

**JURISDICTIONAL WATERS DELIMITATION: INDIA'S
EXCLUSIVE ECONOMIC ZONE (EEZ) IN MV ENRICA
LEXIECASE**

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Italian shooting in the Arabian sea occurred within the Indian Contiguous Zone on 15 February 2012, off the coast of southern India sparked a major diplomatic row between Italy and India, with Indian police immediately opening a murder enquiry and later arresting two members of the Italian Navy security team over the shooting the use of live fire from automatic weapons by members of an Italian Vessel Protection Detachment (VPD) on board oil tanker MV *Enrica Lexie* was linked to the death of two Indian fishermen on board a fishing boat. Ajesh Binki and Valentine aka Gelastine, natives of Tamil Nadu and Kerala respectively, were allegedly shot dead by Italian marines of the Reggimento San Marco, Marina Militare.* In this backdrop, the article focuses on India's maritime interest in relation to the exclusive economic zone (EEZ) and related issues arising out of shooting.

*Italian Marines Chief Master Sergeant Massimiliano Latorre and Sergeant Salvatore Girone, on board the Italian cargo vessel *Enrica Lexie* had shot dead two Indian fishermen suspecting them to be pirates. See more details, India police open murder case against Italian ship crew". BBC News. 17 February 2012.

"Since the seventeenth century, when the development of seaborne trade and the emergence of powerful maritime nations led to a shift from the notion of closed seas claimed by a few countries to the concept of open seas, the two basic principles of the law of the sea have been that a narrow strip of coastal waters should be under the exclusive sovereignty of the coastal state and that the high seas beyond should be freely accessible to all. These principles were originally intended to satisfy and reconcile the requirements of national security with freedom of trade

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and navigation. But they were applied to all activities in both areas and ipso facto defined the legal framework within which fishing activities were carried on.

At the Conference on the Law of the Sea, there was only limited support for maintaining the status quo..."¹

The concept of the exclusive economic zone is an essential element of compromises and trade-offs that constitutes the 1982 Convention on the Law of the Sea.² It is a concept which has received

1 Carroz, J.E. 1982. The living resources of the sea. In the management of humanity's resources: The Law of the Sea. Workshop 1981 organized by The Hague Academy of International Law and the United Nations University. The Hague, Martinus Nijhoff, pp. 193-207. Sourced from Food and Agricultural Organization (FAO) Corporate Document Repository titled FAO Essays in memory of Jean Carroz, The Law and Sea... It is in the article by S.N. Nandan, 'The Exclusive Economic Zone: A Historical Perspective' in <http://www.fao.org/docrep/s5280t/s5280t0p.htm>. Accessed on February 11, 2013. Nandan elaborates in his article the SEZ as well. It goes like this: "...the concept of the exclusive economic zone is one of the most important pillars of the 1982 Convention on the Law of the Sea. The regime of the exclusive economic zone is perhaps the most complex and multifaceted in the whole Convention. The accommodation of diverse issues contributed substantially to the acceptance of the concept and to the Convention as a whole. The 1982 Convention on the Law of the Sea is often referred to as a package. The metaphor is derived from a decision made during the Third United Nations Conference on the Law of the Sea that the Convention would be adopted *in toto*, as a "package deal". No single issue would be adopted until all issues were settled. This decision provided an essential mechanism for reconciling the varied interests of the states participating in the Conference. If a state's interests in one issue were not fully satisfied, it could look at the whole package and find other issues where its interests were more fully represented, thereby mitigating the effects of the first. Thus, the Convention became an elaborately-constructed document built on trade-offs, large and small. The larger package consists of: a twelve-nautical-mile territorial sea; an exclusive economic zone of up to 200 nautical miles in which coastal states have preeminent economic rights and which obviates the need for a territorial sea of 200 nautical miles claimed by some states; extension of the continental shelf regime to the margin, with revenue-sharing obligations beyond the exclusive economic zone; a regime for transit passage through straits used for international navigation and for archipelagic sea-lanes passage; guaranteed access to and from the sea for land-locked states; a regime for the administration and development of the common heritage resources of the international sea-bed area; protection and preservation of the marine environment; and adequate mechanisms for settlement of disputes concerning the interpretation and application of the provisions of the Convention. Within this larger package are many smaller packages of which the exclusive economic zone is one of the most interesting examples....."

2 See United Nations Convention on the Law of the Sea (Unclos) available at www.un.org/Depts/los/convention_agreements/texts/.../unclos_e.pdf Each coastal State may claim a territorial sea that extends seaward up to 12 nautical miles (nm) from its baselines. The coastal State exercises sovereignty over its territorial sea, the air space above it, and the seabed and subsoil beneath it. Foreign flag ships enjoy the *right of innocent passage* while transiting the territorial sea subject to laws and regulations adopted by the coastal State that are in conformity with the Law of the Sea Convention and other rules of international law relating to such passage. For more details see, various articles under Part ii Territorial sea and contiguous zone in the Unclos. See also, under the lecture series Maritime Delimitation Principles of Maritime Delimitation Prof Malcom Shaw (The Sir Robert Jennings Professor of International Law University of Leicester) lectured on Territorial Disputes the International Legal Principles Relating to Territorial Disputes: The Acquisition of Title to Territory. Available in http://untreaty.un.org/cod/avl/ls/Shaw_BD.html#

rapid and widespread acceptance in state practice and is thus now considered by some to be part of customary international law.

India's maritime core interests lie in protecting exclusive economic zone (EEZ). Since the adoption of United Nations Conference on the Law of the Seas (UNCLOS) a new International order of economic jurisdiction of 200 nautical miles (1 nm= \sim 1.85 for the coastal states were established. India has obtained a wide exclusive economic zone (EEZ) of about 2.172-million km in all along the 7500 km long coastline³ around it. By volume, ninety per cent of India's global trade is carried out through sea-borne. Over 65% of the world's known oil reserves are located in the Indian Ocean Region (IOR), and 40% of the world's offshore oil production comes from the countries bordering the Indian Ocean⁴. Seventy per cent of the petroleum products of the world are transported across the Indian Ocean.

The living and nonliving resources in this zone, which measures about two-third of the landmass of the country, are exclusive to India, so also the trading and transport facilities navigated through this area. Moreover, several million people living along the coastline are directly influenced by oceanography of the EEZ, various environmental hazards and related social issues. Indian EEZ sustains one of the last healthy Tuna populations in the world. The Greenpeace, in its report 'Licensed to Loot' released on March 13, the non-profit, claims that several vessels of foreign origin are misusing the Letter of Permit (LoP) scheme of the Indian government to exploit lucrative Indian fish resources.⁵

Article 55 of the UNCLOS creates the legal regime and distinguishes it from the territorial sea: "The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention."

3 http://www.nio.org/index?option=com_newsdisplay/task/view/tid/4/sid/23/nid/35

4 Pradeep Kaushiva, "India's Maritime Interests and Future Engagement in South China Sea" in National Maritime Foundation website, <http://maritimeindia.org/article/indias-maritime-interests-and-future-engagement-south-china-sea>, accessed on February 2013

5 <http://www.downtoearth.org.in/content/how-foreign-vessels-exploit-india-s-loopholes-fishing-laws>. Accessed on February 18, 2013.

Moreover, peninsular configuration juts out 1,500 miles into the sea and places her at the focal point of shipping lanes which are the arteries of world trade.⁶ Apart from other vital commodities, millions of tons of hydrocarbons travel from the Persian Gulf and Middle East to feed the hungry industrial and economic engines of China, Japan and many Southeast Asian countries. Geography has placed a heavy responsibility on India's shoulders and made India as the natural region for trade routes. India's vast exclusive economic zones which are like treasure-houses laden with unimaginable and as yet unexploited mineral wealth.

Proper demarcation, systematic scientific research is an ongoing process under the auspices of National Institute of Oceanography.

The Supreme Court of India pointed out recently that while quoting in the case of *Enrica Lexie* India is a signatory to the United Nations Convention on the Law of the Sea (Unclos) and is bound to adhere to it. Article 97 of Unclos says that in case of a navigation incident such as collision in the high seas India cannot detain a vessel registered in another country or initiate proceedings against the crew if they are not Indian nationals. The Court said Article 97 will not apply in the case of *Enrica Lexie* as the shooting was a criminal action, not a navigation incident. Court asserts that India's Exclusive Economic Zone, a distance of 200 nautical miles from the shore, high seas where Unclos 97 could apply for collisions.

The recent Supreme Court judgment in the *Enrica Lexie* case set up a Special Court to try the Italian marines.⁷ The judgment declares the EEZ of India — the region between the contiguous zone and 200 nautical miles into the sea — as the high seas. The United Nations Convention on the Law of the Sea (Unclos) defines high seas as the area beyond the EEZ, contiguous zone and territorial waters. But the Court has brought the high seas much closer to India's coast and no nation can claim sovereignty over the high seas. This may prevent India from taking unilateral action in case of collisions happening just outside of the contiguous zone.

6 Arun Prakash, "A Vision of India's Maritime Power in the 21st Century" in *Air Power Journal*, Vol. 3 No. 1 WINTER 2006 (October-December), p.2.

7 See, M. Kalyanaraman, "SC's *Enrica* judgment may restrict action against erring ships" *The Hindu* (Chennai edition), January 23, 2013. See also, <http://www.thehindu.com/news/national/scs-enrica-judgment-may-restrict-action-against-erring-ships/article4333292.ece>

Meanwhile, Article 100 of Unclos says that nations must cooperate to curb piracy. If the Special Court finds that the shooting is an anti-piracy action gone awry then Unclos could bring Italy into the trial process. The Special Court can then be asked to decide if Italy also has jurisdiction over the case.

The Supreme Court ruled that the Kerala government has no independent jurisdiction to try two Italian marines for shooting down two Indian fishermen off the Kerala coast last year. The bench of Chief Justice Altamas Kabir and Justice J. Chelameswar held that it was only the Union of India that had the jurisdiction to hold the trial of the two marines Massimiliano Latorre and Salvatore Girone.

The court said the central government, in consultation with the chief justice, will set up a special court to hold the trial. Upon raising this issue of jurisdiction, the special court will decide the question whether the government of India or the Italian government has the jurisdiction to conduct the trial of the two marines under the maritime law.

Territorial Rights and Delimitation of Jurisdictional Waters

Within its EEZ, a coastal State has: (a) sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, whether living or nonliving, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; (b) jurisdiction as provided for in international law with regard to the establishment and use of artificial islands, installations, and structures, marine scientific research, and the protection and preservation of the marine environment, and (c) other rights and duties provided for under international law.⁸

There has been an increase in maritime transport since the integration of world economy to national economy. This also has led to piracy incidents that frequently jeopardize the safe navigation of ships. The regime for the exclusive economic zone is *sui generis* for every country. As a sea-faring nation, India is not an exception to the rule. In 2010, India had submitted to the United Nations Commission on the Law

⁸ National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, http://www.gc.noaa.gov/gcil_maritime.html accessed on February 22, 2013.

of the Sea for its claim to extend its coastal EEZ from 200 nautical miles to 350 nautical miles.⁹ Under a provision of U.N. Convention on the Law of the Sea, a coastal country can seek an extension of its EEZ beyond the approved 200 nautical miles if it can demonstrate that the continental shelf of the country extends beyond that distance. The approval can be given up to a maximum of 350 nautical miles.

The historical underpinnings of the concept in the Truman proclamations on the continental shelf and coastal fisheries of 1945, the unilateral declarations of sovereignty by Chile and Peru in 1947 and the declarations by a number of Arab states in 1949. He then traces the development of the idea in Latin America, through the Santiago Declaration of 1952 which first proclaimed 200-miles zones off Chile, Ecuador and Peru, the Montevideo and Lima Declarations of 1970 and the Declaration of Santo Domingo in 1972, which articulated the notion of the patrimonial sea. The African and Asian contributions to the development of the concept of the exclusive economic zone, focusing on the work of the Asian-African Legal Consultative Committee and the proposals presented by Kenya, the Yaoundé Conclusions of 1972 and the Addis Ababa Declaration of 1973, before moving on to the Kenyan draft articles presented to the Sea-bed Committee in 1972. It then reviews the negotiations at the Third UN Conference on the Law of the Sea on this issue and the various trends apparent in those negotiations.

The aspects of the exclusive economic zone relating to the conservation and management of living resources and the opposing interests of the coastal states and major fishing nations. He reviews a number of proposals put before the Sea-bed Committee in 1972 and 1973 reflecting changes in the balancing of these opposing interests as the fishing nations sought to protect their economic interests and the coastal states to establish their sovereign rights.

9 On the sidelines of an event at the National Centre for Antarctic and Ocean Research (NCAOR), Goa in 2011, the then Union Minister of State for Earth Sciences Ashwani Kumar mentioned that the United Nations Commission on the Law of the Sea would soon accept its claim of almost doubling its Exclusive Economic Zone (EEZ), which could give it access to a larger wealth of oil, natural gas and other off-shore resources. At the event, the Minister, who was on a five-day tour of scientific institutions in Hyderabad, Bangalore and Goa, interacted with Indian scientists stationed at Indian missions at the Antarctic through video-conferencing. The claim, if ratified by the UNCLOS, would help India in exploring the area and exploiting oil, natural gas and mineral resources in the extended area too. The project was started in 1999 with a team of 60 scientists from different national institutions. See P. Sunderarajan, India hopes to double its EEZ. <http://www.thehindu.com/news/national/article2096905.ece>. Accessed n February 10, 2013.

According to the International Trade Statistics 2000 published by the World Trade Organization (WTO), as the data for the first six months of 2000, global commodity trading showed a growth of 14% in value. This is four times 1999. In addition, the amount of commodity trading has grown 12%. It is predicted that the real growth rate of world merchandise exports in 2000 to exceed 10%.

Maritime trade of the world to reflect the development of world trade, recorded an increase of 14 consecutive years in absolute terms in 1999, reaching 5.2 billion 3 million tons to update the record. It is revealed by numerical Maritime Transport 2000 Report of: (United Nations Conference on Trade and Development UNCTAD) United Nations Conference on Trade and Development. We have described the recovery of stable demand and Asia is the driving force behind the expansion of the U.S. global trade in the year 2000 - 1999, UNCTAD, and to underpin the sustainable growth of the world's seaborne trade.¹⁰

Regional and maritime export of petroleum products is the largest in Asia and the Far East. And at the same time, a major supplier of petroleum products, (newly industrialized economies) is also a major consumer country NIEs Far East. About half of imports of petroleum products in these countries is the shipping of NIEs and in between.

Crude oil is a strategic commodity, he has been generally believed and also has a large share in terms of amount and therefore that is. However, although When you examine the structure of maritime trade, goods of low value crude oil, coal, and grain has a share of # 1 in tonnage, the goods communications equipment, computer parts, automotive parts, high-value I found that the transport container handling occupies the # 1 share of seaborne trade in monetary.

Through the initiatives of the Nippon Foundation, these will provide financial support based on the concept of corporate social responsibility (CSR) from user states and the maritime industry. The fund will provide maintenance and upgrade of aids to navigation in the Straits and is the world's first realization of cooperation between user states and user industries based on the UN Convention on the Law of the Sea.

10 <http://nippon.zaidan.info/seikabutsu/2001/00801/contents/00005.htm>, accessed on February 15, 2013.

For most of recorded history there have been only two uses of the oceans that mattered:¹¹ fishing and navigation. At a time when fishermen and most ships stayed close to the shoreline, the oceans and the supply of living resources beneath them seemed truly inexhaustible. Only with the advent of worldwide exploration in the sixteenth century and the flurry of colonial claims that followed did attention begin to be paid to the need for resolution of two conflicting philosophies of ocean use:¹² national ownership (implicit in Spanish and Portuguese claims to the Gulf of Mexico and the entire Atlantic Ocean) and freedom of movement (important to the great trading companies such as The Dutch East India Company).¹³

Article 55 of the UN Convention on the Law of the Sea¹⁴ states that Specific legal regime of the exclusive economic zone The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

Article 56 also stresses the rights, jurisdiction and duties of the coastal State in the exclusive economic zone. In the exclusive economic zone, the coastal State has: (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to: (i) the establishment and use of artificial islands, installations and structures;

11 John Temple Swing, "Who Will Own the Oceans?" *Foreign Affairs*, Vol. 54, No. 3 (Apr., 1976), pp. 527-546.

12 *Ibid.*

13 *Ibid.*

14 From Art.55 to Art. 75 of the United Nations Convention on the Law of the Sea which deals with Exclusive Economic Zone (EEZ). See Part V of the Convention titled 'Exclusive Economic Zone'. Available at http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf .Accessed on February 11, 2013.

The provisions contained in articles 55 and 75¹⁵ reflect interests of states: the sovereign rights of coastal states to manage the zone in good faith; the regard for the economic interests of third states; regulation of certain activities in the zone, such as marine scientific research, protection and preservation of the marine environment, and the establishment and use of artificial islands, installations and structures; freedom of navigation and over flight; the freedom to lay submarine cables and pipelines; military and strategic uses of the zone; and the issue of residual rights in the zone.

The political, strategic, and economic benefits to India in securing rights to vast areas of the ocean and seabed need no elaboration in the current context and pertaining to the *Enrica Lexie* case, but these come with significant responsibilities in relation to delineation, administration, exploitation, and conservation of the marine environment.

Delimitation of the Maritime Zones

In the EEZ, a State has sovereign rights to explore, exploit, conserve and manage the natural resources of the waters superjacent to the seabed and of the seabed and its subsoil; sovereign rights with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and jurisdiction over artificial islands, installations and structures¹⁶. Beyond the EEZ/continental shelf lie the high seas which

15 See, *The Law of the Sea*, United Nations Convention on the Law of the Sea with Index and Final Act of the Third United Nations Conference on the Law of the Sea, United Nations Sales No. E.83.V.5 (UN: New York, 1983)

16 This is the text of the second Wang Tieya Lecture in Public International Law delivered by H.E. Judge SHI Jiuyong on the occasion of the second Wang Tieya Award in Public International Law on 11 March 2010 at Wuhan University Institute of International Law. The Wang Tieya Award in Public International Law and the Wang Tieya Lecture in Public International Law are sponsored by the National Key Research Center, Wuhan University Institute of International Law, China and the Chinese Journal of International Law. This programme was inaugurated in 2009 by: Ian Brownlie, *The Peaceful Settlement of International Disputes*, 8 Chinese JIL (2009), 267-283. See, Shi Jiuyong, "Maritime Delimitation in the Jurisprudence of the International Court of Justice", see Chinese Journal of International Law (2010) 9 (2): 271-291 See. http://www.oxfordjournals.org/our_journals/cjilaw/about.html, accessed on February 21, 2013.

Shi elaborates while using *Qatar v. Bahrain* as an illustration, this Wang Tieya Lecture provides an overview and analysis of the case law of the International Court of Justice on maritime delimitation. The issues covered include: maritime zones recognized under UNCLOS, the development of the law of maritime delimitation, identification of relevant coasts and baselines, pre-existing agreement, delimitation of the territorial sea, delimitation of the continental shelf and the EEZ, and the starting point and end point of delimitation

are open for use by all States, except in respect of resources of the seabed of the ocean floor and subsoil thereof, exploitation of which is to be managed by the International Seabed Authority, set up under UNCLOS for the common benefit of mankind.¹⁷

Comparative Sizes of the Various Maritime Zones

| | |
|---|---|
| Areas of the Earth covered by the Oceans | approx. 335.0 million km² |
| High Seas | 200.4 million km² |
| Territorial Seas | 22.4 million km² |
| Contiguous Zones | 6.6 million km² |
| Exclusive Economic Zones | 101.9 million km² |
| Total areas under national jurisdiction excluding extended continental shelves beyond 200 nm | 131.0 million km² |

Source: UNEP/GRID-Arendal, Continental Shelf: The Last Maritime Zone (2011) at 28. See also http://www.gc.noaa.gov/gcil_maritime.html.

Changes made in the international Law of the Sea, the Indian Parliament extended constitutional recognition to the new concept of the EEZ in May 1976. As a result, Article 297 of Chapter III, Part XII of the Constitution reads as follows:

"All lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone of India, shall vest in the Union and be held for the purposes of the Union".

Three months later, in August 1976, the "Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act" entered into force (with the exception of Section 5—Contiguous Zone—and Section 7—EEZ—which entered into force in January 1977). This Act made provisions for India's territorial waters, contiguous zone, EEZ, and continental shelf. In December 1982, India signed the United Nations Law of the Sea Convention, and ratified it (along with the implementation of Part XI) in June 1995.

¹⁷ Ibid.



EEZ Waters of India Mainland

Source: <http://www.searoundus.org/eez/357.aspx>

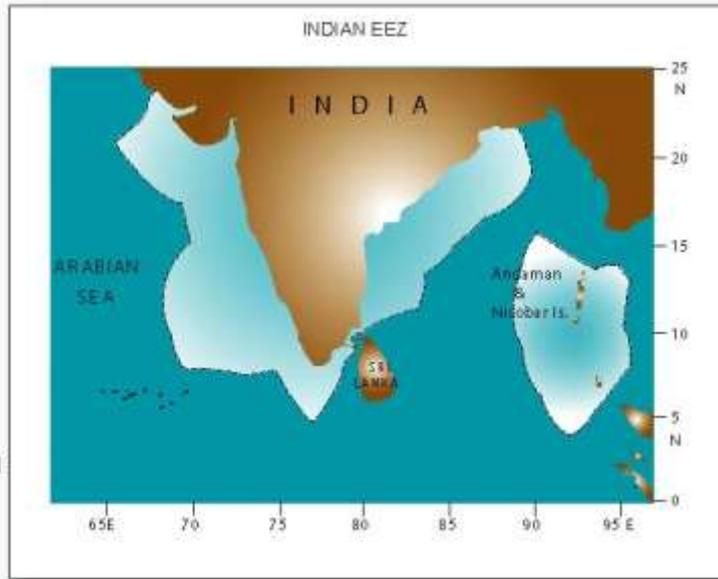
The size of the Indian EEZ is estimated at 2.02-2.2 million sq km, covering both the western and eastern coasts, as well as the island territories of Lakshadweep in the Arabian Sea and the Andaman and Nicobar Islands in the Bay of Bengal. The variance of 180,000 sq km is due to the absence of published baselines of the country (from which maritime zones are calculated), as well as a series of minor hydrographic differences. Moreover, the size of the EEZ is expected to increase even further by the year 2004, in view of the legal provision of extending the continental shelf to 350 nm, if preliminary exploration of the extended area is completed by then. This could provide India an additional EEZ of approximately 1.5 million sq km, if its continental shelf extends well beyond 200 nm. or 100 nm. beyond the 2,500 metre isobath.¹⁸



18 Department of Ocean Development, Annual Report 1996-97 (1997), p. 22.

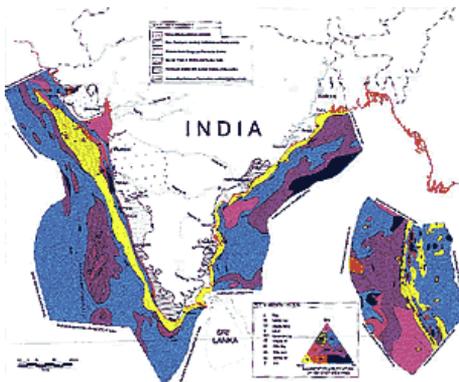
EEZ Waters of Andaman and Nicobar Isl (India)

Source: <http://www.seararoundus.org/eez/357.aspx>



EEZ of India (Shaded area)

Source: National Institute of Oceanography (NIO) Bioinformatics Centre
<http://www.niobioinformatics.in/other2.php>



Marine Maps

The above marine maps of Exclusive Economic Zone (EEZ) and territorial water of India display the surficial sediment distribution in a 2° by 2° format. This series of maps also show bathymetry, sample location, offshore mineral resource potential, deep borehole logs accompanied by magnetic anomaly maps, seismological section, etc.

Source: Geological Survey of India, available at http://www.portal.gsi.gov.in/portal/page?_pageid=127,529486&_dad=portal&_schema=PORTAL

In the EEZ, India possesses the following rights and jurisdictions: sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of the seabed, subsoil, and the waters; rights and jurisdiction with regard to the establishment of artificial islands, installations and structures; exclusive jurisdiction with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and jurisdiction with regard to the preservation of the marine environment, including pollution control. Other states could utilize the resources of the EEZ only with the prior permission of the Indian government.⁴ In terms of warfare, the EEZ is to be considered similar to the high seas, but for the additional obligation to have "due regard to the rights and duties of the coastal state".¹⁹

Unilateral delimitation and international law; the need for delimitation; delimitation of the territorial seas, article 12 of the 1958 convention on the territorial sea and article 15 of the 1982 convention on the law of the sea; continental shelf and exclusive economic zone delimitation, article 6 of the 1958 convention on the continental shelf and articles 74 and 83 of the 1982 convention on the law of the sea.

In any analysis of the development of the concept of the exclusive economic zone, it would be apparent that much of its content is based on preexisting ideas. The notion of "sovereign rights" over natural

¹⁹ Horace B. Robertson, Jr, *The "New" Law of the Sea and the Law of Armed Conflict at Sea*, *The Newport Papers*, no. 3, October 1992, pp. 22-23.

resources was already contained in the 1958 Convention on the Continental Shelf. It was expanded to cover living and non-living resources of the exclusive economic zone. The inspiration for the regime for installations and artificial islands and the establishment of safety zones around them is to be found in that same Convention. The "consent regime" for marine scientific research in the exclusive economic zone is also based on the Continental Shelf Convention. As regards fisheries provisions, in particular those relating to their conservation and management, many useful proposals were listed in the "Main Trends" paper. Proposals from the United States, Japan, the USSR and Canada, among others, contributed substantially to provisions in the Convention on this aspect, even though they were made in the context of preferential fishing rights of coastal states.

The regime gives to coastal states sovereign rights over the natural resources and control of resources-related activities in the zone, while preserving for the international community the freedoms of navigation, over flight and the laying of submarine cables and pipelines.

Coastal states have sovereign rights for the purpose of exploring and exploiting, conserving and managing the living resources of the exclusive economic zone (Article 56). The provisions relating to non-living resources are subsumed in the continental shelf provisions, although jurisdiction over the part of the continental shelf which lies within the exclusive economic zone is not dependent on geophysical considerations. With respect to living resources, the coastal state has broad regulatory and management powers. The coastal state, however, must ensure that the resource is not endangered by over-exploitation and it must do this through proper conservation and management (Article 61). Such measures must be designed to ensure that the populations of harvested species are maintained or restored at levels which can produce the maximum sustainable yield as qualified by relevant environmental and economic factors (Article 61).

Coastal states also have the obligation to promote the objective of optimum utilization of the living resources. The coastal state is obliged to assess the allowable catch and to determine its own capacity to harvest the resources. If it does not have the capacity to harvest the entire allowable catch, it must give other states access to the surplus (Article 62).

Land-locked and geographically disadvantaged states have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources subject to arrangements with the coastal state involved (Articles 69 and 70).

There are special provisions for straddling stocks (Article 63), anadromous species (Article 66), catadromous species (Article 67), sedentary species (Article 68) and marine mammals (Article 65). With respect to highly migratory species, the coastal state and other states whose nationals fish in the region shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species, both within and beyond the exclusive economic zone (Article 64).

In exercising its sovereign rights, the coastal state is empowered to take a wide range of enforcement measures such as boarding, inspection, arrest and judicial proceedings (Article 73).

Finally, a description of the regime would not be complete without mentioning the subject of dispute settlement as it is detailed in Article 297(3). With regard to fisheries disputes concerning the interpretation or application of Convention provisions, they are to be settled by a binding form of dispute settlement. However, coastal states are not obliged to submit disputes relating to the exercise of sovereign rights with respect to living resources in the exclusive economic zone to any form of compulsory dispute settlement procedures. The issues under this exception include the coastal state's discretionary powers for determining allowable catch, its harvesting capacity, the allocation of surpluses to other states and the terms and conditions established in its conservation and management laws and regulations.

The regime of the exclusive economic zone is clearly a revolutionary legal concept which evolved very quickly. In about a 30-year time span, an ocean regime has emerged from many diverse ideas and interests and has found universal acceptance establishing the unlikely proposition that the whole is greater than the sum of its parts.

Balancing balance of legal, economic and political interest pertaining to the EEZ is challenging in contemporary times. In today's

world, more interdependence between nations and more integration of world economy through trade by seaborne makes EEZ of India and Andaman and Nicobar Islands key element in movements of ships in the Indian waters.

Even though countries now hold sovereign rights in the EEZ, the zone remains a commons, i.e. a property with open access.²⁰ Governance of commons comes with a unique set of challenges. Considering the size, dynamic nature, and unpredictability of the EEZ, it is particularly difficult to design a governance regime. There are three mechanisms generally used for overcoming the challenges of governing the commons:²¹ the government mechanism, the market mechanism, and co-management, which entail the government and the community managing the resources together in some way.

The regime for the exclusive economic zone is *sui generis*. Under it the coastal states and other states have specific competences. The legal regime of the exclusive economic zone is thus different from those of the territorial sea and the high seas. It is a zone which incorporates certain characteristics of both regimes but belongs to neither. The zone represents a politico-legal compromise and its various elements constitute a complete unit whose structural harmony and functional balance will be destroyed if it were to be assimilated into any pre-existing concept.²²

In the exclusive economic zone a coastal state has been given sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources. In exercising its rights and performing its duties under the Convention (Law of the Sea), the coastal state is obliged to have due regard to the rights and duties of other states and to

20 Governing the Exclusive Economic Zone: The Ocean Commons, Cumulative Impacts and Potential Strategies for Improved Governance, Prepared by Katherine Andrews, With funding from the sponsors of the Ian Axford (New Zealand) Fellowships in Public Policy, Published by Fulbright New Zealand, July 2008. Available at http://www.fulbright.org.nz/wp-content/uploads/2011/12/axford_2008_andrews.pdf. Accessed on February 18.

21 Ibid.

22 For a detailed analysis and understanding on this point from a legal angle, see the leading cases such as North Sea Continental Shelf cases, ICJ Reports, 1969, p. 3; Gulf of Maine, ICJ Reports, 1984, p. 246; Nicaragua v Honduras, ICJ Reports, 2007; Qatar v Bahrain, ICJ Reports, 2001, p. 40; Guyana/Suriname, 17 September 2007; Barbados/Trinidad and Tobago, 11 April 2006; Anglo-French Continental Shelf, 54 ILR, p. 6; Tunisia/Libya, ICJ Reports, 1982, p. 18; Libya/Malta, ICJ Reports, 1985, p. 13; St. Pierre and Miquelon (Canada/France), 95 ILR, p. 645; Jan Mayen (Denmark v Norway), ICJ Reports, 1993, p. 38; Guinea/Guinea Bissau, 77 ILR, p. 636; Cameroon v Nigeria, ICJ Reports, 2002, p. 303.

act in a manner compatible with the Convention (Article 56). The coastal state has been given considerable discretion in the management of the zone; however, the Convention also imposes specific management responsibilities on the coastal state, especially as concerns the living resources of the zone. In the light of these management responsibilities, a coastal state which has claimed an exclusive economic zone cannot pursue a policy of inaction with respect to its living resources.

The Convention refers to specific matters which a coastal state should take into account in the management of the zone. It contains provisions requiring a state to enter into agreements with other states, either bilaterally, sub regionally or regionally. These references in some cases serve to highlight the interests of other states in the zone or to create preferences in their favour and they were essential elements in the compromises which made the concept of the exclusive economic zone generally acceptable. They now require to be implemented in good faith by all concerned.