## BUSINESS SESSION 5

TOPIC: LAW OF THE SEA AND ANTARCTIC TREATY REGIME

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# LAW OF THE SEA AND THE ANTARCTIC TREATY REGIME

by

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## I

The Law of the Sea is that body of rules which bind States in their international relations in the maritime environment. The sources of the modern Law of the Sea are mainly multilateral treaties that have been drawn up and entered into by States. The last and most comprehensive is the United Nations Convention on the Law of the Sea called herein the LOSC. After work spanning many years the LOSC was completed on 10 December 1982 and signed by Australia and New Zealand on that day. Neither country has as yet ratified the LOSC. It will not come into force until it is ratified or acceded to by 60 States and at present only 47 States have done so. However countries that have signed a treaty are obliged to refrain from acts which would defeat its object or purpose, unless they make clear that they do not intend to proceed to ratification.

Also many parts of the LOSC embody pre-existing international law including many provisions based upon the 1958 Conventions on the Law of the Sea to which Australia and New Zealand are presently parties. These are:

- Convention on the Territorial Sea and the Contiguous Zone
- Convention on the High Seas
- Convention on the Continental Shelf

This paper refers to the various maritime regimes laid down in the LOSC in particular as they affect:

- the environment (including the conservation of resources)
- deep seabed mining, and
- shipping

It then examines relevant regimes laid down in or under the Antarctic Treaty, and the extent to which they have a relationship or an interplay with the LOSC.

Maritime Zones Under the LOSC

Attached is a diagram of the maritime zones recognised by or under the LOSC. Beginning at the coastline, these are:

(a) territorial sea (up to 12 miles)

(b) contiguous zone adjacent to the territorial sea in which the coastal State may exercise control in relation to customs, fiscal, immigration and sanitary laws (up to a further 12 miles)

(c) 200 mile exclusive economic zone (EEZ) measured from the baseline for the territorial sea

(d) seabed consisting of the continental margin of the coastal State (which in some areas may extend beyond the 200 miles EEZ - Australia and New Zealand are such cases)

(e) high seas

(f) the international seabed area beneath the high seas.

The regimes of the territorial sea, the continental shelf, and of the high seas are reasonably well known. The other regimes need some elaboration.

Exclusive Economic Zone

The exclusive economic zone (EEZ) is a concept of recent origin and great significance. Its origins lie in the growing trend since 1945 to extend coastal State jurisdiction ever seawards. The EEZ concept was first put forward by Kenya in 1972 in the UN Seabed Committee, about the same time as Latin American States were developing the concept of a broad "patrimonial sea". Other (overlapping) strands in the development of the concept were on the one hand the claims by some States to a 200 mile territorial sea and on the other the opposition of other

States to such claims. The EEZ was a compromise proposal, which gained rapid acceptance and was inserted in the LOSC. An element in this compromise was eg the obligation placed on a coastal State to allow access by other States to the surplus of the allowable catch of the living resources of its EEZ that it was unable to harvest itself (see LOSC, Art 62).

Some 76 States have claimed EEZ's. These claims are now so numerous that there is, by now, little room to doubt that the EEZ concept is incorporated into customary international, notwithstanding that the LOSC is not yet in force. New Zealand claimed its EEZ in 1977. Australia has yet to do so but at the time of writing this paper steps are in hand to catch up with New Zealand by establishing an Australian EEZ. Australia did in 1979 establish a 200 mile Fishing Zone in which all fisheries must be licensed under Australian law.

The establishment by all coastal States of 200 mile EEZ's would account for more than one third of the seas of the world, containing more than 90% of currently exploitable fish stocks, and most of the world's known submarine oil and gas deposits. Shipping routes usually pass through the 200 mile zone of one or more States other than the States in which the ports of departure and destination are situated. Most marine science research takes place within 200 miles of the coast.

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## Delimitation of the EEZ

Two quick comments are made on delimitation of EEZ's. One is that, while islands usually generate an EEZ, article 121(3) of the LOSC provides that rocks which cannot sustain human habitation or economic life of their own are not to have an EEZ (or continental shelf). This qualification is not easily applicable to specific cases and has so far featured in few, if any, claims.

Second, where the 200 mile zones of neighbouring States overlap, it is necessary to have a boundary delimitation laid down either by agreement or by a ruling of the International Court of Justice or by arbitration. This process may take some time. In the meantime, one way of dealing with overlapping claims is to establish a zone of cooperation by agreement between the States concerned, pending the conclusion of a delimitation agreement.

## Regime within the EEZ

Articles 55 and 86 of the LOSC make it clear that the EEZ does not have a high seas character. A new kind of regime has been drawn up consisting of three main elements:

(a) the rights and duties given to the coastal State in the EEZ

(b) the rights and duties given to other States, and

(c) the regime for dealing with activities which do not fall within either of the two preceding categories.

Rights and Duties of the Coastal State in the EEZ

Article 56(1) and (2) of the LOSC provide:

> 1. In the exclusive economic zone, the coastal State has:
>
> (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
>
> (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures;

(ii) marine scientific research;

(iii) the protection and preservation of the marine environment;

(c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

The relevant provisions of the LOSC on the protection and preservation of the marine environment (see Art 56(1)(b)(iii) above) are set out in Part XII. They give the legislative and enforcement competence as follows:

- overdumping of waste (Arts 210(5), 216)

- other pollution from ships (Arts 211(5-6), 220, 234), and

- pollution from seabed activities (Arts 208, 214).

Enforcement extends to vessels of other States. This constitutes a new development. Previously the main example of such a power was the case of marine casualties threatening or causing serious oil pollution, as dealt with in the 1969 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.

Rights and Duties of other States in the EEZ

Article 58 of the LOSC states:

> 1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.
>
> 2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.

> 3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

It is to be noted that the reference in Art 58(1) to Art 87 largely incorporates into the EEZ the freedoms that all States have on the high seas. Article 87 is in Part VII of the LOSC dealing with the high seas which consists largely of the provisions to be found in the Geneva Convention on the High Seas. However, other States have to comply with the laws and regulations adopted by the coastal State to the extent that they are not incompatible with the provisions of the LOSC on the EEZ. Thus the freedom of navigation is subject to the coastal State's jurisdiction in the EEZ over pollution from vessels referred to above, and artificial islands and installations may be established in the EEZ (provided they are not placed in "recognised sea lanes essential to international navigation").

## Conflicts of Rights in the EEZ

What happens when the exercise of a coastal State's rights conflicts with the exercise of the rights of another State? An obvious example would be where a coastal State sought to regulate foreign shipping for the purpose of protecting fishing activities. All the Convention says on such matters is that there is a mutual obligation to have regard to each other's rights. The 1972 Convention on the International Regulations for Preventing Collisions at Sea may help somewhat. Also Part XV of the LOSC contains provisions for the settlement of disputes which may be invoked if appropriate.

It is also relevant to note that powers of States to protect the environment are drafted so as to minimise interference with shipping - see eg Art 225 (duty to avoid adverse consequences in the exercise of powers of enforcement) and Art 226 (investigation of foreign vessels).

## Other Rights in the EEZ

Article 59 of the LOSC provides:

> In cases where this Convention does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive economic zone, and a conflict arises between the interests of the coastal

State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.

Part XV dealing with the settlement of disputes may have to be used if a dispute arises that cannot be settled by diplomatic means.

Significance of EEZ's

The EEZ's represent a major change in the regulation of, and access to, what previously would be high seas areas, in which there has been open access to resources, and regulation based mainly on flag-State jurisdiction. At the same time, it remains to be seen how effectively this jurisdiction will be exercised. For some countries the establishment of EEZs has produced substantial material gains. For others, the value of EEZs has been more problematical - in part because of less than effective management of the newly won resources. Nevertheless EEZ's are clearly here to stay. Coastal State hegemony has reasserted itself. Grotius, the author of the doctrine of the freedom of the seas - his Mare Librum was published in 1609 - would not have approved.

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## Deep Seabed

Outside the EEZ's and the outer edge of the continental shelf, lies the international sea bed area, simply and starkly designated in Article 1 of the LOSC as "the Area". This was declared in 1970 to be "the common heritage of mankind" and not subject to national appropriation. These concepts were carried into Part XI of the LOSC, under which activities in the Area are to be carried out for the benefit of mankind as a whole, taking particular account of the needs of developing countries and peoples.

For the purposes of this regime, developing countries sought an International Seabed Authority (ISA) that would have authority to mine itself, as well as to control mining by licencees who would pay royalties. Developed countries proposed, at least initially, that the Authority should be more in the nature of a registry of national claims by countries engaging in the very expensive business of deep sea mining. The compromise in Part XI that was finally negotiated has been described as an extraordinarily complicated legal regime. The differences of approach it sought to reconcile remain as one of the main reasons why major developed countries have not so far ratified the LOSC and why it has not yet come into force.

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## Shipping and Navigation

As noted above the LOSC largely reproduces the provisions of the Geneva Convention on the High Seas and on the Territorial Sea and the Contiguous Zone. However, some elements have been added:

(a) a general requirement of transit passage through straits (the LOSC, Arts 37-44)

(b) right of innocent passage through archipelagic waters and a more extensive right of passage in designated sea lanes in such waters (Arts 52 & 53)

(c) freedom of navigation in EEZ's (see above)

(d) as to safety, the LOSC sets out in more detail the duties of the flag-State (Art 94), in terms which refer to "internationally accepted standards").

## Protection and Preservation of the Marine Environment

Summing up on protection of the marine environment, the LOSC includes both general provisions and provisions with specific application to areas covered by the Convention (some of which have already been referred to above in relation to the EEZ).

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Within its territorial sea and EEZ the coastal state has jurisdiction with regard to the protection and preservation of the marine environment. On the high seas, one of the flag State duties is to adopt measures for "the prevention, reduction and control of marine pollution" (Art 94(3)).

The LOSC provides that the effective protection of the marine environment from harmful effects which may arise from activities in the Area is to be ensured (Art 145). Measures are to be adopted for "the prevention, reduction and control of pollution and other hazards to the marine environment" and for the "protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment" (Art 145).

The provisions within Part XII of the LOSC for the protection and preservation of the marine environment from marine pollution apply generally across the regions covered in the Convention. The broad obligation in Part XII on States to individually or jointly adopt measures to protect and preserve the marine environment (Arts 192,194) is balanced with the sovereign right of States to manage their own resources (Art 193). States are under an obligation to take measures necessary to ensure that activities under their jurisdiction are conducted in a way that does not cause damage to other States and their environments. In taking measures to prevent, reduce or control pollution of the marine environment, States

must "refrain from unjustifiable interference with activities carried out by other States" (Art 194) Both global and regional cooperation in protecting the marine environment are encouraged (Arts 192-201) and there is provision for the adoption of international rules and national legislation to prevent, reduce and control pollution of the marine environment from land based sources, seabed activities subject to national jurisdiction, activities in the Area, dumping, all vessels and the atmosphere (Arts 207-212).

II

The Antarctic Treaty System

The Antarctic Treaty, to which Australia and New Zealand are parties, celebrates its 30th Anniversary in 1991. It constitutes a legal regime for the regulation of relations between States in Antarctica.

When the Antarctic Treaty was being negotiated there was an overriding concern, common to each of the twelve countries which had been active in Antarctica and participated in the negotiations, to isolate it from international dispute and conflict taking place in other regions.

In the preamble to the Treaty, the Parties assert that "it is in the interests of all mankind that Antarctica shall continue to be used exclusively for peaceful purposes and shall not become the scene or object of international discord". In the first Article they again affirm that Antarctica is to be used for peaceful purposes only. And so it has been.

Under the Treaty, military activity is banned, as is the testing of nuclear weapons and the dumping of nuclear waste. Freedom of scientific investigation is protected. An important element in making all of this work, has been the Treaty's innovative system of inspection, monitoring compliance. The outcome over the years since the Treaty came into force in 1961, has been the successful demilitarisation of the continent and the establishment of a unique regime of free and cooperative scientific research in the whole of the area south of 60°S.

Before this end could be attained however, it was first essential for the participants in the Treaty negotiations to find an accommodation on the issue of sovereignty - the issue with the greatest potential to give rise to dispute. Seven of the twelve countries involved, including Australia and New Zealand, laid claim to sectors of the continent. Three of these claims overlapped. Five of the countries neither made

nor recognised any sovereignty claims. Of these, the two then superpowers, The United States and the Soviet Union, while not asserting their own claims or recognising those of others, kept their options open by asserting that their activities constituted a basis for claim.

An accommodation was reached. Nothing in the Treaty, or any acts taking place while the Treaty is in force, is to be interpreted as prejudicing the position on sovereignty of any of the parties (Art IV). This, of course, does not mean that the sovereignty issue has been resolved. A good deal of forbearance is required on all sides to make the system work. But the thirty years during which the issue has not been allowed to hinder peaceful Antarctic cooperation give a good indication of the efficacy of the arrangement.

Over the years a substantial body of measures for the collective administration of Antarctica has been put in place. The original twelve Treaty member countries have been joined by others and there are now 40 Parties to the Treaty, of which 26 - the original 12 and 14 others meeting the Treaty's test of substantial research activity in Antarctica (Art IX(2)) - have Consultative Party status and, as such, participate in the decision making on the management of the Continent. In administering Antarctica, the Consultative Parties have put in place both recommendations referred by Antarctic Treaty

Consultative Meetings (ATCMs) to the Governments of member States (Art IX(1)), and a number of independent but closely linked legal instruments. Two of the most important areas covered by these measures are environmental protection - including resource management - and minerals activities.

Environmental Protection and Resource Management

While there is always room for the Treaty Parties to work to lift their game on environmental protection their overall performance in this area has been good. Interest within the Treaty system in the environment and the related issue of the conservation and management of natural resources is not a new thing. Over the years, both issues have been the subject of much of the work done at Antarctic Treaty Consultative Meetings. In fact, while the Treaty itself is silent on resource management, the Treaty Parties have been particularly active on the issue.

The Parties have adopted, inter alia:

- The Agreed Measures for the Conservation of Antarctic Fauna and Flora (1964);

- the Convention for the Conservation of Antarctic Seals (1972);

- the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) (1980);

- Recommendation XIV-2 on Environmental Impact Assessment (1987);

- Recommendation XIV-3 which provides guidelines for scientific drilling in Antarctica (1987);

- the Convention on the Regulation of Antarctic Mineral Resource Activities (1988);

- Recommendation XV-3 on Waste Disposal (1989);

- Recommendation XV-4 on Marine Pollution (1989.

And now, most recently the Parties have adopted and opened for signature the Protocol on Environmental Protection to the Antarctic Treaty - a large and significant addition to the system of environmental protection already established by the Treaty Parties.

The 1964 Agreed Measures on the Conservation of Antarctic Fauna and flora were an early expression of Consultative Party concern about man's impact on the environment. The Agreed Measures designate Antarctica a "Special Conservation Area"

and, in addition, prohibit the killing or capture of native birds or mammals, minimise harmful interference with habitats, prohibit the introduction of non-indigenous species and establish a strict permit system. Provision is made for the designation of Specially Protected Species and Areas.

In the mid to late Seventies, as concern grew about the development of the Southern Ocean fisheries, the Consultative Parties turned their attention to the protection of marine living resources. CCAMLR, concluded in Canberra during 1980, establishes the first standing body to be set up within the system - a Commission with responsibility for the conservation of all living marine resources - and elaborates a set of basic principles with which the harvesting of resources must comply. CCAMLR is open to accession by States which are not party to the Treaty. The Convention approaches the Oceans south of the Antarctic Convergence on the basis that they are a single ecosystem made up of interrelated living organisms. In putting in place Conservation Measures, the Commission must look beyond the impact of harvesting on target species, to its potential impact on the ecosystem as a whole. This approach broke new ground, not only within the Treaty system, but also in the wider international arena.

The text of a Minerals Convention was settled in 1988 after six years of complex and difficult negotiations. 1989, however, saw the announcement by first Australia, and then France, that

they would not sign it. This move was motivated by a view that the Convention contemplated the possibility of mining and that only the banning of mining rather than its strict regulation would ensure adequate protection for the Antarctic environment.

Environmental Protection Protocol

The negotiation of the Protocol on environmental Protection to the Antarctic Treaty began against the backdrop of controversy created by the rejection of the Minerals Convention.

Broad agreement was reached readily on most elements of the Protocol, but consensus on the framing of a mining prohibition proved extremely difficult to attain. Yet, at the conclusion of the third session of negotiations there was general acceptance by the Consultative Parties, with the exception of the United States, of a text. The United States delegation reported to the Meeting that it would require further time to refer the draft to Washington for approval. With the announcement by the United States in July this year that it was willing to sign the Protocol in the form negotiated at the third session, the last block in the way of adoption was removed.

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The starting positions on the mining issue of many of the countries involved in the negotiations were fundamentally different. Some supported the Minerals Convention as at least part of a solution to the issue. Other believed that there should be an unqualified ban on all mining in Antarctica. Still others fell somewhere in between these two approaches. Efforts focussed on finding an accommodation acceptable to all.

The solution began with the inclusion of a brief and simple Article in the Protocol - Article 7 - which provides that "Any activity relating to mineral resources, other than scientific activity, shall be prohibited" - a clear prohibition with wide coverage.

Once the Parties had reached agreement on Article 7, discussion focussed on the circumstances and conditions under which the minerals Article might be amended and the prohibition lifted. The final text of Article 25 of the Protocol provides that, after the expiry of a fifty year period, any party can request a conference to review the Protocol, including a review of the prohibition on mining. The adoption of a modification or amendment proposed at such a conference must be by a majority of the Consultative Parties, including ¾ of current Consultative Parties. The amendment would enter into force on

its ratification by ¾ of Consultative Parties - including all of the current Consultative Parties. But in the case of the mining article, the prohibition cannot be lifted until a binding legal regime to govern mining is first put in place. However, if any such regime does not enter into force within three years of its communication to all Parties, then any Party may, after two years notice, withdraw from the Protocol.

Much of the media attention attaching to the Protocol negotiations has centred on the minerals question. While this is understandable, given that mining has been the most contentious issue under negotiation, it still remains an unfortunate focus. Neither current technology, nor technological advances realistically achievable over the next few decades, are likely to permit commercial mining in the continent. So Antarctica should remain safe from this threat for some time - at least until well into the next century.

Of much more immediate import is the wider environmental protection regime established under the Protocol. Its objective is the "comprehensive protection of the Antarctic environment and dependent and associated ecosystems" (Art 2). Antarctica is designated a "natural reserve, devoted to peace and science". A comprehensive body of environmental principles is set out in Article 3. These principles are to inform the planning and conduct of all human activity on the continent.

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The sharp edge of the new regime is the detailed environmental impact assessment procedures (EIA) which apply to all human activity in Antarctica and are set out in an Annex to the Protocol. Parties undertake to ensure that all activities, both governmental and non-governmental, for which they are deemed to have responsibility comply with the procedures. This is a major advance. Prior to the Protocol, the existing EIA measures were less detailed and applied only to scientific activity.

One of the innovative features of the Antarctic Treaty, and an acknowledged reason for its success, has been its inspection provisions. The Protocol elaborates on the concept, providing not only for inspection by individual Parties, but also collective inspection under the authority of the ATCM.

In addition, the Parties are to cooperate in the planning and conduct of activities and to share information. They agree to undertake prompt and effective response action in the case of environmental emergencies. There is provision for compulsory third party dispute settlement on the interpretation or application of certain sections of the instrument. Attached to the Protocol are Annexes setting out detailed measures relating to marine pollution, waste disposal, environmental impact assessment and (by way of an updating of the 1964 Agreed Measures) the conservation of Antarctic fauna and flora. It is expected that there will be further annexes adopted in due course, including one to flesh out the provisions in the Protocol on liability.

The adoption of the Protocol has only been possible through the exercise of a great deal of goodwill among the Parties. Once it comes in to force, hopefully within the next couple of years, its successful implementation will depend to a large extent on the availability of the same commodity.

III

Interplay between the LOSC and the Antarctic Treaty

During the course of the Law of the Sea negotiations a suggestion was advanced, by Sir Lanka, that in devising the basic rules of LOSC, account should be taken of the special situation of Antarctica. That idea, which would have added a new and extraordinarily difficult dimension to an already very complex negotiation, was not pursued. The LOSC makes no distinction, in terms of the application of its basic rules, between Antarctica and other parts of the world. On the other hand, the fact that the legal status of Antarctica is not agreed does provide a potential source for dispute about the application of LOSC rules to Antarctica. It is open to a country which is outside the Antarctic Treaty system and which does not recognise claims to sovereignty in Antarctica to assert that, if there is no sovereignty in Antarctica, then no part of that continent generates a territorial sea, a contiguous zone, an exclusive economic zone or continental shelf. The international community has in fact already heard

this assertion and variations of it. Since the early 1980s Malaysia has taken the lead in the United Nations in arguing for new arrangements for Antarctica under United Nations auspices; and it and other countries of like mind have asserted that the whole continent and not merely maritime zones adjacent to it should be part of the common heritage of mankind. But the Malaysian initiative has been firmly resisted by the Antarctic Treaty Parties and, although the issue is debated each year in the United National General Assembly, has made little headway.

The Antarctic Treaty Consultative Parties, for their part, have demonstrated that, in legislating collectively for Antarctica, they are conscious of the need to avoid, where this possibility arises - as it could in relation to seabed mining - unnecessary conflict with the Law of the Sea regime.

In the context of the Minerals Convention, there was a clear wish on the part of the Treaty Parties to minimise potential areas of sensitivity in relation to the LOSC International Seabed authority (ISA). The ATCM Recommendation XI-1 that initiated the Antarctic minerals talks noted the Law of the Sea negotiations and stipulated that while the new minerals regime should "apply to all mineral resource activities taking place on the Antarctic Continent and its adjacent offshore areas", the area of application should be "without encroachment on the deep seabed" (Art 5(2)). The Minerals Convention went on to

define the deep seabed as "seabed and subsoil beyond the geographic extent of the continental shelf as the term continental shelf is defined in accordance with international law" (Art 5(3)). In effect, the drafters of the Minerals Convention rejected any suggestion that all of the seabed of Antarctica falls within "the Area" of the common heritage of mankind, defined in the LOSC and falling within the competence of the ISA, and asserted a competence to regulate mineral resource activities in the whole of the continental shelf of Antarctica, but stopped short of claiming such competence in respect of areas of deep seabed within 60°S but beyond the outer limit of the continental shelf.

As already noted, the Environmental Protocol is not concerned with the regulation of mining. Rather it prohibits any mineral activity within the Antarctic Treaty area which includes all of the Southern Ocean south of 60°S - for at least fifty years. It is, of course, in no way inconsistent with the LOSC for the Consultative Parties to agree, inter se, to bind their own hands and abstain from mining in the whole of the Antarctic Treaty area, including areas of the deep seabed falling within the competence of the ISA. On the other hand, should the Treaty Parties find themselves - sometime in the middle of the next century - entering into the negotiation of an alternative regime, they will be confronted with the same area of application issue that arose in the context of the Minerals Convention. And it is not too hard to imagine that they may well reach an accommodation along similar lines.

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By way of more general comment on contrasts between the two systems, the outstanding difference is the comparative strength of Antarctic Treaty environmental protection measures. We have already pointed out that the Treaty Parties have agreed on the adoption of a comprehensive and binding legal regime for the protection of the Antarctic environment, which extends to cover activities in the ocean areas south of 60°S. The emphasis of the Protocol is placed not on the protection of State rights, but squarely on the commitment of the Parties "to the comprehensive protection of the Antarctic environment and dependent and associated ecosystems" (Art 2). there is no parallel to be found on the LOSC or indeed in any other international legal instrument.

The approach to marine pollution and waste disposal issues illustrate the divergence. By and large, the LOSC leaves responsibility with the Parties to adopt their own measures to reduce pollution. Rights of States are to the fore, rather than the protection of the environment itself.

The new Antarctic Protocol includes detailed and rigorous measures covering both marine pollution and waste disposal. The Marine Pollution Annex includes strict regulation of the discharge of oil wastes, a prohibition on the discharge of noxious liquids and sewerage and tight control on the discharge of garbage. The Annex also provides that in its implementation, consideration must be given to the avoidance of

detrimental effects on dependent and associated ecosystems outside the Antarctic Treaty area. Similarly detailed provisions are set out in the Annex on Waste Disposal and Waste Management - including additional measures with particular application to the disposal of waste at the sea.

Contrasting approaches are also adopted in the management and conservation of resources.

As already noted, the LOSC allocates to coastal States all jurisdiction over fish within their 200 mile Exclusive Economic Zone. The focus is very much on the rights of States and the maintenance of fish stocks at an economically viable level - allowing a maximum sustainable yield. Conservation considerations are balanced against the key objective of promoting optimum utilisation of the living resources within the EEZ and express recognition is given to economic considerations.

Protection extended to species associated with or dependent on harvested stocks are set at a much lower level than that of the harvested stocks themselves.

On the high seas, the starting point is the acceptance of a general right of States for their nationals to engage in fishing. While there is a duty on States to adopt conservation measures, the focus remains on the rights of States and the

duty is again tempered by reference to economic factors and the needs of developing countries. The restraints imposed by the LOSC on high seas fishing have, in practice, provide far from effective. Over-fishing and the use of wasteful and indiscriminate techniques, such as drift-net fishing, have occurred and still occur in many parts of the high seas.

By way of contrast, rather than taking as a starting point the rights of States, the clear objective of CCAMLR is the conservation of Antarctic marine living resources. CCAMLR does not include provisions paralleling those in LOSC on economic considerations.

CCAMLR has been in many ways something of a trend-setter. While LOSC makes limited reference to the protection of species associated with or dependent on harvested species in terms of the preservation of a commercially viable fishery, CCAMLR focuses on the conservation of the ecosystem as a whole. This means that rather than looking at the conservation of individual species, consideration must be given to the impact of fishing activities on interdependent species within the ecosystem.

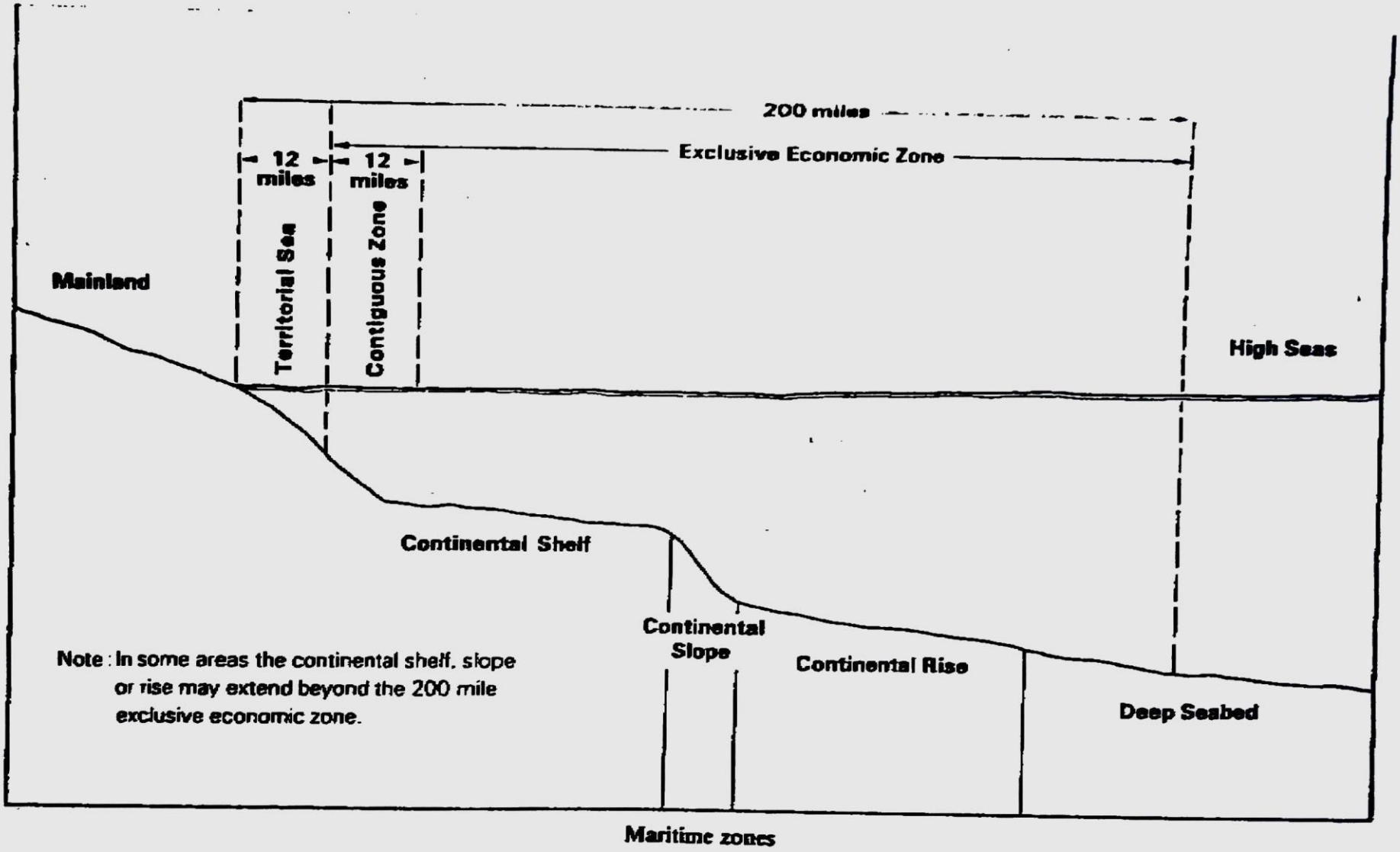
In line with the ecosystem approach, the area of application extends beyond that of the Antarctic Treaty, out to the Antarctic Convergence. Further, rather than applying different rules to different areas, as the LOSC does in the context of

EEZs and the high seas, CCAMLR extends the same rules to all of the Convention area. More work needs to be done within CCAMLR, but the Convention provides the necessary tools to do that work.

It is, finally, of some interest that elements of the Antarctic Treaty system have been of service as precedents in the formulation of new measures in the LOSC context. Mr Vasily Safronchuk, the Under-Secretary General for Political and Security Council Affairs of the United Nations has commented that the approach taken by the Treaty Parties on liability, in particular the extension of State liability for environmental damage has been raised in the Law of the Sea context ("The Relationship between the ATS and the Law of the Sea Convention of 1982" Vasily S Safronchuk. The Antarctic Treaty System and World Politics, Ed Arnfinn Jorgensen-Dahl and Willy Ostreng pp332/33). In addition, environmental protection measures set out in the Minerals Convention have been of use in formulating draft measures for the protection of the marine environment from activities on the deep seabed ("The Unfinished Task: CRAMRA and the Question of Liability" Rudiger Wolfrum. The Antarctic Treaty System and World Politics. Ed Arnfinn Jorgensen-Dahl and Willy Ostreng p129).

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