7 The Exclusive Economic Zone

Umberto Leanza, Maria Cristina Caracciolo

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Edited By: David Attard, Malgosia Fitzmaurice, Norman A Martínez Gutiérrez

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(p. 177) 7. The Exclusive Economic Zone

7.1 Introduction

The exclusive economic zone (EEZ) and the International Seabed Area constitute the main innovations of the new Law of the Sea whose highest expression is the 1982 United Nations Convention on the Law of the Sea (UNCLOS).[1]

Those two legal concepts are expressions of antithetical approaches to the law of the sea. While the international seabed area, finding its legal basis in the concept of common heritage of mankind, represents the triumph of collectivism in international relations, the EEZ is the most evident explication of individualism. It is the recognition of territorial claims of coastal States over waters adjacent to their coasts, giving them sovereign rights of economic character over a large area of sea (p. 178) that extends to 200 nautical miles (nm) from the baselines from which the breadth of the territorial sea is measured.[2]

This recognition of the claims of coastal States was not without conflict: it has focused many of the tensions of the modern international society, and many of the uncertainties arising from the search for a better world organization and a proper economic order. In fact, the EEZ appears to be a compromise, moreover unstable, between the concepts of sovereignty and freedom;[3] a compromise which, being reached with a 'negative' method, i.e. with the elimination of other possible solutions, means that the EEZ appears to be a somewhat ambiguous legal concept.

7.2 The Creation and Development of the Concept of the Exclusive Economic Zone

7.2.1 From the Truman's Proclamation of 1945 to the Geneva Conventions of 1958

The opportunity for new forms of exploitation of marine resources, determined by the development of technology, in the immediate post-war period led to the general trend of the expansion of marine areas under the jurisdiction of coastal States.

After the Proclamation of 28 September 1945, concerning the exercise of United States jurisdiction over the continental shelf, with a second proclamation of the same day on the United States policy in the coastal fishing areas, President Truman referred to the possibility for the United States government to establish some conservation areas on the high seas, where fishing activities would have been subject to regulation and control by the US government. In this Proclamation, however, Truman did not specify the spatial limit for these areas, nor did he claim the exclusive rights of exploitation of biological resources.[4]

(p. 179) A series of unilateral claims followed the Truman Proclamation, mainly relating to the continental shelf; some also concerned the epeiric sea, i.e. the area of sea above the continental shelf characterized by extraordinary biological activity due to the influence of sunlight that stimulates the life of plants and countless species of animals, both of which are susceptible to industrial uses.[5]

In this context, the Declaration of Santiago of 1952 on maritime areas gained particular importance. It was signed by three Pacific Ocean coastal South American States: Chile, Peru, and Ecuador joined by Costa Rica in 1995.[6] These States, without a continental shelf, claimed territorial sovereignty and exclusive jurisdiction over waters up to a minimum distance of 200 nm from the coast, especially in order to protect fish stocks in adjacent waters. In fact, the criterion of 200 nm was intended to include in that area the cold current of Humboldt, coming from the Antarctic. The amount of plankton carried by these cold currents is significant, and therefore the amount of biological resources existing there is remarkable. In this maritime area within 200 nm, including the

seabed and its subsoil, the right of innocent passage[7] of foreign vessels was recognized.

If, on the one hand, other Latin American States were making similar claims or were sharing the inspiration of such a declaration,[8] on the other hand, the

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(p. 180) maritime powers were showing strong opposition. For example, the US Congress approved the Fishermen's Protective Act in 1954, with the aim of protecting the rights of United States vessels on the high seas. This Law provided for the reimbursement by the US Department of the Treasury for any fines paid by the owners of United States' ships captured, and the US Secretary of State reserved the right to pursue appropriate action against foreign States for the recovery of sums paid to the owners of such ships.[9]

Even the Geneva Conventions on the Law of the Sea of 1958 rejected these claims. More specifically, the Convention on the High Seas reaffirms the principle of freedom of use of the sea for all States: the freedom of use, in particular, includes the freedom of navigation, fishing, laying of submarine cables and pipelines, and the freedom of overflight. The assimilation of freedom of fishing to freedom of navigation on the high seas, including the contiguous zone, excludes the recognition of any special right on fisheries for the coastal State. In the same vein, while the 1958 Convention on the Territorial Sea and the Contiguous Zone does not provide a contiguous fishing area, the Convention on Fishing and Conservation of the Living Resources of the High Seas ('Convention on Fishing') recognizes for the coastal State only a special interest in the conservation of marine resources in an area of open sea adjacent to the territorial sea. It also allows it unilaterally to take appropriate measures, which are for that purpose under certain conditions, if not reached within three months, for an agreement on the area under discussion with other States whose citizens engage in fishing in the area.

In other words, the applicability of the Convention does not seem to recognize any sovereign right to the coastal State, but a special interest in maintaining the sovereign productivity of biological resources in all parts of the high seas adjacent to its territorial sea. In addition to the principle of special interest, which seems to be the only exception to the principle of freedom of fishing on the high seas, in the Convention on Fishing it is also stated that biological resources are not unlimited; the importance of conservation to ensure the constant and optimal output of resources, and the importance of international cooperation for the implementation of conservation programmes were highlighted. All these principles would have inspired the next evolution of the law of the sea, and in particular the emergence of the concept of the EEZ.[10]

(p. 181) 7.2.2 From the Geneva Conventions of 1958 to the Third United Nations Conference on the Law of the Sea

The years in between 1958 and the beginning of the Third UN Conference on the Law of the Sea were characterized by great uncertainty about the regime applicable to fishing; this uncertainty was due to doubts and disputes on the extent of the territorial sea and the failure of the system of conservation of biological resources developed by the Convention on Fishing.

Even the second Geneva Conference on the Law of the Sea of 1960 did not reach any concrete results, as no agreement was reached and the extent of the territorial sea or the establishment of fishing zones were not defined. During the proceedings, however, a trend in States' proposals emerged for recognition of a large exclusive fishing zone, up to 12 nm from the baselines. A joint project by Canada and the United States provided for the extension of the territorial sea up to 6 nm, the establishment of a fishing zone up to 12 nm, within which the coastal State would have had, on fisheries and conservation of marine biological resources, the same rights as in the territorial sea; and the recognition of historical fishing rights in the area between 6 and 12 nm to foreign fishermen habitually fishing in those areas for a period of five years prior to 1958. These rights were subject

to a time limit of ten years from 1960.[11] Although this proposal had no effect, and general international law did not seem to admit the legitimacy of a contiguous zone for fisheries, due to the lack of constructive States practice, such a formula was already deserving of attention, because it would have been a model for subsequent unilateral conduct, and subsequent international agreements.

This trend influenced the following development of international practice and, during the 1960s, many States extended their exclusive jurisdiction in respect of fisheries to 12 nm, or extended the territorial sea up to this limit. The establishment of exclusive fishing zones was legitimized by international agreements. The first multilateral treaty providing for the regulation of exclusive fishing zones was the European Convention on Fisheries, signed by twelve States in London in 1964.[12]

The Convention provided for two fishing areas: the first up to 6 nm, where the coastal State had an exclusive right to fishing, and the second between 6 and 12 nm, where the State had only a right to preferential treatment, while (p. 182) recognizing historical rights to fishing vessels of other contracting parties. The historical rights were recognized only to States parties to the Convention, and were subject to a time limit. In particular, the recall to the same rights that the coastal State has in its territorial sea also included the right to restrict the exploitation only to the fishermen of the coastal State; to take legislative measures concerning the conservation of fish species and the fishing methods, also with regard to foreign fishermen allowed to practice their activities within the area; and, additionally, it allowed the monitoring of compliance with such legislation through administrative and judicial measures. It is evident that the existence of this fishing area could not prevent third States from exercising the rights allowed them on the high seas, with respect to matters other than fisheries. As a result, it should not be possible to speak of the sovereignty of the coastal State.

The same 12-mile limit was used by the International Court of Justice (ICJ) in its judgment of 1974 on the dispute between the UK and the Federal Republic of Germany, on the one hand, and Iceland, on the other. The Court, in fact, concluded that coastal States could, under certain circumstances, claim preferential rights to fishing outside their territorial waters only in those maritime areas falling within 12 nm from the coast.[13]

However, during the years from 1958 to 1974, the claims for the establishment of fishing zones ever larger, and often the unilateral determination of these areas, became even more frequent and pressing. The forum in which these claims were focused was the Seabed Committee, established in 1968 within the United Nations and responsible for preparing the revision of the international law of the sea. During the debates within this Committee, the idea of an exclusive jurisdiction of the coastal State over living and non-living resources, present in a maritime area of 200 nm, called the ‘patrimonial sea’[14] beforehand, and ‘exclusive economic zone’[15] afterwards, began to materialize.

7.2.3 The positions of the States during the Third United Nations Conference on the Law of the Sea

The ultimate dispute among these claims occurred during the Third United Nations Conference on the Law of the Sea.

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(p. 183) As for the attitude of the States participating in this Conference on the establishment of the EEZ, four of the most important approaches can be detected: the ‘territorialist’ one; the functional one; that of the landlocked or geographically disadvantaged States, and that of the maritime powers.

The ‘territorialist’ States, mainly Latin American, proposed to extend the territorial sea up to 200 nm off the coast; in this area; the traditional freedom of navigation and overflight, or at least the right of innocent passage, should have been recognized. Instead, some other coastal States opted for a

functional solution. Although they could benefit, due to the geographical configuration of their coasts, by such an extension of the territorial sea, they preferred to recognize the coastal State sovereign rights but solely with regard to natural resources located within 200 nm, with full respect to the traditional freedom of navigation, overflight, and the laying of submarine cables and pipelines. The landlocked States or geographically disadvantaged, at first, were opposed to any extension of State jurisdiction, and later supported the establishment of regional economic zones in which they could participate in the exploration and exploitation of biological resources, in a position of equality with coastal States, and finally they sustained their fair right to participate in the exploitation of the EEZs of their region or sub-region. They based this assumption on the *status* of *res communes omnium* of these areas where they had enjoyed the same rights as the coastal States. In other words, the recognition of equitable chances of access to resources of the EEZ acquired almost a compensatory nature, compared to the loss of actual or virtual rights previously enjoyed. The maritime powers, finally, on the one hand, were not averse to the possibility of extending the rights of coastal States over large areas of sea; on the other, they were also interested in protecting the existing freedom of communication of the high seas, both accentuating the purely economic function of the EEZ, and emphasizing its character as part of the high seas.[16]

The plurality of approaches and solutions submitted during the Conference often made negotiations extremely long and difficult, especially considering the need to reach a compromise solution which could take into account the most relevant demands involved in shaping and developing the concept of the EEZ.

(p. 184) 7.3 The Legal Regime of the Exclusive Economic Zone in the 1982 United Nations Convention on the Law of the Sea

7.3.1 The legal nature of the EEZ

If we examine the proposals submitted during the Third Conference on the Law of the Sea[17] and then analyse Part V of UNCLOS, in which the EEZ is regulated, we are well aware that the rights conferred to the coastal State are extremely large. They concern not only the exclusivity of the exploration, exploitation, and conservation of natural resources in the water column, in the seabed, and in the subsoil within the economic zone, but also the exercise of the coastal State jurisdiction for the purposes of installation and use of artificial islands, installations, and structures, in order to monitor scientific research at sea and to protect the marine environment against pollution. Undoubtedly, the new conventional rules give the coastal State advantages previously unknown in the EEZ. The regime of the *consensus* on the scientific research carried out by foreign vessels or the system of authorizations with regard to artificial islands, installations, and structures show very clearly the expansion of the State's rights and jurisdiction.

As is known, there was a vigorous debate about the legal nature of the EEZ due to its hybrid character determined by a balancing between freedom of navigation and sovereign rights and jurisdiction of the coastal State. According to some, that area would be part of the high seas; according to a second orientation, it would constitute a zone under the State authority; and following a third, it would have a *sui generis* character.[18] The true legal nature of the area can be gathered only from the relevant UNCLOS provisions and, in particular, under Article 55, that defines it as an area located beyond and adjacent to the territorial sea, which cannot extend beyond 200 nm from the baselines from which the territorial sea is measured. The same provision specifies that the EEZ is subject to a special legal regime, established in Part V of UNCLOS, under which the rights and jurisdiction of the (p. 185) coastal State and the rights and freedoms of other States are governed by the relevant provisions of UNCLOS. Therefore, the rules and regulations on the EEZ no longer allow the use of the traditional principles of sovereignty and freedom, in order to identify exactly the State's sovereign sphere and to oppose it to the freedoms of other States at sea. The EEZ is characterized by grey areas that may not be submitted uniquely to the freedom regime or to

that of sovereignty. In this regard, the EEZ constitutes a pragmatic solution to some of the fundamental interests of industrialized States, as well as coastal States and maritime powers.

7.3.2 The legal regime of the EEZ: general aspects

First, coastal State jurisdiction in the EEZ may be exercised only after a specific declaration by the State concerned. The need for this declaration is not expressly provided in any article of UNCLOS, but it emerges *a contrario* by Article 77 paragraph 3 on the continental shelf, which establishes that the rights of the coastal State over the continental shelf are independent from the effective or symbolic occupation, as well as of any express declaration. The reasons for this requirement resides in the idea that the continental shelf is a natural extension of the land highlighted by the ICJ in its judgment on the continental shelf of the North Sea of 1969, an idea which, evidently, cannot be extended to the EEZ.

The legal regime of the EEZ differs both from that of the territorial sea and from the high seas, despite having the characteristics of both of these regimes. The EEZ appears a *sui generis* zone, as a transition zone between the territorial sea and the high seas. There, the coastal State does not enjoy territorial sovereignty, but only sovereign rights over economic resources within it.[19]

Under Article 56 of UNCLOS, these sovereign rights concern the conservation, management, and exploitation of natural resources, biological and non-biological, in the EEZ, and other activities aimed at the exploration and exploitation of the area for economic purposes, such as the production of energy from water, currents, and winds. In fact, biological resources represent the vital and immediate interest, especially for developing countries, and during the Third Conference, the participating States expressed their major concerns regarding the regime of fisheries in the EEZ.

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(p. 186) Two kinds of rights and freedoms are detected in the EEZ: those of the coastal State, on the one hand, and those of other States, on the other. UNCLOS seems to deduce, through the existence of these two kinds of rights and freedoms, a sort of equilibrium between the rights of the coastal State and the freedoms of third States within the EEZ. Through this equilibrium, UNCLOS draws certain consequences in terms of compatibility between the rights of the coastal State and the freedom of other States. But it also provides the so-called residual rule, to be applied in cases where UNCLOS does not confer rights to the coastal State and not to other States either. This residual rule would have a balancing function for the coastal State’s position with respect to the position of other States.[20]

However, in practice it is very difficult to frame the situation of the other States within the EEZ in terms of freedoms, taking into account the measures of control and enforcement the coastal State is entitled to exercise in the area. For these purposes, the coastal State may carry out coercive measures such as arrest, seizure, rights of access, and hijacking, as well as the prosecution of foreign ships and their crews; all measures that will inevitably shift the balance in favour of the coastal State with respect to activities carried out by other States within the zone. The situation does not appear, therefore, balanced, but, is instead detrimental to the other States; it is, therefore, much more oriented towards a regime of territoriality than towards a regime of freedom, at least in the practical implementation of its rights by the coastal State.

Some scholars have underlined the risk of territorialization that can arise from the customary development of the EEZ regime. To avoid such a risk, cooperation among the maritime States should be promoted, in order to prevent the risk that the rights and duties attributed to the coastal State in the EEZ lead to results far from what is considered the *ratio* of UNCLOS. This is what is happening now: a continuous expansion of the jurisdiction of coastal States, to the detriment of freedom of the high seas, and in particular, to the detriment of freedom of navigation in the EEZ.[21]

(p. 187) 7.3.3 The rights of the coastal State in the EEZ

Under Article 56 UNCLOS the coastal State has sovereign rights in the EEZ for the purposes of exploring and exploiting, conserving and managing the natural resources, biological and non-biological, of the waters superjacent to the seabed and of the seabed and its subsoil, as well as 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; of jurisdiction with regard to the establishment and use of artificial islands, installations, and structures; the protection of the marine scientific research; and the protection and preservation of the marine environment.

The exploitation of biological resources is the major sovereign right recognized to coastal States in the EEZ. Specifically, the coastal State shall, pursuant to Article 61 UNCLOS, ensure, taking into account the most valid scientific information available, that the maintenance of living resources in the EEZ is not endangered by intensive exploitation; for this purpose, it shall adopt appropriate measures for storage and use and, as appropriate, cooperate with relevant—regional or universal—organizations.[22]

On the basis of these assumptions, the coastal State shall determine the amount of allowable catch (TAC: total allowable catch) and set its own harvesting capacity. If the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements, give other States access to the *surplus* of TAC. In authorizing such access to other States, the coastal State shall (p. 188) take into account all relevant factors and circumstances, 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 requirements of developing States in the region, and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or who have made substantial efforts in research and identification of stocks.

Nationals of other States who have been allowed to fish in the EEZ, shall comply with the conservation measures and with the other conditions established in the laws and regulations of the coastal State, which will be related to the licensing of fishermen, fishing vessels, and equipment, including payment of fees and other forms of remuneration. In the case of developing coastal States, there may be adequate compensation in the field of financing, equipment, and technology relating to the fishing industry. Other laws and regulations to be complied with are those concerning the determining of the species which may be caught, even fixing quotas of catch and other conditions; the transmission of information and statistical data; the conducting of specified fisheries research programmes; the placing of observers or trainees on board by the coastal State; the landing of all or any part of the catch in the ports of the coastal State; the establishment of terms and conditions relating to joint ventures or other cooperative arrangements; and the transfer of fisheries technology.

In order to ensure compliance with these standards, the coastal State may adopt, under Article 73 UNCLOS, all necessary measures, including detention, inspection, arrest, and judicial proceedings. In any case, however, the penalties may not include imprisonment or any other form of corporal punishment; moreover, arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.[23]

Clearly, the sovereign rights of the coastal State in the fisheries management are exclusive; the coastal State plays the main role in the conservation, management, and exploitation of living resources of the EEZ; and the access of other States in this area to conduct fishing activities depends on its will.

(p. 189) The sovereign rights of the coastal State in the management and exploitation of non-living biological resources in the EEZ, match the rights exercised in the continental shelf. Article 56 paragraph 3 refers to the rules contained in Part IV UNCLOS on the continental shelf.

In the EEZ, the coastal State exercises its jurisdiction, on the creation and use of artificial islands, installations, and structures; on scientific research and the protection and preservation of the

marine environment.[24]

The problem of the construction of artificial islands,[25] even at a considerable distance from the coast, has taken on greater importance, especially since technology development has allowed for the discovery and exploitation of undersea oilfields. In this regard, the powers of the coastal State are wide; indeed, Article 60 UNCLOS provides that the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation, and use of artificial islands and other installations and structures for economic purposes or which may, however, interfere with the exercise of the rights of the coastal State in the zone—evaluation at the coastal State's wide discretion. 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. The coastal State, however, is also the holder of certain obligations with regard to artificial islands and other similar structures: the obligation of notice and warning to maintain navigation in the EEZ, and the obligation of removing any abandoned and disused installations or structures to ensure safety of navigation. For the same reasons, the coastal State can establish reasonable safety zones around such artificial islands, installations, and structures.

The coastal State also has jurisdiction over scientific research;[26] the exercise of this jurisdiction is not regulated by Part V UNCLOS, but by Part XIII which (p. 190) concerns the marine scientific research, in Article 246. This article, which is the result of a laborious compromise, recognizes the right of coastal States to regulate, authorize, and conduct marine scientific research in their EEZ. As for the regime of consent, various hypotheses are identified; in particular, in normal circumstances—i.e. in the case of marine research projects aimed at exclusively peaceful purposes and at increasing scientific knowledge (pure research)—coastal States shall grant their consent in order to realize these projects.[27] However, in the case of projects with direct significance for the exploration and exploitation of natural resources (applied research), or projects involving the construction, exploitation, or use of artificial islands or installations, or drilling on the continental shelf, or the use of explosives or the introduction of harmful substances into the marine environment, or if the information provided regarding the nature and objectives of the project are inaccurate or if the researching State or the competent international organizations have outstanding obligations to the coastal State from a prior research project, the consent may be withheld at the discretion of the coastal State.

Alongside this general regime of consent, Article 246 UNCLOS also includes an hypothesis of implied consent;[28] the implied consent is deemed granted if six months have elapsed from the date on which State researchers have provided all information on their research project and the coastal State has not informed, within four months of the receipt of the communication containing such information, that it has withheld its consent; that the information given does not conform to the manifestly evident facts; that it requires supplementary information; or that outstanding obligations exist with respect to a previous marine scientific research project (Article 252).

Article 247 also provides another possibility of implied consent; it is assumed that the coastal State being a member of or having a bilateral agreement with an international organization has given consent for research to be carried out in its EEZ when the organization took the decision to undertake the project, or expressed willingness to participate in it, and the coastal State has not expressed any objection within four months of the organization's notification of the project. (p. 191) In any case, under certain circumstances, the coastal State may require the suspension or cessation of marine scientific research activities (Article 253).

The State's researchers then have a series of obligations: they shall provide certain information to the coastal State and shall fulfil certain conditions, among them, to ensure the right of the coastal State to participate in the marine scientific research project, to provide access for the coastal State to all data and samples derived from the marine scientific research project; to provide the coastal State with preliminary reports, including the final results and conclusions after the completion of the research; and to ensure that the research results are made internationally available (Articles 248–

249).

Finally, the sovereign rights of the coastal State for the protection of the marine environment[29] are not contained in Part V UNCLOS, but appear in certain Articles of Part XI, dedicated to the protection of the marine environment. In fact, in this Convention, the rules on the protection of the marine environment do not change, depending on the maritime area concerned, but are connected, instead, to different scenarios of pollution arising from activities conducted both by the coastal State and third States. The coastal State has a wide range of powers concerning the safeguarding of the EEZ from pollution, particularly with regard to pollution from dumping and vessels (Articles 210–211). Moreover, the powers granted to the coastal State on marine pollution in the EEZ match in some way its rights concerning the resources of that area. In other words, when the coastal States are recognized, these rights, the instruments to protect the area, and the opportunity to take all necessary measures to preserve it for the future are given to them.

7.3.4 The freedoms of other States in the exclusive economic zone

The freedoms enjoyed by other States in the EEZ are referred to in Article 58 of UNCLOS. They consist of the freedom of navigation, overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms and compatible with the other provisions of this Convention. This list does not include the other freedoms of the high seas, such as fishing and scientific research that has a specific discipline. This list is exhaustive, even if the reference to other lawful uses makes it somewhat flexible, especially with regard to certain military applications.

At a first reading of Part V UNCLOS, and especially of Articles 56 and 58, the rights of the coastal State might seem harmoniously balanced with the rights of other States. This impression appears to be confirmed by the fact that these Articles impose mutually the obligation of the coastal State to take into account the (p. 192) rights and duties of other States and that of other States to take due account of the rights and duties of the coastal State. On a more careful reading, however, the imbalance between the position of the coastal State and that of the other States is clearly evident. Only the freedoms of navigation and overflight effectively limit the functional sovereignty of the coastal State.

The impression is that UNCLOS stated in vain that the assignment of resources to the coastal State should not prejudice the participation of other States in every possible use of the area, and that they would continue to enjoy the freedom of navigation, as well as that of overflight and the laying of submarine cables and pipelines. The contrast with the sovereign rights of the coastal State is evident. In the best case, the rights of the coastal State, as well as those of other States, are on the same footing, so that the coastal State shall be allowed only to carry out the activities necessary for the exploitation of resources, while the other States shall be allowed only to carry out the activities essential to communications and to maritime and aircraft traffic. However, the effective exercise of activities of exploration and exploitation of resources by the coastal State is expected to deeply influence and limit the freedom of shipping of other States.

In the field of relations between the jurisdiction of the coastal State and that of the flag State within the EEZ, some scholars argue, inter alia, that the freedoms enjoyed by the other States in the EEZ are in no way equal to the freedoms of the high seas, because of restrictions imposed on their exercise according to UNCLOS. In this regard, the provision of UNCLOS for the resolution of conflicts on the attribution of rights and jurisdiction in the EEZ states that, in cases where UNCLOS does not attribute rights or jurisdiction to the coastal State or to other States within the EEZ 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 to the international community as a whole.[30]

In this context, the issue of the legality or not of military activities conducted by other States in the

EEZ remains fundamental.[31] Given the silence of UNCLOS on (p. 193) this subject, the absolute freedom of military activities can be easily affirmed, with significant exceptions, such as the prohibition of the threat or use of force, the obligation to take in due account the rights of the coastal State, and any rules contained in specific conventions. However, analysing attentively the various military activities, some concerns arise over the legitimacy of some cases. With the exception of military exercises with naval air teams even of different States, some concerns arise over the use and testing of weapons and explosives; the installation of equipment used for surveillance or espionage or as weapons, and the scientific research for military purposes. Actually, for many of these cases, the most suitable legal solution seems to assess the activities concerned, taking into account the rights of the coastal State and of other States and, where this criterion would not be useful, to employ the clause of the use for peaceful purposes, with the result that if the purpose of the activity may represent a threat to security and peace of the coastal State, the activity in question must be considered unlawful.

7.3.5 Cases of creeping jurisdiction

The very same concept of the EEZ can be regarded as an example of creeping coastal State jurisdiction to manage problems mainly posed by the freedom of fishing in the high seas.[32] Undoubtedly the recognition of extended legal jurisdiction for coastal States must be seen as a necessary addition to the technological developments that ever more allow the use of the high seas for a variety of purposes (e.g., communications, resource development, wind energy, etc.).

In relatively recent times, however, coastal States have attempted to exercise greater control in this zone with regard to maritime transport and other uses, largely on the basis of a need to provide protection to coastal interests and resources. This extension of control can be carried out either by the coastal State, in which case the (p. 194) correct expression is ‘creeping jurisdiction’, or by the international community, in which case a preferable term is ‘creeping common heritage’.[33]

In particular, in the second half of the twentieth century the term ‘creeping jurisdiction’ has been used to describe the progressive extension of State jurisdiction offshore over ever larger areas.

The current State practice shows a further creeping of jurisdiction, consisting of an effort by States to provide themselves with greater security from threats from the sea. However, UNCLOS does not deal with security issues, neither military or environmental security, nor security from the transport of Weapons of Mass Destruction by non-State actors.

Instead UNCLOS almost entirely avoids considering military surveillance, and refers to security matters only with regard to innocent passage through the territorial sea. In particular, the coastal State may temporarily suspend innocent passage for the purposes of essential security protection, and if different activities are deemed to be prejudicial to the peace, good order, or security of the coastal State if they occur on board a foreign vessel in the territorial sea of the coastal State.

Many of the concerns surrounding creeping jurisdiction focus on the freedom of navigation rights for foreign vessels. Although Article 58 UNCLOS grants all States the freedoms of navigation and overflight, as well as all the other high seas freedoms, these rights are restricted and depend on the conduct of coastal States. The unclear provision of the second paragraph of Article 56 means that the limits of the coastal State sovereignty and jurisdiction within the EEZ are not clearly defined. As a result, the coastal State may control the navigation activities of foreign commercial and military vessels within its EEZ, establishing maritime facilities, or safety and conservation zones. Such measures have already been undertaken by coastal States with regard to pollution management.

Some scholars consider Article 59 UNCLOS[34] to be the basis for creeping jurisdiction. Although UNCLOS specifies rights and duties of States within the EEZ, it also admits that some activities do not fall under the authority of either the coastal or foreign State. To solve this problem, UNCLOS merely states that jurisdiction should be determined 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 to the international community as a whole.

(p. 195) Significant inequalities result from the implementation of UNCLOS provisions. Disadvantaged States may appear to expand their jurisdiction offshore in order to prevail over these inequalities, especially if they perceive other attempts at creeping jurisdiction to be contributing to the inequity. For these reasons, many States have applied restrictions on vessels navigating in their territorial waters or their surroundings in order to protect their security.[35] Moreover, certain States have also stated the right to deny vessels transporting ultra-hazardous shipment, such as nuclear materials, the passage through not only their territorial sea, but even their EEZ.[36]

The analysis of State practice undoubtedly shows that States are allowed to conduct military activities within foreign EEZs without coastal State notice or consent. For centuries States have regularly conducted naval military activities in foreign territorial seas. Within the full respect of the imperative customary rule on the prohibition on the use or menace of armed force, these activities range from navigation and overflight, exercises and manoeuvres, weapons firing and testing, to surveys and surveillance. Over the years, some States, such as Brazil and India, have opposed these activities with a diplomatic approach, and have been challenged only by China,[37] North Korea,[38] and, in one case, by Peru.[39]

China represents the most relevant case concerning creeping jurisdiction and military navigation:[40] the EEZ is viewed by China more like the territorial sea than the high seas.

(p. 196) China requires that foreign military vessels give prior notice to the authorities concerned before their passage through its territorial sea. In other words, in its EEZ military activities are prohibited without coastal State consent.

Most of the conflicts involving China have a common factor which relates to how China perceives its national security and international responsibilities: indeed, China sees itself in competition with other States bordering the South China Sea over control of the seafloor energy resources of that area, and considers the United States as a powerful adversary that could threaten its interests at sea. Thus, China has tried to extend its authority over the sea and the seabed, sometimes by force.

In each of the incidents that occurred with the United States, China asserted that US aircraft and vessels were violating Chinese law and international law. In particular, China stated that the EEZ is within China's sovereign domain, and sustained that foreign vessels must have Chinese permission for military operations within its EEZ. China further justified its position by arguing that military activities, excluding navigation and overflight, pose a threat to its security and are incompatible with the provisions of UNCLOS.

China's position is not supported by State practice, and neither by UNCLOS nor other international instruments: military operations, exercises, and activities have always been regarded as internationally lawful uses of the sea, and the right to conduct such activities will continue to be enjoyed by all States in the EEZ.

7.3.6 The rights of landlocked or geographically disadvantaged States in the EEZ

Articles 69 and 70 UNCLOS conferred special rights to the landlocked or geographically disadvantaged States in the EEZs of other States only for the exploitation of biological living resources.[41] The *ratio* of these two norms is to (p. 197) alleviate the negative effects of the establishment of the EEZ that necessarily entails this category of States, which are no longer able to carry out fishing activities in those areas that were previously considered high seas but now fall within the EEZs of coastal States. Already during the proceedings of the Third Conference of the codification of the law of the sea, the landlocked and geographically disadvantaged States joined a group (Group of 54) in order to better protect their interests—interests that did not completely coincide: the landlocked States gave particular importance to the problem of access to the sea, while the geographically disadvantaged States were focused on the exploitation of marine

resources. Articles 69 and 70 UNCLOS attribute to both of these groups of disadvantaged States the right to participate, on an equitable basis, in the exploitation of an appropriate part of the *surplus* of the living resources of the EEZs of coastal States of the same region or sub-region, taking into account the relevant economic and geographical circumstances of all the States concerned, in accordance with the choices made by the coastal State with regard to the conservation and utilization of living resources.

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 number of factors: the need to avoid detrimental effects to fishing communities and to fishing industries of the coastal State; the extent to which the landlocked or the geographically disadvantaged State participates or is entitled to participate, under existing bilateral, sub-regional or regional agreements, in the exploitation of living resources of the EEZs of other coastal States; the extent to which other landlocked and geographically disadvantaged States participate in the exploitation of the living resources of the EEZ of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it; and, finally, the nutritional needs of the populations of the respective States.

When the harvesting capacity of a coastal State approaches a point enabling it to harvest the entire allowable catch of the living resources in its EEZ, UNCLOS provides on behalf of the landlocked States, or the developing geographically disadvantaged States, that the coastal State and other States concerned shall cooperate to the establishment of equitable arrangements on a bilateral, sub-regional or regional basis to allow for participation of those developing States in the exploitation of the living resources of the EEZs, as may be appropriate on satisfactory terms to all parties. Instead, developed landlocked States or geographically disadvantaged States shall be entitled to participate in the exploitation of living resources only in the EEZs of developed coastal States of the same sub-region or region.

In conclusion, even when dealing with landlocked States and geographically disadvantaged States, the coastal State maintains a dominant position and a fundamentally unlimited discretion, since the special regime provided by Articles 69 and 70 is reconnected to the signing of appropriate agreements, which set a (p. 198) personal right of access and exploitation that cannot be transferred to other States. It is, furthermore, a special regime that deals only with living biological resources. Therefore, the coastal State has the possibility of invoking Article 71, which excludes the application of those two provisions in the case of a coastal State whose economy is overwhelmingly dependent on the exploitation of the living resources of its EEZ.

7.3.7 Special regimes for certain categories of biological resources

In addition to the provisions setting out the sovereign rights and fundamental duties of the State in respect of the management of biological resources, more specific rules are provided for particular species of resources: highly migratory species; anadromous stocks; catadromous species; marine mammals; and sedentary species.[42] The exploitation and management of these two latter species is not governed by the norms of Part V relating to the EEZ. In particular, the sedentary species are considered resources of the continental shelf, and therefore they are not subject to the rules of the EEZ. For the highly migratory species a legal regime is provided that constitutes an exception to the general regime outlined by the Convention.[43] States whose nationals catch these species, tuna and swordfish, shall cooperate, in any marine region, directly 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 EEZ. Moreover, in regions for which no appropriate international organization exists, the States concerned shall cooperate to establish such an organization and participate in its work (Article 64).

This rather vague *formula* is a compromise between the Latin American States, especially those of the Pacific coast, where the tuna is plentiful, and those States whose nationals catch tuna in waters far away from their shores, who would prefer an international regime characterized by a complete

freedom of fishing and management, and have regional or sub-regional international organizations to control those operations.

(p. 199) Article 65 is specifically dedicated to marine mammals, given the special protection these species need, although they are also a highly migratory species. This article gives coastal States and international organizations the right to prohibit, limit, or regulate the exploitation of marine mammals more strictly than is provided for by the general rules on fishing in the EEZ.

As regards anadromous stocks, which originate in rivers, spend most of their lives in the sea and then travel back into the rivers where they lay their eggs and die, the primary responsibility is on the State of origin. In any case, the fishing for these stocks shall be conducted only in waters landward of the outer limits of EEZs, except in cases where this provision would result in economic dislocation for a State other than the State of origin (Article 66).

For catadromous species, which spend the greater part of their life cycle in rivers, but lay eggs in the sea, Article 67 establishes a special regime, corresponding in general to that provided for anadromous stocks.

Finally, Article 63 provides that where the species occur within the EEZs 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 for coordinating and ensuring the conservation and development of such stocks.

The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks was adopted by the United Nations in 1995, and came into force in 2001. This agreement aims to ensure the long-term conservation and sustainable exploitation of the stocks concerned[44] through the strengthening of international cooperation. In particular, it was created to enhance the cooperative management of fisheries resources that cover large areas, and are of economic and environmental concern to many States. Straddling fish stocks are particularly at risk of overexploitation.

7.4 The Current Practice of States and the Development of Customary International Law Concerning the Exclusive Economic Zone

Since the mid-seventies, following the rules contained in the negotiation texts of the Third Conference, many States began to proclaim their EEZs unilaterally, (p. 200) encouraging the crystallization of this concept both at the international treaty law level and at the customary law level. The analysis of State practice in this field, i.e. national legislation, unilateral declarations, and bilateral agreements, allows a full understanding of the concept of the EEZ in international life.[45]

Often both unilateral declarations and national rules do not match the system outlined by UNCLOS. Specifically, national legislations can be legally divided into four groups: (1) laws proclaiming the sovereignty up to 200 nm of the extended territorial sea where only innocent passage for foreign vessels is allowed. Almost all of these legislations were adopted before the convening of the Third Conference, in particular, by South American States; (2) laws providing for the extension of the already existing 200 nm fishing zones, without changing their legal frameworks; this is the case of several western States, including some member States of the European Union; (3) laws substantially complying with the text of the Convention but not disciplining the duties of the coastal State in respect of the management of biological resources; these laws are generally adopted by many developing States; and (4) laws referring to the duties of the coastal State, providing for the determination of the amount of allowable catch, the determination and allocation of any *surplus* among the other States concerned. Among the States that adopted laws of this type are the Former Soviet Union and the United States. However, many States,[46] having previously proclaimed a territorial sea (p. 201) beyond the limit of 12 nm, have changed their laws to comply with the

provisions of the Convention, and a growing number of States, implementing the EEZ, have been inspired by the text and the specific rules of the Convention.[47]

Furthermore, most of the bilateral fisheries agreements between a coastal State, having declared an EEZ, and a State interested in gaining access to fishing zones under the jurisdiction of the coastal State, are largely inspired by the rules of UNCLOS. These agreements expressly refer to the determination of the allowable catch and to the determination of the *surplus*.[48] In particular, a correspondence, with regard to the conditions of access and the compensations demanded by the coastal State, is clearly established between the majority of the agreements and the relevant provisions of UNCLOS. Although any agreement explicitly evokes the needs of developing States, many of them are cooperative agreements, concluded generally between a poorer State, which has an EEZ, and another industrialized State. In these agreements, the access to *surplus* depends not only on economic considerations, but on practical and effective help to the development of the fishing industry of the grantor State. This is the case, for example, of agreements concluded between the European Community and many Third World Countries.[49] In the framework of bilateral cooperation, during the seventies, the recourse to joint ventures was very frequent. These are companies that, in the framework of international agreements and in accordance with the domestic laws of a State, shall be created between a public or private enterprise of the coastal State and (p. 202) private foreign companies, in view of a joint exploitation of biological resources. These companies are, to all intents and purposes, national companies of the State that receives funds, and are subject only to the domestic laws of the coastal State.

The achievement of the concept of the EEZ and of the principles of rational management of biological resources in the international practice of States has encouraged, in recent years, a new phase of expansion in the world's production of fish resources.[50] The EEZ has effectively represented an economic revenge for many developing States, which could potentially save an enormous quantity of biological resources from indiscriminate exploitation operated by the most industrialized States practicing deep-sea fishing. The crystallization of the concept of the EEZ in the customary practice of international law shows that the validity of such an institute is independent, paradoxically, from UNCLOS. Undoubtedly, the EEZ is now a legal concept accepted by customary international law; although not all provisions on the EEZ contained in UNCLOS have already acquired the *status* of international customary rules. The rampant jurisdiction of coastal States has, in a short time, almost reversed the relationship between customary law and treaty rules. That is why, in recent years, the international practice in protecting the interests of coastal States often went beyond the very same content of the provisions of UNCLOS.

These trends in international practice, on the one hand, aim at a quantitative extension of marine zones originally assigned to the coastal State, as the EEZ, and, on the other, aim at a qualitative expansion of the powers of the coastal State in the zone, thus transforming the same legal nature of that zone, towards a more accentuated territorialization. This practice, although opposed by the majority of traditional maritime States, is implemented not only by developing coastal States, but sometimes even by the industrialized coastal States, over the oceans.[51]

References

(p. 203) 7.5 The Delimitation of the Exclusive Economic Zone between States with Opposite or Adjacent Coasts

7.5.1 Article 74 UNCLOS

The significant extension of the exclusive economic zone—200 nm from the baselines from which the breadth of the territorial sea is measured—gives rise to

(p. 204) the problem of the delimitation of the EEZ between States with opposite or adjacent coasts.[52]

Article 74 UNCLOS deals with this issue, reproducing completely the provisions contained in Article 83 on the delimitation of the continental shelf. Under this article, the delimitation of the EEZ 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, the States concerned shall resort to the procedures provided for in Part XV on settlement of disputes. In any case, pending agreement as provided in this field, the States concerned shall make every effort to enter into provisional arrangements of a practical nature and not to hamper the reaching of the final agreement. In other words, the States have a real obligation to settle disputes by peaceful means, or to negotiate in good faith. However, Article 74 does not provide any provision concerning the delimitation of the EEZ, as well as Article 83 for the continental shelf. No indication of any specific method of delimitation is given. The rule on the delimitation laid down in this article has an articulated structure, made up of three elements: the agreement; the compliance of the agreement with general and conventional international law; and the equitable solution to be reached in the delimitation.

Not being able to dwell on the development of relevant international case law[53] and on the configuration of the general rule which requires that the delimitation should be sufficient to support a fair solution, the reference made by Article 74 to (p. 205) general international law involves the identification of general rules in force concerning the delimitation of the EEZ. They can be identified by analysing the relevant State practice: bilateral agreements of delimitation; domestic laws; and collective and unilateral declarations.[54]

7.5.2 The conventional international practice concerning the delimitation of the EEZ

Many of the international bilateral agreements do not deal specifically with the delimitation of this area, but they do delimit the seabed and subsoil marine and the water column. These agreements can be divided into three groups depending on their approach to the issue of delimitation: the first group, certainly the most numerous, uses the delimitation's method of the median or equidistance (e.g. Agreement of 20 November 1976 between Colombia and Panama; Agreement of 25 July 1980 between Burma and Thailand; Agreements of 25 October 1983 between France and Great Britain; and Agreement of 13 September 1988 between Australia and the Solomon Islands);[55] the second group merely provides that the delimitation should be made in accordance with international law (e.g. Agreement of 31 October 1978 between the Netherlands and Venezuela, and Agreement of 3 March 1979 between the Dominican Republic and Venezuela);[56] another group establishes directly the geographical coordinates, without indicating which method was used in the delimitation, or resorts to methods other than that of the median or equidistance. Among many, the Agreement of 23 August 1975 between Colombia and Ecuador proposes the line of the geographic parallel where the terrestrial border between Colombia and Ecuador is projected into the sea; the Agreement of 4 June 1975 between Gambia and Senegal and that of 30 January 1981 between Brazil and France have used the method of the rhumb line (or loxodrome) of the azimuth; and the Agreement of 18 April 1988 between Sweden and the Soviet Union adopts a system of straight lines connecting the points of the coordinates specified in the Agreement itself.[57]

Most recently, on 15 September 2010 in Murmansk, Norway and Russia signed a treaty regarding the bilateral maritime delimitation in the Barents Sea and the Arctic Ocean. The delimitation treaty ensures the continuation of the extensive and fruitful Norwegian-Russian fisheries cooperation. The agreement settles a compromise between the median line preferred by Norway, and the meridian

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(p. 206) based sector favoured by Russia. By signing this agreement, Norway and Russia finally resolved a long dispute about the territorial sea and the EEZ concerning the Svalbard archipelago, as it affects Russia's EEZ due to its unique treaty *status*.

The Government of the Republic of Mauritius and the Government of the Republic of Seychelles, on 29 July 2008, signed an agreement on the delimitation of their respective EEZs. Moreover, on 17 December 2010, the Greek Cypriot Administration signed, in Nicosia, an EEZ delimitation agreement with Israel. The governments of Australia and New Zealand also established certain EEZs and continental shelf boundaries in a Treaty of 25 July 2004.[58]

7.5.3 National legislation concerning the delimitation of the EEZ

The analysis of the domestic legislation concerning the delimitation of the EEZ highlights the tendency to prefer the method of the median; this method, therefore, appears to be used not only in the agreements of delimitation but also as an independent criterion. Some laws, indeed, require the delimitation of the area through international agreement, but failing that they relate to the median method. This is the case of the domestic rules adopted, for example, by the Bahamas (1977),[59] Denmark (1976),[60] Japan (1977),[61] Iceland (1979), Norway (1976), New Zealand (1979), and Spain (1978). Other laws provide that the

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(p. 207) delimitation should be made by agreement without stating a method to be used; more specifically, in some cases, they refer to existing international law in the field and in other cases they trace directly the geographical coordinates (e.g. Cuba 1977,[62] Philippines 1979,[63] France 1977, Netherlands 1986,[64] and Federal Republic of Germany 1976[65]). Further, some laws impose a delimitation by agreement, expressly indicating the fair outcome to be achieved (e.g. United States[66] 1983 and the Former Soviet Union 1984[67]); others specify that it is necessary to take into account the special circumstances of the area to be delimited (e.g. Pakistan 1976 and Indonesia[68] 1983); and others, finally, directly trace the geographic coordinates without referring either to the agreement or other method of delimitation (e.g. Canada 1977 and Kenya 1979). There are, however, some acts establishing the EEZs or fisheries zones that merely set the extent of 200 nm from the baselines of the territorial sea without indicating any provision on the delimitation, as well as other acts which refer generically to rules of general international law on the delimitation of marine areas.[69]

(p. 208) 7.6 The Relations between the Exclusive Economic Zone and Other Maritime Areas

The establishment and development of the EEZ make extremely important the aspect of its relations with other maritime zones recognized by the international law of the sea: territorial sea, contiguous zone, continental shelf, high seas, and international seabed area.

As to the territorial sea and the contiguous zone, relations with the EEZ are characterized by a sort of complementarity having its basis in the essentially economic function of the EEZ; in this area the State only exercises sovereign rights concerning the management of biological resources, while in the territorial sea and in the contiguous zone sovereignty is expressed in full (territorial sea) or considering the safety of the community settled on land (contiguous zone). Such complementarity is not detectable in the relationship with the high seas and the international seabed area. In these cases, the relation is definitively in opposition; the EEZ represents the denial of the freedom of the high seas and of the international management regime to advantage all mankind in the international

seabed area.

The relation with the continental shelf is particularly complicated, since it entails the simultaneous application of two different regimes in the same strip of coast, except when the continental shelf outer limit is beyond 200 nm; such regimes are characterized by the exercise by the coastal State of sovereign rights relating, in both cases, to the exploitation of biological resources existing there.

Following a superficial analysis of the provisions of UNCLOS, the two concepts seem to coexist. On the contrary, the continental shelf has been absorbed by the EEZ. Article 56 applies the regime of the EEZ not only to the waters superjacent to the seabed, but also to the seabed and its subsoil in an area of 200 nm from the baselines. However, this article stresses that the rights with respect to the seabed and the subsoil shall be exercised in accordance with Part VI on the continental shelf.

A deeper analysis highlights the autonomy of these regimes; while the regime of the EEZ shall apply to all biological resources, living or not, the regime of the continental shelf covers only the non-living resources of the seabed and subsoil with the exception of sedentary species. This autonomy does not eliminate the strong complementary relation between these two concepts and justifies the efforts of scholars to harmonize the relation between the EEZ and the continental shelf. The need for harmonization, also in order to finding an applicable regime in doubtful and disputed cases, stems from the differences between these two concepts.

(p. 209) First, the rights on the EEZ depend on an express declaration, while those on the continental shelf exist *ipso facto* and *ab initio* without requiring occupations or proclamations. As a result, if a State can have the continental shelf without the EEZ, the opposite hypothesis cannot occur. Furthermore, the extension of such regimes can be different: the EEZ may not extend beyond the limit of 200 nm, while the continental shelf may extend beyond this limit, but not beyond the 350 nm from the baselines or the 100 nm from the 2,500-metre isobaths. Moreover, if, under the regime of the EEZ, the coastal State has the obligation to give access to resources to other States, such an obligation does not exist for the resources of the continental shelf. Finally, while for the laying of submarine cables and pipelines the consent of the coastal State is not necessary in the EEZ (Article 58 UNCLOS), such consent is required within the continental shelf (Article 79 paragraph 3 UNCLOS).

This last distinction, given the geographical overlapping of the EEZ and the continental shelf, raises the question of the identification of the applicable norms. In this regard, the special character of the continental shelf compared to the EEZ has to be emphasized. This special character is also confirmed by paragraph 3 of Article 77 UNCLOS, according to which the rights of the coastal State over the continental shelf are independent of occupation, effective or symbolic, as well as any explicit declaration. The reference to this special character of the continental shelf allows the resolution of any doubts on the applicability of the regime of the EEZ or of that of the continental shelf, giving prevalence to the latter.

Another aspect of the relations between the EEZ and the continental shelf concerns the issue of the delimitation of these two areas between States with opposite or adjacent coasts. More specifically, the question is whether or not the lines of delimitation coincide. Scholars are divided; according to some, the practice of States would encourage the adoption of a single line of delimitation due to the absorption, within 200 nm, of the concept of the continental shelf in that of the EEZ;[70] whereas others argue that there is no legal obligation for States to proceed to trace a single line of delimitation or to automatically extend the line negotiated for the continental shelf also to the EEZ when established. This is because the achievement of a fair result would not entail the adoption of the same criteria for both the delimitations.[71] The most recent international case law seems to be oriented in this direction (Judgment of 31 July 1989 of the ad hoc Arbitration Tribunal on the dispute between Guinea Bissau and Senegal).

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(p. 210) In conclusion, the fact that Articles 77 and 84 UNCLOS have the same content does not

necessarily mean that the factors helping to determine the delimitation lines in order to achieve a fair result are the same.

7.7 The Opportunity of Establishing Exclusive Economic Zones in Enclosed or Semi-enclosed Seas: The Mediterranean Case

The concept of the EEZ, created to satisfy the needs of the oceanic States to the exclusive exploitation of biological resources and minerals contained in the seabed, in the subsoil, and the superjacent water column, within an area of 200 nm, raises serious problems of application in relation to certain enclosed or semi-enclosed seas,[72] given their limited size.

This would result in the decomposition of these seas in the EEZs of their coastal States, with relevant—risky—effects on international navigation.

7.7.1 The opportunity to establish EEZs in the Mediterranean Sea

The problem concerning the effects on the Mediterranean Sea arising from the establishment of EEZs should be considered under at least four different aspects. The first issue to be considered is the legal regime of the EEZ itself; the second concerns the size and features of the Mediterranean Sea; the third aspect concerns the practice carried out so far by Mediterranean coastal States; and the fourth is related to the ability to apply in the Mediterranean the instruments of cooperation provided for by UNCLOS for enclosed or semi-enclosed seas.

The potential establishment of EEZs in the Mediterranean Sea would result in the risk of its territorialization. A compelling reason for preventing the establishment of the EEZs in the Mediterranean arises mainly from the fact that this sea constitutes an important international waterway. The freedom of navigation, especially for the military, would inevitably be affected, despite the existence of principles intended to guarantee it.

(p. 211) The question of the possible establishment of EEZs in the Mediterranean is, therefore, closely related or, rather, specifically conditioned by the size and geographic position of this sea. It is, indeed, a semi-enclosed sea having all the characteristics identified under Part IX of UNCLOS for that classification.

For the purposes of UNCLOS, an enclosed or semi-enclosed sea means a gulf, basin, or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and EEZs of two or more coastal States, where of course they are established. It is not clear what relation exists between the terms ‘enclosed’ and ‘semi-closed’ and the individual elements of this definition. Certainly, the Mediterranean Sea appears to have all of the three characteristics listed by UNCLOS: indeed, its shores are surrounded now by more than twenty States; it is connected to the Atlantic Ocean through the Strait of Gibraltar; and, even if it is not mainly composed of the territorial seas of the coastal States, it would certainly be made up entirely of their EEZs, if established. On the other hand, the Mediterranean Sea also responds to the additional requirements of the doctrine for the definition of an enclosed or semi-enclosed sea: its surface is more than 50,000 sq nm; it is a sea and not the main part of a larger sea; and more than fifty per cent of the perimeter of its surface is surrounded by coasts.

7.7.2 The practice of the Mediterranean coastal States concerning the EEZ and the impact of the establishment or not of EEZs on the freedom of navigation in the Mediterranean sea basin

As far as their attitude towards the EEZ is concerned, Mediterranean States can be clustered into three categories: States which have expressly declared their opposition to the establishment of the EEZ, such as Algeria, Israel, and Turkey, during the course of the proceedings of the Third

Conference on the Law of the Sea; States which have established the EEZ off their Atlantic coast and have not provided for the establishment of such zones in the Mediterranean, such as France[73] and Spain,[74] two great maritime powers whose behaviours, as such, are particularly important for our purposes; and States which have proclaimed, or officially announced the establishment of an EEZ, but do not actually seem to

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(p. 212) have definitively established it, such as Egypt, Lebanon, Malta, Morocco, Syria, Tunisia, Cyprus, and Croatia.[75]

In fact, even Italy has repeatedly argued against the establishment of EEZs within the Mediterranean Sea, as well as several other coastal States of this sea. There are, however, other States, especially those of African and Adriatic coasts of the Mediterranean, perhaps for reasons related to the hoarding and the seizure of the resources of the sea, which are more favourable to the establishment of such areas.

In particular, two very important States, which are also two traditional maritime powers, i.e. France and Spain, have established the EEZ in the Atlantic Ocean, but have specifically avoided establishing the EEZ within the Mediterranean Sea. France has established, by a law of 1976, an EEZ, whose detailed norms are contained in the decree issued to implement it in 1977. The decree under consideration states that such zone extends off the coasts of the territory of the French Republic which borders the North Sea, English Channel, and the Atlantic. Even Spain, with its 1978 law, has established the EEZ, limiting it only to the Atlantic coast and stating explicitly that the application of such provisions is limited to the Spanish peninsular and insular coasts of the Atlantic Ocean, including the Bay of Biscay (Cantabrian Sea).

Egypt declared, upon ratification of UNCLOS, its support to the establishment of the EEZ; but this declaration was not followed by any concrete behaviour, although Egypt signed a Treaty with Cyprus in 2003 for the delimitation of their respective EEZs. Cyprus declared an EEZ with the law of 2 Apr. 2004, while Syria has proceeded by the Law No. 28 of 2003. However, no decrees have been issued by the latter two States for implementing these laws. Finally, Lebanon has

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(p. 213) marked its EEZ with Cyprus in 2007, but without having made a formal proclamation of the same zone.

Finally, Malta and Morocco appeared to have established their respective EEZs. The creation of the Moroccan zone was approved in 1980 by the House of Representatives, and established by a decree of 1981; while the zone of Malta was established in 1978 by decision of the Maltese Government. In these acts, moreover, the terms of the delimitation are vague; and the determination of the nature of those zones is not accurate. As for Morocco, such zone seems to refer only to the Atlantic Ocean, excluding, then, the waters of the Mediterranean, within which a fishing area of 70 nm has been established. The Maltese zone seems to be mainly a fishing area whose extension has been enlarged several times.

Recently, this State has proclaimed an EEZ. In particular, in July 2005, the Maltese Parliament unanimously approved a framework law that authorizes the Prime Minister to extend, by decree, Maltese sovereign rights over the management of living and non-living resources of the water column beyond the Maltese territorial sea, over marine scientific research, and the protection and preservation of the marine environment. This law also provides for the establishment of artificial islands, installations, and structures.

In 2003, Croatia proclaimed an EEZ. In particular, the Croatian Sabor gave effect to the provisions of the Maritime Code in October 2003,[76] but without fully implementing the EEZ, restricting itself to

establishing a fishing zone which is, at the same time, ecologically protected, in accordance with the contents of Article 56 UNCLOS. This zone aimed at achieving sustainable fisheries and to prevent accidents, such as that of the Prestige ship, that can cause irreparable damage to the Adriatic Sea and its coast. This decision which was amended on 2004[77] in order to postpone the implementation of the rules of the ecological and fishing zone up to twelve months after its establishment with regard to Member States of the European Union, clearly found the legal basis of the regime of the area in Article 56 UNCLOS, and grants to other States the traditional freedoms of the high seas: navigation, overflight, and other uses provided for by international law (paragraph 4 of the Declaration).

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(p. 214) About two years later, Tunisia adopted the Law of 27 June 2005, which establishes an EEZ off its shores in order to exploit biological and non-biological resources of the seabed and the superjacent water column, and to exercise any other functional competence that UNCLOS gives to the coastal State, including the protection of the marine environment (Article 2). This Law also provides for the establishment of marine areas characterized by restricted powers of the coastal State, such as fishing in protected areas, the fisheries, and ecological protection zones, to the extent that their establishment is included in the competence of creating an EEZ (Article 4). However, the establishment of an EEZ, or any other area where the jurisdiction of the coastal State is restricted, does not seem to be directly subordinated to the 2005 Law. This only occurs as a forecasting legal framework and requires the adoption of specific implementing decrees, which have not yet been adopted.

To conclude, the EEZ has not been fully implemented in the Mediterranean. If few States have so far proclaimed an economic zone, or otherwise did not actually establish one, this seems to result from a number of different reasons. In general, the problem of the delimitation of marine areas and the need of all States to ensure the widest possible freedom of navigation, especially military, seem to be the reason that best explains the attitude of the Mediterranean States in abstaining from establishing EEZs.

Given the unique geographical conformation of the Mediterranean, the presence of many islands, and the large number of coastal States, the delimitation of the various economic zones would be extremely complicated.

Connected to the problem of delimitation, another reason that may explain the failure of the effective expansion of the EEZ in the Mediterranean can be identified in the consequences that such measures would have for international navigation. Considering that more than the forty per cent of world oil production transit is in the Mediterranean, the question of freedom of navigation has greatly influenced the choice of Mediterranean States with respect to the EEZ.

In particular, relating to fishing, given the relative scarcity of biological resources, the location of fishing areas and the predominantly artisanal character of fisheries in the majority of the coastal States, the abstention from proclamation, or from any implementation, of the EEZ may be the result of a modest interest in adopting such a measure. A semi-enclosed sea and one that is poor in resources, such as the Mediterranean, could not be subject to claims that are too ambitious. Moreover, because of the particular geographical conformation of the Mediterranean and the high number of coastal States, many States may only have small EEZs.

Moreover, in this basin, the question of the freedom of navigation, crucial and important, would become even more serious because the entire basin would turn into a marine area actively supervised by an intense naval patrol. The right of

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(p. 215) navigation exercised by other States would certainly be affected by the rights of the

coastal State in the field of the installation and use of artificial islands, installations, and structures in the seabed or anchored, and of the scientific research and protection and conservation of flora, fauna, and the environment. Nonetheless, it may also be affected by the rights of interference and capture of foreign vessels which are guilty of breaches of the laws of the coastal State, and by the rights of boarding and inspection of vessels suspected of such violations, not only within the limits of the territorial sea but even within those of the same EEZs.

Within the Mediterranean Sea, there is also no possibility for vessels of other States to avoid the EEZs, in order, inter alia, to eliminate the risk of losing precious hours of navigation, by using routes other than the traditional ones, since if they were established by all the coastal States, the EEZs would occupy the entire basin. This new *scenario* would inevitably create new problems for the freedom of navigation, caused by the needs of the maritime traffic control.

In conclusion, therefore, if such EEZs were established in the Mediterranean Sea, the legal regime of navigation would suffer such changes and influences that it could no longer be assimilated to the traditional regime of freedom that now exists.

Of course, the legal regime of the Mediterranean basin emerges in a completely different way if some coastal States establish sectorial functional areas whose content are more restricted, as ecological or fisheries protection zones.[78] The

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(p. 216) difference, due to the fewer activities for the coastal State to exercise in these areas, would automatically result in a smaller number of rights exercisable by the coastal State within them, and then the freedom of navigation, especially military but also commercial, could be better safeguarded.

Footnotes:

1 On the EEZ, see also DJ Attard, *The Exclusive Economic Zone in International Law* (Clarendon Press, 1987) ; RR Churchill and AV Lowe, *The Law of the Sea* (Manchester University Press, 1999) ; P Gautier (ed.), *La zone économique exclusive et la Convention des Nations Unies sur le droit de la mer, 1982–2000: un premier bilan de la pratique des États* (Bruylant, 2003) ; TTB Koh, 'Remarks on the Legal Status of the Exclusive Economic Zone' in MH Nordquist, TTB Koh, and JN Moore (eds), *Freedom of Seas, Passage Rights and the 1982 Law of the Sea Convention* (Martinus Nijhoff, 2009) 53 ; B Kwiatkowska, *The 200-nautical Miles Exclusive Economic Zone in the New Law of the Sea* (Martinus Nijhoff, 1989) ; U Leanza, 'La zona economica esclusiva nella evoluzione del diritto del mare' in E Turco Bulgherini (ed.), *Studi in onore di Antonio Lefebvre D'Ovidio in occasione dei cinquant'anni del diritto della navigazione* (Giuffrè, 1995) vol. I, 541 ; LT Lee, 'The Law of the Sea Convention and Third States' (1983) *AJIL* 77, 541 ; ML Mcconnell, 'National Studies of the Law Applicable on the Continental Shelf and in the EEZ' (2011) 25 *Ocean Yearbook* 221 ; MH Nordquist et al. (ed.), *United Nations Convention on the Law of the Sea 1982: A Commentary* (Martinus Nijhoff, 1993) vol. II, 5 ; A Proelss, 'The Law on the Exclusive Economic Zone in Perspective: Legal Status and Resolution of User Conflicts Revisited' (2012) 26 *Ocean Yearbook* 87 ; RE Salcido, 'Law Applicable on the Outer Continental Shelf and in the Exclusive Economic Zone' (2010) 58 *American Journal of Comparative Law* 407 ; MJ Valencia and K Akimoto, 'Guidelines for Navigation and Overflight in the Exclusive Economic Zone' (2006) 6(30) *Marine Policy* 704.

2 Attard (n 1); JR Coquia, 'Development and Significance of the 200 Nautical miles Exclusive Economic Zone' (1979) 54 *Philippine Law Journal* 440 ; Kwiatkowska (n 1); ML Mcconnell, 'The Law Applicable on the Continental Shelf and in the Exclusive Economic Zone' in KB Brown and DV Snyder (eds), *General Reports of the XVIIIth Congress of the International Academy of Comparative Law/Rapports Généraux du XVIIIème Congrès de l'Académie internationale de droit comparé* (Springer Science+Business Media BV 2012) 453 ; R Nadelson, 'The Exclusive Economic

Zone: State Claims and the LOS Convention' (1992) 16(6) *Marine Policy* 463 ; SN Nandan, 'The Exclusive Economic Zone: A Historical Perspective' in FAO (ed.) *The Law and the Sea: Essays in memory of Jean Carroz* (FAO, 1987) 171 ; F Orrego Vicuña (ed.), *The Exclusive Economic Zone. Regime and Legal Nature under International Law* (Cambridge University Press, 1989).

3 RJ Dupuy and D Vignes (eds), *Traité du nouveau droit de la mer* (Economica, 1985) 243.

4 Cf. S Oda, *The International Law of the Ocean Development, Basic Documents* (Martinus Nijhoff, 1976) vol. I, 341–2 ; 'United States, Proclamation by the President with respect to Coastal Fisheries in Certain Areas of the High Sea, September 28, 1945' (1946) 40 *AJIL, Supplement* of *Documents* 46.

5 See e.g. Argentina, Decree No. 14708 of 11 Oct. 1946 (UNLS, vol. 1, UN Doc ST/LEG/SER.B/1, 4); Chile, Presidential Proclamation, 23 June 1947 (UNLS Doc ST/LEG/SER. B/6, 4); Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific: Agreements and Other Documents, 1952–1966 (Lima, 1967), 15; Peru, Presidential Decree No. 781, 1 Aug. 1947, Ley peruana, 11 Aug. 1947 (L Houston, R Churchill, and MH Nordquist, *New Directions in the Law of the Sea* (Oceana Publications, 1973) vol. 1, 231).

6 Cf. Oda (n 4) 345. The declaration was adopted together with a joint declaration on the problems of fisheries in the South Pacific, recommending the establishment of biological stations for the study of migratory flows and breeding of the species of greater nutritional value. A further document also established the permanent Commission of the Conference on the use and conservation of marine resources in the South Pacific. On 4 Dec. 1954 Chile, Peru, and Ecuador adopted a supplementary agreement as well as an agreement on sanctions; at the same meeting, finally, a special area of marine border at a distance of 20 nm from the coast and extended for 10 nm on both sides of the parallel which constitutes the boundary line between two States was formally established. A detailed analysis of these documents is contained in DP O'Connell, *The International Law of the Sea* (Clarendon Press, 1984) 553–5.

7 O'Connell (n 6) 555–7.

8 Indochina, under French sovereignty, had established a conservation area of 20 km in 1936. Costa Rica and Honduras established areas of 200 nm in 1949 and in 1951; India and Ceylon (Sri Lanka) have established zones of 100 nm, beyond the limit of the territorial sea, in turn, in 1956 and in 1957. In the Indian Proclamation, in particular, the special interest to maintain the productivity of natural resources of the high seas is claimed. For the Argentine position, see Decree No. 14708 of 1946. See also the Final Act of the Inter-American Conference on conservation of natural resources, the continental shelf and oceanic waters, Ciudad Trujillo, 15–28 Mar. 1956, as well as Art. 1 para 2(C) of the Final Act of the Third Meeting of the Inter-American Council of jurists, Mexico, 17 Jan.–4 Feb. 1956 (cf. Pan American Union, Washington, DC, 1956, 36 and UNGA (XI), Doc A/C.6/L.388 of 21 Dec. 1956). For a doctrinal position on the proceedings of the Inter-American Conference of 1956, cf. KG Nweihed, *La vigencia del mar* (Universidad Simon Bolivar, 1974), vol. II, 377 ff. On the origins of the discipline on the conservation of the living resources of the high seas, among others, cf. JJ Caicedo Cestella, 'La Conferencia de Ciudad Trujillo sobre el Mar Territorial' (1956) *REDI* 731 ff.; O De Ferron, *L'évolution du régime juridique de la haute mer* (Contant-LaGuerre, 1951) ; CA Fleischer, 'La pêche' in Dupuy and Vignes (n 3) 819 ff.; SM Garcia, 'Ocean Fisheries Management: The FAO Programme' in P Fabbri (ed.), *Ocean Management in Global Change* (Elsevier, 1992) 381 ff.; FV Garcia Amador, *The Exploitation and Conservation of the Resources of the Sea* (Martinus Nijhoff, 1963) , in particular 78 ff.; A Gros, 'La Convention sur la pêche et la conservation de ressources biologiques de la haute mer' (1959) 2 *RCADI* 3 ; T Scovazzi, *Le pesca nell'evoluzione del diritto del mare* (Giuffrè, 1979–1983) vols I–II.

9 Cf. Scovazzi (n 8) vol. II, 122.

10 For an analysis of the relevant Geneva Conventions of 1958, see U Leanza, *Il nuovo diritto del mare e la sua applicazione nel Mediterraneo* (Giappichelli, 1993) 328 ff.

11 Cf. Second United Nations Conference on the Law of the Sea, UN Doc A/CONF.19/L. 11, 186.

[12] European Fisheries Convention (London, concluded 9 Mar. 1964, entered into force 15 Mar. 1966) 581 UNTS 57, was signed by the following States: Belgium, Denmark, France, Great Britain, Ireland, Italy, Luxembourg, Netherlands, Portugal, Federal Republic of Germany, Spain, and Sweden.

[13] *Fisheries Jurisdiction Cases*, Judgments 25 July 1974 [1974] ICJ Rep 3.

[14] On the concept of the 'Patrimonial sea', see JC Lupinacci, 'The Legal Status of the Exclusive Economic Zone in the 1982 Convention on the Law of the Sea' in Orrego Vicuña (n 2) 75, in particular 84–8; LDM Nelson, 'The Patrimonial Sea' (1973) 22(4) *ICLQ* 668.

[15] L Lucchini and M Voelckel, *Droit de la mer*. Vol. I: *La mer et son droit: Les éspaces maritimes* (Pédone, 1990) 203 : they remind us that probably a Malagasy law of 1973 used this term for the first time, though intending the continental shelf. Actually, the first State that used this term with its actual meaning was Bangladesh in 1974.

[16] L Caflisch, 'Fisheries in the Exclusive Economic Zone: An Overview' in U Leanza (ed.), *Il regime giuridico internazionale del Mare Mediterraneo* (Giuffrè, 1987) 154. For the trends of the States at the Third United Nations Conference on the Law of the Sea (UN Doc A/AC.138/55) (UNCLOS III), see e.g. the working paper submitted on 19 Aug. 1971 to the Committee of the seabed by: Afghanistan, Austria, Belgium, Nepal, Netherlands, Singapore, and Hungary; the Draft of Articles submitted on 16 Aug. 1974 by Bolivia and Paraguay (UNCLOS III, *Official Documents*, UN Doc A/CONF.62/C.2/L.65, vol. III, 270); the drafts of Articles submitted by Zambia respectively on 20 Sept. 1976 and on 15 July 1977 (doc A/CONF.62/C.2/L.95 and L.97, vol. VI, 190 and vol. VII, 87).

[17] The complete list of the documents submitted by the States during the Caracas session is contained in UNCLOS III, *Official Documents*, vols III and V–VIII; for the text of the proposals, 213 ff. Particularly significant in order to identify the scope of the concerned concept, have been the projects submitted respectively by the United States (A/CONF.62/C.2/L.47, vol. III, 257) and by the Soviet Union and other socialist States (A/CONF.62/C.2/L.38, 248 ff.).

[18] For the different theories concerning the legal nature of the EEZ, see e.g., A Del Vecchio, *Zona economica esclusiva e Stati costieri* (Le Monnier, 1984) 122 ff.; WC Extavour, *The Exclusive Economic Zone* (Martinus Nijhoff, 1981) 171 ff.; L Gündling, 'Die Exklusive Wirtschaftszone' (1978) 38 *HJIL* 616 ; JP Queneudec, 'La zone économique' (1975) 2 *RGDIP* 321 ; M Scerni, 'La zone économique exclusive' in *Thesaurus Acroasium*. Vol. VII: *The Law of the Sea* (1977) 157 ; F Wodie, 'Les intérêts économiques et le droit de la mer' (1976) 3 *RGDIP* 738 , in particular 755; cf. the different positions of G Pohl, in Orrego Vicuña (n 2) 40; JC Lupinacci (n 14) 98; and A Schreiber in Orrego Vicuña (n 2) 123.

[19] In this regard, see T Scovazzi, 'La ZEE nei lavori per le nuova codificazione del diritto del mare' (1974) 57(4) *RDI* 730 . About the powers exercised by the other States in the economic zone, see also: ED Brown, 'The Exclusive Economic Zone: Criteria and Machinery for the Resolution of International Conflicts between Different Users of EEZ' (1977) 4(6) *Maritime Policy and Law* 325 ; Kwiatkowska (n 1); BH Oxman, 'An Analysis of the Exclusive Economic Zone as Formulated in the Informal Composite Text' in TA Clingan (ed.), *Law of the Sea: State Practice in Zones of Special Jurisdiction* (Honolulu: Law of the Sea Institute, 1982) 57 ; P Losa, 'La liberdad de navegación en la zona económica exclusiva' (1977) 30(2–3)*REDI* 265 ; S Rose, 'Naval Activities in the Exclusive Economic Zone: Troubled Waters Ahead?' (1990) 21 *ODIL* 123 ; and more recently, M Gavouneli, *Functional Jurisdiction in the Law of the Sea* (Martinus Nijhoff, 2007).

[20] On the different rights exercisable by coastal States in the EEZ, see e.g. Attard (n 1) 86 ff.; L Caflisch and J Piccard, 'The Legal Regime of the Marine Scientific Research and the Third Conference on the Law of the Sea' (1978) 38 *HJIL* 848 ; Del Vecchio (n 18) in particular 115–85; U Jenisch, 'The Exclusive Economic Zone as an Instrument in the North Sea Area' (1990) 5(1–4) *IJECL*, 228 ; HG Knight, *Managing the Sea's Living Resources* (Lexington Books, 1977) ; ND Koroleva, 'The Right of Pursuit from the Exclusive Economic Zone' (1990) 2(14) *Marine Policy* 137 ; N Papadakis, *The International Legal Regime of Artificial Islands* (Sijthoff, 1977) ; JP Queneudec,

'Espace marin: des usagers antagonists' (1981) *La nouvelle revue maritime* 58 ; LI Sanchez Rodriguez, *La zona exclusiva de pesca en el nueve derecho del mar* (Universidad de Oviedo, 1977) ; T Scovazzi, 'La pesca nella zona economica esclusiva' in B Conforti (ed.), *La zona economica esclusiva* (Giuffrè, 1982) 13 ; T Treves, *La Convenzione delle Nazioni Unite sul diritto del mare del 10 dicembre 1982* (Giuffrè, 1983) 35.

21 On State practice concerning the creeping of jurisdiction offshore, see Section 3.5 of this Chapter and T Treves, 'Codification du droit international et pratique des États dans le droit de la mer' (1990) 4 *Recueil des cours* 25.

22 Cf. WT Burke, 'US Fisheries Management and the New Law of the Sea' (1982) 76 *AJIL* 24. Moreover on the fisheries management see also: B Applebaum and A Donohue, 'The Role of Regional Fisheries Management Organizations' in E Hey (ed.), *Developments in International Fisheries Law* (Kluwer Law International, 1999), 217 ; R Barnes, 'The Convention on the Law of the Sea: An Effective Framework for Domestic Fisheries Conservation?' in D Freestone, R,Barnes, and D Ong (eds), *The Law of the Sea: Progress and Prospects* (Oxford University Press, 2006), 233 ; WT Burke, *The New International Law of Fisheries: UNCLOS 1982 and Beyond* (Clarendon Press, 1994) ; DR Christie, 'It Don't Come EEZ: The Failure and Future of Coastal State Fisheries Management' (2004) 14 *Journal of Transnational Law and Policy* 1 ; DR Christie, 'The Conservation and Management of Stocks Located Solely within the Exclusive Economic Zone' in Hey (ed.), *Developments in International Fisheries Law*, 395; FAO Fisheries and Aquaculture Department, *The State of World Fisheries and Aquaculture 2006* (Rome, 2007) ; FAO Fisheries Department, *The State of World Fisheries and Aquaculture 2004* (Rome, 2004) ; FAO, *Code of Conduct for Responsible Fisheries* (Rome, 1995) ; E Hey, *The Regime for the Exploitation of Transboundary Marine Fisheries Resources: The United Nations Law of the Sea Convention Cooperation between States* (Martinus Nijhoff, 1989) ; SB Kaye, *International Fisheries Management*, International Environmental Law and Policy Series (Kluwer Law International, 2001) ; G Moore, 'The Code of Conduct for Responsible Fisheries' in Hey (ed.), *Developments in International Fisheries Law*, 85; R Rayfuse,'The interrelationship between the global instruments of international fisheries law' in Hey (ed.), *Developments in International Fisheries Law*, 107; LM Syarif, 'Promotion and Management of Marine Fisheries in Standard for Sustainable EEZ Fisheries Management' in G Winter (ed.), *Towards Sustainable Fisheries Law: A Comparative Analysis* (IUCN, 2009) No. 74, 31.

23 On coercive measures which can be generally adopted by the coastal State to protect the living resources in its EEZ, see FAO, *Report on an Expert Consultation on Monitoring, Control and Surveillance System for Fisheries Management* (Rome, 1981) ; FAO, *Code of Conduct* (n 22); FAO, *Fisheries Management, 4, Marine Protected Areas and Fisheries, FAO Technical Guidelines for Responsible Fisheries*, No. 4, Suppl. 4 (FAO, 2011) 1. See also T Dux, *Specially Protected Marine Areas in the Exclusive Economic Zone (EEZ): The Regime for the Protection of Specific Areas of the EEZ for Environmental Reasons under International Law* (LIT, 2011). It was also argued that the restriction provided by United Nations Convention on the Law of the Sea (Montego Bay, opened for signature 10 Dec. 1982, entered into force 16 Nov. 1994) 1833 UNTS 3, Art. 73(3) (UNCLOS), which excludes that coastal States may adopt measures such as imprisonment or any other form of corporal punishment, should be applied only to violations committed by vessels authorized to fish under UNCLOS, Arts 62, 69, and 70. See also S Oda, 'Fisheries under the Unites Nations Convention on the Law of the Sea' (1983) 77 *AJIL* 739 . See also Attard (n 1).

24 U Beyerlin, 'Different Types of Norms in International Environmental Law: Policies, Principles and Rules' in D Bodansky, J Brunnée, and E Hey (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press, 2001) 425 ; PW Birnie, AE Boyle, and C Redgwell, *International Law and the Environment* (3rd edn, Oxford University Press, 2009) ; MJ Bowman and CJ Redgwell (eds), *International Law and the Conservation of Biological Diversity* (Kluwer Law International, 1996) ; Del Vecchio (n 18); E Franckx, 'Exclusive Economic Zone, State Practice and the Protection of the Marine Environment' in E Franckx and P Gautier (eds), *La zone économique exclusive et la Convention des Nations Unies sur le droit de la mer, 1982–2000: un premier bilan de la pratique des États* (Bruylant, 2003) 11–30 ; N De Sadeleer, *Environmental Principles: From*

Political Slogans to Legal Rules (Oxford University Press, 2002) ; P Sands and J Peel, *Principles of International Environmental Law* (3rd edn, Cambridge University Press, 2012).

25 N Papadakis, 'Artificial Islands, Installations and Structures in the Exclusive Economic Zone' in Conforti (n 20) 99; P Peters, AHA Soons, and LA Zima, 'Removal of Installations in the EEZ' (1984) 14 *NYBIL* 167 ; S Rastrelli, 'Il regime giuridico delle isole artificiali, installazioni e strutture esistenti nella zona economica esclusiva' in U Leanza and L Sico (eds), *Zona economica esclusiva e Mare Mediterraneo* (Editoriale Scientifica, 1989) 57.

26 D Rinoldi, 'Zona economica esclusiva e ricerca scientifica in mare: questioni concernenti la cooperazione comunitaria ed il Mare Mediterraneo' in Leanza and Sico (n 25) 92 ff.

27 Scholars have highlighted the risk that, in the absence of detailed criteria set by the Convention, to distinguish the different categories of research mentioned respectively in paras 3 and 5 of Art. 246 UNCLOS, the coastal State could easily withhold its consent, even in cases in which, according to Art. 246 para 3, it would be required to grant it, citing the more or less direct impact of the research activities on the exploration and exploitation of their natural resources. In this regard, see R Pisillo-Mazzeschi, 'La ricerca scientifica nella zona economica esclusiva e sulla piattaforma continentale' in Conforti (n 20) 168; T Treves, *La ricerca scientifica nell'evoluzione del diritto del mare* (Giuffrè, 1978) 69 ff.

28 This is essentially a hypothesis of tacit consent, originally proposed by Italy during the works of the Committee for the peaceful use of the seabed (Sea-bed Committee Documents, Doc A/AC.138/SC.III/L.50, vol. 33). On this point, see also Caflisch and Piccard (n 20) 868.

29 N Parisi, 'La cooperazione interstatuale per la protezione dell'ambiente marino nel Mare Mediterraneo: tendenze evolutive nella prassi più recente' in Leanza and Sico (n 25) 173.

30 See G Righetti, 'Il contenuto dell'articolo 59 della Convenzione sul diritto del mare del 1982' in Leanza (n 16) 227; L Sico, 'Osservazioni sull'articolo 59 della Convezione di Montego Bay' in Leanza and Sico (25) 281.

31 G D'Agosto, 'Attività militari e zona economica esclusiva' in Leanza and Sico (n 25) 67; MA Morris, 'Military Aspects of the Exclusive Economic Zone' (1982) 3 *Ocean Yearbook* 320 ; RP Pedrozo, 'Preserving Navigational Rights and Freedoms: The Right to Conduct Military Activities in China's Exclusive Economic Zone' (2010) 9(1) *Chinese Journal of International Law* 9 ; JP Queneudec, 'Zone économique exclusive et forces aéronavales' in RJ Dupuy (ed.), *The Management of Humanity's Resources: The Law of the Sea. Workshop, The Hague, 29–31 October 1981* (Martinus Nijhoff, 1982) 319 ; HB Robertson, 'Navigation in the Exclusive Economic Zone' (1984) 24(4) *Va J Int'l L* 865 ; T Scovazzi, 'Coastal States Practice in the Exclusive Economic Zone: The Rights of Foreign States to Use the Zone', Paper for the XX Annual Conference on the Law of the Sea Institute (Miami, 1986) ; A Skaridov, 'Military Activity in the EEZ: Exclusive or Excluded Right?' in MH Nordquist et al. (eds), *Freedom of Seas* (n 1) 249; RJ Zedalis, 'Foreign State Military Use of Another State's Continental Shelf and International Law of the Sea' (1984) 16 *Rutgers Law Journal* 21.

32 See e.g. M Coelho, J Filipe, and M Ferreira, 'Creeping Jurisdiction: The Enlargement of Economic Exclusive Zones' in *Proceedings do 15º Congresso da APDR* (Associação Portuguesa de Desenvolvimento Regional, 2009) 3318 ; N Esters, 'Impacts of Language: Creeping Jurisdiction and its Challenges to the Equal Implementation of the Law of the Sea Convention' in Conference Paper for the HO/IAG Advisory Board on the Law of the Sea Conference, *Difficulties in Implementing the Provisions of UNCLOS* (2008) ; E Franckx, 'The 200-nautical Miles Limit: Between Creeping Jurisdiction and Creeping Common Heritage?' (2005) 48 *German Yearbook of International Law* 117 ; SB Kaye, 'Freedom of Navigation in a Post 9/11 World: Security and Creeping Jurisdiction' in Freestone et al. (n 22) 347; JA Knauss, 'Creeping Jurisdiction and Customary International Law' (1985) 15(2) *ODIL* 209 ; B Kwiatkowska, 'Creeping Jurisdiction Beyond 200 Nautical miles in the Light of the 1982 Law of the Sea Convention and State Practice' (1991) 22(2) *ODIL* 153.

33 E Franckx, 'The 200-nautical Miles Limit: Between Creeping Jurisdiction and Creeping Common

Heritage? Some Law of the Sea Considerations from Professor Louis Sohn's Former LLM Student' (2007) 39(3) *George Washington Int'l L Rev* 467.

34 UNCLOS, Art. 59 has been seen as the basis for the 'creeping jurisdiction' by coastal States: N Esters (n 32).

35 See GV Galdoresi and AG Kaufman, 'Military Activities in the Exclusive Economic Zone: Preventing Uncertainty and Defusing Conflict' (2007) 32 *Cal W Int'l LJ* (2002) 253 ; JM Van Dyke, 'Military Ships and Planes operating in the Exclusive Economic Zone of Another Country' (2004) 28 *Marine Policy* 29.

36 See EJ Molenaar, *Coastal State Jurisdiction Over Vessel-Source Pollution* (Kluwer, 1998) ; M Roscini, 'The Navigational Rights of Nuclear Ships' (2002) 15 *Leiden J Int'l L* 251 ; JM Van Dyke, 'The Legal Regime Governing Sea Transport of Ultrahazardous Radioactive Materials' (2002) 33 *ODIL* 77 ; JM Van Dyke, 'Balancing Navigational Freedom with Environmental and Security Concerns' 15 (2003) 15 *Colorado J Int'l Env L & Policy* 19.

37 The four well-known incidents are the collision between a US EP-3 surveillance aircraft and a Chinese F-8 on 1 Apr. 2001 and China's interference with the USNS *Bowditch* (T-AGS 62) on 23 Mar. 2001, the USNS *Impeccable* (T-AGOS 23) on 9 Mar. 2009, and the USNS *Victorious* (T-AGOS 19) on 1 May 2009.

38 On 23 Jan. 1968, the USS *Pueblo* (AGER-2) was attacked by North Korean vessels and MiG jets. One crew member died, and the remaining 82 crew members were captured and held prisoner for 11 months. On 15 Apr. 1969, a North Korea MiG-17 shot down a US Navy EC-121 reconnaissance aircraft over the Sea of Japan. All 31 crew members died. North Korea claimed that it had shot down the aircraft because it had violated its territorial airspace.

39 On 24 Apr. 1992, two Peruvian Air Force SU-22 aircraft opened fire on a US C-130 aircraft that was conducting a routine counter-narcotics surveillance mission some 60 nm off the coast of Peru in international airspace, after the US aircraft refused to obey an order to land. One US service member was killed and two others were wounded.

40 See E Franckx, 'American and Chinese Views on Navigational Rights of Warships' (2011) 10 *Chinese J Int'l L* 187 ; JW Houck, 'Alone on a Wide Wide Sea: A National Security Rationale for Joining the Law of the Sea Convention' (2012) 1 *Penn State J L & Int'l Aff* 1 ; Pedrozo (n 31) 9.

41 T Abbundo, 'Diritti di pesca degli Stati privi di litorale e geograficamente svantaggiati nelle zone economiche esclusive degli Stati vicini' in Leanza and Sico (n 25) 197; JE Bailey, 'The Unanticipated Effects of Boundaries: The Exclusive Economic Zone and Geographically Disadvantaged States Under UNCLOS III' (1997) 5(1) *Boundary & Security Bulletin* 87 ; L Caflisch, 'The Fishing Rights of Land-Locked States and Geographically Disadvantaged States in the Exclusive Economic Zone' in B Conforti (n 20) 29; Y Huang, 'Rights of Land-locked and Geographically Disadvantaged States in the Exclusive Economic Zone' in R Lagoni, P Ehlers, and M Paschke (eds), *Recent Developments in the Law of the Sea* (LIT, 2011) 87 ; EJ De Arechaga, 'International Law in the Past Third of a Century' (1978) 1 *Recueil des cours* 1, in particular 220–2; A Martinez Puñal, *Los derechos de los estados sin litoral y su situation geográfica desventajosa en la zone économica exclusiva* (Conselleria da Presidencia e Administracion Publica, Servicio Central de Publicacions, Xunta de Galicia, 1988) ; C Palazzoli, 'De quelques développements récents du droit des gens en matière d'accés à la mer des Pays dépourvus de littoral' (1966) 77 *RGDIP* 667 ; J Symonides, 'Geographically Disadvantaged States under the 1982 Convention on the Law of the Sea' (1978) 1 *Recueil des cours* 287 , in particular 374–8; AH Tabibi, 'The Right of Free Access to and from the Sea for Land-Locked States, as well as Their Right to Exploitation of Living and Non-Living Resources of the Sea' (1978) 29(1–2) *OZöRV* 75 ; For a more comprehensive bibliography on the subject, see MI Glassner, *Bibliography on Land-Locked States* (Martinus Nijhoff, 1991).

42 Caflisch (n 16) 165 ff.; T Scovazzi, 'Les espèces hautement migratoires et le droit international de la mer' in B Vukas (ed.), *Essay on the New Law of the Sea*, (1985) 276.

[43] The first session of the UN Conference on Highly Migratory Species and Straddling Stocks took place in New York in July 1993 (UN Docs A/CONF.164/13, 29 July 1993; A/CONF.164/L, 1–33, 27 May–28 July 1993; and A/CONF.164/INF., 1–6, 16 May–26 July 1993). See also DH Anderson, 'The Straddling Stocks Agreement of 1995: An Initial Assessment' (1996) 44 *ICLQ* 463 ; DA Balton, 'Strengthening the Law of the Sea: The New Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks' (1996) 27 *ODIL* 125 ; J Ellis, 'The Straddling Stocks Agreement and the Precautionary Principle as Interpretive Device and Rule of Law' (2001) 32(4) *ODIL* 289 ; D Freestone and Z Makuch, 'The New International Environmental Law of Fisheries: The 1995 United Nations Straddling Stocks Agreement' (1996) 7 *YBIEL* 3 ; L Juda, 'The 1995 United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks: A Critique' (1997) 28 *ODIL* 147.

[44] Straddling stocks are fish stocks that migrate through more than one EEZ. Highly migratory fish refers to fish species which undertake ocean migrations and also have wide geographic distributions, such as tuna, shark, marlin, and swordfish.

[45] Between 1976 and 1978, more than 60 countries extended their sovereignty over biological resources up to 200 nm. In late 1978, among 130 States, 98 had extended their fisheries jurisdiction beyond 12 nm, and 80 claimed the 200 nm limit. Out of these 80 States, 41 had proclaimed an exclusive economic zone, 27 an exclusive fishing zone, and 14 even a territorial sea. Among the States that to this date had extended their jurisdiction to 200 nm there were also States previously hostile to the concept of an EEZ: such as the USSR, USA, Japan, Great Britain, and France. The former Soviet Union, in 1976, and Japan, in 1977, enacted such laws on an interim basis. For a detailed analysis of the unilateral practice of States, before the opening of the Third Conference, see Attard (n 1) 3–31.

[46] In 1986, among 142 States, 102 had extended their jurisdiction to 200 nm; among those, 68 had declared an economic zone, 20 a zone of exclusive fishing, and 13 even a territorial sea. For an updated overview of the State claims, see *LIS*, No. 36, 3 Jan. 1990; *LIS*, No. 36, 8 Revision, 25 May 2000; US Department of Defense, *Maritime Claims Reference Manual*, Washington DC, 23 June 2005 ; UN, Office for Ocean Affairs and the Law of the Sea, *The Law of the Sea: National Claims to Maritime Jurisdiction: Excerpts of Legislation and Table of Claims* (1992) ; UN, Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, *Digest of International Cases on the Law of the Sea* (2006) . For the texts of national legislation concerning the EEZ and fishing areas, see UN, Office of the Special Representative of the Secretary General for the Law of the Sea, *The Law of the Sea, National Legislation on the Exclusive Economic Zone, the Economic Zone and the Exclusive Fishery Zone* (1986). For a comment of the doctrine on unilateral practice of States in the matter, see W Goralczyc, 'La Mer Baltique et les problèmes de coopération des États riverains' (1980) 84 *RGDIP* 269 ; RB Krueger and MH Nordquist, 'The Evolution of the 200-nautical Miles Exclusive Economic Zone: State Practice in the Pacific Basin' (1978–1979) 19 *Va J Int'l L* 321 ; SKB Mfodwo, BM Tsamenyi, and SKN Blay, 'The Exclusive Economic Zone: State Practice in the African Atlantic Region' (1989) 20(5) *ODIL* 445 ; Nadelson (n 2) 463; C Park, 'Les juridictions maritimes dans la mer de la Chine' (1980) 84 *RGDIP* 328 ; JF Pulvenis, 'La Mer des Caraïbes' (1980) 84(1) *RGDIP* 310 ; R Ranjeva, 'L'Océan Indien et le nouveau droit de la mer' (1980) 84 *RGDIP* 298 ; Treves (n 21); Winter (n 22).

[47] FAO drafted a programme to assist the development and management of biological resources in the EEZ in 1979. The purpose of this programme was to assist States in developing national legislation for the rational management of living resources. More than 40 States, usually developing States, used such collaboration for the regulation of fishing within the EEZ in 1982. See FAO, *Fisheries Management. 4* (n 23); FAO, *Code of Conduct* (n 22). For an analysis of its content, see Moore (n 22) 85.

[48] For State practice, see JE Carroz and M Savini, 'La pratique des États côtiers en matière d'accès par les États étrangers aux ressources ichtyologiques (analyse des accords bilatéraux)' in FAO, *Rapport sur les pêches n. 293* (1983) 40 ff. ; JE Carroz and M Savini, 'Les accords de pêche

conclus par les États africains riverains de l'Atlantique' (1983) 29 *AFDI* 674 ; E Chege Kamau, A Wamukota, and N Muthiga, 'Promotion and Management of Marine Fisheries in Kenya' in Winter (n 22) 83; WR Edeson, 'Types of Agreements for Exploitation of the EEZ Fisheries' in ED Brown and RR Churchill (eds), *The U.N. Convention on the Law of the Sea: Impact and Implementation (Law of the Sea Institute Conference 1985)* (Law of the Sea Institute, 1987) 157 ; M Figuereido, 'Promotion and Management of Marine Fisheries in Brazil' in Winter (n 2) 187; GA Leger, 'Les accords bilatéraux régissant la pêche étrangère dans les eau canadiennes' (1978) 16 *Can. YIL* 116 ; M Markowski, 'The International Legal Standard for Sustainable EEZ Fisheries Management' in Winter (n 2) 3; G Ponce-Díaz, F Arregín-Sánchez, A Díaz-De León, and P Alvarez Torres, 'Promotion and Management of Marine Fisheries in Mexico' in Winter (n 2) 233; RM Rukoro, 'Promotion and Management of Marine Fisheries in Namibia' in Winter (n 2) 139; Syarif (n 2) 31.

49 Among the others, see: J Carroz and M Savini, 'La pratique des États côtiers' (n 48); A Del Vecchio, 'Sull'incidenza della normativa comunitaria in materia di pesca fra Stati membri della CEE e Stati terzi' in (1982) 65 *RDI* 571 ; G Habib, 'L'accès de la CEE aux zones de pêche des États ECP' (1989) *Rev Jur Pol, Indépendence et Coopération*, 164 ; T Markus, 'Promotion and Management of Marine Fisheries in the European Community' in G Winter (n 2) 253; N Nitsch, 'Les accords de pêche entre la Communauté et les États tiers' (1980) *Rev Marché commun* 453.

50 After 1978, world production has not registered more downturns: between 1980 and 1985 production has increased at an annual growth rate of 3%; in 1985, production reached a record level of 85 million tons, with an increase of 7% compared to 1983. According to FAO estimates, in 2009 the world production of fisheries products amounted to 144.6 million tons, of which 61.5% came from fishing (catches), and the remaining part, i.e. the 38.5%, from breeding (aquaculture). In marine waters the catches prevail on aquaculture, constituting in 2009 about 82% of the fish production. Vice versa, in the internal waters the breeding assumes a greater weight, which, with 38.1 million tones, represents about 79% of the entire production. Basically then, while most of the fishing activity is carried out in marine water (more than 88% of all catches), activities of aquaculture are concentrated in the internal waters (more than 68%). World production of fisheries products increased in 2009 over the previous year of about 2 million tones (+1.5%), confirming the growth of the sector identified as early as 2004. The increased production derives particularly from the increase in the aquaculture sector (+2.7 million tons; up 5.1% compared to 2008), being since 2006 a substantial stability of catches, which in the period 2006–2009 were maintained at between 89 and 90 million tones. It is no coincidence that the production in the internal waters grew in 2009, about 5%, while the products derived from the marine environment remained stable for about four years, at about 96 million tones.

51 The following 5 cases may be mentioned as examples of rampant jurisdiction of coastal States: *Maldives*: Law No. 30/76 of 27 Nov. 1976, which establishes an EEZ of the Republic of Maldives beyond the limit of 200 nm offshore from its coast, and Law No. 32/76 of 5 Dec. 1976 relating to the navigation and passage by foreign ships and aircrafts through the airspace, territorial waters, and the economic zone of the Republic of Maldives, which provides that innocent passage is subject to the prior consent of the Government of the Republic of Maldives, also within its EEZ. Cf. Circular of the Ministry of Foreign Affairs of the Republic of Maldives, cir/91/02 of 7 Mar. 1991. *Chile*: Fisheries Laws No. 19,079 and 19,080 (in *Diario Oficial de la Republica de Chile*, 6 Sept. 1991) which introduced the concept of 'Mar presencial' (or 'the Sea in which we are present') meaning that 'part of the ocean space between the outer limits of Chile's continental EEZ and the meridian which, passing through the western edge of Easter Island continental shelf, extends north to the international boundary with Peru and south to the South Pole. Within this space, qualified as an international sea, Chile intends to exercise its jurisdiction to different purposes, among others, the exploitation of resources, on the basis of the need of their rational exploitation, in order to prevent the depletion'. According to this interpretation, Chile is allowed to extend its jurisdiction within a certain range beyond the EEZ to protect and conserve maritime resources, including straddling and migratory fish stocks (cf. the text of the Conference held by Admiral Bush at the opening of the Program of celebrations for the month of the Sea in 1991). *Canada*: Coastal Fisheries Protection Act

(SRC 1979, Chap. C-21, as modified on 11 May 1987): despite the reaffirmation of freedom of navigation in the EEZ in the Verbal Note of 16 Aug. 1988 of the Canadian Ministry of Foreign Affairs addressed to the Embassy of Spain in Ottawa, Canada applies to its EEZ the provision of Art. 3.1 of the Coastal Fisheries Protection Act, according to which no foreign fishing vessel shall enter Canadian fisheries waters for any purpose unless authorized by (a) this Act or the regulations, (b) any other law of Canada (c) or a treaty. Furthermore, the draft legislation C-39 of 2 Oct. 1989 (Art. 13, which amends the previous law on the protection of coastal fisheries) prohibited any persons on board a foreign vessel 'de pêcher ou se preparer à pêcher toute espèce sédentaire de poisson en quelque partie du plateau continental située au-delà des eaux de pêche canadiennes'. *Brazil*: Declaration upon ratification of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 10 Dec. 1988, according to which no State may arrest and visit foreign vessels navigating in the EEZ of Brazil, which are suspected to have on board a cargo of illicit drugs, without the prior consent of the coastal State, i.e. Brazil. *Argentina*: Law No. 23.968 of 14 August 1991 (*Bulletin du droit de la mer* (n 20) mars 1992, 22 ff.) whose Art. 5 para 3 provides that 'National provisions concerning the conservation of resources shall apply beyond the two hundred (200) nautical miles zone in the case of migratory species or species which form part of the food chain of species of the exclusive economic zone of Argentina'. For a comment of the doctrine on the above State practices see: JG Dalton, 'The Chilean Mar Presencial: A Harmless Concept or A Dangerous Precedent?', (1993) 8 *IJMCL* 397 ; Figuereido (n 48) 187 ff.; C Joyner and P De Cola, 'Chile's Presencial Sea Proposal: Implications for Straddling Stocks and the International Law of Fisheries' 24 (1993) 1 *ODIL* 101 ; E Miles and WT Burke, 'Pressures on the United nations Convention on the Law of the Sea of 1982 Arising from New Fisheries Conflicts: The Problem of Straddling Stocks' (1989) 20 *ODIL* 343 ; MMJ Salmon and E Franckx, Les revendications des certains États riverains sur les ressources vivantes dans les zones de la haute-mer adjacente aux zones économiques exclusives. Avis donné à la Commission des Communautées européennes, 1 juin 1992 (Brussels, 1992) ; Treves (n 21) 147 ff.; JL Zackrison and JE Meason, 'Chile, Mar Presencial and the Law of the Sea' (1997) *NWC Rev* 65.

52 With regard to the delimitation of the EEZ compared to the continental shelf, see *Continental Shelf* (*Tunisia v Libyan Arab Jamahiriya*) *Judgment* [1982 and 1985] ICJ Rep; *Maritime Delimitation in the Area between Greenland and Jan Mayen* (*Denmark v Norway*) [1993] ICJ Rep; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (*Qatar v Bahrain*) [2001] ICJ Rep; *Land and Maritime Boundary between Cameroon and Nigeria* (*Cameroon v Nigeria:* Equatorial Guinea intervening) [2002] ICJ Rep; S Oda, 'Trends in the Delimitation of the Continental Shelf/Exclusive Economic Zone at the United Nations Third Conference on the Law of the Sea' in E McWhinney (ed.), *Judge Shigeru Oda and the Progressive Development of International Law: Opinions (Declarations, Separate Opinions, Dissents) on the International Court of Justice, 1976–1992* (Martinus Nijhoff, 1993), 234; and MC Ciciriello, *Le formazioni insulari e la delimitazione degli spazi marini* (Editoriale Scientifica, 1990) 227 ff .; J Shi, 'Maritime Delimitation in the Jurisprudence of the International Court of Justice' (2010) 9(2) *Chinese J Int'l L* 271 ; T Treves, 'The Exclusive Economic Zone and the Settlement of Disputes' in Franckx and Gautier (n 24) 79. Moreover, most recently on 15 Mar. 2012 the International Tribunal for the Law of the Sea awarded Bangladesh an EEZ measuring 685 sq km in the Bay of Bengal, as well as full access to the outer continental shelf. The court also awarded Bangladesh a 41 sq km territorial sea area around the island of St Martin's. The decision means Dhaka can pursue oil and gas exploration in the resource-rich area. Bangladesh filed its case against Burma at the United Nations Maritime Tribunal in 2009.

53 See UN, Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, *Digest of International Cases on the Law of the Sea* (2006). This UN publication contains a selection of summaries of cases dealing with Law of the Sea issues from the late nineteenth century to the present time. The 33 cases selected have been deemed useful in understanding the evolution of jurisprudence concerning the Law of the Sea. See D Rothwell, *The Law of Maritime Boundary Delimitation between States: A History of its Development to the Present Day* (LLM dissertation,

University of Alberta, Canada, 1984).

[54] UN, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, *Law of the Sea Bulletins Repertory* (2012) 1–70.

[55] The texts of the agreements referred to have been published in B Conforti et al. (eds), *Atlante dei confine sottomarini* (Giuffrè, 1979–1987) vols I–II. The Agreement between Australia and the Solomon Islands of 1988 is published in (1989) 2 *IJECL* 152.

[56] Conforti et al. (n 55).

[57] For this agreement, see UN, Office of the Special Representative of the Secretary General for the Law of the Sea, *Current Developments in State Practice* (1992) vol. III, 203 ff.

[58] It is useful to remember some other agreements more recently signed on the delimitation of the exclusive economic zones: for example, on 17 Feb. 2003, Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone; on 23 Jan. 2002, Agreement between the Government of the United Republic of Tanzania and the Government of the Republic of Seychelles on the Delimitation of the Maritime Boundary of the Exclusive Economic Zone and Continental Shelf; on 21 Feb. 2001, Treaty between the Federal Republic of Nigeria and the Democratic Republic of São Tomé and Príncipe on the Joint Development of Petroleum and other Resources, in respect of Areas of the Exclusive Economic Zone of the Two States; on 19 Feb. 2001, Agreement between the Government of the French Republic and the Government of the Republic of Seychelles concerning delimitation of the Maritime Boundary of the Exclusive Economic Zone and the Continental Shelf of France and of the Seychelles which establishes French Southern and Antarctic Lands Glorioso Islands–Seychelles boundary; and on 25 Dec. 2000, Agreement between the People's Republic of China and the Socialist Republic of Viet Nam on the delimitation of the territorial seas, the exclusive economic zones, and continental shelves in Beibu Bay/Bac Bo Gulf.

[59] Bahamas adopted, on 1996, an Act (No. 37 of 1993) respecting the Territorial Sea, Archipelagic Waters, Internal Waters and the Exclusive Economic Zone, entered into force on 4 Jan. 1996.

[60] Denmark adopted on 22 May 1996, the Act. No. 411 on Exclusive Economic Zones; on 19 July 2002 the Executive Order No. 613 in order to Amend the Executive Order concerning Denmark's Exclusive Economic Zone. Afterwards, Denmark adopted the Royal Decree on the Entry into Force of Act on Exclusive Economic Zones for Greenland on 15 Oct. 2004, and on 20 Oct. 2004 the Executive Order on the Exclusive Economic Zone of Greenland.

[61] Japan adopted Law No. 74 on the Exclusive Economic Zone and the Continental Shelf of 1996, and Law No. 140 on the Exclusive Economic Zone and the Continental Shelf-Act of 14 June 1996.

[62] In 2009 Cuba adopted the Decree-Law No. 266 on the outer limits of the EEZ of the Republic of Cuba in the Gulf of Mexico.

[63] Philippines adopted in 2009 the Republic Act No. 9522 (An Act to Amend Certain Provisions of Republic Act No. 3046, as amended by Republic Act No. 5446, to Define the Archipelagic Baselines of the Philippines, and for Other Purposes).

[64] Netherlands adopted the Kingdom Act of 27 May 1999 establishing an EEZ of the Kingdom (Exclusive Economic Zone (Establishment) Act) and the Netherlands Decree of 13 Mar. 2000 determining the outer limits of the EEZ of the Netherlands and effecting the entry into force of the Kingdom Act establishing an EEZ (Exclusive Economic Zone of the Netherlands (Outer Limits) Decree).

[65] Federal Republic of Germany proclaimed on 25 Nov. 1994 the establishment of an Exclusive Economic Zone of the Federal Republic of Germany in the North Sea and in the Baltic Sea.

[66] Proclamation by the President of the United States of America on the Exclusive Economic Zone of the United States of America, 10 Mar. 1983.

[67] The Russian Duma adopted in Nov. 1998 and the Federation Council approved on 2 Dec. 1998

a Federal Act on the EEZ of the Russian Federation: this Federal Act defines the *status* of the EEZ of the Russian Federation, the sovereign rights and jurisdiction of the Russian Federation in its EEZ, and the exercise thereof in accordance with the Constitution of the Russian Federation, the generally recognized principles and norms of international law and the international treaties to which the Russian Federation is a party. Matters relating to the EEZ of the Russian Federation and activities therein not provided for in this Federal Act are regulated by other federal laws applicable to the EEZ of the Russian Federation and to activities therein.

68 Act No. 5 of 1983 of 18 Oct. 1983 on the Indonesian exclusive economic zone.

69 National legislation and unilateral proclamations concerning the EEZ are collected in: UN, Office of the Special Representative of the Secretary General for the Law of the Sea *The Law of the Sea, National Legislation on the Exclusive Economic Zone, the Economic Zone and the Exclusive Fishery Zone* (1986); UN, Office of the Special Rep of the Sec Gen, *Current Developments in State Practice* (1987); UN, Office of the Special Rep of the Sec Gen, *Current Developments in State Practice* (1989); UN, Office of the Special Rep of the Sec Gen, *Current Developments in State Practice* (1992); UN, Office of the Special Rep of the Sec Gen, *Current Developments in State Practice* (1995); UN, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, *Law of the Sea Bulletins—Repertory* (2012) 1–70.

70 DW Bowett, 'Exploitation of Mineral Resources and Continental Shelf' in Leanza (n 16) 25.

71 In this regard, see L Caflisch, 'Les zones maritimes sous juridiction nationale: leurs limites et leur délimitation' in D Bardonnet and M Virally (eds), *Le nouveau droit international de la mer* (Pedone, 1983) 104.

72 M Adi, *The Application of the Law of the Sea and the Convention on The Mediterranean Sea* (UN, Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, 2009) ; U Leanza, *Il regime giuridico internazionale del mare Mediterraneo* (Editoriale Scientifica, 2008) ; M Skrk, 'Exclusive Economic Zones in Enclosed or Semi- Enclosed Seas' in B Vukas (ed.), *The Legal Regime of Enclosed and Semi-enclosed Seas: The Particular Case of the Mediterranean* (Birotehnika, 1988) 62 ff. ; B Vukas, 'The Mediterranean: An Enclosed or Semi-enclosed sea?' in Vukas (ed.), *The Legal Regime of Enclosed and Semi-enclosed Seas*, 51.

73 France is in the process of declaring an EEZ in the Mediterranean Sea. In this basin France established an ecological protection zone and a surveillance zone, in which the coastal State ensures surveillance against offences breaking international regulations. For a detailed analysis see: Policy Research Corporation, *The potential of Maritime Spatial Planning in the Mediterranean Sea Case Study Report: The Western Mediterranean*, Study carried out on behalf of the European Commission (2011).

74 Although Spain has established an EEZ in the Atlantic Ocean, the country did not decide upon the establishment of an EEZ in the Mediterranean Sea.

75 In particular, in 1981, Morocco created a 200 nm EEZ (Dahir No. 1-81-179 of 8 April 1981), without distinguishing between the Mediterranean and the Atlantic coasts; Egypt, upon ratifying UNCLOS on 26 Aug. 1983, declared that it 'will exercise as from this day the rights attributed to it by the provisions of parts V and VI of the…Convention…in the EEZ situated beyond and adjacent to its territorial sea in the Mediterranean Sea and in the Red Sea'. Syria in 2003, by Law No. 28 of 19 Nov. 2003 provided for the establishment of an EEZ. Moreover, in 2004 Cyprus proclaimed an EEZ under the Law adopted on 2 Apr. 2004. And in 2005 Tunisia established an EEZ under the Law No. 2005-60 of 27 June 2005, but the modalities for the implementation of such law will be determined by decree. In 2009, Libya proclaimed an EEZ with a declaration of 27 May 2009 and a decision of 31 May 2009, No. 260, and the external limit of the zone shall be determined by agreements with the neighbouring States concerned. And finally, in 2011 Lebanon established its EEZ by a framework Law adopted on 19 Sept. 2011 and defined in the text of three annexes the limits of the zone between Lebanon and, respectively, Syria, Cyprus, and Palestine. See: T Scovazzi and C Samier, 'Fisheries Legislation of the GFCM Mediterranean and Black Sea Members', FAO, General

Fisheries Commission for the Mediterranean (2012) . See also B Vukas, 'State Practice in the Aftermath of the UN Convention on the Law of the Sea: The Exclusive Economic Zone and the Mediterranean Sea' in A Strati, M Gavouneli, and N Skourtos (eds), *Unresolved Issues and New Challenges to the Law of the Sea: Time before and Time after* (Martinus Nijhoff, 2006) 251.

76 On 3 Oct. 2003, the Croatian Parliament adopted a 'decision on the extension of the jurisdiction of the Republic of Croatia in the Adriatic Sea' and proclaimed 'the content of the EEZ related to the sovereign rights for the purpose of exploring and exploiting, conserving and managing the living resources beyond the outer limits of the territorial sea, as well as the jurisdiction with regard to marine scientific research and the protection and preservation of the marine environment, whereby the ecological and fisheries protection zone of the Republic of Croatia is established as of today' (Art. 1).

77 On 3 June 2004, the Croatian Parliament amended the 2003 decision in order to postpone implementation of the ecological and fishing zone with regard to Member States of the European Union.

78 Some Mediterranean coastal States have proclaimed *sui generis* zones, i.e. fishing zones or ecological protection zones. While neither of them is mentioned in UNCLOS, they are not forbidden either. In particular, five States have declared a fishing zone beyond the limit of the territorial sea: Tunisia has established along its southern coastline (from Ras Kapoudia to the frontier with Libya) a fishing zone delimited according to the criterion of the 50-metre isobaths, based on a legislation of 1951 (Decree of the Bey of 26 July 1951) which was subsequently confirmed (Law No. 63-49 of 30 Dec. 1963 and Law No. 73-49 of 2 Aug. 1973); Malta, in 1978, established a 25-nm exclusive fishing zone with the Territorial Waters and Contiguous Zone Amendment Act of 18 July 1978. Under Legislative Act No. X of 26 July 2005, fishing waters may be designated beyond the limits laid down in the 1978 Act and jurisdiction in these waters may also be extended to artificial islands, marine scientific research, and the protection and preservation of the marine environment; Algeria created, in 1994, a fishing zone whose extent is 32 nm from the maritime frontier with Morocco to Ras Ténès and 52 nm from Ras Ténès to the maritime frontier with Tunisia (Legislative Decree No. 94-13 of 28 May 1994). Spain, in 1997, established a fishing protection zone in the Mediterranean (Royal Decree 1315/1997 of 1 Aug. 1997, modified by Royal Decree 431/2000 of 31 Mar. 2000). The zone is delimited according to the line which is equidistant between Spain and the opposite or adjacent coasts of Algeria, Italy, and France; Libya, in 2005, established a fisheries protection zone whose limits extend seaward for a distance of 62 nm from the external limit of the territorial sea (General People's Committee Decision No. 37 of 24 Feb. 2005), according to the geographical coordinates set forth in General People's Committee Decision No. 105 of 21 June 2005. Furthermore, three other States have adopted legislation for the establishment of an ecological protection zone: in 2003, France adopted Law No. 2003-346 of 15 Apr. 2003 which provides that an ecological protection zone may be created. In this zone France exercises only some of the powers granted to the coastal State under the EEZ regime, namely the powers relating to the protection and preservation of the marine environment, marine scientific research, and the establishment and use of artificial islands, installations, and structures. A zone of this kind was established along the French Mediterranean coast by Decree No. 2004-33 of 8 Jan. 2004 which specifies the coordinates to define the external limit of the zone. The French zone partially overlaps with the Spanish fishing zone; in 2005, Slovenia provided for the establishment of an ecological protection zone (Law of 4 Oct. 2005). In 2006, Italy adopted a framework legislation for ecological protection zones (Law No. 61 of 8 Feb. 2006) to be established by decrees. Within the ecological zones, Italy exercises powers which are not limited to the prevention and control of pollution, but extend also to the protection of marine mammals, biodiversity, and the archaeological and historical heritage. The first of the implementing enactments is the Decree of the President of the Republic of 27 Oct. 2011, No. 209, establishing an ecological protection zone in the Ligurian and Tyrrhenian Seas. See Scovazzi and Samier (n 75).