
COMPARATIVE ANALYSIS BETWEEN THE EXCLUSIVE ECONOMIC ZONE AND THE INTERNATIONAL AREA OF SUBMARINE TERRITORIES

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Abstract: *The 1982 United Nations Convention on the Law of the Sea, in addition to establishing a legal regime for all maritime spaces, already established by custom or convention, also has the merit of establishing new maritime spaces, the exclusive economic zone and the international zone of submarine territories and of formulating new principles and norms to govern these new spaces. For the first time, within the scope of a single convention, the blue continent was divided into several zones, and for each of these zones a distinct legal regime was established, but, given the fact that, ultimately, all these maritime spaces constitute a component part of the same whole, the implications for one of these spaces rarely have, in fact, effects on all the others. In this context, this article aims to carry out a comparative analysis of the legal regime of the exclusive economic zone and the international zone of submarine territories in the regulation of the 1982 United Nations Convention on the Law of the Sea.*

Keywords: *exclusive economic zone, international zone of submarine territories, law of the sea, maritime spaces, United Nations Convention on the Law of the Sea of 1982*

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United Nations Convention on the Law of the Sea, in addition to establishing a legal regime for all maritime spaces, already established by custom or convention, also has the merit of establishing new maritime spaces, the exclusive economic zone and the international zone of submarine territories and of formulating new principles and norms to govern these new spaces. For the first time, within the scope of a single convention, the blue continent was divided into several areas, and for each of these areas a distinct legal regime was established, but, given the fact that, ultimately, all these maritime spaces constitute a component part of the same whole, not infrequently, the implications on one of these spaces, in essence, have effects on all the others.



The marine space known as the exclusive economic zone¹ emerged and became established relatively recently, as a result of national practices and the adoption of international documents².

And, although the extension of the territorial sea, justified by fishing needs, has been raised since the Hague Conference of 1930 (but without success, because it refused to take into account the fact that fishing interests could be likely to justify an extension of the riparians to the open sea by a unilateral declaration), the origins of the legal regime of this space are found in the unilateral claims, formulated after 1946³, by some South American states, regarding certain fishing protection zones, along the coast of these states, beyond the territorial sea, at distances ranging from a few dozen miles to up to 200 miles offshore⁴. Subsequently, similar claims were formulated by other states such as India, Pakistan, Iceland⁵ as well as a number of African states. These unilateral extensions of the competences of the riparian states were sometimes violently rejected and have been the source of numerous disputes over time (e.g. the three so-called "maroon wars" between England and Iceland in 1958, 1972, 1975)⁶.

However, the concept of an exclusive economic zone, with a width of 200 nautical miles measured from the baselines from which the breadth of the territorial sea is measured⁷, met with broad support among the states participating in the Third UN Conference on the Law of the Sea and was enshrined in the 1982 United Nations Convention on the Law of the Sea, in Part V⁸.

Thus, both the exclusive economic zone and the international zone of submarine territories, as distinct maritime spaces, as well as the legal regimes intended to govern them, find their consecration for the first time in the 1982 United Nations Convention on the Law of the Sea.

The exclusive economic zone has been defined as the area beyond and adjacent to the territorial sea, extending offshore for a distance of up to 200 nautical miles, measured from the baselines of the territorial sea (art. 57 of the 1982 United Nations Convention on the Law of the Sea).

¹The term was first used by Kenya in 1972, in a document addressed to the UN Committee on the Peaceful Use of Undersea Spaces. (**D. Popescu**, *Public International Law*, Titu Maiorescu University Publishing House, Bucharest, 2005, p. 131).

²Through the Montevideo Declaration on the Law of the Sea, signed in 1970 by two Latin American states, as well as through the Santo Domingo Declaration, signed in 1975 by 15 states in the Caribbean Sea area, through which the riparian states claimed the right to dispose of the natural resources of the sea adjacent to their shores, as well as of its soil and subsoil, a space called the patrimonial sea, in order to encourage the maximum development of their economy and the raising of the standard of living of the peoples. (**R. Miga-Besteliu**, *Public international law - Introduction to public international law*, All Beck Publishing House, Bucharest, 1998, p. 230).

³US President Truman, in a proclamation on September 28, 1945, citing the need to protect living species in the interest of all, claims the right of the US to establish a conservation and fisheries regulation zone in the open seas of the US. (<https://www.trumanlibrary.gov/library/proclamations>)

⁴**M. Popescu**, *Law of the sea: National Jurisdiction Zones*, Artprint Publishing House, Bucharest, 2000, p. 206-207. Chile, Peru and Ecuador, through the Declaration of Santiago de Chile of August 18, 1952, unilaterally extended the width of their territorial sea to 200 nautical miles. The solution found by the three states did not, however, aim at extending their sovereignty to this limit, but only aimed at reserving access to the fish resources in these areas. (**J.P. Beurrier, et al.**, *Droits maritimes*, Dalloz, Paris, 2007, p. 108).

⁵On June 30, 1958.

⁶**J.P. Beurrier, et al.**, op. cit., p. 108; See also ICJ Reports (1974), pp. 3-24, 175.

⁷Consensus was reached relatively late, because at the beginning of the negotiations of the Third UN Conference on the Law of the Sea, discussions on the EEZ highlighted the divergence of interests on this issue, on the one hand, between coastal states and the international community, and, on the other hand, between developing states and the major maritime powers. (**R. Ranjeva, Ch. Cadoux**, *Droit international public*, EDICEF, Paris, 1992, p. 162).

⁸**R. Miga-Besteliu**, *Public International Law*, vol. I, All Beck Publishing House, Bucharest, 2005, p. 165-166.



The legal regime of the exclusive economic zone is a special regime that is defined by exclusive economic rights recognized to coastal states over all resources in the area, including jurisdiction in the area, but excludes claims of territorial sovereignty by these states.

Therefore, as in the contiguous zone, the coastal state exercises sovereign rights, but not full sovereignty, over the exclusive economic zone. In this space, the coastal state has sovereign rights only with regard to the exploration and exploitation, conservation and management of natural resources, biological and non-biological. The coastal state also has the right to carry out other activities of exploration and exploitation of the area, for economic purposes, such as the production of energy by using water, sea currents, wind.

In this sense, the coastal state has the right to regulate through internal laws the exercise of its sovereign rights and jurisdiction, establishing administrative, judicial and sanctioning measures against any violations of the legal regime of the exclusive economic zone⁹.

We would like to point out that the legal regime established regarding the exclusive economic zone concerns only surface waters, because the soil and subsoil resources within the exclusive economic zone are subject to the legal regime applicable to the continental shelf¹⁰.

Thus, with respect to the international area of submarine territories, where the provisions of the 1982 United Nations Convention on the Law of the Sea stipulate that the International Submarine Territories Authority will be responsible for the administration and management of the resources of submarine territories, located beyond the limits of national jurisdiction, as well as for the exercise of jurisdiction and control over operators and activities carried out here, with regard to the exclusive economic zone, although this is not under the sovereignty of the coastal state, nevertheless, through the way this part of the sea has been regulated, the coastal state has relatively similar responsibilities to the International Submarine Territories Authority, in the sense that it will determine the manner in which both the exploration and exploitation of the exclusive economic zone will be carried out, as it is also empowered to take the necessary measures for the protection and conservation of the marine environment in this area.

In exercising its right to manage the resources of the exclusive economic zone, the coastal State establishes the total allowable catch of living resources, in particular fish, and determines the volume of its own catch (art. 62, para. 2 of the 1982 United Nations Convention on the Law of the Sea). If this is less than the total allowable catch established, the coastal State may authorize other States, on the basis of special agreements or other arrangements, to exploit the difference remaining from the total allowable catch initially established¹¹.

In an attempt to draw a parallel between the legal regime of the exclusive economic zone and that of the international area of submarine territories, we could see here a certain similarity between the two regimes, namely, just as the coastal state, by virtue of the exclusive rights recognized by the 1982 United Nations Convention on the Law of the Sea , first reserves the right to exploit the resources of the exclusive economic zone, the International Submarine Territory Authority does practically the same thing when it proceeds to reserve sectors, because operators in the Area will only be able to exploit those sectors that the International Submarine Territory Authority has not

⁹ M. Popescu, op.cit., p.236-240.

¹⁰ Paragraph 3 of Article 56, 1982 Convention.

¹¹ J. Combacau, S. Sur, *Droit international public* , Montchrestien Publishing House, Paris, 2006, p. 489.



reserved for itself. The sectors reserved by the International Submarine Territory Authority will be able to exploit itself through the Enterprise or in association with developing states.

Another similarity is that, just as the International Submarine Territory Authority must grant preferential treatment to developing states, the provisions of the 1982 United Nations Convention on the Law of the Sea recommend, with regard to the exclusive economic zone, that the coastal state, in order to capitalize on the difference between the volume exploited by it and the maximum authorized, grant a preferential regime to landlocked or geographically disadvantaged countries that are part of the same region or subregion (art. 70 of the 1982 United Nations Convention on the Law of the Sea).

On the other hand, the coastal State must consider optimal exploitation taking into account the most reliable scientific data that will be disseminated and exchanged at regular intervals, through the competent international organizations, with the participation of all interested States. Here we can see the basis of a controlled international regime, given that, although the coastal State is responsible for the management and conservation of the resources of the exclusive economic zone, it will also have to take into account the interests of other States¹². Therefore, it will exercise the powers of administration of the exclusive economic zone but, at the same time, will also take into account the general interest.

At the same time, in the exercise of its sovereign rights, the coastal state has the right to build, authorize and regulate the construction, exploitation and use of artificial islands, installations and works for economic purposes and to establish security zones around them up to 500 meters, having the obligation not to prejudice navigation on internationally recognized sea lanes.

We note that similar provisions are also provided for the international area of submarine territories, given that art. 147 of the United Nations Convention on the Law of the Sea of 1982 allows the erection and location of installations used for activities carried out in the international area of submarine territories, specifying that their installation must be made in accordance with the provisions of the United Nations Convention on the Law of the Sea of 1982 and under the conditions established by the rules and regulations adopted by the International Authority for the Protection of the Sea. Similarly, as in the case of the exclusive economic zone , they will not be located in places where they could hinder the use of recognized shipping lanes of vital importance for international navigation or in areas of intensive fishing and will be surrounded by security zones appropriately marked by beacons to ensure the security of the installations and navigation. At the same time, the 1982 United Nations Convention on the Law of the Sea also indicates that they will be used for exclusively peaceful purposes.

As regards scientific research, unlike the international zone of submarine territories, where, in principle, such activities could be carried out by all states, in the exclusive economic zone only the coastal state can freely carry out scientific research, and other states only with its consent (art. 246, para. 2 of the 1982 United Nations Convention on the Law of the Sea). Another particularity of the legal regime of the exclusive economic zone, which we also encounter in the case of the international zone of submarine territories, is given by the freedom to install submarine cables and pipelines.

This freedom to install submarine cables and pipelines, imposed in terms of the legal regime of the exclusive economic zone, along with the enshrinement of freedom of navigation and overflight, demonstrates that the legal nature of the exclusive economic zone is defined not only by the

¹² *Ibid.*, p. 490.



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sovereign rights of the coastal state, but also by aspects of the high seas, which make this area a *sui generis space*¹³, with a mixed legal regime¹⁴.

¹³ R. Miga-Besteliu , op. cit., 1998, p. 231.

¹⁴ D. Popescu, A. Năstase , *Public International Law* , "Șansa" Press and Publishing House, Bucharest, 1997, p. 208.

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