

BRAZIL'S MARITIME CLAIM: A THREAT TO UNCLOS?

By Kari Lipschutz

On September 3, 2010, Brazil unilaterally expanded the offshore area where it claims jurisdiction. In an apparent effort to increase control over the exploration and exploitation of natural resources, Brazil outwardly snubbed the international laws that dictate the limits of offshore control. Less than two weeks later, the rising South American power signed a memorandum of understanding with Britain for the future purchase of eleven warships, an initiative largely seen by military analysts as a protective measure to secure the vast natural resources within its newly enlarged territory. As a signatory to the United Nations Convention on the Law of the Sea (UNCLOS), Brazil's actions have wide ideological and practical implications.

There is no question *why* Brasilia has taken steps to secure the area lying outside its UNCLOS-prescribed boundaries. As the world's ninth largest oil producer, Brazil is clearly on the move to increase its rank. As a growing economic powerhouse whose GDP derives more than twenty percent of its wealth from the industrial sector, securing the extensive oil and gas reserves that lie beneath the ocean floor is a seemingly necessary step to sustain growth. But given that a well-established international framework exists for handling such issues, and that Brazil has consented to work within that framework, recent action seems to be a particularly flagrant rebuke of the international system and raises fundamental questions regarding the efficacy of international law.

Statists and internationalists have long grappled over what role international law should play in what some consider to be domestic affairs. Brazil's unilateral action to extend their maritime border, along with other run-ins with the international community—namely, the government's persistent refusal to permit International Atomic Energy Agency inspectors full access to nuclear facilities—places it firmly

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within the ideological statist camp. Though international law depends on the principle of state consent, what use is it if state signatories will not honor the conventions to which they prescribe?

Article 76, Paragraph 8 of UNCLOS clearly states that if a signatory state wants to extend their maritime border beyond 200 nautical miles, they must present their case to the Commission on the Limits of the Continental Shelf (CLCS) within ten years of the convention coming into force. The CLCS then reviews the case and either provides further recommendations or grants approval for the border to be extended.

In 2007 the CLCS gave Brazil recommendations to revise their 2004 submission. Instead of doing so, the Brazilian government prepared a resubmission to the commission defending its original claim. By submitting a claim through the institutional structure in the first place, Brazil illustrated its procedural understanding of the UNCLOS and the CLCS. But when it was unhappy with the results, the country began to act outside of the system, largely negating previous attempts to work within it. Brazil is not the first country to act unilaterally on a matter of domestic interest – the most popular offender being the United States – but the subject matter of this claim crosses into an area with practical implications that will become progressively more visible in the near- and medium-term.

As global warming continues to take hold of the world's most sensitive ecosystems, adherence to UNCLOS is becoming increasingly important. With unknown reserves of oil, gas, and minerals sitting below a shriveling ice sheet in the Arctic and five "Arctic states" (Norway, the United States, Canada, Russia, and Denmark) waiting to gain access, the seriousness of Brazil's unilateral claim to extend its borders comes into focus. In short, if Brazil goes unchallenged, a dangerous precedent will be set.

All five of the Arctic states have submitted proposals to the CLCS to extend their maritime borders into the Arctic in hopes of gaining jurisdiction over its potential wealth. If Brazil's claim goes uncontested, this could open the floodgates for similar unilateral action. Russia has come close by planting a flag below the ocean's surface on what it claims to be its continental shelf. If Brazil's claim gains default recognition by the inaction of the international community, what is to stop Russia or any other Arctic state from taking the same course of action?

To be sure, the significant lag in processing time between a state's submission to the CLCS and its conclusion raises issues for countries scrambling to secure natural resources they view as their own. Of the fifty-one submissions that have been lodged with the CLCS, only nine have been reviewed as of January 2010. This timeline is simply unsustainable. But Article 82 of UNCLOS provides the opportunity for compromise between state interests and those of the international community. This provision states that countries may exploit resources outside of their 200 nautical mile jurisdiction provided they give a portion of the profits to the International Seabed Authority. It remains to be seen whether Brazil will readily hand over this contribution, but the international community should be clear in its intent to hold the nation to account.

As an emerging market, Brazil's interest in securing control over lucrative natural resources is understandable. However, as a nation rising in prominence on the global political stage, it may be wiser to look for solutions within the international system instead of ignoring it altogether. As of January 2011, Brazil's future is now in the hands of a new president, Dilma Rousseff. The Rousseff administration would do well to find strength in international agreements, which build consensus rather than divisive unilateral action that promotes division and conflict. **Y**