討論鄰接區之法律地位

Discussion the Legal Status of Contiguous Zones

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壹、前言

在今天，若有人發問：「鄰接區的範圍為何？」相信每個人都能夠答出：「依據聯合國『海洋法公約』與我國『領海及鄰接區法』第14條前段規定，鄰接區為領海外側至距離基線24浬間之海域。」那麼「專屬經濟海域的範圍呢？」大家都能夠說：「依據聯合國『海洋法公約』與我國『專屬經濟海域及大陸礁層法』第2條第1項規定，專屬經濟海域為領海外側至距離領海基線200浬間之海域。」

依此道理「鄰接區的範圍是否一定在專屬經濟海域之內呢？」應該會有人抱持著質疑的態度。然筆者認為，從「聯合國海洋法公約」與我國「海域二法 [註1] 」之內容來看，鄰接區可能為專屬經濟海域，既然稱之為「可能是」專屬經濟海域，是否代表鄰接區亦「可能不是」專屬經濟海域？筆者提出粗淺見解，認為鄰接區的範圍，可能超過專屬經濟海域。

貳、鄰接區制度的源起

鄰接區（contiguous zone）制度之源起 [註2]，可推溯至1736年，英國立法對於領海外伺機走私之船舶進行檢查及處罰；在當時，各國對於3浬領海尚未取得共識。發展至19世紀中葉，3浬領海已獲得英美的實踐，但未主張領海的歐洲國家，亦針對特定事項，主張不同範圍的管轄海域。另外，部分拉丁美洲國家則認為，在主權所及的3浬區域外，應有海關與安全的管轄權。

1922年，美國立法對於12浬內違反禁酒法令之他國船舶進行管轄，此雖引起許多國家的反彈，但到了1930年之後，鄰接區的概念已經逐漸獲得各國的共識。1958年聯合國「領海及鄰接區公

Part I. Preface

If such question “What is the range of a contiguous zone?” was posed today, I believe everyone can answer the question. You would answer: According to the UN’s International Law of the Sea and the opening section14th Article of Taiwan’s Law on the Territorial Sea and Contiguous Zone, a contiguous zone is starting from the outer of territorial sea to the 24 nautical mile sea area from the base line. Then what about this question “What is the range of an exclusive economic zone?” Everyone can still answer the question: According to the UN’s International Law of the Sea and the 1st Item of 2nd Article of Taiwan’s Law on the Exclusive Economic Zone and the Continent Shelf, an exclusive economic zone is the 200 nautical mile sea area where starting from the outer of territorial sea to the base line.

Therefore, can we conclude that the range of a contiguous zone is within the exclusive economic zone? I guess there are people what have the same doubt as I am. The author thinks that judging from the contents of UN’s International Law of the Sea and the two laws governing the ocean zones,[1] the contiguous zone might be an exclusive economic zone. However, when I say ‘might be’, it is also rational that the area ‘might not be’ the exclusive economic zone. The author here suggests own understanding of the sentence and conclude that the range of a contiguous zone surpasses the exclusive economic zone.

PartII.Origin of the Contiguous Zone System

The origin of the contiguous zone system[2]

約」，明文規定鄰接區為領海基線向外，不得超過12浬之範圍，1982年聯合國「海洋法公約」更將鄰接區擴張至現行的24浬。

我國在1934年公布施行之「海關緝私條例」第6條規定，緝私範圍為沿海12浬以內之水域[註3]。在1982年聯合國「海洋法公約」公布後，翌年（1983年）我國配合新制度的發展，即修訂海關緝私條例，將緝私水域擴為24浬[註4]。1998年，我國再公布「中華民國領海及鄰接區法」，並宣示：「中華民國鄰接區為鄰接其領海外側至距離基線24浬間之海域。[註5]」此後，鄰接區的制度在我國法例中，已然成文化。

參、「領海及鄰接區公約」與「海洋法公約」關於鄰接區之比較

1958年聯合國「領海及鄰接區公約」第24條規定：「沿海國得在鄰接其領海之公海區域內行使必要之管制，以(a)防止在其領土或領海內違犯有關海關、財政、移民或衛生規章之行為；(b)懲治在其領土或領海內違犯前述規章之行為。此項鄰接區自測定領海寬度之基線起算，不得超過12浬。兩國海岸相向或相鄰者，除彼此另有協議外，均無權將本國鄰接區擴展至每一點均與測算兩國領海寬度之基線間最近各點距離相等之中央線外。」在此時，鄰接區的法律地位仍是公海，並非沿海國主權所及的範圍，沿海國僅能對於該公約授權的項目進行管轄。

can be traced back to 1736 when the UK stipulated a law regulating the inspection and punishment on vessels that transport smuggled goods. At that time, countries hadn't reached a consensus on the 3-nm territorial sea concept. In the mid-19th century, the 3-nm territorial sea has been realized by the UK and USA, but those European countries hasn't adopted the territorial sea idea have claimed ocean areas of different ranges. Furthermore, some countries from Latin America thought that within the 3-nm zone where still a sovereign territory should have the jurisdiction on custom setting and safety controls.

In 1922, the USA claimed jurisdiction on vessels from other countries that violated the Prohibition Law. Though there were many countries stood against the bully action, the contiguous zone concept has gradually been accepted by countries in 1930s. In 1958, the UN's Convention on Territorial Sea and Contiguous Zone obvious regulated that a contiguous zone must be outside the base line and cannot surpass the range of 12-nm. In 1982, the UN's International Law of the Sea expanded the range to current 24-nm.

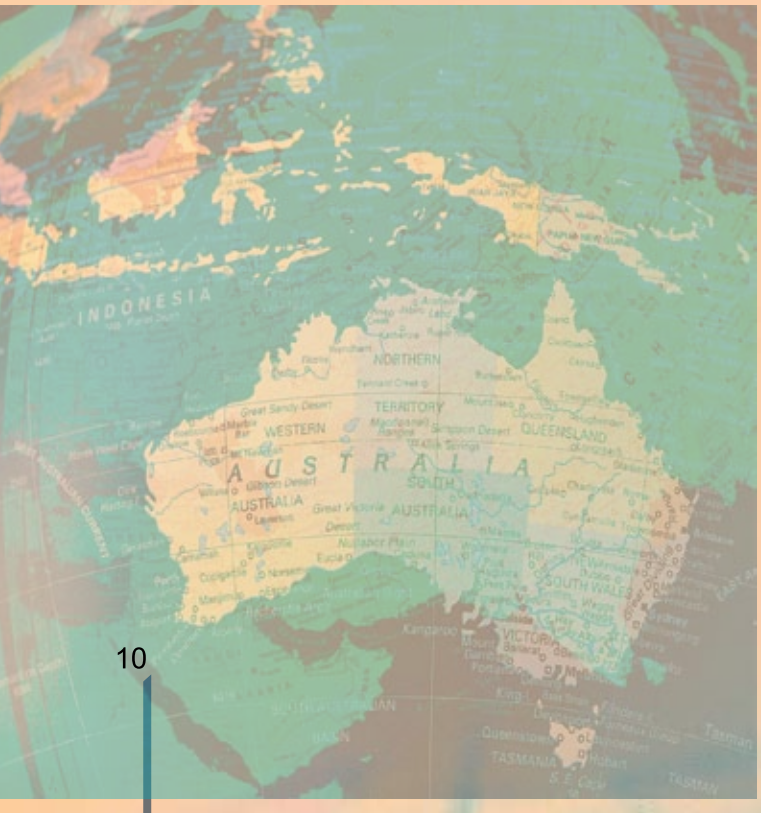
In 1934, Taiwan announced the execution of Custom Anti-smuggling Act in which the 6th Article regulates that the range of anti-smuggling inspection is the water areas within the 12-nm zone along the coast.[3] In the 1982, the UN's International Law of the Sea was announced. In order to comply with the new system, Taiwan soon amended the Custom Anti-smuggling Act in 1983 to expand the inspection range to 24-nm.[4] In 1998, the government announced Law on the Territorial Sea and Contiguous Zone of the Republic of China and regulated that 'the contiguous zone of ROC is the wide water area from the outer of the territorial sea to the 24-nm from the baseline.[5] Since then the contiguous zone system has been legalized in Taiwan's laws.

1982年聯合國「海洋法公約」第33條規定：「沿海國可在鄰接其領海稱為鄰接區的區域內，行使為下列事項所必要的管制：(a)防止在其領土或領海內違犯其海關、財政、移民或衛生的法律和規章；(b)懲治在其領土或領海內違犯上述法律和規章的行為。鄰接區從測量領海寬度的基線量起，不得超過24浬。」比較1958年「領海及鄰接區公約」與1982年「海洋法公約」之內容，其重要改變有3點，如下[註6]：

一、在1958年「領海及鄰接區公約」中，鄰接區的性質仍為公海；但在1982年「海洋法公約」裡，已將「在公海區域內」的條文刪除，此係因專屬經濟海域制度的創設後，鄰接區已不再被視為公海的一部分。

二、1958年的「領海及鄰接區公約」規定，鄰接區為基線向外不得超過12浬之範圍；而1982年「海洋法公約」內，因12浬領海制度已獲各國認同，故將鄰接區範圍擴張至基線向外24浬以內。

三、1958年領海及鄰接區公約第24條第3項，為鄰接區劃界的「中間線」原則；但是在1982年海洋法公約內，已承認相鄰或相向的國家可擁有重疊之鄰接區，而且其權力之行使並無衝突之可能，



PartIII.Comparison of Contiguous Zones in the 1958 Convention and the 1982 Law

In 1958, the 24th Article of UN's Convention on Territorial Sea and Contiguous Zone regulated that 'In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to: (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; (b) punish infringement of the above laws and regulations committed within its territory or territorial sea. The contiguous zone may not extend beyond 12 nautical miles from the baselines from which the breadth of the territorial sea is measured. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured.' By the time, the legal status of a contiguous zone is still within the high seas and not the range of coastal sovereign states. Coastal states have jurisdiction on only items that have been authorized by the Convention.

In 1982, the 33rd Article of UN's International Law of the Sea regulated that 'In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to: (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; (b) punish infringement of the above laws and regulations 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.' Compare that contents of the 1958 Convention and the 1982 Law, there are three major reforms de-

故將鄰接區的劃界原則刪除。

肆、鄰接區範圍超過專屬經濟海域的情形

我國「海域二法」亦配合1982年聯合國海洋法公約之規範，在我國「領海及鄰接區法」第14條前段規定：「中華民國鄰接區為鄰接其領海外側至距離基線24浬間之海域。」而我國「專屬經濟海域及大陸礁層法」第2條第1項規定：「中華民國之專屬經濟海域為鄰接領海外側至距離領海基線200浬間之海域。」該法第4條第1項規定：「中華民國之專屬經濟海域或大陸礁層，與相鄰或相向國家間之專屬經濟海域或大陸礁層重疊時，其分界線依衡平原則，以協議方式劃定之。」所以：

一、我國「領海及鄰接區法」規定，我國領海與他國重疊時，劃界方式採用中間線原則，但未規定鄰接區與他國重疊時之劃界方式。而聯合國「海洋法公約」中，立法者認為「相鄰或相向國家，可同時於兩國重疊之鄰接區內行使各該有關權力，並無衝突之可能，因而沒有必要一定要將該區域為劃分。[註7]」是以，從國際法及國內法而言，皆不禁止我國與他國有重疊之鄰接區。

二、我國「專屬經濟海域及大陸礁層法」規定，我國專屬經濟海域與他國重疊時，劃界方式採用衡平原則。而「海洋法公約」對於專屬經濟海域之劃界方式，係以國家協議或第15部分爭端解決來處理。由此可知，國際法及國內法皆認為各國主張專屬經濟海域重疊時，將發生權利的衝突，有劃界之必要。

scribed below:[6]

I.The 1958 Convention still regarded the contiguous zone as high seas while the 1982 Law deleted the article. It was because the establishment of exclusive economic zone system which exclude the contiguous zone as a part of high seas.

II.In 1958 Convention regulated that a contiguous zone must be outside the base line and cannot surpass the range of 12-nm while the 1982 Law expanded the range to current 24-nm.

III.The 3rd Item of the 24th Article of the 1958 Convention described the principles of median line that separates the contiguous zone. However, in the 1982 Law, it recognized that adjacent states can have overlapped contiguous zones. And the governing sovereign made it impossible to have clashes, therefore the principles of division for contiguous zones were deleted.

PartⅣ.Current Situation of Contiguous Zones Surpassing the Exclusive Economic Zone

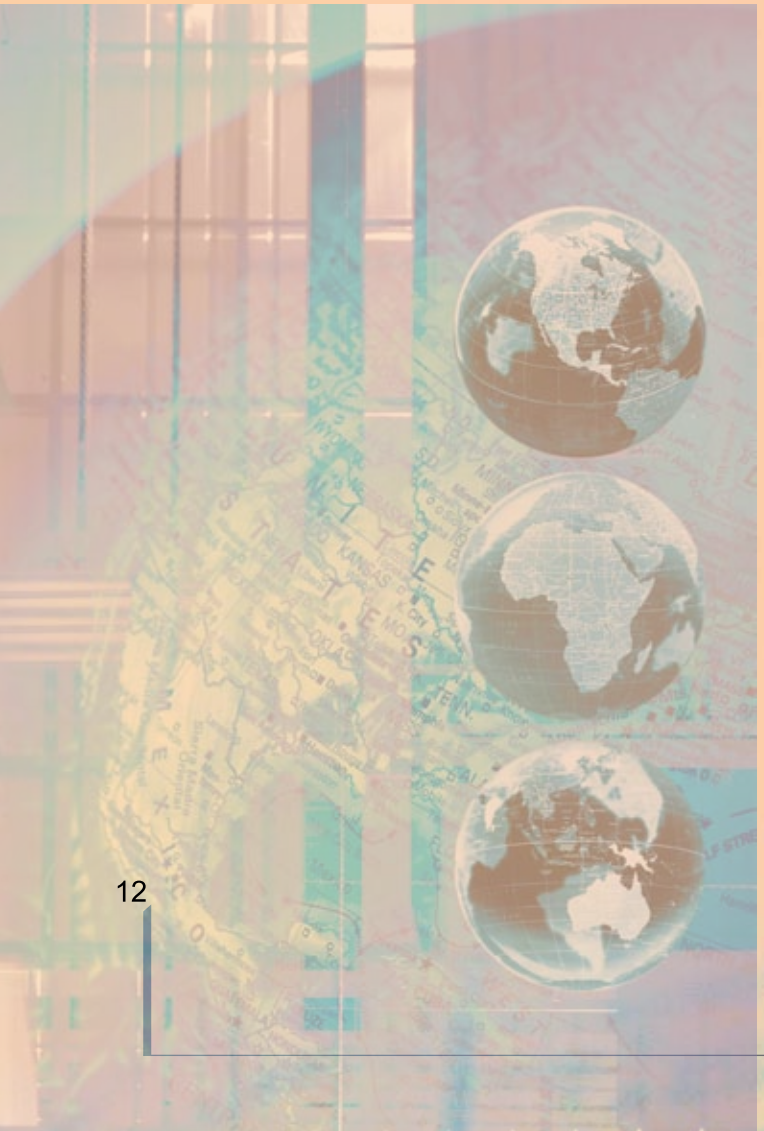
In 1982, Taiwan's two governing laws on marine affairs complied with the regulations of UN's International Law of the Sea and regulated at the opening section of the 14th Article of Law on the Territorial Sea and Contiguous Zone of the Republic of China that 'the contiguous zone of ROC is the water area from the outer of the territorial sea to the 24-nm from the baseline.' However, according to the 1st Item of 2nd Article of Law on the Exclusive Economic Zone and the Continent Shelf of the Republic of China, 'an exclusive economic zone is the sea area where starting from the outer of territorial sea to the 200 nautical mile from the base line.' The 1st Item of the 4th Article of the Law also regulates that 'When the ROC's exclusive economic zone or continent shelf have overlapped with its adjacent or opposite states', both states should negotiate for a median line based on principle of equity.' Therefore:

I.The Law on the Territorial Sea and

筆者假設：A國、B國為二相向國，其領海基線相距39浬，A、B各自主張12浬領海及24浬鄰接區，故在二國領海外界線間，存在15浬之海域；二國進行劃界後，相互主張19.5浬之專屬經濟海域。此時，A、B二國各自之鄰接區（24浬）範圍即大於專屬經濟海域（19.5浬）範圍4.5浬，二國之間即存在9浬之重疊鄰接區。

伍、結語：

依據本文前述論述可知，在1958年「領海及鄰接區公約」裡，鄰接區必然存在於公海。而在1982年「海洋法公約」下，鄰接區不一定是公海，鄰接區也未必是專屬經濟海域，鄰接區的範圍可能大於專屬經濟海域。然而依「海洋法公約」及我國「領海及鄰接區法」內容，皆規定鄰接區為鄰接「領海外側」至領海基線間24浬之海域，是否即解釋為無領海即無鄰接區呢？本文認為，鄰接區



Contiguous Zone of the Republic of China regulates that when our territorial sea has overlapped with another state's, the separation method should be in median line principle. However, the Law doesn't regulate the separation method for overlapped contiguous zones. In the UN's International Law of the Sea, the legislators though that 'adjacent or opposite states can perform necessary sovereignty in the overlapped contiguous zones of two states and it's not possible to have clashes. Therefore, it is not necessary to define the zone.[7] As a result, all international and national laws don't forbid the generation of overlapped contiguous zones with other states.

II.The Law on the Exclusive Economic Zone and the Continent Shelf of the Republic of China regulates that principle of equity should be adopted when our exclusive economic zone overlaps with another state's. However, the International Law of the Sea treats the same problem with negotiations between states or the argument solution described in the 15th part. So we can conclude that international and national laws agree that there will be clashes when claiming the exclusive economic zones and should be clearly defined.

The author makes the following hypothesis: If A and B states are opposite states, the distance between each state's territorial sea base line is 39 nm. A and B claims respectively the 12-nm territorial sea and the 24-nm contiguous zone, therefore a 15-nm wide marine area exists between the outer line of two states' territorial sea. When two states define the zone, they each claim 19.5-nm exclusive economic zone. Then the contiguous zone (24-nm) of A and B are larger that their exclusive economic zone (19.5-nm) by 4.5-nm more. There is a 9-nm overlapped contiguous zone between two states.

Part V. Conclusion

According to the explanation of this research,

為對於沿海國的授權規範，其目的係為防止、懲治違犯沿海國海關、財政、移民或衛生的行為，故在解釋上應有利於沿海國。所以僅管沿海國未主張領海，也能單獨主張鄰接區。

我國現實狀況，金馬地區因位置特殊，目前仍未公布基線、領海及鄰接區。而以各級法院判例[註8]，普遍認為走私進口行為在鄰接區為未遂，進入領海後為既遂。以此推論，在金馬地區之走私進口行為，只有在貨物上岸後方能論以既遂；在未上岸之前，因為沒有領海及鄰接區，所以未構成犯罪行為。如此是否足以達到防止走私之目的呢？是以本文建議，僅管金馬尚未公告領海，行政院亦能單獨公告鄰接區，以作為執法機關查緝走私進口行為之依據。

（本文作者任職於海岸巡防署勤務指揮中心）

the 1958 Convention allows the existence of contiguous zone within high seas. But in the 1982 Law, a contiguous zone is not necessary high seas nor the exclusive economic zone. The range of a contiguous zone might be larger than the exclusive economic zone. According to the contents of and the International Law of the Sea and Law on the Territorial Sea and Contiguous Zone, both regulate that a contiguous zone is the water area from the outer of the territorial sea to the 24-nm from the baseline. Does this mean that a contiguous zone doesn't exist if there is not territorial sea? The research claims that the authorization of costal states for contiguous zones is to prevent and punish any misdoings against the state's custom, financial, immigration and hygienic conditions, such zone is beneficial to any coastal states. A coastal state can also claim its contiguous zone even if it doesn't have territorial sea.

Judging from the current status of Taiwan, the location of Kinmen and Matsu are peculiar, therefore, the base line, territorial sea and contiguous zones have not been released. The judgment from all levels of courts[8] all consider smuggling behavior in the contiguous zone is not a successful deed. When the smuggling vessels enter the territorial sea, the act is thus confirmed. To conclude from the fact, all the smuggling acts in Kinmen and Matsu areas are confirmed only when the goods are on the land. Before the goods are sent ashore, it is not a criminal act due to the lack of territorial sea and a contiguous zone. Can this situation positively ban the smuggling? So the research suggests that the Executive Yuan should announce the range of contiguous zone despite that Kinmen and Matsu are yet to release the range. With this definition, the law performers can thus have a standard on smuggling inspection and seizure.

(The author is currently with the Duty Command Center of Coast Guard Administration.)

參考資料：

註1、稱「海域二法」者，係指我國於1998年公布施行之「中華民國領海及鄰接區法」與「中華民國專屬經濟海域及大陸礁層法」。

註2、參照：姜皇池著國際海洋法（上冊）2004年9月初版第360頁至363頁。

註3、參照：魏靜芬、徐克銘著國際海洋法與海域執法2002年3月二版第35頁至37頁。

註4、海關緝私條例第6條：「海關緝私，應在中華民國通商口岸，沿海24海里以內之水域，及依本條例或其他法律得為查緝之區域或場所為之。」

註5、中華民國領海及鄰接區法第14條：「中華民國鄰接區為鄰接其領海外側至距離基線24浬間之海域；其外界線由行政院訂定，並得分批公告之。」

註6、參照：姜皇池著國際海洋法（上冊）2004年9月初版第371頁至372頁。

註7、引述自：姜皇池著國際海洋法（上冊）2004年9月初版第372頁。

註8、引述自：姜皇池著國際海洋法（上冊）2004年9月初版第372頁。

References

1.Called as 'two governing laws on ocean zones'. The two laws are the 1988 Law on the Territorial Sea and Contiguous Zone of the Republic of China and Law on the Exclusive Economic Zone and the Continent Shelf of the Republic of China.

2.Refer to pp. 360-363, 1st edition in September, 2004, International Law of the Sea (1st Volume) by Jiang Huan-Chih.

3.Refer to pp. 35-37, 2nd edition in March, 2002, International Law of the Sea and Law Enforcement by Wei Jing-Fen and Hsu Ke-Min.

4.6th Article of Custom Anti-smuggling Act Anti-smuggling act of custom officers should be done in commercial parts of ROC and within the 24-nm area. The staff can resort the act or other laws to carry out investigation to the area or place.'

5.The 14th Article of Law on the Territorial Sea and Contiguous Zone of the Republic of China 'the contiguous zone of ROC is the water area from the outer of the territorial sea to the 24-nm from the baseline. The outer line is defined by Executive Yuan and can be announced alternately.

6.Refer to pp. 371-372, 1st edition in September, 2004, International Law of the Sea (1st Volume) by Jiang Huan-Chih.

7.Refer to p. 372, 1st edition in September, 2004, International Law of the Sea (1st Volume) by Jiang Huan-Chih.

8.Refer to p. 372, 1st edition in September, 2004, International Law of the Sea (1st Volume) by Jiang Huan-Chih.