

THE MARITIME ZONES BILL
(No. I of 2005)

Explanatory Memorandum

The object of this Bill is to provide for -

- (a) the United Nations Convention on the Law of the Sea to have force of law in Mauritius;
- (b) the delimitation and management of the maritime zones of Mauritius,

and for matters incidental thereto.

04 February 2005

P. R. Berenger
Prime Minister,
Minister of Defence & Home Affairs

THE MARITIME ZONES BILL
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ARRANGEMENT OF CLAUSES

Clause

PART I - PRELIMINARY

- 1. Short title
- 2. Interpretation

PART II - UNCLOS TO HAVE FORCE OF LAW IN MAURITIUS

- 3. UNCLOS to have force of law in Mauritius

PART III - BASELINES

- 4. Baselines
- 5. Closing lines for internal waters

PART IV – TERRITORIAL SEA, INTERNAL WATERS, ARCHIPELAGIC WATERS AND HISTORIC WATERS

- 6. Legal status of territorial sea and internal, historic and archipelagic waters

7. Territorial sea
8. Limits on exercise of sovereignty in internal waters
9. Limits on exercise of sovereignty in archipelagic waters
10. Limits on exercise of right of innocent passage
11. Historic waters

PART V - CONTIGUOUS ZONE

12. Contiguous zone
13. Controls in the contiguous zone

PART VI - EXCLUSIVE ECONOMIC ZONE

14. Exclusive economic zone
15. Rights, jurisdiction and duties of Mauritius in the EEZ
16. Exercise of jurisdiction by Mauritius in the EEZ
17. Authority to explore and exploit the EEZ

PART VII - CONTINENTAL SHELF

18. Continental shelf
19. Rights of Mauritius over the continental shelf
20. Exercise of jurisdiction by Mauritius on the continental shelf
21. Authority to explore and exploit the continental shelf

PART VIII - MARINE SCIENTIFIC RESEARCH

22. Marine scientific research in the maritime zones
23. Regulation of marine scientific research in the maritime zones

PART IX - UNDERWATER CULTURAL HERITAGE

24. Underwater cultural heritage in internal waters, archipelagic waters and territorial sea
25. Maritime cultural zone
26. Underwater cultural heritage in the EEZ and continental shelf

PART X - MISCELLANEOUS

27. Regulations
28. Offences
29. Repeal
30. Consequential amendments
31. Transitional and savings provisions
32. Commencement

A BILL

To provide for the United Nations Convention on the Law of the Sea to have force of law in Mauritius

ENACTED by the Parliament of Mauritius, as follows –

PART I - PRELIMINARY

1. Short title

This Act may be cited as the Maritime Zones Act 2005.

2. Interpretation

(1) In this Act, unless otherwise expressly provided –

“archipelagic baselines” means straight archipelagic baselines referred to in section 4(2)(a);

“archipelagic waters” means any waters, other than internal waters, enclosed by archipelagic baselines;

“baselines” means baselines prescribed in accordance with section 4;

“closing lines” means the lines prescribed in accordance with section 5(1);

“contiguous zone” means the area of sea specified in section 12;

“continental shelf” means the continental shelf of Mauritius, as defined in section 18(1);

“EEZ” means the exclusive economic zone of Mauritius, as defined in section 14;

“historic waters” means the historic waters of Mauritius prescribed under section 11;

“innocent passage” has the same meaning as in Article 19 of UNCLOS;

“internal waters” means –

- (a) in respect of archipelagic waters, all waters landward of the closing lines; and
- (b) in any other case, all waters landward of any baselines;

“low-water line” means the lowest astronomical tide level on the coast of Mauritius that can be predicted to occur under average meteorological conditions and under any combination of astronomical conditions;

“maritime cultural zone” means the area of sea referred to in section 25;

“maritime zones” means the –

- (a) archipelagic waters;
- (b) contiguous zone;
- (c) continental shelf;
- (d) EEZ;
- (e) historic waters;
- (f) internal waters;
- (g) maritime cultural zone; and
- (h) territorial sea;

“nautical mile” means a distance of 1.85200 kilometres;

“outer limit”, in relation to a maritime zone, means a geodesic line of the geodetic datum joining the geographical co-ordinates of points on the datum in a clockwise direction;

“territorial sea” means the territorial sea of Mauritius, as defined in section 7;

“UNCLOS” means the United Nations Convention on the Law of the Sea of 10 December 1982.

(2) Unless otherwise expressly provided, words and expressions defined in UNCLOS and used in this Act shall have the same meaning as in UNCLOS.

PART II - UNCLOS TO HAVE FORCE OF LAW IN MAURITIUS

3. UNCLOS to have force of law in Mauritius

Notwithstanding any other enactment, UNCLOS shall have force of law in Mauritius.

PART III - BASELINES

4. Baselines

(1) The Prime Minister may, by regulations, prescribe the baselines from which the maritime zones of Mauritius shall be determined.

(2) The baselines may be –

(a) straight archipelagic baselines determined in the manner referred to in Article 47 of UNCLOS;

(b) normal baselines, being –

(i) the low-water line as specified in Article 5 of UNCLOS;

(ii) the seaward low-water line of reefs as specified in Article 6 of UNCLOS; or

(iii) straight baselines determined in the manner referred to in Article 7 of UNCLOS; or

(c) a combination of the methods for determining baselines specified in paragraphs (a) and (b).

5. Closing lines for internal waters

(1) The Prime Minister may, by regulations, prescribe closing lines to delimit internal waters.

(2) The closing lines may be determined by using all or any of the methods specified in Articles 9, 10 and 11 of UNCLOS.

PART IV – TERRITORIAL SEA, INTERNAL WATERS, ARCHIPELAGIC WATERS AND HISTORIC WATERS

6. Legal status of territorial sea and internal, historic and archipelagic waters

(1) The sovereignty of Mauritius -

(a) extends and has always extended to –

- (i) the territorial sea;
 - (ii) its internal waters;
 - (iii) its archipelagic waters;
 - (iv) its historic waters;
- (b) also extends to the air space over the archipelagic waters, the historic waters, the internal waters and the territorial sea as well as to their beds and subsoil, and the resources contained in them.

(2) Unless otherwise expressly provided, any law in force in Mauritius shall extend to its maritime zones.

7. Territorial sea

The territorial sea of Mauritius is and has always been the sea between the baselines and a line of which every point is at a distance of 12 nautical miles from the nearest point of the baselines.

8. Limits on exercise of sovereignty in internal waters

Any right of innocent passage existing in internal waters delimited by closing lines prescribed under section 5 shall continue to exist to the extent that it existed immediately before the closing lines were prescribed.

9. Limits on exercise of sovereignty in archipelagic waters

The exercise by Mauritius of its sovereignty in archipelagic waters shall be subject to -

- (a) any rights set out in any agreement between Mauritius and any other State;
- (b) rights in respect of submarine cables existing at the time the archipelagic baselines are prescribed; and
- (c) the right of innocent passage.

10. Limits on exercise of right of innocent passage

- (1) The Prime Minister may make regulations -

- (a) to designate the sea lanes and air routes to be used by foreign ships and aircraft in passage through or over any archipelagic waters, internal waters and territorial sea; and
- (b) to prescribe traffic separation schemes to be observed by ships in passage through narrow channels in the sea lanes.

(2) Subject to subsection (3), the Prime Minister may make regulations to regulate the passage of ships carrying hazardous waste, nuclear materials or radioactive materials through all or any part of the archipelagic waters, internal waters and territorial sea.

(3) No ship carrying radioactive materials shall pass through any part of the archipelagic waters, internal waters or territorial sea unless prior notification of the intended passage of the ship through those waters or sea has been given, and prior authorisation and consent for the passage, specifying the route to be taken by the ship, has been given, in accordance with regulations made under this section.

(4) The Prime Minister may, by notice in the *Gazette*, suspend temporarily the innocent passage of foreign ships in a specified area of any archipelagic waters, internal waters or territorial sea where he is satisfied that the suspension is essential for the protection of the security of Mauritius.

(5) Regulations made under this section shall provide for such action as may be taken, including stopping and boarding of ships, to ensure compliance with the regulations.

(6) In this section, "radioactive materials" means waste that, as a result of being radioactive, is subject to an international control system, or international instrument, applying specifically to radioactive materials.

11. Historic waters

The Prime Minister may, by regulations, prescribe the limits of the historic waters of Mauritius.

PART V - CONTIGUOUS ZONE

12. Contiguous zone

The contiguous zone of Mauritius is and has always been the area of sea between the territorial sea and a line of which every point is at a distance of 24 nautical miles from the nearest point of the baselines.

13. Controls in the contiguous zone

The Prime Minister may make regulations for the exercise of controls necessary in the contiguous zone to prevent and punish infringement of the customs, fiscal, immigration or sanitary laws within Mauritius, its archipelagic waters, internal waters and territorial sea.

PART VI - EXCLUSIVE ECONOMIC ZONE

14. Exclusive economic zone

(1) The exclusive economic zone of Mauritius is the area beyond and adjacent to the territorial sea of Mauritius that extends to the EEZ outer limit line.

(2) The Prime Minister may, by regulations, prescribe the EEZ outer limit line.

(3) For the purposes of this Part, "EEZ outer limit line" means a line of which every point is at a distance of 200 nautical miles from the nearest point of the baselines.

15. Rights, jurisdiction and duties of Mauritius in the EEZ

(1) In accordance with international law and in particular Article 56 of UNCLOS, Mauritius has in the EEZ -

- (a) sovereign rights -
 - (i) to explore and exploit, conserve and manage the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil; and
 - (ii) with regard to other activities for the economic exploitation and exploration of the EEZ, such as the production of energy from the water, currents and winds;
- (b) jurisdiction as provided for by international law 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; and
- (c) such other rights and duties as may be provided for by international law.

(2) The rights specified in this section with respect to the seabed and subsoil shall be exercised in accordance with international law and, in particular, Part VI of UNCLOS.

16. Exercise of jurisdiction by Mauritius in the EEZ

(1) To enable Mauritius to exercise the sovereign rights and jurisdiction which it has in the EEZ, there is extended to that zone, to the extent recognised by international law, the law in force in Mauritius.

(2) In particular, the law of Mauritius shall apply to artificial islands, installations and structures in the EEZ as if they were in the territorial sea.

17. Authority to explore and exploit the EEZ

The Prime Minister may make regulations to –

- (a) provide for the authorisation of persons to explore for natural resources in the EEZ, or to recover or attempt to recover any such resources, in accordance with such terms and conditions as may be determined by the Prime Minister;
- (b) regulate the laying of pipelines or cables in the EEZ;
- (c) provide for the authorisation and regulation of any drilling in the EEZ; and
- (d) regulate the construction, operation and use of –
 - (i) artificial islands;
 - (ii) installations and structures for the purposes provided for in Article 56 of UNCLOS; and

- (iii) installations and structures which may interfere with the exercise of the rights of Mauritius in its EEZ.

PART VII - CONTINENTAL SHELF

18. Continental shelf

(1) The continental shelf of Mauritius comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory –

- (a) subject to paragraph 2 of Article 76 of UNCLOS, to the outer edge of the continental margin; or
- (b) where the outer edge of the continental margin does not extend up to that distance, a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

(2) Where, by virtue of paragraph 2 of Article 76 of UNCLOS, the outer limits of the continental shelf require to be determined in accordance with paragraphs 4 to 6 of UNCLOS, the Prime Minister may make regulations to provide for the outer limit to be determined by any method specified in paragraph 4 of Article 76 of UNCLOS.

19. Rights of Mauritius over the continental shelf

(1) In accordance with international law and in particular Article 77 of UNCLOS, Mauritius shall exercise sovereign rights over the continental shelf to explore it and exploit its natural resources.

(2) The rights referred to in subsection (1) shall be exclusive in that, if Mauritius does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of Mauritius.

(3) In accordance with Article 80 of UNCLOS, Mauritius has in the continental shelf the exclusive right to construct and to authorize and regulate the construction, operation and use of -

- (a) artificial islands;
- (b) installations and structures for the purposes provided for in Article 56 of UNCLOS and other economic purposes; and
- (c) installations and structures which may interfere with the exercise of the rights of Mauritius in the continental shelf.

(4) Mauritius has exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.

20. Exercise of jurisdiction by Mauritius on the continental shelf

(1) To enable Mauritius to exercise the sovereign rights and jurisdiction it has in the continental shelf, there is extended to the continental shelf, to the extent recognised by international law, the law in force in Mauritius.

(2) In particular, the law of Mauritius shall apply to artificial islands, installations and structures on the continental shelf as if they were in the territorial sea.

21. Authority to explore and exploit the continental shelf

- (1) The Prime Minister may make regulations to -
- (a) provide for the authorisation of persons to explore for natural resources on the continental shelf, or to recover or attempt to recover any such resources, in accordance with such terms and conditions as may be determined by the Prime Minister;
 - (b) regulate the laying of pipelines or cables in the continental shelf;
 - (c) provide for the authorisation and regulation of any drilling in the continental shelf; and
 - (d) regulate the construction, operation and use of -
 - (i) artificial islands;
 - (ii) installations and structures for the purposes provided for in Article 77 of UNCLOS; and
 - (iii) installations and structures which may interfere with the exercise of the rights of Mauritius in the continental shelf.

(2) For the purposes of this Part -.

“natural resources” means -

- (a) the mineral and other non-living resources of the seabed and subsoil; and
- (b) the living organisms belonging to sedentary species;

“sedentary species” means organisms which, at their harvestable stage -

- (a) are immobile on or under the seabed; or
- (b) are unable to move except in constant physical contact with the seabed or the subsoil.

PART VIII - MARINE SCIENTIFIC RESEARCH

22. Marine scientific research in the maritime zones

(1) As provided by international law and in particular Article 245 of UNCLOS, Mauritius, in the exercise of its sovereignty, has the exclusive right to regulate, authorise and conduct marine scientific research in its territorial sea.

(2) As provided by international law and in particular Article 246 of UNCLOS, Mauritius, in the exercise of its jurisdiction, has the right to regulate, authorise and conduct marine scientific research in its EEZ and on its continental shelf.

23. Regulation of marine scientific research in the maritime zones

(1) Marine scientific research shall not be conducted in any maritime zone except with the express consent of the Prime Minister and in accordance with such regulations as may be made by the Prime Minister.

(2) Regulations made under subsection (1) shall -

- (a) establish procedures to ensure that consent for marine scientific research is not delayed or denied unreasonably;
- (b) ensure that any person who is given consent for marine scientific research under this section makes the

results of his work available to the Government of Mauritius; and

- (c) ensure that, in appropriate cases, intellectual property rights that Mauritius has in the use of any living or non-living resource, are recognised and vested in Mauritius.

PART IX - UNDERWATER CULTURAL HERITAGE

24. Underwater cultural heritage in internal waters, archipelagic waters and territorial sea

(1) Mauritius, in the exercise of its sovereignty, has the exclusive right to regulate and authorise activities directed at underwater cultural heritage in its archipelagic waters, internal waters and territorial sea.

(2) The Prime Minister may, notwithstanding any other enactment, make regulations for the purpose of regulating activities specified in subsection (1).

25. Maritime cultural zone

(1) The maritime cultural zone of Mauritius is an area of sea coincident with the contiguous zone.

(2) The Prime Minister may make regulations to regulate and authorise activities directed at underwater cultural heritage within the maritime cultural zone.

26. Underwater cultural heritage in the EEZ and continental shelf

The Prime Minister may, notwithstanding any other enactment, make regulations to prohibit or authorise any activity directed at underwater cultural heritage in the EEZ or the continental shelf to prevent interference with the sovereign rights and jurisdiction of Mauritius.

PART X - MISCELLANEOUS

27. Regulations

(1) The Prime Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Regulations made under this Act may provide for baselines and lines delineating maritime zones to be prescribed -

- (a) as lists of geographical coordinates of points, specifying the geodetic datum;
- (b) by reference to charts of a scale or scales adequate for ascertaining the position of the baselines and other limits; or
- (c) where it is appropriate or necessary to do so, by using both the methods specified in paragraphs (a) and (b).

(3) Without prejudice to the generality of subsection (1), regulations made by the Prime Minister under this section may, in particular -

- (a) provide that any enactment that extends to a maritime zone shall extend to that zone with such amendment as may be prescribed by the regulations;
- (b) prescribe fees, forms and procedures;
- (c) provide for the payment of royalties and other charges, and the manner in which they shall be calculated;
- (d) provide for the confiscation of property in respect of an offence committed in a maritime zone;
- (e) provide for the appointment of officers necessary for the administration of the regulations and prescribe their powers and duties.

28. Offences

(1) Any person who contravenes this Act or any regulations made under this Act shall commit an offence and shall be liable -

- (a) in the case of an individual, to a fine not exceeding 30,000,000 rupees or to imprisonment for a term not exceeding 5 years;
- (b) in the case of a body corporate, to a fine not exceeding 150,000,000 rupees.

(2) Where an offence committed by a body corporate under this Act is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) a director, manager, secretary or other similar officer of the body corporate; or
- (b) a person who was purporting to act in any such capacity,

that person specified in paragraph (a) or (b) as well as the body corporate, shall commit an offence and be punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, subsection (2) shall apply in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

29. Repeal

The following enactments are repealed –

- (a) the Maritime Zones Act;
- (b) the Continental Shelf Act; and
- (c) the Territorial Sea Act.

30. Consequential amendments

- (1) The Environment Protection Act 2002 is amended -
 - (a) in section 49, by deleting the definition of "maritime zone" and replacing it by the following definition -

"maritime zone" has the same meaning as in the Maritime Zones Act 2005;
 - (b) in section 51(2), by adding immediately after paragraph (f), the following new paragraph -
 - (g) the control and prevention of pollution from or through the atmosphere, applicable to the air space under its sovereignty and to vessels flying its flag or vessels or aircraft of its registry.

(2) The Fisheries and Marine Resources Act is amended -

(a) in section 2 -

(i) by deleting the definition of "Mauritius waters" and by inserting the following new definition in its appropriate alphabetical place -

"maritime zone" has the same meaning as in the Maritime Zones Act 2005;

(ii) by deleting the definition of "territorial waters" and by inserting the following new definition in its appropriate alphabetical place -

"territorial sea" has the same meaning as in the Maritime Zones Act 2005;

(b) in section 7(5), by deleting paragraph (a) and replacing it by the following paragraph -

(a) a maritime zone including, where appropriate, the seabed underlying the maritime zone;

(c) by deleting the words "Mauritius waters" and "territorial waters" wherever they appear and replacing them by the words "any maritime zone" and "territorial sea" respectively.

(3) The Interpretation and General Clauses Act is amended in section 2 -

(a) by adding immediately after paragraph (b), the following new paragraph -

(c) "archipelagic waters", "continental shelf", "EEZ", "historic waters", "internal waters", "maritime zone" and "territorial sea" have the same meaning as in the Maritime Zones Act 2005;

(b) by deleting the definition of "continental shelf",

(c) by inserting the following definition in its appropriate alphabetical place -

“Mauritius waters” means the territorial sea, internal waters, archipelagic waters, historic waters, the EEZ of Mauritius, and the water superjacent to its continental shelf;

(4) The Merchant Shipping Act is amended in section 2, by inserting immediately after the definition of “Superintendent”, the following definition -

“territorial waters of Mauritius” includes archipelagic waters;

(5) The National Coast Guard Act is amended in section 2, by deleting the definition of “Maritime Zones” and replacing it by the following new definition –

“maritime zone” has the same meaning as in the Maritime Zones Act 2005;

(6) The Petroleum Act is amended in section 2, by deleting the definition of “territorial sea”.

31. Transitional and savings provisions

(1) Pending the determination of baselines in accordance with this Act, the baselines, territorial sea, EEZ and continental shelf shall, for the purposes of this Act, be deemed to be those that existed under the enactments repealed under section 29 immediately before their repeal.

(2) Any area of sea designated by the Prime Minister as historic waters under the Maritime Zones Act repealed by section 29 shall, on the coming into operation of this Act, be deemed to have been designated to be, and always to have been, historic waters of Mauritius in accordance with this Act.

(3) Any agreement made for the purposes of the enactments repealed under section 29 and in force immediately before the coming into operation of this Act -

(a) shall remain in force to the extent that it is not inconsistent with this Act; and

(b) shall be deemed to have been made under this Act.

(4) The Prime Minister may make regulations making such further transitional, saving, consequential, incidental or supplementary provisions as may be necessary or expedient to bring this Act into effect.

32. Commencement

This Act shall come into operation on a day to be fixed by Proclamation.