

COMMENTS ON THE CONTRIBUTIONS OF :

JANSOONE, R., *The Belgian State Practice  
in the Law of the Sea :  
the Exclusive Economic Zone*

and

GAUTIER, Ph., *Le plateau continental  
de la Belgique et sa délimitation.  
Quelques réflexions  
sur la notion d'accord implicite (\*)*

BY

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It goes without saying that the limited time available does not allow to give an in depth comment on the presentations of Mr. Jansoone and Mr Gautier. I shall therefore limit these comments mainly to aspects of the EEZ and the continental shelf related to the law of the sea followed briefly by a few remarks concerning the Belgian situation.

It is clear in my opinion that the introduction of the EEZ in the law of the sea fundamentally aimed at regulating and managing the natural resources of the seas. As such the concept is a primary example of both the growing pressure from the states on the seas as well as a marked change in attitude of those same states. There is indeed for some time now a development going on towards a more policy inspired managerial approach of the exploitation issues of the resources of the oceans. The introduction of a « benefit sharing » system for living natural resources within the concept of the EEZ is no doubt a remarkable achievement in this context.

Rightly so Mr Jansoone paid a good deal of attention to the problem of the protection of the marine environment in the EEZ, both with respect to vessel source pollution and dumping. I would nevertheless want to stress upon the fact that the provisions of part XII of UNCLOS dealing with marine pollution in the EEZ must be seen as complementary to the rights

(1) English translation by the author of the original intervention which was made in Dutch.

of exploitation which are being conferred upon the coastal states by the introduction of the EEZ. Indeed, what would be the use of providing states with far reaching exploitation possibilities and then to withhold from them the regulation of the necessary conditions to do so. Rules concerning marine pollution with respect to the EEZ are in the first instance directed at safeguarding the exploitation interests of coastal states.

Within the framework of Belgian state practice there can be no doubt that the introduction of an EEZ will have an important influence on Belgian legislation. The provisions of UNCLOS concerning marine pollution are not entirely crystal clear and this will undoubtedly also have consequences for the introduction of internal legislation. Nevertheless, the problem of the protection of the marine environment remains mostly a problem of enforcement rather than legislative action. The dispersion of enforcement authorities is not making it any easier and practical enforcement issues are complicating the matter even further. It remains to be seen how the Belgian authorities will be dealing with this problem.

Highly interesting is the reference made by Mr. Jansoone to the initiative of the European Union introducing a European reporting system for the transport of noxious and dangerous substances (Eurorep) within the concept of a common policy for safe seas. Notwithstanding the fact that the European Union no doubt developed highly appreciable initiatives with respect to safety at sea, immediately influencing the protection of the marine environment, I'm not entirely convinced that the Union constitutes the right forum to enact such measures. Safety at sea is a problem requiring an international solution, as was sadly demonstrated recently. The solution handed out by the European Union is mainly a European and therefore a regionally inspired solution notwithstanding the fact that it will also be applicable towards vessels flying a non-European flag. This sort of regionalism is a clear sign of genuine concern also demonstrated through the American OPA 90. The latter however can be seen as an overreaction with possibly serious consequences for international transport of oil towards the USA in the near future. In my opinion the European Union should be careful not to be trapped into a situation with which the American administration has been confronted lately.

The introduction of an EEZ will no doubt also have consequences upon the maritime delimitation issue towards our neighbouring countries. Mr. Jansoone is of the opinion that the delimitation of the EEZ should be elaborated along the same lines as for the continental shelf. Essentially of course he is right as far as the provisions of the 1982 Law of the Sea Convention are concerned. With respect to the Belgian situation however it needs mentioning that the delimitation of the Belgian continental shelf so far was based upon the framework law of June 13, 1969. The directive principle to be found in that law is the equidistance principle together with

the special circumstances idea. To date however any maritime delimitation should be agreed upon according to the prevailing principle of the 1982 Law of the Sea Convention, namely equity. The agreements already entered into so far with the United Kingdom and France are truly corrections on the equidistant principle in order to reach an equitable solution.

The dispersed and complicating division of powers with respect to maritime areas between several administrative departments and between the federal and the regional authorities, show an urgent need for an efficient coordination legislation effective towards all uses of the sea. Such a North Sea Coordination Law would avoid a shattered approach towards problems involving different levels of authorities and/or administrations. It would enable a more coherent reaction to all kinds of specific problems concerning the uses of the sea, such as e.g. negotiations on maritime delimitation. Especially the division of powers between the federal and regional authorities does not entirely result in positive experiences. Moreover, the fact that regional authorities can often indirectly influence general (federal) competences with respect to the use of the sea is not enhancing a coherent and coordinated approach. Without expressing any preference for an expansion of regional or federal competences it is anyhow worth while looking into the development of a coordinated North Sea legislation, especially taking into account the upcoming introduction of an EEZ off the Belgian coast.

Without expressly mentioning it, Mr. Gautier is referring to a hot issue in Belgian state practice with respect to maritime delimitation, i.e. the 1965 so-called administrative agreement on the delimitation of the Belgian continental shelf vis a vis the Netherlands. In exploring the particular case of implicit agreements in international law, Mr. Gautier rightly comes to the conclusion that this law making technique is to be handled with serious reservations in particular as far as maritime delimitation is concerned. I fully agree and would furthermore cast some serious doubt on the proclaimed validity of the 1965 draft as a treaty, not merely on the basis of international law but also on constitutional grounds. Indeed, at that time the Belgian Constitution required that certain treaties must be approved by Parliament (1). Amongst others this was the case with treaties that could directly bind Belgian nationals which certainly is the case for maritime delimitation treaties. On the basis of the Vienna Treaty Convention it can rightly be expected that the unfulfillment of such a preliminary requirement constituted an unsurmountable obstacle for entering into a treaty since neighbouring States are expected to be aware of these requirements. There can be no doubt in my opinion that the delimitation of the continental shelf between Belgium and the Netherlands is an open issue to be

(2) The former art. 68 of the Constitution. According to art. 167, §2 of the coordinated Constitution all treaties need the approval of Parliament (or of the regional legislative authorities).

agreed upon in ongoing negotiations. Although the Belgian law of 1969 on the continental shelf mentions the equidistance criterium as a delimitation principle it implies the possibility to use other criteria in reaching an agreement. Reaching an equitable solution for delimitation purposes certainly is nowadays the basis for the delimitation of maritime areas not only in international law but also in Belgian State practice (2). It can therefore be expected that the delimitation of the continental shelf between Belgium and the Netherlands shall be effectuated on the basis of equity, rather than equidistance taking into account that a corrected equidistance can also provide an equitable solution.

Finally contrary to Mr Jansoone's opinion I'm fully convinced that the entry into force of the Law of the Sea Convention is not at all the end of academic interpretation. Further academic debates can be expected on several issues. The advantage gained by the entry into force is of course that the expected development of state practice in this field will offer additional assets for interpretational purposes.

(3) See the 1984 Belgian declaration issued on the occasion of the signing of UNCLOS ; furthermore see the *supra* mentioned agreements with France and the United Kingdom.