



HAS THE DEVELOPMENT OF EEZ ACHIEVED ITS AIMS?

M. Belal Hossain¹ and M. Mostafa^{2*}

¹*Department of Fisheries and Marine Science, Noakhali Science and Technology University, Sonapur, Noakhali 3802, Bangladesh*

²*Fisheries and Marine Resource Technology Discipline, Khulna University, Khulna 9208, Bangladesh*

KUS: 10/06-130510

Manuscript received: May 13, 2010; Accepted : August 26, 2010

Abstract: The Exclusive Economic Zone (EEZ) concept is the prime and important invention of the Third United Nations Convention on the Law of the Sea (UNCLOS III) in 1982. It was designed to secure coastal state control over the resources within the area with a view to solve the conflicting claims of territorial sea, to ensure fair share of the resources and ultimately to use and manage the ocean resources in a sustainable manner. The concept is a reflection of developing states' aspiration, but in reality the main beneficiaries are the rich and developed states. The biggest losers of all are the land-locked and geographically disadvantaged states, which either cannot have an EEZ or their claims, are of little economic significance, considering the width of their EEZs or the resources therein. Still there are many unresolved issues and problems concerning the EEZ regime such as overlapping claims, conflicting use of navigation and fishing, unattributed rights, access to surplus stocks, over-fishing and marine pollution. The rules of the EEZ have not yet fully implemented by all parties. Therefore, it cannot be considered a finished treatment of controlling this important area and it should be supplemented by other agreements and regional co-operations like UN Fish Stock Agreement and International Maritime Organization (IMO).

Keywords: EEZ, ocean resources, sustainable use, achievements

Introduction

The control and ownership of the oceans has long been a controversial topic. However, it was not until the twentieth century that countries began to come together to discuss a standardisation of maritime boundaries. After a long debate and negotiation, the Third United Nations Convention on the Law of the Sea (UNCLOS III) being a "constitution" in the sense founded a new regime for the governance of the oceans of the world (Tanja, 1990; Brown and Churchill, 1987). The Exclusive Economic Zone (EEZ), outcome of UNCLOS III, is an area of 200 nm beyond and adjacent to the territorial sea, within which the coastal State enjoys extensive rights in relation to natural resources and other jurisdictional rights and third states enjoy the freedom of navigation, over flight by aircraft and the laying cables and pipelines (Article 55 and 56, UNCLOS III).

It embraces about 36% of sea, 90% of commercially exploitable fish stocks, 87% of submarine deposits and 10% of Manganese nodules (Bernaerts, 1988). About 80% of marine scientific research has been conducted in the region adjacent to the coast (David, and Digeser, 1990). In terms of geography, about 36% of the world oceans have been closed off by the universal 200 nautical mile limit. Seas such as the Baltic, the North, the Mediterranean, the Black, the Red, the Persian, South China, Sulu, and the Caribbean seas all fall under the national jurisdiction of their littoral States (Dahmani, 1987).

*Corresponding author: <mostafaku@yahoo.com>

DOI: <https://doi.org/10.53808/KUS.2010.10.1and2.1006-L>

It is regarded that the development of EEZ is the main invention of the UNCLOS III. The issue involved in the EEZ development was to make all states equal regarding the use of ocean resources. However, an attempt has been made here to find out its effectiveness and viability from the perspective of its overall achievements.

Materials and Methods

In order to understanding and evaluation of the effectiveness and achievements of the Law of the Sea, related articles, books, journals and important reports on international conventions have been studied. Web based information has also been discussed.

Results and Discussion

Evolution of EEZ: The first formulation of the doctrine of the EEZ found expression in the unilateral claims of the Latin American states following the Truman proclamation in 1945 (Anand, 1983). In 1952, some Latin American states (such as Peru, Equador) in the Santiago declaration postulated that they possessed sole sovereignty and jurisdiction over an area of the sea of not less than 200 nautical miles (Dahmani, 1987). In 1958, eighty-six states adopted the First Law of The Sea Convention (LOSC I) and again in 1960 the Second Law (LOSC II) was held. Questions regarding territorial and fishing matters were not been resolved in 1958 and 1960 conventions. At the beginning of the 1970s many African states and several Asian developing states adopted a policy corresponding to the South American claims (Tanja, 1990). The widely diverging territorial sea claims of various states challenged the unity of the law of the sea. In 1972 UN General Assembly confirmed its decision to convene the conference in 1973. Finally in 1982 law of the sea convention was held and it approved the regulation of the fishing rights of coastal states by declaring 200 nautical miles EEZ. In 1994, the law of the sea came into force (Churchill and Lowe, 1999).

Aims of the EEZ development: The concept is regarded as the direct result of the developments in the law of the sea concerning coastal State fisheries jurisdiction. It was developed to solve the unilateral claims of extended territorial limit by many coastal states (Attard, 1987; Vicuna, 1989). In relation to fishery, the EEZ was designed to redress the inequalities in the distribution of ocean resources between the developed and developing states i.e. to ensure a fair share of the resources. Basically, it was the aspiration of the developing countries for their economic development and raising standard of living. And the ultimate goal was to use the resources within the area in sustainable manner.

Achievements of the EEZ: The extension of coastal State jurisdiction by means of 200 nautical mile EEZs has represented a major change in the regulation and access to ocean activities. The area has moved away from its open access nature to regulation based coastal State jurisdiction (Tanja, 1990). It has allowed the coastal states to gain control over whatever resources they have within the areas adjacent to their coast that were previously subject to the freedom of fishing.

It is argued that the establishment of EEZ has redistributed the ocean resources among the coastal states. But the leading twenty states in the period 1993-95 accounted for about 81% of the total world fish catch, whereas the remaining 19% was shared by 130 other coastal states which is clearly an evidence of unequal distribution (Churchill and Lowe, 1999). Although the concept of EEZ is a reflection of developing states' aspiration, but in reality the main beneficiaries are the rich and developed states like the USA, France, Canada, Japan, the Russia, and New Zealand (Table 1 and 2). Yet the shares of Japan and the Russia in fishing counted around 30% of the world catch, whereas the shares of all African states, which number more than 50 states, counted about 6 % (Churchill and Lowe, 1999; Anon., 2007). Only few developing countries like China and some Latin American island states are among the main beneficiaries of EEZs. The biggest losers of all are the land-locked and geographically disadvantaged states, which either cannot

have an EEZ or their claims, are of little economic significance, considering the width of their EEZs or the resources therein.

Table 1. Leading EEZ beneficiaries (Columns 1 and 2: Anon., 2000; column 3: Anon., 2007)

States	EEZs (square nautical miles)	Fish catches or estimated potential (million tonnes)
1. USA	2,831,400	5.5(1994)
2. France	2,083,400	Not available
3. Indonesia	1,577,300	6.7(EP)
4. New Zealand	1,409,500	0.7(1995)
5. Australia	1,310,900	2.5(1995)
6. Russia	1,309,500	3.0(1994)
7. Japan	1,126,000	6.5(1995)
8. Brazil	924,000	0.6(1995)
9. Canada	857,000	0.8(1995)
10. Mexico	831,500	1.2(1995)

Table 2. States gaining large areas in EEZ (Shyam, 1982)

	Large gain	Small or no gain	Total
Developed States	12 (33%)	25 (67%)	37 (100%)
Developing States	30 (27%)	80 (73%)	110 (100%)

In some extent the developing states have benefited economically from establishing EEZ through imposing license fees on foreign vessels fishing in their zones but in that case they are to set costs for managing its zone and enforcing its legislation. Many developing states still lack the necessary capital and manpower to manage the EEZ properly and benefit from its resources (Anon., 1992).

In some cases the rules of EEZ have some vague expressions or have created some problems or have proved to be failure, these are discussed below.

Problems associated with the development of the EEZ

Delimitation of boundaries: Article 57 of UNCLOS III provides that the EEZ shall not extend beyond 200 nautical miles from the base lines from which the territorial sea is measured. This leaves the discretion to the coastal states to decide the breadth of its EEZ from 1 nautical mile up to 200 nautical miles, whatever breadth it thinks. The coastal states may choose any breadth up to 200 nautical miles and can decide to have no zone at all. Moreover, the EEZ would have no real meaning in practice unless the coastal states are prepared to exercise their rights and implement their laws and regulations in the zone.

Although islands normally generate an EEZ, article 121(3) of the law of the sea provides that 'rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone'. So far the provision seems to have had limited impact in practice. A number of states have claimed EEZs around such types of islands e.g., France (islands in the pacific and Indian ocean), Fiji (Ceva-I-Ra) and Venezuela (Churchill and Lowe, 1999).

Navigation and conflicting use: In the EEZ all states enjoy ‘the freedoms referred to in article 87 of navigation’ and ‘other internationally lawful uses of the sea related to’ this freedom compatible with other provisions of the convention [Art. 58(1)]. But there are some limitations on freedom of navigation in the EEZ not explicitly mentioned in the convention. For example, foreign shipping is subject to the coastal State’s powers of pollution control and it may be affected by the presence of artificial islands and installations.

In some cases the convention contains no specific rules to avoid conflicts of use. For example, it is not clear whether and to what extent a coastal State may, as part of its sovereign rights to exploit and manage living resources, regulate foreign shipping in order to minimise conflicts with fishing in its EEZ, e.g., by requiring ships to avoid areas where there are standing nets or which are important spawning and nursing grounds for fish.

Access to surplus stock: Where 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 the allowable catch [Art. 62 (2)]. Here surplus stock is related to the harvesting capacity of the coastal State as determined by that coastal State itself and not surplus to the actual harvesting capacity of the coastal states determined by reference to objective criteria. Thus, in order for the coastal State to deny the existence of such surplus and consequently access of other states is easy.

Article 62(2) provides that in giving access to the surplus resources of the EEZ, the coastal State shall have particular regard to the provision of Articles 69 and 70 which deal with the right of landlocked states and geographically disadvantaged states to participate on an equitable basis in the exploitation of that surplus stock. The effect of this provision is that it is made expressly clear that access of both land-locked and geographically disadvantaged states is, like that of any other third states, limited only to the surplus of the allowable catch. Besides, their rights further limited by the Article 71 which states that the provisions of Articles 69 and 70 do not apply in the case of a coastal State whose economy is overwhelmingly dependent on the exploitation of the living resources of its EEZ. The convention envisages that this group of states should be given access to an appropriate part of the surplus, but avoids altogether the basic issue of whether they should have any priority in sharing the surplus of the coastal State in its EEZ. In practice, this latter may be more inclined to provide the surplus fishery to those states which have habitually fished in the area, land-locked and geographically disadvantaged states may not be able to compete with distant-water fishing states in the ‘auctions’ for fishing licences held by the coastal State. In the end they may not have any share of the EEZ fisheries.

Unattributed rights: There are some uses of the EEZ which do not fall within the rights of either the coastal State or other states, for example, the emplacement of the underwater listen devices for submarines, the recovery of historic wrecks beyond the contiguous zone, jurisdiction over buoys used for pure scientific research and developments in technology may produce further examples. The convention does not state clearly regarding such uses. In Article 59, it gives a general formula for attributing rights in such cases. There is no presumption in favour of either the coastal state or other states. In each case it will have to be decided on its own merits on the basis of the criteria set out in the Article 59.

Management of some particular species: Many fish stocks (e.g., anadromous, catadromous, straddling and highly migratory species) do not remain under one State’s jurisdiction throughout their life-cycle, but spend some of the life outside that State’s EEZ either in the EEZ’s of neighbouring states or on the high seas or both. Article 63 does not give any clear answer to resolve the management problems of these fish stocks. It only requires that the states concerned should enter into negotiations with a view to agreeing on conservation measures. Any

Hossain, M.B. and Mostafa, M. 2010. Has the development of EEZ achieved its aims? *Khulna University Studies* 10 (1&2): 217-222

management measure taken by a coastal State in its EEZ will be undermined by the activities of vessels fishing on the high seas. And in practice, in the areas where straddling stocks exist, there have been problems. In 1995 the 'Turbot War' between Canada and Spain was occurred due to the straddling stock problem (Aqorau, 2000).

Over-exploitation and IUU fishing: One of the major justifications for the introduction of the EEZ concept is to control over-exploitation in adjacent maritime areas but it has failed to address the problem. Recently it has been supplemented by *UN Fish Stock Agreement*, 1995 and Agenda 21. According to the FAO, 50% of fishery resources are fully exploited, 15% are over fished, six percent depleted, and 2% are recovering (Aqorau, 2000). North Sea Cod and Hake fishery are extremely over-exploited .

Another dimension of problems is Illegal Unreported and Unregulated (IUU) fishing, which the FAO has estimated to be responsible for up to 30% of total catch in some fisheries. It is an increasing problem in the EEZ of Asian states due to lack of sufficient enforcement of laws (Anon., 2007).

Marine pollution: Marine pollution is another pressing problem in the EEZ. After having supplemented by International Maritime Organization (IMO), the Ocean Dumping Convention, and the Maritime Pollution (MARPOL) Convention the major causes of marine pollution are now land-based sources of pollution, emissions into the atmosphere and effluents discharged into rivers or directly into the ocean from land. The Articles 207-212 and 222 deal with marine pollution. So far, however, it has appeared to have a limited impact on State practice (Birmie and Boyle, 2000).

Conclusion

From the above discussion it may be concluded that the development of EEZ has not yet fulfilled its aims. Still there are many unresolved issues and problems concerning the EEZ regime. The potentialities of EEZ regime have not yet fully implemented by all parties, and can not be considered as a finished treatment of controlling this vast important resource area. It can be a basis or framework for working on and solving ongoing and future problems, and should be supplemented by other agreements and regional cooperations like UN Fish Stock Agreement, International Maritime Organization (IMO), Marine Pollution (MARPOL) Convention, European Commission (EC), Southeast Asian Fisheries Development Centre (SEAFDC) etc.

References

- Anand, R.P. 1983. *Origin and Development of the Law of the Sea: History of International Law Revisited*. Martinus Nijhof Publishers
- Anon. 1992. *The law of the sea: national claims to maritime jurisdiction*. United Nations office for ocean affairs and the law of the sea, New York
- Anon. 2000. *Limits in the seas*. No. 36, Office of the Ocean Affairs, USA
- Anon. 2007. *State of the World Fisheries and Aquaculture: Part 3*. Highlights of Special FAO Studies, The Economic Viability of Marine Capture Fisheries, available on <http://www.fao.org/DOCREP/003/X8002E/x8002e06.htm#P5> (site visited on 20 April 2007)
- Aqorau, T. 2000. Illegal Fishing and fisheries law enforcement in small Island developing states: The pacific Island experience. *International Journal of Marine and Coastal Law* 15: 137-64
- Attard, D.J. 1987. *The exclusive economic zone in international law*. Clarendon press, oxford

- Bernaerts, A. 1988. *Bernaerts guide to the 1982 United Nations Convention on the Law of the Sea*. Fairplay Publications
- Birnie, P. and Boyle, A. 2002. *International Law and the Environment*.
- Brown, E.D. and Churchill, R.R. 1987. *The UN convention on the law of the sea: impact and implementation*. University of Hawaii, USA
- Churchill, R.R. and Low, A.V. 1999. *The law of the sea*. Juris Publishing, Manchester University Press
- Dahmani, M. 1987. *The fisheries regime of the exclusive economic zone*. Martinus Nijhoff Publishers, Dordrecht, The Netherlands
- David, R.S. and Digeser, P. 1990. *The United States and the law of the sea treaty*. Johns Hopkins University, Washington D.C.
- Shyam, M. 1982. The new international economic order and the new regime for fisheries management. *Ocean Management* 8: 568-582
- Tanja, G.J. 1990. *The legal determination of international maritime boundaries*. Kluwer Publishers, The Hague
- Vicuna, F.O. 1989. *The exclusive economic zone*. Cambridge University Press, UK