

Nurana Janlar Huseynova

Baku State University

master

nuranahsynva@gmail.com

PREVENTION FOR INFRINGEMENT OF COASTAL STATES' LAWS AND REGULATIONS IN THE CONTIGUOUS ZONE

Summary

The modern contiguous zone is the result of the coming together of different kinds of claim to maritime jurisdiction definable in State practice. It is the most poorly understood and used international maritime zone. Article 33 of UNCLOS 1982 only controls regarding special jurisdiction for customs, taxation, immigration, and health or immorality, while if it is related to Article 303 paragraph (2) permits the state to conduct its legal authority in the field of protection of underwater cultural heritage. Confusion about exactly what enforcement operations can lawfully be carrying out by coastal states against foreign ships in the zone has existed from its creation in 1958.

Key words: *contiguous zone, special jurisdiction, regulations, state's control, custom, fiscal, immigration, sanitary*

Introduction

It had continued nearly a century to achieve the recognition of the contiguous zone concept and precise definition of the jurisdictions that can be used within the coastal state. Approximately in the middle of the 19th century the 3-mile limit of territorial waters became the widely accepted norm of International law. Therefore, there was a need to establish a clear position in International law for those jurisdictions that many coastal states successfully enforce beyond the 3-mile limit. The concept of contiguous zones as originated in the Hovering Acts developed later in the 19th century where a number of countries exercised their jurisdiction beyond their territorial seas with the aim of protecting income against smuggling crimes and public health against the spread of infectious diseases. The Aim of the contiguous zones is as a form of surveillance and prevention of breaches of legislation related to customs, fiscal, immigration, or sanitary.

Contiguous Zone is a part of the state jurisdiction which referred to as "special jurisdiction" because the coastal state needs the power to exercise security of state interests in customs, fiscal, immigration or sanitary. The contiguous zone is identified in UNCLOS article 33, which was adopted as a general regime of international law for the first time in the Convention on the Territorial Seas and the Contiguous Zone adopted in Geneva on April 29, 1958. Although all other international maritime zones have several defining articles in the LOSC, there is single article related to contiguous zone with the exception of an additional supporting paragraph concerning the protection of archaeological and historical objects in article 303(2). The relevant provision of UNCLOS reads:

In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:

(a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;

(b) punish infringement of the above laws and regulations committed within its territory or territorial sea. (1, art.33)

Comparative analysis reveals 3 important differences between Article 33 of the Convention on the Law of the Sea and Article 24 of the 1958 Convention. Firstly, Article 33 does not specify that the contiguous zone constitutes a part of the high seas. Simultaneously, no additional qualification has been introduced, since, theoretically, there are a few options possible. For the coastal state may establish an economic zone, a zone of exclusive fishing or of fishing protection, or may desist from establishing any zone, and then the high seas area beyond the limits of territorial waters holds its former status. Two, the UN Convention on the Law of the Sea establishes as the farthest permissible limit of the zone, not 12 but 24 nautical miles from the baselines of the territorial sea, and three, Article 33 of this Convention lacks Article 24 paragraph 3 of the Geneva Convention, regarding the delimitation of zones between the states whose coasts are opposite or adjacent to each other. (2, p.207)

The concept of states exercising jurisdiction outside their territory arose as early as the 18th century in relation to the smuggling of goods into Great Britain, paving the way for the United States liquor laws and

the Fordney–McCumber Tariff of 1922, French laws which created a customs zone of more than 10 nautical miles breadth, Chile's 12 nautical mile policy and customs zone. (3, p.48) The main intentions of States in relation to such a zone have always been related to customs control and security purposes; seemingly, coastal states felt the need for protection starting beyond their territory. Naturally, this need collided with the concept of the freedom of navigation and the freedom of the high seas. The establishment of the contiguous zone in 1958 followed a proposal for its creation at the 1930 Hague Conference and a 1950 report of the International Law Commission. With adoption of the TSC Convention, states reached a compromise on the contiguous zone, codified in TSC Convention art 24, which is now UNCLOS art. 33(1).

A conclusive understanding of UNCLOS art. 33 and the rights it grants presupposes a distinction between the different types of jurisdiction. A state in the contiguous zone may have the necessary control to prevent violations of its customs, fiscal, immigration or sanitary laws within its territory. In *Saiga No 2* before the ITLOS, Guinea claimed the right to prescribe customs and related laws in its contiguous zone, which it may then, in turn, enforce. However, closer scrutiny of the rights outlined in UNCLOS art 33(1)(a) under the means of interpretation outlined by the Vienna Convention on the Law of Treaties ('VCLT') art 31 reveals that the legislative jurisdiction Guinea claimed over its contiguous zone is limited to the exercise of control rights. (4, p.6)

It is already implicated by the wording of UNCLOS art. 33, which gives the state only the right to exercise the control necessary to prevent violations of said laws. The term 'control' simply refers to the 'power or authority to operate, conduct, inspect, limit, regulate, govern, administer, or supervise'. More importantly, UNCLOS art. 33 gives the right to prevent violation of customs and connected laws only within its territory or territorial sea. Therefore, at the very least expression indicates that the right to prescribe customs, fiscal, immigration and sanitary laws must be limited to the zone where they prevail, namely the territorial sea. (4, p.6)

The most difficult aspect about the contiguous zone is the scope of the unique preventative powers that may be exercised by coastal States within it, which are limited to four ill-defined topic areas in Article 33 of LOSC. Art 33 (1) (a) is not of punitive, but of preventive nature. According to article 33(1) (a) states may stipulate laws compelling incoming ships to obey orders to halt, to endure inspections, searches and verifications of the ship name and its registration number when there exists reason to believe a ship will violate customs, immigration, fiscal or sanitary laws should it enter the territorial sea. Judge Laing considers this form of protection of coastal state interests 'protective jurisdiction'. (5, p.) While article 33(1)(a) does not give coastal states the right to determine and impose customs, immigration, fiscal or sanitary laws within the contiguous zone when there has been no previous penetration of the territorial sea, it authorizes states to legislate and act upon control modes for protecting its territorial sea from future violations. The term 'protective jurisdiction' in the context of art 33(1)(a) therefore provides for the prescription and imposition of control rights, the 'species of authority for the protection of coastal State interests'.

Protective jurisdiction in the context of art 33(1)(a) cannot be equated with the protective principle under international criminal law. The protective principle serves to establish 'extraterritorial effect to legislation criminalizing conduct damaging to national security or other central State interests'. (6, p 712) In contrast, protective jurisdiction in the contiguous zone is of an exclusively administrative nature, enabling the coastal state to protect itself from potential future criminal conduct in the territorial sea.

State practice in implementing the contiguous zone is not uniform, with some incompatibility seemingly apparent between the international requirements of Article 33 of the LOSC and domestic laws. One of the countries that has implemented contiguous zones in full is the People's Republic of China (PRC), the PRC has the authority to regulate contiguous zones with the aim of preventing and imposing sanctions for violations of security, customs, fiscal, health, and policies or supervision of the entry and exit of goods/people from/to land, inland waters and territorial sea (Standing Committee of the National People's Congress of the People's Republic of China, 1992), for example when there are foreign vessels that violate the laws and regulations in additional zones, the authorized Chinese officials have sufficient reason to can pursue hot pursuit and prevent violations from occurring within the contiguous zone of the PRC. (7, p.2749)

Problems will arise if the rules regarding contiguous zones related to customs, fiscal, immigration, and sanitation have not been comprehensively regulated, so that they will disturb the country's sovereignty. In the 1980s (BPHN, 1980) Dutch citizens carried out the lifting of the shipwreck of the Geldermarsen and its cargo which was then brought to the Netherlands from the maritime zone which was supposed to be a contiguous zone of Indonesia. The Indonesian government at that time did not take any action and was greatly disadvantaged because it did not have a legal basis for legal action against the Netherlands considering the Indonesian Government had not yet announced the outer boundaries of the Indonesian

Contiguous Zone. The Dutch action at that time could be considered as a violation because it was carried out without Indonesian approval in accordance with Article 303 paragraph (2) of UNCLOS 1982, which stated that "To control the circulation of such objects (ancient objects and historical objects found at sea) The coastal state may, in applying article 33, assume that the taking of such objects from the seabed in the area referred to in that article, without the consent of the coastal State concerned, would constitute a violation in its territory or territorial sea, of laws and regulations the rules intended in that article."

Indonesia itself has ratified UNCLOS 1982 in accordance with Law Number 17 of 1985 concerning the Ratification of UNCLOS 1982. So that it can be interpreted that efforts to synchronize national regulations with international law have occurred, but in its application, this is not fully accommodated. In the field of immigration, Indonesia is a favorite place for illegal immigrants to reside or only as a transit point to seek better asylum (Irma Ganesia, 2018). Aside from immigration issues, fiscal and sanitation issues also need to be synchronized so that the Contiguous Zone can play an important role in protecting the sea area. (7, 2751-2752)

The United States also has jurisdiction to supervise and prevent violations of regulations, customs, fiscal, immigration, and sanitation. In addition to the four things that have been regulated in Article 33 paragraph (1) of UNCLOS 1982, the United States also regulates the importance of taking valuable objects in the sea territory up to 24 nautical miles. Violators of oil pollution regulations within United States' sanitary zone are subject to fine or imprisonment or both, with the vessel held as security for payment of the fine. (8, p.96-97)

The Contiguous Zones in Australia are regulated in the Sea and Submerged Land Act 1973, letter (c) that the Contiguous Zones, located 24 nautical miles from the coastline. In this maritime zone, Australia has jurisdiction in the fields of custom, fiscal, immigration, and sanitary laws. Australia has a strategy in protecting these sea areas called the Border Protection Command (9). This strategy is to protect natural resources for sustainable development and can coordinate with regard to prevention, control, and response to threats in the sea area.

The Indian government has set contiguous zones and authorities related to custom, fiscal, immigration and sanitary, including the authority of "the security of India", as seen in Indian legislation namely The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, Act No. 80 of 28 May 1976. (7, p. 2755)

On 15 February 2012, two Italian marines on board an Italian-flagged vessel, the MV Enrica Lexie allegedly shot and killed two persons on board a fishing vessel, the St Antony. They had perceived them as pirates. The two marines were later arrested. The question in the Supreme Court of India was, primarily, whether the Union of India had adequate jurisdiction to judge them.

'India is entitled both under its domestic law and the public international law to exercise rights of sovereignty up to 24 nautical miles from the baseline on the basis of which the width of the territorial waters is measured [...]. The incident of firing from the Italian vessel on the Indian shipping vessel having occurred within the contiguous zone, the Union of India is entitled to prosecute the two Italian marines under the criminal justice system prevalent in the country.' (10)

Conclusion

Contiguous zones are a practical method of protecting national interests only in specific areas, but they are coming to have a fixed and meaningful content. Article 33 of the LOSC closely mirrors Article 24 of the 1958 Convention on the Territorial Sea and Contiguous Zone which established the contiguous zone in international law. Article 33 of the LOSC provides that coastal states can exercise the control necessary to prevent infringement of their customs, fiscal/ immigration and sanitary laws and regulations within their territory or territorial sea. The most difficult aspect about the contiguous zone is the scope of the unique preventative powers that may be exercised by coastal states within it, which are limited to four ill- defined topic areas in Article 33 of LOSC. State practice in implementing the contiguous zone is not uniform, with some inconsistency seemingly apparent between the international requirements of Article 33 of the LOSC and domestic laws. The urgency is necessary to establish a Contiguous Zone, because coastal countries need the power to secure national interests such as customs, immigration, fiscal, and sanitation.

References

1. United Nations Convention on the Law of the Sea (LOSC), 1982;
2. Janusz Symonides, origin and legal essence of the contiguous zone, Ocean Development& International Law, published online: 2009;

3. Seokwoo Lee, Keyuan Zou, Sustainable Development and the Law of the Sea, Boston, Vol.2; 2014
4. Philipp Eschenhagen and Max Jürgens, Protective jurisdiction in the contiguous zone and the right of hot pursuit: Rethinking coastal states' jurisdictional rights, Melbourne Journal of International Law, Vol 19, 2018;
5. Saiga No 2, ITLOS Reports 10, Judge Laing, 1999;
6. Iain Cameron, "International Criminal Jurisdiction, Protective Principle" in Rüdiger Wolfrum (ed), Max Planck Encyclopedia of Public International Law, Oxford University Press, vol 5, 2012;
7. Giustin Aryahya Lubis, Dina Sunyowati, The Contiguous Zones as Special Jurisdiction: A Case Study in Indonesia, Talent Development & Excellence Vol.12, No.1, 2020, <http://www.iratde.com>
8. United Nations Legislative series, Laws and regulations on the regime of territorial sea, 1957
9. www.defence.gov.au/Operations/BorderProtection/default.asp.
10. Cambridge International Law Journal, The Enrica Lexie Incident: Jurisdiction in the Contiguous Zone, Edward Elgar Publishing
11. <http://cilj.co.uk/2014/04/19/enrica-lexie-incident-jurisdiction-contiguous-zone/>

Rəyçi: h.f.d. C.Hacıyev

Göndərilib: 30.03.2021

Qəbul edilib: 01.03.2021