



SIXTH GENERAL ASSEMBLY

**Questioning the addition of legal provisions to the
Convention on the Law of the Sea to address disputed
economic maritime boundaries**

BACKGROUND PAPER

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Mandate

The *United Nations Sixth General Assembly (Legal)* (6th GA) is a specialised committee of the UN General Assemblies. It deals with issues of private and public international law for example, international trade, the conduct of UN personnel and transnational terrorism.¹

The Assembly has the mandate of any other GA, although it must also meet the ethical and diplomatic standards of its GA counterparts. More to the point, it must encourage the codification and progressive development of international law.

Notable treaties created through this Assembly include the *1998 Rome Statutes of the International Criminal Court*, and the *1961 Vienna Convention on Diplomatic Relations*.

While the Secretary General of the United Nations receives instruments of ratification and accession and the UN provides support for meetings of states party to the *United Nations Convention on the Law of the Sea*, the 6th GA has no direct operational role in its implementation. The 6th GA must work with its affiliates and various other NGOs to design an implementation plan.

Affiliation

The 6th GA is affiliated with:

- *International Maritime Organization - Inter-Governmental Maritime Consultative Organization*;²
- *International Law Commission*;³
- *United Nations Commission on International Trade Law*;⁴ and
- *International Seabed Authority*.⁵

Again, delegates should understand the extent of the various affiliations if they wish to achieve an insight into how to deal with maritime boundary issues in the Assembly today.

Membership

All Member States of the United Nations can represent themselves in the Sixth General Assembly. However, for the purposes of *Brisbane Model United Nations Conference 2010* (BrizMUN), representation is limited to representatives from a category of 40 pre-selected States.

¹ For background reading on topics that the body have previously discussed, see <<http://www.un.org/ga/sixth/>> for the archives of 6th General Assembly Committee Sessions.

² See International Maritime Organisation, accessed 30 March 2010 at <www.imo.org>.

³ See International Law Commission, accessed 30 March 2010 at <<http://www.un.org/law/ilc/>>.

⁴ See United Nations Commission on International Trade Law, accessed 30 March 2010 <www.uncitral.org/>.

⁵ See International Seabed Authority; accessed 30 March 2010 <www.isa.org.jm>.

Historical context

The earliest records of multi-national ocean use demonstrate the freedom with which our seafaring ancestors enjoyed the world's seas.⁶ The suitability of this *free-for-all perspective* was first challenged in the Seventeenth Century with the advent of the 'Freedom of the Seas Doctrine'.⁷ This was premised on the idea that national rights and jurisdiction over sea-beds was limited to a narrow belt of sea surrounding a nation's coastline. The remainder of ocean stretches were unclaimed, and ostensibly they belonged to no-one – although certain personalities and groups would maintain *forceful influence* over regions, as some do today.

While these arrangements were useful for several centuries, after WWII there was a global impetus to extend national claims over offshore resources to transnational trade and other various private commercial ventures.⁸ Certain reasons for the shift in international standards included tolls taken on coastal fish stocks by fishing fleets⁹ and the threat of pollution and wastes from transport ships and oil tankers carrying cargoes with noxious materials.¹⁰ For that reason, we strongly encourage delegates to consider the history of maritime law to add substance to their contributions through committee sessions.

Current Situation

International maritime boundaries have always been treated with some contention. As a former delegate for Malta once put it in an address to the General Assembly, “[r]apidly developing technology makes possible the exploration, occupation and exploitation of the world's sea-bed and much of its ocean floor.”¹¹ However, in the same breath he then went on to say that he expected a suspicious reception from his fellow delegates in response to his willingness to reserve sea-beds, given its indelicately power-driven¹² nature and the intricacy of its economic and political considerations.

The United Nations Conferences on the Law of the Sea (I – III) were held from 1973 to 1982 and allowed the creation of the *United Nations Convention on the Law of the Sea 1982*. Today, this Convention defines the types of boundaries. Nations can follow these, yet some nations elect to use treaties (especially bi-

⁶ D M Johnston (1988). *The theory and history of ocean boundary-making*, McGill-Queen's University Press, Canada, 95 - 97.

⁷ Ibid, 98.

⁸ S P Jagota, *Maritime boundary*, Martinus Nijhoff Publishing, United States of America, 166.

⁹ M Byers, Cold Peace: International Cooperation Takes Hold in the Arctic, December 16, 2009, Carnegie Council – The Voice of Ethics in International Affairs. Accessed 30 March 2010 at <http://www.cceia.org/resources/articles_papers_reports/0040.html>.

¹⁰ D Freestone, R Barnes and D Ong. (eds.) (2006). *The law of the sea: Progress and prospects*. Oxford Univ. Press: United Kingdom.

¹¹ United Nations General Assembly, Twenty-Second Session, First Committee, 1515th Meeting, Wednesday 1 November 1967 at 10:30am, Agenda Item 92 – Examination of the question of the reservation exclusively for the peaceful purposes of the seabed and the ocean floor and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interest of mankind, para [5], *the contributions of the delegate for Malta (Mr Pardo* <at http://www.un.org/Depts/los/convention_agreements/texts/pardo_ga1967.pdf> .

¹² Ibid, at para [4].

lateral treaties),¹³ or rely on agreements that are nothing more than *gentlemen's handshakes*.¹⁴ The former lacks the flexibility needed to accommodate our modern world, and the latter can result in serious security issues.

Key Problem

Role of Sovereignty in Public International Law

The difficulty with establishing sovereignty in the context of international plots of sea is the ranking the sovereignty of nations in priority. That is, who is to say that one nation has greater claim to a plot of sea over another? And if the decision can be made that one does, then what are the standards for making that determination? Alternatively, where the sovereignty of different nations are in stark conflict, how are they ranked to determine which is allowed to exclusively enjoy the sovereign region?

International Economic Power and Hegemony

Nations must acknowledge that maritime boundaries place an integral role in determining commercial interests in private international law. However, where particular groups may gain an economic power over a region, it is possible that this may add to the economic power of a nation. Excepting free-trade agreements and bi-lateral treaties, if these power plays are permitted, nations associated with the wealthier players in regions may eventually exert hegemony over that region themselves.

Shape of a Nation's Boundary

Archipelagos¹⁵ (that is, countries that are spread over a mass of islands) can create an interesting tension of views. Some may argue that a nation can only extend its name over the sea-belt surrounding its land mass for the sake of achieving equality between nations, while others believe that precise measurements of sea belts disadvantage smaller nations, especially if there is a sea-bed path through waters between their islands for other nations to pass through. Archipelagos include:

- The Philippines;¹⁶
- Indonesia;¹⁷ and
- Various other nations in the West Indies.

¹³ See, for example, No. 553. *Agreement Between The United Nations And the Inter-Governmental Maritime Consultative Organization*. Approved by the General Assembly of the United Nations on 18 November 1948 and by the Assembly of the Inter-Governmental Maritime Consultative Organisation on 13 January 1959.

¹⁴ J I Charney and L M Alexander (ed) (2002). *International maritime boundaries v. 1-2 & 4: The American Society of International Law*, United States of America.

¹⁵ G Francalanci, T Scovazzi and D Romano (1994). *Lines in the sea*, Martinus Nijhoff Publishers, The Netherlands, 99 – 107.

¹⁶ The Philippines was the first state to put forward the concept of the archipelagic waters in international practice when it pronounced: "*the position of the Philippines Government in the matter is that all waters around, between and connecting the different islands belonging to the Philippine Archipelago irrespective of their widths or dimensions, are necessary appurtenances of its land territory, forming an integral part of the national or inland waters, subject to the exclusive sovereignty of the Philippines*"; UN. STILEGISER, B16, 39. Note, the United States of America heavily protested legislation of the Philippines enacted with this basic view.

¹⁷ Act No. 4 of 18 February 1960 Indonesia, USDS, Limits, No. 35, 1974: UN, Baselines, 187; USDD, Claims, 2-227.

Exclusive economic zones (EEZs) where coastal states also have exclusive control over living resources *attached* to the continental shelf but not to creatures living in the water column beyond the exclusive economic zone.

Contiguous zone, consider: taxation, customs, immigration and right to minerals and oil.

Sea-Level Rise

While territorial waters can be portioned, natural sea-level fluctuations can undo the effect of those allocations.¹⁸ Delegates should consider a flexible approach to allocating sea boundaries that reflects the effects of climate change.

Stability of Land and Sea Boundary Delimitations in International Law

Delimitations are agreed regions that used for a particular purpose,¹⁹ such as fishing. The purpose and practice of using these solutions should factor into any resolutions that delegates reach.

Pollution

Pollution hazards threaten coastal resorts and all forms of ocean life. This is particularly relevant to countries with coastal native groups who are exposed to the residue and wastages of shore pollution on internal waters.²⁰

CASE STUDY

This pressing issue is applicable to various seas and territories that are being disputed. Some of the greater concerns are:

The Arctic

The current situation in the Arctic is receiving a great deal of international attention. Competing claims and territories attempting to assert their territorial sovereignty has reduced previous negotiations, and heightened tensions between various countries. Whilst the Arctic may seem to be remote and offer little to countries who would choose to assert territorial sovereignty over it, there are suspicions that the sea bed beneath contains vast deposits of oil, minerals and natural gases.

Russia has claimed that the seabed is an extension of the Russian continental shelf. Earlier this year, the Russians went so far in their claim to assert territorial jurisdiction over the area by dropping a flag onto the seabed. However, such actions angered other states. Canada in particular believes they have jurisdiction over the territory. Similarly, the United States also believes they have a right to the territory.

¹⁸ G H Blake, contributed by P B Beazley et al , (1994). *Maritime boundaries*, Nijhoof Publishers, The Netherlands, 147.

¹⁹ Ibid, 166.

²⁰ R Anand. (1983). *Origin and development of the law of the sea*. Kluwer Law International, The Hague; T Buergethal and S Murphy. (2007). *Public international law in a nutshell*, 4e. Thomson/West Group, New York; and TChoudhury. (2006). *Mitra's legal and commercial dictionary*, Eastern Law House, United Kingdom.

Denmark too is claiming their jurisdiction, and has announced they are sending their own team of scientists to the region to undertake testing and research.

Note: Should anything be found, a resolution by this committee would need to address what can occur next.

Under the current United Nations Convention of the Sea, territorial sovereignty will be asserted on whether the sea bed is an extension of a claiming country's continental shelf. However, there appears to be some overlap in claims, and experts have expressed their concern that potentially no one country will be able to assert jurisdiction over the whole area, and that rather, future agreements need to focus on setting boundaries.

Not only will future agreements need to be mindful of agreements that allow for multiple country claims, but provisions will need to be made in relation to other potential seas with competing claims. Of concern is the Northwest Passage which, if melting ice continues, may link up the Atlantic and Pacific Oceans. Any future agreements must take these considerations into account.

As well, there is no proof that oil, minerals and natural gases are in existence under the sea bed. If there are, environmental affects would need to be ascertained if the Atlantic was to be exploited. Due to climate change, drilling may now be viable in areas of the sea bed that were previously unattainable. Such changes make the Arctic area more desirable, and Russia sees it as its strategic advantage to gain such control.

Figure 1 maps-out Russia's competing claims to the territory, and the disputed area of the sea.



Figure 1²¹

²¹ Figure 1 (and some info for artic)'Canada PM asserts Arctic claims,' BBC NEWS 10 August 2007 <<http://news.bbc.co.uk/2/hi/americas/6939732.stm>> at 27 April 2010.

- 1) **North Pole:** Russia leaves its flag on the seabed, 4,000m (13,100ft) beneath the surface, as part of its claims for oil and gas reserves.
- 2) **Lomonosov Ridge:** Russia argues that this underwater feature is an extension of its continental territory and is looking for evidence.
- 3) **200-nautical mile (370km) line:** Shows how far countries' agreed economic area extends beyond their coastline. Often set from outlying islands.
- 4) **Russian-claimed territory:** The bid to claim a vast area is being closely watched by other countries. Some could follow suit.

Abu Musa

Another disputed territory is Abu Musa, the island between Iran and the UAE. The island lies in the Persian Gulf and is situated about halfway between Iran and the UAE, both of which assert jurisdiction over the territory.

The area is thought to be rich with oil reserves, and also lies in a strategic position to the shipping routes commonly taken through the Gulf. Previously, Iran and the UAE have agreed to share the island and the oil resources. However, Iran did take the island by force in 1971. The Iranian Parliament has passed a law extending the limits of the countries territorial waters to 12 miles of the coast, however, concerns are mounting that this claim is too large given the size of the Persian Gulf and the close proximity of the other Gulf states. Any such resolution that the 6th General Assembly seeks must address this issue or a way for states to resolve these issues.



Figure 2²²

Kuril Islands

The Kuril Island dispute between Japan and Russia over the sovereignty over the south Kuril Islands has a long history, and past negotiations aimed at resolving these territorial disputes have not worked. The disputed Islands are Itrup, Kunashir, Shikotan and Habomai.

Previously, the disputed Islands were occupied by Russian Soviet forces at the end of WW2, and are under Russian administration but are claimed by the Japanese. A previous treaty, the San Francisco Peace Treaty stated that Japan was to give up all claims to the Kuril Islands. However, this treaty also failed to

²² W Dabbs, Abu Musa: Island Dispute between Iran and the UAE (1996) The Mandala Projects: case problems and legal identifications <<http://www1.american.edu/ted/abumusa.htm>> at 27 April 2010.

recognise the Soviet Union's sovereignty over the Kuril Islands. Russia relies on the Soviet Union's over the Islands from agreements at the end of WW2.

Past negotiations have been attempted over the territorial disputes of the Islands. These negotiations largely fell apart when the Japanese government published new school textbook guidelines directing teachers to say that Japan had the sovereignty over the Kuril Islands. Russia responded by reaffirming its sovereignty to the Islands.²³

In early 2009, the two countries met to discuss the Kuril Islands, and it was said after the meeting that they had agreed to speed up negotiations in relation to the dispute, but as of yet no outcomes have been reached. Whilst both countries have granted each other concessions previously, the negotiations seem to have reached a standstill, and the Russian Head of the Kuril Region has called to drop the visa free program for the Japanese; whilst in another case Japanese fisherman were fired upon for allegedly fishing illegally in Russian waters.

It is now up to the 6th General Assembly to reach a sustainable agreement in relation to these issues.

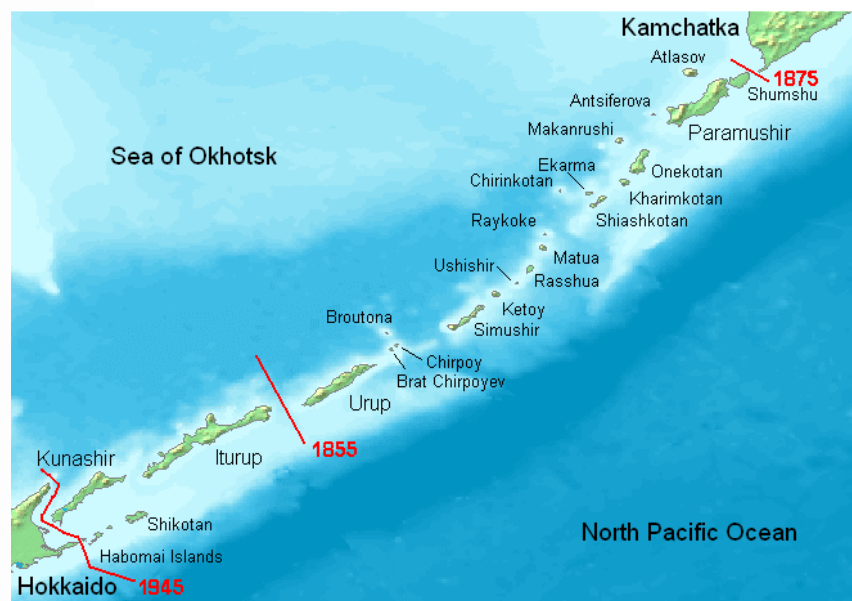


Figure 3²⁴

²³ M Njorge: The Japan-Soviet Union Debate (1985) University of California Press <<http://www.jstor.org/pss/2644403>> at 28 April 2010.

²⁴ Kuril Islands Dispute (2009). Wikipedia <http://en.wikipedia.org/wiki/Kuril_Islands_dispute> at 28 April 2010.

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