared my mind for the diplomatic and legal odyssey that eventually led to the convocation by the United Nations of the Third Conference on the Law of the Sea (UNCLOS III).

The fact that for many years I was a member of the Mexican delegation to the Law of the Sea Conference, then under the direction of Amb. Jorge Castañeda, Secretary of Foreign Affairs, clearly served to strengthen my professional and academic interest on the law of the sea. Years later, I was also fortunate to serve as Legal Advisor to Dr. Agustín Ayala Castañares, President of the Intergovernmental Oceanographic Commission (IOC) of UNESCO in Paris, France, thus becoming directly involved in the marine programs sponsored by the IOC, in particular the legal regime applicable to marine scientific research.

Finally, as part of my teaching activities, I decided to bring to the law school classrooms in Mexico the legal and diplomatic experiences accumulated as a result of my participation in the negotiations at UNCLOS III and to impress upon my students the importance that the law of the sea is to play in Mexico's development. The law of the sea courses that I taught for many years at the Institute of Marine Sciences and Limnology of Mexico's National Autonomous University (UNAM) and at the Center for Naval Studies for Officers of the Mexican Navy (CESNAV) prepared me to serve as Director of the Law of the Sea Program at the Center for Economic and Social Studies of the Third World (CEESTEM) under the direction of President Luis Echeverría at San Jerónimo-Lidice in Mexico City. At the same time, the domestic and international experience accumulated at CEESTEM allowed me to continue with my teaching and academic activities starting anew at the University of San Diego School of Law (USD) in 1983 where I have enjoyed teaching a law of the sea course for almost thirty years.

The principal aim of this book is to provide the reader with an overview of Mexico's direct involvement in the formulation of that public order for the oceans both at the international and domestic levels.

Internationally, Mexico became an active participant during the prolonged and complex multilateral negotiations at UNCLOS III in New York, Geneva, and Caracas, that was convoked in 1973 and culminated at Montego Bay, Jamaica, in 1982. As part of this international context, this book discusses also Mexico's involvement and contributions to the law of the sea at the regional meetings held in Latin America at Montevideo, Lima and Santo Domingo during the early 1970's. It was at these regional diplomatic gatherings where the legal antecedent of the current exclusive economic zone was created and given legal shape under the original name of the Patrimonial Sea. This book also examines the bilateral maritime agreements entered into by Mexico with the United States of America, Cuba, Honduras, Guatemala and Belize.

At the domestic level, this work introduces the reader to the intricacies of Mexican constitutional law while discussing the legal nature of Mexico's marine zones pursuant to its Federal Constitution of 1917. The Federal Oceans Act of 1986 (FOA) is the first and most comprehensive legislative enactment ever formulated in Mexico's legislative history on law of the sea matters. This federal

statute establishes the legal regime that governs each of the surrounding marine zones subject to Mexico's sovereign control or to its jurisdiction, namely: the internal waters, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf. From a substantive viewpoint, the FOA closely parallels the corresponding articles of the 1982 Law of the Sea Convention although FOA's regulations (*Reglamento*), essential to interpreting several of its technical provisions, have not yet been published for unknown reasons.

Finally, this book discusses the intriguing issues raised by two diverse but delicate law of the sea topics: first, the conduct of marine scientific research by foreign vessels offshore Mexico and the legal regime applicable to these activities; and second, the fact that Mexico continues to be remiss in publishing a legal enactment (*Ley Reglamentaria*) required to govern its islands, including its multiple uses and resources.

It is hoped that this book may contribute to elucidate some technical and legal questions relative to the law of the sea within a Mexican context and, at the same time, turn the attention of government officials, diplomats, academicians and students to the importance of the oceans' uses and resources, given the advancements of science and technology at the dawn of the 21st century, in the development of countries like Mexico and in the progress of humankind.

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Many law of the sea specialists, law professors, scientists and government officials from the United States and Mexico contributed with their opinions, comments and critiques to the preparation of this book. To each and all of them I am truly grateful.

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I owe a special debt of gratitude to Prof. John E. Noyes, Roger J. Traynor Professor of Law at California Western School of Law, and Prof. Michael Reed, of USD School of Law. Their technical expertise on the law of the sea helped me to clarify and improve the substance of the final work. My personal thanks are also extended to Prof. Joseph Darby, USD friend and colleague and to Dr. Robert Smith, a leading law of the sea expert in maritime delimitation, who kindly reviewed the corresponding chapters of this book.

I was fortunate to receive valuable comments from leading specialists in different aspects of the law of the sea, including Lic. Joel Hernandez, Legal Advisor of Mexico's Secretariat of Foreign Affairs (SRE); Lic. Francisco José Valdés Roa, Director General for North America, SRE; Lic. Laura Ortiz, formerly at SRE's Legal Advisor's Office and currently at Mexico's Supreme Court; and Lic. Jorge Toro, Head of the Department of Insular Territory, Secretariat of the Interior (Segob); Ms. Angelica Narvaez, Science Section of the American Embassy in Mexico City; and Ms. Elizabeth Tirpak and Brian Van Pay from the U.S. Department of State.

A selected group of marine scientists reviewed the chapters on marine scientific research and islands and provided me with their ideas and suggestions. My sincere thanks go to Dr. Exequiel Ezcurra, Director of the US/MEXUS

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University of San Diego School of Law
Spring 2011

Contents

Foreword	xix
Preface	xxi
Acknowledgements	xxv

Chapter One Mexico and Its Territory: Constitutional Principles and Foundations	1
1. Introduction	1
2. Mexico's Constitutional Provisions	3
A. Article 27 of the Political Constitution of 1917	4
B. Article 42 of the Political Constitution	5
C. Article 48 of the Political Constitution	6
3. Mexico's National Territory	6
A. Opinions of Mexican Doctrinarians	6
B. The Notion of Territory in Mexico's Domestic Legislation	10
1. The General Act of National Assets	10
2. Mexico's Territory and the Supreme Court of Mexico	13
C. Article 27, Paragraph One	14
1. Historical Background	14
2. Legal Interpretation	19
D. Article 27, Paragraphs Four through Seven	24
E. Article 42 and the Component Parts of the Territory	30
F. Article 48 and Mexico's Islands	35
G. Marine Affairs under Mexico's Federal Public Administration	37
4. Conclusions	38
5. Appendix One	40
Document 1.1	40
Articles 27, 42 and 48 of Mexico's Political Constitution of 1917	

Chapter Two Mexican Marine Zones: Their Legal Regime under the Federal Oceans Act of 1986	43
1. Legal Historical Background	43
2. Mexico's Federal Oceans Act of 1986	49
A. Rationale of the Federal Executive Power	51
1. The Conversion of International Law into Domestic Law	53

2. Ratification by Mexico of the 1982 United Nations Convention on the Law of the Sea	55
3. The FOA and the Opinion of the Foreign Affairs Secretary	59
B. General Overview of the Federal Oceans Act	61
1. To Codify, Update and Systematize	61
2. To Comply with the 1982 LOS Convention	63
C. The FOA's Innovative Features	64
D. FOA's Ambit of Application	68
1. General Provisions	68
2. Maritime Installations	70
3. Resources and Economic Utilization of the Sea	71
4. Protection and Preservation of the Marine Environment and Marine Scientific Research Principles	71
3. Mexico's Marine Zones	72
A. Internal Waters	72
1. Application of the Straight Baseline System to the Gulf of California	74
a. Diplomatic Protest by the United States in 1969	79
B. The Territorial Sea	86
C. The Contiguous Zone	92
D. The Exclusive Economic Zone	93
E. The Continental Shelf	95
4. Conclusions	101
5. Appendix Two	103
Document 2.1	103
<i>Federal Oceans Act (Diario Oficial de la Federación of January 8, 1986)</i>	
Document 2.2	121
Delineation of the Provisional Maritime Boundary between the Exclusive Fishery Zones of the United States and Mexico in the Pacific Ocean, International Boundary and Water Commission (IBWC), December 30, 1967	
Document 2.3	122
International Maritime Boundary in the Gulf of Mexico, International Boundary and Water Commission (IBWC), December 12, 1970	
Document 2.4	123
International Maritime Boundary in the Pacific Ocean, International Boundary and Water Commission (IBWC), December 12, 1970	

Document 2.5	124
Mexico: Straight Baselines, 1968	
Document 2.6	125
Straight Baselines Delimiting Mexico's Territorial Sea in the Interior of the Gulf of California, Pursuant to <i>Diario</i> <i>Oficial</i> of August 29, 1986, and Fé de Erratas (<i>Corrigendum</i>) of <i>Diario Oficial</i> of October 5, 1968	
 Chapter Three Genesis and Development of the Exclusive Economic Zone in Latin America	127
1. Introduction	127
2. Genesis and Development in Latin America	132
A. Latin American Diplomatic Conferences	132
1. The Santiago Declaration of 1952	137
A. Preamble and Maritime Policies	138
B. Plurality of Legal Regimes Leads to Regional Conferences	141
2. The Montevideo Declaration on the Law of the Sea of 1970	142
A. Basic Principles of the Law of the Sea	143
3. The Lima Declaration of Latin American States on the Law of the Sea of 1970	145
A. Rationales	146
B. Common Principles of the Law of the Sea	147
C. Resolutions	148
4. The Declaration of Santo Domingo of 1972	150
A. Legal Content and Analysis	150
a. Territorial Sea	153
b. Continental Shelf	156
c. International Seabed	159
d. High Seas	160
e. Marine Pollution	161
f. Regional Cooperation	161
g. Patrimonial Sea	161
h. Origin of the Name "Patrimonial Sea"	163
B. The Inter-American Juridical Committee	166
1. The Report of Vargas Carreño in 1971	166
2. The Committee's Resolution of 1973	168
3. The Transformation of the Patrimonial Sea into the Exclusive Economic Zone	169
A. The Colombo Meeting of January 18–27, 1971	170

B. The Yaoundé Seminar of June 20–30, 1972	171
C. Kenya Draft on the Exclusive Economic Zone of August 7, 1972	172
D. Declaration of the Organization of African Unity (OAU) on the Issues of the Law of the Sea, Addis Ababa, Ethiopia, May 17–24, 1973	173
4. Conclusions	174
5. Appendix Three	176
Document 3.1	176
Declaration of the Maritime Zone, Adopted August 18, 1952	
Document 3.2	178
Montevideo Declaration on the Law of the Sea, Adopted May 8, 1970	
Document 3.3	180
Declaration of the Latin American States on the Law of the Sea, Adopted August 8, 1970	
Document 3.4	182
Declaration of Santo Domingo, Adopted June 9, 1972	
Document 3.5	185
Colombia, Mexico and Venezuela: Draft Articles of Treaty Territorial Sea, April 2, 1973	
Document 3.6	188
Principles of Mexico on the Juridical Regime of the Sea, Mexico City, February 3, 1956	
Document 3.7	190
Evolution of Law of the Sea Concepts Leading Up to the 1982 UN Convention	
Chapter Four Mexico's Exclusive Economic Zone. Its Establishment, Negotiation and Delimitation with Neighboring States	193
1. Introduction	193
2. The Exclusive Economic Zone in Mexico's Domestic Legal Arena	196
A. The EEZ and Mexico's Federal Constitution	196
1. Addition of an Eighth Paragraph to Article 27 of the Constitution	198
2. The Reglamentary Act on the Exclusive Economic Zone of February 13, 1976	201
3. Decree Establishing the Outer Boundaries of the EZZ of June 7, 1976	203