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The Problem of Delimiting the Exclusive Economic Zone Between the States with Opposite and Adjacent Coasts

Maxim BRAILA, PhD Student
University of European Studies of Moldova
Chisinau, REPUBLIC OF MOLDOVA
braila.maxim@gmail.com

Abstract: *The objective of this research is to carry out a comprehensive analysis of the international legal regime of the exclusive economic area established by the 1982 Convention of and of the modern practice of its application, as well as the provisions of the legislation of the coastal states regulating the regime of the exclusive economic area. The methodological basis of the research was the dialectical method of cognition. This method of scientific knowledge has been combined with the use of historical-legal and comparative-legal methods, as well as logical techniques and research tools, whose application has contributed to achievement of the objective and solving the problems in the field considered. The value of this article consists of a comprehensive study of current theoretical and practical issues regarding the international legal regime of the exclusive economic area. The results of the present research can be used in research works, as well as in teaching the course of international sea law.*

Keywords: *territorial supremacy, maritime law, exclusive economic zone, coastal state*

Introduction

Recently, has increased significantly the interest of many countries for the problems of the oceans related to the played role by international navigation and naval navigation, the development of natural resources of the sea, the development of mineral resources from the bottom of the sea, the protection of the marine environment as a component of the whole, scientific ocean research using those new technologies etc.

In addition, it is impossible not to see the developing interstate conflicts regarding the violation of the laws of the coastal states or the rights of the flag state, the rights of the ship in foreign waters etc.

Indeed, maritime spaces differ in their legal framework and this affects directly the condition of the ships and their crews.

In addition to exploring and developing natural resources, sovereign rights in the exclusive economic zone are granted to the coastal state for other purposes.

We talk about the sovereign rights of the coastal state in relation to other types of economic exploration and development of the resources of the area, such as the energy production through the use of water, currents and wind.

1. General Considerations Regarding the Rights of States in Relation to the Exclusive Economic Area

An important place to consider the issue of the rights and obligations of a coastal State is occupied by Article 56, the provisions of which were developed following discussions during the work of the Third United Nations Conference on the Law of the Sea.

At the beginning of the work of the Third United Nations Conference on the Law of the Sea, some developing countries made a proposal to establish the coastal State's sovereignty over the natural resources of the exclusive economic zone.

Thus, the OAU (Organization of African Unity) Declaration on the Law of the Sea stated that coastal States should exercise inalienable sovereignty over all living mineral and mineral resources in the exclusive economic area.

As mentioned by Yu.G. Barsegov [4, 43] from the point of view of legal content and nature, the rights of the coastal States in the exclusive economic zone cannot be identified with their territorial sovereignty. The coastal State, in accordance with international law, does not receive full sovereignty over the exclusive economic zone. They benefit from the following rights:

1. sovereign rights for the exploration, development and conservation of natural resources, both living and non-living, in the waters lying on the seabed, on the seabed and in its intestines, as well as for the purpose of managing these resources and in relation to other types of economic exploration and development of the specified area, such as energy production through the use of water, currents and wind;
2. the competence provided for in the relevant provisions of this Convention in relation to: i) creation and use of islands, installations and artificial structures;
3. marine scientific research;
4. protection and conservation of marine environment;
- 5) other rights and obligations provided for in this Convention. As the sovereignty of the state implies the exercise of territorial supremacy on its territory, and the exclusive economic zone is not part of it, therefore, the 1982 Convention could not speak of its sovereignty in terms of the resources of the area. Therefore, the authors of this convention refused to use the term „sovereignty”.

The United Nations Conference on the Law of the Sea has given preference to the term „sovereign rights”, confirming the functional nature of a coastal State's rights to natural resources beyond the exercise of national sovereignty.

Sovereign rights do not come from territorial supremacy but their content is of conventional origin.

In accordance with Article 56 paragraph (1a) of the 1982 Convention, the coastal State in the exclusive economic zone has sovereign rights for the exploration, development and conservation of natural resources, both living and living, in the waters of the seabed, on the seabed and in its intestines, as well as for the management of these resources and in connection with other types of economic exploration and development of the specified area, such as energy production through the use of water, currents and wind. [5, 22]

The granting of the sovereign rights of the coastal State in relation to the natural resources of the exclusive economic zone means the following: first, the coastal State in the area does not have sovereignty, but sovereign rights, that is strictly limited rights and clearly limited areas of application; secondly, these rights are established for the purpose of exploring, developing and conserving natural resources; and thirdly, another State has no right to pursue such activities without the consent of the coastal state. [1]

However, national law, in some cases, contains provisions contrary to the provisions of the 1982 Convention on the exercise by coastal states of rights and obligations.

This refers in particular to the following provisions of the 1982 Convention:

- establishing the jurisdiction of the coastal state, in accordance with letter b), c) p. 1 s. d. 60, in relation to the artificial installations and the structures located in its exclusive economic area;
- the inadmissibility of the prison as a form of punishment for violation of the laws and regulations of the coastal state regarding fishing in the exclusive economic area (and Article 3 of Article 73);
- the proclamation of the jurisdiction of the coastal state in relation to the protection and conservation of the marine environment in the exclusive economic area (p. b) „w” p 1 article 56) and the restriction of the penalty with fines for violation of national laws and international norms and standards for the prevention, reduction and maintaining control of the pollution of

the marine environment committed by foreign vessels outside the territorial sea (Article 230 Article 1).

Provisions 4.V of the 1982 Convention provide for the rights of a coastal state with regard to natural resources not only in the water column, but also in the seabed and in its intestines within 200 miles of this area (Article 56, paragraph 1).

However, according to p. Z. Article 56, sovereign rights in respect of the seabed and its basement are exercised in accordance with Part VI of the 1982 Continental Shelf Convention.

In accordance with the United Nations Convention on the Law of the Sea, an economic zone is an area outside the territorial sea and adjacent to it, with a width of up to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. In this area, a specific legal regime was established.

The Convention granted to the coastal state in the exclusive economic area sovereign rights for the exploration and development of natural resources (both living and non-living), as well as rights in connection with other activities for the purpose of economic exploration and development of the mentioned area, and the right to generate energy through the use of water, currents and wind.

The coastal state has jurisdiction over the creation and use of artificial islands, installations and structures, marine scientific research and the conservation of the marine environment.

Marine scientific research, the creation of artificial islands, installations and structures for economic purposes can be carried out in the exclusive economic zone by other countries with the agreement of the coastal state.

Other states, both maritime and without access to the sea, enjoy in the exclusive economic area the freedoms of navigation, flights over it, the installation of cables and pipes and other legal uses of the sea related to these freedoms.

The coastal state and other states, in the exercise of their rights and obligations in this area, take due account of their rights and obligations to each other.

The adjoining area is a part of the maritime area adjacent to the territorial sea in which the coastal state may exercise control in certain designated areas.

The right of the coastal state to establish the contiguous zone in this form and up to 12 nautical miles was enshrined in the 1958 Convention on the Territorial Sea and the Contiguous Zone (Article 24).

The United Nations Convention on the Law of the Sea of 1982 also recognizes the right of a coastal state to the adjoining area where it can exercise the controls necessary for:

- preventing the violation of customs, fiscal, immigration or sanitary laws and regulations in its territory or territorial sea;
- the punishment for violation of the laws and regulations mentioned above in its territory or territorial sea (paragraph 1 of article 33).

The United Nations Convention on the Law of the Sea, as opposed to the Convention on the Territorial Sea and the Contiguous Zone indicates that the contiguous area cannot extend beyond 24 nautical miles, measured from the baseline for the measurement of territorial sea width.

2. Results and Discussions

The problem of delimiting the territorial sea between states with oppositions or adjacent coasts was decided without great difficulties in 1982, with the adoption of the art. 15.

The provisions of Articles 55 and 75 reflect a number of interests:

- the sovereign rights of the coastal states to manage the area in good faith;
- respecting the economic interests of third countries;
- regulation of certain activities in the area, such as marine scientific research, protection and conservation of the marine environment and the creation and use of artificial islands, installations and structures; freedom of navigation and flying;
- freedom to establish submarine cables and pipes;
- military and strategic use of the zone; and the issue of residual rights in the zone.

International disputes and conflicts are resolved on the basis of the sovereign equality of the parties. [3, 17-18]

Also, the states have rights, subject to the principle of free choice of funds, in compliance with the obligations of the United Nations Charter and the principles of justice and international law.

Use of any dispute resolution procedure or consent to such a procedure, freely agreed between States, in relation to existing or future disputes to which these States are parties.

The United Nations Convention on the Law of the Sea states: „If the shores of two states are located against one another or join one another, neither one nor the other state has the right, unless otherwise agreed between them, to distribute the territorial sea beyond the centre line, drawn in such a way that each of its points is equal to the nearest points of the source lines from which the wide territorial width of each of these two states is measured” (The United Nations Convention on the Law of the Sea states 1982, article 15).

If the conciliation proposal is not accepted or the parties do not reach agreement on the procedure to be applied, then a dispute follows at the request of one of the parties transferred to the procedures involving the adoption of binding decisions by the parties. Convention allows the parties to choose one or more of the necessary procedures and the following dispute resolution tools:

- 1) International Court for the Law of the Sea (ICCM) 2;
- 2) The International Court of Justice;
- 3) Arbitration;
- 4) Ad hoc courts.

Despite the fact that international law has a legal status and a regime of marine spaces, there are still many disagreements regarding the use of marine resources.

The delimitation of maritime space between coastal states has always been a special issue.

The conference, which took place in Geneva from February 24 to April 27, 1958, was represented by 82 states.

It adopted the following important conventions for the delimitation institute: the 1958 United Nations Convention on the Continental Shelf (in particular Article 6), the United Nations Convention on the Territorial Sea and the Contiguous Zone (Article 12), which made a significant contribution to the development of international sea law and influenced the development of the national legislation of the coastal states.

Paragraph (1) of art 6 The United Nations Convention on the Continental Shelf of 1958, states: „Where the same continental shelf is adjacent to the territory of two or more states, whose banks are located side by side, the boundaries between the shelves are established by agreement between them.

In the absence of agreement and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured” [1, 56].

Point 2 of art 6 The UN Convention on the Continental Shelf of 1958, states: „Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the shelf is established by agreement between them.

In the absence of an agreement and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured” [3, 65].

A similar method of the midline for the delimitation of the territorial sea was determined by art 12 of the United Nations Convention on the Territorial Sea and the Contiguous Zone of 1958 [2].

Thus, the 1958 Convention established that the main rule for delimiting the continental shelf is a mutual agreement of the States.

If it is absent, use the midline method (as far apart). But, as a later practice has shown, the legal rules set out in these conventions have failed to fully resolve the issue of maritime borders between States.

Maritime disputes have become sources of dangerous conflict situations between States. The history of this problem clearly indicates the great difficulties that arise almost every time it comes to establishing the external limit or the external borders of maritime spaces.

Examples of such situations are the Greek-Turkish debate on the delimitation of the Aegean continental shelf in the mid-1970s, the delimitation of the Persian Gulf continental shelf between Iran, Iraq, Kuwait etc.

Also, one case: in February 1964, the International Court of Justice of the United Nations received a statement from the Federal Republic of Germany, Denmark and the Netherlands. The parties have asked the Court to decide on the methods, principles and norms of international law to be applied for delimiting the continental shelf in the North Sea.

In my opinion, this means that the intermediate line method was not suitable for solving this problem. In a word, this method does not allow the complete resolution of the delimitation of marine spaces, therefore it must be improved.

It became obvious that in-depth research is needed on this topic.

The next step in the development of international sea law was the organization of the International Conference on Sea Law in 1982.

During the United Nations Conference, the issue of the delimitation of maritime spaces occupied a special place.

The expansion of the activities of the States in new maritime areas as an exclusive economic zone, which also had to be differentiated between the coastal States, forced the participants to return to this problem again.

The adoption of the 1982 United Nations Convention on the Law of the Sea was preceded by a lengthy negotiation process (approximately 10 years).

The problem of delimiting the territorial sea between States with opposite or adjacent coasts has been solved without too many difficulties.

The article 15 of the United Nations Convention on the Law of the Sea of 1982, states: „Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every

point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured” [3, 21].

We note that for the territorial sea case, the principle of the median line becomes obligatory (see: „neither the state nor the other has the right to extend its territorial sea beyond the midline).

The exclusive economic zone is the sui generis zone of the open sea.

This conclusion is based on an analysis of the relevant provisions of the 1982 Convention, as well as of the views of scientists and specialists on the legal status of the exclusive economic zone.

The issue of the rights and obligations of other states in the exclusive economic zone remains very acute in many respects, as national law contains provisions that do not comply with Article 58 of the 1982 Convention on the Exercise of Freedom of Navigation.

During the discussion on the problem of delimiting the exclusive economic zone and the continental shelf between the States with opposite coasts and (or) adjacent coasts.

The 1982 United Nations Convention provides for the right of other States, under certain conditions, to participate in the collecting of living resources in the exclusive economic zone.

However, this right can be exercised only by agreement with the coastal State.

Also, the coastal State has recognized jurisdiction over the creation and use of artificial islands, facilities and structures, marine scientific research and conservation of the marine environment.

Marine scientific research, the creation of artificial islands, installations and structures for economic purposes can be carried out in the exclusive economic zone by other countries with the consent of the coastal State.

At the same time, other States, both maritime and non-block, enjoy in the exclusive economic zone the freedoms of navigation, flights over it, the installation of cables and pipes and other legal uses of the sea related to these freedoms.

These freedoms are exercised in the zone as in the open sea. The zone is also subject to other rules and regulations governing the rule of law in the free seas (the exclusive competence of the flag State on its ship, exemptions allowed from it, the right to prosecution, provisions on safety of navigation etc.).

The exclusive economic zone is a territory that does not extend the sovereignty of either State and has a mixed legal regime.

In accordance with the 1982 Convention, the coastal State of this region has sovereign rights solely for the purpose of exploring, developing and conserving natural resources, both living and non-living, in the waters that cover the seabed, the seabed and its intestines.

Along with this, the coastal State has sovereign rights both for the management of these resources and for other types of economic exploration and development of this zone, such as energy production through the use of water, currents and wind.

When exercising their rights and fulfilling their obligations under the 1982 Convention in the exclusive economic zone, foreign States shall duly consider the rights and obligations of the coastal State.

However, they must comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other international rights.

The coastal State, in addition to individual sovereign rights, also has the competence provided for in the relevant provisions of the 1982 Convention with regard to the creation and use of artificial islands, facilities and structures; marine scientific research; protection and conservation of the marine environment; other rights and obligations provided for in the Convention.

Therefore, for the purpose of exploration, development of an exclusive economic zone and for other economic purposes, the coastal State has the exclusive right to build, as well as to allow and regulate the creation, exploitation and use of artificial islands, facilities and structures.

These objects do not have the status of islands, they do not have their own territorial sea, and their presence does not affect the definition of the territorial sea, the exclusive economic zone or the continental shelf.

The coastal State has exclusive jurisdiction over such artificial islands, facilities and structures, including jurisdiction over customs, tax, health and immigration laws and regulations, as well as safety laws and regulations.

If necessary, the coastal State may establish reasonable security zones around artificial islands, facilities and structures where it can take appropriate measures to ensure the safety of both maritime and artificial islands, facilities and structures.

The width of these zones is determined by the coastal State, taking into account the international standards applicable at a distance of up to 500 meters, measured from each point of their outer edge.

Exceptions are the cases provided by the generally accepted international standards or by the recommendations of the competent international organizations.

Appropriate notification is given regarding the extent of the safety zones.

Typically, such notifications are included in the Notifications to sailors, transmitted by radio in the Navigation Alerts and Coastal Alerts.

No State has the right to claim the subordination of the economic zone to its sovereignty.

This important provision applies without prejudice to other provisions of the legal regime of the exclusive economic zone.

In this regard, attention must be paid to the fact that the Convention requires the coastal State and other States, when exercising their rights and obligations in the area, to take due account of mutual rights and obligations and to act in accordance with the provisions of the Convention.

Even at the height of the work of the Third United Nations Conference on the Law of the Sea, a significant number of States, which go beyond the course of events and are trying to direct them in the right direction, have adopted laws establishing along their shores of fishing or economic zones up to 200 nautical miles.

The coastal State, in the exercise of its sovereign rights to explore, operate, conserve and manage living resources in the exclusive economic area, may take such measures, including inspection, inspection, arrest and trial, as necessary to ensure compliance with laws and the regulations adopted by it in accordance with the 1982 Convention, it has the right to follow a ship in the free seas outside the exclusive economic zone in hot search.

Recently, the interest of many States in the problems of the oceans has increased significantly in relation to the role played by international navigation and naval navigation, the development of living resources of the sea, the development of mineral resources from the bottom of the sea, the protection

of the marine environment as a component of the whole environment, scientifically, ocean research using the newest technologies etc.

In addition, it is impossible not to see the developing interstate conflicts in relation to the violation of the laws of the coastal States or the rights of the flag State, the rights of the ship in foreign waters, etc.

Conclusions

Indeed, maritime spaces differ in their legal regime and this directly affects the situation of maritime vessels and their crews. An arrested foreign ship and its crew are released immediately upon providing a reasonable security deposit or other guarantee.

Sanctions imposed by a coastal State for violating fisheries laws and regulations in the exclusive economic zone may not include prisons, in the absence of agreement from the States concerned, or any other form of personal punishment.

In the event of the arrest or detention of a foreign vessel, the coastal State shall immediately notify the flag State by appropriate channels of the measures taken and any subsequent punishment.

As of December 1986, out of 142 coastal States, at least 70 States have proclaimed 200-mile exclusive economic zones and about 20 people have established 200-mile exclusive fishing zones.

The rapid and widespread acceptance of the concept of economic zone reflected in the national legislation indicates that it has become a permanent feature of modern international sea law.

What was once a revolutionary idea with few supporters is now considered by some to be part of the ordinary international law?

Finally, we need to look at the whole package to understand the mini-packages and why some States would show "renunciation" of certain traditional rights that have been in their favour for decades.

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