CHAPTER 10

New Maritime Zones and the Law of the Sea

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Introduction

The international law of the sea is one of the oldest parts of public international law and has been—like all parts of public international—in a state of flux due to the changing needs, interests and opinions of the international community triggered by, for instance, technological, demographical and environmental developments, scarcity of resources and shifting views on how resources should be shared equitably.

Maritime zones are an important feature of the evolution of the international law of the sea. Powers that were able to claim and exercise effective control over large expanses of water—such as the Romans in the Mediterranean Sea (mare nostrum)—eventually had to give way to the prevailing preference for a regime based on the freedom of the seas as advocated by Grotius.1 Particularly in the 20th century, however, this regime was increasingly eroded by the phenomenon of ‘creeping coastal State jurisdiction’, which led to expanded coastal State authority both substantively and geographically (further seaward), including through the establishment of various new coastal State maritime zones.2 Various phases of efforts to codify and progressively

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1 H. Grotius "Mare liberum sive de iure quod Batavis competit ad Indicana commercia, dissertatio" (“The Freedom of the Seas or The Right Which Belongs to the Dutch to Take Part in the East Indian Trade” (1609), translated by R. Van Deman Magoffin (1916).


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develop the international law of the sea eventually led to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which will function as the main benchmark in this chapter.

**Meaning of ‘New’**
The objective of this chapter is to examine state practice on the establishment of new maritime zones, including its consistency with the UNCLOS. For the purpose of this chapter, ‘new’ maritime zones are maritime zones that (i) are not mentioned in the UNCLOS and (ii) were also not part of customary international law upon the UNCLOS’ entry into force in 1994. Exclusive fishery zones (EFZs), for instance, are not included in the UNCLOS but secured increasingly wider support after the 1945 Truman Coastal Fisheries Proclamation. Well before the entry into force of the UNCLOS—probably by the early 1970s—a coastal State's entitlement to sovereign rights and jurisdiction for fisheries purposes within a 200 nautical mile (nm) EFZ had crystallized into customary international law. EFZs are therefore not regarded as new maritime zones in this chapter.

While the precise implications of China's so-called nine-dashed-line—or its ten-dashed-line declared in June 2014—in the South China Sea for China's claim to sovereignty, sovereign rights and jurisdiction over land territory and waters therein are uncertain, it seems that China does not claim a new maritime zone as defined above. Rather, the marine area within the nine- or ten-dashed-lines are either internal waters—whether by means of historic title or otherwise—, territorial sea, continental shelf or exclusive economic zone (EEZ).

Finally, some States use the term ‘territorial waters’ in their domestic legal framework to denote the waters consisting exclusively of internal waters—whether exclusively marine or also freshwater—or internal waters and the

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100 American Journal of International Law 830–851 (2006), also examines creeping coastal State jurisdiction, and has both a geographic and a substantive balance.


4 Or Exclusive Fisheries/Fishing Zone, Fishing/Fisheries Zone (FZ).


6 See the Chinese Notes Verbales No. CML/17/2009, of 7 May 2009 (including map with the nine-dashed-line) and No. CML/8/2011, of 14 April 2011 (available at DOALOS website, note 28 infra).