IMPACTS OF LANGUAGE: Creeping Jurisdiction and its Challenges to the Equal Implementation of the Law of the Sea Convention

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With the 1982 Law of the Sea Convention the international community attempted to create a comprehensive governance regime for maritime activities that would benefit all states. However the vague nature of various provisions has led to creeping jurisdiction by coastal states. Claims extending jurisdiction beyond what the Convention allows have contributed to its unequal implementation. This paper considers the relationship between language and creeping jurisdiction by examining how language has enabled it, factors behind jurisdictional expansion, and how creeping jurisdiction and unequal application of the treaty affects party states and states that have yet to accede to the Convention

This paper examines the effects of creeping jurisdiction on the equal implementation of the 1982 Law of the Sea Convention by looking at the relationship between the phenomenon and language. Previous studies examining creeping jurisdiction have tended to be divided into two general areas, those considering the expansion of jurisdiction in relation to a specific maritime zone such as the exclusive economic zone or continental shelf and those looking at the phenomenon as part of a more general study of the law of the sea. Few have looked specifically at how language has enabled the existence of creeping jurisdiction across the entire law of the sea legal framework. And taken a step further, how language has produced, through creeping jurisdiction, an unequal application of the Convention's provisions within the international community.

The first section will look at the historical characteristics of the debate between free and closed seas beginning in 1609 with Dutchman Hugo Grotius, up through 1958 and the eve of the First United Nations Convention on the Law of the Sea. The second section will cover the origins of the term "creeping jurisdiction" as well as its scope within this paper. Section three will consider how creeping jurisdiction impacted the first and second UN law of the sea negotiations, by demonstrating how concerns over widespread coastal state attempts to expand their jurisdiction seaward led to calls for both the 1958 and 1960 meetings. In addition, how the failure of these meetings to halt expansionist efforts and the subsequent explosion of excessive maritime claims in the 1960s and early 1970s, contributed to the convening of yet another meeting in 1973 resulting in the 1982 Law of the Sea Convention presently in force today. The fourth section shows how language can lead to creeping jurisdiction by providing examples within the major maritime zones of the territorial sea, contiguous zone, exclusive economic zone (EEZ), and the continental shelf, of how the generalized and incomplete language of some articles within the Convention leads certain coastal states to creep their jurisdiction seaward. The baseline system and islands regime are considered due to their impacts on the aforementioned zones. The factors behind coastal states attempts at creeping jurisdiction are considered in section five. The affects of creeping jurisdiction on states parties to the Convention are looked at in section six. How may states react to the unequal implementation of the agreement that arises from creeping jurisdiction? Finally, using the United States as an example, section seven looks at how such inequality may impact states that have yet to accede to the Convention but are looking to do so in the

near future. The conclusion of the paper looks to future UNCLOS meeting and the law of the sea by considering creeping jurisdiction and the waters above the outer continental shelf as the next probable battle ground between open and enclosed sea advocates.

I. MARITIME JURISDICTION

A Historical Look

The recent discussions over maritime jurisdictional expansion are part of a debate that has been ongoing for centuries. In the early seventeenth century, in response to the claims of Spain and Portugal of absolute sovereignty over the major oceans of the world, Hugo Grotius, a Dutch lawyer, published *Mare Liberum* (Free Sea) in 1609 (Brown, 1973). In it Grotius argued "the sea could not subjected to private ownership, except in the case of gulfs and straits, and that navigation and fishing rights in the free seas should be respected" (Alexander, 1983, p. 562). While the Grotian theory of free seas would become the international standard for the next 300 years it was not without its challengers. In 1619 an English barrister, John Selden, published his treatise on the law of the sea entitled *Mare Clausum* (Closed Sea) in which he maintained that the seas could in fact be privately owned. Moreover, because the various resources of the seas were limited, states had the right and duty to protect their interests by restricting the use and access of areas to their discretion (Alexander, 1983). Such a contention was hardly surprising, as the British Crown had been maintaining claims to the "British Seas" as early as the tenth century (Brown, 1973). Although not as widely accepted as those of Grotius, many of Selden's theories of maritime jurisdiction over the seas would find their way into the concept of the territorial sea (Ball, 1996). These two maritime jurisdictional concepts, that of the territorial sea within which existed sovereign control over activities such as navigation, fishing, and customs, and that of the high seas where there existed no jurisdiction and all nations would have the freedoms of exploration, exploitation and navigation, became the fundamental principles of international law for the next several centuries.

The Modern Age

The issue of maritime jurisdiction reemerged in the early twentieth century as states began to expand the limits of their territorial seas past the traditional 3 nautical miles (hereafter known as 3 miles) of customary law. Although most states laying claim to a territorial sea adhered to the 3-mile limit, other states laid claim to additional ocean space. These states included Sweden, Norway, Finland, and Denmark all of whom claimed a 4-mile limit, and Italy who claimed a 6-mile limit (Alexander, 1983). The 1930 Conference on the Codification of International Law (the 1930 Hague Conference) attempted to standardize the breadth of the territorial sea. A survey undertaken in preparation for the conference found that twenty countries had claimed 3-mile limits, four had claimed 4-mile limits, and two claimed 6-mile limits (Alexander, 1983). Following the failure of the conference to reach a consensus over a limit, additional states began to make expanded claims so that by 1945 fifteen states claimed between 4 and 12-mile territorial seas (Alexander, 1983).

Though discussion over expanded claims of jurisdiction, particularly as it pertained to a state's territorial sea, began anew in the early twentieth century, the middle of the century saw an explosion of maritime claims both in the geographical size of ocean space and the functional jurisdictional rights being asserted. Many trace this sudden increase to 1945 and the Truman Proclamations. On 28 September 1945 United States President Harry Truman issued two proclamations that would substantially change the traditional regime of the law of the sea. Proclamation 2667 gave the United States Government "jurisdiction and control" over "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" (Woolley & Peters, 2008). Proclamation 2668 gave the United States the right to "establish conservation zones in those areas of the high seas contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale" (Woolley & Peters, 2008). The declaration also asserted the right to regulate and control fishing activities within established conservation zones (Woolley & Peters, 2008).

These two proclamations would signal the end of the traditional law of the sea regime which limited coastal state jurisdiction to the short belt of the territorial sea and left majority of the world's oceans open to all. In short order countries around the world moved to follow the US' example issuing their own similar declarations and expanding their jurisdiction. Despite the fact that both of Truman's proclamations took careful note to assert only control and authority over the resources of the continental shelf and fisheries activities and not ownership of the ocean itself, some states that followed suit went further with their proclamations (Ball, 1996). The results of these early declarations, in which some states claimed jurisdiction and control over resources in the seabed and waters off their coasts, while others claimed full ownership of the entire continental shelf and water column, led to a host of varying unilateral claims to areas of ocean space outside the territorial sea considered to be high seas (Churchill & Lowe, 1999). In the case of several Latin American states, claims not only included the continental shelf and the superjacent waters, but even the air space above these waters (Churchill & Lowe, 1999). In 1952 the countries of Chile, Peru, and Ecuador came together and signed the Santiago Declaration.[1] According to Nelson (1973), the agreement went beyond just claiming additional authorities over waters contiguous to the coasts of the signatory states. Instead, the Declaration effectively expanded territorial sea rights out to a distance of 200 nautical miles, "the Declaration of Santiago…mentioned the right of innocent and inoffensive passage, a right which is only identified with the territorial sea" (Nelson, 1973, p. 671).

In 1958 a survey of state practice showed that 37% of countries reporting claimed a territorial sea of 3-miles, down from 59% found in 1950. A further thirteen countries claimed 12-miles and three claimed 200-miles (Alexander, 1983). This ever-increasing seaward expansion of coastal states jurisdiction was one of the main reasons for the convening of the first United Nations Conference on the Law of the Sea in 1958. But before discussing the impacts that creeping jurisdiction has had on the success and implementation of the Law of the Sea conferences and agreements, it is important to consider the meaning of the term "creeping jurisdiction."

II. ORIGINS, DEFINITION, & SCOPE OF THE TERM

The origins of the term "creeping jurisdiction" are directly related to the Truman Proclamations of 1945. As an example of almost instant customary international law many of the principles found in Proclamation 2667 became the foundation for the 1958 Convention on the Continental Shelf (CSC). Unfortunately the major flaw of the Proclamation was carried over into the text of the CSC. While the agreement gives coastal states the sovereign right to explore and exploit the natural resources of their continental shelves, Article 1 of the Convention defines the legal status of the shelf as being the seabed and subsoil past the territorial sea up "to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources…" (United Nations, 1958). Often called the "open-ended outer limit provision," the exploitability clause of the definition contained within it the very real risk of unlimited expansion of coastal state jurisdiction seaward of the territorial sea (Franckx, 2007, p. 477). According to Franckx

[1] Costa Rica would sign on to the agreement in 1955 (Nelson, 1973).

(2007), when presented with the speed of technological developments and possible coastal state occupation of the entire continental shelf and beyond, Dr. John Craven, a chief scientist at the Department of the United States, commented on the probability that jurisdictional rights once claimed over the seabed would soon be claimed over the above water column above as well. Indeed, a statement by the Singaporean delegate during the Third United Nations Conference on the Law of the Sea (UNCLOS III) negotiations in 1980 demonstrates how large of an impact the exploitability clause of the Convention had on the extension of maritime claims: "The exploitability criterion in the 1958 Convention of the Continental Shelf had led to creeping jurisdiction over the last 20 years" (Franckx, 2007, p.447). Although the concept of creeping jurisdiction initially began with discussions concerning the continental shelf, the term soon started to encompass the general process of jurisdictional extension, as many coastal states began to expand their jurisdictional claims to include the water column above the continental shelf (Franckx, 2007).

As states continued to creep their jurisdiction seaward in both the seabed and water column and the debate throughout the international community became more heated alternative names were offered for the process of ever-expanding maritime claims (Franckx, 2007). The ocean enclosure movement (Alexander, 1983), territorialization of the oceans (Booth, 1983), creeping unilateralism (Scovazzi, 2000), parcellation (Brown, 1977), and propertization (Knight, 1981) had all been used to describe the extension of maritime claims by coastal states. In addition scholars have also sought to define state expansion of competence by differentiating between its results, whether it led to a geographical increase in ocean space or a functional increase in regulatory authorities. Ball (1996) defines "creeping jurisdiction" as a coastal state's extension of their authority out past the 200-mile limit of the exclusive economic zone, while "the process of regulating more and more activities within an EEZ" is defined as "thickening jurisdiction"(p. 103). For the purposes of this paper I will define creeping jurisdiction as the expansion of both regional and functional jurisdiction by a coastal state seaward of the territorial sea limit, beyond which is expressly laid out in law of the sea agreements of the time.

III. UNCLOS NEGOTIATIONS & CREEPING JURISDICTION

UNCLOS I & II

The resulting outbreak of creeping jurisdiction from the Truman Proclamations became such a matter of concern for the maritime powers of the world that many began to support the convening of an international conference that would work to standardize the law of the sea and halt expansionist claims. The First United Nations Conference on the Law of the Sea (UNCLOS I) was held in Geneva in 1958. Eighty-six States attended the meeting (Churchill & Lowe, 1999). Four agreements came from the Conference: the Convention on the Continental Shelf (the Continental Shelf Convention), the Convention on the High Seas (the High Seas Convention), the Convention on the Territorial Sea and the Contiguous Zone (the Territorial Sea Convention), and the Convention on Fishing and Conservation of the Living Resources of the High Seas (the Fishing Convention). However for all the effort that went into garnering the adoption of these agreements two key elements were absent from the suite of conventions, thus allowing for creeping jurisdiction. Firstly, as mentioned above, the imprecise language of the Article 1 definition of the Continental Shelf Convention inevitably led states to loosely interpret the provision issuing the maximum claims they could reasonably get away with. Secondly, although the territorial sea had been one of the focal points of the conference its participants failed to reach a consensus on a standard breadth for the zone. Maritime powers and traditionalists such as the United States and Great Britain continued to push for the maintenance of the 3-mile limit while other states argued they

should be able to choose any limit up to twelve miles (Alexander, 1983). In the absence of clarity on a limit, states were free to expand their territorial sea claims out as they saw fit.

At a second meeting, the Second United Nations Conference on the Law of the Sea (UNCLOS II) held in Geneva in 1960, the breadth of the territorial sea was once again a focal point of the conference, but by this time fishing rights had also gained importance. Due to a lack of a confirmed territorial sea limit, states were prevented for consistently implementing some of the provisions found in the 1958 Fishing Convention. This had resulted in a wide range of unilateral claims to exclusive fishing and management rights over an expanded territorial sea as well as the water contiguous to it. In attempt to solve both problems a compromise was put forward that combined a 6-mile territorial sea limit with an additional exclusive fisheries zone that would be able to extend out from six to 12 miles offshore (Nelson, 1983). Unfortunately, as was the case two years before, the proposal was defeated and no consensus was reached.

Meanwhile countries continued to creep their jurisdictional claims seaward issuing claims to authorities over fishing, navigation, customs, immigration, and sanitation. In 1970, in an effort to gain acceptance of their 200-mile claim by creating a regional consensus on the matter, nine Latin American states: Argentina, Brazil, Chile, Ecuador, El Salvador, Nicaragua, Panama, Peru, and Uruguay signed the Montevideo Convention (Nelson, 1983). The agreement once again used the principles found in the Truman Proclamations to, according to Paragraph 2 established maritime limits

> in accordance with their geographical and geological characteristics and with factors governing the existence of marine resources and the need for their rational utilization (Nelson, 1983, p. 675).

Paragraph 6 went on to state that any measures undertaken to exercise the right of sovereignty and jurisdiction within the areas mentioned would be exercised “without prejudice to freedom of navigation by ships and overflying by aircraft of any flag” (Nelson, 1983, p. 675). Nevertheless subsequent interpretations by the various signatory states would prove otherwise. The countries of Brazil, Panama, Peru, Nicaragua, and Ecuador would pull from the Santiago Declaration of 1955 in their interpretations of Paragraph 6, describing the freedom of navigation within the 200-mile claim as the same as that enjoyed in the territorial sea, innocent passage. Thus as with the Santiago Declaration these five coastal states extended their authority to claim competence over navigational rights in order to restrict them to those enjoyed within the territorial sea. Such actions agreed with what Richard Bilder described to the be effect of creeping jurisdiction: “an coastal extension of jurisdiction into the contiguous sea, even if functionally limited, tends over time to expand to include more claims, until it becomes the functional equivalent of a territorial sea” (p.104). Previous Presidential Declarations from Peru and Chile in 1947 and Costa Rica in 1948 expressly recognized the freedom of navigation (Nelson, 1973).

In considering the increase of expansionist maritime claims it is also necessary to take note of the importance that the end of colonialism had on the political make-up of world. With the end of World War II dozens of former colonies of Great Britain, France, the United States, Belgium, and Germany became independent states. In gaining their independence these countries assumed the same territorial ambitions as the colonial powers before them including those involving the sea. In the period between 1943 and 1969 sixty-nine countries became independent with fifty-five of these being coastal states (US Dept. of State, 1969). Concerned over ensuring their sovereign rights to marine resources of their coasts, this new group of states began to add their voices to the ongoing debate over the law of the sea.

At the end of the 1960s it seemed that instead of achieving the goal of halting creeping jurisdictional claims as was the intention of UNCLOS I and II, both meetings had instead contributed to its proliferation due to their failure to provide the international community with concrete language describing limits to such important international maritime issues as the territorial sea, the continental shelf, and fishing rights. With the ongoing absence of this language and the "recognition that the various parts of the law of the sea were inextricably inter-related" the UN General Assembly agreed to convene another conference on the law of the sea "with the task of producing a comprehensive Convention on the Law of the Sea" (Churchill & Lowe, 1999, p.16).

UNCLOS III

The first session of the Third United Nations Conference on the Law of the Sea (UNCLOSA III) was held in December 1973 in New York. Attended by around 150 states, almost double the number of participants at the first UNCLOS meeting, UNCLOS III was an attempt by the international community to create a standardized governance regime for maritime activities that would provide equal benefits for both the traditional maritime powers and the newly emerging coastal states of the developing world. In many ways the Law of the Sea Convention, adopted by participating states on 30 April 1982, achieved this goal. However, as with previous law of the sea agreements the vague and incomplete nature of the some of the Convention's text has led to irregularities in its implementation as states continue to creep their jurisdiction seaward. Moreover with the addition of such legal concepts as the exclusive economic zone, archipelagic waters, and the deep-seabed to the existing regimes of the territorial sea, contiguous zone, continental shelf, and high seas, states now have a variety of ways in which they may seek to creep their jurisdiction past what is described within the Convention.

IV. LOSC MARITIME ZONES: HOW LANGUAGE LEADS TO CREEPING JURISDICTION

Creeping jurisdiction as it relates to the Law of the Sea Convention may occur as the result of number of circumstances including selective implementation of treaty provisions, the outright disregard of undesirable restrictions, or the use of textual weaknesses to simultaneously adhere and circumvent its stipulations. The process by which language can drive creep jurisdiction is considered in this section. Each of the major regimes of the LOSC is affected by ambiguous and indefinite wording that once exploited by coastal states allows for the extension of jurisdiction past what is acceptable according to international law.

Baselines

Because baselines are the starting point (or in the case of internal waters, the ending point) from which the territorial sea, contiguous zone, continental shelf, and exclusive economic zone of a coastal state are measured it is important to look first that their construction. Part II of the Convention describes two types of baselines, normal and straight. Normal baselines are defined in Article 5 as "the low-water line along the coast as marked on large-scale charts officially recognized by the coastal state" (UN, 1997). The problem with the definition comes from the phrase "low-water line" or low-tide line. There are several different types of tides, which vary greatly depending on the time of day, time of month, and location on Earth. Furthermore, certain types of tides have more than one low-tide mark. Figures 1-3 show the three basic tides: diurnal, semi-diurnal, and mixed as well as their low and high tide marks per tidal day (roughly twenty-four hours). Notice how the both the semi-diurnal and mixed tides (Figures 2 & 3) have multiple low tides throughout the day. Figure 4 shows the worldwide distribution of these 3 main types of tides.

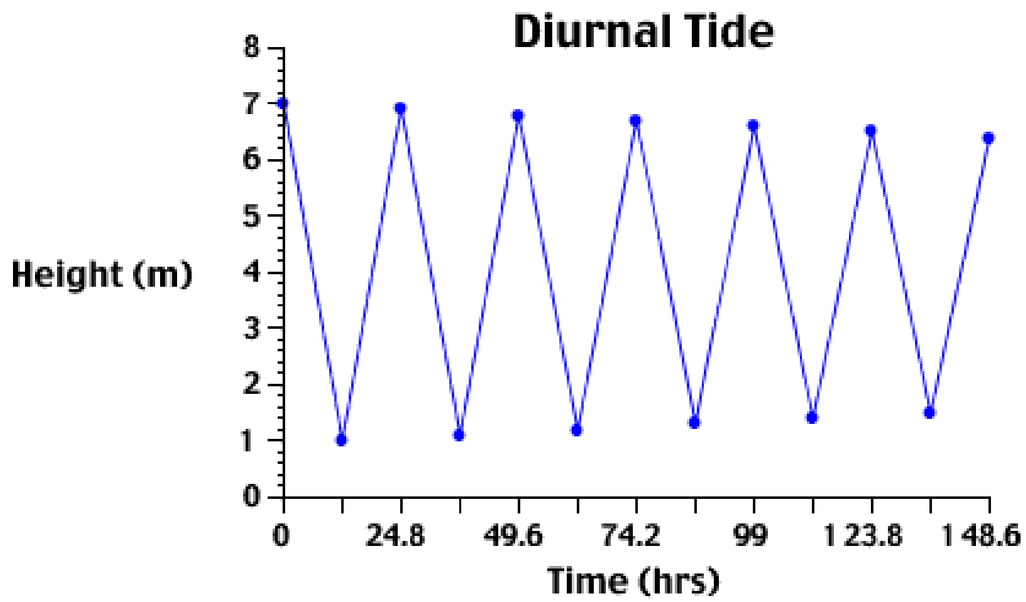

Figure 1. Diurnal tides have only one low and high level per tidal day (Pidwirny, 1999).

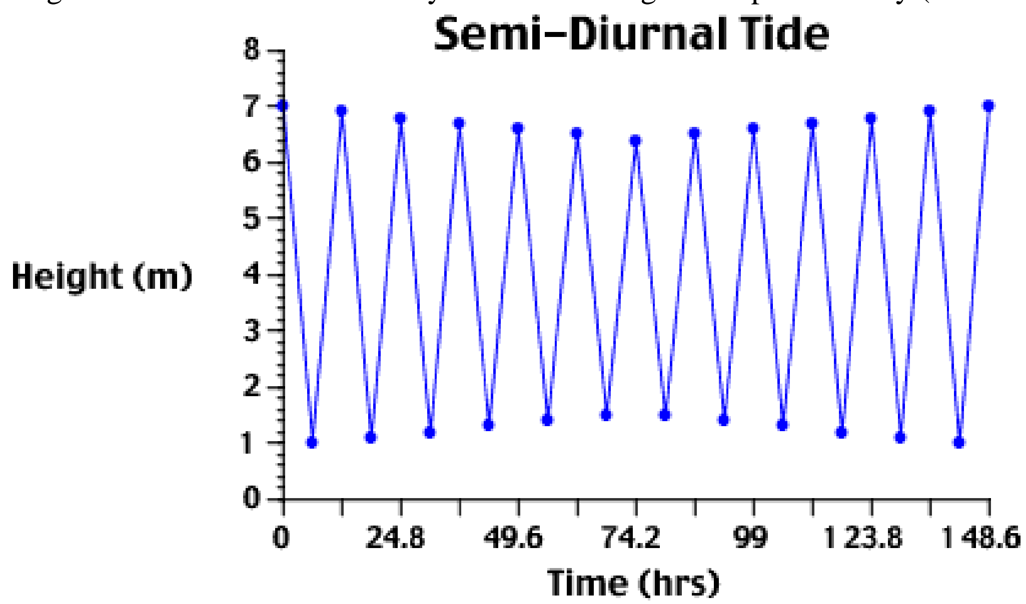

Figure 2. Semi-Diurnal tides have two low and two high water tides during one tidal day (Pidwirny, 1999).

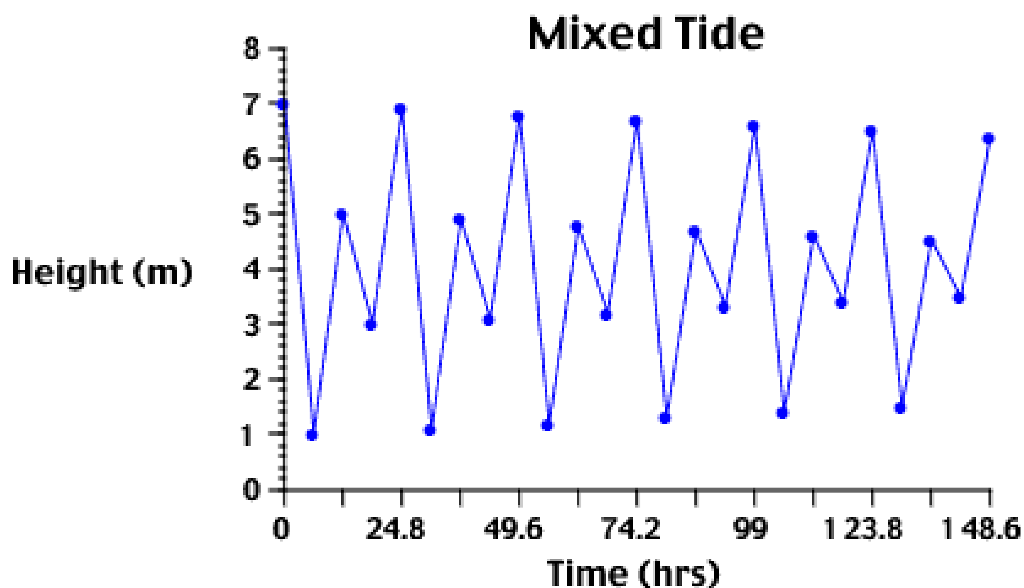

Figure 3. Mixed tides have multiple low and high tides throughout a tidal day (Pidwirny, 1999).

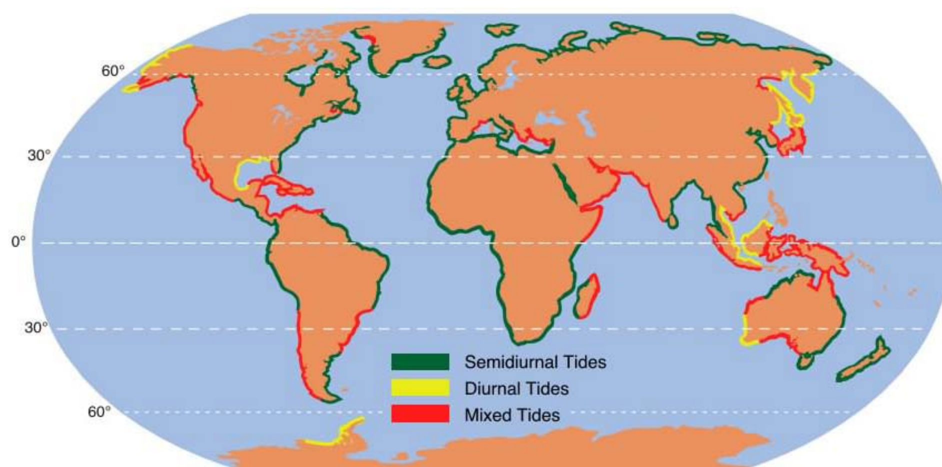

Figure 4. The global distribution of tides (Pidwirny, 1999).

The location of the low-water line has consequences when the method of baseline construction is applied to other formations along coastlines, Article 9 says to use a straight baseline between the low-water lines of its banks, while Article 12 allows a state to use the low-water line on a low-tide elevation as a part of its baseline. In the case of islands with reefs, Article 6 says to use the seaward low-water line of the reef. Without specific enough language that describes what is meant by "low-water line" a state is able apply the existing definition as they see fit, potentially pushing baselines systems seaward of where they ought to be.

Straight baselines are found in Article 7 and can be used by a state in areas where the coastline "is deeply indented and cut into", in the presence of fringing islands, and where the geology or geomorphology of the coastline is highly unstable (UN, 1997). This clause introduces the concept of magnitude. When does a depression in a coastline become a deep indentation? What qualifies a formation as a fringing reef and therefore applicable to straight baselines as opposed to a barrier reef which does not qualify for the use of straight baselines?

Finally, when does a coastline become considered unstable? The questions of degree and extent inherent to this provision “leaves room for subjective appreciation…which must, in the first place at least, be one for the coastal state itself to exercise” (Jennings, 1972, p. 34). Another point that should be recognized is the absence of a limit to the length of the baselines. Therefore a state can create as short or in the case of Iran and Ecuador as long a baseline as they would like. Figures 5 and 6 are maps of the straight baseline claims of Iran and Ecuador. In addition to using straight baselines in an inappropriate manner, as their coasts are not heavily indented, both states have used few base points from which to plot their baselines. The resulting lengths of the baselines have allowed them to enclose as internal waters, ocean space that otherwise would be part of the territorial sea.

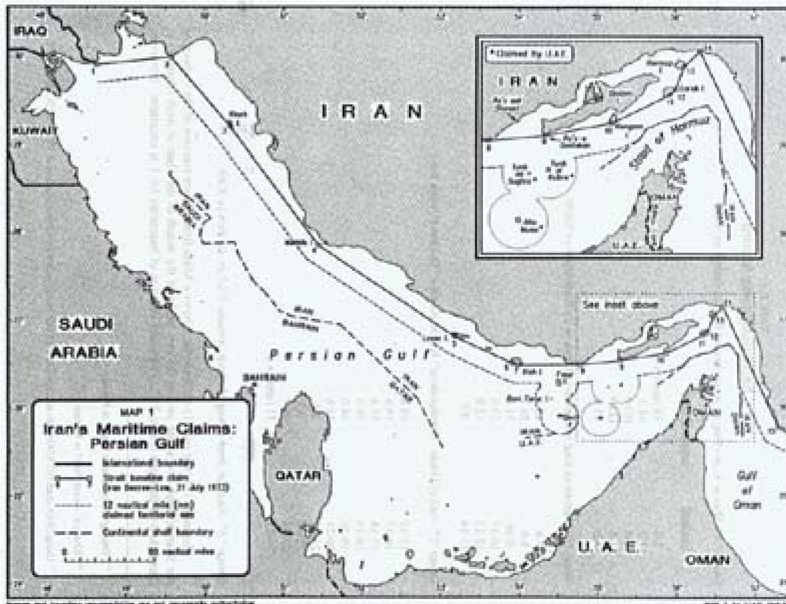

Figure 5. Iran’s maritime claims using the straight baseline method (Florida State University, 2005).

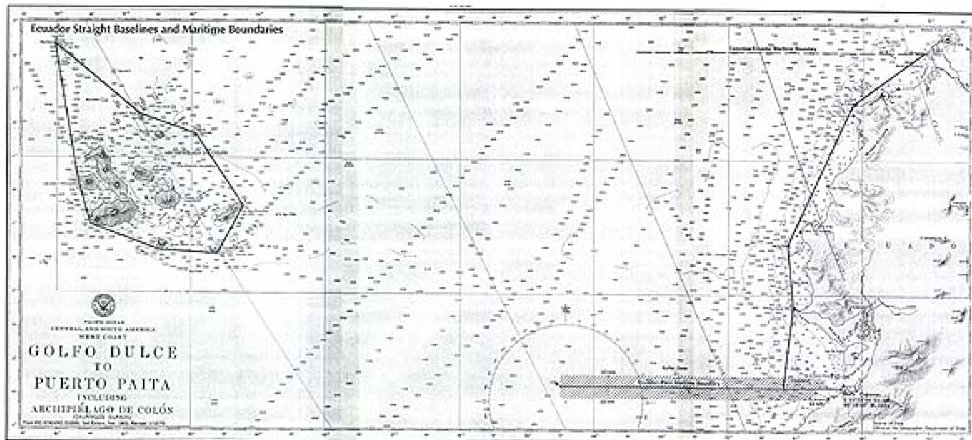

Figure 6. The coast of Ecuador is not so complex as to warrant straight baselines, unlike the Galapagos Islands offshore (Florida State University, 2005).

The international community has been dealing with the question of baselines for more than 75 years beginning with the 1930 Hague Conference (Churchill & Lowe, 1999). With the 1951 Anglo-Norwegian Fisheries the International Court of Justice became directly involved in the matter and by providing criteria by which a state could move off the coast in order to place their baseline, the Court created a piece of customary law that survived largely intact in the 1982 conventional agreement. In many ways the Court's decision, though correct for the circumstances facing Norway, opened the door for coastal states to push the limits of their internal waters seaward, thereby expanding their jurisdictional rights from the beginning. Indeed, Churchill and Lowe (1999) have found that between fifty-five to sixty-five countries have used straight baselines in along all or part of their coasts with another fifteen passing legislation that would allow them to follow suit. And of those countries that have drawn their baseline systems so far, an estimated two-thirds do not follow international law (Churchill & Lowe, 1999).

Territorial Sea

Prior to the adoption of the Law of the Sea Convention (LOSC) in 1982, most of the efforts made by coastal states to expand their territorial sea jurisdiction involved widening the breadth of the zone. The 1955 Santiago Declaration, the 1970 Montevideo Convention and the 1970 Declaration of Latin American States on the Law of the Sea are examples of attempts to expand territorial sea jurisdiction into, what was at the time, high seas. According to Jennings (1972) by 1969 more that fifty states claimed 12-mile territorial seas, backing such claims with publicly enacted and enforced laws. This gradual movement towards an increase in the territorial sea came about as both the traditional maritime powers and emerging coastal states began to desire more regulatory power over navigation, fishing, pollution, customs, and other activities taking place near to their shores. With the adoption of the LOSC treaty in 1982 the official limit to the territorial sea became 12 nautical miles as measured from the baseline (Article 3).

The major source of present day creeping jurisdiction as it pertains to the territorial sea seems to be navigation. As the coastal state has complete sovereignty over its territorial sea, the only general right entering foreign ships have is innocent passage. Sixteen articles within the LOSC cover innocent passage as it relates to such issues as military ships, the carrying of hazardous materials, commercial ships, and traffic patterns. To begin with Article 19 of the Convention is careful to define innocent passage not by what it is, but by what it is not. Thus Churchill & Lowe (1999) raise the question if innocence depends "on activities of the ship and whether or not certain activities may automatically deprive passage of its innocence" (p. 86). Uncertainty raised in the application of innocence has important implications for military vessels

The question of innocence as it relates to warships has always been a difficult issue in international relations. Article 17 of the LOSC contains the following: "ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea" (UN, 1997). Furthermore, Article 20 states "in the territorial sea, submarines and other underwater vehicles are required to navigate on the surface and to show their flag" (UN, 1997). Maritime powers have looked to both of these articles when arguing that military vessels should have the right of innocent passage, pointing to two aspects of the LOSC. First that Article 17 is found in under the heading "Rules applicable to all ships" and second, submarines are specifically mentioned and given the right of innocent passage (Article 20) and since all submarines are military, military vessels are intended to have the right of innocent passage (Churchill & Lowe, 1999). Opponents to this idea point to the lack of specific language allowing for warships to be given the right and consider the matter unregulated by the Convention (Churchill & Lowe, 1999). Recognizing the security concerns

of many coastal states the LOSC requires "foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances" to carry documents as well as follow safety measures establishment by international agreement when exercising innocent passage (Article 23) (UN, 1997). The Convention also grants coastal states the ability to require foreign ships exercising the right of innocent passage to travel by way of designated sea lanes (Article 22). Finally, within its territorial sea Article 25 gives a coastal state the right to take all necessary steps to prevent passage, which is not innocent (UN, 1997). Even as these provisions have probably done much to ease the distrust over military and other dangerous vessels, states such as Egypt, Malaysia, Malta, and Saudi Arabia have expanded their competences within their territorial seas by claiming the right to demand prior notification and/or authorization for the passage of nuclear-powered ships and those carrying hazardous materials (Churchill & Lowe, 1999).

Contiguous Zone

The history of the contiguous zone is very much tied up with that of the territorial sea. Those who advocated the concept claimed a variable zone or zones of limited sovereignty contiguous to the territorial sea. The area would serve as a jurisdictional buffer between the full sovereign powers over the territorial sea and the full rights of freedom found on the high seas. Opponents of the concept saw the claims as attempts at territorial sea expansion into the high seas. Early claims differed from state to state but included legislative and enforcement jurisdiction over customs, sanitation, immigration, pollution, security, and fishing activities (Churchill & Lowe, 1999). In 1958 the Territorial Sea Convention would limit coastal state competence to the enforcement of "its customs, fiscal, immigration, or sanitary laws and regulations within its territory or territorial sea" (Article 24) (UN, 2000). The provision would be carried over almost verbatim to the 1982 Law of the Sea Convention as Article 33 (UN, 1997). Unfortunately despite the fact that the contiguous zone has a clear list of areas of authority and a limit of 24 nautical miles from the baseline, there exist no directions on how to delimit a boundary for the zone, especially as it pertains to opposite or adjacent coasts. In practice this means that coastal states are able to lay down a boundary as they see fit, potentially creeping their jurisdiction into another state's contiguous zone or EEZ.

Exclusive Economic Zone

The exclusive economic zone is a relatively recent concept in international law, with origins found in the Truman Proclamations of 1945. As John Craven had predicted claims, which began in the continental shelf, began to move into the superjacent water column. As a result the creeping jurisdiction of coastal states led to the inception of the EEZ concept, which by the end of the UNCLOS III negotiations had become virtual customary law. A fear of creeping jurisdiction caused many maritime powers to push for the EEZ to have high seas qualities, where a designated list of coastal state competences would limit its jurisdiction and activities outside of such a list would be governed by the high seas regime (Churchill & Lowe, 1999). Other states pushed for the zone to take on territorial sea characteristics, in which those activities not qualifying for non-coastal state jurisdiction would be under the authority of the coastal state (Churchill & Lowe). In fact the EEZ regime that emerged from UNCLOS III negotiations fell into neither of these camps. Instead the EEZ gives coastal states "sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources" of the waters adjacent to the territorial sea and jurisdiction over artificial islands, installations, and structures, marine scientific research, and the protection and preservation of the marine environment (Article 56)(UN, 1997).

Many of the concerns about language and creeping jurisdiction center on freedom of navigation rights for foreign vessels. Although Article 58 grants to all states the freedoms of navigation and overflight, as well as all of the other high seas freedoms, these rights are conditional and depend first and foremost on actions taken by coastal states. Furthermore, the vague language of the third paragraph of Article 56, "In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States…" (UN, 1997) means that in practical terms there exists no clearly defined limit to a coastal state's sovereignty and jurisdiction within the EEZ. Therefore if it chooses a coastal nation may use the establishment of maritime facilities, safety zones, or conservation zones to influence the navigational activities of foreign commercial and military vessels within its EEZ. Such actions have already been undertaken with respect to pollution management by coastal states. The US, for example, took steps in 1990 to protect its marine environmental from oil pollution with the United States Oil Pollution Act. Passed in response to the 1989 Exxon Valdez disaster, the law requires foreign tankers stopping at US ports to be double hulled (Churchill Lowe, 1999). The Act, which is stricter than International Maritime Organization regulations, is an example of creeping jurisdiction as the US has basically claimed the competence to unilaterally prescribe design and construction standards for ships traveling through its waters (Churchill & Lowe, 1999).

Finally, creeping jurisdiction efforts may result from language contained in Article 59 of the LOSC. Though the Convention assigns rights and duties that cover many of the basic uses of EEZ waters, the agreement also recognizes that there are activities within the EEZ that do not fall under the authority of either the coastal or foreign state as defined by the agreement (Churchill & Lowe). Unfortunately the Convention offers no real solution to this problem saying instead that jurisdiction should be determined on a case by case basis using the principle of equity and "in the light of all the relevant circumstances [take] into account the respective importance of the interests involved to the parties as well as to the international community as a whole" (UN, 1997).

Continental Shelf

A good deal of the jurisdictional uncertainties over the continental shelf were laid to rest with the creation of the EEZ concept as coastal states now had the sovereign right to access the resources of the seabed and subsoil as well as the jurisdiction over activities in EEZ waters necessary to do so (i.e. the installation of facilities for drilling, artificial islands, processing stations, etc.). Yet the language of the continental shelf provisions still allows for creeping jurisdiction. Article 78, says "the exercise of the rights of the coastal States over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States…" (Paragraph 2). This provision is unrealistic, as unless the resources being exploited are located away from any kind of maritime traffic, some freedoms will automatically be infringed upon in order to access them. Moreover, the clause once again raises the question of discretion with the word "unjustifiable". Inherent in the clause is the notion that a coastal state is free to do as it chooses so long as it can justify its actions. Because a coastal state has the same competences over artificial islands, installations and structures on the continental shelf as it does in the EEZ, in terms of creeping jurisdiction this means that a country could expand its jurisdiction to hamper freedom of navigation for submarines and other underwater vehicles. What's more, if used in combination with creeping jurisdictional efforts in the EEZ in an effective manner, a coastal state would be able to effectively exercise competence over navigation out to a limit of 200 miles. Moreover, in considering the outer continental shelf, such an ability to expand one's

authority to encompass navigation would go a long way in making jurisdictional claims to the water column superjacent to the shelf.

Islands

Whole books and conferences have been devoted to the issue of the LOSC's coverage of islands. The entire island regime as set forth by the Convention in Part VIII is comprised of three paragraphs in one article (121) and yet the interpretation that have risen from this article have led to some of the most complex disputes involving the law of the sea. Since each island produces its own territorial sea, contiguous zone, EEZ, and continental shelf it is important to consider its relationship with creeping jurisdiction.

The island regime is predicated on the following definition "an island is a naturally formed area of land, surrounded by water, which is above water at high tide" (UN, 1997). Unfortunately this definition raises several questions. Problems with the use of the simple term "high tide" have already been discussed in the Baseline section of this paper. And while the requirement of being surrounded by water is a pretty straightforward prerequisite, the stipulation of being "naturally formed" is more complicated. Is the formation of an island a one-time occurrence where once the formation takes shape it is forever an island? Realistically speaking this should not be the case, as it would completely ignore natural oceanic processes of erosion, therefore is island formation a natural process that means that an island is not final and can disappear? If this is the case can coastal states work to keep the formation's island status? In the absence of clarification behind what constitutes an island coastal states have moved to maintain existing islands or lay claim to new ones, even if their status as an island is questionable, in order to garner jurisdiction over its maritime space.

The LOSC does offer one exception to ability of islands to generate maritime jurisdictional space, but it too is unclear, "rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf" (UN, 1997). The basic question arises what is a "rock"? How does it differ from an island? Size? Composition? Physical features? The same uncertainty exists for the two qualifications found in the provision. What qualifies as human habitation? The number of people? The presence of fresh water? Length of time spent on the rock? What qualifies as economic life? Value? Sustainability? Employment numbers? As with islands the lack of a clear understanding of the concept of a rock has resulted in coastal states declaring questionable features rocks in an effort to gain jurisdiction over its surrounding territorial sea and contiguous zone.

V. FACTORS DRIVING CREEPING JURISDICTION

Even if the language of the LOSC agreement provides opportunities to expand one's jurisdiction, a coastal state must decide if they have enough justification to do so. For in attempting to creep their jurisdiction, a state is going against international law thus opening itself up to various possible reactions from the international community ranging from litigation to sanctions to violent conflict. In looking at why coastal states engage in creeping jurisdiction it is vital to consider whether existing activities under a coastal state's authority are viable enough to keep the country content with the limits of its jurisdiction. If these opportunities as well as future prospects are perceived to be too limited, the state might look towards expanding its jurisdiction in order to shore up ongoing projects or gain access to new ones. It is also important to recognize the inequalities that result from implementation of the LOSC provisions. States that are disadvantaged may look to creep their jurisdiction seaward in order to overcome these inequalities, especially if they perceive other attempts at creeping jurisdiction as contributing to the imbalance. The main driving factors behind coastal state attempts to expand jurisdiction may be divided into four categories.

1. ***Protection of economic interests.***

As was previously mentioned both the extension of the territorial sea to its present limit and the concept of the exclusive economic zone came about as a result of coastal state desires to gain access to fishing activities off their coastlines. In succeeding to gain sovereign rights over such large areas of ocean space, coastal nations were able to capture economic benefits that once belonged to foreign fishing fleets.

Fear of outside impacts on economic interests may be another reason for creeping jurisdiction, for with 90% of the world's commercially exploitable fisheries now covered under the jurisdiction of coastal nations, almost 80% of these fisheries are fully exploited, over-exploited, depleted or in collapse. Therefore a coastal state might move to protect those natural resources its sees to be within its reach. An example of this is the Canadian Coastal Fisheries Protection Act of 1994. In response to the Newfoundland cod fishery collapse of the late 1980s and the 1992 placement of an indefinite moratorium on cod fishing, the Canadian government passed national legislation that would unilaterally disallow non-Canadian vessels to fish the straddling stocks of the Canadian EEZ and adjacent high seas. Moreover, the legislation accorded Canadian officials the authority to enforcement the Act. Such a move was made in order to protect the largely fisheries industry dependent economies of the Newfoundland communities Other examples of this would include the unilaterally placed moratorium on fishing in the Sea of Okhotsk's Peanut Hole by Russia in 1994 and the bilaterally placed moratorium on fishing Pollock in the Bering Sea's Donut Hole by the United States and Russia in 1993. These areas are high seas enclaves surrounded by the EEZs of the Russia, in the case of the Peanut Hole, and both the United States and Russia in the case of the Donut Hole. Severe overfishing in the regions as well as illegal fishing forays into the surrounding EEZs resulted in dramatic decreases of fish stocks and the collapse of pollock stocks in the Donut Hole. US and Russian extension of jurisdiction into the high seas came as a result of threats to fish stocks, which straddled the high seas and their EEZs, thereby threatening the local economies of both nations' pacific coasts. Indeed problems associated with the conservation and management of straddling fish stocks had led to and will continue to be the cause of creeping jurisdiction.

Finally, securing future access to natural resources is a reason for states to creep their jurisdiction. This mainly relates to resources of the seabed and subsoil. A state may not have the financial capital or the technological know-how to reach the materials at present, but ensuring their access to these materials for the future is in the economic interest of any nation. Concerns over ensuring the future exploitability of the resources of the seabed and subsoil are not new. In 1967 Maltese Ambassador Arvid Pardo spoke in front of the United Nations on this very matter except that his concern focused on ensuring future access to the seabed by halting creeping jurisdiction. Ambassador Pardo called for the halt of expansionist claims into the deep-seabed calling it the "common heritage of mankind" (Baslar, 1998, p.xix). That the issue of creeping jurisdiction that virtually began with the continental shelf some sixty years ago is still so much a part of the regime is something to consider particularly was viewed with the outer continental shelf.

2. ***To overcome geographic and /or natural disadvantages.***

The ability or lack thereof to fully utilize the various limits of maritime zones found within the LOSC is another major factor in state attempts at creeping jurisdiction. Although the agreement gives each coastal state a 12-mile territorial sea, and a 200-mile continental shelf and exclusive economic zone, in practice full implementation of those provisions is not feasible. States located within close proximity to each, such as those in the Caribbean, Southeast Asia, and surrounding the Mediterranean Sea, Persian Gulf and the North and Baltic Seas have had to limit their claims in order to not overlap with those states opposite or

adjacent to them. Furthermore, in addition to states with limited maritime space, there are those thirty nations which are completely landlocked and who have to rely solely on the high seas from which to take natural resources (Alexander, 1982). According to Churchill and Lowe (1999) in terms of free ocean space gained only around thirty coastal nations have significantly gained from the establishment of an EEZ.

The commercial value of the natural resources found within an EEZ or continental shelf is another matter altogether. With respect to continental shelves is there a presence of an actual continental shelf? Yes, each coastal state has been given a legal continental shelf of 200 miles, but does the area actually compromise the oceanographic formation of a continental margin? The presence of such a formation is important, as most commercial exploitation of hydrocarbons and metallic and non-metallic mineral ore takes place within the continental margin. The 1952 Santiago Declaration is an example of creeping jurisdiction in response to a natural disadvantage as all three original signatory states, Chile, Peru, and Ecuador have narrow continental shelves which plunge into the Atacama deep sea trench, roughly 100 miles of their coasts. Many other countries face a similar situation to Chile, Peru, and Ecuador, especially those that lie along the Pacific Ocean's Ring-of –Fire. This area of highly tectonic activity encircles most of the Pacific Ocean basin and creates an almost continuous series of deep-sea trenches, many of which are found close to the shores of nearby coastal nations cutting short any real continental shelf.

In the case of fisheries resources the characteristics of the water column become a key factor. Commercially exploitable fish stocks tend to be located in specific areas of the world. Alexander (1982) puts these locations in shallow continental shelves or plateaus, such as the Grand Banks off the coast of Canada's Newfoundland region. Ocean currents also play an important part in the presence of fish as the movement of water brings with it nutrients and plankton. Many species base their migration patterns on the locations of currents. Examples of important oceanic currents include Humboldt Current off the pacific coast of South America, the Benguela Current off the southwestern coast of Africa, and Tsushima and Kuroshio Currents of the East China Sea. Such currents contribute to the high ecosystem productivity of these regions. Therefore a state's access to valuable and sustainable fishery resources depends on its location along coasts with highly productive ecosystems. Those without such access may try to extend their jurisdiction out past the internationally legal limit and into the high seas in order to catch whatever resources they can. In fact, the Santiago Declaration can be seen as an attempt to offset the absence of a continental shelf, by claiming jurisdiction over the abundant fishery resources of the region.

Although it may not be a major source of concern at present the impacts of future sea level rise due to climate change is also something that show be considered. As a state's coastline retreats landward, so will the various maritime zones measures from its baseline. Short of freezing current baseline systems, low-lying coastal nations such as Bangladesh and Kiribati will be more affected and face the loss of both terrestrial and marine resources. Therefore, states may try to establish extended jurisdiction in anticipation of such a retreat.

3. Political relations.

Alexander (1983) wrote "the need of a coastal State to exercise jurisdiction in its offshore waters has traditionally been related to its enforcement of its domestic laws" (p.569). It is the same with attempts to expand jurisdiction. Alexander (1983) gives such an example in the efforts of US authorities to enforce its 1920s prohibition laws by claiming competence over customs rights in waters outside of their territorial sea. Present day examples of creeping jurisdiction in order to enforce political will include measures adopted by the European Union against smuggling and pollution. These have impacted the right of

transit passage freedom of navigation enjoyed by foreign vessels within the exclusive economic zones of member countries.

In addition to exercising its own political will through creeping jurisdiction, states may also expand their jurisdiction to force the political will of regional organizations or the international community as a whole. This can be seen in the various fishing disputes of the early 1990s. In the case of the dispute between Canada and the European Community (EC), Canada's unilateral actions to end fishing of straddling stocks of the Grand Banks region of the North Atlantic was in direct response to the weak political will of the European Community in taking adequate conservation and management measures to ensure the sustainability of the fishery. Canada viewed its actions necessary to ensure its own economic survival as well as a way to force the hand of the EC. The dispute ended in April of 1995 when Canada and the EC agreed to strengthen conservation and management requirements under Northwest Atlantic Fisheries Organization, including the all important enforcement measures.

The actions of the US and Russia in the northern Pacific Ocean are other examples of attempts to force the political will of the international community. In both instances with the absence of a regional fisheries organization, moratoriums were bilaterally issued (by the US and Russia in the Donut Hole) and unilaterally issued (by Russia in the Peanut Hole), until such time when an international agreement could be reached between other countries acting within the fishery. As a result, the US and Russia, as well as the other major maritime interests in the area, South Korea, Japan, China, and Poland, signed the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea in June of 1994. For the Peanut Hole, Russian efforts to create a management regime went by way of the UN Fish Stocks Agreement in combination with individual bilateral treaties with the other foreign fishing nations involved in the area. All of whom had also been involved in the Donut Hole agreement.

4. To protect security interests.

Suspicion of foreign military activities is a natural reaction for any country and is a reason to reinforce its existing jurisdictional rights as well as issue claims that would expand them. Due to many of the questions raised about the rights, under the LOSC, of military naval and aircraft movements throughout the territorial sea and exclusive economic zone, many coastal nations have sought to establish their view on the matter through national legislation that in many instances expands their competences over such movements by requiring prior notification and approval, restricting access, or outright denying entry of vessels deemed to be a security threat. The same holds true to those vessels considered a threat due to their cargo. Whether it be the nuclear material powering a submarine or a super-sized oil tanker, the perceived threat of these ships to national security interests cause coastal states to creep their jurisdiction outward.

VI. AFFECTS OF CREEPING JURISDICTION ON STATES A PARTY TO THE CONVENTION

The Law of the Sea Convention was originally created to provide a balanced governance regimes for the world's ocean in which both flag and coastal state would have equal opportunity to participate in maritime activities and utilize marine resources. Therefore the ability of certain states to gain jurisdictional powers beyond what is explicitly provided for within the treaty clearly influences other states that are a party to the agreement but are not be able or willing to try to take advantage of its weaknesses. The following are reactions, which may come from such states, to creeping jurisdiction.

1. Loss of confidence.

The expectation of signatory states of the LOSC was that the implementation of its various provisions would be fair and balanced. Unfortunately the examples of creeping jurisdiction described within this paper, as well as those not mentioned, have served to show the inherent weaknesses of the treaty. Such a situation may cause party states to loss confidence in the agreement. In addition, with the absence of a strong enforcement regime[2] the Law of the Sea Convention is just another example of soft law and as such is not legally binding to states a party to it. As states lose their confidence in the treaty they may look to establish stronger bilateral, multilateral or regional versions of their own law of the sea regimes. The creation of such competing governance regimes would reverse decades old efforts to create a standardized law of the sea and in practice would cause immeasurable trouble for those involved in international maritime activities and relations as those who travel the seas would potentially face keeping track of numerous management guidelines along with varying degrees of enforcement mechanisms.

2. Imitation and expansion.

The relative success of creeping jurisdiction may cause other states to imitate these efforts. For although many coastal state attempts to expand their jurisdiction have been met with international protests (with the US responsible for most of these objections by far) few of these protests have resulted in the reversal of a coastal state's policy. Should creeping jurisdiction be allowed to continue unrestrained it will likely lead to a positive feedback cycle, where a perceived successful extension of jurisdiction will foster further attempts increasing excessive claims and leading to a situation similar to that of the 1960s and 1970s. Reasons behind imitation may vary from state to state. In regions of the world were a country's creeping jurisdiction would likely have a large impact on its neighbors, surrounding coastal states might enact similar expansionist legislation in order to answer domestic security, economic, or political concerns. A similar situation would occur with states that operate within the same industry. If one or more states stand to gain an advantage within such markets as hydrocarbon and mineral drilling or commercial fishing through creeping its jurisdiction, it would be in the best interest for a competitor state to follow suit in order to mitigate any advantage.

On top of states seeking to imitate other creeping jurisdiction action are those more bold states who may seek to take full advantage of prior actions, by expanding on them. This may reveal itself in the waters above the outer continental shelf. As history has shown coastal state creeping jurisdictional efforts to claim the water column superjacent to the continental shelf proved to be successful and resulted in the new legal concept of the EEZ. With more and more states submitting[3] or preparing to submit applications to the Commission on the Limits of the Continental Shelf (CLCS) to extend their jurisdiction over their continental shelves out to maximum 350 nautical miles (Article 76) it is not inconceivable that these states would then move to claim the water column above their newly acquired outer continental shelf. This would mean that once again certain states would have the ability to creep their jurisdiction further seaward. The fact that most of the states that have already

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[2] The LOSC does contain mechanisms for the settlement of disputes over the interpretation of the Convention (see Part XV and Annexes V-VIII of the text for general disputes and part Section 5 of Part XI for disputes involving The Area). However it also contains Article 298 which provides states with the ability reject the jurisdiction of any international body in disputes over claims made within the territorial sea, exclusive economic zone, and continental shelf, or the three maritime zones in which most creeping jurisdiction occurs.

[3] In order of submission: Russia (2001), Brazil (2004), Australia (2004), Ireland (2005), New Zealand (2006), France, Ireland, Spain, and the UK (jointly submitted in 2006), Norway (2006), France (2006), Mexico (2007), Barbados (2008), UK (2008)

submitted applications all have developed or emerging economies further increases the inequality of the situation.

3. Increased disputes and conflicts.

This is an almost guaranteed result of continuing unchecked creeping jurisdiction. Despite the fact that states have in the past confined most of their protests and challenges to creeping jurisdiction to formal diplomatic responses, this will likely change in the future as the resources of the oceans are depleted and the financial benefits of having access to additional jurisdictional waters becomes a real and measurable advantage. An increase in conflicts and disputes would certainly test the dispute resolution framework of the Convention and given that coastal states have the ability to opt out of legal accountability for expansionist claims within the territorial sea, exclusive economic zone, and continental shelf (as mentioned above), states that are cut off from dispute resolution options may turn to more violent options. The Cod Wars of the 1970s between the United Kingdom and Iceland over fisheries access, the US confrontation with Libya in 1981 over freedom of navigation within the Gulf of Sidra, and the more recent 2000 confrontation between Guyana and Suriname over continental shelf resources have already demonstrated how far states are willing to go when in dispute over maritime claims to jurisdiction.

VII. AFFECTS OF CREEPING JURISDICTION ON STATES NOT A PARTY TO THE CONVENTION: THE US SITUATION

In addition to those states already a party to the Law of the Sea Convention, creeping jurisdiction also impacts those countries that have yet to accede to the agreement, therefore it is important to look at how creeping jurisdiction might influence those states looking to become a party to the treaty. As I am an American and the US it close to ratifying the agreement, I will use the US as a mini case study.

The United States of America is not a party to the Law of the Sea Convention. President William Clinton signed the agreement in 1994, but the US Senate has yet to ratify the treaty. Therefore any relationship the US has with the agreement must be viewed with this in mind as its reactions to the Conventions provisions are obviously influenced by its non-party status. Nonetheless, US national legislation follows many of the provisions of the LOSC and the country has claimed a 12-mile territorial sea (1988), 24-mile contiguous zone (1999) and a 200-mile EEZ (1983) and continental shelf (1945).

As a major maritime power the US has been one of the main opponents of creeping jurisdiction, resisting claims that encroach on the freedoms of the high seas. Indeed, the US is the main issuer of objections to what it deems are excessive maritime claims, going to so far as to publish a book on its responses to such claims[4]. This is ironic as many hold the 1945 actions of US President Harry Truman responsible for starting the modern outbreak of creeping jurisdictional claims, which still continues to this day. However, since that time the United States has maintained a close watch over the claims of coastal nations. Owing much to concerns over advancing claims, the US became a major supporter of the call to hold what would become the 1958 UNCLOS I negotiations. Indeed, these concerns would remain ongoing throughout the 1960 UNCLOS II meeting and would lead the US to once again support the convening of UNCLOS III. Even after the adoption of the text of the 1982 LOSC, the United States still resisted what it considered to be exorbitant maritime claims, not recognizing the 12-mile territorial sea until 1988, when it extended its own territorial sea,

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[4] The book, a part of the US Department of State's Limit of the Seas series, was originally published in 1992 and updated in 1996 following the entry into force of the LOSC on 28 July 1994.

years past when the concept had become part of customary law and five years past when it became official international law through the LOSC agreement.

Navigation

The impacts of creeping jurisdiction on the US relationship with the LOSC relates to several areas including navigation, fishing, and the outer continental shelf. Under navigation efforts to challenge excessive claims, such as an expanded territorial sea (at least until the US finally accepted the new limit) as well as other claims, include the Freedom of Navigation program. Established by the US Department of Defense (DOD) in 1979 the program uses diplomatic correspondence and the exercises of navigation and overflight to protest maritime claims. Although not a party to the agreement, the US "views the Convention's navigation and overflight provision as generally confirming existing maritime law and practice and, as such, available for all nations to enjoy" (DOD, 1995). The statement goes on to say the US "also believes that unchallenged excessive maritime claims may, in time, become valid through acquiescence. Accordingly, it is necessary for maritime nations, such as the United States, to protest excessive coastal claims…" (DOD, 1995).

Fishing

While the United States fights creeping jurisdictional efforts in the name of freedom of navigation it seems to almost embrace the concept when it comes to fishing. Actions in the Bering Sea Donut Hole (as described above) and in the South Pacific with tuna, along with national legislation such as the Magnuson-Stevens Fishery Conservation and Management Act (MAS) of 1976 are all examples of creeping jurisdiction. While the US holds the navigational provisions of the Convention as customary law, this does not seem to be the case with the fishing sections of the agreement. In the case of the South Pacific Tuna disputes, the US held that it had the right to freely fish tuna stocks under the jurisdiction of MAS, which did not list tuna species as highly migratory. This was in direct opposition to the Annex I of the LOSC, which lists eight tuna species as highly migratory. In essence the US expanded its own jurisdiction over that of an international agreement.

The Outer Continental Shelf

The importance of creeping jurisdiction as it pertains to the continental shelf lies in issues raised by the outer continental shelf. Even as there is no doubt that the continental shelf concept is accepted as customary law, the same may not be said of the outer continental shelf since no country has yet to be granted jurisdiction over seabed and subsoil past 200-miles. Yet in 2007 the United States began the Extended Continental Shelf Project in order to ascertain the possibility of establishing claims to an outer continental shelf of its own. Although the US has for the most part been able to get past not being a party to the LOSC by claiming that its provisions are customary law and therefore accession to the agreement is not necessary, such is not the case with the outer continental shelf. Should the US move to issue a claim over the area it would be guilty of creeping jurisdiction.

Future Ratification

Despite the fact that creeping jurisdiction has led to a very clear inequality in its application by party states, the US, as well as other states, is likely to give more weight to the benefits gained by ratification of the LOSC that to the actions of other states, preferring instead to approach such issues when it is prudent and necessary. Moreover, generally speaking ratification of the LOSC would allow the United States to take the high road on the issue of creeping jurisdiction. It would be able to make legitimate claims to an outer continental shelf avoiding possible expansionist labels. Accession would also mean that as a

party-state the US could work against to expansionist claims within the Convention's framework either through the dispute mechanisms of the agreement, or by working towards clarifying the text of the treaty.

CONCLUSION

The law of the sea remains a battle between those who seek to keep the world's ocean open for all to access and those who would partition the seas into varying zones of jurisdiction. For those looking to creep their jurisdiction seaward, language has so far been vital to the success of their efforts, thus the relationship language and jurisdiction is a significant part of the law of the sea. The current LOSC agreement contains provisions in which the language of the text is either vague or incomplete. These characteristics have enabled coastal states to creep their jurisdiction seaward from the beginning baseline systems through all of the major maritime zones and have resulted in individual coastal states gaining unequal access to marine resources and authority over maritime activities.

Looking at future UNCLOS meetings, concerns over creeping jurisdiction will no doubt continue to be an important factor in negotiations for both coastal and non-coastal states as the international community moves to update its law of the sea regime. History has shown, through events leading to the extension of the territorial sea and the establishment of the contiguous zone, continental shelf and exclusive economic zone, that with enough time and in the absence of clear and comprehensible language coastal state creeping jurisdictional efforts can eventually lead to acceptance into customary law and official recognition in international treaties. Without adequate language to clearly define limits of competence, the events leading to the creation of the EEZ concept are likely to repeat themselves in the waters superjacent to the outer continental shelf.

The continued unequal application of the LOSC which results from creeping jurisdiction may have severe impacts on states a party to the agreement especially if only certain states are able to gain additional authority over the water column above the outer continental shelf. While those states with the means (geographically and geologically) to imitate such efforts may do so, those states that cannot would almost inevitably lose confidence in a treaty whose creation was meant to provide them with relatively equal access to maritime activities and resources. Reactions to this loss of confidence may range from withdrawal from the treaty to the creation of competing regional law of the sea regimes, reversing efforts going back to the beginning of the twentieth century to codify the law of the sea.

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