

Comments and suggestions

The concept of the legal continental shelf, as developed in the Single Negotiating Text,¹⁹ preserves only the most tenuous relationship with that of the geological shelf and is clearly political in nature. It is based on the dubious assumption that coastal States have acquired under the 1958 Geneva Convention on the Continental Shelf sovereign rights over the entire "natural prolongation" of their land territory up to the outer edge of the continental margin.²⁰ Furthermore the Single Negotiating Text proposes inconsistent criteria for the determination of the legal continental shelf: a political criterion (distance from the coast) and a geological criterion (the outer edge of the continental margin) which is difficult to determine with any precision with present technology. Thus the limits of coastal State jurisdiction remain highly flexible within wide limits.

Adoption of the proposal contained in the Single Negotiating Text frustrates any attempt precisely to define the limits of national jurisdiction in ocean space, benefits only a few States and has a very considerable conflict potential.²¹

With the establishment of a wide economic zone in which the coastal State enjoys exclusive rights to resources and exercises comprehensive powers, the continental shelf concept has lost its "raison d'être." It should consequently be absorbed by that of the exclusive economic zone. It is accordingly proposed that the entire section on the continental shelf contained in the Single Negotiating Text be deleted and replaced by a provision providing appropriate payment by the international community through the proposed International Seabed Authority to coastal States in those few cases where submarine areas less than 200 meters deep extend beyond 200 miles from the coast. This would compensate the coastal States concerned for the loss of their legitimate expectations under the 1958 Continental Shelf Convention.²²

7. Islands

Present international law recognizes that islands, defined as "naturally formed areas of land, surrounded by water, which are above water at high tide"²³ may have a territorial sea and a continental shelf. The Single Negotiating Text maintains the present definition of islands and expressly recognizes that they have a territorial sea, a contiguous zone, an exclusive economic zone and a continental shelf determined in accordance with the provisions applicable to other land territory. Rocks which "cannot sustain human habitation or economic life" are, however, recognized only a territorial sea and a contiguous zone.²⁴

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It is noted that even minute areas of land with few or no inhabitants would be comprised within the definition of islands accepted by the Single Negotiating Text and that the expression "rocks which cannot sustain human habitation or economic life" is far from clear.²⁵ It is also observed that the Single Negotiating Text proposal extending to islands, whatever their size, the vast extensions of jurisdiction envisaged for other land territory have highly inequitable implications,²⁶ high conflict potential²⁷ and lead to the unnecessary enclosure of several millions of square miles of ocean space.

The question of the extent of the maritime jurisdiction which should be attributed to island is undoubtedly highly complex and cannot be resolved with absolute fairness to all the national and international interests involved.²³ Nevertheless, it is possible to make proposals that are more constructive than those contained in the Single Negotiating Text.

It is suggested that areas of land surrounded by water which are above water at high tide be divided for the purposes of the law of the sea, into three categories based on the size of these areas.²⁹ The categories suggested are: (a) areas less than one square kilometer in area; (b) areas between one and ten square kilometers in area. Areas in category (a) could be points on baselines if in sufficient proximity to a sufficiently large land territory but would not generate any maritime jurisdiction whatsoever unless special circumstances were conclusively demonstrated. Areas in category (b) would be called islets; they would possess a territorial sea only. Islands would be areas of land surrounded by water more than ten square kilometers in area; they would possess a territorial sea and an exclusive economic zone.³⁰ If this suggestion were adopted some of the unfortunate implications of the proposal on islands contained in the Single Negotiating Text could be mitigated.

8. Delimitation of areas under national sovereignty or jurisdiction between States to lying adjacent or opposite to each other

Territorial sea

The 1958 Geneva Convention on the Territorial Sea provides that, subject to historic title or other special circumstances, "where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of each of the two States is measured."³¹

Contiguous zone

In the 1958 Geneva Convention on the Territorial Sea, the

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provision for delimitation of the contiguous zone between two States are identical to those for the delimitation of the territorial sea, with omission, however, of the reference to historic title or other special circumstances. The Single Negotiating Text lacks a delimitation provision.

Exclusive economic zone

No exclusive economic zone was discussed at the 1958 Geneva Conference on the Law of the Sea. The Single Negotiating Text proposes that delimitation between adjacent or opposite States "be effected by agreement in accordance with equitable principles, employing, where appropriate, the median or equidistance line and taking account of all the relevant circumstances." "If no agreement can be reached within a reasonable period of time the States concerned shall" resort to the dispute settlement procedures provided in Part IV. "Pending agreement, no State is entitled to extend its exclusive economic zone beyond the median line or equidistance lines."³³

Continental shelf

The 1958 Geneva Convention on the Continental Shelf prescribes that "where the same continental shelf is adjacent to the territories of two or more States, whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement and unless another boundary is justified by special circumstances, the boundary line is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured."³⁴ There is substantially identical provision for adjacent States.

The delimitation provision in the Single Negotiating Text, on the other hand, is identical to that proposed for the exclusive economic zone.³⁵

In short, the 1958 Geneva Conventions adopt an equidistance/special circumstance rule, modifiable by negotiation, in the case of the territorial sea; an equidistance rule, modifiable by negotiation, in the case of the contiguous zone, and an agreement/special circumstance³⁶ rule in the case of the continental shelf. The Single Negotiating Text has proposed no change in the Geneva rules with regard to the territorial sea, has not believed it necessary to propose any delimitation rules for the contiguous zone and has proposed an excessively vague rule -- agreement between the States concerned in accordance with undefined "equitable principles" -- for the delimitation of the continental shelf and of the exclusive economic zone between States lying adjacent or opposite each other. The Single Negotiating Text, however, contains an interesting and potentially significant innovation,³⁷ which stresses international community interest in conflict avoidance, by proposing specific dispute settlement procedures for continental shelf and exclusive economic zone delimitation.

Comments and suggestions

General rules relating to the delimitation of areas under national sovereignty or jurisdiction between States lying adjacent or opposite each other are extremely difficult to formulate. Problems could perhaps be somewhat simplified were the conference on the law of the sea to reduce the number of areas under national sovereignty or jurisdiction to two (territorial sea, and exclusive economic zone) and to delete all reference to the use of straight baselines in the process of delimitation.³⁸ If this were done, it might be possible to propose a general rule to the effect that where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea (and/or exclusive economic zone) beyond the median line every point of which is equidistant from the nearest points on the coast,³⁹ subject to compulsory dispute settlement procedures in the event that a claim of special circumstances is made.

9. Publicity

The 1958 Geneva Conventions on the Territorial Sea and on the Continental Shelf contain vague rules with regard to the action which coastal States must take to bring their decisions on jurisdictional limits to the attention of the international community. These rules may be summarized as follows: (a) straight baselines must be clearly indicated on charts to which "due publicity" must be given,⁴⁰ (b) no rules are prescribed for the territorial sea, but the line of delimitation between the territorial seas of two States lying opposite or adjacent to each other must be marked on large scale charts officially recognized by the coastal States,⁴¹ (c) no rules are prescribed for the contiguous zone, (d) no rules are prescribed for the continental shelf, but when the boundaries of the continental shelf of two States lying opposite or adjacent to each other are delimited, this should be done "with referent to charts and geographical features as they exist at a particular date and reference should be made to fixed permanent identifiable points on the land."⁴²

Similar provisions are contained in the Single Negotiating Text,⁴³ which, however, is a little more specific with regard to publicity required for straight baselines used for measuring the breadth of the territorial sea.

It is proposed in this connection that the coastal State "must clearly indicate straight baselines on charts, supplemented by a list of geographical coordinates of points, deposited with the Secretary General of the United Nations, who shall give due publicity thereto." A similar formulation is proposed for baselines drawn by archipelagic States.⁴⁴ While the Single Negotiating Text does not propose that the coastal State assume any obligation to bring its actions with regard to the limits of its maritime jurisdiction to the attention of the international

community, there is indication that some publicity is expected. Thus Article 2 of Part I states that "States Parties to the Convention shall notify the International Seabed Authority... of the limits referred to in paragraph one [seabed area beyond national jurisdiction]...determined by coordinates of longitude and latitude and shall indicate the same on appropriate large scale charts officially recognized by that State."

Comments and suggestions

A serious effort should be made to improve the provisions in the Single Negotiating Text dealing with the obligation of coastal States to inform the international community of the limits of marine areas claimed to be under coastal State sovereignty or jurisdiction. It is noted in this connection that (a) the number of States using the seas has greatly increased and that many of these States have comparatively limited means of information; (b) the number of jurisdictional regimes in ocean space has increased; (c) the extent of the marine areas subject to some form of coastal State control has expanded enormously; (d) activities in the oceans have multiplied; (e) the number of changes made by coastal States in the limits of their national jurisdictional areas is increasing.

It can no longer be assumed that persons using ocean space will necessarily be informed of the precise jurisdictional regime applicable to the marine area which they are transiting or in which they are operating.

In these circumstances it would appear highly desirable for the Single Negotiating Text to establish a general obligation on the coastal States to indicate clearly both straight baselines and the limits of each marine area under its sovereignty or jurisdiction on large-scale charts deposited with the Secretary General of the "integrative machinery" proposed in this paper, who would be obliged within a specific period of time to communicate copies of the charts to all States members of the integrative machinery. A similar obligation should be established in the case of delimitation of the territorial sea, contiguous zone, exclusive economic zone and continental shelf between States lying adjacent or opposite to each other.

The manner of drawing straight baselines and the determination by a coastal State of its jurisdictional limits in ocean space affects the interests of all States. The Single Negotiating Text, therefore, should make specific provision to permit any State and the "integrative machinery," which we propose, to question within a reasonable period of time before an international tribunal under compulsory and binding dispute settlement procedures, the baselines drawn and jurisdictional limits claimed by a coastal State.