Chapter Three

Genesis and Development of the Exclusive Economic Zone in Latin America

1. Introduction

The exclusive economic zone of 200 nautical miles and the submarine continental shelf\(^1\) probably are the two most modern law of the sea spaces.\(^2\) Having appeared during the 20th century, both of these concepts may be characterized as revolutionary legal notions that were almost “instantly”\(^3\) recognized as rules of customary international law.

The Geneva Conventions on the Law of the Sea of 1958 represent the codification of the “old” law of the sea basically prepared by major maritime powers and then formalized under the aegis of the United Nations. This traditional law of the sea encapsulated in four international conventions hundreds of years of customs and rules relative to the uses and resources of the seas in an era when maritime powers plowed the surface of the oceans to discover remote and unknown lands, obtain prestige and power through military conquests, conduct unregulated fishing and engage in global trade. The modern law of the sea has been characterized, *inter alia*, as the result of impressive scientific and

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\(^1\) The Proclamation No. 2667 (10 Fed. Reg. 12303) of President Harry S. Truman of September 28, 1945 is recognized as the origin of the legal notion of the continental shelf. For its impact upon Mexico and other countries in Latin America, see the discussion in Chapter One of this book, titled: *Mexico and Its Territory. Constitutional Principles and Foundations.*

\(^2\) The notion of the seabed and ocean floor beyond the limits of national jurisdiction, recognized as a “Common heritage of Humankind” in UNGA Resolution 2749 of December 17, 1970, and referenced in Part XI of the 1982 Law of the Sea Convention, may be characterized as a third “revolutionary” legal concept of the law of the sea. However, it may be questionable whether this concept has already been recognized today as a rule of customary international law. Many major powers may disagree with such a recognition.

\(^3\) Generally speaking, rules of customary international law, by definition, take a long time to be recognized as such. The first exception to this principle was the continental shelf proclaimed by President Truman in 1945. The number of countries that rapidly adhered to this notion in a decade or so was so large and so geographically widespread that a claim was advanced that the continental shelf “instantly” became a rule of customary international law. See, for example, Henkin, Pugh, Schachter and Smit. *INTERNATIONAL LAW* (West, 1987) at 82, 1301–1302 note 2.
technological developments and the drive led by developing countries to utilize the oceans for economic reasons, *i.e.*, the inherent right of coastal populations to use the natural resources in the adjacent sea to elevate the well-being of their populations and to promote their economic and social development.\(^4\) For the majority of countries in the world, poor and undeveloped but with coastlines rich in natural marine resources, the State’s economic interests tend to receive more attention than military, strategic or political interests.\(^5\)

Considering the vital importance that poor and developing coastal States give to this economic goal, it is easy to understand the overwhelming support the majority of States attending the Third U.N. Conference on the Law of the Sea gave to the then emerging notion of the exclusive economic zone. Accordingly, this marine space recognized both as conventional law in the language of the 1982 Convention and as a part of customary international law, is considered a diplomatic triumph on the law of the sea accomplished by the developing world during the 20th century.

From a diplomatic perspective, the exclusive economic zone as a new marine space that was codified in the 1982 Convention truly was a compromise that resulted from the imperative necessity keenly felt by developing countries to change some of the premises of law of the sea.\(^6\) Thus, this new marine zone was the product of a legal compromise of two opposing positions: one, vigorously

\(^4\) In the progressive development of the law of the sea *phase one* may be represented by navigation for discoveries, military purposes, trade and fishing; and *phase two* for a strong economic orientation towards the oceans and its resources. Given the existence of serious pollution problems and the rapid extinction of certain living resources, added to the problems associated with global warming, the *third phase* of the law of the sea (that has started already), may be directed at protecting the marine environment and its living resources, and using the hydrosphere (*i.e.*, wind, waves and solar energy) as a source of alternative sources of energy.

\(^5\) The practical philosophy of considering the adjacent seas as a driving force for the economic development of coastal populations led to a strong and global trend of poor and developing countries in Latin America, Africa and Asia to demand the creation of a “New International Economic Order.” This economic drive – that arrived at the United Nations and other regional organizations in the 1970’s – was translated into a practical philosophy to promote economic development that was strongly embraced by the “Group of 77.”