

Excessive Maritime Claims

Contents

Third Edition

Foreword to the Third Edition	By	J. Ashley Roach and Robert W. Smith
Table of International Agreements	xvii	
Table of Cases	xviii	
Table of Abbreviations	xix	
Table of Symbols	xx	
Table of Abbreviations	xxi	
Table of Symbols	xxii	

Chapter One: Maintaining Freedom of the Seas

Chapter Two: Identification of Excessive Maritime Claims	17
2.1 Introduction	17
2.2 History: How have excessive maritime claims been identified?	17
2.3 Baseline	17
2.4 Territorial Sea Boundary	17
2.5 Contiguous Zone	17
2.6 Exclusive Economic Zone	17
2.7 Maritime Boundary Delimitation	17
2.8 Archipelagic waters	17
2.9 Areas beyond the limits of national jurisdiction and other zones	17
2.10 Individual countries' interpretation of terminology in international agreements	17
2.11 National legislation	17
2.12 International law	17
2.13 The concept of "excessive"	17
2.14 The concept of "maritime"	17
2.15 Summary	17

SARCHI CHAIR LAW

M A R T I N U S
N I J H O F F
P U B L I S H E R S

188

LEIDEN • BOSTON
2012



Library of Congress Cataloging-in-Publication Data

Roach, J. Ashley.

Excessive maritime claims / by J. Ashley Roach and Robert W. Smith.—3rd ed.

p. cm. — (Publications on ocean development ; v. 73)

Rev. ed. of:United States responses to excessive maritime claims. 2nd ed. c1996.

Includes index.

ISBN 978-90-04-21773-7 (hardback : alk. paper) 1. Territorial waters. 2. Contiguous zones (Law of the sea) 3. Economic zones (Law of the sea) 4. Boundaries. 5. Claims. 6. Law of the sea—United States. 7. United States—Foreign relations. 1. Smith, Robert W. II. Roach, J. Ashley. United States responses to excessive maritime claims. III. Title.

KZA1146.U6R63 2012

341.4'48—dc23

2012010078

ISSN: 0924-1922

ISBN: 978 90 04 21773 7 (hardback)

ISBN: 978 90 04 21772 0 (e-book)

Copyright 2012 by Koninklijke Brill NV, Leiden, The Netherlands.

Koninklijke Brill NV incorporates the imprints Brill, Global Oriental, Hotei Publishing, IDC Publishers and Martinus Nijhoff Publishers.

All rights reserved. No part of this publication may be reproduced, translated, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior written permission from the publisher.

Authorization to photocopy items for internal or personal use is granted by Koninklijke Brill NV provided that the appropriate fees are paid directly to The Copyright Clearance Center, 222 Rosewood Drive, Suite 910, Danvers, MA 01923, USA.
Fees are subject to change.

This book is printed on acid-free paper.



Contents

List of Figures, Tables, and Maps	xvii
Preface to the Third Edition	xix
Preface to the Second Edition	xxi
Preface to the First Edition	xxiii
Foreword to the First Edition	xxv
Abbreviations	xxvii
Table of International Agreements	xxxiii
Table of Cases	lxv

Part One Introduction

Chapter One Maintaining Freedom of the Seas	3
Chapter Two Identification of Excessive Maritime Claims	17
2.1 Introduction	17
2.2 Historic Bays	18
2.3 Baselines	19
2.4 Territorial Sea Breadth	20
2.5 Contiguous Zones	21
2.6 Exclusive Economic Zones	21
2.7 Continental Shelves	22
2.8 Archipelagos	23
2.9 Innocent Passage in the Territorial Sea	24
2.10 Straits Used for International Navigation	25
2.11 Overflight Restrictions	26
2.12 Archipelagic Sea Lanes Passage	27
2.13 Navigation in EEZs	28
2.14 Marine Data Collection	28
2.15 Submarine Cables and Pipelines	29
2.16 Polar Areas	29
2.17 Underwater Cultural Heritage	30
2.18 Peaceful Purposes/Peaceful Uses of the Seas	30

Part Two
Legal Divisions of the Oceans and Airspace

Chapter Three	Historic Waters	35
3.1	Criteria	35
3.2	United States Waters	35
3.3	Foreign Waters Considered Not to Be Historic	36
3.3.1	Argentina and Uruguay (Rio de la Plata)	38
3.3.2	Australia (Anxious, Encounter, Lacepede and Rivoli Bay)	39
3.3.3	Cambodia and Vietnam (Gulf of Thailand)	42
3.3.4	Dominican Republic (Santo Domingo and La Escocesa Bays)	43
3.3.5	India and Sri Lanka (Gulf of Manaar and Palk Bay)	43
3.3.6	Italy (Gulf of Taranto)	44
3.3.7	Libya (Gulf of Sidra)	46
3.3.8	Panama (Gulf of Panama)	49
3.3.9	USSR (Peter the Great Bay)	50
3.3.10	USSR (Northeast Passage)	53
3.3.11	Vietnam (Gulf of Tonkin)	53
3.4	Historic Bay Claims Rolled Back	54
3.4.1	Bays Now Qualifying As Juridical Bays	54
3.4.2	Egypt (Bay of El-Arab)	55
3.5	Settlement of Disputes	56
 Chapter Four Baselines		57
4.1	Introduction	57
4.2	Normal Baseline	58
4.2.1	Reefs	59
4.3	Straight Baselines	59
4.3.1	Purpose	59
4.3.2	Areas of Application	60
4.3.3	Criteria for Drawing Straight Baseline Segments	63
4.3.4	Straight Baseline Policy of the United States	67
4.4	Other Baseline Rules	68
4.4.1	Low-Tide Elevations	68
4.4.2	Combination of Methods	68
4.4.3	Harbor Works	68
4.4.4	River Mouths	69
4.5	Bays and Other Features	69
4.5.1	Juridical Bays	69
4.5.2	Historic Bays	70

4.5.3	Charts and Publication	70
4.5.4	Islands	71
4.5.5	Artificial Islands and Off-Shore Installations	71
4.5.6	Roadsteads	71
4.6	Excessive Baseline Claims	72
4.6.1	Coastline Not Deeply Indented and Cut Into	83
4.6.2	Coastline Not Fringed with Islands	98
4.6.3	Non-independent Archipelagos	108
4.6.4	Baseline Departs from the General Direction of the Coast	115
4.6.5	Waters Are not Closely Linked to the Land Domain ..	116
4.6.6	Low-tide Elevation Improperly Used As Basepoint	118
4.6.7	Terminus Located on a Maritime Boundary at Sea	120
4.6.8	Terminus Located on the Territory of Another State	121
4.6.9	Basepoints Located at Sea	123
4.6.10	Terminus Not Located on Own Mainland	124
4.6.11	Overlarge Bays and Gulfs	127
4.6.12	Estuary Closing Lines	130
4.6.13	Baselines Not Published	131
4.7	Excessive Claims Rolled Back	133
Chapter Five Territorial Sea		
5.1	Maximum Permissible Breadth	135
5.2	United States Policy	135
5.3	Territorial Sea Claims	136
5.4	Excessive Claims Rolled Back	138
5.5	Territorial Sea Claims Greater Than 12 Miles	144
5.6	Territorial Seas Measured from Non-Conforming Baselines	148
Chapter Six Contiguous Zone		
6.1	Juridical Regime	149
6.2	Excessive Claims	153
6.2.1	Security	154
6.2.2	Underwater Cultural Heritage	158
6.2.3	Contiguous Zones (CZ) Drawn from Non-Conforming Baselines	158
6.3	Excessive Claims Rolled Back	159
Chapter Seven Exclusive Economic Zone		
7.1	Juridical Regime	161
7.2	Status As Customary Law	165
7.3	United States Policy	169

7.4	Excessive Claims	170
7.4.1	All Laws Apply in EEZ	170
7.4.2	All Artificial Islands, Installations and Structures	173
7.4.3	Imprisonment for Fisheries Violations	176
7.4.4	Delimitation Not from Baselines	176
7.4.5	EEZs Drawn from Non-Conforming Baselines	176
7.4.6	Residual Rights in the EEZ	177
7.4.7	Islands and Rocks: Aves Island	178
7.5	Special Areas	178
 Chapter Eight Continental Shelf		 181
8.1	Geologic Definition	181
8.2	Juridical Definitions	181
8.3	Rights and Duties	183
8.4	Limits of the Continental Shelf beyond 200 Miles	184
8.4.1	Definition	184
8.4.2	Outer Limit of the Continental Shelf	185
8.4.3	Commission on the Limits of the Continental Shelf	191
8.4.4	Revenue Sharing	192
8.5	Excessive Claims	193
8.6	Continental Shelves Measured from Non-Conforming Baselines	200
 Chapter Nine Archipelagos		 203
9.1	Archipelagic States	203
9.2	Island-Mainland States	208
9.3	Baselines	208
9.3.1	Straight Archipelagic Baselines	208
9.3.2	Closing Lines	215
9.4	Legal Status	215
9.5	Excessive Claims	216
 Part Three Navigation and Overflight Rights and Duties		
 Chapter Ten In The Territorial Sea		 221
10.1	Right of Innocent Passage	221
10.2	Permissible Restrictions on Innocent Passage	224
10.2.1	Temporary Suspension of Innocent Passage	225
10.3	Excessive Restrictions on Innocent Passage	228
10.3.1	Time Limits for Passage; Prohibited Zones	228
10.3.2	Compulsory Pilotage for Sovereign Immune Vessels ...	231

Contents ix

10.3.3	Passage Limited to Sea Lanes	232
10.3.4	Prior Notice or Permission for Passage of Warships ...	239
10.3.5	Enforcement of Violations	251
10.3.6	Limitation on Number of Warships	252
10.3.7	Nuclear Powered Warships	254
10.3.8	Claims Rolled Back	258
10.4	Excessive Restrictions on Transport of Hazardous Waste	259
10.5	Places of Refuge for Ships in Distress	262
10.6	Assistance Entry	266
Chapter Eleven Straits Used for International Navigation		267
11.1	Legal Regime	267
11.2	Transit Passage	268
11.3	Innocent Passage	275
11.4	International Straits Not Completely Overlapped by Territorial Seas	277
11.5	“Straits Used for International Navigation”	277
11.6	Legal Status of Waters Forming International Straits	278
11.7	Rights and Duties of States Bordering Straits and of Ships and Aircraft During Transit Passage	278
11.7.1	Safety at Sea	281
11.7.2	Cooperation	283
11.8	Navigational Regimes of Particular Straits	283
11.8.1	Åland	284
11.8.2	Bab el Mandeb	284
11.8.3	Bering Strait	286
11.8.4	Bonifacio	286
11.8.5	Bosporus and Dardanelles	288
11.8.6	Gibraltar	290
11.8.7	Hormuz	293
11.8.8	Kuril Straits	296
11.8.9	Magellan	300
11.8.10	Malacca and Singapore	304
11.8.11	Messina	308
11.8.12	Northeast Passage	312
11.8.13	Northwest Passage	318
11.8.14	The Oresund and the Belts	328
11.8.15	Sunda and Lombok	332
11.8.16	Tiran	334
11.8.17	Torres Strait	336
11.8.18	United Kingdom Straits	342

Chapter Twelve Overflight Restrictions	345
12.1 Juridical Regime	345
12.2 Excessive Claims	346
12.2.1 Territorial Airspace Wider Than Territorial Sea	346
12.2.2 Flight Information Regions (FIR)	348
12.2.3 Restricted Airspace over High Seas	353
12.2.4 Excessive Territorial Sea Claim	353
12.2.5 Airspace over the EEZ	356
12.2.6 Airspace over Archipelagic Waters	361
Chapter Thirteen Navigation and Overflight in Archipelagos	363
13.1 Archipelagic Sea Lanes Passage	363
13.1.1 Adoption and Designation of Sea Lanes	365
13.2 Rights and Duties of Ships and Aircraft during Archipelagic Sea Lanes Passage and of Archipelagic States	367
13.3 Innocent Passage	368
13.3.1 Rights and Duties of Ships in Innocent Passage	369
13.4 Archipelagic Waters Not Claimed	370
13.5 Excessive Claims	370
13.5.1 Archipelagic Sea Lanes Passage Only in Designated Sea Lanes	370
13.5.2 No Transit Passage Rights in Archipelagic Waters	371
13.5.3 Non-Recognition of Archipelagic Sea Lanes Passage ...	373
13.5.4 Overflight Restrictions	374
13.5.5 Prior Permission for Innocent Passage	374
Chapter Fourteen Navigation in Exclusive Economic Zones	377
14.1 Criteria	377
14.2 Excessive Claims	379
14.2.1 Military Activities in the EEZ	379
14.2.2 Law Enforcement Activities in the EEZ	391
14.2.3 Transit of Fishing Vessels	395
14.2.4 Transit of Hazardous Material	398
14.2.5 Transit of Nuclear Material	401
14.3 Transfer of Oil Between Ships at Sea	409
14.3.1 Bunkering in the EEZ	412
Chapter Fifteen Marine Data Collection	413
15.1 Definitions	413
15.1.1 Marine Scientific Research (MSR)	414
15.1.2 Surveys	416

15.1.3	Operational Oceanography	417
15.1.4	Exploration and Exploitation	418
15.2	Legal Regimes under the 1958 Geneva Conventions	418
15.3	Legal Regimes under the LOS Convention	420
15.3.1	Marine Scientific Research	420
15.4	MSR under the LOS Convention	422
15.4.1	Territorial Sea	422
15.4.2	Archipelagic Waters	422
15.4.3	International Straits and Archipelagic Sea Lanes	423
15.4.4	EEZ and Continental Shelf	423
15.4.5	The High Seas and the Area	424
15.4.6	Research Installations and Equipment	425
15.4.7	Responsibility and Liability	425
15.5	U.S Marine Scientific Research Policy	425
15.6	Role of the U.S. State Department in MSR	427
15.7	Coastal State Practice Regarding MSR under the LOS Convention	427
15.8	Value of the LOS Convention Today for MSR	430
15.8.1	MSR Dispute Settlement Regime	432
15.9	Survey Activities under the LOS Convention	435
15.9.1	Survey Activities vs. Marine Scientific Research	435
15.9.2	In the Territorial Sea	436
15.9.3	In International Straits and Archipelagic Sea Lanes	436
15.9.4	In the Exclusive Economic Zone	436
15.10	Military Activities, including Military Surveys	436
15.11	Operational Oceanography	437
15.11.1	Operational Oceanography Programs	439
15.11.2	Coordination of Operational Oceanographic Programs	441
15.11.3	Data Collection Platforms and Instruments	443
15.11.4	Operational Oceanography Summary	448
15.12	Exploration and Exploitation	449
15.13	Summary	450
Chapter Sixteen	Submarine Cables and Pipelines	451
16.1	Legal Regime	451
16.1.1	Submarine Cables and Pipelines in the Territorial Sea and Archipelagic Waters	452
16.1.2	Submarine Cables and Pipelines in the EEZ and on the Continental Shelf	453

16.1.3	Submarine Cables and Pipelines on the High Seas and Deep Seabed	454
16.2	Other Protections for Submarine Cables and Pipelines	454
16.3	Difficulties Protecting Submarine Cables	456
16.3.1	Cable Route Planning and Cable Route Surveys ...	458
16.3.2	Causes of Damage to Submarine Cables	459
16.4	Excessive Claims Pertaining to Repairing Submarine Cables	460
16.5	Other Excessive Claims	461
16.6	Inadequate National Legislation	462
16.7	Improvements to COLREGS	463

Part Four
Recent Developments

Chapter Seventeen	Polar Areas	467
17.1	The Polar Areas	467
17.2	Arctic	467
17.2.1	Terminology	467
17.2.2	Maritime Boundaries in the Arctic Ocean	469
17.2.3	Sources of Law	471
17.2.4	Soft Law	473
17.2.5	The Arctic Council	474
17.2.6	Arctic Marine Shipping Assessment	476
17.2.7	Recent Shipping through the Arctic	477
17.2.8	Tools	481
17.2.9	Unilateral Regulation: Canada and Russia	490
17.2.10	Extended Continental Shelf Claims in the Arctic Ocean	496
17.3	Antarctica	497
17.3.1	Extended Continental Shelf Claims in the Southern Ocean	498
17.3.2	Inspections	502
17.3.3	Southern Ocean Marine Conservation (CCAMLR)	502
17.3.4	Antarctic Tourism	504
17.3.5	Liability Arising from Environmental Emergencies	505
17.3.6	Handbook of the Antarctic Treaty System	506
Chapter Eighteen	Environmental Protection and Resource Conservation	507
18.1	Introduction	507

18.2	Environmental Protection	507	
18.2.1	Pollution from Ships	508	
18.2.2	Dumping of Wastes and Other Matter	514	
18.2.3	“Generally/Accepted/Applicable”	515	
18.2.4	Regional Agreements and Strategies	519	
18.2.5	MARPOL Special Areas	522	
18.2.6	Particularly Sensitive Sea Areas	524	
18.2.7	Mandatory Ship Reporting and Ship Routeing	527	
18.2.8	Excessive Environmental Protection Claims	529	
18.3	Resource Conservation	531	
18.3.1	Excessive Resource Conservation Claims	533	
18.4	UNCED Agenda 21 Chapter 17	534	
18.5	Summary	534	
Chapter Nineteen Sovereign Immunity and Sunken Ships			535
19.1	Sovereign Immunity of Warships and Military Aircraft	535	
19.1.1	Factors for Consideration in Drafting	540	
19.2	Sunken Warships and Military Aircraft	541	
19.2.1	Historical Evolution of Rules	543	
19.2.2	Current Situation	544	
19.3	Underwater Cultural Heritage	549	
19.4	Other Unresolved Questions	553	
19.4.1	Rules Applicable to Private Cargo on Sunken Military Craft	553	
19.4.2	Are Sunken Warships Still “Warships”?	553	
19.4.3	War Graves – Cultural Differences	554	
19.4.4	Do These Rules Apply to Ships Sunk before the 17th Century?	554	
19.4.5	Sunken Warships Located in Disputed Waters	554	
19.4.6	Ships, Other Than Warships, on Government Service	555	
19.4.7	Warships on Commercial Service	555	
19.4.8	Application of Marine Archaeological Rules	556	
19.4.9	Coastal State Authority under National Law to Protect Wrecks	557	
19.5	Significance	557	
Chapter Twenty Maritime Law Enforcement			559
20.1	Maritime Law Enforcement	559	
20.1.1	Jurisdiction to Prescribe	559	
20.1.2	Jurisdiction to Enforce	561	

20.1.3	Limitations on the Exercise of Maritime Law Enforcement Jurisdiction	567
20.1.4	Shipboarding	570
20.2	International Maritime Crimes	581
20.2.1	Narcotics Trafficking – Maritime Counter-Drug Operations	581
20.2.2	Immigration Control – Alien Smuggling	584
20.2.3	Counter-Proliferation	589
20.2.4	Piracy and Related Crimes	596
20.3	Maritime Law Enforcement Cooperation	623
20.4	Treatment of Seafarers	623
20.4.1	Fair Treatment of Seafarers in the Event of a Maritime Accident	624
20.4.2	Casualty Investigation Code	627
20.4.3	Oily Water Separators (OWS) and the “Magic Pipe”	629
20.4.4	Treatment of Seafarers Taken Hostage	629

Part Five
The Future and Conclusions

Chapter Twenty-One	The Future of U.S. Ocean Policy	633
21.1	The “Other” Excessive Maritime Claims	633
21.1.1	Presidential Leadership for Accession to the LOS Convention	636
21.2	Implementation of U.S. Ocean Policy	637
21.2.1	Freedom of Navigation (FON) Program: The “Lever of U.S. Ocean Policy”	637
21.2.2	Promulgation of Policy Guidance for Maritime Forces	639
21.2.3	Development of Conventional International Law	641
21.3	U.S. Oceans Policy for the 21st Century	642

Appendices

1.	President’s Ocean Policy Statement, March 10, 1983	647
2.	Proclamation 5030, Exclusive Economic Zone, March 10, 1983	650
3.	Proclamation 5928, Territorial Sea, December 27, 1988	652
4.	Proclamation 7219, Contiguous Zone, September 2, 1999	654
5.	Joint Statement by the United States and Soviet Union, with Uniform Interpretation of the Rules of International Law Governing Innocent Passage, September 23, 1989	656

Contents xv

6.	Presidential Letter of Transmittal of the Law of the Sea Convention, October 6, 1994	658
7.	Secretary of State's Letter of Submittal to the President, September 23, 1994	661
8.	Commentary – The 1982 United Nations Convention on the Law of the Sea and the Agreement on Implementation of Part XI	669
9.	Senate Executive Reports on the Law of the Sea Convention	775
10.	Minority Report and Rebuttal	815
11.	Table of Comparable Provisions 1958 Geneva Conventions and 1982 LOS Convention	840
12.	Evolution of the Modern Law of the Sea	845
13.	Sources and Implementation of the 1982 LOS Convention	861
14.	U.S. Arctic Policy, January 9, 2009	866
15.	The Ilulissat Declaration, 2008	877
16.	United States Maritime Law Enforcement Agreements (in Force or Signed Awaiting Entry into Force), and Understandings and Operational Procedures	879
17.	Interdiction Principles for the Proliferation Security Initiative, September 4, 2003	893
18.	Parties to the 1982 UN Convention on the Law of the Sea	895
19.	U.S. Maritime Boundaries	900
	Index	903

1.	American Samoa Maritime Boundary
2.	Indonesian Maritime Boundary
3.	Costa Rica
4.	Gulf of Aden
5.	Pearl and Hermes
6.	Petite Martinique
7.	Outer Islands
8.	Outer Islands
9.	Outer Islands
10.	Outer Islands
11.	Outer Islands
12.	Outer Islands
13.	Outer Islands
14.	Outer Islands
15.	Outer Islands
16.	Outer Islands
17.	Outer Islands
18.	Outer Islands
19.	Outer Islands