UNCLOS III: Pollution Control in the Exclusive Economic Zone

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I. INTRODUCTION

In January 1995, Shell Oil Company announced that it would join with Amoco Production Company and Exxon U.S.A. to develop the deepest offshore oil rig in the Gulf of Mexico. This rig will be constructed 125 miles southeast of New Orleans, Louisiana, and 80 miles south of Mobile, Alabama, and should begin operating in the latter part of 1997. The companies project this rig will extract 60,000 barrels of oil and 200 million cubic feet of natural gas every day. Technological advances now permit greater deep-sea exploitation than previously possible. Consequently, the threat of deep-sea pollution reaches beyond a coastal state’s territorial boundary. The authority to control pollution in this area is the thrust of this comment.

The 1982 United Nations Convention on the Law of the Sea (UNCLOS III) has been promoted as the foundation for comprehensive international regulation of economic, environmental, and national security matters. However, UNCLOS III is flawed. It fails to provide coastal states with sufficient authority to control pollution beyond their territorial boundaries—especially in the exclusive economic zone (EEZ). Certain modifications of UNCLOS III are needed to make the convention more effective.

UNCLOS III should be amended to provide coastal states with sovereign rights over pollution control within their EEZs. Limited jurisdictional rights that UNCLOS III currently grants are insufficient. UNCLOS III should permit coastal states to choose the extent to which they regulate pollution in the EEZ. Each state, however, should still be required to meet the existing minimum international standards for pollution control.

UNCLOS III came into force on November 16, 1994, six months after sixty-one, non-industrialized countries ratified the treaty. The United States has refused to ratify UNCLOS III for the last twelve years. On June 30, 1994, the Clinton administration notified the United States Senate
Committee that the President would sign the agreement, with modifications for deep-sea mining provisions. The President's signature provisionally binds the United States to the agreement and the modified deep-sea mining provisions of UNCLOS III for four years, even without the advice or consent of the United States Senate. During the 104th Congress, the Senate will discuss the ratification of UNCLOS III in its entirety. The suggested modifications should be made prior to that time.

UNCLOS III divides the oceans into five major jurisdictional zones. Part II of this comment introduces these zones. Part III discusses pollution control mechanisms currently impacting the EEZ and demonstrates how these mechanisms provide inadequate pollution protection.

To clarify the rationale behind the current pollution control mechanisms of the EEZ, Part IV of this comment discusses the evolution of the EEZ. In connection with Part IV, Part V examines pollution control laws countries have independently enacted that affect the EEZ. This section demonstrates that the extension of the EEZ from a mere economic zone to a pollution control zone would be simply a matter of codifying coastal states' customary practices.

Part VI of this comment discusses the possibility of adopting this extension and what role Louisiana might play in controlling pollution within its EEZ should a pollution extension be adopted. Finally, Part VII recommends specific improvements for UNCLOS III to transform it into a foundation for comprehensive regulations concerning economic, environmental, and national security matters.

II. THE DIFFERENT ZONES UNDER UNCLOS III

UNCLOS III divides the ocean into five zones: (i) the territorial sea; (ii) the contiguous zone; (iii) the exclusive economic zone; (iv) the continental shelf; and (v) the high seas. In each zone, a coastal state may exert various levels of
control depending on the activity. The amount of control given to a state decreases as one moves away from a state's territorial sea.

A. The Territorial Sea

Under Article 3 of UNCLOS III, the breadth\(^{10}\) of the territorial sea is established as twelve nautical\(^{11}\) miles from the baseline.\(^{12}\) In this area, a coastal state has sovereign rights\(^{13}\) regarding activities within the water column, within the airspace above the sea, and on the bed and subsoil beneath the sea.\(^{14}\) The coastal state may regulate "the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof."\(^{15}\) In addition, coastal states may require foreign ships, exercising their right of innocent passage, to use designated sea lanes in the territorial sea. These laws place particular restrictions on nuclear-powered ships or ships carrying noxious substances.\(^{16}\)

Other provisions of UNCLOS III place limitations on the exercise of state sovereignty in this zone. The primary limitation is the right of innocent passage\(^{17}\)—the right of other countries to engage in navigation or overflight when the passage "is not prejudicial to the peace, good order or security of the coastal State."\(^{18}\)

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10. "Breadth" is defined as "[t]he measure or dimension from side to side as distinguished from length or thickness ... wide extent or scope ... ." The American Heritage Dictionary 205 (2d College ed. 1985).

11. A "nautical mile" is defined as "an international and U.S. unit equal to 1,852 meters, or about 6,076 feet." *Id.* at 833. A "standard mile," however, is defined as "[a] unit of length equal to 5,280 feet, 1,760 yards, or 1,609.34 meters ... ." *Id.* at 796. Consequently, a nautical mile is 796 feet longer than a standard mile. Any reference to a "mile" in this comment refers to a nautical mile and not a standard mile.


UNCLOS III Article 5 states:

Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

In special cases; i.e., where reefs, islands, mouths of rivers or bays lay on the fringes of coastal states, UNCLOS III provides alternative ways for measuring the baseline. For further discussion of this issue, see UNCLOS III Articles 6-10.

13. For discussion of differences in sovereign rights and jurisdiction, see infra text accompanying notes 53-58.

14. UNCLOS III Article 2.

15. UNCLOS III Article 21.

16. UNCLOS III Article 22.

17. UNCLOS III Article 17.

18. UNCLOS III Article 19 defines "innocent passage" as passage that is not prejudicial to the peace and good order of a coastal state. The article then provides examples of when passage is considered prejudicial:
B. The Contiguous Zone

In the contiguous zone, a coastal state "may exercise the control necessary to ... prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea." This zone extends from three miles to a maximum of twenty-four miles. As in the territorial sea, regulation in this zone is limited by the right of innocent passage.

Coastal states' powers within the contiguous zone are more limited than in the territorial sea. These limited powers include the power to control and prevent infringement of the coastal states "sanitary laws." This phrase is not defined by UNCLOS III; therefore, it may be interpreted either broadly or narrowly. The broad definition of sanitation is the "formulation and application of measures designed to protect public health." This definition is consistent with the breadth of police powers exercised by a state of the United States. These broad powers allow the state to promulgate laws and regulations to protect the health, safety, and welfare of its citizens. However, the narrow definition of sanitation is the "disposal of sewage." This definition limits coastal states to controlling waste disposal in the contiguous zone.

C. The Exclusive Economic Zone

The EEZ is an area extending from twelve miles to a maximum of two hundred miles from the coastline. In this zone, a coastal state has sovereign rights of exploration, exploitation, conservation, and management of natural resources. These include living and non-living resources of the sea-bed, subsoil,
and superjacent waters, e.g., oil, gas, and fisheries. In addition, a coastal state has sovereign rights regarding the exploitation and exploration of energy production by water, currents and wind.

Within the EEZ, a coastal state has limited jurisdiction concerning the performance of marine scientific research, the protection and preservation of the marine environment, and the use of artificial islands and structures. A coastal state has the exclusive right to construct, authorize and regulate the construction and use of such offshore structures. A coastal state cannot require special design or construction standards for vessels operating within the state’s EEZ.

D. The Continental Shelf

The continental shelf is comprised of the sea-bed and subsoil of the submarine areas extending beyond the territorial sea to the outer edge of the continental margin. This distance is, at a maximum, three hundred and fifty miles.

A coastal state enjoys sovereign rights regarding the exploration and exploitation of natural resources on the continental shelf. These rights, under UNCLOS III, are exclusive. If the coastal state does not engage in the exploration and exploitation of minerals on the continental shelf, no foreign state may do so without the consent of the coastal state. In addition, these rights are effective under UNCLOS III absent any affirmative action by coastal states, e.g., occupation or proclamation.

E. The High Seas

The high seas are the waters beyond the EEZ or the area beyond the limits of the continental shelf when that area extends beyond two hundred miles. In this area, all states enjoy freedom of navigation, overflight, placement of submarine

24. “Superjacent” waters can be defined as those waters which are lying immediately above or upon the continental shelf. The American Heritage Dictionary 1220 (2d College ed. 1985).
25. UNCLOS III Article 56.
26. Id.
27. The difference between “exclusive rights” and “sovereign rights” is not clear. The amendment recommended in Part V infra would clarify this distinction.
28. UNCLOS III Article 60.
29. The continental shelf is defined as “a generally shallow, flat submerged portion of a continent, extending to a point of steep descent to the ocean floor.” The American Heritage Dictionary 317 (2d College ed. 1985).
30. UNCLOS III Article 76. The “continental margin” is comprised of “the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.” Id.
31. UNCLOS III Article 77. Under UNCLOS III, “natural resources” include mineral and other non-living resources as well as other living organisms either mobile or immobile.
32. Id.
33. Id.
cables and pipelines, construction of artificial islands, fishing, and scientific research.\textsuperscript{34}

In exchange for these freedoms, coastal states assume certain duties. A coastal state must be certain that the master, the officers and, to a limited extent, the crew of its ships are familiar with international regulations regarding safety at sea, prevention of collisions, reduction and control of marine pollution, and maintenance of communications by radio.\textsuperscript{35} These duties are designed to prevent collisions and navigational incidents that could result in injury or loss of life to any nation's citizens; damage to ships, artificial islands, or other installations of another state; or damage to the marine environment.\textsuperscript{36}

III. POLLUTION CONTROL IN THE EEZ UNDER UNCLOS III

A. The Compromise and Current Pollution Control

During the UNCLOS III negotiations, participants disagreed whether pollution control standards should be global or regional.\textsuperscript{37} Less developed nations feared that "global" requirements would force them out of international trade because they lacked capital to meet these requirements. A compromise was reached to gain a majority vote on the treaty.\textsuperscript{38} This compromise combines global and regional pollution control standards. It permits global control of pollution by requiring coastal states to meet international minimum standards.\textsuperscript{39} At the same time, one, or a group of, coastal states could exercise regional control by petitioning a competent international organization for authority to enact more stringent pollution control laws.\textsuperscript{40}

The International Sea-Bed Authority (hereinafter "Authority") is one example of a competent international organization. Article 145 of UNCLOS III gives broad and general powers to the Authority. Article 145 states:

\begin{itemize}
\item \textsuperscript{34} UNCLOS III Article 87.
\item \textsuperscript{35} UNCLOS III Article 94.
\item \textsuperscript{36} Id.
\item \textsuperscript{37} "Global" pollution control refers to international laws that require coastal states to take certain measures to prevent pollution of the oceans. Unilateral actions by individual coastal states are inconsistent with the idea of global pollution control. "Regional" pollution control refers to acts promulgated by individual coastal states or agreements with individual coastal states that are designed to control pollution of the sea. These acts would apply only to the regions where the coastal state exercises its sovereign rights.
\item \textsuperscript{39} Minimum international standards may be found in: (1) general international law; (2) treaty law; or (3) standards established by international organizations. Standards established by international organizations are binding on signatories of UNCLOS III even if such signatories are not members of the international organization promulgating the standard. Jonathan I. Charney, \textit{The Marine Environment and the 1982 United Nations Convention on the Law of the Sea}, 28 Int'l Law. 879, 888-89 (1994).
\item \textsuperscript{40} UNCLOS III Article 211(6).
\end{itemize}
Necessary measures shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities. To this end the Authority shall adopt appropriate rules, regulations and procedures for *inter alia*:

(a) the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from harmful effects of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities . . . .

One commentator has suggested that the broader and more inclusive language of Article 145 be used throughout UNCLOS III, but the delegates to UNCLOS III feared the broad language would impose onerous environmental obligations that many states could not afford to fulfill.

The compromise resulted in separate articles, each implementing unique standards and remedies for specific types of pollution. These standards and remedies are discussed in Articles 192-244 of UNCLOS III and apply to the entire ocean. Pollution is classified by origin: land-based sources, sea-bed activities, vessels, ocean dumping, and atmospheric discharges.

Regarding land-based pollution and pollution from sea-bed activities, UNCLOS III requires states to take measures, including the adoption of laws and regulations, to prevent pollution of the marine environment. These regulations, furthermore, must be no less effective than the accepted minimum international standards.

UNCLOS III also requires that international minimum standards be maintained to prevent vessel source pollution. A coastal state may enact more stringent pollution standards upon petitioning a competent international organization. This right, however, is limited to situations in which a state believes minimum international standards are inadequate to protect its EEZ due

41. UNCLOS III Article 145.

42. McLaughlin, *supra* note 38, at 41.

43. UNCLOS III defines “pollution of the marine environment” as

[T]he introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.


45. An example of a “competent international organization” is “The Authority” created by UNCLOS III. UNCLOS III Articles 156-58. *See also supra* text accompanying note 41.
to special concerns such as fragile ecosystems. For example, Article 234 grants coastal states limited power to reduce and control vessel source pollution in ice-covered areas of the EEZ. Article 234 is invoked only by a showing that marine pollution could cause irreversible destruction to the ecological balance of the coastal state. These additional laws may relate only to discharges or navigational practices. States may not require design, construction, manning or equipment standards different from the accepted international minimum standards.

Ocean dumping and atmospheric pollution within the territorial sea, EEZ or continental shelf area are also regulated by international standards. Coastal states have the right to regulate ocean dumping in the EEZ, but such regulation must be no less effective than minimum international standards.

B. Problems With Pollution Control Under UNCLOS III

The first problem with UNCLOS III's pollution control laws is a classification based on sources of pollution (pollution from vessels, dumping, etc.) and not on the zone in which the activity is performed (EEZ, territorial sea, etc.). Classifying pollution control based on the activity rather than on the area of occurrence causes confusion and chaos to such an extent that UNCLOS III's goal of uniformity will never be met. The pollution control provisions in the EEZ are unclear. One commentator has noted that the "most complex and easily misunderstood of coastal states rights in the economic zone is the jurisdiction with respect to the preservation of the marine environment." It would, therefore, be more appropriate to control pollution in the EEZ by extending a state's sovereign rights in the EEZ from rights to conduct economic activities to rights to control pollution activities.

46. Special concerns may include unique geographical concerns, such as the ice covered areas in Canadian waters which were recognized as fragile ecosystems under UNCLOS III allowing Canada to exert additional control over activities in their EEZ.
47. UNCLOS III Article 234.
48. UNCLOS III Article 211(6)(c).
49. UNCLOS III Article 211(5).
50. One of the primary purposes of UNCLOS III was to "create some international legal order to regulate these highly sensitive issues before there is further unilateral action by nation-states which would tend to create disorder and chaos." David L. Larson, Major Issues of the Law of the Sea 1 (1976).
51. Bernard H. Oxman, An Analysis of the Exclusive Economic Zone as Formulated in the Informal Composite Negotiating Text, cited in Thomas A. Clingan, Jr., Law of the Sea: State Practice in Zones of Special Jurisdiction 57, 75 (1982). Oxman recognizes that foreign ships in a coastal state's EEZ are the primary concern of the state. Unlike any other of the coastal state's rights in the EEZ, this jurisdiction directly limits a ship's freedom of navigation. As such, the environmental jurisdiction of a coastal state is the most complex and intricate subject matter of UNCLOS III.
52. For discussion of differences in sovereign rights and jurisdiction, see infra text accompanying notes 53-58.
The second problem lies in the distinction between "sovereignty" and "jurisdiction." UNCLOS III Article 56 gives states "sovereign rights" of economic exploitation and exploration of natural resources including living and non-living resources of the sea-bed, subsoil and superjacent waters in the EEZ. These natural resources include the production of energy from water, currents and winds.\footnote{UNCLOS III Article 56.} Article 56, however, gives states only "jurisdiction" over the establishment and use of artificial islands, installations and structures; marine scientific research; and the protection and preservation of the marine environment.\footnote{Id.} UNCLOS III does not define sovereignty or jurisdiction; nor does it explicitly state how these words are to be interpreted. Because each word can have several meanings, no clear rules or prohibitions are set by the treaty. States are forced to speculate as to the level of control they may exert.

"Sovereignty," in legal terms, is defined as:

\begin{quote}
the supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority; the supreme will . . . the international independence of a state, combined with the right and power of regulating its internal affairs without dictation . . . .
\end{quote}

"Sovereignty" is commonly defined as "[c]omplete independence and self-government."

On the other hand, the legal definition of "jurisdiction" is "[a] term of comprehensive import embracing every kind of judicial action. . . . Jurisdiction defines the powers of courts to inquire into facts, apply the law, make decisions, and declare judgment."\footnote{Black's Law Dictionary 1396 (6th ed. 1990).} However, "jurisdiction" can be more generally defined as "1. The right and power to interpret and apply the law. 2. a. Authority or control. b. The extent of authority or control. 3. The territorial range of authority or control."

In applying these two definitions to the language of UNCLOS III Article 56, states have the supreme and absolute power to regulate economic concerns in the EEZ but have only limited jurisdiction over pollution control in the EEZ. This segregation seems ironic considering coastal states are, essentially, free to explore and exploit natural resources but are severely limited in protecting the environment that generates these resources.

The difference between the exercise of sovereign rights and the exercise of jurisdictional rights is most evident when comparing a coastal state's authority to control pollution with its authority to control fisheries in the EEZ. A coastal
state is given the sole and exclusive authority to control fishing within its EEZ. The coastal state determines the allowable catch of living resources in the zone.\textsuperscript{59} In addition, under UNCLOS III Article 63, nationals of other states fishing in the EEZ must comply with the laws and regulations enacted by the respective coastal state.\textsuperscript{60}

In contrast, the coastal state's ability to control pollution in the EEZ is limited. A coastal state is precluded from enacting legislation that includes greater restrictions or requirements than existing international minimum standards. The coastal state may not impose design, construction or equipment standards on vessels. If a coastal state believes higher standards are necessary, it must prove the existence of a fragile ecosystem requiring additional regulation to prevent total destruction. Such a burden of proof is very difficult to meet and, thus far, has been found satisfied only in some ice-covered areas.\textsuperscript{61}

For the convention to be effective, the precise meaning of the terms “sovereignty” and “jurisdiction” must be made explicit.\textsuperscript{62} If the meanings are not clarified, states will be forced to guess as to what practices are acceptable under international law. As a result, states may unknowingly subject themselves to fines and penalties by the United Nations for either exceeding their powers or avoiding their duties under the treaty.

IV. THE EVOLUTION OF THE EEZ\textsuperscript{63}

In 1958, the United Nations recognized the need for international rules to define coastal states' territorial boundaries. The first United Nations Conference on the Law of the Sea (UNCLOS I) convened in Geneva to meet that need. Participants in the conference focused on four topics: (1) the territorial sea and the contiguous zone; (2) the high seas; (3) the continental shelf; and (4) fishing and conservation of the living resources of the High Seas.\textsuperscript{64} UNCLOS I attempted to set the breadth of the territorial sea at six miles with an additional six-mile contiguous zone for fiscal, customs, and sanitation regulation.\textsuperscript{65} UNCLOS I did not reach an agreement regarding territorial boundaries.\textsuperscript{66}

\textsuperscript{59.} UNCLOS III Article 61.
\textsuperscript{60.} These laws and regulations may relate, \textit{inter alia}, to: (1) licensing of fisherman, vessels, and equipment; (2) determining the species and amount of stock which may be caught; (3) regulating the conduct of fisheries research programs; (4) placing observers on board ships; (5) landing any part of the catch in ports of coastal states; (6) setting requirements for the training of personnel or transfer of fisheries technology; and (7) enforcing procedures. See UNCLOS III Article 62.
\textsuperscript{61.} See UNCLOS III Article 234 and \textit{supra} text accompanying notes 46-47.
\textsuperscript{62.} See \textit{supra} text accompanying notes 55-58.
\textsuperscript{63.} For a detailed discussion of the evolution of the law of the sea, see Larson, \textit{supra} note 50, at 2-6. For a brief synopsis of major periods in the development of the international law of the sea, see Appendix I.
\textsuperscript{64.} Larson, \textit{supra} note 50, at 6-7.
\textsuperscript{66.} Larson, \textit{supra} note 50, at 7.
however, it did provide a starting point for discussion of an EEZ for the control and exploitation of natural resources.

Two years later, the Second United Nations Conference on the Law of the Sea (UNCLOS II) again sought to determine the breadth of both the territorial sea and the contiguous zone. The participants also discussed the establishment of a six-mile zone beyond the territorial sea wherein a coastal state would have exclusive control over fishing. The proposal failed only by a one-vote margin, despite strong opposition to the proposal by major fishing states desiring a minimum twelve-mile territorial sea. Countries such as Chile, Ecuador, and Peru desired two hundred mile territorial seas. Like UNCLOS I, UNCLOS II adjourned with little progress made.

Following UNCLOS II, Dr. Arvid Pardo, the Head of the Permanent Mission of Malta to the United Nations, introduced an agenda to the United Nations calling for a declaration and treaty regarding the purposes and uses of the seabed, ocean floor, and natural resources located therein. This agenda resulted in the passage of the “Pardo Resolution,” which established an ad hoc committee to study the uses of the seabed and ocean floor. This committee grew into a standing committee, which became the preparatory Committee for the 1975 United Nations Convention on the Law of the Sea (UNCLOS III).

Unlike UNCLOS I and UNCLOS II, UNCLOS III saw a compromise begin to emerge at the first two sessions. An informal consensus among the delegates arose that included the following: (1) twelve-mile territorial seas; (2) two hundred mile economic zones; (3) coastal states’ rights to the continental margin beyond two hundred miles; and (4) a new concept for measuring the baseline from which islands would measure their territorial boundaries. Even with this growing consensus, a majority decision could not be reached, and the first two sessions of the convention were dismissed with little progress towards an international treaty. Delegates began to fear that failure to reach an international agreement would result in coastal states taking unilateral actions that would disrupt the work of the convention. The final text of UNCLOS III emerged in the eighth session of the convention.

On April 30, 1982, UNCLOS III was adopted. The United States and three other Western European countries voted against the measure because of concerns about deep-sea mining provisions. Eastern European countries abstained from the voting for the same reason. The treaty was opened for signature on

67. Id.
68. Id.
69. Id.
70. Id. at 7-8.
71. Id. at 8.
72. Hollick, supra note 65, at 10.
73. Larson, supra note 50, at 12.
December 10, 1982, but the United States, Great Britain, Italy, Luxembourg, and West Germany refused to sign because of the deep-sea mining provisions.\textsuperscript{75}

Although adopted in 1982, UNCLOS III was not ratified until February 18, 1994. It was on this date the requisite number of countries (sixty one), none of them industrialized, ratified UNCLOS III. Subsequently, according to the terms of UNCLOS III, the treaty became effective on November 16, 1994, and the provisions establishing both the reach of the EEZ and the activities that may be regulated in the EEZ became binding on the countries that ratified the treaty.\textsuperscript{76}

Despite the United States’ disagreement with the convention, in 1983, President Reagan issued Proclamation 5030 establishing an EEZ for the United States, which mirrored the zone described in UNCLOS III. Thus, the fear of the UNCLOS III delegates—unilateral action by nation states without a binding agreement—was realized. Like the convention, Proclamation 5030 created an EEZ extending two hundred miles\textsuperscript{77} in which the United States had sovereign rights over exploitation matters, such as fisheries and deep-sea mining.\textsuperscript{78} In addition, the United States claimed jurisdiction over all matters concerning the protection and preservation of the marine environment in this zone.\textsuperscript{79}

In 1988, the United States again took unilateral action to extend its sovereign rights. President Reagan extended the breadth of the territorial sea from three miles to twelve miles.\textsuperscript{80} President Reagan’s justification for this extension was national security.\textsuperscript{81} This extension was significant because it raised questions about the reach of a state of the United States’ sovereignty in the area between the old three-mile territorial sea and the new twelve-mile territorial sea.\textsuperscript{82}

V. POLLUTION CONTROL BY INDIVIDUAL COUNTRIES

Some countries have enacted their own pollution control laws that affect the area within their EEZs or beyond their territorial seas. These laws are significant because international law can be created from international agreements, customary practices, or general principles of common legal systems.\textsuperscript{83} Thus,

\textsuperscript{75} Id. at 147.
\textsuperscript{76} S. Con. Res. 72, 103d Cong., 2d Sess. (1994); see also The LOS Convention in the UN, Ocean Policy News (Council on Ocean Law, Washington, D.C.), March 1994, at 1. For discussion of differences between signing and ratifying a treaty, see supra note 7.
\textsuperscript{78} Id.
\textsuperscript{79} Id.
\textsuperscript{81} Id.
\textsuperscript{82} Letter from Michael J. Matheson, Acting Legal Advisor, to Douglas W. Kmiec, Acting Assistant Attorney General, Office of Legal Counsel 11 (Aug. 15, 1988).
\textsuperscript{83} Restatement (Third) Foreign Relations Law of the United States § 102 (1987). General principles of common legal systems include rules relating to the procedure and administration of justice, such as the doctrines of \textit{res judicata} and estoppel. Id. For a detailed discussion of the sources of international law, see \textit{id}.
if this trend continues, the extension of the EEZ from a mere resource exploitation zone to a pollution control zone would only be a matter of codifying the customary international law. A brief overview of laws countries have enacted follows.

A. Canada

In 1970, Canada enacted the Arctic Water Pollution Prevention Act. In this Act, Canada claimed sovereign rights over pollution control of one hundred miles of Arctic waters adjacent to the mainland of Canada. Canada claimed this action was necessary to supplement existing international law, which ensured freedom of navigation to merchant states at the expense of protecting the marine environment. This act required the submission of a plan by any person wishing to perform activities that might result in the deposit of wastes in the Arctic waters. Canada saw the threat of pollution in the Arctic waters as a threat to Canada's national security and vital interests.

The United States responded to this act with great hostility, feeling such regulation impeded freedom of navigation of the seas. The United States believed international law provided no basis for such a unilateral assertion by Canada. Instead, it advocated the negotiation and adoption of international agreements that would control pollution on the high seas.

Canada responded to the United States' position on April 17, 1979, by demonstrating a large number of coastal states had asserted limited jurisdiction over waters adjacent to their territorial seas. In fact, Canada maintained the United States itself had claimed extended jurisdiction over customs enforcement and fishing beyond its three-mile territorial limit as far as sixty-two miles.

84. 9 I.L.M. 543 (1970).
85. Canada felt "[s]uch traditional concepts are of little or no relevance anywhere in the world if they can be cited as precluding action by a coastal state to protect the environment." 9 I.L.M. 607, 610-11 (1970).
86. The procedure to gain approval is as follows: The plan is submitted to the Governor in Council who has the power to require modification or to prohibit the execution if he believes such plan would violate Section 1 of the Arctic Water Pollution Prevention Act.
In addition to the "plan provision," the Governor in Council has power to adopt regulations prohibiting ships from navigating within specified safety control zones unless such ships comply with the standards set by the Canadian government. Included in these standards are regulations regarding the construction of the ship, the construction of machinery and equipment, the manning of the ship, and the quantity of cargo, fuel, water and other supplies allowed. Any ship that violates these standards or requirements is subject to either a monetary penalty or seizure of the ship and its cargo.
87. Id. at 608.
89. 9 I.L.M. 607 (1970).
90. In Presidential Proclamation Number 2667, the United States claimed jurisdiction over the continental shelf to a distance of two hundred nautical miles. President Harry S. Truman stated this area was now subject to the exclusive control of the United States in matters relating to the exploration and conservation of natural resources of the subsoil and seabed. In essence, the United
essence, Canada purported to merely claim the same rights to protect its vital interests and national security as the United States had already claimed.\footnote{91}

UNCLOS III explicitly provides states may not require vessel source pollution standards of design, construction, manning or equipment other than the accepted international minimum standards.\footnote{92} However, the convention does recognize special circumstances in which a coastal state may enact laws as necessary to control pollution in fragile ecosystems.\footnote{93} UNCLOS III validated a large portion of Canada’s act, while at the same time invalidating the portion concerning special standards of design and construction.

B. United States

As the government of Canada alleged, the United States has also engaged in unilateral action to control pollution. A number of federal statutes regulate pollution in the coastal waters: the Federal Water Pollution Control Act, better known as the “Clean Water Act” (CWA),\footnote{94} the Oil Pollution Act of 1990 (OPA),\footnote{95} the Outer Continental Shelf Lands Act (OCSLA),\footnote{96} the Ocean Dumping Act (ODA),\footnote{97} and the Deepwater Ports Act (DPA).\footnote{98}

1. The Federal Water Pollution Control Act (CWA)

The CWA regulates the maintenance and integrity of the “waters of the United States” through extensive regulation of pollutant discharge. “Waters of the United States” includes waters that are used, were used, or may be used in interstate or foreign commerce and encompasses the territorial seas\footnote{99} and tributaries.\footnote{100} Federal courts have interpreted “waters of the United States” broadly.\footnote{101}

91. Canada also argued that international law is created primarily by state practice. It cited instances where Canada extended jurisdiction to certain areas of the seas, the United States objected to such extensions, and subsequently, the United States adopted similar measures.

92. UNCLOS III Article 211(6).

93. See supra text accompanying notes 46-47.


99. Under the CWA, the territorial sea is still defined as three nautical miles. 33 C.F.R. § 328.4 (1993).

100. 33 C.F.R. § 328.3 (1993).

In Section 1251(c) of the CWA, Congress stated:

[T]he President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to ensure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.102

This statement of congressional goals evidences Congress' intent that other nations follow the United States' lead in pollution control and enact laws that will, at a minimum, duplicate the regulations set by Congress.

If the United States ratifies UNCLOS III, it could no longer pervasively regulate pollutant discharges beyond the limits of its territorial sea. The CWA specifically addresses oil pollution in the territorial sea, the contiguous zone and the outer continental shelf.103 It prohibits the discharge of oil or other hazardous substances into those areas that ultimately affect natural resources and are under the exclusive management authority of the United States.104 Ratification of UNCLOS III would invalidate CWA's prohibitions on pollutant discharge beyond the contiguous zone, frustrating United States' protection of natural resources.

2. The Oil Pollution Act of 1990 (OPA)

The OPA was based upon liability concepts of other federal statutes—in particular, the CWA.105 The OPA requires parties responsible for the discharge, from vessels or facilities, of oil that subsequently poses a threat to navigable waters, adjoining shorelines, or the exclusive economic zone to pay removal costs as well as damages resulting therefrom.106

In addition to providing remedial measures, the OPA establishes construction requirements for all newly built tank vessels. Any newly built tank vessel operating in waters of the United States107 must have “double hulls.” The act

104. Id. These resources include fish, shellfish, wildlife, shorelines and beaches.
107. The OPA applies to the EEZ and navigable waters of the United States. The EEZ is defined by Presidential Proclamation Number 5030. See supra text accompanying note 77.
also provides for a "phase out" of any vessels not meeting these construction requirements.\textsuperscript{108}

If the United States Senate ratifies UNCLOS III, the construction requirement provisions of the OPA will be invalidated. UNCLOS III explicitly provides that states may not require vessel source pollution standards of design, construction, manning or equipment other than the accepted international minimum standards.\textsuperscript{109}

3. The Outer Continental Shelf Lands Act (OCSLA)

The purpose of the original OCSLA, enacted in 1953, was to provide the United States with jurisdiction over the submerged lands of the outer continental shelf and to provide the Secretary of the Interior with the authority to lease the lands.\textsuperscript{110} Such jurisdiction over the subsoil, seabed, or any artificial islands or structures constructed thereon was exclusive. In essence, OCSLA treated the outer continental shelf as if located within an area of exclusive federal jurisdiction.\textsuperscript{111}

In 1978, OCSLA was amended to establish management policies for the exploitation of oil and gas on the outer continental shelf as well as policies for protecting the marine environment.\textsuperscript{112} "Marine environment" includes the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the outer continental shelf.\textsuperscript{113}

In addition, the federal government assumed responsibility for the minimization and elimination of the adverse effects of oil and gas production that impacts on fishing and recreational activities. The 1978 Amendment provided a fund for the prompt removal of oil spills and for the review of environmental and safety regulations. These two legislative changes suggest the federal government sought not only to remove oil spills after they occur, but also to prevent their occurrence.


109. UNCLOS III Article 211(6). See also supra text accompanying note 92.


111. Id.

112. Id. OCSLA defines "marine environment" as:

[the] physical, atmospheric, and biological components, conditions and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the outer continental shelf.


113. Id.
Ratification of UNCLOS III would limit United States' sovereign power over the outer continental shelf to exploration and exploitation of natural resources. UNCLOS III Article 56 would only give the United States "jurisdiction" over protection and preservation of the marine environment. Although jurisdiction may be determined to be the equivalent of sovereignty with regards to resources on the outer continental shelf, this determination will not protect the marine environment to the same extent as OCSLA. Under OCSLA, the United States has sovereign rights to create policies that would protect the marine environment from the territorial sea to the high seas. Unless the federal government has the actual "sovereign" power to change regulations, its "jurisdictional" power to review environmental and safety regulations is worthless.

4. The Ocean Dumping Act (ODA)

The purpose of the ODA is to regulate the dumping of materials from either land of the United States or United States' vessels, aircrafts, or agencies. The ODA regulates dumping within either the territorial sea or the contiguous zone. Thus, when the ODA was enacted, the United States was attempting to control pollution beyond its territorial sea.

The ODA, however, defines the contiguous zone as extending to twelve, not twenty-four, miles. Article 33 of ODA grants coastal states authority to control sanitation in the contiguous zone. To conform to UNCLOS III, Congress would have to amend ODA to provide for a twelve-mile territorial sea and a twenty-four mile contiguous zone.

5. The Deepwater Ports Act (DPA)

A "deepwater port" is any fixed or floating structure or group of structures located off the coast of the United States. According to Section 1502(10), the regulation of these structures extends beyond the territorial sea. The DPA is another United States' unilateral action to control pollution beyond its territorial boundaries.

If ratified, UNCLOS III would limit the ability of the United States to regulate these deepwater ports. UNCLOS III Article 56 allows coastal states to exercise only limited jurisdiction over artificial islands and structures located within the EEZ. In addition, the regulation of such ports would not fit within the coastal state's authority in the contiguous zone.

114. See supra note 71.
115. For discussion of the interpretation of "sanitation," see supra text accompanying notes 21-23.
117. For discussion of coastal state's authority in the contiguous zone, see supra text accompanying note 20.
C. India

In 1976, India enacted The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act. Like UNCLOS III, India delineated the different zones as follows: the territorial sea extended to a distance of twelve miles, and the continental shelf and EEZ extended to a distance of two hundred miles.

While the delineation of the zones is similar to UNCLOS III, two main differences exist. First, no provisions were made for a contiguous zone. Second, in the continental shelf zone, India proclaimed full and exclusive sovereign rights as compared to the limited sovereign rights granted by UNCLOS III. The inclusion of the word “full” is an important modification. This suggests India sought not only to control economic activities in its EEZ, but all other activities as well. UNCLOS III does not provide that states will enjoy full exclusive sovereignty. Instead, UNCLOS III limits a coastal state’s exertion of sovereign rights in the EEZ to economic activities.

Like UNCLOS III, India claims sovereign rights over the exploration and exploitation of both living and non-living resources as well as over resources used for the production of energy from tides, winds, and waters in the EEZ. Unlike UNCLOS III, India claims exclusive rights and jurisdiction over the construction, maintenance, or operation of artificial islands, offshore terminals, installations, and other structures used in the exploitation and exploration of resources. Likewise, India claims exclusive control and jurisdiction to preserve and protect the marine environment and control pollution in the EEZ.

As of August 15, 1985, India’s government had not ratified UNCLOS III, although it did sign the final act and convention. If India ratifies an unamended version of UNCLOS III, the additional measures taken to preserve and protect their marine environment will be superseded, substantially decreasing the effectiveness of their pollution control mechanisms.

D. Iran and Saudi Arabia

In a 1978 regional convention, Iran and Saudi Arabia sought to prevent pollution of the Persian Gulf with methods similar to Canada’s. In addition to accepted regulation of activities within the territorial sea, contiguous zone, and continental shelf, the Iranians and Saudi Arabians regulated access to the Persian Gulf. In this area, which included the territorial sea and superjacent waters of the continental shelf, virtually all vessels were subject to regulation and inspection. If an inspector found a ship did not fulfill the regulations or

119. For a discussion of a coastal state’s sovereign rights in the EEZ, see supra text accompanying notes 24-29.
120. For a discussion of the differences between signing and ratifying a treaty, see supra note 7.
created an unreasonable threat of harm to the marine environment, he could take all action necessary to ensure the vessel would not sail until such regulations were met.

The governments of Iran and Saudi Arabia justified additional regulation because the Persian Gulf has special pollution concerns due to the volume of oil tanker traffic. They also justified the additional regulation with national security interests. Other nations criticized the regulations because it allowed Iran and Saudi Arabia to inspect tankers, not only for environmental reasons, but also to find shipments of weapons, contraband, and even terrorist groups. Iran, however, claimed the regulations encouraged other Persian Gulf states to enact similar legislation to protect the environment from a major oil spill as a result of terrorist attacks.

As of August 15, 1985, neither Iran's nor Saudi Arabia's government had ratified UNCLOS III. Iran signed both the final act and the convention; Saudi Arabia has only signed the convention. If both Iran and Saudi Arabia ratify an unamended version of UNCLOS III, the regional agreement between the two nations will be superseded, substantially decreasing the effectiveness of their pollution control mechanisms.

E. Agreements Among Nations

In addition to UNCLOS III, the United Nations, in 1973, convened the International Convention for the Prevention of Pollution from Ships (MARPOL). MARPOL is designed to eliminate intentional pollution and minimize negligent pollution of the marine environment by oil. This convention regulates the construction of tankers as well as drilling rigs and other platforms. MARPOL Article 9, however, states that

nothing shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea... nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.

122. Sixty percent of the world's oil is shipped via the Persian Gulf. The risk of an oil spill is far greater here than in other areas. Id. at 164.

123. Id. The presence of oil tankers in the gulf provides ample opportunities for terrorists. This possibility is not so far-fetched. In fact, it was reinforced by a 1979 warning from the United States Department of Maritime Affairs and Defense Mapping which warned crews of oil tankers to be alert for such an attack by terrorist groups. It was again reinforced when Lloyd's of London required tankers in the Persian Gulf to purchase special war-zone insurance. Id. at 165.

124. For a discussion of the difference between signing and ratifying a treaty, see supra note 7.

125. U.N. Doc. ST/LEG/SER.B/18 at 461 (1976); 12 I.L.M. 1319 (1973) [hereinafter referred to by its MARPOL article number].

126. MARPOL Article 9.
Under UNCLOS III, a coastal state cannot require special design or construction standards for vessels operating within the state's EEZ. This prohibition conflicts with MARPOL's regulations for design and construction of ships and drilling rigs. It would seem that, like with domestic law, the later law prevails. The provisions of UNCLOS III would prevail over MARPOL's design and construction requirements.

Similar to UNCLOS III, MARPOL provides regulations for "special areas." These areas include the Mediterranean Sea, the Baltic Sea, the Black Sea, the Red Sea, and the "Gulf area." The Gulf area is the area located northwest of the rhumb line between Ras al Hadd and Ras al Fastch. In this area, tankers and ships shall not discharge oil or any oily mixture. In addition, ships shall not discharge any oil drainage or sludge, dirty ballast, and tank washing waters. With the ratification of UNCLOS III, the control or possibility of control in the special areas defined by MARPOL are ambiguous. UNCLOS III specifically recognizes only Canada as a "special area." The question, whether UNCLOS III should recognize the special areas designated in MARPOL, or if MARPOL should recognize the special area designated in UNCLOS III, is unanswered.

VI. THE POSSIBILITY OF AN EXCLUSIVE POLLUTION CONTROL ZONE

Less developed countries may resist expanding the regulatory scope of the EEZ to include an exclusive pollution control zone. A principal reason UNCLOS III was not ratified immediately was because less developed countries feared the creation of international pollution control standards would require costly regulations and policies. Less developed countries lacked the capital they would have needed if extensive design or construction requirements were imposed on vessels and tankers. Thus, extensive new requirements would have excluded them from international commerce.

While the less developed countries' concerns are significant, the health and quality of the world's oceans is more important. International cooperation is necessary to preserve the oceans. As one commentator stated, "two countries prohibiting oily discharges from tank cleaning operations won't make much of a dent in the problem if the rest of the world's tanker fleet does not follow suit." Likewise, if one country enacts pervasive regulations that significantly prevent pollution in the EEZ and other countries do not follow suit, little progress will be made in protecting the marine environment.

If the EEZ expands to encompass exclusive pollution control, the tension between the states of the United States and the federal government over

127. UNCLOS III Article 60.
128. MARPOL Article 10(1).
129. MARPOL Article 10(2).
130. MARPOL Article 10(1).
regulation of the territorial sea, as well as the contiguous zone and the EEZ, will increase. The extension of the territorial sea to twelve miles forshadowed the tension expanding federal control in the EEZ could create.\textsuperscript{132} For example, the Coastal Zone Management Act (CZMA) defines the United States coastal zone as "extending to the boundary of the territorial sea."\textsuperscript{133} The CZMA allows coastal states of the United States to draft a management plan for coastal resources located within the coastal zone, with approval from the federal government.\textsuperscript{134} Louisiana submitted a plan to the federal government but defined "coastal zone" as "pursuant to state law," which is three marine leagues or nine nautical miles. The federal government rejected Louisiana's plan of regulation extending to nine, not three, miles. However, after the extension of the territorial sea to twelve miles, the federal government may no longer object to Louisiana's plan.\textsuperscript{135}

The closer an area is to the coastline, the greater a state's interest in protecting the sea. Anything that occurs in close proximity and threatens the health, safety or welfare of the citizens of the coastal state falls directly within the broad police powers of the states. However, as an area extends further into the ocean, the federal interests in national security and international trade increase.\textsuperscript{136} The balancing between federal and state interests is consistently seen in cases involving the Commerce Clause of the Constitution.\textsuperscript{137}

The Commerce Clause gives the federal government broad power to control and regulate interstate commerce.\textsuperscript{138} Congress undoubtedly has the power to regulate foreign commerce as the states ceded this power when the Constitution was ratified. Regulation to control pollution in the EEZ will affect interstate commerce. If regulations are too strict, they may impede navigation and foreign trade. If regulations are too lenient, however, oil spills or other accidents may hamper marine transportation and the production or exploitation of oil, gas, and other natural resources located within the seas.

In Cooley v. Board of Wardens,\textsuperscript{139} the United States Supreme Court recognized states may impose special regulations on interstate commerce where local conditions were unique. The Court found Pennsylvania had a heightened

\textsuperscript{132} See supra text accompanying note 82. (The 1988 Reagan Proclamation caused great difficulty in terms of federal-state relations. With the additional nine miles of sovereignty, some states claimed they should control this area. Instead, the federal government claims the additional nine miles only gave it the right to control and manage—states were still limited to a three-mile territorial sea.).

\textsuperscript{133} New Territorial Boundary, Aquanotes (Louisiana Sea Grant, Baton Rouge, La.), Spring 1989, at 5.

\textsuperscript{134} Id.

\textsuperscript{135} Id.


\textsuperscript{137} U.S. Const. art. 1, § 8, cl. 3.


\textsuperscript{139} 53 U.S. (12 How.) 299 (1851).
interest in regulating ships entering and leaving the port of Philadelphia even if interstate commerce was forced to bear a burden. The main inquiry was whether the state's interest in the problem outweighs the federal interest in uniformity of the laws. Although the *Cooley* decision was based on activities within the territorial sea of the state, it may have an impact on waters beyond twelve miles because pollution occurring beyond this point will ultimately impact the shores of a coastal state. *Cooley* brought to light questions regarding: (1) the national versus local nature of the problem, (2) the commercial versus police powers purpose of the regulation, and (3) the directness of the effect on interstate commerce.¹⁴⁰ UNCLOS III raises the same questions.

Because UNCLOS III has special provisions regarding ice-covered areas considered to be fragile ecosystems, the delegates to UNCLOS III have extended the rationale of *Cooley* to the international arena. Where special circumstances or a fragile ecosystem exists, coastal states may enact more stringent laws. The same may apply to the United States. For example, assume the United States has a fragile ecosystem and receives authority to impose significant regulations on pollution control in this area. In turn, suppose this area is located fifty miles off of the coast of a state of the United States. The state also seeks to enact pollution regulations in this zone to protect the health, safety, and welfare of its citizens.

Clearly the federal government has the power to regulate activities within the territorial sea, contiguous zone, EEZ, and the continental shelf. A question arises, though, as to the power of a state to exert concurrent jurisdiction over any of these areas. Clear precedent exists that a state has the ability to exert sovereign rights up to three miles from the coastline.¹⁴¹ Beyond this limit, the exertion of sovereignty by a state is questionable.

Whether a state of the United States or the federal government controls up to twelve miles remains significant in terms of UNCLOS III. States of the United States have often taken action, sometimes inappropriately, to regulate activities beyond their territorial seas. Congress has been quick to end such assertions of power.¹⁴² In the last few decades, however, Congress has enlarged the role a coastal state may play in regulating the ocean. This increase is due to states demanding more influence in areas related to local concerns. States feel that they are in a better position than the federal government to understand the peculiar needs of their ecosystem.¹⁴³

¹⁴¹  *Chevron U.S.A., Inc. v. Hammond*, 726 F.2d 483 (9th Cir. 1984) (Congressional intent in *CWA* was to allow states to take an active role in abating water pollution, but the federal-state partnership in pollution regulation applies only to water within the state's jurisdiction which was determined to be three nautical miles from the coastline).
¹⁴²  See *supra* text accompanying notes 133-135.
VII. CONCLUSION

UNCLOS III provides a starting point for effective control of marine pollution; however, "the existence of international environmental law does not of itself guarantee better protection for the oceans."\(^{144}\) An individual nation must be responsible for the pollution that occurs in the ocean surrounding its territory. To assume this responsibility, however, the nation must be trusted by the international community to establish fair and equitable rules. This surrender of power to the nation need not be complete. The international community may require that certain minimum standards be met. However, a nation should be free to go above and beyond these standards if it has compelling reasons.

The opportunity to better protect the marine environment lies within the EEZ. UNCLOS III already grants each nation sovereign rights over both the exploration, exploitation, conservation, and management of natural resources and the exploitation and exploration of energy production by water, currents and wind. A nation, however, has only limited jurisdiction over matters regarding the use of artificial islands and structures, the performance of marine scientific research, and the protection and preservation of the marine environment. Over the past decades, many nations expressed a desire, through laws and policies, to extend the scope of pollution regulation. With new advances in technology, such as Shell Oil Company’s plans to develop the deepest offshore oil rig in the Gulf of Mexico, it is time for the United Nations to amend UNCLOS III to allow such regulation.

The United States could impel such an amendment. The United States has already been instrumental in amending the deep-sea mining provisions of UNCLOS III. The United States could influence the United Nations to amend UNCLOS III to give coastal states a greater role in pollution control. If the United Nations refuses to amend UNCLOS III, the United States Senate should refrain from ratifying the treaty.

If the United Nations will consider amending UNCLOS III, the following changes should be made. First, UNCLOS III should be amended to define "sanitation" as used in the listed powers of coastal states in the contiguous zone. This definition should be very broad to provide greater control over pollution.\(^{145}\)

Second, UNCLOS III should be amended to give a coastal state sovereign rights within its EEZ. UNCLOS III already gives coastal states sovereign rights to control economic matters, e.g., fishing, scientific research, and deep-sea mining. The extension of the EEZ to a pollution control zone need not be mandatory. Each state still would be required to meet the existing minimum

\(^{144}\) Sielen, supra note 131.

\(^{145}\) "Sanitation" is broadly defined as the "formulation and application of measures designed to protect public health." The American Heritage Dictionary 1090 (2d ed. 1985). See also supra text accompanying notes 20-23.
international standards for pollution control. However, a coastal state should be allowed to enact additional measures to control particular pollution problems in its EEZ, as long as these measures are "reasonable" and not for the sole purpose of impeding navigation or harming the interests of less developed countries. The United Nations is not equipped to determine what pollution controls each coastal state requires.

UNCLOS III provides a foundation for comprehensive regulations regarding economic, environmental, and national security matters. For these regulations to be effective, the above amendments must be enacted, or UNCLOS III will create more uncertainties than remedies.

Amy deGeneres Berret
APPENDIX I

THE DEVELOPMENT OF THE LAW OF THE SEA

6th c. Greek city-states, Roman Republic, and Italian cities began to exercise jurisdiction over adjacent waters. 146

13th c. Venice claims sovereign rights over the Adriatic Sea. 147

1492 Discovery of the New World by Christopher Columbus. 148

1494 Pope Alexander VI issues the Treaty of Tordesillas that divided the Southern Hemisphere between Spain and Portugal. 149

1605 Grotius writes the *De Jure Praedae Commentarius* that laid the groundwork for discussion at UNCLOS III. 150

1930 The Hague Convention is convened to determine the breadth of the territorial sea and the territorial boundaries of coastal states. 151

1945 President Truman issues Proclamation Number 2667 in which the U.S. claimed jurisdiction over the continental shelf to a distance of 200 miles; Mexico follows suit. 152

1947 Chile claims sovereign rights over the continental shelf to a distance of 200 miles; Peru and Ecuador follow suit. 153

1958 United Nations holds the first conference on the Law of the Sea (UNCLOS I) to determine the breadth of the territorial sea, the contiguous zone and the continental shelf. 154

1960 United Nations convenes the second conference on the law of the sea (UNCLOS II) to determine the breadth of the territorial sea and the contiguous zone. 155

1970 Canada enacts Arctic Waters Pollution Prevention Act, which claims sovereign rights over pollution control to a distance of 100 miles. 156

1975 United Nations convenes the third conference on the law of the sea (UNCLOS III) to determine the breadth of the

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146. Larson, supra note 50, at 2.
149. Larson, supra note 50, at 3.
150. *Id.*
151. *Id.* at 5.
152. Hollick, supra note 65, at 18-61.
154. Larson, supra note 50, at 6-7.
155. *Id.* at 7.
156. 9 I.L.M. 543 (1970).
terrestrial sea, the contiguous zone, the EEZ, and the continental shelf; Informal Single Negotiating Text emerges in 8th Session. 157

1976
India enacts the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act. 158

1982
UNCLOS III is adopted by a vote of 130 to 4 and the convention is opened for signature; the United States does not sign. 159

1983
President Reagan issues Proclamation 5030 that creates a U.S. EEZ. 160

1988
President Reagan issues Proclamation 5928 that extends the territorial seas of the U.S. from 3 miles to 12 miles. 161

1991
Poland enacts Polish Law on the Territorial Waters of 4/91 that extends pollution control laws of Poland to the EEZ. 162

Feb. 18, 1994
Bosnia becomes the 61st member nation to ratify UNCLOS III. 163

June 30, 1994
The Clinton administration notifies the Foreign Relations Committee that President Clinton will sign an agreement amending UNCLOS III 164

July 29, 1994
President Clinton signs amending agreement that provisionally binds the United States to the agreement and portions of UNCLOS III for four years. 165

Nov. 1994
UNCLOS III becomes binding international law on signatory nations. 166

165. Id.