

THE OXFORD HANDBOOK OF

THE LAW
OF THE SEA

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OXFORD
UNIVERSITY PRESS

JUN 16 2015

UAL-107

OXFORD
UNIVERSITY PRESS

Great Clarendon Street, Oxford, OX2 6DP,
United Kingdom

Oxford University Press is a department of the University of Oxford.
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First Edition published in 2015

Impression: 1

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Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data
Data available

Library of Congress Control Number: 2015930576

ISBN 978-0-19-871548-1

Printed and bound by
CPI Group (UK) Ltd, Croydon, CRO 4YY

Jacket illustration: Roger Coulam/Oxford Scientific/
Getty Images.

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4 THE CLAIMS TO EXPAND THE COASTAL STATE'S JURISDICTION AFTER WORLD WAR II

Already in the 1930s, a number of States recognized that sovereignty over the territorial sea was not sufficient to ensure the proper conservation of fisheries in the areas adjacent to it. There was nonetheless widespread reluctance to entrust the subject to unilateral decision making by the coastal State. As Gidel remarked, 'the establishment of rules on fisheries applicable beyond the territorial sea to nationals and foreigners must not be left to be fixed autonomously by the coastal State' as, undoubtedly, 'extremist' and 'arbitrary' measures would result.²² It was equally clear that contiguous zone rights could not apply to fisheries.²³

The two Proclamations adopted by United States President Truman on 28 September 1945 (Truman Proclamations) marked a turning point towards the acceptance of coastal States' claims to exclusive rights beyond the limit of the territorial sea. They concerned respectively the 'Natural Resources of the Subsoil and the Seabed of the Continental Shelf' and 'the Policy of the United States with Respect to Coastal Fisheries in Certain Areas of the High Seas'.²⁴

The Continental Shelf Proclamation is more radical than the Fisheries Proclamation. It was precipitated by the increased importance of oil resources, underscored by the necessities of World War II and by the development of exploration and exploitation technology. It was a claim that the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States 'appertain' to it under its jurisdiction and control. It went beyond what had hitherto been accepted in international law, with the exception of the immediate precedent of the 1942 Treaty between Great Britain and Venezuela Relating to the Submarine Areas of the Gulf of Paria.²⁵ In this treaty each of the two States recognized the 'rights

²² Gidel, n 20, Vol III, 468.

²³ Ibid, Vol III, 473. In the French original:

Le droit international ne reconnaît pas les intérêts de pêche comme susceptibles de servir de base à l'institution en cette matière d'une zone contiguë par la déclaration unilatérale de l'Etat riverain.

In 1959 the Cuban jurist and diplomat Garcia Amador, examining possible extensions of coastal States' fishery rights through the notion of the contiguous zone, stated that: 'the monopoly over or exclusive exploitation of the resources of the sea was entirely foreign to the purpose for which the establishment of this zone could be permitted'. See G Amador, *The Exploitation and Conservation of the Resources of the Sea* (2nd edn AW Sythoff Leydon 1959) 65.

²⁴ Proclamation No 2267 (1945) 12 *Federal Register* 12303; Proclamation No 2668 (1945) 12 *Federal Register* 12305; AV Lowe and SAG Talmon, *The Legal Order of the Oceans. Basic Documents on the Law of the Sea* (Hart Oxford/Portland 2009) 19, 20.

²⁵ 1942 Treaty between Great Britain and Northern Ireland and Venezuela Relating to the Submarine Areas of the Gulf of Paria; Lowe and Talmon, n 24, 16.

of sovereignty or control' of the other over an area delimited by an agreed line and extending beyond the 3 nm limit of the territorial sea of the two States.

The Truman Proclamation on fisheries, although trying to meet the 'pressing need' for conservation of fisheries resources in high seas waters contiguous to the coasts of the United States, remained much closer to traditional international law. The claim to exclusivity was limited to regulation and control. It did not apply to the resources as such. Moreover, it was put forward only in circumstances where it did not clash with other States' interests and for areas in which fisheries had been conducted by United States fishermen alone. Outside these areas, fisheries would have to be regulated through agreements between the United States and other States engaged in fishing therein.

Both Proclamations underline the 'character of high seas' of, respectively, the waters above the continental shelf and the areas in which the conservation zones were established and state that 'the right of free and unimpeded navigation' was 'in no way affected'.

Seen from Latin America, the two proclamations were welcome as an opening to the extension of the coastal States' control over resources beyond the limits of the territorial sea. It soon appeared, however, that the different regimes set out for the—primarily—mineral resources of the continental shelf and for the living resources of the waters adjacent to the coasts were tailored to the needs of the United States, a country with a sizable continental shelf and important fisheries interests off the coasts of other (especially Latin American) States.

Latin American States endowed with continental shelves, such as Argentina and Mexico, as well as some States in other areas of the world, were quick in following the United States in proclaiming sovereign rights on their continental shelves. They also proclaimed similar rights in the waters above the continental shelf. This was the notion of the 'epicontinental sea'. South American States with coasts on the Pacific had no extended continental shelves as the seabed adjacent to their coasts dropped abruptly towards the abyssal plains. They felt the injustice of the lack of the opportunity to exploit mineral resources and considered that they needed compensation.²⁶ Whaling by foreign vessels in the waters adjacent to their territorial seas was one of their main concerns. So, in 1947, Chile and Peru, invoking the Truman Proclamations and the Mexican and Argentinian proclamations, adopted enactments proclaiming their sovereignty and jurisdiction over the seabed as well as in the superjacent waters up to a limit of 200 nm from the coast. The right of free navigation (specified in the Chilean proclamation to be 'on the high seas') was not to be affected. On 18 August 1952, Chile and Peru, together with Ecuador, adopted at Santiago de Chile, a Declaration (Santiago Declaration)²⁷ which, after stating

²⁶ A de Ulloa, *Derecho internacional público* (4th edn Iberoamericanas Madrid 1957) 565ff.

²⁷ 1952 Declaration on the Maritime Zone (hereinafter Santiago Declaration).

that the former extensions of the territorial sea and of the contiguous zone were inadequate for the purpose of the conservation, development and exploitation of the natural resources of the maritime zones adjacent to their coasts, proclaimed 'as a norm of their international maritime policy that they each possess exclusive sovereignty and jurisdiction over the sea along the coasts of their respective countries to a minimum distance of 200 nautical miles from these coasts'. The Declaration specified that such sovereignty and jurisdiction included also the soil and subsoil corresponding to the 200 nm zone and that it was 'without prejudice to the necessary limitations to the exercise of sovereignty and jurisdiction established under international law to allow innocent and inoffensive passage through the area indicated for ships of all nations'.

The Declaration is formulated as a proclamation directed by the three participating parties to the rest of the world, and not as a treaty. This notwithstanding, it was registered as a treaty with the United Nations in 1976.²⁸

The terminology and the very concepts utilized in the Santiago Declaration and in the proclamations of Latin American States are tentative and variable. They cannot be read with the precise meaning that the international law of the sea now gives them. The basic outlook adopted is that the rights claimed corresponded to those claimed by the United States for mineral resources of the continental shelf. This emerges clearly from the difference in the terminology (reproduced above) used in the Chilean and Peruvian Proclamations and in the Santiago Declaration to refer to the navigational and other rights of all States in the 200 nm zone, and to the clarifications given by representatives of the signatory countries as to the meaning of the terms 'sovereignty' and 'sovereign rights' as relating to exclusive functional rights for certain purposes.

When adopting their proclamations and the Santiago Declaration, Chile, Peru, and Ecuador were aware that their claims did not correspond to the international law of their time. The purpose was to start a process that, in the wishes of the three States, would eventually lead to the formation of new customary law. The strong protests in 1948 by the United Kingdom and the United States against the Chilean and Peruvian Proclamations, and later, against the Santiago Declaration, indicated that the main maritime powers of the time considered the claims as going beyond what was permitted by international law.

The 1950s saw another development towards the expansion of coastal States' rights. It consisted in the claims put forward in 1955 by the Philippines and in 1957 by Indonesia to draw straight lines joining the outermost islands of the archipelagos and considering the waters within such lines as internal waters. These were the seminal claims to the institution of archipelagic waters.

²⁸ UN Treaty Registration No 14758.

The claim set out in the Truman Proclamation on the continental shelf was to have a very quick impact on the evolution of the law. The more ambitious claims of the Latin American countries, as well as the archipelagic claims of the Philippines and Indonesia, took more time. Yet, about a quarter of a century after the Santiago Declaration they reached their purpose with the general acceptance of the notions of the exclusive economic zone and of archipelagic waters.

5 CODIFICATION IN THE EARLY PHASE OF THE UNITED NATIONS: THE GENEVA CONVENTIONS ON THE LAW OF THE SEA

After World War II the United Nations assumed, under Article 13 of the Charter, the task of the progressive development and codification of international law, continuing, in a more institutionalized manner, the attempts made by the League of Nations. The International Law Commission (ILC), the body of experts entrusted with this task within the United Nations, identified, since the beginning of its work in 1949, the regime of the high seas and of the territorial sea among the topics ripe for codification, and started work on the subject in 1950. Continuity with the work conducted before World War II was stressed by the fact that the Rapporteur on the law of the sea of the Hague Conference of 1930, Professor François, was selected as Special Rapporteur. Up to the end of the Commission's work in 1956, the ILC, and the United Nations General Assembly (UNGA) that closely followed its work, proceeded through drafts concerning different aspects of the law of the sea. Only in the final report submitted to the General Assembly in 1956 were all provisions systematically ordered as one body of draft articles covering the whole of the law of the sea.

This final report was to be the main basis for the First United Nations Conference on the Law of the Sea (UNCLOS I), held in Geneva from 24 February to 27 April 1958 and convened by UNGA Resolution 1105(XI) of 21 February 1957. Attended by 86 States, the Conference followed rules of procedure similar to those of the UN General Assembly, so that, although provisions could be adopted in the Committees by simple majority, a two-thirds majority was required for adoption in Plenary. This procedural rule made it impossible to agree on the breadth of the territorial sea. While a 12 nm breadth could probably have secured approval in the competent Committee, it was clear that it could not do so in Plenary. Thus the question was left unresolved. However, the fact that one of the conventions adopted provided that

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THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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ROBIN R CHURCHILL

1 INTRODUCTION

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THE United Nations Convention on the Law of the Sea (LOSC)¹ is without doubt the most important source of the international law of the sea, although it is by no means the only source, as will become evident in later chapters of this book. The LOSC regulates, in greater or lesser detail, almost every possible activity on, in, under, and over the sea. No attempt will be made in this chapter to discuss the substantive provisions of the LOSC: that will be done in the following chapters. Instead, this chapter deals with the history and legal characteristics of the LOSC. Thus, it explains how the LOSC came into being; gives a brief overview of its provisions and considers their varying legal nature; explains which entities may and have become parties to the LOSC and considers the extent to which they are permitted to make reservations and declarations; outlines the relationship of the LOSC to other treaties and customary international law; explores the mechanisms for seeking to

¹ 1982 United Nations Convention on the Law of the Sea (hereinafter LOSC).

ensure compliance with the LOSC by its States parties; and finally discusses how the LOSC is kept under review and developed.

2 THE GENESIS, ADOPTION, AND ENTRY INTO FORCE OF THE LOSC

As recounted at the end of the previous chapter, the UN General Assembly decided in 1970 to hold a Third United Nations Conference on the Law of the Sea (UNCLOS III) to 'deal with the establishment of an equitable international regime' for the resources of the seabed and subsoil beyond the limits of national jurisdiction and 'a broad range of related issues'.² By 1973, the mandate of the Conference had become to 'adopt a convention dealing with all matters relating to the law of the sea'.³ The Conference met in 11 sessions, each (apart from the first) of several weeks' duration, between 1973 and 1982.⁴ The Conference worked in a very different way from the First United Nations Conference on the Law of the Sea (UNCLOS I), held in 1958. First, it had before it no set of draft articles prepared by the International Law Commission. Instead, there was a mass of often conflicting proposals put forward both by States individually and by groups of States to promote their common interest. Such groups included not only those traditionally operating in international fora, such as the Group of 77, but also groups formed especially for the Conference, such as the Group of Landlocked and Geographically Disadvantaged States and the Group of Archipelagic States.⁵ Many of the Conference negotiations, in fact, took place informally and off the record within and between such groups.⁶ UNCLOS III was thus far more politicized than UNCLOS I. Over the course of the Third Conference, the numerous proposals made by States

² UNGA Res 2570C (XXV) (1970) [2]. UN General Assembly resolutions may be found at <<http://www.un.org/en/ga/68/resolutions.shtml>>.

³ UNGA Res 3067 (XXVIII) (1973) [3].

⁴ For detailed studies of the Conference negotiations, see the series of contemporaneous articles by JR Stevenson and BH Oxman in *American Journal of International Law* (1974) Vol 68, 1; (1975) Vol 69, 1 and 763; (1977) Vol 71, 247; (1978) Vol 72, 57; (1979) Vol 73, 1; (1980) Vol 74, 1; (1981) Vol 75, 211; and (1982) Vol 76, 1; JK Sebenius, *Negotiating the Law of the Sea* (Harvard University Press Cambridge MA 1984); *Virginia Commentaries*, Vol I, 29–152; and EL Miles, *Global Ocean Politics: The Decision Process at the Third United Nations Conference on the Law of the Sea 1973–82* (Martinus Nijhoff The Hague 1997). For a short serviceable account, see J Harrison, *Making the Law of the Sea* (Cambridge University Press Cambridge 2011) 37–48.

⁵ See further B Buzan, "United We Stand..."—Informal Negotiating Groups at UNCLOS III' (1980) 4 *Marine Policy* 183.

⁶ This means that when it comes to interpreting LOSC, the official *travaux préparatoires* are quite limited.

were refined into a series of negotiating texts by the chairs of each of the three (eventually four) committees between which the subject matter of the Conference was divided.

A second way in which UNCLOS III differed from UNCLOS I was in relation to the process of decision-making. Whereas UNCLOS I had adopted all decisions by majority vote, UNCLOS III decided that it would work by consensus, resorting to a vote only if all attempts at consensus had failed.⁷ UNCLOS III was the first UN law-making conference to use consensus decision-making and did so in order to try to obtain the greatest possible support, including from both developing and developed States, for the convention that would eventually be adopted.

A third significant difference between the two conferences was that UNCLOS III decided to utilize a 'package deal' approach. This meant that the product of the Conference should be a single convention, unlike UNCLOS I which had produced four conventions, which States could (and did) selectively ratify. The package deal approach thus implied, and required, a great deal of give and take by negotiating States. It also meant that there would inevitably be a certain amount of ambiguity and lack of precision in the convention in relation to matters where negotiating States could do no better than reach a weak compromise.⁸

UNCLOS III finally reached agreement on a new treaty, the UN Convention on the Law of the Sea, in 1982. Ultimately, the Convention could not be adopted by consensus. Instead a vote was taken at the request of the USA, which on the election of President Reagan in 1980 had markedly changed its attitude to the draft Convention. This resulted in 130 votes in favour of adopting the Convention, with four votes against (Israel, Turkey, USA, and Venezuela) and 17 abstentions (mainly developed States).

Article 308 of the LOSC provided for its entry into force 12 months after the deposit of the 60th ratification. Ratifications were initially slow to materialize, but in November 1993 the 60th ratification was deposited. Of those 60 ratifications, all but two—by Iceland and Yugoslavia (which by that time had ceased to exist *de facto*)—were by developing States. The reason why many developed States did not ratify was because of dissatisfaction with the regime for the mining of minerals in the seabed beyond national jurisdiction contained in Part XI of the LOSC, which in several important respects was in conflict with the neoliberal economic policy that had begun to dominate in the USA and a number of other Western States since the early 1980s. A law of the sea convention to which only developing States were parties was clearly undesirable, potentially divisive, and did not meet the UN General Assembly's aspirations for universal participation. The UN

⁷ See further B Buzan, 'Negotiating by Consensus: Developments in Technique at the United Nations Conference on the Law of the Sea' (1981) 75 *American Journal of International Law* 324.

⁸ Further on the package deal approach, see H Caminos and MR Molitor, 'Progressive Development of International Law and the Package Deal' (1985) 79 *American Journal of International Law* 871.

Secretary-General therefore began to explore whether there was a way of overcoming the objections of Western States to Part XI so as to encourage them to ratify the LOSC without alienating developing States. His diplomatic efforts were eventually successful and resulted in the Agreement relating to the Implementation of Part XI of the LOSC, which was adopted as an annex to UN General Assembly Resolution 48/263 in July 1994 (1994 Implementation Agreement).⁹ While the Agreement is, for political reasons, an 'implementing' one in name, in reality it amends several key provisions of Part XI by baldly stating that they do not apply or that they apply with significant modifications. The changes made by the Agreement were sufficient to overcome the objections of developed States, most of which ratified the LOSC within a relatively short space of time after the adoption of the Agreement.

3 AN OVERVIEW OF THE LOSC

The broad aim of the LOSC, according to its preamble, is to 'settle... all issues relating to the law of the sea',¹⁰ and in particular to establish 'a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment'.¹¹ The preamble goes on to state, in language that is a diminishing echo of that used by developing States when calling for the establishment of a New International Economic Order in the 1970s, that the achievement of such a legal order for the oceans 'will contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked'.¹²

The LOSC seeks to achieve the above aims through 320 articles, arranged into 17 parts and supplemented by nine annexes. Part I, consisting only of Article 1, defines a number of the terms used in the LOSC: several other terms are defined in the substantive provisions. Parts II, V, and VI deal with the maritime zones that may be claimed by

⁹ See further three articles by DH Anderson: 'Efforts to ensure Universal Participation in the UN Convention on the Law of the Sea' (1993) 42 *International and Comparative Law Quarterly* 654; 'Further Efforts to ensure Universal Participation in the United Nations Convention on the Law of the Sea' (1994) 43 *International and Comparative Law Quarterly* 886; and 'Legal Implications of the Entry into Force of the UN Convention on the Law of the Sea' (1995) 44 *International and Comparative Law Quarterly* 313. The Agreement is further discussed in Section 10 below.

¹⁰ LOSC, n 1, Preamble, First Recital.

¹¹ *Ibid*, Fourth Recital.

¹² *Ibid*, Fifth Recital.

coastal States, namely the territorial sea and contiguous zone; exclusive economic zone (EEZ); and continental shelf. These Parts stipulate how such zones are to be delimited and set out the respective rights and obligations of coastal and other States therein.¹³ They resolve previous uncertainties over the breadths and legal nature of coastal States' maritime zones and have put an end, at least for the foreseeable future, to the phenomenon of 'creeping jurisdiction', thereby achieving one of the main aims of UNCLOS III.¹⁴ Part III of the LOSC is concerned with navigation through straits lying partly or wholly within the territorial sea.¹⁵ Part VIII defines an island and stipulates how coastal State maritime zones are to be delimited from islands; while Part IV deals with that issue in relation to islands that comprise archipelagos.¹⁶ Some provisions in Parts II, VI, and VIII are similar, or even identical, to provisions in the 1958 Territorial Sea and Continental Shelf Conventions,¹⁷ but many others differ considerably or are concerned with matters (such as the EEZ and archipelagos) that are not addressed at all in the 1958 Conventions.

Part VII sets out the regime for the high seas, ie, the areas of sea beyond the maritime zones of coastal States.¹⁸ Its provisions are largely identical, or similar, to the 1958 Convention on the High Seas and parts of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas.¹⁹ The remaining Parts of the LOSC, discussed below, are all quite new, having no equivalents in the 1958 Conventions.

Part IX of the LOSC calls for cooperation between States parties bordering enclosed or semi-enclosed seas. Part X deals with the access of landlocked States to the sea: there are also provisions elsewhere in the LOSC addressing other aspects relating to landlocked States and the sea.²⁰ Part XI, together with Annexes III and IV, as read with the 1994 Implementation Agreement, set out a detailed regime, based on the principle of the common heritage of mankind, governing the mining of the mineral resources found in 'the Area', ie the seabed and subsoil beyond the limits of national jurisdiction.²¹ This regime is administered by a new international organization created by Part XI, the International Seabed Authority.²²

Part XII of the LOSC is headed 'Protection and Preservation of the Marine Environment'. Considerably influenced by the Declaration and Action Plan adopted at the UN Conference on the Human Environment held at Stockholm in 1972,²³ which

¹³ See further Chapters 4, 5, 8, and 9 in this volume.

¹⁴ See further Chapter 1 in this volume.

¹⁵ See further Chapter 6 in this volume.

¹⁶ See further Chapter 7 in this volume.

¹⁷ 1958 Convention on the Territorial Sea and the Contiguous Zone; 1958 Convention on the Continental Shelf.

¹⁸ See further Chapter 10 in this volume.

¹⁹ 1958 Convention on the High Seas; 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas.

²⁰ See further Chapter 15 in this volume.

²¹ See further Chapter 11 in this volume.

²² See further Chapter 17 in this volume.

²³ Declaration and Action Plan adopted at the United Nations Conference on the Human Environment, UN Doc A/CONF.48/14/Rev 1 (1972).

for the first time placed the protection of the environment squarely on the agenda of the international community, Part XII begins by setting out some broad principles for the protection of the marine environment. The remainder of Part XII is concerned only with the prevention of marine pollution. These provisions require States parties to the LOSC to develop international norms and standards to prevent, reduce and control marine pollution from all sources, both at sea and on land, and to put in place and enforce national legislation that is no less strict than such norms and standards.²⁴ Part XIII is concerned with marine scientific research, stipulating the conditions under which such research may be carried out in different maritime zones and calling for cooperation in the carrying out of such research and the publication and dissemination of its results.²⁵ Part XIV calls on States to cooperate to promote the development and transfer of marine science and technology on fair and reasonable terms.

Unlike the Geneva Conventions, which dealt with the settlement of disputes in an optional protocol, the LOSC contains an ambitious set of provisions on dispute settlement in the body of the Convention. Part XV provides that disputes concerning the interpretation or application of the LOSC that cannot be settled by consensual means may, subject to some exceptions, be referred unilaterally by any party to the dispute to binding judicial settlement, utilizing either the International Court of Justice (ICJ); the International Tribunal for the Law of the Sea (ITLOS), a new international court established by Annex VI of the LOSC; arbitration in accordance with Annex VII; or, for certain kinds of dispute, arbitration in accordance with Annex VIII.²⁶ Disputes relating to Part XI are to be settled in accordance with the specialized dispute settlement provisions of that Part.

Part XVI consists of five articles dealing with a miscellaneous selection of general matters. The last Part of the LOSC, Part XVII, headed 'Final Provisions', deals with the usual kinds of matter found at the end of multilateral treaties, including signature and ratification/accession, conditions for entry into force, reservations, and amendment of the LOSC.²⁷

4 THE LEGAL NATURE OF THE PROVISIONS OF THE LOSC

The LOSC does not contain comprehensive and detailed rules regulating specific uses of the sea, such as navigation, fishing, the mining of minerals (including

²⁴ See further Chapter 23 in this volume. ²⁵ See further Chapter 25 in this volume.

²⁶ See further Section 8 below and Chapters 17 and 18 in this volume.

²⁷ See further Sections 2, 5, 6, and 10 of this chapter.

in 2007 to commence negotiations on the PSM Agreement nevertheless underscored that the Model Scheme on PSM was not regarded as an adequate solution for the aims it pursued.

The PSM Agreement lays down global minimum standards and thereby fosters a level playing field among regions. Articles 6 and 9(4)—in conjunction with Article 4(2)–(3)—of the PSM Agreement also link future parties, to some extent, to the conservation and management measures of RFMOs to which they would not otherwise be legally bound. These linkages could be regarded as a step towards the development of a duty under general international law for port States to cooperate with a relevant RFMO; quite similar to the flag and coastal States' obligation to do so under Article 8(3) of the 1995 FSA. Crucial for this development however, is the entry into force of the PSM Agreement. As of August 2014, only nine States and the EU had ratified, accepted, approved, or acceded to the Agreement—well short of the 25 required for entry into force.⁶³

At the regional level, most RFMOs that deal with straddling, highly migratory, and discrete high seas fish stocks have developed port State practices. Some regions and some RFMOs have not, however, and some existing port State regimes lack transparency, are optional, insufficiently implemented, or apply exclusively to vessels flying the flag of non-members of the RFMO.⁶⁴

3 COASTAL STATES

3.1 Overview

At the time of writing, there are 152 coastal States and 43 landlocked States.⁶⁵ These numbers can change owing to processes such as secession, accession, and

⁶³ Information obtained from FAO, 'Treaties under Article XIV of the FAO Constitution', available at <www.fao.org/legal/treaties/treaties-under-article-xiv/en/>.

⁶⁴ See K von Kistowski et al, *Port State Performance: Putting Illegal, Unreported and Unregulated Fishing on the Radar* (PEW Environment Group Online 2010) available at <www.portstateperformance.org>.

⁶⁵ Based on United Nations Division for Ocean Affairs and the Law of the Sea (DOALOS), *Table of Claims to Maritime Jurisdiction* (as at 15 July 2011), and DOALOS, *Table Recapitulating the Status of the Convention and of the related Agreements* (as at 10 January 2014), both available at <www.un.org/Depts/los>; and the information on UN Membership at <www.un.org/en/members/index.shtml>. The Cook Islands and Niue are not UN Members at the time of writing. The following are landlocked States at the time of writing: Afghanistan, Andorra, Armenia, Austria, Azerbaijan, Belarus, Bhutan, Bolivia, Botswana, Burkina Faso, Burundi, Central African Republic, Chad, Czech Republic, Ethiopia, Hungary, Kazakhstan, Kyrgyzstan, Lao People's Democratic Republic, Lesotho, Liechtenstein, Luxembourg, Malawi, Mali, Moldova, Mongolia, Nepal, Niger, Paraguay, Rwanda, San Marino, Serbia, Slovakia,

dissolution. The implications of climate change induced sea-level rise on statehood are currently under examination.⁶⁶

Post World War II, coastal States became more prominent in the law of the sea. This process—often called ‘creeping coastal State jurisdiction’—involved a seaward expansion of coastal State maritime zones as well as an expansion of their substantive rights and jurisdiction within these zones. While coastal States initially focused on maximizing authority within a relatively narrow zone along their coasts, they subsequently claimed specific, exclusive resource-related rights in much larger adjacent areas. Some coastal States also advocated for jurisdiction to protect and preserve the marine environment within these areas. The LOSC eventually granted these, even though prescriptive jurisdiction over foreign vessels remains largely confined to applying international rules and standards.

In view of the considerable number of coastal State maritime zones as well as the significant differences between the rights and jurisdiction of coastal States and rights and freedoms of flag States in each zone, it is not possible to provide more than an overview here.⁶⁷

3.2 Coastal State maritime zones

3.2.1 *Maritime zones under coastal State sovereignty*

The LOSC stipulates that a coastal State’s sovereignty extends beyond its land territory to three maritime zones: internal waters, archipelagic waters (where applicable), and a territorial sea.⁶⁸

The marine waters landward of the baseline (for measuring the breadth of the territorial sea) are part of the internal waters of a coastal State.⁶⁹ The normal baseline is the low-water line along the coast, but a coastal State can use straight baselines in certain scenarios, provided specific conditions are met.⁷⁰ These conditions are not applicable to ‘historic bays’ or ‘historic waters’, which are internal waters on account of longstanding effective administration and control by the coastal State and sufficient recognition or acquiescence by the international community.⁷¹ So-called ‘closing lines’ are often used to delimit these bays and waters from the territorial sea.

As internal waters are part of the coastal State’s territory and therefore subject to its sovereignty, it can be assumed that the coastal State has:

South Sudan, Swaziland, Switzerland, Tajikistan, The Former Yugoslav Republic of Macedonia, Turkmenistan, Uganda, Uzbekistan, Zambia, and Zimbabwe. See also n 4 and accompanying text.

⁶⁶ See eg the International Law Association (ILA) Committee on International Law and Sea Level Rise, information available at <www.ila-hq.org>.

⁶⁷ See in particular chapters 5 and 24 in this volume. ⁶⁸ LOSC, n 3, Arts 2(1) and 49 (1).

⁶⁹ Ibid, Art 8(1). ⁷⁰ Ibid, Arts 5, 7, and 9–10. See chapter 4 in this volume.

⁷¹ See eg LOSC, n 3, Arts 10(6), 15, and 298(1)(a)(i).