

The concept of the Economic Exclusive Zone

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Abstract

The important and the new concept that brought the third UN Conference of the Law of the Sea was the Economic Exclusive Zone (EEZ), requested by countries whose coasts are bordering on the oceans, seas, but also in harmony with the interests of countries which have extensive coastline or those with specific geographical features, which have a very narrow coastal zone.

On December 10, 1982, nearly 120 countries signed the new United Nations Convention on the Law of the Sea, as one of the most significant international conferences. Part V of that Convention (more precisely Articles 55 to 75) provides for an "Exclusive Economic Zone" extending 200 nautical miles seaward from the coast. If all coastal states thus exercised their jurisdiction over their own EEZ, some 38 million square nautical miles would become their "economic patrimony". It should be mentioned that the ocean represents 71% of the total surface of the earth and that 32% of that falls under the jurisdiction of coastal states. Consequently inside these economic zones would lie 90% of global fishing, 87% of oil deposits and 10 % of polymetallic nodules.

The EEZ provisions have received widespread support and have become an integral part of international practice especially when the Convention of 1982 entered into force, also articles 55 and 86 of the Convention make it clear that the EEZ is not a part of the territorial sea, but it is a zone sui generis, with a statute of its own. Some countries had claimed 200-mile EEZ and other have established a 200- mile Exclusive Fishing Zone (EFZ). The countries benefiting the most from the EEZ concept are in order of the size of their zones: USA, Australia, Indonesia, New Zealand, Canada and Russia. If this concept was to be applied by all coastal Mediterranean States, the entire sea would be covered by EEZs of the littoral countries. The countries of the Mediterranean that would most benefit from the EEZ are Greece, Cyprus, Italy and Malta. The 1982 Convention drastically changed the maritime boundaries in the Mediterranean. It is surrounded by 22 States which have codified their coastal zones and ratified the Convention which entered into force on November 16, 1994.

Keywords: *Exclusive Economic Zone, Coastal State, Territorial Sea, Continental Shelf, Contiguous zone, International Convention.*

Introduction

The principle of freedom of the seas is recognized in the seventeenth century as one of the oldest principles of international law. This concept of freedom was ideally suited to the requirements of commerce and economic progress and was the sea-going equivalent of the liberal principles of free trade and free enterprise. In December 1982 the Montego Bay Convention (Jamaica) on the Law of the Sea was signed. The Republic of Albania has approved the Convention of UN on the Law of the Seas with the Albanian Law No. 9055, on 24.4.2003.

The 1982 UN Convention on the Law of the Sea (UNCLOS) was considered as one of

the most successful and progressive codifications made by the United Nations since the end of the World War II. As a comprehensive legal framework for the law of the sea, the UNCLOS Convention has elucidated the rights and obligations of all States, including: coastal, land-locked and geographical disadvantaged States and other international actors in various functional maritime areas.¹

The problems addressed in the 1982 Convention can be divided in two major groups:

a) *Marine spaces that are subject to national jurisdiction (internal waters, territorial sea, contiguous zone, exclusive economic zone, continental shelf);*

b) *Marine spaces that are not subject to national jurisdiction.*

The newest concept of the Montego Bay Convention was the Exclusive Economic Zone. The EEZ, (Article 55) is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

The main characteristic of the EEZ regime is the fact that the coastal state does not exercise sovereignty in its entire territorial, but only some rights such as exploration, exploitation, conservation and resource management. The jurisdiction of the Coastal state is about the rise and use of the artificial installations, research into the sea, as well as protection of the marine environment. Between freedom of navigation and the immediate interest of the coastal state, priority is given to the coastal State (Klein, 2005, 65).

Rights and duties of the Coastal State in the EEZ

According to Article 56, the coastal State has sovereign rights in the exclusive economic zone for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds. The jurisdiction as provided for in the relevant provisions of this Convention with regard to the establishment uses the artificial islands, installations and structures, marine scientific research and the protection and preservation of the marine environment (Juda, 1986, 58).

Also there are other rights and duties provided for Coastal State in this Convention. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention (Klein, 2005, 23). The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. In the exclusive economic zone, all States, whether coastal or land-locked, are subject to the relevant provisions of this Convention, the freedoms of navigation and overflight and to the

¹The LOS Convention was adopted on 30 April 1982 as the result of the long nine years of tireless negotiation took place at the Third United Nations Conference on the Law of the Sea. The LOS Convention came into force on 16 November 1994 and currently 149 countries are parties to the LOS Convention (source: http://www.un.org/depts/los/reference_files/status2005.pdf).

laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, compatible with the other provisions of this Convention. In exercising their rights and performing their duties, under this Convention in the exclusive economic zone (Juda, 1986, 21), States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law. Basis for the resolution of conflicts regarding the attribution of rights and jurisdiction in the exclusive economic zone, in cases where this Convention does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive economic zone, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as the international community as a whole.

In the exclusive economic zone, the coastal State shall have the exclusive right to construct, 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 and other economic purposes;*

(c) *installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.*

The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations. Due notice must be given to the construction of such artificial islands, installations or structures, and permanent means giving warning of their presence (Buzan, 1981, 324).

Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organization. Such removal shall also have due regard to fishing, protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed.

The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures. The breadth of the safety zones shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 meters around them, measured from each point of their outer edge, except as authorized by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given to the extent of safety zones.

All ships must respect these safety zones and shall comply with generally accepted international standards regarding navigation in the vicinity of artificial islands,

installations, structures and safety zones. The artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation. Artificial islands, installations and structures 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, the exclusive economic zone or the continental shelf (UNCLOS).

Right of land-locked States

Land-locked States expressed in the Article 69, shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same sub region or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article. The terms and modalities of such participation shall be established by the States concerned through bilateral, sub regional or regional agreements taking into account, the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State; the extent to which the land-locked State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, sub- regional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States (Lupinacci, 1983, 93).

Also those agreements must take into account the extent to which other land-locked States and geographically disadvantaged States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it. The nutritional needs of the populations of the respective States shall also be taken into account. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall cooperate in the establishment of equitable arrangements on a bilateral, sub regional or regional basis to allow for participation of developing land-locked States of the same sub region or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the sub region or region, as may be appropriate in the circumstances and on terms satisfactory to all parties (Juda, 1986, 38).

To implement this provision, developed land-locked States shall be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same sub region or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone. The above provisions are without prejudice to arrangements agreed upon in sub regions or regions where the coastal States may grant to land-locked States of the same sub region or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

Right of geographically disadvantaged States

“Geographically disadvantaged States” mean coastal States, including States bordering enclosed or semi-enclosed seas, whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other States in the sub region or region for adequate supplies of fish for the nutritional purposes of their populations or parts thereof, and coastal States which can claim no exclusive economic zones of their own. Geographically disadvantaged States (Article 70) shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same sub region or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and articles of the Convention. The terms and modalities of such participation shall be established by the States concerned through bilateral, sub regional or regional agreements taking into account:

(a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;

(b) the extent to which the geographically disadvantaged State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, sub regional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;

(c) the extent to which other geographically disadvantaged States and land-locked States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;

(d) the nutritional needs of the populations of the respective States.

When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall cooperate in the establishment of equitable arrangements on a bilateral, sub regional or regional basis to allow for participation of developing geographically disadvantaged States of the same sub region or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the sub region or region, as may be appropriate in the circumstances and on terms satisfactory to all parties (United States Fishery Conservation and Management Act, 1976, 636).

Developed geographically disadvantaged States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same sub region or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone (Jayakumar, 1977, 69).

The above provisions are without prejudice to arrangements agreed upon in sub regions

or regions where the coastal States may grant to geographically disadvantaged States of the same sub region or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

The rights provided under articles 69 and 70 to exploit living resources shall not be directly or indirectly transferred to third States or their nationals by lease or license, by establishing joint ventures or in any other manner which has the effect of such transfer unless otherwise agreed by the States concerned. The foregoing provision does not preclude the States concerned from obtaining technical or financial assistance from third States or international organizations in order to facilitate the exercise of these rights (FAO).

The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.

Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed (Carroz & Savini, 1983, 50).

The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution. If no agreement can be reached within a reasonable period of time, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.

Conservation of the living resources

The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone. Taking into account the best scientific evidence available to it, the coastal State shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether sub regional, regional or global, shall cooperate to this end. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing

communities and the special requirements of developing States, and taking into account fishing patterns, (Conforti, 1987, 180) the interdependence of stocks and any generally recommended international minimum standards, whether sub regional, regional or global. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened. Available scientific information, catch and fishing effort statistics and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether sub regional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.

The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice. The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations, give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States. In giving access to other States to its exclusive economic zone, the coastal State shall take into account all relevant factors, including, inter alia, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70, the requirements of developing States in the sub region or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.

Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, inter alia, through licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry; by determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period; by regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used; by fixing the age and size of fish and other species that may be caught; specifying information required of fishing vessels, including catch and effort statistics and vessel position reports; requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmer and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data; the placing of observers or trainees on board such vessels by the coastal State; the landing of all or any part of the catch by such vessels in the ports

of the coastal State; terms and conditions relating to joint ventures or other cooperative arrangements; requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research; enforcement procedures (Buzan, 1981, 324).

The Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it have a specific regulation. Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate sub regional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice. Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate sub regional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.

Highly migratory species

The coastal State and other States shall cooperate directly for the highly migratory species or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall cooperate to establish such an organization and participate in its work. Nothing restricts the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals. States shall cooperate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management and study (Scovazzi, 1985, 276).

Regarding the States in whose rivers anadromous stocks originate, they should have the primary interest in and responsibility for such stocks. The State of origin of anadromous stocks shall ensure their conservation by the establishment of appropriate regulatory measures for fishing in all waters landward of the outer limits of its exclusive economic zone and for fishing. The State of origin may, after consultations with the other States, for fishing these stocks, establish total allowable catches for stocks originating in its rivers. Fisheries for anadromous stocks shall be conducted only in waters landward of the outer limits of exclusive economic zones, except in cases where this provision would result in economic dislocation for a State other than the State of origin.

With respect to such fishing beyond the outer limits of the exclusive economic zone, States concerned shall maintain consultations with a view to achieving agreement on terms and conditions of such fishing giving due regard to the conservation requirements and the needs of the State of origin in respect of these stocks. The State of origin shall cooperate in minimizing economic dislocation in such other States fishing these stocks, taking into

account the normal catch and the mode of operations of such States, and all the areas in which such fishing has occurred (Caminos, 1987, 148).

Participating by agreement with the State of origin in measures to anadromous stocks, particularly by expenditures for that purpose, special consideration shall be given by the State of origin in the harvesting of stocks originating in its rivers. Enforcement of regulations regarding anadromous stocks beyond the exclusive economic zone shall be by agreement between the State of origin and the other States concerned. In cases where anadromous stocks migrate into or through the waters landward of the outer limits of the exclusive economic zone of a State other than the State of origin, such State shall cooperate with the State of origin with regard to the conservation and management of such stocks. The State of origin of anadromous stocks and other States fishing these stocks shall make arrangements for the implementation of the provisions of this article, where appropriate, through regional organizations.

A coastal State in whose waters catadromous species (Article 67) spend the greater part of their life cycle shall have the responsibility for the management of these species and shall ensure the ingress and egress of migrating fish. Harvesting of catadromous species shall be conducted only in waters landward of the outer limits of exclusive economic zones. When conducted in exclusive economic zones, harvesting shall be subject to this article and the other provisions of this Convention concerning fishing in these zones. In cases where catadromous fish migrate through the exclusive economic zone of another State, whether as juvenile or maturing fish, the management, including harvesting, of such fish shall be regulated by agreement between States. Such agreement shall ensure the rational management of the species.

Conclusions

The EEZ entered into force also articles 55 and 86 of the Convention make it clear that the EEZ is not a part of the territorial sea, but is a zone *sui generis*, with a statute of its own. The countries benefiting the most from the EEZ concept are in order of the size of their zones: USA, Australia, Indonesia, New Zealand, Canada and Russia. If this concept was to be applied by the all coastal Mediterranean States, the entire sea would be covered by EEZs of the littoral countries. The countries of the Mediterranean that would most benefit from the EEZ would be Greece, Cyprus, Italy and Malta (UNCLOS).

Partial implementation of the EEZ regime to be embodied in the future Law of the Sea Convention had already started in 1976 to 1978, when several States, including the two superpowers, began to claim exclusive 200 mile fisheries zones. After that we have a crystallization of the EEZ regime on the treaty as well as on customary level. Almost 51 States had established a full 200 mile EEZ until the date of adoption of the Convention. According to the publication of 1984, 54 States had created a 200-mile EEZ, only Madagascar had claimed a zone of 150 miles, 23 States had decreed an exclusive fishery zone and 13 States have claimed a 200 mile territorial sea.

As pointed out unilateral declarations and national laws do not always conform to the EEZ regime outlined in the 1982 Convention (Conforti, 1983, 28). Many coastal States have nationalistic tendency in the field of fishery. The study also shows that 32 out of

52 countries gave third-State users access to surpluses on the basis of national permits, without specifying that such access is a matter of right.

From the countries specifically providing access of third-State users to EEZ fisheries, only six list factors have to be taken into account for allocating surpluses. Some of them mention the traditional interests of foreign distant-water fishermen, referring to reciprocity, moreover all countries take into consideration other unspecified matters believed by their governmental authorities to be relevant.

Turning to fisheries agreements some studies reveal that although these agreements do implicitly take account of factors such as traditional fishing activities, generally no specific reference is made to the provisions of the Convention restricting coastal State prerogatives, in particular to the rights of land-locked and geographically disadvantaged countries (Jayakumar, 1977, 78).

The delicate balance painfully established between coastal-State prerogatives and third-State access is being subverted by unilateral declarations and national legislation disregarding the rules of the Convention. This raise the question of whether the signatories of the Convention who have made such declarations or enacted such legislation are living up to article 18 of the 1969 Vienna Convention on the Law of Treaties which enjoins to refrain from acts which would defeat the object and purpose of the new law of the Sea treaty.

According to Article 26 of the Vienna Convention and the rule obtained in Article 27 of that Convention, the State may not justify its failure to perform a treaty obligation by invoking internal legislation. It could be objected by the existing EEZ legislation that was passed prior to the adoption of the Law of the Sea Convention and the resulting discrepancies will eventually be removed by adapting the former to the later. One might add that in any event the Convention takes precedence over domestic law.

But is questionable if the members of the international community will see this issue in that direction. It also remain uncertain whether the restrictions placed by the Convention on coastal States will make it possible to stem the tide of creeping jurisdiction, since disputes settlement mechanisms set up by 1982 Convention but partly cover the EEZ. One will nonetheless concede that whatever their weaknesses, the barriers erected by the Law of the Sea Treaty to curb the excesses of coastal States are preferable no barriers at all. This suggests the conclusions that countries are more interested in containing coastal State jurisdiction over the EEZ than in extending their own prerogatives, who would be well advised to become Parties of the Convention.

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