

The International Law of the Sea

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and

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Donald R Rothwell
Tim Stephens

Preface

The international law of the sea has been in a state of constant development over the course of many centuries. At first it was dominated by the state practice of the great powers and the views of publicists such as Grotius, but then gradually there emerged a distinctive and more expansive body of customary international law. The twentieth century proved to be the most significant to date for the law of the sea. Early efforts were made to codify the law, and then when these failed the International Law Commission was called upon to consider the issues, and the Commission's work was a major catalyst for the First United Nations Conference on the Law of the Sea and the eventual adoption of the four 1958 Geneva Conventions.

The middle of the twentieth century was a tumultuous time for international affairs coinciding with the Cold War, the development of the United Nations system, and decolonisation resulting in the emergence of many new states which sought to challenge the existing order, including the 'eurocentric' focus of international law. These geopolitical currents exerted great force on the Third United Nations Conference on the Law of the Sea, and impacted upon the way in which the 1982 United Nations Convention on the Law of the Sea was negotiated and eventually settled.

Upon its conclusion and opening for signature at Montego Bay, Jamaica on 10 December 1982 the international law of the sea was irrevocably transformed. That pivotal moment did not completely overturn the legal foundation found in many centuries of state practice, customary international law, decisions of international courts and the writings of publicists. However, the Convention nevertheless pointed the way forward for a new era in the international law of the sea. Not only did the Convention provide certainty to the law and settle ongoing arguments about matters such as the breadth of the territorial sea, it also took the law in new directions in its provisions dealing with the deep seabed, archipelagic states, marine environmental protection, marine scientific research and compulsory dispute settlement.

Importantly the law of the sea now sought to achieve a balance between the respective rights and interests of coastal states and maritime states, and provided a clear framework for the way in which the various maritime zones now recognised under the law could be accessed, utilised and managed. In perhaps the most important 'mixed zone', the law recognised the exclusive economic zone as an area in which the legitimate sovereign rights and interests of a coastal state could be blended with the traditional freedoms of navigation enjoyed over what otherwise would have been high seas.

Notwithstanding all of these developments in the international law of the sea it has not remained fixed at that point in time when the 1982 Convention was adopted. Two important implementing agreements were adopted in the 1990s dealing with modifications to the Part XI deep seabed provisions of the Convention, and extending the Convention so as to deal more effectively and comprehensively with straddling and highly migratory fish stocks. State practice has continued to expand and develop the application

and interpretation of parts of the Convention, especially those dealing with navigational rights and freedoms, archipelagos, marine environmental protection, and marine scientific research. There has also been a growth in the institutions associated with the law of the sea as was envisaged by the Convention. The International Tribunal for the Law of the Sea, the International Seabed Authority, and the Commission on the Limits of the Continental Shelf are all making significant contributions to the interpretation and operationalisation of the law. The United Nations continues to play its role hosting the annual meetings of the state parties, an informal consultative process, and through the United Nations Division on Ocean Affairs and the Law of the Sea (UNDOALOS) disseminates information and data on the law of the sea.

However, in keeping with its history, the law of the sea is not standing still but is developing and expanding further. State practice continues to 'thicken' in established areas such as coastal, flag, and port state controls over marine pollution, while in others it is only beginning to emerge fully developed, as is the case with claims to an outer continental shelf. The international law of the sea is also being confronted with new challenges principally deriving from the effects of climate change and other environmental impacts, and the growing influence of non-state actors. There was little appreciation of the consequences of climate change when the 1982 Convention was under negotiation, but early in the twenty-first century its effects on the world's oceans and coastlines are beginning to be understood. What the real effects of climate change will be for the law of the sea remain unknown but there will need to be a rethinking of how the community of states address coastal erosion, shifting baselines, disappearing low tide elevations and islands, and the effects of ocean warming upon marine living resources and the ocean environment. The growing impact of non-state actors upon contemporary international maritime affairs was understood throughout the 1980s and 1990s, but two events in the 2000s shifted those perceptions. The first was the 2001 terrorist attacks on New York and Washington, which though not having a maritime element, were quickly understood as having maritime dimensions. The second was the upsurge in regional piracy in 2008 and 2009 which brought about unprecedented responses from the international community to deal with this contemporary manifestation of an age-old threat to maritime security.

What these recent events teach us is that while the international law of the sea is well developed and has a very solid foundation, it cannot remain complacent in dealing with new challenges. The law will, therefore, as it has over many centuries, continue on its evolutionary path, presenting an ever-present challenge to balance a firm appreciation of the roots of the contemporary international law of the sea with a willingness to adapt the law to resolve modern dilemmas.

* * *

In writing this book we have been conscious of the voluminous literature on the international law of the sea. We have referred to the major historical and contemporary works in the discipline, but do not pretend to have done so in any exhaustive fashion. At the conclusion of each chapter we direct our readers to those works that we consider to be particularly useful and authoritative.

Treaties noted throughout the text are listed in the accompanying Table of Treaties where full references to those instruments can be found. In the case of those treaties and other international instruments which have been reproduced in AV Lowe and SAG Talmon, *The Legal Order of the Oceans: Basic Documents on the Law of the Sea*: (Oxford,

Hart Publishing, 2009) (*Basic Documents*), we also include a reference in the footnotes to the relevant document in that excellent compendium. *Basic Documents* should be read as a companion to this volume.

The law as stated in the text is current as at 1 January 2010, although in some instances it was possible to take into account more recent developments.

Canberra and Sydney
31 March 2010

List of Abbreviations

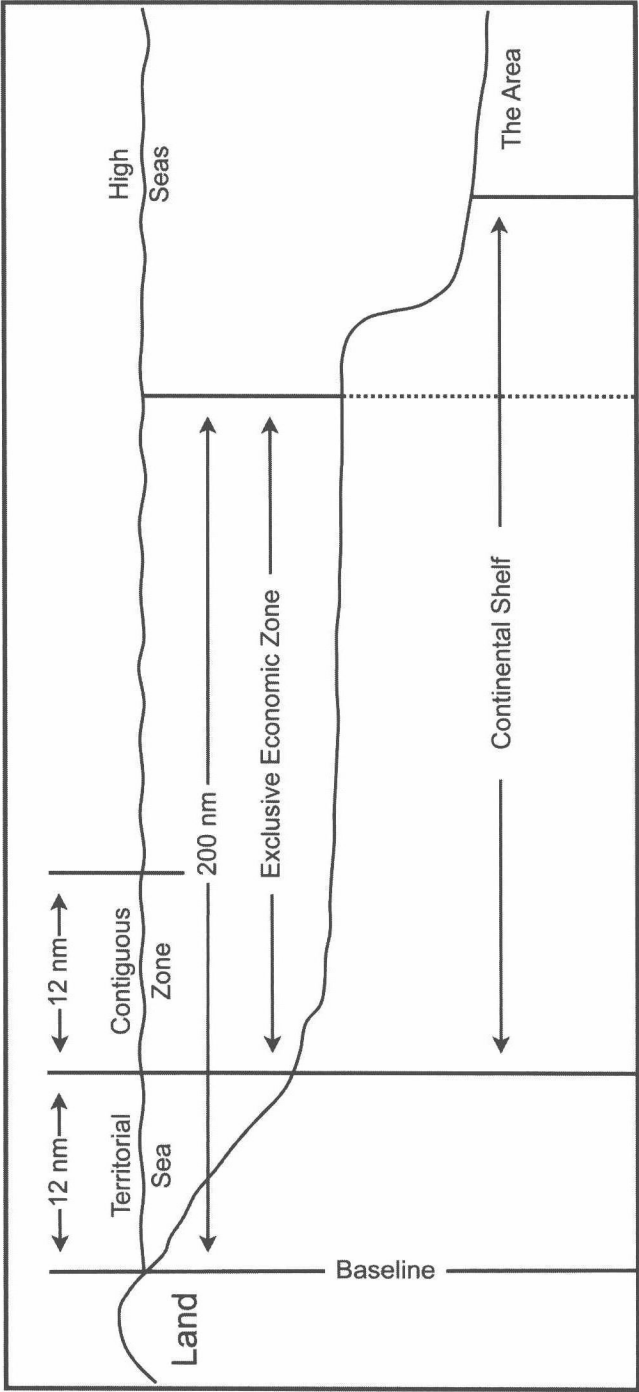
ACCOBAMS	1996 Agreement on the Conservation of Cetaceans of the Baltic Sea, Mediterranean Sea and Contiguous Atlantic Area
AMIS	Australian Maritime Identification System
APEC	Asia-Pacific Economic Cooperation
ASCOBANS	1992 Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas
ASEAN	Association of Southeast Asian Nations
ASLP	archipelagic sea lanes passage
BGR	Federal Institute for Geosciences and Natural Resources of Germany
CBD	1992 Convention on Biological Diversity
CCAMLR	1980 Convention on the Conservation of Antarctic Marine Living Resources
CCSBT	1993 Convention for the Conservation of Southern Bluefin Tuna
CFP	Common Fisheries Policy
CITES	1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora
CLC	1992 Convention on Civil Liability for Oil Pollution Damage
CLCS	Commission on the Limits of the Continental Shelf
COLREG	1972 Convention on the International Regulations for Preventing Collisions at Sea
COLREGs	Collision Regulations
COMRA	China Ocean Mineral Resources Research and Development Association
CTI	APEC Leaders of the Coral Triangle Initiative
DDT	Dichlorodiphenyltrichloroethane
DOALOS	Division for Ocean Affairs and the Law of the Sea
DORD	Deep Ocean Resources Development Company
DPRK	Democratic People's Republic of Korea (North Korea)
ECJ	European Court of Justice
EEZ	Exclusive Economic Zone
EFZ	Exclusive Fishing Zone
EIA	Environmental Impact Assessment
EU	European Union
EUNAVFOR	European Union-led Naval Force
FAO	Food and Agriculture Organization
FFA	Forum Fisheries Agency
FON	Freedom of Navigation

FSA	1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
GATT	1947 General Agreement on Tariffs and Trade
GESAMP	Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection
GPA	1995 Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities
GPASL	General Provisions on the Adoption, Designation and Substitution of Archipelagic Sea Lanes
HNS Convention	1996 Convention on Liability and Compensation for the Carriage of Hazardous and Noxious Substances by Sea
IAEA	International Atomic Energy Authority
IATTC	Inter-American Tropical Tuna Commission
IBC	International Bulk Chemical
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICP	United Nations Open-Ended Informal Consultative Process on Oceans and the Law of the Sea
ICRW	1946 International Convention for the Regulation of Whaling
IGC	International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk
IHO	International Hydrographic Organization
ILC	International Law Commission
IMDG	International Maritime Dangerous Goods
IMO	International Maritime Organization
IOC	Intergovernmental Oceanographic Commission
IOM	Interoceanmetal Joint Organization
IOPCF	International Oil Pollution Compensation Fund
ISBA	International Seabed Authority
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for Conservation of Nature
IUU	illegal, unreported and unregulated
IWC	International Whaling Commission
LLGDS	landlocked and geographically disadvantaged states
LME	Large Marine Ecosystem
LOSC	1982 United Nations Convention on the Law of the Sea
MARPOL	1973 International Convention for the Prevention of Pollution from Ships, as Modified by the Protocol of 1978 Relating Thereto
MoU	Memoranda of Understanding
MSP	marine spatial planning
MSR	marine scientific research

1979 MSR	1979 International Convention on Maritime Search and Rescue
MSY	maximum sustainable yield
NAMMCO	1992 Agreement on Research, Conservation and Management of Marine Mammals in the North Atlantic
NATO	North Atlantic Treaty Organization
nm	nautical miles
OILPOL	1954 International Convention for the Prevention of Pollution of the Sea by Oil
OPPRC Convention	1990 Convention on Oil Pollution Preparedness, Response and Cooperation
OPRC-HNS Protocol	2000 Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances
OSPAR Convention	1992 Convention for the Protection of the Marine Environment of the North-East Atlantic
PCA	Permanent Court of Arbitration
PCB	Polychlorinated biphenyls
PCIJ	Permanent Court of International Justice
pH	Potential for Hydrogen
POPs	persistent organic pollutants
PSI	Proliferation Security Initiative
PSSA	particularly sensitive sea area
ReCAAP	2004 Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia
RFMO	regional fisheries management organisation
RMP	Revised Management Procedure
RMS	Revised Management Scheme
RSP	Regional Seas Programme
SDR	Special Drawing Rights
SEAFO	South-East Atlantic Fisheries Organisation
SOLAS	1974 International Convention for the Safety of Life at Sea
SPLOS	Meeting of State Parties to the United Nations Convention on the Law of the Sea
STCW Convention	1978 Convention on Standards of Training, Certification and Watchkeeping for Seafarers
SUA Convention	1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
SUA Fixed Platforms Protocol	1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf
SWG	Small Working Group on the Future of the International Whaling Commission
TAAF	French Southern and Antarctic Territories
TFG	Transitional Federal Government
TSS	traffic separation schemes
UN	United Nations

UNCLOS	United Nations Conferences on the Law of the Sea
UNCLOS I	First United Nations Conference on the Law of the Sea
UNCLOS II	Second United Nations Conference on the Law of the Sea
UNCLOS III	Third United Nations Conference on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNDOALOS	United Nations Division for Ocean Affairs and the Law of the Sea
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNICPOLOS	United Nations Open-ended Informal Consultation Process on Oceans and the Law of the Sea
UNTAET	United Nations Transitional Administration in East Timor
<i>Virginia Commentaries</i>	<i>United Nations Convention on the Law of the Sea 1982: A Commentary</i> (The Hague, Martinus Nijhoff, 1985–2002) vols 1-6
WCPFC	Western and Central Pacific Fisheries Commission
WMD	Weapons of Mass Destruction
WTO	World Trade Organization

Maritime Zones



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