

The Regime of Islands in International Conventions (Part 1)

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1. Introduction

The law of the sea includes many multilateral and bilateral agreements. The primary multilateral agreements currently in effect are the United Nations Convention on the Law of the Sea (UNCLOS), which was adopted in 1982 and entered into force in 1994; the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (“Implementation Agreement”); and four 1958 Geneva Conventions on the Law of the Sea.¹ The legal regime of islands is embodied in UNCLOS Article 121, and the CTS Geneva treaty regulates islands in Article 10. Another one of the four Geneva conventions, the CCS, also includes regulations concerning islands in Article 1(b).

In this essay I examine the regime of islands in international conventions by examining the debate at the Hague Codification Conference² and earlier international conferences, the discussions of the International Law Commission³ that led to the regulations in Article 10 of the 1958 CTS, the

¹ The Convention on the Territorial Sea and the Contiguous Zone (CTS); the Convention on the High Seas (CHS); the Convention on Fishing and Conservation of the Living Resources of the High Seas (CFCLR); the Convention on the Continental Shelf (CCS). These were adopted in 1958 and all entered into force by 1966.

² The Hague Codification Conference was held in 1930 under the auspices of the League of Nations in order to codify the international customary law regarding the three issues of territorial waters, nationality, and the issue of state responsibility. There was a clash of opinions over the width of territorial waters, and a convention on territorial waters was not adopted.

³ The International Law Commission, established in 1947 by a 1946 UN resolution, presently consists of 34 members.

discussions of the United Nations Committee on the Peaceful Use of the Sea Bottom in advance of UNCLOS III, and the debate on UNCLOS III over the 10 year period from 1973 to the adoption in 1982 of UNCLOS is examined in a separate part.⁴

Two issues in the regime of islands are identified. The first is the allocation of maritime spaces to islands. The second is the role of islands in the delimitation of maritime spaces between states with opposite or adjacent coasts. In this essay (Part 1), I examine those two roles that islands play in the aforementioned international conventions and draft proposals of those conventions.

2. Before the UN Convention on the Law of the Sea

A. The 1930 Hague Codification Conference

The Hague Conference for the regulation of North Sea Fisheries was held in 1881, nearly 50 years before the Hague Codification Conference of 1930, and nearly every country involved with the North Sea fisheries—Belgium, Denmark, France, Germany, Norway, and Sweden, and the United Kingdom—participated. The Conference adopted the convention the following year, and it was signed and ratified by all of these countries, with the exception of the Scandinavian states of Norway and Sweden. Since this convention set regulations concerning fishing on the high seas, defining the breadth of territorial waters was an inevitability. There was opposition between the bloc of five countries—including the United Kingdom—that supported territorial waters of 3 nautical miles out, and Norway and Sweden, which argued for 4 nautical miles. Norway demonstrated particularly little flexibility in its position, not only on the issue of the breadth of territorial waters but also on the existence of a straight line extending about 560 miles that form the baseline for determining its territorial waters⁵ and the claim that all its fjords were internal waters. Norway attempted to define fjords and bays as internal waters while maximally utilizing the existence of “insular formations”⁶ to secure broader territorial waters. Discussions at this conference focused on which insular formations could claim exclusive fishing zones, i.e. territorial waters of their own.

⁴ This is planned for Part 2 of this paper.

⁵ This line was based on the Decree of October 16, 1869, relating to the Delimitation of Sunnmøre, and the Statement of Reasons for this Decree.

⁶ These formations included islands, low-tide elevation, islets, rocks, reefs, cays, and so forth.

The provisions on islands that were accepted by all of the countries other than Norway and Sweden were adopted in 1882 and incorporated into Article II of the Decree as follows:

“The fishermen of each country shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along the whole extent of the coasts of their respective countries, as well as of the dependent islands and banks.”

The treatment of insular formations was already recognized as a complex and serious issue by the nations concerned. It was recognized that establishing a definition for “insular formation” would have an effect on the sovereignty of thousands of square kilometers of maritime areas.

The Hague Codification Conference was held in 1930 by the League of Nations in order to codify the international customary law concerning the three issues of (a) nationality, (b) territorial waters, and (c) responsibility of states for damage done in their territory to the person or property of foreigners, with around 50 countries participating in the talks. While there were opposing opinions concerning claims on the width of the territorial sea and the contiguous zone and the participants did not go so far as to adopt a convention on the territorial sea, many other provisions discussed there did later form a useful foundation for the codification conferences held after World War II.⁷ This was the beginning of concrete talks toward the establishment of a common, worldwide law of the sea.

In preparation for the 1930 Codification Conference, the League of Nations tasked Harvard Law School with conducting the research needed for drawing up a draft of an international convention concerning these three issues. A draft was proposed by an advisory committee consisting of 44 American scholars and experts on international law, and was approved by Harvard Law School. In 1927, the Council of the League of Nations established the Preparatory Committee for the Codification Conference, composed of one expert each from Chile, France, Italy, the Netherlands, and the United Kingdom. The committee met in 1928 and 1929 to study the responses returned by League of Nations member states to the request for information on the above three issues that had been circulated to them. There were replies from each of the 29 countries, but not all 29 commented on all three issues. Several countries only replied regarding particular issues. Through this process, the Preparatory Committee drew up documents⁸ that formed the base for discussions at the Codification Conference.

⁷ Shimada Yukio and Hayashi Moritaka, *Kokusai kaiyo ho* (International Law of the Sea) (Tokyo: Yushindo, 2010), p. 10

⁸ Bases of Discussion Drawn up for the Conference by the Preparatory Committee (League of Nations Documents C.74.M.39.1929.V.)

One of these documents, "Vol. II Territorial Waters," discusses "Point V: Territorial Waters around Islands" and "Point VI: Definition of an Island." The Preparatory Committee solicited opinions on the following aspects of Point V from League member states:

"An island near the mainland. An island at a distance from the mainland. A group of islands; how near must islands be to one another to cause the whole group to possess a single belt of territorial waters?"

According to the responses from member states, it was clear that there was agreement regarding the idea that an island at a sufficient distance from the mainland and from other islands possesses its own territorial waters measured in accordance with the previously stated rules.

But there was significant disagreement regarding cases in which islands were in proximity to one another, or to the mainland. Several countries argued that even in cases where islands are separated by less than twice the breadth of the territorial waters, those islands would have their own territorial waters. Other countries held:

"Wherever two or more islands are sufficiently near to one another or to the mainland the islands or the islands and the mainland form a unit, and territorial waters must be determined by reference to the unit and not separately for each island; there will thus be single belt of territorial waters. This conception claims to be based on geographical facts."

This approach raised complicated questions, though. It made it necessary to determine how near the islands must be to one another or to the mainland, first of all. Some governments argued for a required distance twice the breadth of the territorial waters. Others avoided defining a particular distance, arguing instead for a more flexible approach that took account of geographical facts, making it possible to consider land masses much farther from one another as a whole, particularly in the vicinity of a country's mainland. This view also allowed the definition of a group of islands⁹ as a coherent unit with its own belt of territorial waters, even if the distances among those islands were longer than would ordinarily allow them to share such contiguous waters.

Treating a group of islands, or an island and the mainland, as a coherent unit with its own belt of territorial waters raised a new problem: how to define the status of the waters separating those land masses. One view held that these waters were inland waters, with the belt of territorial waters surrounding the group's external boundary. Another opinion, one held by the majority of the states taking part in this discussion, viewed all the waters in question to be territorial waters, subject to the relevant rules governing such

⁹ Basis of Discussion No. 13.

holdings. The former opinion placed the interests of the coastal state first, while the latter was more favorable to the freedom of navigation.

In order to reach some sort of compromise and consensus in the midst of this disagreement, the Preparatory Committee drew up a compromise draft based on the responses from the various nations, to be Basis of Discussion No. 13.¹⁰ This compromise proposal treated groups whose islands were sufficiently proximate to one another as a single unit and the waters surrounding such a group as territorial waters. A group of islands comprising a portion of an archipelago would be deemed a single unit, and the width of territorial waters would be measured from the center of that archipelago. The opinion was also expressed that whether a group of islands comprises an archipelago should be determined not only by geographical factors, but at times also be based on historical or prescriptive grounds.¹¹

The following points were also raised in Basis of Discussion No. 13:

“In the case of a group of islands which belong to a single State and at the circumference of the group are not separated from one another by more than twice the breadth of territorial waters, the belt of territorial waters shall be measured from the outermost islands of the group. Waters included within the group shall also be territorial waters. The same rule shall apply as regards islands which lie at a distance from the mainland not greater than twice the breadth of territorial waters.”

The Preparatory Committee solicited opinions from League member countries regarding the following question in Point VI, “Definition of an Island.” “For the purpose of Points IV¹² and V, what is meant by an island?”

The responses from 16 countries can be broadly divided into two sets, one defining islands as being above water at high tide and the other saying that they meet the requirement if they are above water at low tide. This course of debate resulted in the proposal that islands that exist independently must be above water at all times, including during high tide, in order to have their own territorial waters, while for islands located within the mainland’s territorial waters or the territorial waters of another island, being above water during low tide is sufficient for extending the belt of territorial waters.

B. The 1956 International Law Commission Report¹³

¹⁰ The Bases of Discussion were not presented as a proposal of the Preparatory Committee itself, but rather as the results of the Preparatory Committee trying to coordinate the opinions seen in the responses that the Preparatory Committee had requested from the member countries.

¹¹ C. J. Colombos, *The International Law of the Sea*, 6th Revised Edition, (London: Longman, 1967), p. 120.

¹² Point IV: Determination of the Base Line for Measurement of the Breadth of Territorial Waters

As noted above, legalistic issues concerning islands—such as the territorial waters surrounding a single island or the territorial waters surrounding islands that form a group, and the definition of an island—all fall within the scope of “Part II: Territorial Waters” of the 1930 Hague Codification Conference and the discussion during its preparatory stages. However, the International Law Commission, composed of individually accredited experts and established in 1947 via a resolution of the UN General Assembly, had a different mission from that established under the League of Nations.¹⁴ In addition to codifying existing customary law, this commission was also tasked with the progressive development of the law.¹⁵

The Law of the Sea was one of the initial topics of the International Law Commission, and the 1956 Commission Report can be considered an early attempt to form a comprehensive regime of islands.

This report includes the following provision, in II (Articles concerning the law of the sea), Part I (Territorial Sea), Section II (Limits of the Territorial Sea), Article 10 (Islands):

“Every island has its own territorial Sea. An island is an area of land surrounded by water, which in normal circumstances is permanently above high-water mark.”

The commentary accompanying the above statement notes: “This article applies both to islands situated in the high seas and to islands situated in the territorial sea. In the case of the latter, their own territorial sea will partly coincide with the territorial sea of the mainland. The presence of the island will create a bulge in the outer limit of the territorial sea of the mainland. The same idea can be expressed in the following form: islands, wholly or partly situated in the territorial sea, shall be taken into consideration in determining the outer limit of the territorial sea.” The commentary on the section of Article 10 defines an island as “any area of land surrounded by water which, except in abnormal circumstances, is permanently above high-water mark.” According to this definition, artificial land is also considered to be an island. This means that, until Article 10 of the Convention on the Territorial Sea and the Contiguous Zone of 1958 restricted the definition of an island to a naturally formed area of land, there had been a legal interpretation enabling land that did not form naturally to possess its own territorial waters. Due to concerns that the expansion of territorial waters would erode freedom of the

¹³ 1956 Report of the International Law Commission, Official Records of the General Assembly, Eleventh Session, Supplement No.9 (A/3159), pp. 16–17 and p. 41.

¹⁴ UN General Assembly Resolution 174 (II) on Establishment of an International Law Commission defines the mission of this Commission as the “promotion of the progressive development of international law and its codification.”

¹⁵ Shimada and Hayashi, *International Law of the Sea*, p. 11.

high seas, artificial land was excluded when the revised draft was eventually adopted.

The phrasing of Article 10 in the draft also included a deliberate contradiction. The term “abnormal circumstances” due to climatic or weather conditions is used in contrast to “normal circumstances,” but by defining islands as “*permanently* above high-water mark,” the draft establishes a requirement that an island be above the high-water mark, regardless of the circumstances. This can be interpreted as intended to withhold the status of an island from land that is below the high-water mark in other than “normal circumstances.”

According to this definition, the following are not considered islands, and do not possess territorial waters.

(i) Low-tide elevations: Elevations that are above water at low tide only. Even if an installation is built on such an elevation and is itself permanently above water—a lighthouse, for example—the elevation is not an “island” as understood in this article.

(ii) Technical installations built on the sea bed, such as installations used for the exploitation of the continental shelf.

Paragraph 3 of Article 71 in the draft states: “Such installations, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.”

The International Law Commission nevertheless proposed that a safety zone around such installations should be recognized in view of their extreme vulnerability. It does not consider that a similar measure is required in the case of lighthouses. Article 11 of the report went on to say:

“Drying rocks and drying shoals which are wholly or partly within the territorial sea, as measured from the mainland or an island, may be taken as points of departure for measuring the extension of the territorial sea.”

The Commission initially planned to establish a regulation similar to this for groups of islands, but—like the 1930 Hague Codification Conference—was unable to overcome the difficulties inherent in this issue. Each island group forms a different shape depending on its own component islands, and the Commission failed to produce any measures for solving this extremely complicated problem. The Commission was unable to state an opinion due to a lack of technical data concerning the issue, as well as a lack of consensus regarding the width of territorial waters. It did recognize the importance of this issue, but stopped at expressing their desire to tackle the problem in a future international conference.

The report stipulates the following in Part II (High Seas), Section III (Continental Shelf), Article 67:

“For the purposes of these articles, the term ‘continental shelf’ is used as referring to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters (approximately 100 fathoms) or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.”

According to the commentary for Article 67,¹⁶ the Commission consciously defined “continental shelf” in a way that departed somewhat from the standard geological definition. In particular, it became evident when the Commission included exploitable areas at a depth of more than 200 meters. At the same time, the Commission noted: “The term ‘continental shelf’ does not imply that it refers exclusively to continents in the current connotation of that word. It also covers the submarine areas contiguous to islands.”

Lastly, the Commission pointed out that “it does not intend limiting the exploitation of the subsoil of the high seas by means of tunnels, cuttings or wells dug from terra firma. Such exploitation of the subsoil of the high seas by a coastal State is not subject to any legal limitation by reference to the depth of the superjacent waters.”

3. From UNCLOS I to UNCLOS III

A. The 1958 Geneva Conventions on the Law of the Sea

The First United Nations Conference on the Law of the Sea (UNCLOS I)¹⁷ was held in 1958 in Geneva, and the following four conventions were adopted:

- (1) Convention on the Territorial Sea and the Contiguous Zone (CTS)
- (2) Convention on the High Seas (CHS)
- (3) Convention on Fishing and Conservation of the Living Resources of the High Seas (CFCLR)
- (4) Convention on the Continental Shelf (CCS)

The four Geneva Conventions on the Law of the Sea were the first comprehensive treaties on the law of the sea to ever be concluded.

Draft Article 10 and Draft Article 67, composed by the aforementioned International Law Commission, were examined at UNCLOS I, and as a result Article 10 of the CTS and Article 1 of the CCS established the following rules on islands:

¹⁶ Report of the International Law Commission on the Work of its Eighth Session, April 23–July 4, 1956, and Official Records of the General Assembly, Eleventh Session, Supplement No.9 (A/3159) p.297.

¹⁷ UNCLOS II was held in 1960 to define the breadth of territorial seas and fishery limits. Participants failed to reach an agreement on these matters, though.

Article 10 (CTS):

1. An island is a naturally-formed area of land, surrounded by water, which is above water at high tide.
2. The territorial sea of an island is measured in accordance with the provisions of these articles.

Article 1 (CCS):

For the purpose of these articles, the term “continental shelf” is used as referring

- (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said area;
- (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Neither Article 10 of CTS nor Article 1 of CCS directly addresses the regime of islands; instead, the matter was dealt with in the context of the regime of territorial seas and the regime of continental shelves.

Islands are defined quite broadly in CTS Article 10, Paragraph 1. For example, regardless of size, geological properties, population, or the maintenance of economic life, all islands—artificial land aside—are granted the same status.

B. United Nations Committee on the Peaceful Uses of the Sea-Bed

These two provisions served as the primary legal background for discussions on the regime of islands by the United Nations Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (“UN Sea-Bed Committee”)¹⁸ composed of 42 member states, established by a December 1968 UN General Assembly Resolution. The UN later resolved in December 1970¹⁹ to hold UNCLOS III, directing the UN Sea-Bed Committee to serve as a preparatory body.

No noteworthy progress in the debate over the regime of islands was seen until the March 1971 session of the UN Sea-Bed Committee. However, having been ordered to prepare for the third conference, the Committee established three subcommittees during the March 1971 session, with the second of those being tasked to draw up a comprehensive list of subjects and

¹⁸ The United Nations Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction was established by UN General Resolution 2467A (XXIII) in December 1968, and was preceded by an Ad-hoc committee of 36 member countries, established in 1967 by UN General Resolution 2340 (XXII).

¹⁹ UN General Resolution 2750C (XXV) of December 17, 1970.

issues relating to the Law of the Sea. The list indicated that these issues related primarily to the following subjects in the legal regime:

“ . . . the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits and contiguous zone), fishing and conservation of the living resources of the high seas (including the question of preferential rights of coastal states) . . . ”

While preparing this comprehensive list of subjects and issues, the second subcommittee was also tasked with composing drafts of conventions concerning these problems in the legal regime. The 1971 discussions by the UN Sea-Bed Committee and second subcommittee focused most of all on international seabed areas, but also touched briefly on the regime of islands. In particular, they mentioned the necessity of solutions to the particular problems of island nations involving their special circumstances and interests.²⁰ Sending their message via two nations that were committee members, five developing South Pacific nations that were not members of the UN Sea-Bed Committee expressed the special importance of ocean resources to them. At the same time, it was stressed that the benefit of all nations, not just island nations, must be considered.²¹

During the same session, some member states also produced their own draft convention texts, either individually or in concert with other members. During deliberations on the regime of islands, several drafts were submitted. These included the Malta Draft, the Greek Draft, the Uruguay Draft, and the 14 African Nation Draft. The “Draft Ocean Space Treaty,” submitted by Malta, deserves particular attention.

Part I (Ocean Space), Chapter I (Definitions), Article 1:

The term *island* is used as referring to a naturally formed area of land, surrounded by water, which is above water at high tide.

The text starting with “a naturally formed . . .” was used as-is in the definition of an island found in Article 10 of the 1958 CTS (which also employs the following wording in Article 11, Part 1):

“A low tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide.”

Part II (Coastal State Jurisdiction in Ocean Space), Chapter IX (Limits), Article 37 contains rules for the jurisdiction of island or archipelagic states.

According to this clause, the jurisdiction of a state extends 200 nautical miles from the principal island or islands, or over a belt of ocean space 200 nautical miles from other islands. The principal island or islands can be designated by

²⁰ Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21 (A/8421) Introduction, para. 39.

²¹ *Ibid.*, para. 100.

that state, and such designations shall be notified to the International Ocean Space Institutions, which have authority over such designations.

Part V (The International Ocean Space Institutions: IOSI),
Chapter XVI (Establishment and personality) Article 90:

The Institutions may accept from any State the transfer to their administration of reefs, sandbanks, or islands having less than 10,000 permanent inhabitants.

This approach was based on the stance that a small island nation may lack resources sufficient for the safeguarding and development of the ocean, and that such island nations should have jurisdiction over only small areas.

The UN Sea-Bed committee, through concentrated talks during August 1972, drew up and adopted a comprehensive list of subjects and issues relating to the law of the sea.²² These served as materials for later deliberation and as a framework when later drafting provisions.

The following two main points regarding the regime of islands were included in the list.

- (a) Regime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction
- (b) Regime of islands:
 - (i) Island under colonial dependence or foreign domination or control;
 - (ii) Other related matters.

In the 1972 subcommittee meetings of the UN Sea-Bed Committee, several countries expressed their opinions on the question of the regime of islands, particularly concerning the regime of islands as it concerned the exclusive economic zone, as well as the regime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction, mentioned above as a major issue. In response to those concerns, a variety of differing options were studied, such as whether to grant the same status to all islands, and whether to categorize islands differently based on standards involving their size, location, population, or ocean space associated with them.

The regime of islands was also examined from other viewpoints, including islands under colonial rule or foreign control or a sovereign island nation located on the continental shelf of another nation. Issues with territorial seas, the continental shelf and delimitation thereof, exclusive economic zones beyond the territorial sea, and other related matters were also touched on.

Several countries emphasized the inalienability of national sovereignty and jurisdiction. That is, they pointed out the danger lurking in categorizing islands by criteria such as size, location, and population, while also noting the

²² Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 (A/8721), para. 23.

similar risk resulting from categorizing island states and islands under the jurisdiction of a non-island state.

The proposals and opinions submitted to the subcommittee can be broadly divided into two categories. One view is that the same status should be granted to all islands; this can be seen in the CTS and CCS. The other is that islands should be categorized by some sort of standard and granted different status depending on the assigned category. This idea of island categorization can be further divided into two subcategories. The first is to establish a fixed standard and declare that islands not meeting the standard will not have an EEZ or continental shelf. The second involves boundary delimitation, in which delimitation of maritime space is carried out through the principle of equity in all factors, such as the island's size, presence of residents, and indivisibility from the mainland. The second subcategory did not provide any specific provision granting an EEZ or continental shelf based on the size of an island.

The draft articles submitted by Malta in July 1973²³ added to the countries' 1971 draft of the definition of an island in Article 1 categorization based on size, dividing islands into "islands" and "islets." A naturally formed area of land that is 1 square kilometer or more is designated as island, and smaller ones are designated as islets. It then stipulates in Article 9, "Jurisdiction over maritime space may not be claimed by a State by virtue of sovereignty or control over (a) reefs and low tide elevations, whether or not lighthouses or other installations have been built on them; (b) islets; (c) man-made islands of whatever size; (d) fixed or floating installations of whatever nature, whether joined to the seabed or not; (e) underwater installations or works of whatever nature."

As mentioned above, the UN Sea-Bed Committee produced an extremely large number of documents in preparation for UNCLOS III. These were submitted as official proposals and declarations and reflected in the comparative texts that were submitted later. Although no formal agreement had been reached, the reality is that several main trends came to the fore. One can say that the basis for discussions and proposals regarding the regime of islands in UNCLOS III had already been offered.

Although there was no consensus, the main trends can be summarized as follows.

- (1) As to the definition of an island, a dominant trend that emerged was to retain the definition as found in Article 10, Paragraph 1, of the 1958 CTS.

²³ Preliminary Draft Articles on the Delimitation of Coastal State Jurisdiction in Ocean Space and on the Rights and Obligations of Coastal States in the Area under their Jurisdiction (Document A/AC.138.SC.II/L28 of July 16, 1973.)

- (2) As to the delimitation of the maritime space of islands, it was proposed that as a general rule the same criteria applicable to the delimitation of the territorial sea and continental shelf would also apply to islands.
- (3) As the continental shelf does, islands would also have their own EEZ and patrimonial sea.²⁴
- (4) To determine the relevant maritime space of islands, it was noted that a series of criteria such as the population or absence thereof or geomorphological structure and configuration should be taken into consideration. There was even a proposal that islets and small islands – which were uninhabited and without economic life – would possess no continental shelf or other maritime space. However, under certain conditions, even such islets and small islands would possess their own maritime space.

The proposals listed above can be seen as having formed the basis for discussions at UNCLOS III on specific issues with the regime of islands.

4. Conclusion

Finally, I would like to discuss the application of the currently effective conventions concerning the law of the sea. As discussed above, four conventions on the law of the sea were adopted at UNCLOS I in 1958 in Geneva. All four of those conventions entered into force in 1966, but the number of signatories was limited to a small number. The reality is that until the entry into force in 1994 of the 1982 United Nations Convention on the Law of the Sea, the Geneva conventions shouldered the primary burden of the international law of the sea.²⁵

On the other hand, as it says in the preamble to the UN Convention on the Law of the Sea, “matters not regulated by this Convention continue to be governed by the rules and principles of general international law.” The four 1958 Geneva conventions on the law of the sea are commonly understood as having codified the customary law concerning the sea, but in fact only the Convention on the High Seas (CHS) is considered to have resulted from the codification of customary law. If nothing else, it can be described as consistent with customary international customary law at the time of the adoption of the convention. This is even clear from the preambles of the conventions. Unique to the preamble to CHS, there is language indicating that the convention

²⁴ An economic zone extending 200 nautical miles from the base line determining the territorial sea, as was mainly argued for by Latin American countries.

²⁵ Shimada and Yahashi, *International Law of the Sea*, p. 11.

espouses the established principles of international law.²⁶ The other three Geneva conventions include many provisions that are rules ordinarily recognized, but not that of customary law.²⁷ The 1958 Geneva CTS and CCS each include their own definition of islands and rules concerning islands, but these provisions are not the result of the codification of customary law, as I have examined in this essay. Perhaps the persuasiveness and appropriateness of regarding these rules as customary international law can be measured in terms of how many nations adopted these conventions between 1958 and 1994.

(Continued in Part 2.)

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²⁶ The preamble to CHS says, "adopted the following provisions as generally declaratory of established principles of international law." CTS and CCS have no preambles.

²⁷ C.J. Colombos, *The International Law of the Sea*, pp. 62–66; Ian Brownlie, *Principles of Public International Law*, (Oxford: Clarendon Press, 1973), pp. 233–36.