THE HIGH SEAS AS POTENTIAL EXCLUSIVE ECONOMIC ZONES IN THE MEDITERRANEAN

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1. The ‘Zonal Scheme’ of the UNCLOS

The UN Law of the Sea Convention (UNCLOS)\(^2\) is the key international law source setting out the law of the sea rules applicable world-wide. It is also of key importance in the Mediterranean. The coastal States are all parties to the UNCLOS with very few exceptions (Turkey, Israel, Syria and Libya). On most issues, the rules of UNCLOS reflect (or in the years after its entry into force in 1994, have come to reflect) customary law. Consequently they are of relevance also for non-parties.

Perhaps the most important aspect of UNCLOS is the indication of specific maritime zones. Some pre-existed the UNCLOS, such as the territorial sea, the contiguous zone, the continental shelf and the high seas. Even for these zones the Convention introduces new elements that in most cases have entered into customary law, in particular as regards the maximum extent of the territorial sea (12 nm), of the contiguous zone (24 nm), of the continental shelf (200 nm or more according to the complex formulation and procedure of art. 76 and annex II). Other maritime zones set out in UNCLOS were, at the time the Convention was adopted, either non-existent, or not accepted as corresponding, broadly at least, with customary law. These are the exclusive economic zone with a maximum width of 200 miles, the archipelagic waters, the International Seabed Area, and a zone in which the coastal State enjoys exclusive right concerning the removal of

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archaeological and historical objects, whose width coincides with that of the contiguous zone.

What seems noteworthy for the purposes of the present paper is that the list of maritime zones set out in UNCLOS seems – at least at first reading – a closed one. No other zone is mentioned nor can one find in the Convention provisions entrusting parties with the right to institute zones different from those mentioned in the UNCLOS.

2. The Mediterranean and the UNCLOS Zonal Scheme

If we compare the zonal scheme as it emerges from UNCLOS with the situation of the Mediterranean we immediately become aware of the fact that the correspondence is only minimal. This is due in part to the small size and conformation of this semi-enclosed sea. The key relevant legal-geographical fact is that there is no point in the Mediterranean whose distance from a coast is more than 200 miles.

This has immediate consequences as far as the seabed is concerned:

1) In light of the definition of the continental shelf set out in article 76, para 1, of UNCLOS, the whole of the seabed of the Mediterranean is part of the continental shelf of one or another of the riparian States, without need for express proclamation or occupation (art. 77, para 3)

2) In the Mediterranean no problem arises concerning the extension of the continental shelf beyond the 200-mile limit and consequently there is no role for the Commission for the Limits of the Continental Shelf established under UNCLOS art. 76 and annex II.

3) No part of the Mediterranean seabed and subsoil is included in the International Seabed Area, as no part of it lies beyond the limits of national jurisdiction. Consequently, in the Mediterranean there is no role to play for the International Seabed Authority set up under the provisions of Part XI of UNCLOS.

Another consequence is that unilateral establishment of the external and lateral limits of the continental shelf, of the EEZ and, at least to some extent, of the territorial sea and of other zones, is not sufficient to establish borderlines opposable to all States. To obtain this result, delimitation of zones between neighbouring States is necessary and must be obtained either by agreement or through the intervention of an international judge or arbitrator. As is well known, in the