

## The Exclusive Economic Zone: a Latin American Perspective, Edited by Francisco Orrego Vicuña

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**THE EXCLUSIVE ECONOMIC ZONE: A LATIN AMERICAN PERSPECTIVE.** Edited by Francisco Orrego Vicuña. Boulder, Colo.: Westview Press, 1984, 188 pp., \$20.00.

The United Nations Convention on the Law of the Sea,<sup>1</sup> adopted in Montego Bay, Jamaica in 1982, allows signatory states to establish an exclusive economic zone (EEZ) of up to 200 nautical miles from its coastal baselines. According to the Convention, which the United States has not signed and which has not yet entered into force, the nature of this zone and the "rights and jurisdiction of the coastal State and the rights and freedoms of other States"<sup>2</sup> are governed by the relevant Convention provisions. Among others, competences under the Convention's articles include "sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources,"<sup>3</sup> of the EEZ's waters, seabed, and subsoil.

As with other concepts in international law, the interpretation of the language and intent of the originating articles, and therefore the sweep of rights and obligations of states declaring EEZs under the umbrella of the 1982 Convention, is subjective and complex. It varies from case to case; country to country. In essence, the evolving EEZ relates to circumstances. It is altered by, and balanced with state practice, customary law, and by the entire corpus of international law.

It is in the context of unraveling the international legal conundrum that the EEZ represents that *The Exclusive Economic Zone: A Latin American Perspective* finds its *raison d'être*. As such, the book, a slim, edited work, is a valuable contribution to the burgeoning literature on the international law of the sea. It provides particular insight into the dialectic over the legal status of the EEZ, and the critical role played by Latin American states in the contemporary history of the EEZ.

The book's editor, Francisco Orrego Vicuña, has assembled nine chapters from presentations made in late 1981 at a conference sponsored by the Institute of International Studies at the University of Chile. A more appropriate locale for such a conference is unimaginable, since the EEZ in its present form has its origins in Chile. Most of the nine chapters are authored by individuals who played active roles as representatives of their countries at one or more of the various sessions that comprised the Third

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1. United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, U.N. Doc. A/CONF. 62/122 (1982) [hereinafter cited as 1982 Convention], *reprinted in* 21 I.L.M. 1261 (1982) *and in* UN CONVENTION ON THE LAW OF THE SEA 1982 (K.R. Simmonds ed. 1983).

2. *Id.*, art. 55.

3. *Id.*, art. 56.

United Nations Conference on the Law of the Sea (UNCLOS III). They are uniquely qualified to tackle the task set by the editor, "to highlight the wealth of intellectual discussion that has accumulated around this new institution," and to examine the legal status of the EEZ in light of Latin American state practice and the debates that underwrote the eventual Convention provisions.

The book begins with an overview piece by Orrego Vicuña, former Vice-Chairman and Head of the Delegation of Chile to the Law of the Sea Conference. In this short chapter, Orrego Vicuña provides the background of the book and nicely sets the scene. He rightly asserts that the "new institution" of the EEZ is "indissolubly linked to Latin American practice. . ."—a fact giving special significance to this regional approach to an international concept. He touches on several points, such as the history of the EEZ concept and the role of informal UNCLOS negotiations, that are the grist for subsequent authors. Cutting to the heart of the matter, however, Orrego Vicuña quickly establishes the question of the legal status of the EEZ as the centerpiece of the work. He succinctly crystallizes the authors' consensual perspective on the topic, that the EEZ is a "maritime space *sui generis*, different from the territorial sea and from the high seas although taking elements from both to combine them within a new institution."

F.V. Garcia-Amador's contribution, "The Origins of the Concept of an Exclusive Economic Zone: Latin American Practice and Legislation," is an expertly crafted, well-documented account of the antecedents of the EEZ. Professor of Law at the University of Miami and former Head of the Cuban Delegation to the First and Second United Nations Conferences on the Law of the Sea, Garcia-Amador briefly reviews ancient claims and customs regarding sea rights and resources. He then carefully recounts the contemporary history of the notion of extending state sovereignty for special purposes (*e.g.*, protection of living resources, exploitation of minerals, etc.) over the adjacent seas. Garcia-Amador points out that President Truman's 1945 Fisheries Proclamation,<sup>4</sup> which empowered the United States to establish conservation zones and regulate fishing activities in waters contiguous to the coasts but beyond the territorial seas of the United States, precipitated "a series of claims aimed at conserving the high seas' living resources. . ." It was left to Chile, however, to articulate much of what today constitutes the characteristics of the EEZ. In a 1947 presidential decree<sup>5</sup> in language simi-

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4. Proclamation No. 2667, Sept. 28, 1945, 10 Fed. Reg. 12,304 (1945); Exec. Order No. 9,634, Sept. 28, 1945, 10 Fed. Reg. 12,305 (1945).

5. Presidential Decree of June 23, 1947, *El Mercurio* Santiago de Chile, June 29, 1947, at 27, U.N. ST/LEG/SER. 1311 at 6-7, *reprinted in* 2 INT'L L. Q. 135 (1948).

lar to that in the 1982 UN Convention, Chile claimed national sovereignty over adjacent seas "to reserve, protect, maintain, and utilize natural resources and wealth." Subsequently, in the 1952 Santiago Declaration,<sup>6</sup> Chile, Ecuador, and Peru reiterated their claims to "special jurisdictions" in adjacent maritime areas, and, for the first time in a multilateral forum, established 200 nautical miles as the limit of these juridicogeographical zones.

Historical precedents for the EEZ are explored further in the book's shortest chapter, "The Economic Interest Underlying the First Declaration on a Maritime Zone" by Pilar Armanet, Director of the Institute of International Studies of the University of Chile. The chapter might better have been entitled "Private" rather than "Economic" interest. Armanet reveals that the proprietors of an incipient South Pacific Chilean fishing concern, fearing competition from Europeans after World War II, asked their legal counsel, Fernando Guarello, to "seek arguments . . . that might enable the Chilean government to regulate the utilization of marine resources in waters adjacent to the coasts. . . ." Guarello's subsequent brief, which according to Armanet was prepared with the cooperation of international law expert Jerman Fisher, ultimately was translated into the precedent-setting Chilean Official Declaration of 1947.

The next two chapters cover the UNCLOS III negotiations which led to the inclusion of the EEZ articles in the 1982 Convention. They represent the low and high points of the book, from the perspective of both insight and prose. Reynaldo Galindo Pohl's piece on formal negotiations is a rambling, verbose essay that often confuses as much as enlightens. For example, arguing against a formalistic approach to analyzing the evolving EEZ, Galindo Pohl mixes his metaphor declaring that "dry and rigid formulas, understood as the symbolic language of the connections of logic, seem to lose their humanity alongside the living process to which they are applied." Through the syntactic fog, however, glimpses of insight are visible. Chairman of the Second Committee of UNCLOS, Galindo Pohl elaborates some of the legalistic complexities and nationalistic biases involved in creating the EEZ, and some of the key compromises needed to allow its appearance in the UN Convention.

The chapter by Vicente Marotta Rangel, "The Role of Informal Negotiations in the Search for a Consensus on the Law of the Sea," is the best in the book. Marotta Rangel vividly recounts the manner in which differences

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6. Declaration on the Maritime Zone, Aug. 18, 1952, Chile-Ecuador-Peru, 1954 *Revista Peruana de Derecho Internacional*, tomo XIV, No. 45, at 104, *reprinted in* I NEW DIRECTIONS IN THE LAW OF THE SEA - DOCUMENTS 231 (S.H. Lay, R. Churchill & M. Nordquist eds. 1973).

of opinion were hammered out during the long UNCLOS process. He points out that the emergence of "contact" or "interest" groups is not surprising considering that the conference involved more than 130 sovereign states debating issues ranging from overfishing to the rights of military movement on the high seas. Nonetheless, he argues that it was primarily because of the use of the consensus rule, whereby Convention provisions were adopted in the absence of formal opposition rather than through debate/vote mechanisms, that informal negotiations "had a profound influence on the development and growth of the codification process." In particular, Marotta Rangel highlights the role played by the Evensen Group. Named for its chairman, Norwegian Ambassador Evensen, the forty member group operated without mandate and without express ties to other groups. Its goal was to reduce the various texts proposed "to increasingly precise and complete proposals capable of obtaining the consensus of the conference." According to Marotta Rangel, the work of the Evensen Group exemplifies the advantages of informal processes—including the fact that delegates can speak candidly at informal meetings and that such meetings often lead to *ad hoc* groups designed to reconcile opposing positions—within lengthy, multidimensional negotiation procedures.

Julio Cesar Lupinacci's chapter on the legal status of the EEZ is perhaps the linchpin of the book. The former Head of the Uruguayan Delegation to the Law of the Sea Conference, Cesar Lupinacci meticulously dissects the key legal points swirling around the EEZ concept. In the EEZ, says Cesar Lupinacci, we have "a renewal of the dilemma of the principles of sovereignty and freedom. . . ." The dilemma manifests itself legalistically in the debate over whether the EEZ is a "part of the high seas subject to a special regime," or "a zone *sui generis*. . . with a legal characteristic of its own. . . ." Eventually, as presaged by Orrego Vicuña and to no one's surprise, Cesar Lupinacci, after carefully constructing cases for both perspectives, comes down on the *sui generis* side of the question. He concludes that the EEZ has a status of its own, a status different from the high seas or territorial seas, and one that is evolving through state practice and resultant customary law. In the final analysis he, like any good jurist, returns to the text of the Convention to support his contention. Article 86, dealing with the high seas, says that its provisions "apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial waters or in the internal waters of a State, or in the archipelagic waters of an archipelagic State." *Ergo*, argues Cesar Lupinacci, the EEZ must be a zone unto itself, a conclusion not shared by all scholars or diplomats.<sup>7</sup>

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7. See, e.g., arguments by Professor O'Connell in 1 THE INTERNATIONAL LAW OF THE SEA (I. Shearer, ed. 1984). See *infra* at p. 279 for a review of this book.

The next two chapters deal with the influence that the EEZ may have on specific activities, namely military uses and fishing. Alfonso Arias Schreiber's piece on the problem of military uses of the EEZ covers ground he has addressed elsewhere.<sup>8</sup> Despite a rather provocative opener to the chapter, in which Schreiber suggests that the question of military uses of the EEZ has been the center of "fierce controversies," in the end he leaves us with the rather axiomatic conclusion that "the permissibility of utilizing the EEZ for purposes neither forbidden nor authorized in the convention—as in the case of military uses—must be determined by balancing the effects that such use would have on the interests of the coastal state, the user state, and the international community as a whole. . . ." Hugo Caminos also covers familiar ground since it was disputes over fishing and the control of fish resources that led ultimately to the crystallization of the concept of extended jurisdiction in the form of the EEZ.

The concluding chapter, authored by Maria Teresa Infante, a former member of the Chilean Delegation to the Law of the Sea Conference, addresses the settlement of disputes regarding the Law of the Sea. She points out that to settle differences, including those that may arise over interpretations of the EEZ, the Convention has established a system of primacy of procedures leading to a compulsory or binding settlement issued by an international tribunal. Reminding us that "positions favoring a jurisdictional settlement [of disputes] are not necessarily consistent with those that seek to reinforce the freedoms of the seas within the EEZ," she echoes the theme that the EEZ is a new, evolving institution with a separate and dynamic legal status of its own.

In general, Orrego Vicuña has produced an accessible and meaningful contribution to the rapidly expanding law of the sea literature. The spotty writing normally present in edited works is not apparent here. With the one exception mentioned above, the prose is uniformly crisp and readable—evidence of thorough editing. In addition, the book contains a useful index, and strong bibliographies follow each chapter.

The two main flaws of the work stem from sins of omission. Maps could have illustrated handsomely and precisely the various components of the seas addressed by UNCLOS III and referred to repeatedly in the book. Unfortunately, none are included. Even more lamentable, is the fact that three years passed from the time the papers were first presented in Chile until their publication here.

Despite these minor shortcomings, the book should prove useful to jurists, foreign relations specialists, Latin Americanists, and others interested

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8. See, e.g., his discussion in 1978 *REVISTA DE LA COMISION PERMANENTE DEL PACIFICO SUR*.

in the many ramifications of the evolving international law of the sea. For students of the plethora of juridical, developmental, and diplomatic questions concerning the EEZ, the work is a must.

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