Current Legal Developments

Republic of the Marshall Islands

2016 Maritime Zones Declaration Act: Drawing “Lines in the Sea”

On 18 March 2016, the Nitijela (Parliament) of the Republic of the Marshall Islands passed comprehensive new legislation, repealing “in its entirety” the 1984 Maritime Zones Declaration Act, and declaring anew all its maritime zones.1 Section 118 of the 2016 Maritime Zones Declaration Act authorizes the Minister to declare by order:

(a) the geographical co-ordinates of the points on the baseline; or
(b) the geographical co-ordinates of the limits of the whole or any part of the local government waters, territorial sea, archipelagic waters, the contiguous zone, the exclusive economic zone and the continental shelf.

The Act was swiftly followed by a Declaration of “Baselines and Outer Zone Limits” pursuant to the Act, issued on 18 April 2016.2 These, at first sight unusually detailed, regulations run to more than 450 pages and include long lists of co-ordinates, plus supporting maps. The reason for the great length of the Declaration is that it provides for the definition of the location not only of the baselines of the Marshall Islands and agreed maritime boundaries with neighbouring States, but the outer limits of its maritime zones. The primary purpose of this legislation is to provide maritime jurisdictional clarity and certainty, so as to deliver significant benefits in terms of maritime surveillance

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1 Act No. 13 of 2016. Text appended below at the end of this article. Source at: http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/mhl_mzn120_2016_1.pdf [hereinafter “the Act”].
and enforcement: uncertainties as to whether a particular vessel is within a particular maritime zone or not are removed.

The wider significance of the Marshall Islands legislation is that it appears to anticipate that, once established, these “lines in the sea” defining baselines, limits and boundaries will not move in the future. This Marshall Islands action represents the latest development in an emerging pattern of practice in the Pacific region whereby States are unilaterally declaring and publicizing their maritime jurisdictional baselines, limits and boundaries. Such stability in the spatial scope of a State’s maritime jurisdiction has clear administrative as well as enforcement benefits. However, the wider implication of this practice is that it appears to be a deliberate attempt to pre-empt arguments that physical changes to its coastline, particularly those resulting from climate change-induced sea-level rise, would have resulting impacts on its baselines and on the outer limits of its zones.

A Review of the Legislation

The 2016 Act defines the baselines of the Marshall Islands as being the low-water line of the seaward side of fringing reefs or of reefs bounding any lagoon of the Republic. The Act provides for the definition of closing lines where breaks in the reef and natural entrances to reefs exist.3 Article 47 of the 1982 UN Convention on the Law of the Sea (LOSC)4—that deals with reefs—makes no mention of closing lines, despite the fact that the Convention does envisage that the lagoon waters of archipelagos may be counted as land for the purposes of calculating the land:water ratio.5 Despite this apparent oversight on the part of the LOSC drafters, the Marshall Islands practice of defining closing lines across lagoon entrances is unlikely to prove controversial, as such closing lines are necessary in order to distinguish between areas of internal waters within lagoons and the territorial sea and other maritime zones defined seawards from the baselines consistent with the seaward low-water line of the reef.

On the rare occasions where reefs are not present, the legislation states that the low-water lines of the coast may be used as the baseline.6 The Act also authorises the Minister responsible to declare archipelagic baselines.7

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3 Ibid., at Section 107.
5 See, ibid., at Art. 47(7).
6 See, the Act, at subsection (1) (b).
7 Ibid., at subsection (3).