Law of the Sea

HISTORY OF THE MARITIME ZONES UNDER INTERNATIONAL LAW

FROM THE CANNON SHOT RULE TO UNCLOS

For hundreds of years, the marine environment was free from regulation of fishing, shipping, and resource exploitation. Over time, coastal States (countries) had an increased interest in national security and the enforcement of laws to protect its commerce and marine resources. As a result, a balance was needed to maintain the freedom of navigation that many foreign maritime interests had relied upon. This need for balance is captured in the history of the law of the sea.

The birth of a nation's authority to control its coastal waters has been traced back to the sixteenth century. In the seventeenth century, the father of international law and doctrine on the freedom of the seas, Grotius, recognized the existence of a nation's jurisdiction over the coastal waters that could be effectively controlled from the land. The extent to which a nation could control its coastal waters was largely based on the reach of its cannons on the shore. Thus, the 3 nautical mile (nm) limit of the territorial sea resulted from what is often referred to as the "cannon shot" rule. In the U.S., the creation of a territorial sea and contiguous zone date back to as early as the late 1700s in response to issues of national security and law enforcement at coastal areas, including a 1793 diplomatic note sent from Thomas Jefferson and legislation passed by Congress in 1799 to allow the boarding of foreign flag vessels within 12 nm from the coast. This zone was known as "customs waters" and was later called the "Contiguous Zone." By 1930 the proprietary rights of the coastal state over the resources of the territorial sea was well established, provided it did not interfere with a vessel's right of innocent passage. In 1945, President Truman issued a proclamation asserting rights to explore and exploit the oil and gas resources of the continental shelf outside of the 3 nm territorial sea. In 1953, the U.S. Congress enacted legislation over the federal and state control of the continental shelf. In 1958, international conventions were concluded in Geneva on the territorial sea, contiguous zone and continental shelf. The concept of a fishery conservation zone was born in another Truman Proclamation but Congress did not enact laws regarding a 200 nm fishery conservation zone until 1976. This evolved into a zone whereby a coastal nation had exclusive control over all economic exploration and exploitation of the natural resources off its coast. By 1982, the custom of asserting a 12 nm territorial sea, 24 nm contiguous zone, and 200 nm EEZ was codified in the United Nations Convention on the Law of the Sea (UNCLOS).

U.S. CONTROL IN MARITIME ZONES VS RIGHTS OF FOREIGN STATES

The U.S. proclaimed a 12 nm territorial sea in 1988, a 24 nm contiguous zone in 1999, and a 200 nm EEZ in 1983, consistent with customary international law as codified in UNCLOS. This customary law is a balanced compromise between a flag State's interest in maritime shipping and a coastal State's interest in protecting and managing its coastal waters. The U.S. sovereignty over its terrestrial lands extends to its internal waters and territorial sea, including the airspace above and the seabed below. Subject to ancient customs where nations should provide safe harbor to ships in danger or distress (*force majure*), the U.S. may restrict entry or travel through its internal waters. The U.S. may also prohibit the entry into portions of the territorial sea, provided there is still an area that allows for vessels to exercise their right of innocent passage through the territorial sea. "Passage" through the territorial sea must be continuous and expeditious, although that may include stopping and anchoring under certain circumstances. While warships are generally immune from laws and regulations, the U.S. has the right to require foreign warships comply with U.S. laws. If they don't, the U.S. may order the foreign warship to leave its territorial sea.

The contiguous zone is a buffer to the territorial sea, and within it, the U.S. may exercise the control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulation of territorial sea. In addition, the U.S. may regulate the removal of cultural heritage, including foreign flagged vessels and nationals in its contiguous zone. It overlaps the EEZ which extends from the territorial sea out to 200 nm. The U.S. does not exercise sovereignty in the contiguous zone or the EEZ. It does

have exclusive sovereign rights and jurisdicton for exploration and exploitation of natural resources of the seabed, subsoil, water column, and air space in the EEZ.

All of these zones have a common point of reference from which they are measured: the baseline. The rules for determining the baseline under UNCLOS are substantively the same as those under the 1958 Convention, which the U.S. ratified in 1961. As a line that marks the inner limit of the territorial sea and the outer limit of internal waters, the baseline is comprised of the low water line on NOAA charts plus closing lines across legally-defined bays and rivers. The U.S. uses a normal baseline, as opposed to a straight baseline because of its interests in preserving the freedom of navigation. One of the most important facts for those relying on NOAA's charts for the limits of these zones is that the baseline and all of the zones are ambulatory. They are subject to change due to accretion and erosion of the shore.