

The Polish Contiguous Zone – the Exercise of the Coastal State Jurisdiction and Control

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ABSTRACT: In November 2015 Poland established a contiguous zone and, after more than a year, in January 2017, adopted the regulation on the baselines, an external boundary of the Polish territorial sea and the contiguous zone of the Republic of Poland. After many decades, it was a successful attempt to establish a contiguous zone returning to the concept of the 30's of the last century. The United Nations Convention on the Law of the Sea (UNCLOS) recognizes that the coastal State may establish a zone contiguous to its territorial sea that extends to 24 nautical miles from the baselines of the coastal State, known as the contiguous zone, and exercise the control necessary to prevent infringement of its customs, fiscal, immigration, or sanitary laws and regulations within its territory or territorial sea, or to punish such infringements committed within its territory or territorial sea. This paper presents a few general comments on the Polish contiguous zone taking into account the international roots of that legal institution of the law of the sea, of such importance, also for the security reasons.

1 INTRODUCTION

Poland established a contiguous zone in November 2015. The establishment of the contiguous zone ought to provide the proper use of the rights and jurisdiction that Poland, as the coastal State, can exercise under the UNCLOS. The coastal States are free to establish the contiguous zone as well as an exclusive economic zone within the limits indicated in the UNCLOS.

The Polish contiguous zone extends to 24 nautical miles from the baselines of the Republic of Poland determined in accordance with international law reflected in the UNCLOS. Within the contiguous zone of the Republic of Poland the ships and aircraft of all countries enjoy the high seas freedom of navigation and overflight and the laying of submarine cables and pipelines, and other internationally lawful uses of the

sea related to those freedoms compatible with other provisions of international law.

2 LEGAL STATUS OF THE CONTIGUOUS ZONE

The contiguous zone was created by international customary law. The literature of the subject has referred to the origin of the zone in the "Hovering Acts" enacted by the United Kingdom against foreign smuggling ships hovering within distances of up to eight leagues (24nm) from the shore [1].

In the contemporary law of the sea, the contiguous zone was codified for the first time at the Geneva conference in 1958, in the Geneva Convention on the Territorial Sea and the Contiguous Zone. Prior to the Geneva conference, in July 1956, the draft prepared by

the International Law Commission (ICL) adopted the rule that the contiguous zone established to protect (understood as the prevention of violations of the rights of the coastal State) the customs regulations, fiscal (tax) and sanitary ones of the coastal State within its territory and the territorial sea cannot extend beyond 12 nautical miles from the baselines [2]. ICL had proposed a text identical to that adopted.

In accordance with Article 24 of the 1958 Geneva Convention, in a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to: prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea; punish infringement of the above regulations committed within its territory or territorial sea (Art. 24(1)). The contiguous zone may not extend beyond 12 miles from the baseline from which the breadth of the territorial sea is measured (Art. 24(2)). Generally, the adoption of Article 24 of the 1958 Geneva Convention resulted in the unification of different approaches regarding the width of the contiguous zone. Article 33 of the UNCLOS is in line with the previous approach of the Geneva Convention. Article 33(1) of the UNCLOS follows Article 24(1) of the Geneva Convention on the Territorial Sea and the Contiguous Zone. However, according to Article 33(2) of the UNCLOS, the contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Currently, the Polish maritime zones are covered by one act and one regulation, namely – the 1991 Maritime Areas of Republic of Poland and Maritime Administration Act [3] and the 2017 Regulation on the Baselines, External Boundary of the Polish Territorial Sea and Contiguous Zone of the Republic of Poland, respectively [4]. The 2017 Regulation relates to the Polish baselines [5].

Nevertheless, in the thirties of the last century, Poland benefited from the territorial sea, which extended the width of three nautical miles. At that time, Poland also had the contiguous zone with a width of three nautical miles.

According to the 1932 Order of the President of the Republic concerning the maritime boundary of the State [6], “the territorial waters of the State shall be bounded by a line drawn at a constant distance of three nautical miles from the coast and the boundary of internal waters” (Article 1). Within six nautical miles from the coast line and parallel to it, boundary waters adjacent lane runs, in which the State is entitled to exercise the sovereign powers in the field of coastal security (Article 3). Sovereign powers, exercised by the State in its territorial waters, the adjacent lane and the coastal waters of the Polish customs area, are at the same level performed in the airspace overlying the waters, and beneath its surface (Article 5). According to the 1933 Order of the President of the Republic concerning customs law “the area of the sea extending six nautical miles from the customs boundary shall constitute the maritime customs zone” (Article 5) [7].

The Decree of 23 March 1956 concerning the protection of the State boundaries constituted that the State boundary of the Polish People’s Republic [8] was the line separating the territory of the Polish

People’s Republic from the territory of the other States and from the open sea. The boundary lines also demarcated the air space, the water and the interior of the earth in the vertical plane (Article 1). The boundary of the territorial waters and the contiguous zone ran parallel to the coastline and to the boundary of the internal maritime waters and extended from the land boundary between the Polish People’s Republic and Germany to the land boundary between the Polish People’s Republic and the Union of Soviet Socialist Republics (Article 2). The coast line was the line of contact between the sea and the land at low water (Article 3).

According to the 1977 Act on the Territorial Sea of the Polish People’s Republic [9] the territorial sea was the maritime area of the width of 12 nautical miles measured from the coastline or from the baseline closing Polish internal waters at the Bay of Gdańsk. The 1977 Act provided for the State sovereignty over the territorial sea, the airspace over such waters, as well as the seabed and subsoil of the territorial sea. It also safeguarded the right of innocent passage for foreign ships. This 1977 Act was repealed by the 1991 Act.

The 1991 Act concerning the maritime areas of the Republic of Poland and the maritime administration defines the legal situation of Polish maritime areas [10]. It should be mentioned, that at that time, the maritime zone provided by the UNCLOS, but omitted by the 1991 Act, was the contiguous zone. Since 1991 the Act has been amended several times.

The very last important amendment of the 1991 Act, which relates to maritime areas, is the establishment of the Polish contiguous zone in 2015 and adoption of the Regulation on the baselines, external boundary of the Polish territorial sea and the contiguous zone of the Republic of Poland.

At present, the maritime areas of the Republic of Poland are: inland waters, territorial sea, the contiguous zone and the exclusive economic zone. The internal waters and the territorial sea are part of the territory of Poland.

The 1991 Act defines the zone as “a zone contiguous to the territorial sea of the Republic of Poland, where the outer limit extends no more than 24 nautical miles from the baselines”. In the contiguous zone, the Republic of Poland shall have the rights to:

- prevent infringement of Polish customs, fiscal or sanitary regulations, as well as regulations concerning illegal migration, within its territory;
- pursue, seize and punish perpetrators of an infringement of regulations mentioned above when the infringement took place in the Polish land territory, internal waters or territorial sea of the Republic of Poland, or when the duty to pursue, seize and punish perpetrators by the European Union law or international agreements, to which the Republic of Poland is a State Party.

The contiguous zone is an area of the sea adjacent to the territorial sea, covering a part of the Polish exclusive economic zone.

On 14 February 2017 the Regulation of the Council of Ministers on the baselines, external boundary of the Polish territorial sea and contiguous zone of the

Republic of Poland entered into force (see three attached charts from the Regulation).



Figure 1. Outer limit of the Polish territorial sea and the outer limit of the contiguous zone – Western part

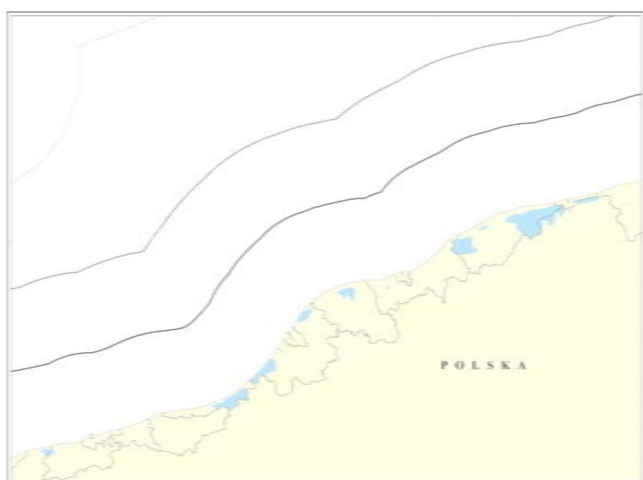


Figure 2. Outer limit of the Polish territorial sea and the outer limit of the contiguous zone – Central part



Figure 3. Outer limit of the Polish territorial sea and the outer limit of the contiguous zone – Eastern part

3 ENFORCEMENT JURISDICTION OVER THE CONTIGUOUS ZONE FOR THE PURPOSE OF PREVENTIVE CONTROL

Poland does recognise coastal State jurisdiction in accordance with international law on the contiguous zone, as well as in other maritime areas, in which the coastal State may exercise its jurisdiction to prevent or punish infringement of its regulations limited according to the law of the sea.

The UNCLOS came into force in 1994. At that time 53 of the 148 coastal states had their contiguous zones. In contrast, a few years later, in 1999, already 70 coastal States had a 24 nautical mile or less contiguous zone, and only one State unclaimed for a wider area than is allowed by the UNCLOS. Currently, about 90 coastal States have the contiguous zones. Under the UNCLOS the contiguous zone falls not within the high seas but within an exclusive economic zone. A coastal State is free to established a contiguous zone within the limits indicated in the UNCLOS [11] [12].

According to international law, reflected in the applicable provisions of the UNCLOS, in a zone contiguous to its territorial sea, the 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, or to punish such infringements committed within its territory or territorial sea. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

The coastal State does not possess sovereignty over the contiguous zone, as it does in the internal waters and territorial sea. The coastal State enjoys jurisdiction in the contiguous zone for the limited purposes specified in Article 33(1) of the UNCLOS.

Jurisdiction is only claimed for the control necessary to prevent infringements. E.J.Molenaar argues that within the contiguous zone the coastal States have no prescriptive or enforcement jurisdiction over the protection and preservation of the marine environment, as well as over vessel-source air pollution [13]. Y.Tanaka provides that according to literally meaning of Article 33(1) the coastal State may exercise only enforcement, not legislative, jurisdiction within its contiguous zone. According to a literal interpretation of Article 33, the coastal State has only enforcement jurisdiction in its contiguous zone. G. Fitzmaurice stressed that the power over the contiguous zone is “essentially supervisory and preventative” [14]. Nevertheless, Y. Tanaka describes a liberal view concerning jurisdiction over the contiguous zone and indicates that the coastal State may regulate the violation of its municipal law within the contiguous zone.

The contiguous zone must be explicitly claimed. A contiguous zone may be claimed wherever the territorial sea exists in accordance with the applicable baseline principles. The contiguous zone does not form part of a coastal State’s territory. Jurisdiction exercised within the contiguous zone cannot be presumed to exist but must have an explicit basis in international law. When the coastal State establishes the exclusive economic zone, the contiguous zone is a

part thereof. Taking this view into account, it is rather clear that the coastal State may exercise both, legislative and enforcement, jurisdiction for some limited purposes according to the UNCLOS provisions. The contiguous zone is also important for the purpose of illegal migration. Drug traffic and illicit traffic in refugees and immigrants is of concern for the Polish authorities.

The State practice since 1958 has not always followed the conventional provisions on the status of the zone. Some States claim, quite clearly, both enforcement and legislative jurisdiction. More coastal States claim the contiguous zone for the purposes other than those listed in the Convention, notably for security purposes [15].

The domestic legislation on the contiguous zone is rather in compliance with the provisions of the UNCLOS. Although, several States have claimed a contiguous zone for the "protection of their security". According to Article 33(1) (a) the UNCLOS mentions only customs, fiscal, immigration or sanitary law for control purposes.

On the basis of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone only a few States enacted the legislation establishing a zone, whereby control necessary to prevent infringement of customs, fiscal, immigration or sanitary laws and regulations could be exercised up to 12 miles from the baselines. Article 111(1) provides that the coastal State may undertake the hot pursuit of foreign ships within the contiguous zone.

The extension of the contiguous zone is an important step in preventing the removal of cultural heritage found within 12 nautical miles beyond the external border of the territorial sea. According to the provisions of the UNCLOS the coastal State in its exclusive economic zone has no sovereignty rights to regulate activities pertaining to the underwater cultural heritage as well as the continental shelf beyond the contiguous zone. But Article 303 of the UNCLOS granted to the coastal States exercising jurisdiction to prevent or punish the unauthorized removal of objects of an archeological and historical nature from the seabed within its contiguous zone. In order to control traffic in such objects, the coastal State may, in applying Article 33, presume that their removal from the seabed in the contiguous zone, without its approval, would result in an infringement within its territory or territorial sea of the laws and regulations [Art. 303(2)]. Article 303 establishes *factio juris* of competence by providing jurisdiction to the coastal States for preservation and protection beyond their territorial sea in the contiguous zones [16].

4 CONCLUSIONS

The contiguous zone is established for the protection of national interests and claims to prescriptive jurisdiction. Article 33 UNCLOS allows control only with respect to the four categories of laws listed.

In the thirties of the last century Poland benefited from the territorial sea, which extended the width of three nautical miles. At that time, Poland also had the contiguous zone with a width of three nautical miles.

In 1978 the Polish contiguous zone was abolished in connection with the establishment of a twelve-mile territorial sea. The Maritime Areas of the Republic of Poland and the Maritime Administration Act entered into force in 1991. This Act has not established the contiguous zone.

Most coastal States that claim a contiguous zone, reproduce the text of Article 33 of the UNCLOS. Extension of the contiguous zone to the limits permitted by the law of the sea will have an influence on the law enforcement and control as well as the security interests of Poland.

On 19 November 2015 the Act amending the Maritime Areas of the Republic of Poland and the Maritime Administration Act and certain other Acts entered into force, on the basis of which the contiguous zone was established (Art. 2 para. 1) This particular change is the establishment of the contiguous zone in accordance with the provision of Article 33 of the UNCLOS.

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