2

Origins and Evolution of the Exclusive Economic Zone

The foundation of the exclusive economic zone (EEZ) regime, which has gone through a long evolutionary process, goes back as far as the earliest unilateral national claims to various marine natural resources beyond the limit of the territorial sea. The purpose here is not to recite exhaustively this history but to highlight certain characteristic features of State practice that are relevant to the evolution of the fundamental regime of the EEZ. The essential aim of the national claims beyond the territorial sea was for economic benefits without the intention to interrupt navigation and communication.

2.1 Early Claims to Marine Living Resources

2.1.1 Preferential Rights to Sedentary Species

Not long after the Dutchman Huge De Grotius published his treatise, *Mare Liberum*, in 1609, the doctrine of 'freedom of the seas' came to be generally accepted as the principle applicable to the high seas for more than three centuries.[1] Coastal State sovereignty, in contrast, was limited within a three-mile territorial water belt as commonly adopted since the end of the eighteenth century, with some States claiming different breadths.[2] Consequently, coastal States' rights did not in general extend beyond the three-mile limit, though there was a consensus favouring the

[1] Percy Thomas Fenn, Jr, 'Justinian and the Freedom of the Sea' (1925) 19 *Am J Int'l L* 716, 716–717; James B. Morell, *The Law of the Sea: An Historical Analysis of the 1982 Treaty and Its Rejection by the United States* (McFarland & Company 1992) 2.

[2] Thomas Baty, 'The Three-Mile Limit' (1928) 22 Am J Int'l L 503, 503; Thorsten Kalijarvi, 'Scandinavian Claims to Jurisdiction over Territorial Waters' (1932) 26 Am J Int'l L 57, 69; Shigeru Oda, 'The Territorial Sea and Natural Resources' (1955) 4 Int'l & Comp LQ 415, 420–421.

coastal State to reserve the exclusive right to exploit resources of the seabed located beyond and adjacent to its territorial sea.[3]

Even before the doctrine of the three-mile limit was widely established, Britain had extended its right over the resources located on the surface of the seabed. By the Cornwall Submarine Mines Act, the Parliament had, in 1858, committed itself to the position that the seabed below the low-water mark was vested in the Crown 'as part of the soil and territorial possessions of the Crown'.[4] Without affecting the navigational and fishing rights in the superjacent water and 'restricted by the silent abandonment of more extended claims', the property right over sedentary fisheries was not considered inconsistent with the universal right of freedom of the seas, and was declared by Hurst as 'entitled to be recognized by other States'.[5] Other examples include the claims of pearl and chank fisheries in the Gulf of Mannar and Palk Bay by littoral successive masters, the Irish claim with regard to oyster beds and the claim of the Bey of Tunis respecting sponge banks.[6]

The essence of such claims rests on the unique nature of the sedentary fisheries. Oyster, pearl-oyster, chank and sponge fisheries or any other form of sedentary fisheries connected with the bottom of the seabed 'have always been considered as on a different footing from floating fish'.[7] They have also been compared to 'crops on land'; that these resources are considered to be the fruit of the seabed, to be harvested by the sovereign of the adjacent land rather than caught like swimming fish.[8] However, the most convincing theory was the principle enunciated by Lord Hall, who claimed the right over seabed resources depended on long and effective possession in order to be valid.[9] It follows that ownership over

[3] Richard Young, 'Sedentary Fisheries and the Convention on the Continental Shelf' (1961) 55 Am J Int'l L 359, 360–362; FV Garcia-Amador, 'The Origins of the Concept of an Exclusive Economic Zone: Latin American Practice and Legislation', in Francisco Orrego Vicuña (ed.), *The Exclusive Economic Zone: A Latin American Perspective* (Westview 1984) 8.

[4] Cecil J. B. Hurst, 'Whose Is the Bed of the Sea? Sedentary Fisheries Outside the Three-Mile Limit' (1923–1924) 4 Brit YB Int'l L 34, 34.

[5] Ibid 42–43.

[6] Ibid 40–41; Andrea Gioia, 'Tunisia's Claims over Adjacent Seas and the Doctrine of "Historic Rights"' (1984) 11(2) Syr J Int'l L & Com 327, 339; Robin Churchill, Vaughan Lowe and Amy Sander, *The Law of the Sea* (4th ed., Manchester University Press 2022) 223–224.

[7] Thomas Wemyss Fulton, *The Sovereignty of the Sea* (Blackwood 1911) 696–697.

[8] Young (1961) 360–361.

[9] Hurst (1923–1924) 39; Hersch Lauterpacht, 'Sovereignty over Submarine Areas' (1950) 27 Br YB Int'l L 376, 415–433.

the seabed can be established and maintained by the coastal State as long as effective occupation continues; the produce obtained from sedentary fisheries that are situated in the soil of the seabed can be owned by the coastal State as a product of the soil.[10]

The fact that these claims related to certain living resources rather than to the seabed did not retrench their significance. It was acknowledged that sedentary fisheries were an exception to the rule that navigation and fishing on the high seas were free to all alike and ownership can be claimed by the adjacent coastal State where the species are located.[11] Recognising coastal State preferential rights to sedentary fisheries was the first step in the long chain of development to endorse the exclusive rights over marine resources beyond the limit of territorial waters.

2.1.2 The Bering Sea Fur-Seals Arbitrations

Coastal fisheries are the oldest and most important use of the ocean. Jurisdictional claims over floating fisheries beyond territorial waters, however, were not accepted by international society until the twentieth century.

After purchasing the territory of Alaska from Russia in 1867, the United States unilaterally adopted strict conservation measures toward the fur-seals found there, as they were largely diminished in number and seemed threatened with extinction. These measures included some penal statutes prohibiting all persons from killing seals in the Bering Sea, and all vessels whose crews were found violating such statutes were liable to seizure and forfeiture and the crews liable to fine and imprisonment. The application of these statutes since 1886 involved the seizure of several vessels owned by citizens of Great Britain, which resulted in protests from the British who asserted that such seizures were wholly unjustified under international law because they took place outside the three-mile limit of US territorial waters. The two countries eventually agreed to submit the matter to arbitration by a treaty signed on 29 February 1892.[12] The core question that arose before the arbitral tribunal was whether the

[10] Hurst (1923–1924) 40.

[11] Ibid 40; Young (1961) 360.

[12] Bering Sea Fur-Seals Case (Great Britain/United States of America), (1999) 1 International Environmental Law Reports 44–52; Award between the United States and the United Kingdom relating to the Rights of Jurisdiction of United States in the Bering's Sea and the Preservation of Fur Seals, 15 August 1893, Reports of International Arbitral Awards, Volume XXVIII, 263–276 (United Nations, 2007) https://legal.un.org/riaa/cases/vol_XXVIII/263-276.pdf.

United States had the right to enforce its domestic laws beyond the three-mile territorial waters.[13]

The United States defended its actions on three main grounds: first, it was entitled to claim jurisdiction over the Bering Sea either as successor to Russia in sovereignty over Alaska or in its own right; second, the United States had 'a right of protection and property in the fur-seals frequenting the Pribilov Islands when found outside the ordinary three-mile limit'; and third, it had the right to protect fur-seals as trustee on behalf of the common interest of all nations.[14] The arbitral tribunal first found that Russia never in fact asserted or exercised any exclusive jurisdiction or right beyond the ordinary limit of its territorial waters in the Bering Sea, and neither did Great Britain recognise or concede any such claims. The arbitral tribunal then found that the United States 'had no right of protection or property in fur-seals frequenting US islands in the Bering Sea when such seals were found outside the limits of the territorial sea'.[15] Nevertheless, the arbitral tribunal recognised the necessity to protect and preserve the fur-seals outside the jurisdictional limits in the Bering Sea, and responded to the request of the two parties to lay down concurrent regulations for the United States and Great Britain to apply.[16] Those regulations were regarding prohibitions of fishing areas and periods, vessels types, fishing methods and tools, and application scope.[17] This award indicated that although the coastal State had no right to claim protective jurisdiction over fisheries beyond its territorial waters, this was not a legal vacuum; rather protection and preservation measures on the high seas could be applied through international agreements with the flag State.

At the end of the eighteenth century, the unilateral property claim over free swimming fisheries beyond the three-mile limit was novel, and there was no legal foundation to support such a claim against the better-established principle of freedom of the seas. As Arbitrator Morgan stated, these questions were 'to be decided upon the existing state of the law, and finding no existing precedent in the international law, they did not feel

[13] Great Britain–United States of America, Treaty for Submitting to Arbitration the Questions Relating to the Seal Fisheries in Bering Sea, Washington, 29 February 1892, (1999) 1 International Environmental Law Reports 63, Article I.
[14] Bering Sea Fur-Seals Case 54–58.
[15] Ibid 60–61.
[16] Ibid 61.
[17] Ibid 70–73.

warranted in creating one'.[18] It was not a surprise when Russia seized a number of British and American vessels for taking fur-seals in the Bering Sea in 1892 that these seizures had been declared illegal by a new arbitral tribunal, 'since the jurisdiction of the State could not be extended beyond the territorial sea, unless by express convention'.[19]

It was apparent that States were tempted to make inroads upon the general principle of the freedom of the seas. However, these desires were confronted with the difficulties of breaking the absolute dichotomy of 'territorial sea' and 'high seas'. The increasing awareness of protecting and conserving the living resources in waters adjacent but outside territorial waters created an urge for States to deliberately break the traditional rules to bring about these changes.[20]

2.2 The 1930 Hague Codification Conference

2.2.1 State Practice Pre-1930

Driven by the intention to protect the interests of neutrality, defence, surveillance and conservation, coastal States were concerned to extend their jurisdiction over foreign vessels to a broader belt of sea, in some cases upon the high seas adjacent to their territorial waters.[21] However, as the doctrine of the 'freedom of the seas' had been so deeply rooted in international law, there was a natural reluctance to admit that the coastal State had the right to do so.[22] In the absence of a rule of international law fixing a specific extent of coastal State competence over marine areas, States took various measures to meet their own needs.[23]

Several European States made no claim to a single belt of territorial waters, but instead claimed jurisdictions over different limits of adjacent waters for different purposes.[24] France, for example, claimed a cannon-

[18] Ibid 79.
[19] Note Concerning Russia–United States of America Fur-Seals Dispute, (1999) 1 International Environmental Law Reports 84–88.
[20] Daniel P. O'Connell, *The International Law of the Sea*, Vol. I (Clarendon Press 1982) ix.
[21] Percy Thomas Fenn Jr, 'Origins of the Theory of Territorial Waters' (1926) 20 Am J Int'l L 465, 465–471.
[22] Philip C. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction* (GA Jennings 1927) 75.
[23] Ibid 3–71; Oscar R. Houston, 'Freedom of the Seas: The Present State of International Law' (1956) 42 ABA J 235, 235–236.
[24] Alan V. Lowe, 'The Development of the Concept of the Contiguous Zone' (1981) 52 Brit YB Int'l L 109, 133.

shot zone for general and fishing purposes, and jurisdiction up to six miles for neutrality and up to twelve kilometres for customs supervision.[25] The hypothesis behind these claims was the doctrinal position adopted by La Pradelle that a State's maritime jurisdiction was merely a 'bundle of servitudes' based on a 'solid juridical principle derived from the inherent quality of being a coastal State', but which did not amount to sovereignty.[26] Similar positions can be observed from the practice of Belgium, Greece, Italy, Portugal, Spain and Türkiye, all of which made multiple claims to jurisdictional zones of different widths for different purposes.[27]

For States that explicitly accepted the three-mile limit as the breadth of territorial waters, there were two opposite positions: some States denied the existence of jurisdiction beyond the normal limit of territorial waters, while others insisted on exercising such jurisdiction.

In 1736, the British Parliament adopted the Hovering Acts, 'by which vessels with certain cargoes on board, destined for British ports, might be seized within four leagues of the British coast'.[28] But the case of the *Petit Jules*, a French smuggling vessel seized by the British Revenue about twenty-three miles off the Isle of Wight in 1850, was the last occasion on which Britain exercised jurisdiction beyond the three-mile limit over foreign vessels.[29] However, there were inconsistent practices respecting the limits of bays, where coastal State jurisdiction extended to a ten-mile-wide diameter measured between headlands.[30] In 1892, the Fishery Board of Scotland made a by-law closing the Moray Firth and prohibited the use of beam-trawl and otter-trawl by any person for herring fisheries therein. Conviction was obtained and upheld against Danish fisherman Mortensen in 1906, whose violation was found 'at a point within the Moray Firth, more than three miles from the shore, but to the west of a line drawn from Duncansby Head in Caithness to Rattray Point in Aberdeenshire, that being thereafter found within British Territory'.[31] In general, since mid-nineteenth century, British 'national policy had been to uphold the three-mile limit, and to protect against and resist the pretension of any foreign country to enforce its own jurisdiction on the

[25] O'Connell (1982) 121–122.
[26] Ibid 68–70.
[27] Lowe (1981) 135–137.
[28] Fulton (1911) 593.
[29] Lowe (1981) 111–113.
[30] O'Connell (1982) 367.
[31] 'Mortensen v. Peters (High Court of Justiciary of Scotland)' (1907) 1 Am J Int'l L 532.

sea beyond the three-mile limit'.[32] The above-discussed *Bering Sea Arbitration* was one of those examples.

Nevertheless, the steadfast British position was not without exceptions. Traditionally, the strict three-mile jurisdictional competence could be extended in very limited circumstances. It was admitted that the doctrine of 'constructive presence' allowed a wider application of the three-mile rule; for self-defence reasons, the British government reserved its right to extend its jurisdiction; and lastly, the doctrine of 'hot pursuit' was also recognised within a confined scope.[33] Furthermore, as the time drew near to an imminent international law codification conference, Britain softened its position by conditionally agreeing to several extended zones claimed by France and Spain.[34] In the Schedule of Points circulated in advance of the Hague Conference, the British reply indicated that it was prepared to recognise the extended jurisdiction beyond territorial waters through bilateral or multilateral agreements.[35]

The other tendency among the three-mile territorial sea group was that the coastal State in addition claimed a jurisdictional zone within which at least the exercise of certain rights touching on vital interests was reserved.[36] A good example was the liquor laws adopted by the United States in 1920s. By the Eighteenth Amendment to the Constitution, the United States prohibited the importation and exportation of intoxicating liquors for beverage purposes and enforced it on both US nationals and foreigners.[37] Although the US government vigorously maintained the three-mile limit as the extent of territorial waters, it nonetheless seized numerous hovering vessels beyond that limit.[38] Moreover, Congress passed the Tariff Act in 1922 claiming customs control over all ships, whether bound for US ports or not, within four leagues of the coast.[39] Other examples include various extended customs zones or policing zones claimed by Argentina, Chile, Ecuador, Egypt, Estonia and Norway.[40]

[32] O'Connell (1982) 367.
[33] Lowe (1981) 117–122.
[34] Ibid 129.
[35] Ibid 130–131.
[36] Winston Conrad Extavour, *The Exclusive Economic Zone: A Study of the Evolution and Progressive Development of the International Law of the Sea* (Institut universitaire de hautes études internationales 1979) 32.
[37] Jessup (1927) 211.
[38] Ibid 241–242.
[39] Ibid 212–213.
[40] Lowe (1981) 134–135.

Thus, by the 1900s there was a certain tendency towards endorsing the coastal State's extended jurisdiction beyond territorial waters with at least a certain enforcement jurisdiction recognised. That tendency had been observed, analysed and finally incorporated into the formal agenda of the 1930 Hague Conference.

2.2.2 *Failure to Secure an International Agreement*

The First Conference for the Codification of International Law, held at The Hague under the auspices of the League of Nations in 1930, appointed Committee II to study the bases of discussion drawn up by the Preparatory Committee regarding territorial waters.[41] Due to wide divergences among delegations, Committee II was unable to reach an agreement in respect of the fundamental question of the breadth of territorial waters, which necessarily affected the results of the examination of other points.[42] The work of Committee II, however, did not go to waste, as it clarified the legal status of the territorial sea and paved the way for continuing development on this issue.

During the discussions of Committee II, it was recognised that 'international law attributes to each Coastal State sovereignty over a belt of sea round its coasts' which is essential for protecting the legitimate interests of the coastal State.[43] It also adopted the term 'territorial sea' to describe the belt of sea over which the 'sovereignty' extends.[44] Such 'sovereignty' was subject to conditions prescribed by international law, and one important condition resulted from the right of innocent passage granted to the vessels of all States.[45] However, 'outside the one of sovereignty no right of exclusive economic enjoyment may be exercised'.[46]

[41] 'Official Documents: Conference for the Codification of International Law (Hague Conference), The Hague, 13 March 1930, Draft Rules of Procedure for the First Conference for the Codification of International Law, Article VI' (1930) 24(1) Am J Int'l L Sup 74, 75; Hunter Miller, 'The Hague Codification Conference' (1930) 24 (4) Am J Int'l L 674, 674–675.

[42] 'Official Documents: Hague Conference, Report of the Second Committee (Territorial Sea), Rapporteur: M. Francois' (1930) 24(3) Am J Int'l L Sup 234, 236.

[43] Francois (1930) 234.

[44] 'Official Documents: Hague Conference, The Legal Status of the Territorial Sea, Article 1' (1930) 24(3) Am J Int'l L Sup 184, 184.

[45] Ibid 'The Legal Status of the Territorial Sea, Article 3' 185.

[46] Proelss, 'Article 55' (2017), 411.

Correspondent with the divergent State practice as discussed above, Committee II was sharply divided on the question of the breadth of territorial sea and the associated question of coastal States' jurisdiction in adjacent waters.[47] Freedom of navigation was of utter importance to all maritime powers, 'in their own interests they ought to favour the application of the principle by all possible means'.[48] Consequently, the conciliatory approach of acknowledging a jurisdictional zone beyond territorial waters to achieve wider acceptance of the three-mile rule proposed by the Preparatory Committee was not well received at Committee II.[49] Among those States that favoured an additional jurisdictional zone beyond the territorial sea, the purposes of customs and defence were mostly accepted; only four delegations advocated extension of the scope to include fishing interests, namely Portugal, Belgium, Iceland and Denmark.[50] As a result, the Hague Conference merely adopted a recommendation that recognised the necessity of protecting the various products of the sea in the waters beyond the territorial sea, and affirmed the importance of measures of protection and collaboration to safeguard 'the riches constituting the common patrimony'.[51]

When Committee II concluded that it was unable to reach a convention on the territorial sea, the intention was to invite various States to continue exploring the question further and to reconvene a new conference as soon as was opportune.[52] At that time, the idea of certain jurisdictions existing separately from the notion of the territorial sea had emerged but was not widely accepted at the international level. As subsequent State practice showed, the divisions arising from previous claims over the adjacent waters would continue until an acceptable agreement was reached.

[47] 'Official Documents: Hague Conference, Territorial Waters, Extract from the Provisional Minutes of the Thirteenth Meeting Held on Thursday, April 3, 1930' (1930) 24(3) Am J Int'l L Sup 253.
[48] Francois (1930) 234.
[49] 'Official Documents: Hague Conference, Bases of Discussion Drawn up for the Conference by the Preparatory Committee, II Territorial Waters, Point III Breadth of the Territorial Waters' (1930) 24(1) Am J Int'l L Sup 25, 27–29.
[50] Garcia-Amador (1984) 11–12.
[51] 'Official Documents: Hague Conference, Conference for the Codification of International Law Final Act, Recommendation Concerning the Protection of Fisheries' (1930) 24(3) Am J Int'l L Sup 169, 187–188.
[52] 'Official Documents: Hague Conference, Conference for the Codification of International Law Final Act, Resolution' (1930) 24(3) Am J Int'l L Sup 169, 184.

2.3 Early Initiatives for a 200-Mile Maritime Zone

2.3.1 The Truman Proclamations

Aware of the necessity for preserving 'an augmented supply of natural resources' and conserving near-shore fisheries and acknowledging the inadequacy of the narrow extent of territorial waters for such purposes, the United States took unilateral measures to create new rules.[53] Two proclamations issued simultaneously by US President Truman on 28 September 1945, the Continental Shelf Proclamation and the Fisheries Proclamation, which opened the door for claims of coastal State jurisdiction over the high seas.[54]

The Continental Shelf Proclamation asserted jurisdiction and control over 'the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the [United States]', as they were regarded as 'appertaining to' the coastal State.[55] The United States had adopted the three-mile limit as the breadth of territorial waters and did not show any desire to challenge it before the late 1930s, except by enforcing jurisdiction under the liquor laws adopted during the Prohibition period in the 1920s.[56] Thus, it was admitted from the beginning that this proposal was 'to evolve new concepts of maritime territorial limits beyond three miles, and of rights to occupy and exploit the surface and subsoil of the open sea'.[57] The United States claimed to base its policy on the propositions that the continental shelf may be regarded as *ipso jure* appurtenant to its territory on geographic and geomorphological grounds, and that the resources therein were affected

[53] United States Department of State (US DOS), 'Formulation of United States Policy on the Resources of the Continental Shelf and on Coastal Fisheries', Foreign Relations of the United States: Diplomatic Papers, 1945, General: Political and Economic Matters, Volume 2, 1481–1482, 1521, http://digital.library.wisc.edu/1711.dl/FRUS.FRUS1945v02; David J Attard, *The Exclusive Economic Zone in International Law* (Clarendon Press 1987) 1.

[54] 'Official Documents – United States (US): Proclamation by the President with Respect to the Natural Resources of the Subsoil and Seabed of the Continental Shelf', 'Proclamation by the President with Respect to Coastal Fisheries in Certain Areas of the High Seas' (1946) 40(1) Am J Int'l L Sup 45–47; George V. Galdorisi and Alan G. Kaufman, 'Military Activities in the Exclusive Economic Zone: Preventing Uncertainty and Defusing Conflict' (2001–2002) 32 Cal W Int'l L J 253, 258.

[55] United States, 'Proclamation by the President with Respect to the Natural Resources of the Subsoil and Seabed of the Continental Shelf' 46.

[56] James R. Crawford, 'International Law on a Given Day', in James Crawford, *International Law as An Open System: Selected Essays* (Cameron May 2002) 80–81.

[57] US DOS, 'Formulation of United States Policy' 1481.

by and dependent upon coastal State activities; therefore, it was reasonable for the United States to exercise 'special jurisdictional and property rights in particular areas of the bed or subsoil of the high seas', as well as for the purposes of 'self-protection and as a matter of national defense'.[58]

The effect of the Fisheries Proclamation was to assert 'the policy of establishing conservation zones for the protection of fishery resources' in certain areas of the high seas contiguous to the coasts of the United States 'wherein fishing activities have been or in the future may be developed and maintained on a substantial scale'.[59] The United States reserved exclusive regulation and control over such conservation zones where fishing activities were conducted by its nationals only, while establishing and applying joint regulation and control in areas where fishing activities were conducted by nationals of other States.[60] Bearing in mind previous failed claims over the Bering Sea fur-seals discussed above, the Fisheries Proclamation was asserted on 'the premise that reasonable and just bases for the exercise of jurisdiction over the fisheries of an area of the high seas in the vicinity of the coasts of a state' exist.[61] It not only recognised the right of other States to establish conservation zones off their coasts on a reciprocal basis, but also explicitly ensured that the high seas status of the areas in which such zones were established and freedom of navigation were in no way affected.[62]

In order to prevent protests from other States, the United States conducted international consultations with twelve foreign governments whose interests might be affected before the proclamations were made.[63] For the Fisheries Proclamation in particular, the United States emphasised that it had no intention of extending the breadth of territorial waters or excluding foreign nationals, but rather was establishing clearly defined conservation zones in areas of the high seas contiguous to the coasts for conservation and protection purposes.[64] Iceland and Cuba gave definitive replies regarding the Fisheries Proclamation; the British

[58] Ibid 1500–1502.
[59] Ibid 1503; United States, 'Proclamation by the President with Respect to Coastal Fisheries in Certain Areas of the High Seas' 47.
[60] United States, 'Proclamation by the President with Respect to Coastal Fisheries in Certain Areas of the High Seas' 47.
[61] US DOS, 'Formulation of United States Policy' 1498.
[62] United States, 'Proclamation by the President with Respect to Coastal Fisheries in Certain Areas of the High Seas' 47.
[63] US DOS, 'Formulation of United States Policy' 1486–1487.
[64] Ibid 1499, 1507, 1515.

reluctantly accepted the Fisheries Proclamation, but welcomed the Continental Shelf Proclamation; Canada did not reply due to an imminent election, but from earlier dealings and the special relationship with the United States, it would likely have accepted the Fisheries Proclamation.[65] Therefore, although such proclamations were clearly tantamount to an infringement of the existing general freedom of the high seas, they were not met by widespread protests.

Other factors contributed to the success of the Truman Proclamations. As technology advanced, methods of industrial-scale fishing developed progressively, resulting in more intensified exploitation, which caused a rapid depletion of certain marine resources, such as tuna, salmon and whales in the Pacific.[66] In contrast, under the then international law, coastal State competence was limited to a narrow belt of territorial waters, which precluded coastal States from excluding foreign fishing vessels from the waters further offshore. Moreover, with modern technological progress, the utilisation of submarine areas for oil wells and mines was already practicable in the 1940s. The need for a basis for the extension of jurisdiction for a reasonable distance beyond territorial waters was accordingly recognised by coastal States.[67] Furthermore, far away from the European battlefield, the United States was able to develop its national economy, science and technology, thereby building up its strength to take the lead in post-war reconstruction.[68] As a result, when these two ground-breaking proclamations were published, they were generally accepted and widely followed.[69]

2.3.2 *Latin American Practice*

Unlike their moderate precedent, the maritime claims made by Latin American States following the Truman Proclamations were more

[65] Ibid 1493–1495, 1511–1514, 1523–1524, 1527.

[66] Ann L. Hollick, 'US Ocean Policy: The Truman Proclamations' (1976) 17(1) Va J Int'l L 23, 25.

[67] Robert B. Krueger and Myron H. Nordquist, 'The Evolution of the 200-Mile Exclusive Economic Zone: State Practice in the Pacific Basin' (1978-1979) 19(2) Va J Int'l L 321, 325.

[68] Crawford (2002) 91.

[69] Lewis M. Alexander, 'The Ocean Enclosure Movement: Inventory and Prospect' (1982–1983) 20(3) San Diego L Rev 561, 565; Attard (1987) 2–3; Krueger and Nordquist (1978–1979) 325–328; Daniel Margolies, 'Jurisdiction in Offshore Submerged Lands and the Significance of the Truman Proclamation in Post war U.S. Foreign Policy' (2020) 44(3) Diplomatic History 447, 448–451.

ambitious. With the end of the Second World War, Latin American States were facing resumed competition from industrial-scale fishing and whaling by foreign fleets in the South Pacific Ocean and the Antarctic Zone.[70] In addition, the geographical fact that a deep abyss along the west coast of South America causes the seabed to plunge abruptly before it rises to an offshore plateau, made the ordinary doctrine of the continental shelf irrelevant to some States.[71] In searching for alternative protections, some of the national decrees and proclamations attempted to claim sovereignty over the continental shelf and the superjacent waters to a minimum distance of 200 nautical miles (NM) measured from the baselines.[72]

As an immediate successor, the Mexican Presidential Declaration in 1945 laid claim to 'the whole of the continental platform or shelf adjoining its coastline and to each and all of the natural resources existing there, whether known or unknown' based on the grounds that the land forming the continental plateau rests on the continental shelf that 'clearly forms an integral part of the continental countries'.[73] With regard to fishing resources, with which the coastal State has been 'endowed by nature', their protection 'should consist in the extension of control and supervision by the State to the places and zones . . . irrespective of their distance from the coast'.[74] Mexico claimed exclusive rights over the fisheries resources and incorporated the continental shelf into its territory, rather than merely claiming jurisdiction and control of the natural resources therein. Nonetheless, it still recognised the lawful rights of third parties on a reciprocal basis and preserved the freedom of navigation.[75]

In order to protect the offshore fisheries effectively, Chile took the initiative in proclaiming a 200 NM sovereign maritime zone by Presidential Declaration in 1947, which was immediately followed by Peruvian Presidential Decree No. 781.[76] Both Chile and Peru asserted 'national sovereignty', or (in the language of the Peruvian Decree)

[70] Pilar Armanet, 'The Economic Interest Underlying the First Declaration on a Maritime Zone', in Orrego Vicuña (1984) 28.
[71] O'Connell (1982) 555.
[72] The claims were not consistent with the use of unit of measurement, this chapter only use nautical miles (NM) when the original documents so indicate.
[73] 'Mexico – Presidential Declaration with Respect to Continental Shelf, 29 October 1945', in Laws and Regulations on the Regime of the High Seas (United Nations, ST/LEG/SER.B/1, 11 January 1951), 13–14.
[74] Ibid.
[75] Ibid.
[76] 'Chile – Presidential Declaration Concerning Continental Shelf, 23 June 1947', 'Peru – Presidential Decree No. 781, Concerning Submerged Continental or Insular Shelf,

'national sovereignty and jurisdiction', over the continental shelf and the adjacent seas, regardless of depth, for preserving, protecting and exploiting the natural resources.[77] By virtue of these proclamations, coastal protection and control over the adjacent seas were immediately extended to a distance of 200 NM measured from the coastlines without affecting 'the rights of free navigation on the high seas'.[78] This single comprehensive claim of sovereignty over the continental shelf and its superjacent waters clearly went beyond the scope of the Truman Proclamations.[79] Nevertheless, similar claims beyond the limit of the territorial waters were declared by Argentina, Costa Rica, Cuba, El Salvador, Honduras, Iceland, Nicaragua, Panama, and Saudi Arabia.[80]

In order to consolidate their positions with respect to the new 200 NM maritime zone, Chile, Ecuador and Peru, all countries which had no continual continental shelf, signed a joint Declaration on the Maritime Zone in 1952 (Santiago Declaration) to claim sole right based on distance.[81] They declared that each State 'possesses exclusive sovereignty and jurisdiction over the sea along the coasts of their respective countries to a minimum distance of 200 nautical miles from the coasts', including 'the seabed and the subsoil thereof'.[82] There were controversial

1 August 1947', in Laws and Regulations on the Regime of the High Seas (United Nations, ST/LEG/SER.B/1, 11 January 1951), 6–7, 16–17.

[77] 'Chile – Presidential Declaration Concerning Continental Shelf', para (1); 'Peru – Presidential Decree No. 781', para 1.

[78] 'Chile – Presidential Declaration Concerning Continental Shelf', para (3); 'Peru – Presidential Decree No. 781', para 3.

[79] Attard (1987) 6; Maritime Dispute (Peru v. Chile), Judgment, ICJ Reports 2014, p. 3, para 26.

[80] 'Costa Rica – Decree-Law No. 803, Concerning Continental and Insular Shelf, 2 November 1949', 'El Salvador – Political Constitution, 7 September 1950', 'Honduras – Congressional Decree No. 25, 17 January 1951', 'Iceland – Law No.44 Concerning the Scientific Conservation of the Continental Shelf Fisheries, 5 April 1948', in Laws and Regulations on the Regime of the High Seas (United Nations, ST/LEG/SER.B/1, 11 January 1951) 9–10, 300–303, 12–13; Richard Young, 'Recent Developments with respect to the Continental Shelf' (1948) 42 Am J Int'l L 849, 850–855; 'Rights Claimed by Littoral States in Adjacent Seas: Claims to the Continental Shelf' (1948–1949) 46 Int'l Law Stud 182 https://digital-commons.usnwc.edu/ils/vol46/iss1/29/.

[81] Statement by HS Amerasinghe, 'The Third United Nations Conference on the Law of the Sea', in Myron H Nordquist (ed), *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. I (Martinus Nijhoff 1985) 2.

[82] Declaration on the Maritime Zone (Santiago Declaration), 18 August 1952, Articles II–IV, www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/CHL-ECU-PER1952MZ.PDF.

interpretations with regard to the character of the 'maritime zone' established by this Santiago Declaration. Although it used the phrase 'exclusive sovereignty and jurisdiction', the purpose of establishing such zones was solely for 'the conservation, development and exploitation of these resources, to which the coastal countries are entitled'.[83] In addition, the Santiago Declaration allowed 'innocent and inoffensive passage through the area indicated for ships of all nations', which was different from the preserved freedom of navigation beyond the limit of the territorial sea made in their individual national decrees.[84] This supports the assumption that the Santiago Declaration was proposing a special maritime zone that incorporates exclusive rights over all resources found in this area, with limited recognition for the freedom of navigation that is inoffensive to such economic purposes.[85]

The Latin American practices appeared to diverge significantly in scope and character from the Truman Proclamations, in particular with regard to the claims of sovereignty and jurisdiction to a 200 NM maritime zone. These unilateral claims, as well as the first international instrument in this respect, the Santiago Declaration, served as the foundation for subsequent developments in the international law of the sea and constituted a major source of inspiration for the concept of the EEZ.[86]

2.4 Development of the Exclusive Economic Zone Concept

2.4.1 The 1958 and 1960 Law of the Sea Conferences

The trend of extending coastal State jurisdiction up to a 200-mile maritime zone, which emerged and developed after the Second World War, gained little support at both the First and Second United Nations Conferences on the Law of the Sea, held in Geneva in 1958 and 1960 respectively.[87]

At its first session in 1949, the International Law Commission (ILC) incorporated the high seas and the territorial waters as topics whose codification were considered as 'necessary or desirable'.[88] The

[83] Ibid Article I.
[84] Ibid Article V.
[85] Francisco Orrego Vicuña, The Exclusive Economic Zone: Regime and Legal Nature under International Law (Cambridge University Press 1989)
[86] Garcia-Amador (1984) 7, 23; Extavour (1979) 57.
[87] United Nations, Codification Division Publications, Diplomatic Conferences, https://legal.un.org/diplomaticconferences/.
[88] 'Report of the International Law Commission to the United Nations General Assembly' (1949) 1 YB ILC 280.

Chairman observed the emerging State practice of establishing reserved zones for the preservation of fisheries that may affect 'the sea approaches to various territories' in spite of 'the time-honoured principle of the freedom of the high seas'.[89] The ILC's work accumulated into a draft of Articles Concerning the Law of the Sea adopted in 1956 (ILC Draft Articles), comprising 73 articles dealing with territorial waters and high seas (including high seas fisheries), as well as the continental shelf.[90]

At the ILC, the idea of endorsing a separate exclusive fishery right to the coastal State beyond the territorial sea limit was strongly resisted, while the freedom of fishing was explicitly preserved.[91] Nevertheless, the concept of the continental shelf was accepted. It was defined as 'the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation', where the coastal State had 'sovereign rights for the purpose of exploring and exploiting its natural resources'.[92] It was also confirmed that the sovereign rights 'over the continental shelf do not affect the legal status of the superjacent waters as high seas'.[93] The ILC Draft Articles demonstrated the tension between the coastal State claims and the freedom of the seas in the 1950s, which denied the previous proclamations of sovereignty and exclusive jurisdiction made by Latin American States and paved the way for the 1958 First Geneva Conference.

Among the four Conventions adopted at the 1958 First Geneva Conference, there was no recognition of a separate jurisdictional zone for fishery interests. The Territorial Sea and the Contiguous Zone Convention adopted a 12-mile contiguous zone as an independent regime of the territorial sea, where the coastal State has enforcement jurisdiction to prevent and punish 'infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea'.[94] This provision signified that the contiguous zone was unrelated to fisheries. In addition, the High Seas Convention defined the high seas as 'all parts of the sea that are not included in the territorial sea or in the

[89] Ibid 43; Extavour (1979) 101.
[90] 'Report of the International Law Commission to the United Nations General Assembly, A/3159, Articles Concerning the Law of the Sea' (1956) 2 YB ILC 265.
[91] Ibid Article 27.
[92] Ibid Articles 67–68.
[93] Ibid Article 69.
[94] Convention on the Territorial Sea and the Contiguous Zone (29 April 1958, in force 10 September 1964) 516 UNTS 205, Article 24.

internal waters of a state', plainly declaring that the water column of the contiguous zone and above the continental shelf has the same legal status as the high seas.[95] Therefore, within the contiguous zone 'no state may validly purport to subject any part of them to its sovereignty', thereby preserving the freedoms of navigation and fishing.[96] Nevertheless, the Fisheries Convention recognised that the coastal State has 'a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea' and that it could 'adopt unilateral measures of conservation' to this end when fulfilling the requirements of prior consultation, urgent need, scientific support and non-discrimination.[97] Though this 'special interest' was significantly different from the extensive claims made by some Latin American States, it was the first modification of the freedom of fishing on the high seas and to some degree paved the way for extended coastal State jurisdiction over fisheries beyond the territorial sea.

In contrast, the emerging doctrine of the continental shelf had matured to be accepted on the international level and provided a victory for those seeking extended coastal State competence. The Continental Shelf Convention recognised the coastal State's sovereign rights over the continental shelf 'for the purpose of exploring it and exploiting its natural resources', including 'the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species'.[98] Moreover, such rights 'do not affect the legal status of the superjacent waters as high seas', which undoubtedly did not constitute the right as one of 'sovereignty'.[99]

It is noteworthy that the 1958 First Geneva Conference took a tentative move to recognise certain rights of the coastal State beyond the territorial sea, but State practice was not yet mature enough to reach a consensus except for on the matter of the continental shelf. As the 1958 First Geneva Conference adjourned, there was a general understanding that there should be a second law of the sea conference to continue to work on the two unsolved questions, namely, the breadth of the territorial sea and

[95] Convention on the High Seas (29 April 1958, in force 30 September 1962) 450 UNTS 11, Article 1.
[96] Ibid Article 2.
[97] Convention on Fishing and Conservation of the Living Resources of the High Seas (29 April 1958, in force 20 March 1966) 559 UNTS 285, Articles 6(1), 7.
[98] Convention on the Continental Shelf (29 April 1958, in force 10 June 1964) 499 UNTS 311, Articles 2(1), 2(4).
[99] Ibid Article 3.

the extent of the exclusive fisheries jurisdiction beyond the territorial sea.[100] Most proposals received at the 1960 Second Geneva Conference envisaged a narrow breadth of the territorial sea accompanied by a narrow fishery zone that was beyond and adjacent to the territorial sea, 'coupled with a phasing out of foreign fishing activity' therein.[101] One notable proposal was a so-called six-and-six formula co-sponsored by the United States and Canada that proposed a six-mile territorial sea with a further six-mile fishing zone where the coastal State 'shall have the same rights in respect of fishing and exploitation of the living resources of the sea as it has in its territorial sea'.[102] However, this proposal fell one vote short of the two-thirds majority necessary for adoption.[103]

It is clear that, after the Second World War, State practice took a shift towards the acceptance of extended coastal State rights over the maritime areas beyond and adjacent to the territorial sea, in particular the recognition of the doctrine of the continental shelf. Although exclusive fisheries jurisdiction beyond the territorial sea was not accepted, neither was the 200-mile single maritime zone claimed by the Latin American States. The work of the two Geneva Conferences was decisive for the development of the law of the sea in the period thereafter.

2.4.2 Post-Geneva Developments

The law of the sea was developed in the broader context of the international relations that witnessed the political, social and economic changes after the Second World War. One of the most decisive events has been the disintegration of the colonial empires and the birth of scores of a large number of new States that carry with them a legacy of resentment over their past status and a host of issues relating to their development.[104] In seeking to establish their national identity on the international stage,

[100] United Nations General Assembly (UNGA), Res 1307 (XIII), 10 December 1958, Convening of A Second United Nations Conference on the Law of the Sea.

[101] Nordquist, Nandan and Rosenne (1993) 495.

[102] Ibid; Second United Nations Conference on the Law of the Sea, A/CONF.19/L.11, 22 April 1960, 'Canada and United States of America: proposal'.

[103] Second United Nations Conference on the Law of the Sea, Official Records, Vol. I: Summary Records, Annexes and Final Act, A/CONF.19/SR.13, 26 April 1960, Thirteenth Plenary Meeting, 30.

[104] UNGA, Res 1514 (XV), 14 December 1960, Declaration on the Granting of Independence to Colonial Countries and Peoples; Malcolm N Shaw, *International Law* (8th ed., Cambridge University Press 2017) 28.

these new States were eager to embrace the ideas of the sovereignty and equality of States, and to support the right of permanent sovereignty over natural resources.[105] Their needs are manifested in the issues of national claims over natural resources in the adjacent maritime areas that came to shape the legal order for the ocean.[106]

Following the two Geneva Conferences, there was a renewed trend of coastal States to extend their claims of the breadth of the territorial sea or over specific rights or jurisdiction in the areas beyond the territorial sea.[107] For most coastal States that were actively engaged in this process, the primary drive was to preserve their fishing rights from the growing interests of distant-water fishing States.[108] A few notable practices emerged in this period. First, States quickly adopted the practice of extending the breadth of their territorial sea to 12 NM.[109] Second, in the absence of general rules regulating fishery rights, States' claims diverged between a 12-mile fishery zone up to 200-mile fishery zone, with numerous different breadths in between, for the purpose of asserting fisheries jurisdiction or other extensive rights.[110] Third, States concluded bilateral and multilateral instruments to secure recognition of their claims.

In Europe, there were emerging attempts to increase fisheries jurisdiction beyond the territorial sea. The inconsistent national practice, however, had led to the arrest of a number of fishing vessels and provoked conflicts among several States with some of the disputes been brought to the International Court of Justice (ICJ). In 1964, twelve European States signed a Fisheries Convention, *inter alia*, providing that each 'coastal State has the exclusive right to fish and exclusive jurisdiction in matters of fisheries within the belt of six miles measured from the baseline of its

[105] UNGA, Res 1803 (XVII), 14 December 1962, Permanent Sovereignty over Natural Resources; Shaw (2017) 29.

[106] Satya N. Nandan with Kristine E. Dalaker, *Reflections on the Making of the Modern Law of the Sea* (National University of Singapore 2021) 31–32.

[107] Nordquist, Nandan and Rosenne (1993) 495.

[108] Tommy Koh, *Building a New Legal Order for the Oceans* (National University of Singapore 2020) 270–282; Margaret A. Yong, 'A Quiet Revolution: The Exclusivity of Exclusive Economic Zone', in Kim Rubenstein (ed.), *Traversing Divides: Honouring Deborah Cas's Contribution to Public and International Law* (Australian National University Press 2021) 62–63.

[109] Extavour (1979) 128.

[110] Ibid 165–167; David Harris and Sandesh Sivakumaran, *Cases and Materials on International Law* (8th ed, Sweet & Maxwell 2015) 391–392; Churchill, Lowe and Sander (2022) 522–526.

territorial sea', and reserving the right to fish to only the coastal State and certain habitual fishing contracting parties in the belt between six and twelve miles from the baseline.[111] This was an effort to reconcile the desire of coastal States to extend their jurisdiction over a greater portion of the sea but still preserve the fishing rights of other interested States on a regional level.

More extensive claims emerged in Latin America, where States had extended their jurisdiction over the adjacent seas to distances greater than 12 miles. Brazil, for instance, extended its territorial sea to 200 NM, while granting ships of all other nations the right of innocent passage.[112] Similar claims to a 200-mile jurisdictional zone were made by Ecuador,[113] El Salvador,[114] Nicaragua[115] and Panama.[116] Among the 200 miles claimants, Uruguay established two well-distinguished legal regimes in this zone. By Decree 604/969 and the Fisheries Act Law No. 13833, both adopted on 3 December 1969, Uruguay extended its territorial sea to 200 miles: within the inner zone of 12 miles, it reserved the exclusive right to exploit the natural resources, and ships of all nations enjoyed the right of innocent passage; in the remaining 188 miles, the freedom of navigation and overflight were retained and fishing activities were permitted under certain conditions.[117] This regime served as an example of the functional approach to claim maritime jurisdiction, and it became the closest approximation to the nascent concept of the EEZ.

[111] Fisheries Convention (adopted London, 9 March/10 April 1964, entered into force 15 March 1966) Articles 2–3, Contracting Parties are Austria, Belgium, Denmark, the French Republic, the Federal Republic of Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland, https://assets.publishing.service.gov.uk/media/5a7c6f4bed915d696ccfcc12/Fisheries_Conv_March-April_1964.pdf.

[112] 'Brazil, Decree Law No. 1098 of 25 March, 1970', in S Houston Lay, Robin Churchill and Myron Nordquist (eds), New Directions in the Law of the Sea, Documents Volume I (New York 1973) 15.

[113] Ecuador, Civil Code as amended by Decree No.256-CLP of 27 February 1970 (1), Article 628, www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/ECU_1970_Code.pdf.

[114] El Salvador, Constitution of 13 December 1983, Article 84, www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/SLV_1983_Constitution.pdf.

[115] Nicaragua, Act No. 205 of 19 December 1979 on the Continental Shelf and Adjacent Sea, Article 2, www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/NIC_1979_Act.pdf.

[116] Panama, Act No.31 of 2 February 1967, Article 1, www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PAN_1967_Act.pdf.

[117] Extavour (1979) 139–140; Attard (1987) 17–18.

The claimant States supplemented their unilateral claims by a series of regional declarations to consolidate their positions in response to the movement within the United Nations towards the convocation of a third law of the sea conference.[118] The States involved in this revival were mainly newly independent developing countries of Latin America, Africa and Asia. For the Latin American States, this was an inevitable phase in the continuous process of evolution of their unilateral claims, while most newly independent States in Africa and Asia were making their first contribution to the development of international law that could meet their special needs and even form part of a new international economic order.[119]

The Latin American States consolidated their positions on the 200-mile zone in two multilateral declarations adopted in 1970. The first meeting, attended by nine States that claimed a 200-mile zone, unanimously adopted the Montevideo Declaration.[120] The subsequent meeting was intended to embrace all the States of the Latin America and Caribbean regions, with the aim of co-ordinating a common position based on the maritime policy agreed upon at the previous meeting, and 14 of the 20 participating States signed the Lima Declaration.[121] Both Declarations recognised the 'geographical, economic and social link between the sea, the land, and man who inhabits it', expressed concern over the 'abusive practice in the extraction of marine resources' and the 'disturbance of the ecological balance', and affirmed that each coastal State has the sovereign right over its natural resources.[122] Accordingly, the coastal State had the right to establish the limits of its maritime sovereignty or jurisdiction in accordance with reasonable criteria, to take control of the marine resources within, and to exercise other jurisdiction without prejudice to the freedom of navigation and overflight enjoyed by all States.[123] The Declarations endowed the coastal State with the right to decide its maritime jurisdiction limit – not to seek sovereignty for the sake of territorial expansion, but to accomplish the need to protect and utilise the natural resources for its own economic benefit.

[118] Attard (1987) 15–17.
[119] Extavour (1979) 143–145; Shaw (2017) 30.
[120] Montevideo Declaration on the Law of the Sea, 8 May 1970, signed by Argentina, Brazil, Chile, Ecuador, El Salvador, Panama, Peru, Nicaragua, and Uruguay, (1970) 9(5) ILM 1081 (Montevideo Declaration).
[121] Declaration of the Latin American States on the Law of the Sea, 8 August 1970, (1971) 10 (2) ILM 207 (Lima Declaration).
[122] Montevideo Declaration, Preamble; Lima Declaration, Preamble.
[123] Montevideo Declaration, paras 2, 6; Lima Declaration, paras 2–3.

The 200-mile maritime zone was refined in the Santo Domingo Declaration by a number of Caribbean States as the 'patrimonial sea', extending to a maximum of 200 NM, in which the coastal State had 'sovereign rights over the renewable and non-renewable natural resources, which are found in the waters, in the seabed and in the subsoil', instead of sovereignty over the sea itself.[124] Freedom of navigation, overflight and the laying of submarine cables and pipelines of all States were recognised 'with no restrictions other than those resulting from the exercise by the Coastal State of its rights within the area'.[125] The concept of 'patrimonial sea' was one of the immediate precursors of the EEZ, in the sense that it emphasised the economic interests of the coastal State over the natural resources, rather than the extension of jurisdiction for territorial purposes, while maintaining respect for the high seas freedoms of all other States.[126]

The newly independent States in Africa also faced a serious threat to their offshore fisheries due to over-exploitation by foreign distant-water fishing fleets, which brought them closer to the Latin American practice of protecting such natural resources.[127] Inspired by their participation in the Lima Conference, State members of the Asian-African Legal Consultative Committee included the subject of the law of the sea on the agenda for the 1971 Colombo session that set up a working group to consider related issues.[128] At the 1972 Lagos session, Kenya presented a working paper on 'the Exclusive Economic Zone Concept', which attempted to safeguard the coastal State's economic interests without interfering unduly in other States' legitimate interests in navigation.[129] This concept embodied a relatively narrow belt of territorial sea of 12 miles, supplemented by the exclusive right of coastal States for economic purposes in a wider zone up to a maximum distance of 200 NM from the

[124] Declaration of Specialized Conference on Problems of the Sea, 9 June 1972, (1972) 11(4) ILM 892, Patrimonial Sea, paras 1, 3 (Santo Domingo Declaration).

[125] Ibid Patrimonial Sea, para 5.

[126] Satya N. Nandan, 'The Exclusive Economic Zone: A Historical Perspective', in *The Law and the Sea: Essays in Memory of Jean Carroz* (United Nations Food and Agriculture Organization 1987), www.fao.org/docrep/s5280t/s5280t0p.htm.

[127] Attard (1987) 20–21; Koh (2021) 280–282.

[128] 'Report on the 13th Session of the Asian-African Legal Consultative Committee, 17 May 1972' (1972) 2 YB ILC 216; Julio Cesar Lupinacci, 'The Legal Status of the Exclusive Economic Zone in the 1982 Convention on the Law of the Sea', in Orrego Vicuña (1984) 88; Nandan (1987).

[129] 'Kenyan Draft Articles on the Concept of an Exclusive Economic Zone beyond the Territorial Sea, 7 August 1972' (1973) 12(1) ILM 33.

baselines.[130] This proposal received widespread support within the meeting, and encouraged States to explore this pattern further.[131]

A unified position on this economic zone was presented in the final Report of the African States Regional Seminar on the Law of the Sea in 1972.[132] This Report acknowledged that the coastal State has the right to determine the limits of its maritime jurisdiction, where it has the right to establish beyond the 12 NM territorial sea an economic zone over which it will have an exclusive jurisdiction for the exploitation of the living resources and pollution control, while other States enjoy the freedom of navigation, overflight and the laying of submarine cables and pipelines.[133]

The EEZ concept was further strengthened by the Declaration of the Organization of African Unity on the Issues of the Law of the Sea (OAU Declaration) as the general position of the African States at the newly convened conference on the law of the sea.[134] The OAU Declaration recognised 'the right of each coastal State to establish an [EEZ] beyond their territorial seas whose limits shall not exceed 200[NM]', within which it 'shall exercise permanent sovereignty over all the living and mineral resources and shall manage the zone without undue interference with the other legitimate uses of the sea, namely, freedom of navigation, overflight and laying of cables and pipelines'.[135] The OAU Declaration was incorporated into a proposal entitled Draft Articles on Exclusive Economic Zone and presented to the Sea-Bed Committee in 1973.[136]

2.5 Conclusion

The origins and evolution of the EEZ concept demonstrated beyond doubt that the intention of the extended coastal State claims is to satisfy economic interests while not unduly interrupting the high seas freedoms.

[130] Ibid Articles I–II, VII; Shigeru Oda, *The Law of the Sea in Our Time II: The United Nations Seabed Committee, 1968–1973* (Sijthoff Leyden 1977) 215–216.
[131] Report on the 13th Session of the Asian-African Legal Consultative Committee 217.
[132] 'African States: Conclusions of the Regional Seminar on the Law of the Sea, 30 June 1972' (1973) 12(1) ILM 210.
[133] Ibid para 1(a)(1)–(3).
[134] Third United Nations Conference on the Law of the Sea, Official Records, Vol. III: Documents, A/CONF.62/33, 19 July 1974, Declaration of the Organization of African Unity on the Issues of the Law of the Sea.
[135] Ibid Articles 6–7.
[136] UNGA, A/AC.138/SC.II/L.40, 16 July 1973; 'Draft Articles on the Exclusive Economic Zone' (1973) 12(5) ILM 1246.

Nevertheless, the challenge to the long established dichotomy between territorial waters and high seas met with strong resistance from different States over time.

The idea of claiming an additional zone beyond the territorial waters for fishery protection and conservation gained strength after the Second World War in association with the decolonisation movement. The claim of a 200-mile zone originated from a group of Latin American States, refined by the Caribbean States as the patrimonial sea, and defined explicitly by the African States as the exclusive economic zone. This process was supplemented by State practice in Europe and other regions to claim fisher jurisdictions to varying distances and under different terminologies.

By the early 1970s, State practice showed an accelerated trend towards the extension of coastal State jurisdiction over sea areas beyond the territorial sea limit.[137] These developments were such that in the 1974 *Fisheries Jurisdiction* cases, the ICJ stated that two concepts had crystallised as customary law arising out of State practice and the general consensus revealed at the two Geneva Conferences. The first was the concept of a 12-mile fishery zone measured from the baselines where the coastal State may claim exclusive fishery jurisdiction, and the second was the concept of a coastal State's preferential rights of fishing in adjacent waters in a situation of special dependence on its coastal fisheries.[138] However, ICJ declined to pronounce on the general validity in international law of Iceland's 50 NM exclusive fishing zone except to recognise its preferential position.[139] Against this background, the concept of the EEZ became a crucial item on the agenda of the Third United Nations Conference on the Law of the Sea which commenced in 1973, with the hope of completing the process of negotiation to become a widely-accepted legal regime.[140]

[137] Harris and Sivakumaran (2015) 392; Myron Nordquist and Kenneth R Simmonds (eds.), *New Directions in the Law of the Sea*, Documents Volume X (New York 1973) 472.

[138] Fisheries Jurisdiction (United Kingdom v. Iceland), Merits, Judgment, ICJ Reports 1974, p. 3, para 52; Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Merits, Judgment, ICJ Reports 1974, p. 175, para 44.

[139] Fisheries Jurisdiction (UK v. Iceland), paras 67–68; Fisheries Jurisdiction (Germany v. Iceland), paras 59–60.

[140] Nordquist, Nandan and Rosenne (1993) 498; Koh (2020) 3–10; Nandan (2021) 41–42.