

The Unanticipated Effects of Boundaries: The Exclusive Economic Zone and Geographically Disadvantaged States Under UNCLOS III

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Introduction

Recent events have breathed new life into the once moribund UNCLOS III, also known as the Law of the Sea Treaty.¹ Not only has the treaty now entered into force,² but the United States has finally begun the two-step US ratification process.³ Drafted to be an ongoing constitution for the seas, one of the most important issues that the Law of the Sea Treaty attempts to address is the equitable participation of nations in the wealth of the oceans. However, by establishing new political boundaries in the oceans, the Law of the Sea Treaty has produced several unanticipated effects.

One of the unanticipated effects involves the interaction between two innovative concepts: Exclusive Economic Zone (EEZ) jurisdiction and the legal status of geographically disadvantaged states. While applying either of these concepts alone will prove challenging, their interaction will complicate matters considerably. For example, while evaluating a state's claim that it is geographically disadvantaged is difficult, this difficulty is compounded by the existence of the EEZ regime.

While arguments in favour of a share of marine resources for states with limited access to the ocean have been advanced for centuries,⁴ the existence of EEZ jurisdiction exacerbates the problem for a host of states which would otherwise have no legitimate basis for asserting geographically disadvantaged status and its accompanying rights. In fact, the effect of EEZ jurisdiction can lead to startling results, for it is the presence of adjacent EEZ jurisdiction that can change apparently unrestricted coastal states into geographically disadvantaged states.

Treaty Negotiations: Wrangling over Resources and Geography

A major innovation of UNCLOS III was the idea that the geophysical conditions which prevent significant access to ocean resources can create a special legal status. That such geophysical conditions *should* give rise to special legal rights was purely the result of the weight of numbers at

the conference. The interests of the landlocked states in access to and participation in the ocean's resources were shared by states with very limited ocean access – the geographically disadvantaged states. The combination of these two groups, one easily defined, the other very difficult to define, resulted in a very powerful voting block.⁵

Although the rules of procedure adopted for the conference mandated a consensus procedure according to which voting on issues was delayed until the participants had tried to resolve problems involving those issues, the voting process ultimately required a two-thirds majority to adopt any particular provision. The importance of the two-thirds requirement was that it gave blocking power to the geographically disadvantaged states and landlocked states which totalled over one-third of the states attending the conference.⁶ The ability to prevent any provision from being adopted as part of the final text was sufficient leverage to force adoption of provisions which addressed the concerns of the geographically disadvantaged/landlocked group.

As negotiations developed, the power of the geographically disadvantaged and landlocked group coalesced as did a group of coastal states with interests contrary to those of the geographically disadvantaged/landlocked group. Eventually the coastal state group numbered half of the conference participants.⁷

The sharpest point of contention between these two groups was over the EEZ concept. While many of the geographically disadvantaged states and landlocked states understood the interests of the developing nations that belonged to the coastal state group, the geographically disadvantaged and landlocked states group nonetheless saw the 200-mile *Exclusive Economic Zone* as an intolerable obstacle to their effective access to ocean resources.⁸ As negotiations progressed, the geographically disadvantaged and landlocked states came to consider access to ocean resources as their legal right. Eventually, those rights were included in

the final treaty text, in particular, Articles 69 and 70.

Fundamentals of the Exclusive Economic Zone

Stated generally, Part V of the treaty (Articles 55 to 75) provides that the Exclusive Economic Zone is an area of ocean space beyond a coastal state's territorial sea the breadth of which is limited to 200 nautical miles (nm) from the state's baseline and within which the coastal state has exclusive rights to all resources of any economic value.⁹

While the concept of the EEZ is simple, agreement on it was not. Although more than 100 states supported the principle of a 200nm exclusive economic zone, landlocked states and those with a short coastline (the geographically disadvantaged states) were opposed to the idea.¹⁰ Before an agreement could be reached, the question of what benefits would have to be given to the landlocked and geographically disadvantaged states had to be answered.¹¹ The solution came in the form of Articles 69 and 70 which give these states a right of access to: "*the surplus of the living resources of the exclusive economic zones of the coastal States of the same subregion or region...*"¹² As the following section demonstrates, though, determining which states may legitimately be described as either landlocked or geographically disadvantaged, and thereby claim the aforementioned rights, is not a simple task.

Establishing the Legal Status of Geographically Disadvantaged and Landlocked States

Treaty Structure and Innovative Legal Rights

A curious aspect of the Law of the Sea Treaty is its pervasive use of dichotomies. For example, the treaty divides the wealth of the ocean into two types of resources: living and non-living.¹³ The treaty regulates access to those resources between two regimes: that of the Exclusive Economic Zone (EEZ) and the High Seas.¹⁴ Similarly, the treaty implicitly divides the nations of the world into two types: disadvantaged states and those which are not disadvantaged. In yet another example of a dichotomy within the treaty, disadvantaged states are divided into two groups: those which are *economically* underdeveloped and those which are *geographically* hindered in their efforts to participate in reaping the resources of the ocean.¹⁵

As mentioned in the previous section, special rights are afforded to those states that are either landlocked or geographically disadvantaged. Unfortunately, the Law of the Sea Treaty does not provide an easy means of determining such states.

This task is further complicated by the existence of EEZs which can create geographically disadvantaged states where none would exist if no EEZ were present. This complication resulted because both EEZ jurisdiction and special rights for geographically disadvantaged states were novel concepts which were not developed with sufficient thought as to how they might affect one another. That failure of foresight has given rise to unexpected developments which are apparent upon a detailed examination of several provisions of the Law of the Sea Treaty. That examination begins with defining and classifying the types of states recognised under the treaty.

Classification of States under UNCLOS III

While many variations on classification of states are possible under the Law of the Sea treaty, one broad division based on a nation's reaction to the sea is compelling: states may be classified as either coastal or landlocked.¹⁶

The term "*coastal state*" is not defined by the treaty; however, Article 2 describes the extent of a coastal state's sovereignty as extending into "*an adjacent belt of sea, described as the territorial sea.*"¹⁷ Territorial seas are discussed in Part II, Section 2 of the treaty in relation to baselines which are themselves described in Article 5 as normally lying, "*along the low watermark of the coast.*" Thus, a coastal state is any state possessing territory on which a baseline can be drawn and thereby generate a territorial sea.¹⁸

While it is clear that all nations bordering the open ocean would be coastal states since they have sea coasts, the classification of other states is not so simple. For example, it is possible that a nation which lacks access to the open ocean may nonetheless have a coastline along a sea which is itself landlocked; the states of Azerbaijan, Turkmenistan, Kazakstan and Uzbekistan all border either the Caspian Sea or Aral Sea but have no coastline with access to the ocean.

If Article 124 is applied as written, then these nations are not landlocked but are *coastal* states. Further, Article 122 indicates that states bordering enclosed (*i.e.*, landlocked) seas *are* properly considered coastal states.¹⁹ Thus, a "*coastal State*" is any nation which possesses a shoreline along a body of water that qualifies as a "*sea.*"²⁰ That some states may technically be "*coastal States*" but still lack access to the ocean is why UNCLOS III divided coastal States into two types: geographically disadvantaged states and those without such disadvantages.²¹

Reconciling the Concepts of Geographically Disadvantaged States and the EEZ

A Question of Access: Article 70

Having determined that the LOS Treaty classifies landlocked states as either coastal or landlocked, one can discern from the treaty that coastal states are further divided into geographically disadvantaged states and non-geographically disadvantaged states.²² The geographically disadvantaged category is, by the terms of Article 70(2), further divided into states having no EEZ and states whose “*geographical situation*” makes them dependent on other states’ EEZ.

The first category of geographically disadvantaged states (those with no EEZ) can only apply in two exceptional circumstances:

1. an otherwise landlocked nation which possesses an oceanic “*rock*” which, as defined by Article 121, does not generate an EEZ but does generate a territorial sea and therefore must have a “*coast*”;²³ and,
2. a state which, due to boundary lines drawn as a result of the presence of other states, does not possess an EEZ.²⁴

Seven states currently exhibit these characteristics: Bahrain, Cameroon, Iraq, Jordan, Kuwait, Singapore and Zaire. (If Uzbekistan is considered a coastal state rather than a landlocked state, due to its Aral Sea coast, then it would be included in this list as well.) Of these states Bahrain is the only *island* nation that has no EEZ whatsoever due to the presence of neighbouring EEZ jurisdictions.

The second category of geographically disadvantaged states (those whose geography makes them dependent on other nations’ EEZs) is far more complex. Article 70(2) also defines geographically disadvantaged states as:

“coastal States...whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other States in the subregion or region for adequate supplies of fish for the nutritional purposes of their population or parts thereof...”

The limiting aspects of this definition are noteworthy.

First, to be included in this category, a state would not need to be completely zone-locked or EEZ-deprived, but need only suffer as a result of the

proximity of neighbouring States’ EEZs. Second, the state in question must be dependent on living rather than energy resources in nearby EEZs. Third, the living resources in question are limited to fish. Fourth, dependence on those fish stocks must be nutritional rather than economic. Fifth, that dependence only extends to EEZs in that particular region or subregion. Finally, that nutritional dependence must arise solely out of the state’s “*geographical situation*.”²⁵ Any state meeting this description is afforded particular rights with regard to that living resource.

Regardless of its legal or political legitimacy, the idea of providing access to fish in a neighbouring EEZ to satisfy a nearby state’s nutritional needs is easily understood. Were this the extent of the definition in Article 70(2), there could be little debate over its meaning. However, the definition contains two ambiguities.

First, as used in Article 70, the terms “*region*” and “*subregion*” are clearly intended to limit the geographical reach of geographically disadvantaged states; nonetheless, these important terms are not defined.²⁶ Second, the ambiguity of the limitation that the nutritional dependence must be caused by the state’s “*geographical situation*” greatly complicates determining the applicability of the Article.

Applied literally, a state’s “*geographical situation*” refers solely to the circumstances of the state’s physical features or topography. Yet, surely the limitation imposed by geographical features is not the critical aspect addressed by Article 70; it is the presence of *political boundaries* which limit ocean access that is the critical aspect. If “*geographical situation*” is the intended criteria for a geographically disadvantaged state, then a state with a long coastline but few resources within its land territory would be geographically disadvantaged, regardless of the immensity of its EEZ. However, if “*geographical situation*” refers to political jurisdiction which limits a state’s EEZ, then a nation with a small EEZ would qualify as geographically disadvantaged. Correct application of Article 70 requires that it be interpreted as providing that: “*geographically disadvantaged States are States the size of whose EEZs make them dependent on the living resources of other States’ EEZs.*”

This interpretation is supported by the fact that Article 70(2) also provides that:

“geographically disadvantaged states mean coastal States, including States bordering enclosed or semi-enclosed seas.”

The reference to states bordering enclosed and semi-enclosed seas is unnecessary however, since the term “*coastal states*” unquestionably encompasses those states. The only reason for the use of this phrase is to emphasise that the dominant factor in characterising a state as geographically disadvantaged is the size of its EEZ, not its geography. This explanation for the use of this phrase is consistent with the rest of Article 70(2) which specifically classifies coastal states lacking an EEZ as geographically disadvantaged.

Distinguishing the *concepts* of geographically disadvantaged states and landlocked states is important in this analysis. Though often uttered in the same breath as though essentially identical, the concepts of geographically disadvantaged states and landlocked states are very different.²⁷ As Article 70(2) indicates, geographically disadvantaged states are granted their status solely as a result of the size of their EEZ, *not* the size of their coast line. This is why Cameroon, which has virtually no EEZ due to the presence of Bioko Island (an offshore possession of Equatorial Guinea) but which possesses a coast line of almost 200 miles, can nevertheless legitimately claim geographically disadvantaged status. Landlocked states, on the other hand, are granted their special status solely as a result of lacking a coast rather than an EEZ.²⁸

Can an Island Be “Geographically Disadvantaged”?

The concept of geographically disadvantaged states revolves around the realisation that if landlocked states should receive special consideration because of their lack of access to the ocean, then there is no logical reason why states with severely restricted access to the ocean should not also receive special consideration. If such consideration is not granted to these geographically disadvantaged states, then having severely restricted access to the ocean ends up being worse than having no access at all. Thus, the idea of an island nation being a geographically disadvantaged state would seem absurd: how can a nation surrounded by the sea be considered disadvantaged in terms of its access to the sea? The answer becomes obvious when one moves from consideration of merely geography to a

consideration of the effect of extended zones of marine jurisdiction.

Article 70 specifically includes as geographically disadvantaged those states bordering enclosed or semi-enclosed seas.²⁹ The phenomenon of enclosure or semi-enclosure includes not only areas of ocean space restricted by land, but also areas of ocean space that are restricted by EEZs. Article 122 supports this conclusion:

“an enclosed or semi-enclosed sea...[is] a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.”

This definition’s emphasis on the restrictions created by sea zones supports the idea that an island nation may legitimately claim geographically disadvantaged status if its access to the *open ocean* is restricted by the presence of neighbouring EEZs.

For example, one would not immediately think of Cuba as a geographically disadvantaged state since its access to the open ocean is apparently unrestricted. However, when one considers the effect of EEZs generated by the presence of neighbouring states, Cuba is virtually zone-locked, possessing a very constricted EEZ. Cuba’s potential EEZ is restricted by the presence of the United States to the north, the Bahamas to the northeast, Haiti and Navassa Island (a US possession) to the east and southeast, Jamaica to the south, the Cayman Islands (a British possession) to the southwest, and Mexico to the west. Only a narrow slice of the Gulf of Mexico to the northwest allows for full extension of Cuba’s EEZ out to 200nm.

This situation is not unique to Cuba; at least twenty island nations in the Caribbean³⁰ and South Pacific³¹ are in similar circumstances (Figures 1 and 2).³² The *effect* of neighbouring EEZ jurisdictions in these circumstances (limiting access to the ocean’s resources) actually defeats the *reason* for creating EEZ jurisdiction (assuring and maximising coastal state access to the ocean’s resources). Moreover, these circumstances provide a powerful factual basis for applying the concept of geographically disadvantaged states to these island nations.

Indeed, island nations whose ocean resource access is limited by adjoining states' jurisdictions possess the classic characteristics of geographically disadvantaged states: they cannot benefit from any permitted seaward extension of jurisdiction such as the EEZ, and the seaward extension of neighbouring states' jurisdiction restricts their ability to enjoy the resources of the sea that would otherwise be available to them.³³

Since the factual circumstances of certain island nations fit precisely the circumstances anticipated by Article 70, and since the treaty does not bar application of Article 70 to island nations, the logical conclusion is that island nations can indeed be geographically disadvantaged. However, the problem of determining *when* any nation is truly geographically disadvantaged remains to be solved.

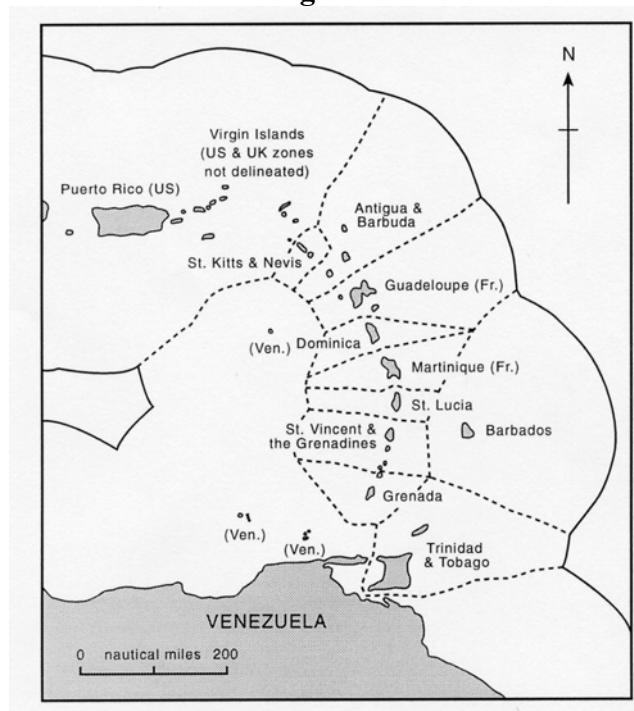
When Is Article 70 to be Applied?

Since there is no standard size for an EEZ,³⁴ it is impossible to determine when a state's geographical situation results in an EEZ that is sufficiently impaired so as to enable that state to claim geographically disadvantaged status under Article 70.³⁵ In fact, the example of geographically disadvantaged states contained in Article 70(2) – coastal states with no EEZ whatsoever – implies that a geographically disadvantaged state is one whose EEZ is *radically* impaired by the presence of other states' zones of maritime jurisdiction.³⁶ This situation is consistent with the circumstances of states bordering enclosed and semi-enclosed seas which is also described in Article 70.³⁷

In other words, an argument can be made that a state possessing anything more than an inconsequential EEZ cannot claim geographically disadvantaged status. This interpretation would exclude all island nations other than Bahrain, St. Kitts and Nevis, Grenada and St. Lucia³⁸ as potential geographically disadvantaged states; moreover, this interpretation would limit the total number of potential geographically disadvantaged states to less than ten.³⁹ However, that numerical result undercuts the likelihood that this extreme interpretation of Article 70 is correct, since the size of the geographically disadvantaged and landlocked states voting block at UNCLOS III strongly indicates that many more states than these consider themselves geographically disadvantaged.

The opposite extreme (and an even less defensible interpretation) would recognise geographically disadvantaged claims whenever a nation's potential EEZ is impinged to any degree whatsoever. Such an

Figure 1



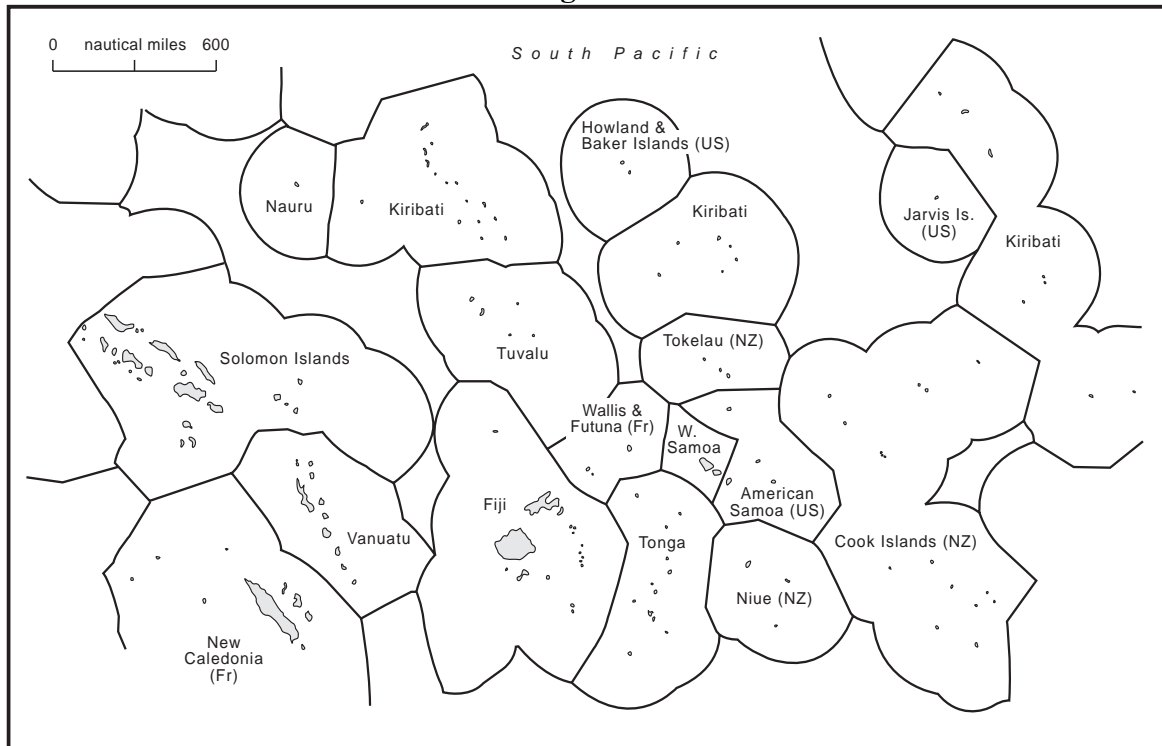
approach is patently inconsistent with the description of geographically disadvantaged states in Article 70; allowing states to assert geographically disadvantaged status merely because their EEZs are somewhat limited by the presence of neighbouring EEZs would permit every nation to claim geographically disadvantaged status.

In addition to their extremity, another problem with both of the foregoing approaches is that they fail to provide an objective standard for determining when a state's geographical situation results in geographically disadvantaged status. While Article 70 requires both a restriction of the EEZ and dependence on the living resources of neighbouring EEZs before a nation can successfully claim geographically disadvantaged status,⁴⁰ neither aspect need be a totally subjective inquiry.

Bringing Predictability to the Unanticipated Effects of New Boundaries

Essential to any claim of geographical disadvantage is a showing of the limiting effects of neighbouring political boundaries, particularly EEZs.⁴¹ Also, essential to any viable resolution of such a claim is an objective means of determining the threshold question of whether a state's jurisdiction is sufficiently restricted by the presence of adjacent states' areas of jurisdiction. Achieving both objectivity and predictability is possible by considering the percentage of incursion by adjacent EEZ jurisdictions.

Figure 2



Evaluation of all claims of geographically disadvantaged status would rest on a comparison of a state's *potential* EEZ size to its *actual* EEZ size. The analysis begins by determining the size of a nation's EEZ when all adjoining EEZs are ignored. Next, the potential EEZ is compared with the actual EEZ to determine how much of that nation's potential EEZ is actually limited by the presence of other nations' jurisdiction. Uniformity and certainty regarding geographically disadvantaged status would, therefore, be possible through the application a formula such as the following:

Any state whose potential EEZ (i.e., the area that state could claim if there were no adjacent, impinging EEZ) is reduced more than 50% by the presence of other states' jurisdictions should be considered a potentially⁴² geographically disadvantaged state.

This approach does *not* ignore the existence of lines of delimitation between neighbouring coastal states because those lines establish the boundaries of both neighbouring territorial seas and neighbouring EEZ jurisdictions.⁴³ Thus, this approach would only apply to restrictions on the seaward extent of EEZ jurisdictions. States whose EEZ jurisdiction is restricted by the presence of other states' territorial sea(s) would also be eligible to claim geographically disadvantaged status; however, the same 50% formula would be applied in evaluating that claim.⁴⁴

The observation that a state's potential EEZ jurisdiction must be reduced by over 50% is derived from the wording of Article 70(2). States which cannot claim an EEZ and states which border enclosed or semi-enclosed seas (all of which have severely restricted EEZs) are the only types of coastal state specifically mentioned in the Article. The implication is that a state's potential EEZ must be severely restricted before it can claim geographically disadvantaged status. As discussed earlier,⁴⁵ this does not likely imply that a state's EEZ must be virtually eliminated. However, those examples of states with severely impaired EEZs do imply that the EEZ restriction must be closer to total elimination than minimal incursion. However, without a more specific provision, the EEZ incursion necessary to claim geographical disadvantage cannot be said to be greater than "more than 50%."

Conclusion

Perhaps no other action in human history has led to more political and military conflict than the establishment of boundaries. One of the remarkable achievements of UNCLOS III is that to avoid future conflict over ocean resources, new boundaries in the ocean were peacefully established. Yet, one of the failings of the conference is the lack of foresight regarding the interaction between the boundaries created by a novel mode of jurisdiction, the EEZ, and a novel legal status for coastal states, geographically disadvantaged.

Incredibly, while the legal content of both concepts were developed and woven together in the same part of the treaty, their interaction was completely overlooked. Indeed, the approach to the EEZ concept was one of either intentional ambiguity⁴⁶ or unforgivable ignorance.⁴⁷

The inevitable difficulties of applying the new boundaries of the EEZ indicate that even in a peaceful process dominated by the consensus procedure of UNCLOS III, the establishment of political boundaries remains the most difficult of international activities.

Notes

- ¹ United Nations Convention on the Law of the Sea, opened for signature 10 December 1982, UN Doc. A/CONF.62/122 (1982), reprinted in United Nations (1983) *Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index; International Legal Materials*, 1261 (1982).
- ² Guyana became the sixtieth nation to ratify the treaty which entered into force on 16/11/94, one year after Guyana's ratification. 'Law of the Sea Treaty Meeting Opens', Inter Press Service, 16/11/94.
- ³ US Department of State Dispatch, Transmittal Letter, 1 February 1995.
- ⁴ These arguments have been urged most often on behalf of landlocked states, but as the above discussion indicates, the theory behind the arguments applies equally to geographically disadvantaged states. For a wide-ranging examination of the assertions of landlocked states from the 15th century B.C. to the present see Menefee S. P. (1992) *The Oar of Odysseus: Landlocked and Geographically Disadvantaged States in Historical Perspective*, California Western International Law Journal, 23, 1.
- ⁵ Sebenius, J.K. (1984) *Negotiating the Law of the Sea*: 13, Cambridge, Mass.: Harvard University Press.
- ⁶ Sebenius, 1984: 13. Currently, as a result of the break-up of the Soviet Union, there are over 40 landlocked states.
- ⁷ "Circling round these official and semi-official groups was a host of 'special interest' groups that were peculiar to the LOS conference... The largest and earliest of these groups was that of **Coastal States**... The 'Coastal' eventually grew into a rather amorphous group of 75 delegations – half the conference – under Mexican leadership, in a move to outmatch the increasing numbers of the Land Locked group" (emphasis added); Sanger, C. (1987) *Ordering the Oceans: The Making of the Law of the Sea*, Toronto: University of Toronto Press: 31.
- ⁸ The primary reason the concept of an exclusive 200nm coastal zone caused such concern stems from the fact that 90% of the living resources harvested

from the ocean are located within 200nm of the coast. Joyner C. C. (1995) 'Ocean Fisheries, US Interests, and the 1982 Law of the Sea Convention', *Georgetown International Environmental Law Review*, 7: 749, 751.

- ⁹ The treaty articles on the EEZ do not clearly establish the exact legal nature of the EEZ. For instance, Part V of the treaty repeatedly refers to "**the Exclusive Economic Zone**" instead of "**an Exclusive Economic Zone**" (emphasis added). The implication of this repeated use of the singular reference is that it may be more accurate to speak of a single world-wide EEZ, than several different EEZs. Thus, EEZ jurisdiction may not require a formal national claim to exist. However, Article 70 refers to a state's ability to *claim* an EEZ, and therefore nations may have to claim an EEZ before such jurisdiction will be recognised.
- ¹⁰ Sanger, 1987: 63.
- ¹¹ *Ibid.*: 64.
- ¹² The first paragraphs of Articles 69 and 70 are identical in this wording.
- ¹³ Non-living resources are further divided into mineral resources and physical resources. Although the term 'physical resources' is never used in the treaty, it is implicit in the notion of "**exclusive economic**" use of an area of ocean space (emphasis added). Thus, an EEZ provides exclusive use, for example, of energy resources such as wave motion and temperature gradients. Like mineral resources, these are a type of non-living resources.
- ¹⁴ Living resources beyond the EEZ are subject to the regime of the high seas, mineral resources beyond the EEZ are divided into the regimes of the continental shelf and deep seabed. Use of physical resources beyond the EEZ is subject only to the principle of reasonable use.
- ¹⁵ Obviously, many states exhibit both characteristics. Also, geographic disadvantage would likely have contributed to economic disadvantage because of limitations on the use of the sea as a highway for commerce.
- ¹⁶ While it may seem unnecessary to establish this distinction in detail since it appears self-evident, the importance of clearly making this distinction manifests itself upon deeper examination of the treaty's classification scheme when such distinctions inform conclusions about the status of island nations as geographically disadvantaged states.
- ¹⁷ Article 2, the Law of the Sea Treaty, *supra*, note 1.
- ¹⁸ Curiously, Article 3 declares that "**Every State [not every coastal state] has the right to establish the breadth of its territorial sea...**" Article 3 seems to imply that it is possible for a state to have a territorial sea yet not be a coastal state. The only conceivable situation to which this might arguably apply would be a state whose only contact with the sea resulted from its possession of a "**rock**" as defined by Article 121, rather than an island. However, Article 70, paragraph 2 discusses "**coastal States which can claim no**

- exclusive economic zone of their own.” Although rocks do not generate an EEZ, a rock does generate a territorial sea; thus, a state whose only contact with the sea is a rock would nonetheless be a coastal state.
- ¹⁹ Article 122 defines an enclosed sea as a “sea surrounded by two or more States and...consisting of the territorial seas and exclusive economic zones of two or more *coastal States*” (emphasis added).
- ²⁰ “Sea” is not defined in the treaty; therefore, what bodies of water may be considered seas is debatable. Since the treaty does refer to “*enclosed seas*”, presumably the Caspian and Aral Seas (which have no connection to the ocean) would legitimately be seas if only because they have historically been considered such. However, there are several other bodies of water which are either larger than or comparable to the Aral Sea which border on otherwise landlocked States. The Aral Sea is 36,000km² Lake Victoria is 68,000km² and (if considered a sea) would make Uganda, Rwanda and Burundi coastal states with no access to the ocean. Lake Tanganyika is slightly smaller than the Aral Sea at 33,000km², but if considered a sea due to its size, would make Zambia yet another a coastal state without ocean access (all figures from *The Oxford Atlas of the World*, 1992: xv).
- ²¹ As shown in the following section, coastal states which border inland seas are not landlocked but are by definition geographically disadvantaged coastal states.
- ²² Article 70, paragraph 2: “*For purposes of this Part, ‘geographically disadvantaged States’ means coastal States, including States bordering enclosed or semi-enclosed seas, whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones to other States in the subregion or region for adequate supplies of fish for the nutritional purposes of their populations or parts thereof, and coastal States which can claim no exclusive economic zones of their own.*”
- ²³ The possession of a mid-ocean rock, as defined by Article 121, by an otherwise landlocked state would render that state a coastal state without an EEZ. Currently, no states have these characteristics.
- ²⁴ This category may be elastic in that its application may not be dependent solely upon the existence of other nations’ EEZ but also on treaty agreements. Thus it is possible for a nation that would have no EEZ due to median boundary lines to possess an EEZ as a result of treaty arrangements. However, the language of Article 70 referring to a state’s inability “*to claim*” an EEZ implies that only states that would have no EEZs in the absence of treaties would qualify for this category (emphasis added).
- ²⁵ The term “*geographical situation*” is yet another undefined term in the treaty. An examination of its possible implication is discussed in the text in the succeeding paragraphs.
- ²⁶ Satya Nandan of Fiji, who participated in the negotiations at UNCLOS III, has stated that several such ambiguities in the EEZ portions of the treaty were intentional – see, for example, Sanger, 1987: 147. Even if true, the result of such manoeuvring merely shifted determination of those ambiguities from the ongoing negotiations to a time after the treaty had entered into force.
- ²⁷ Obviously, though, both classifications were devised to address the issue of resource allocation: “*Although separate treatment has been accorded, in the Convention, to each category, they [the landlocked and geographically disadvantaged states] have been treated both at the Sea-bed Committee and in the Conference, for the purposes of the EEZ’s resources allocation, as being two aspects of one problem.*” Dahmani, M. (1987) *The Fisheries Regime of the Exclusive Economic Zone*, Dordrecht: Martinus Nijhoff: 57.
- ²⁸ If lack of an EEZ were the determining factor common to both types of states, there would be no need to distinguish between geographically disadvantaged states and landlocked states; both types of states could be referred to as geographically disadvantaged states or “*EEZ disadvantaged states.*”
- ²⁹ Article 70 refers to such states as “*coastal States.*” This indicates that states which have no access to the ocean but have a coastline on a landlocked seas would be “*coastal States*” under the treaty. See text at footnotes 21 through 23.
- ³⁰ Antigua and Barbuda, Barbados, Cuba, Dominica, The Dominican Republic, Grenada, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, St. Vincent and Trinidad and Tobago all appear to have a reasonable basis for claiming geographically disadvantaged status as a result of the limiting effects of neighbouring states’ EEZs.
- ³¹ Fiji, The Republic of Palau, the Solomon Islands, Tonga, Tuvalu, Vanuatu, and Western Samoa all appear to have legitimate claims to geographically disadvantaged status. Kiribati and Nauru may also have legitimate claims.
- ³² For the sake of completeness, it should be noted that since Article 69 specifically includes “*States bordering enclosed or semi-enclosed seas*”, the island nations of Cyprus and Malta can also claim geographically disadvantaged status by virtue of their location in the Mediterranean, a semi-enclosed sea.
- ³³ See, for example, Dahmani (1987: 57) regarding the problems of geographically disadvantaged states: “*First, they cannot benefit from any extensive limit that may be permitted (viz. 200-mile zone); in other words they are unable to extend their limits to a significant extent. Secondly, extension of national jurisdiction by neighbouring states to the new permitted limit (200-miles) could transform adjacent high seas areas into areas of national jurisdiction. This could not only seriously curtail their fishing rights under the freedom of fishing on the high seas,*

but, where such national zones affect the sea-bed resources, they would also diminish the extent of sea-bed resources which would be available to them under the emerging concept of 'common heritage of mankind'."

- ³⁴ A fist-sized island with no neighbour within 400 miles would generate an EEZ of over 394,783 sq. miles. This theoretical island is the closest one can come to a predictable EEZ area. (At the risk of sounding pedantic, I will point out that such a structure would of course in all likelihood be a 'rock' rather than an island and therefore according to Article 121 would not generate an EEZ.)
- ³⁵ It is important to remember that restriction of a nation's EEZ alone would not be a sufficient basis for claiming geographically disadvantaged status. Article 70 requires *both* a restricted EEZ and dependency on the living resources of nearby EEZs. The discussion in this section of the text is limited to a consideration of the "restricted EEZ" portion of the analysis.
- ³⁶ The focus must be limited to the restrictions caused by other nations' EEZs rather than the presence of the states themselves, otherwise *all* states could claim that they are deserving of geographically disadvantaged states status because their potential EEZ is interrupted by the physical presence of another nation's coast (that is to say, the neighbouring state's existence).
- ³⁷ See text at footnotes 15 through 20.
- ³⁸ Bahrain does not claim an EEZ and would not have one even if claimed; thus, Bahrain is by the specific terms of Article 70(2) geographically disadvantaged. Grenada, St. Kitts and Nevis, and St. Lucia all claim EEZs, but the additional seaward extension gained thereby is minimal (if that) – see Figure 1. Since these nations have *some* EEZ jurisdiction, they can only claim geographically disadvantaged status by virtue of their "geographical situation" (i.e., their small EEZ). United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs (1995) 'National Claims to Maritime Jurisdictions', *Limits in the Seas*, 36, 7th Revision (11 January).
- ³⁹ Cameroon, Iraq, Jordan and Kuwait have no potential EEZ and therefore have not claimed one. By the terms of Article 70(2), these states are geographically disadvantaged. Likewise, neither Singapore nor Zaire would appear to be able to claim an EEZ; however, both have evidently acquired minuscule EEZs as a result of agreements with neighbouring states. Beyond these obvious examples of "absent or insignificant EEZs", discerning geographically disadvantaged states becomes highly problematic.
- ⁴⁰ This article's focus is exclusively on the unanticipated effects of EEZ boundaries. Extended discussion how a nation might establish its dependence on the living resources of other EEZs and thereby complete its case for asserting geographically

disadvantaged status is beyond the scope of the current analysis.

- ⁴¹ As pointed out earlier (see text at footnotes 26 through 28), Article 70's reference to "geographical situation" refers to restrictions on a nation's potential EEZ resulting from neighbouring political boundaries and maritime zones.
- ⁴² Nations with this characteristic would be *potential* geographically disadvantaged states since Article 70 only grants that status to nations that either completely lack an EEZ or whose severely restricted EEZ makes them dependent on the living resources of nearby EEZs. Thus, a state that establishes that its EEZ is sufficiently restricted must also demonstrate its dependence on nearby EEZs.
- ⁴³ The clear implication of Article 70 is that geographically disadvantaged status results from either a lack of appreciable coastline sufficient to generate a significant EEZ or the effect of EEZ jurisdictions that restrict each other as a result of their extension *perpendicular* to the coast.
- ⁴⁴ This approach applies to neighbouring coastal states as well. The first step in determining whether a coastal state is a geographically disadvantaged state is to calculate the size of its EEZ without regard to the presence of neighbouring states' EEZ jurisdiction. This would be accomplished by noting the size of an 'unencumbered' EEZ (i.e., the EEZ of the subject state would extend to its 200nm limit without regard to the jurisdiction of its neighbour). This unencumbered EEZ would then be compared to the actual EEZ (as determined by the median line between the two states). If the actual EEZ is less than 50% the size of the unencumbered EEZ, that state could claim geographically disadvantaged status.
- ⁴⁵ See text at footnotes 33 through 38.
- ⁴⁶ See footnotes 26.
- ⁴⁷ According to the Nigerian Ambassador to UNCOS III, while the nations negotiated a 200nm EEZ, no one had any idea of how an EEZ would either enrich or deprive various nations because no one took the effort to discern the effects of these new boundaries by drawing those potential boundaries on a map. Sanger, 1987: 64.

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