Emerging Law of the Sea: The Economic Zone Dilemma

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The fourth substantive session of the United Nations Third Conference on the Law of the Sea (UNCLOS) is now a part of history. Among the many accomplishments of the session, one of particular importance is the reduction of the list of outstanding issues from hundreds to a critical few. This statement is not a suggestion that all else has been agreed, but a clear focus now exists upon solving the major outstanding problems with the hope that the smaller difficulties will then fall into place. Undoubtedly, the primary problems are those concerning the regime and machinery of the seabeds beyond the limits of national jurisdiction, including the system of access, the financing of the enterprise, and a timely mechanism review. However, another issue of major importance is the question of the precise nature and legal status of the belt...
of water adjacent to the territorial seas which is now being called the exclusive economic zone.

The concept of the economic zone has its roots in some rather familiar doctrinal soil. Like many other theories of the past, it attempts to accommodate the desires of coastal States to achieve increased competence over adjacent seas for resource management (and other purposes) with the needs of States wishing to keep the seas open for maximum flexible use. This article will examine the familiar efforts of the past and evaluate the progress of the economic-zone concept in the current law of the sea negotiations.

BACKGROUND: EXTENDED CLAIMS TO COMPETENCE IN THE OCEANS

Sovereign States have long guarded, and occasionally expanded, their territorial prerogatives. Some of these expansions were politically inspired and produced actual conflict. Others were projected to preserve or advance pre-existing rights. One example of expansion is the steady encroachment of coastal State claims to regulate fisheries and to conserve living resources in the coastal seas which has occurred over the past thirty years. This kind of incursion does not involve territorial claims by one State upon the sovereignty of another. Thus it has not engendered violent response. However, this expansion does reflect the movement of coastal States into an area that has variously been perceived as the territory of all States, the territory of none, or the common heritage of mankind. International resistance to this sort of incursion is normally of a much lower order than is that to physical invasion of a sovereign territory. However, it is of sufficient magnitude to provide a basis for serious disagreement among States who perceive the order of the oceans in different ways.

Extra-territorial Claims in Historical Perspective

The most extensive extra-territorial claims over the oceans were those asserted during the fifteenth century by the then dominant world powers, Spain and Portugal. In 1493 the conflicting interests of these two States resulted in a virtual division of the world by papal bull. The bull Inter Caetera assigned those interests east of an imaginary line 100 leagues west of the Azores and Cape Verde
Islands to Portugal and those west of the line to Spain. Although astounding to modern sensibilities, this division was extremely logical. Pope Alexander simply identified the major users of ocean space and accommodated their national interests. In a modern context, the Law of the Sea Conference is seeking to do precisely the same thing on a much more complicated scale. What is involved is the identification of the interests not of two but of more than 100 nations with respect to more than seventy discrete issues. The objective now, as then, is the creation of a logical global system which will reduce the potential for conflict.

Soon after Pope Alexander's decree, other nations, especially England and the Netherlands, became active in world trade and set about the task of undoing the world the Spanish and the Portuguese had built. An inexorable shift of emphasis occurred from the creation of national enclaves to the enhancement of trade through enshrining the doctrine of the freedom of the high seas. Carving up the oceans was deemed unfeasible because the seas were considered too vast and their resources inexhaustible. The Grotian concept of the oceans and the resulting doctrine of the freedom of the seas successfully shifted the emphasis of ocean politics and served the cause of international trade and navigation for over 300 years. Only recently has this venerable doctrine been subject to question.

It is now clear that the oceans are truly not infinite in their bounty. New technologies have created increasing doubts that the oceans should be without adequate resource management. Coastal States have recently begun to address the special relationship that they have to resources near their coasts and the rights and obligations that arise because of this nexus. Heightened significance

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1. Bull Inter Caetera (Alexander VI) of May 4, 1493. This document was subsequently both confirmed and modified by the Treaty of Tordesillas between Spain and Portugal signed on June 7, 1494. That treaty was in turn confirmed by the bull Eq Quae (Julius II) of January 24, 1506.
2. The work of Grotius has been expansively commented upon. It is best to refer directly to his writings. H. GROTIUS, MARE LIBERUM (Magoffin trans. 1916).
3. For one view of the state of U.S. fisheries and the problem of overfishing of certain stocks, see REPORT OF THE HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE ON THE MARINE FISHERIES CONSERVATION ACT, H.R. Doc. No. 94-445, 94th Cong., 1st Sess. (1975). This report is typical of the literature on the subject.
4. A clear exposition of the nexus is found in the preamble to the Declaration of Santiago:

Governments are under an obligation to secure the necessary conditions of subsistence for their peoples and to provide them with the means for their economic development. Consequently, it is
was attached to this relationship in 1945, when President Truman issued his now-famous proclamation. The Truman Proclamation stated that the natural resources of the subsoil and the seabed of the United States continental shelf “appertained” to the U.S. and were subject to its jurisdiction and control.5

This claim, as well as the reasons used in its justification, has significance for the development of the economic-zone concept. The Truman Proclamation argued that:

(a) the shelf's resources should not be exploited without the assistance of the coastal State and that thus the State had a special interest;

(b) the continental shelf was no more than the natural extension of the dry land mass and thus naturally appurtenant to the coastal State;

(c) the shelf's resources were to be found in pools or deposits associated with the land within territorial limits; and

(d) self-protection required a coastal State to monitor activities offshore, particularly those involving foreign nations.6

These and similar nexus arguments have become the framework for justifying recent claims to extend State competence seaward.

The Truman Proclamation was the first major assertion of rights to resource jurisdiction. It reflected the contemporary political climate and the pressures generated by new technology. For the first time, extraction of oil and gas from the submerged land of the continental shelves was practical and economic. The Proclamation, designed to assure the stable investment climate desired by

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6. Id. See also the remarks of Herman Phleger, Legal Adviser of the State Department (May 13, 1955), quoted in 4 M. Whiteman, Digest of International Law 761 (1965).
American oil companies, created a precedent which was soon emulated by other littoral States in claims based on the arguable impacts on economic, political, social, or military interests. In short, the Truman Proclamation ushered in the modern era of unilateralism in the oceans.

Although the Truman doctrine subsequently received international sanction by the Geneva Convention on the Continental Shelf, the pattern it established paved the way for the evolution of the economic zone, or patrimonial sea. The United States claim also gave strength and comfort to a variety of nations which had made, or were to make, claims of an even more comprehensive nature. In 1952, the Inter-American Juridical Committee submitted a draft convention (later rejected by the Organization of American States) which declared that under international law coastal States had sovereignty over the continental shelf and the waters above it. The draft convention would also have recognized the right of coastal States to establish areas of “protection, control, and economic exploitation” to a distance of 200-nautical miles. During the same year Chile, Ecuador, and Peru signed the Declaration of Santiago proclaiming “as a rule of their international maritime policy” the exclusive sovereignty and jurisdiction of each to 200 miles from their respective coastlines. This action solidly reflected the mood of the time and the trend in Latin and Central America. Such claims were based in part upon the nexus between the coastal State and the sea. Additionally the Truman doctrine was cited as precedent.

A review of the past actions of nations reveals the emergence of a distinct pattern. As States became aware of the benefits of modern technology and the increased abilities of technically advanced nations to exploit the ocean’s resources, new problems began

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8. E.g., the declaration by Chile of a 200-nautical-mile maritime zone, Supreme Resolution No. 179, Apr. 11, 1953; the Ecuadorian Executive Accord of Nov. 10, 1966, and the Decree Law No. 1542, Registro Official, No. 158, Nov. 11, 1966; and the Peruvian Supreme Decree No. 781, Aug. 1, 1947.
11. As of December 1975, the State Department reported that of the nine States claiming 200-mile territorial seas, seven were in Central and South America. It is within this geographical area that the economic zone has received strong and effective support. Bureau of Intelligence & Research, U.S. Dept’ of State, Pub. No. 36, Limits in the Seas, National Claims to Maritime Jurisdictions (3d ed. rev. 1975).
to develop. First, States feared that advanced technology would destroy resources at an unprecedented rate unless adequate controls were exercised to some significant distance from the coasts. Second, the advance of technology, making the harvesting of living and non-living resources more feasible, was seen as widening, at an alarming rate, the gap between the developed and developing countries. Therefore a regime was conceived to deal with both these apprehensions.

It is not only the developing countries which perceive benefits in extended claims to jurisdiction. While the executive branch of the United States government has long opposed unilateral action similar to that taken by others, has protested extended foreign claims, and has carefully worded agreements with countries making extended claims in order to avoid recognizing these claims, the Congress has clearly not been of the same mind. Aware of increased pressure on fish stocks in waters adjacent to the U.S. generated by highly mobile and efficient foreign fleets, the Congress has been determined to assert whatever jurisdiction is required to protect the interests of the domestic fishing industry, particularly in New England and Alaska and on the northwest Pacific coast. The objections of executive agencies, in particular those of the Department of State, were couched primarily in terms of the impact of unilateralism on the 1976 UNCLOS. Spectres of conflict were conjured, but little was said about the impact of congressional action on U.S. industry. Arguments were made that the UNCLOS would fail because of the bad faith of the United States.

Despite these legitimate concerns, the Congress, in 1975, passed, and the President signed, the Fishery Conservation and Management Act of 1976. This Act establishes a fishery conservation zone extending seaward to a limit of 200-nautical miles. Within this zone the U.S. has extensive management and licensing powers. Although the impact on the UNCLOS has not reached the

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anticipated magnitude, little doubt exists that it has had an effect, both on the U.S. negotiating position and because such action tends to preempt the UNCLOS' work. Other nations, including Norway, Mexico, and Canada, have moved toward extended jurisdiction, although in the nature of a more exclusive economic zone, and the European Economic Community has now followed suit.

These and similar actions have put pressure upon the UNCLOS to complete its work before it becomes mooted by a series of similar or related moves by large numbers of coastal States. New claims could reach the level of territorial assertions. In addition, the U.S. may soon add to the ante by enacting a deep-seabed mining bill.\(^\text{14}\)

Unilateral, extra-territorial assertions reflect a need which has also been recognized by treaty. Article 24 of the Geneva Convention on the Territorial Sea and Contiguous Zone provides:

1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:

   (a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;

   (b) Punish infringement of the above regulations committed within its territory or territorial sea.\(^\text{15}\)

The Article mandates that these zones may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured. A similar contiguous-zone provision is found in the Revised Single Negotiating Text (RSNT), used as a working document by the UNCLOS.\(^\text{16}\) Although the contiguous-zone concept in the 1958 treaty does not deal with resources, it is an explicit recognition that States need certain special competences in waters adjacent to their territorial sea, however limited. The International Law Commission in its preparatory documents indicated that international law already accorded States the right to exercise preventive or protective control for special purposes with-

\(^{14}\) In the past a number of bills have been initiated concerning deep-seabed mining. All have received some degree of opposition from the administration. The pressure for such legislation continues to mount. See, e.g., the report of Congressmen Paul McCloskey and Benjamin Gilman reprinted in the Congressional Record on September 29, 1976. 122 CONG. REC. 149 (1976). McCloskey and Gilman have been strong supporters of the U.S. law of the sea effort, and their support for a bill of this nature is significant.


out affecting the legal status of the waters as high seas. It is also fairly clear that the Commission did not intend the list of zones in the Article to be exclusive, nor was the Article intended to bar parties to the convention from asserting rights which they had previously claimed under customary international law or other treaties. The contiguous-zone concept is now settled international law and is one of the foundations of the economic zone.

Although over the years claims to extra-territorial competence have been many and varied, McDougal and Burke suggest that all can be placed in one of several categories:

1. Claims relating to control of access to contiguous areas;
2. Claims to competence to prescribe authority;
3. Claims to competence to apply authority;
4. Claims relating to the exclusive appropriation of resources in adjacent submarine areas.

This classification is clearly a more rigorous approach to a full understanding of unilateralism than that undertaken here. However, one of the authors' generalizations is particularly important.

The lawfulness of states' claims to an occasional exclusive competence in contiguous areas must of course be appraised in terms of the more general policy underlying the whole public order of the oceans, which, as we have seen, is that of securing the fullest production of values compatible with their equitable distribution. Generally speaking, this goal is to be sought by protecting the widest ambit of inclusive use and competence and restricting exclusive authority, comprehensive or occasional, to the narrowest bound possible—on the theory that freedom of use to all who possess the necessary capabilities is desirable for fullest production and widest distribution. It must be recognized, however, that there are certain exclusive interests, common to all states, which may require exercise of unilateral protective measures in the contiguous areas beyond the territorial sea.

Each of the examples included in this article must be evaluated in terms of its reasonableness in context and in light of the general views of the international community. This evaluation is the true task of the UNCLOS when it considers the economic zone. It must decide whether it will indeed secure the fullest possible pro-

19. Id. at 578.
duction of values, taking into account their equitable distribution. Although some other formulation may prove politically acceptable, only a provision which meets this test will also withstand the test of time.

THE EXCLUSIVE ECONOMIC ZONE

The zone is the most recent manifestation of attempts to accommodate the polarized views of the UNCLOS. Those coastal States with existing declarations of extended jurisdiction (limited or absolute) as far seaward as 200-nautical miles came to the UNCLOS with expectations of justifying these prior claims. Included in this group of "territorialists" are nations such as Peru, Ecuador, and El Salvador. On the other side, maritime powers such as the United States traditionally claimed narrow limits of national jurisdiction in order to increase naval mobility and for similar purposes. Obviously the divergent positions of these two groups would not converge, and thus a new development was needed to break the incipient deadlock. This development was the economic zone.

A forerunner of the economic-zone concept, the Patrimonial Sea, was developed in the early seventies. This concept was formalized in 1972 in a declaration adopted (ten in favor and five abstentions) by the Specialized Conference of the Caribbean Countries on Problems of the Sea held in the Dominican Republic.  

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20. The name *Patrimonial Sea* is credited to Edmundo Vargas Carreno, a Chilean professor, who was said to have been the first to use it in an official document. A. Aguilar, The Patrimonial Sea, Proceedings of the Seventh Annual Conference of the Law of the Sea Institute, University of Rhode Island, June 26-29, 1972, at 165.

21. The pertinent provisions of the Santo Domingo Declaration are:

*Patrimonial Sea*

1. The coastal state has sovereign rights over the renewable and non-renewable natural resources, which are found in the waters, the seabed, and in the subsoil of an area adjacent to the territorial sea, called the patrimonial sea.

2. The coastal state has the duty to promote and the right to regulate the conduct of scientific research within the patrimonial sea, as well as the right to adopt the necessary measures to prevent marine pollution and to ensure its sovereignty over the resources of the area.

3. The breadth of this zone should be subject of an international agreement, preferably of a worldwide scope. The whole of the area of both the territorial sea and the patrimonial sea, taking into account geographic circumstances, should not exceed a maximum of 200 nautical miles.

4. Delimitation of this zone between two or more states should be carried out in accordance with the peaceful procedures stipulated in the charter of the United Nations.

5. In this zone ships and aircraft of all states, whether coastal or not, should enjoy the right of freedom of navigation and over-flight with no restrictions other than those resulting from the exer-
the same time, a group of experts from Africa met in Yaounde, Cameroon, and produced proposals endorsing an economic zone. In August 1972, the principles elaborated were introduced by Kenya in the form of draft articles to the Preparatory Committee on the Law of the Sea. In April 1973, representatives of African nations assembled in Addis Ababa drafted a declaration which was subsequently adopted by the Organization of African Unity. Thus the principle of the economic zone was emerging on two continents.\textsuperscript{22}

When the first substantive session of the UNCLOS convened in Caracas in 1974, the third world was clearly prepared to endorse this new concept. The United States, however, approached the subject with considerable caution. After initial opposition, the chief of the U.S. delegation stated that the U.S. was prepared to negotiate a new treaty on the basis of "Broad coastal state jurisdiction over living and non-living resources beyond the territorial sea."\textsuperscript{23} Nevertheless, the United States indicated that there had to be concomitant responsibility on coastal States to respect the legitimate interests of other States in the area. Ambassador Stevenson elaborated on the U.S. position in his formal statement to the plenary meeting.

\begin{quote}
[W]e are prepared to accept, and indeed we would welcome general agreement on a 12-mile outer limit for the territorial sea and a 200-mile outer limit for the economic zone provided it is part of an acceptable comprehensive package, including a satisfactory regime within and beyond the economic zone and provision for unimpeded transit of straits used for international navigation.\textsuperscript{24}
\end{quote}

He specified that the economic zone should not impinge upon the rights of other States, traditionally viewed to be high seas rights.

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\textsuperscript{22} For a comparative review of the African and Latin positions, see the statement made by H.E. Mr. C.G. Maina, head of the delegation of Kenya to the Law of the Sea Conference, Caracas, July 2, 1974.
\textsuperscript{23} Statement of Ambassador John R. Stevenson, head of the U.S. delegation to the UNCLOS, at a press conference in Caracas on June 20, 1974.
\textsuperscript{24} Statement of John R. Stevenson in plenary session on June 11, 1974.
\end{quote}
Unfortunately, other formal statements clearly showed that some nations favored much stronger coastal State rights.

It became obvious that the problems surrounding the economic zone could not be negotiated adequately in full committee and that another approach was necessary. Minister Jens Evensen of Norway suggested and convened an informal group of juridical experts from a number of countries, acting in their personal capacities, to determine if grounds existed for mutual accommodation. This "Evensen Group" eventually spent months producing the necessary texts. Although the concept was strong because all major coastal State viewpoints were represented, it lacked African support. The format of the group was simple. Minister Evensen monitored the discussions on the zone and produced a series of draft articles, each refined on the basis of further discussion. At the completion of the sixth draft, he forwarded the product of these consultations to the chairman of the Second Committee as his own work product, binding no nation.

The sixth draft covered two major areas, general articles on the economic zone and specific rules respecting fisheries. Minister Evensen concluded that the coastal State had a right to establish an exclusive zone in which it had "Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether renewable or non-renewable, of the seabed and subsoil and the superjacent waters."25 These same States, he concluded, should have jurisdiction over marine scientific research and marine pollution and over establishing artificial islands and installations, but only under terms to be provided for in the UNCLOS. All other States were to enjoy the freedoms of navigation, overflight, and laying of submarine cables and pipelines, and "other internationally lawful uses of the sea related to navigation and communication."26

Much of the Evensen text found its way into the Single Negotiating Text (SNT)27 prepared by Reynaldo Galindo Pohl, Chairman of the Second Committee, at the conclusion of the second substantive session of the UNCLOS in Geneva. The SNT became the basic negotiating document for further work.

In an obvious attempt to accommodate the Group of 77 and others, Galindo Pohl made some significant changes in the Evensen

26. Id. Art. 3.
text, despite the fact that the text had been painfully negotiated over a long period of time. Although Evensen had given coastal States exclusive resource management jurisdiction, he had restricted other rights, particularly with respect to science and pollution in accordance with rules contained in the treaty. Galindo Pohl was more liberal toward the coastal States, according them unhampered jurisdiction over these activities and reducing the rights of other States in the zone.\(^\text{28}\) He added the word *exclusive* to the name *economic zone*. Additionally, and more significantly, he authored the introductory article to the high seas chapter: "The term 'high seas,' as used in the present Convention means all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State."\(^\text{29}\) Because the Evensen Group had not discussed the high seas, there was no equivalent provision in its text. Taken in the context of the economic zone articles, this article states that the zone is not to be considered high seas. Andres Aguilar, presently chairman of the Second Committee, has endorsed this concept in his report, clearly showing that he views the zone as neither territorial seas nor high seas, but as a zone sui generis.\(^\text{30}\)

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28. Especially id. arts. 45 & 47.
29. *Id.* SNT article 73 now appears in the RSNT, *supra* note 16, pt. 2, as article 75.
30. In May 1975, Ambassador Aguilar wrote in his introductory note:

16. It was perhaps unfortunate that the issue was addressed in terms of the definition of the high seas in article 75. There could be little debate as to which of the provisions in the chapter on the high seas apply in the exclusive economic zone, whether included in the definition of high seas or not.

17. Nor is there any doubt that the exclusive economic zone is neither the high seas nor the territorial sea. It is a zone sui generis.

18. As has often been pointed out, the matter should be addressed in terms of the "residual rights". In simple terms, the rights as to resources belong to the coastal State and, in so far as such rights are not infringed, all other States enjoy the freedoms of navigation and communication. In fact, this is specified in general terms in article 46, when read in conjunction with articles 44 and 47. Many had thought that these provisions dealt adequately with the matter. My original intention to point the way to a compromise solution would have related closely to these provisions. And I would encourage a reorientation of the discussion around these articles.

RSNT, *supra* note 16, pt. 2. And in September he wrote:

26. I continue to believe that the comments which I made with regard to this point in various paragraphs of my introductory note, particularly in paragraphs 17 and 18, indicate the appropriate path for a compromise solution in connection with that subject.

The result of the work of Pohl and Aguilar is a text that gives to other States the rights in the economic zone of freedom of navigation, overflight, the laying of cables and pipelines, and rights related to navigation and communication. All other rights accrue to the coastal State. The maritime States, in particular the United States, have vigorously opposed this approach. The U.S. position has been that the seas of the economic zone, except for rights specifically granted to the coastal State by the Convention, should retain their status as high seas. In other words, creating an economic zone should not alter the basic character of the high seas.

At this juncture the UNCLOS has stalled on the issue. Neither side has been willing to yield, and both have adamantly decried the inflexibility of the other. No procedural device has been adequate to do more than reflect the depth of the schism within Committee II.31

At first blush it may seem that the difference between the two views is not significant. What do the maritime powers want to do in the zone that they may not do under the present wording of Articles 44, 46, 47, and 75 of the RSNT?32 The answer is compli-


32. For ready reference purposes, Articles 44 and 46 are reproduced here:

Article 44

Rights, jurisdiction and duties of the coastal State
in the exclusive economic zone

1. In an area beyond and adjacent to its territorial sea, described as the exclusive economic zone, the coastal State has:
   (a) Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the bed and subsoil and the superjacent waters;
   (b) Exclusive rights and jurisdiction with regard to the establishment and use of artificial islands, installations and structures;
   (c) Exclusive jurisdiction with regard to:
      (i) Other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and
      (ii) Scientific research.
   (d) Jurisdiction with regard to the preservation of the marine environment, including pollution control and abatement;
   (e) Other rights and duties provided for in the present Convention.

2. In exercising its rights and performing its duties under the present Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States.

3. The rights set out in this article with respect to the bed and subsoil shall be exercised in accordance with Chapter IV.

Article 46

1. In the exclusive economic zone, all States, whether coastal or landlocked, enjoy, subject to the relevant provisions of the present
icated. The words "related to navigation and communication" do arguably permit almost any use of ocean space. But while accepting the economic zone, the territorialists and like-minded States are giving up nothing but a questionable claim to a 200-mile territorial sea. The maritime States are giving up many of the high seas rights clearly and unequivocally accorded to them by the 1958 Geneva Conventions. In exchange for this immense concession, the maritime States seek more than an arguable right to exercise high seas freedoms in the zone. Because most States agree that these rights may in fact be exercised, it seems unusual to balk at saying so in the Convention.

There are other predictable difficulties. Article 75 of the RSNT sets forth the broad philosophical principle that the economic zone is not high seas. Such a declaration is almost certain to be enshrined in any future international litigation, while the detailed rights of coastal and other States respecting the zone are likely to be viewed as mere contractual arrangements between States parties. This construction would have a considerable impact upon the positions of those States who may choose not to sign the Convention but who prefer to rely upon sweeping statements as evidence of their own unilaterally claimed jurisdiction. Article 75, if agreed to by a large number of nations, would indeed give great weight to this position.

Another concern is that treaties tend to be expansively interpreted. The 1958 Conventions quickly became inadequate for the

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2. Articles 77 to 103 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Chapter.

3. In exercising their rights and performing their duties under the present Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations enacted by the coastal State in conformity with this Chapter and other rules of international law.


34. Some observers argue that the 1958 Conventions do not represent the will of the international community because they were executed under pressure from the maritime powers and because many nations were colonies at the time and had no say in the negotiations; thus they may not now be bound by the results.
tasks for which they were designed because the pressures of technology forced interpretations of their provisions they could no longer sustain. Rights provided for in that Convention were not clearly stated and were liberally rather than conservatively viewed. The economic zone could be subject to the same fate. In this situation it would seem wise to be as precise as possible to avoid the risk that in the future the Convention might be so liberally interpreted as to support claims to functional equivalents of a territorial sea. Jurisdiction does in fact creep, but the new treaty should encourage stability.

One additional important consideration should be noted. The maritime States are not the only nations affected by a strong coastal State tilt in the economic zone. A number of landlocked, geographically disadvantaged States (LL/GDS)\textsuperscript{35} are not in a position to benefit from such a zone. They either have no economic zone or their zones are so restricted because of their geography that their potential benefits are severely reduced.\textsuperscript{36} These States see their access to the ocean’s resources threatened by strong exclusive economic zones. In order to protect their position, they have opposed a territorialist approach to the creation of the zone and have instead supported a high seas status more compatible with their overall goals. The coalescence of the interests of the landlocked and geographically disadvantaged States with those of the maritime States has divided the Committee almost evenly on the economic zone issue and will continue to do so until an accommodation is reached.

During the last session of the New York Conference, the LL/GDS struggled to find a way out of their dilemma. A formal group of coastal States was formed, and a selected number from both groups met to negotiate. Negotiations have not yet achieved success. Similarly, the Committee II, while successful in narrowing the differences, made little real progress. Chairman Aguilar, in his final report, indicated that “the group was very close to reaching a generally acceptable solution.”\textsuperscript{37} However, his emphasis was upon Arti-

\textsuperscript{35} The landlocked States are easily identified. Most are in Africa, and only two are in Latin America. The identification of the geographically disadvantaged States is not so easy, for the Conference has not been able to produce a legal definition of what disadvantages a country.

\textsuperscript{36} The primary benefits sought by the LL/GDS concern access to the sea (transit rights), access to resources, and a share of the revenues from the outer continental shelf beyond 200-nautical miles. These subjects are dealt with, albeit not to their satisfaction, in Articles 58, 59, 70, and 109-15 of the RSNT, \textit{supra} note 16, pt. II.

cles 44 and 46 as the basis for a compromise that would "avoid assimilating the exclusive economic zone in any way to the territorial sea or the high seas." He also suggested that formulas had been tabled which were favorably received during the last days of the session and which could provide the basis for a final compromise. This evaluation disregards the principle of Article 75, which remains an unnegotiated, overlooked, and ignored threat to the interests of the maritime States and the LL/GDS group. The language of Santo Domingo was an indication that something similar to Article 75 had been a strategic Latin objective throughout, and it remains the cornerstone of their position. While the Latin States have consistently adhered to the Santo Domingo doctrine since 1972, the maritime powers have just as consistently moved toward the acceptance of more and more coastal States' rights in the zone. This statement is undeniably true with respect to the conduct of marine scientific research and to the protection of the marine environment.

PROGNOSIS

The confusion in Committee II on the issue of the economic zone rebuts the view of President Amerisinghe that all that needs to be done is to tie up loose ends. Admittedly, the major hurdle for the UNCLOS continues to be Committee I. But the economic zone and questions concerning the rights of the LL/GDS, the continental margin, and marine scientific research in the zone remain important, unresolved issues for a large number of nations—issues which must be resolved to the general satisfaction of all before the UNCLOS can move to a successful conclusion. The only alternative to general acceptance is a treaty to which certain States could become signatories. This treaty would be contrary to the intent of the "gentleman's agreement" upon which the

38. Articles 58 & 59, RSNT, supra note 16, pt. II.
39. Articles 64 & 70, id.
40. Ch. II, id. pt. III.
41. The "Gentlemen's Agreement," approved by the U.N. General Assembly at its 2169th meeting on November 16, 1973, reads as follows:
   "Bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole and the desirability of adopting a Convention on the Law of the Sea which will secure the widest possible acceptance,
   The Conference should make every effort to reach agreement on
UNCLOS was launched and operates. However, even assuming that all nations for whatever reason agreed to sign, it is questionable how long such a treaty would endure as an effective set of rules.

Although the economic-zone concept was in many ways conceived as a political compromise between opposing viewpoints, it is unlikely that many countries have backed away from strictly parochial ideas about the zone. If a lasting solution to the problem is to be found, the interests of the various countries with respect to the zone must be identified and understood. Separating demands for access to the resources (and those rights closely related to these demands) from demands to access to the area unrelated to resources is necessary. It is upon this basis that a natural division lies. The international community is probably prepared to view exclusive rights to resources as acceptable demands on the part of the coastal State. However, a large number of important developed and developing countries are not prepared to accept further exclusive demands on the part of coastal States simply because they might be in the broader interest of the international community and might lead toward stability and rational management of ocean space. Clearly, a division of the oceans among nations is not appropriate now, for it is politically unacceptable. Nevertheless, because of real needs, resources adjacent to the coasts of nations ought to be under the nation's aegis. To go much beyond this point raises legitimate fears of neo-colonialism on a scale far beyond the celebrated projected resource "grab" frequently the subject of Committee I negotiations. The UNCLOS, if it is to be successful, must recognize that lasting rules must address only legitimate and pressing needs. Older regimes should be left untouched to operate as they have in the past until a pressing need exists to set them aside and until the entire international community is ready to give its consent.

Many observers believe that Ambassador Aguilar is correct when he finds that there are proposals which may help to solve the difficulties in Articles 44 and 46. Such proposals began to appear toward the end of the last session, although little time existed to consider or refine them. Moreover, it is not at all clear how broad the support for these proposals would in fact be. Outside the coastal States group there is little support for the sweeping thesis

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substantive matters by way of consensus and there should be no voting on such matters until all efforts at consensus have been exhausted. Procedurally, this agreement is reflected in the Conference Rules of Procedure, U.N. Doc. A/Conf. 62/30/Rev. 2, Rule 37.
that these Articles contain the full solution to the economic zone problem. One simply cannot ignore the fact that many States have extreme difficulty in accepting Article 75 as it is presently written. Some may in fact never accede to the principle because the philosophy of Article 75 is anathema to them. Furthermore, the subject has not been adequately aired. How States would have viewed the Evensen texts if they had perceived that subsequently such an article would be interjected is uncertain.

The answer to Ambassador Aguilar's dilemma is real negotiation on the Article 75 issue. With the kind of statesmanship he has demonstrated in the past, a fair solution should not be beyond his grasp. Whatever the accommodation may eventually be, neither side is prepared to accept an explicit denial of its view of the economic zone. Therefore, prejudicial language would not be acceptable to either. If an accommodation is reached and the rights and duties of States spelled out appropriately and fairly in Articles 44 and 46, international accord will not be far behind. Committee II will then be in the position of breathing new life into the UNCLOS by a significant breakthrough.

However, the longer the work on Article 75 is delayed, the more temptations there will be to reopen Articles long thought to be laid to rest. Signs of such pressures are already extant. When these pressures occur, the risk increases that the Committee will be drawn away from its serious negotiating effort through a series of rear-guard actions. As a result, general debate may be reopened across the board, defeating any real chance for significant progress.

The UNCLOS has indeed come a long way in three short years. The texts in existence, while not agreed to, are a credit to the skill, diligence, and ingenuity of the UNCLOS leadership. Significantly, the leadership has been able to guide the UNCLOS to serious consideration of the major outstanding issues, and the skill and knowledge are available to solve these problems. Nothing should be done now to prevent the negotiated solution of these problems. While that result is near, we must be extremely careful to accurately gauge the true interests at stake and not to be swept up in an unfortunate fever to drive for "cheap victories" that will in the final analysis serve no nation. Patience and a high degree of statesmanship continue to be the order of the Law of the Sea Conference.