

Does Colombia participate in the law of the sea?

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From many years ago, the sea and the oceans had served the human beings for different uses such as communication and commerce between cities, discovery and knowledge, the increase of the military potency of the cities, the coast defense and territory, fishing, and after some years, the use of other economic resources.

The law of the sea has many stages in its evolutive and formative process, giving itself to be known in a clear way, the way how it started to be and how, as years were passing by, it has been evolving and has been adopted each time by more states.

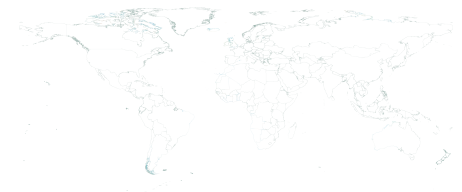
In this essay, it's going to be given many important aspects to be known about the law of the sea, its definition, origin and characteristics that had been very important in the international community involving Colombia, as well as other states in their definition of limits and sea zones, in the sea resources conservation, deals made to fish in determined territories. All of this had given place to conferences to treat and clarify important aspects that every country is willing to take care of. Not forgetting to mention the controversy caused between Nicaragua and Colombian Islands of San Andrés y Providencia, Which is still waiting for a definitive solution.

What is the law of the sea? How had it been evolving?

The law of the sea is one of the most important branches of international law, it permits to solve the state's complaints, according to its national interests, about the use of the ocean resources. The evolution that the law of the sea had showed from immemorial times has to guarantee the progress and economic development, the most important ones.

In its oldest stage, it involves the beginning of the civilizations, where the oceans started to play a very important role in the city's development; it establishes the commerce contact between the different human groups, making people get used to the sea resources in peace or war. It never existed a written law to establish the norms and state's behavior, or its mobilization between the oceans¹

1. Anand, R. P. (1982). "Origin and Development of the law of the Sea." Publications on ocean development, Vol. 7, (The Hague), p.2.



In the classic stage of the law of the sea, the commerce expansion was one of the causes for the discovery of new lands, starting in that way the International Community. In this stage the juridical sea regimen was expressed in safety and commerce terms. And the territorial sea wideness of the state was not defined in a clear way, so, for many states, it was defined by the defense capacity of their coasts².

Just from the 1st Hague Conference of 1899, is where the idea of codifying the international aspects about the sea started to grow. It was given birth to an uncountable number of conferences, meetings and congresses, until 1970. Where is necessary to highlight the first united nations conference on the law of the sea at Geneva in 1958 (UNCLOS I) which drew up four conventions: the convention on the territorial Sea and the contiguous zone, the convention on the high seas, the convention on fishing and conservation of the living resources of the high seas, and the convention on the continental shelf³.

In 1960 the II Ginebra Convention on the law of the sea (UNCLOS II) was held, nut it failed confronting the opposite positions between the states, because there was an onflow supported by United States which proposed a wideness of 6 miles of territorial sea, while the other flow constituted by the developing countries that wanted 12 miles instead⁴.

The contemporary stage starts in 1973, in Caracas, Venezuela. When the 3rd UN conference met about the law of the sea (UNCLOS III), and concludes with the text of the actual law of the sea which involves some concepts of the four Ginebra conventions of 1958⁵.

That way, the 3rd UN convention about the law of the sea, has been the most populated in the world history, talking about the people and states which participated, and is the one with the longest elaboration.

In 1982, after a very long work, it was achieved the approbation of the convention Project which is now the universal law of the sea, but there were some countries who rejected it, like Venezuela. Despite of being the convention called "Caracas convention" making honor to the nation which received them back in 1973⁶.

A very important point to put the finger on is that the states which belong to the convention can't present reservation in front of each of the articles that conform this national instrument; they have to accept its content as it is⁷.

2 Vanderpool, C. K. (1983). "Marine Science and the Law of the Sea." Sage Publications, Ltd, p.108-109.

3 Alexander, L. M. (1968). "Geography and the Law of the Sea." Taylor & Francis, Ltd. on behalf of the Association of American Geographers, p.182.

4 Oda, S. (1983). "Fisheries under the United Nations Convention on the Law of the Sea.", American Society of International Law, p.739-740.

5 Malanczuck, P. (1997). "Akehurt's Modern introduction to international Law.", Routledge, chapter 17, (London and NY), p.173.

6 Vanderpool, C. K. (1983). "Marine Science and the Law of the Sea." Sage Publications, Ltd, p.10.

7 Malanczuck, P. (1997). "Akehurt's Modern introduction to international law.", Routledge, chapter 18,(London and NY), p.299.



All of this exposed previously, gives the way to know the origin of the law of the sea. Knowing that there were some countries that didn't agree with it at first, but as years were passing by they accepted it, and agreed to comply all the established items.

Next, it's going to be shown some important aspects about topics that were held on the first United Nations conference on the law of the sea, and today, they still being relevant for the commercial, economic and politic areas of the states in the moment of making changes.

The maritime boundaries delimitation

Years ago, the states did not delimit their maritime boundaries with other states. But with the commercial exploitation and the development of the ocean resources, they have required defined areas located among operators. All of this has made that states claim new zones of maritime jurisdiction seaward and define boundaries with other states that maximize the areas over which they have exclusive authority to exploit and manage these resources. And the result is that delimitation of maritime boundaries among neighboring states has intensified more and more⁸.

That's why the maritime delimitation has benefited and benefits the coastal states industrial and technologically, and that means that the nations increase their management of living resources found in their adjacent maritime areas and take steps to protect the marine environment from damage resulting from exploitation activities.

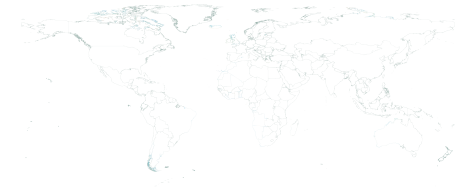
The states have established many maritime boundaries and there has been more litigation before the international court of justice on maritime boundaries than any other single subject. And also disputes over the location of maritime boundaries have been common with controversies⁹.

The international Law commission organized a group of experts to consider the formulations of norms for the maritime boundaries, and the result was the law of the sea conference of 1958 but it did not achieve the purposes that were supposed to be completed, and also the matter was subsequently taken by the international court of justice in the north sea Continental Shelf but they made the law more indeterminate.

It is also important to know that some conventions as the Geneva Convention on the territorial sea, place primary emphasis on the equidistance principle, but other conventions such as the Geneva Convention on the continental shelf places primary emphasis on delimitation agreement, both talk about special circumstances but the maritime boundaries based on the equidistance principle are distorted by the islands or curvatures of the coast and that

8 Jonathan I. Charney, L. M. A. (1991). "International Maritime Boundaries.", American Society of International Law, U.S.A, p.23.

9 Jonathan I. Charney, L. M. A. (1991). "International Maritime Boundaries." American Society of International Law U.S.A, p.27.



makes that one moves out to sea, and that makes that the court and the international law of the sea make important decisions in order to achieve an equitable solution¹⁰.

Than the matter was not addressed at the second conference on the law of the sea but finally in the third conference resulted the 1982 convention on the law of the sea which determined equidistance special circumstances for maritime boundaries in the territorial sea, the continental shelf and the exclusive economic zone¹¹.

Exclusive fishery zones and exclusive economic zones

Over the years the States have claimed for the exclusive fishery zones beyond their territorial seas¹².

The states have needed some control over exploitation of the resources and of the vast oceans if their most favorable utilization was to be assured. With the UNCLOS I, some treaties were concluded providing the effective regulation of fishing on the high seas. Without forgetting the equal access to fisheries and equal limitations on fishing¹³.

In 1960 were referred questions of the breadth of the territorial sea and the extent of the coastal state's fishery jurisdiction, in the second conference on the law of the sea (UNCLOS II). Those facts were not approved but with the practice the extent of the fisheries jurisdiction of the coastal state became separated from the notion of territorial sea, reflecting the importance of fishery resources for all states.

That's why the states obtained two very important concepts, first that the concept of the fishery zone is independent of the territorial sea and that the extension of that fishery zone up to 12-mile limit from the baselines was accepted. And second is the concept of preferential rights of fishing in adjacent waters in favour of the coastal state in a situation of special dependence on its coastal fisheries, operating in regard to other states concerned in the exploitation of the same fisheries¹⁴. That is the case of the states that had traditionally fished and also their population is economically dependent on fishing there¹⁵.

10 Malanczuk, P. (1997). "Akehurt's Modern Introduction to international law." Routledge, London and NY, (Chapter 17), p.195-196.

11 Jonathan I. Charney, L. M. A. (1991). "International Maritime Boundaries.", American Society of International Law, U.S.A, p.28.

12 Malanczuk, P. (1997). "Akehurt's Modern Introduction to international law." Routledge, London and NY, (Chapter 17), p.183.

13 Oda, S. (1983). "Fisheries under the United Nations Convention on the Law of the Sea.", American Society of International Law, Vol. 77, p.740.

14 Evans, A. E. (1975). "Fisheries Jurisdiction Case (United Kingdom v. Iceland). ICJ Reports," American Society of International Law, Vol. 69, p.161.

15 Malanczuk, P. (1997). "Akehurt's Modern Introduction to international law." Routledge, London and NY,(Chapter 17), p.183.



The UNCLOS III provided the new concept of the 200 mile exclusive economic zone in which the coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, including fishing and natural resources, and other states may continue to enjoy the freedom of navigation and overflight¹⁶, and in this conference was approved the territorial sea of 12 miles, that could not be successful in the UNCLOS II¹⁷.

In 1994 some states claimed the right to restrict activities within their zones beyond what the 1982 convention allows, and some claimed an exclusive economic zone but no more than 200 miles. It is also important to recognize that the largest exclusive economic zone belongs to the United States in the Atlantic, Pacific and Arctic Oceans, including the US island territories.

In addition to this, when the foreign ships violate the rights of a coastal state in its exclusive fishery zone or EEZ, they may be arrested by the coastal state, and also in some cases in its contiguous zone¹⁸.

What has been the colombian role in some aspects of the law of the sea?

The United Nations convened the First Conference on the Law of the Sea in Geneva in 1958. Colombia's delegates to this Conference were José Joaquín Caicedo Castilla and Juan Uribe Holguín, both former Ministers of Foreign Affairs¹⁹. And four conventions were signed during the course of the Conference, the projects for which had been prepared by the UN Legal Committee, such as the Convention on Territorial Waters and Contiguous Zone, the Convention on Continental Platform, the Convention on the High Seas and the Convention on Fishing and Conservation of Living Resources on the High Seas²⁰. The Secretary of the Third Maritime Conference was the eminent Colombian legalist and bemoaned attorney, Bernardo Zuleta Torres, as delegate of the Secretary General. Acting on behalf of Colombia were Ambassadors Germán Zea Hernández, Antonio José Uribe and Hector Charry Samper. Within the delegation, Ambassador José Joaquín Gori gave a brilliant performance²¹.

16 Oda, S. (1983). "Fisheries under the United Nations Convention on the Law of the Sea.", American Society of International Law, Vol. 77, p.741.

17 Malanczuk, P. (1997). "Akehurt's Modern Introduction to international law." Routledge, London and NY(Chapter 17), p.183.

18 Malanczuk, P. (1997). "Akehurt's Modern Introduction to international law." Routledge, London and NY(Chapter 17), p.184.

19 Holguín, J. U. (1963). "Informe de los embajadores Juan Uribe Holguín y José Joaquín Caicedo Castilla, delegados de Colombia a la Conferencia sobre Derecho del Mar."

20 Alexander, L. M. (1968). "Geography and the Law of the Sea." Taylor & Francis, Ltd. on behalf of the Association of American Geographers, Vol. 58, p.182.

21 Arteaga, J. R. B. (2004). "Memorias del encuentro Camilo Torres y Tenorio." Centro Editorial Universidad del Rosario, Colombia, p.59.



Colombia and its maritime delimitation

During the government of the expresident Alfonso Michelsen (1974-1978) the Colombian diplomacy consolidated the most of its sea limits in the Caribbean area, when there wasn't any sea reclamation to Colombia, and bordering disputes for these delimitations either, with exception of the Colombia-Venezuela case, in which an agreement haven't been achieved about the delimitation of marine and submarine areas in the golf.²²

However, the negotiation process had been developed by the use of ordinary diplomatic ways, the direct negotiation, in this case the high commissioners of Colombia and Venezuela named by them for that effects, according to the San Pedro Alejandrino Act of 1990, subscribed by the presidents Virgilio Barco Vargas and Carlos Andrés Pérez.²³

The sea delimitation between states its adjusted by a lot of technic criteria, represented in a letter which contains exact lines sustented in the treaty text, without historic or demographic considerations. An example of this sea delimitation its constituted by how Colombia could establish those spaces with all of the Caribbean countries, which shares borders with. Some of them will be mentioned up next, having in mind that there are some in force and others waiting to be ratified with the centro-american and Caribbean countries, including Ecuador which border with Colombia is the Pacific Ocean in the Ancón de Sardinias bay. Here is just going to be made reference to some of them, showing the cases in which has been more action or created controversy, without saying that the others had lost importance or total lack of it.

Starting with Ecuador, Colombia signed in Quito the Liévano-Luccio about the sea area delimitation and sea cooperation on August 23rd of 1975, it points the geographic parallel line that cuts the point where the international border (From Ecuador and Colombia) goes until the sea, by this way, is established the right of each country to practice its own sovereignty, jurisdiction or security in the sea area next to their coasts until 200 miles. Both countries are compromised to facilitate the development of the wide cooperation for the protection of renewable and no renewable natural resources, besides of giving a wide cooperation to promote the international navigation in the seas submitted to the sovereignty and jurisdiction of each country, the coordination of fishing permission and cooperation in species conservation matter, which moves away from their respective sea areas²⁴.

Keeping with the countries which have treaties with Colombia, it comes the case with Nicaragua, where the Esguerra-Bárceñas treaty is signed in Managua on March the 24th of 1928, where the change of ratifications had place in Bogotá on May 5th of 1930. In this treaty was established that Colombia recognizes the Nicaragua's sovereignty of the "Costa

22 Duarte, B. A. (1999). "Alfonso López Michelsen: escritos y acción de un constitucionalista." Instituto de Investigaciones Jurídicas, Colombia, p.100-101.

23 Otálvora, E. C. (1994). "La Paz Ramónica.", Pomaire, Caracas. p.35.

24 Truque, G. F. (1997). "Mares y Fronteras." Sociedad Geográfica de Colombia, Colombia, p.7.



de los Mosquitos” between the “Cape Gracias a Dios” and San Juan river, and of the Mangle Grande islands and Mangle Chico in the Atlantic Ocean, Nicaragua recognizes as well the sovereignty and complete domain of the San Andrés Y Providencia islands, as well as Santa Catalina and all of the islands around. But on February the 2nd of 1980, the Revolutionary Meeting of National Reconstruction instaurated in Nicaragua, disowned the treaty validity, and started a reclamation to Colombia, nowadays it is a case to Hague International Court Of Justice, which had been solved partially but no totally. The same way, the Esguerra-Árcenas treaty is still working inside the rules on International Law, precisely in the Viena Convention about the treaties rights of 1969. And it’s important to know that in this treaty, the Roncador, Quitasueño and Serrana islets are not included, because the domain about these was on litigation between Colombia and United States²⁵.

Costa Rica is another country which Colombia have had inconvenients with, because despite of having signed the Fernández-Facio treaty about marine and submarine area delimitation and sea cooperation in the Caribe sea made in San José on March the 17th of 1977, approved after by the Colombian Congress with de 8th law of 1978, the Nicaragua government has been making pressure, because this treaty, as well as the treaties with Panamá, Honduras, Jamaica and United States, recognize the San Andrés y Providencia islands belong to Colombia, in that way, they started to set the maritime limits and submarine area. Besides, Colombia has treaties with other countries such as Dominican Republic, Panamá, Venezuela, Jamaica, Honduras, and Haiti. And despite of, it doesn’t border with United States, there is an agreement of joint exploitation in fishing but not the borders, established in the Vásquez-Saccio treaty signed in September the 8th of 1972²⁶.

Parallel, the country kept going on in the sea route, giving the law 10 of 1978 dictating norms about the territorial sea, the exclusive economic zone and the continental platform, involving the national material legislation of the new law of the sea; with posteriority emits the 1436 law of 1984, that determines the straight base lines, measuring the sea areas consecrated in the law of the sea²⁷.

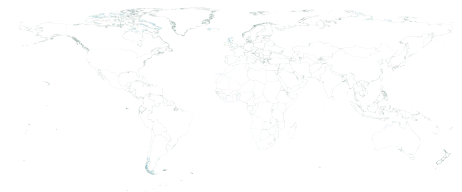
Colombia and the exclusive fishery zones and the exclusive economic zones

Colombia ratified the Conventions on Platforms and Fishing. However, it has failed to do the same with the Conventions on Territorial Waters and High Seas. In the Third Conference signed at Montego Bay on December 10 in 1982, the countries met and made some decisions such as a claim to a 200 mile limit for territorial waters by the South Pacific countries. Latin

25 Liévano, E. G. (1997). “Colombia Insular y San Andrés como archipiélago oceánico.” Sociedad Geográfica de Colombia, Colombia, p.3.

26 Truque, G. F. (1997). “Mares y Fronteras.” Sociedad Geográfica de Colombia, Colombia, p.7.

27 Colombia, P. d. I. R. d. (1984). “Decreto 1436 de 1984.” Rodrigo Lloreda Caicedo, Gustavo Matamoros Bogotá., p.1-2



Americans including Colombia, met in Mexico and Santo Domingo, and proposed the creation of a 200 mile zone classified as an economic zone, called by some the epicontinental zone, instead of 200 miles of territorial waters²⁸.

About the Exclusive Economic Zone, States like Colombia, Chile, Ecuador and Peru joined the 1982 letter to the president of UNCLOS III claiming to be the first to declare the concept of the EEZ in the Santiago declaration²⁹, they accepted that this zone has a width of 200 miles measured from the base lines, and exists only from territorial waters. Those countries talked about the necessary restrictions on the exercise of sovereignty and jurisdiction imposed by international law to permit the freedom of navigation, a very important issue to resolve³⁰.

In the case of the Platform and Exclusive Economic Zone, jurisdiction is exercised only over the exploitation of the resources on the platform, on the bed and in the subsoil. In the economic zone it is exercised over resources found in overlying waters, extending to the bed and subsoil, but this is applied only when the zone exceeds the platform. But the coastal states exercise sovereignty in the Exclusive Economic Zone for exploration, exploitation, conservation and administration of living and non-living resources in waters overlying the bed, and the bed itself and subsoil³¹.

This topic was very important for Colombia and the other Latin-American States which participated actively in the convention and established the parameters of both the exclusive economic and fishery zones, and how they must be respected by all states in the world.

In addition to this and according to the databases of the "sea around us Project" found in the webpage, it can be showed that the area of the Colombia's ZEE is 817,816 (21,419) km² ³², while for example for the US, only the west coast is 825,549 (30,050) km² ³³.

To sum up, it is clear that the law of the sea is one of the most important branches of the international law, which permits to use the ocean resources in a good way, and when that does not happen, the States can claim before the international court or before tribunals which are part of the 4 options of the parties in the section 2 of the system in the international Law convention. The dispute settlement system of the 1982 law of the sea

28 Garcia-Amador, F. V. (1974). "The Latin American Contribution to the Development of the Law of the Sea." American Society of International Law Vol. 68, p.41-42.

29 Kwiatkowska, B. (1989). "the 200 mile exclusive economic zone in the new law of the sea." Publications on ocean development U.S.A and Canada, p.209

30 Garcia-Amador, F. V. (1974). "The Latin American Contribution to the Development of the Law of the Sea.", American Society of International Law Vol. 68, p.38

31 Oda, S. (1983). "Fisheries under the United Nations Convention on the Law of the Sea.", American Society of International Law Vol. 77, p.741-743

32 "Sea around U.S Project." The Pew Charitable Trusts.URL: <http://www.seaaroundus.org/eez/170.aspx>, Accessed: 28/03/2010.

33 "Sea around U.S Project." The Pew Charitable Trusts.URL: <http://www.seaaroundus.org/eez/848.aspx>, Accessed: 28/03/2010.



convention provides for some form of binding third-party decision and also lays down the option of non-binding conciliation (article 284)³⁴.

The international law of the sea has not only been used in the war but also has been used in peace times in order to resolve the interests of the merchant fleets and the fishing industry. It includes topics such as the exploitation and exploration of the resources in the international maritime zone, the territorial sea and the contiguous zone, the continental shelf, the exclusive economic zone, the fishery zone, the preservation of the sea resources, and the scientific investigation of the oceans³⁵.

That's why its evolution has been very fast and has been the base for the socioeconomic development of the states and also to control the rational use of ocean resources for the benefit of the people. And like that, there is no discrimination in the moment of the participation of industrialized states, maritime powers, and also developing countries without taking into account the social, economical or political position.

After the three conferences made, the result was the adoption of the 4 conventions about the territorial sea, the contiguous zone, high seas, fishery and its preservation and the continental shelf. And with the third conference made in Ginebra, Switzerland, they formulated a new legal order for the seas and oceans of the world, taking into account the needs and the interests of the people and their resources³⁶. And besides that, it is important to recognize that the exclusive Economic zone was born in Latin America and represents one of the biggest achievements in the diplomacy of the third world states, because it is one of the instruments that can be used in bilateral, regional and multilateral forums and exploit resources more equitably³⁷.

The third United Nations convention of the law of the sea is the result of three decades of hard work of the international community, through the Organization of the United Nations, fulfilling the mission which marks the Charter, to promote the development and codification of international law³⁸.

During all this process, Colombia has been present and could make treaties with other countries, with them, it has won territorial extension, bearing in mind that the San Andrés y Providencia islands has been also included. Besides, Colombia could define, using equidistance and the intermediate line, the almost totality of its sea and submarine spaces in the Pacific Ocean and the Caribbean sea as well, under parameters and fair politics, this situation gave it special

34 Malanczuk, P. (1997). "Akehurt's Modern introduction to international law", Routledge, chapter 18, (London and NY), p.299.

35 Malanczuk, P. (1997). "Akehurt's Modern Introduction to international law." Routledge, London and NY(Chapter 17), p.183.

36 Alexander, L. M. (1968). "Geography and the Law of the Sea." Taylor & Francis, Ltd. on behalf of the Association of American Geographers, p.182.

37 Kwiatkowska, B. (1989). "the 200 mile exclusive economic zone in the new law of the sea." Publications on ocean development U.S.A and Canada, Vol. 14, p.209

38 Vanderpool, C. K. (1983). "Marine Science and the Law of the Sea." Sage Publications, Ltd, p.10.



consistency and stability to its sea borders, which are adjusted in its formation to norms and principles accepted by the International Community³⁹.

This way, Colombia had been part of the law of the sea, actively participating of conventions and conferences, had ratified treaties with other countries, in that way, it could establish and define its sea borders and has respected everything that has been established in these conventions. Its governments since the 70's had been developing this process becoming an active part of the law of the sea; besides, with its definition of the exclusive fishery zone and the exclusive economic zone, it has achieved a favorable commercial interchange and had developed activities for the nation progress. It is true that it has been involved in controversies with countries like Nicaragua, but its expected with the pass of the time, get a fair agreement, where Colombia doesn't have to be the harmed one.

³⁹ Truque, G. F. (1997). "Mares y Fronteras." Sociedad Geográfica de Colombia, Colombia, p.7.



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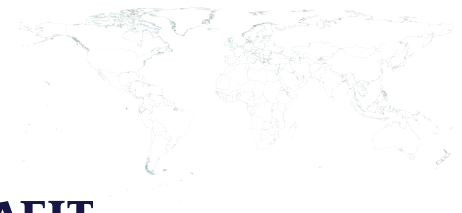
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