LEGAL REGIME OF THE EXCLUSIVE ECONOMIC ZONE

LEGAL REGIME OF THE EXCLUSIVE ECONOMIC ZONE

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CERTIFICATE

Certified that the dissertation entitled, "Legal Regime of the Exclusive Economic Zone" which is being submitted by Neelam Tiwari for the award of degree of MASTER OF PHILOSOPHY is her original work and may be placed before the examiners for evaluation. This dissertation has not been submitted for the award of any other degree of this University or of any other University.

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TO

MAMMY AND PAPA

C O N T E N T S

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INTRODUCTION

The United Nations Convention on the Law of the Sea (1982) has ushered in a new international legal order for the oceans. The Convention is the culmination of almost 14 years of work, involving participation by more than 150 countries, representing all regions of the world, all legal and political systems, all degrees of socio-economic development, countries with various disposition on the numerous issues covered by the Convention. The participants included coastal states, geographically disadvantaged states, archipelagic states, island states and land-locked states. The Convention is indeed multi-faceted and is a monument to international co-operation in the treaty-making process.

The Law of the Sea Convention incorporates a separate regime for an Exclusive Economic Zone (E.E.Z.) which is rather of recent origin. It gives every state the right to establish an E.E.Z., seawards of its territorial sea and extending up to 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. Sea-bed areas beyond the territorial sea and within 200 nautical miles of the coast are, therefore, subject to both the continental shelf and the E.E.Z. regimes. The provisions on the E.E.Z. constitute a new law.

The demand for an E.E.Z. is a reflection of the aspirations of the developing countries for economic development

and the desire to gain greater control over the economic resources off their coasts, particularly the fish stocks. The concept of the E.E.Z. has also attracted the support of highly developed coastal states, such as Canada and Norway. This widespread support for the concept of E.E.Z., is a proof of the fact that the E.E.Z. has assumed -- "the hard lineaments or the definitive status of an established rule of international law," -- which has come to be codified in the 1982 Convention on the Law of the Sea.

The legal regime of the E.E.Z., enshrined in the LOS Convention, would cover about 36% of the total ocean space. Even before the conclusion of new Convention, a 200 nautical miles jurisdiction had been claimed by more than 50 coastal states which shows the importance of the E.E.Z. Although relatively small, the area falling within 200 miles limit contains over ninety percent of all the existing commercially exploitable fish stocks, about eighty seven percent of the world's known submarine oil deposits, and about ten percent of maganese nodules. Furthermore, a large proportion of marine scientific research takes place within the E.E.Z., and virtually all major shipping routes of the world pass through the E.E.Zs of states other than those in which the ports of departure and destination are situated.

In view of these extensive activities, the economic zone was conceived of as a compromise between the competing

claims of the major maritime powers, which championed the principle of the freedoms of the sea and the developing countries, especially of Latin America and Africa, which advocated the extension of territorial waters upto 200 nautical miles from the baseline. The concept was subsequently developed against the backdrop of the general perspectives of the New International Economic Order. Thus a study of the legal regime of the E.E.Z. is of crucial importance. The legal status of the E.E.Z., however, continues to be enigmatic. It can be neither approximated to the territorial sea nor to the high seas. It is a zone sui generis, in which the coastal and other states will have the rights and freedoms described in the Convention.

In Chapter I a bird's-eye view of the evolution of the concept of E.E.Z. has been given. This encompasses demands expressed, especially by the Third World countries, at the international forums for the extension of limits of the maritime zones. The demand for a separate regime for the E.E.Z. almost coincided with the Third UN Conference on the Law of the Sea. The views expressed by various delegations at the conference, have been briefly presented to put forth their urge for laying down an economic zone regime under the Convention. Chapter II specifically analyses the E.E.Z. regime under Part V of the Convention. An attempt has been made to examine the sui generis character of the E.E.Z., especially in view of the fact that the coastal states have sovereign

rights rather than sovereignty in the E.E.Z. and it neither falls in the territorial sea nor in the high seas. It also deals with the rights of the land-locked and geographically disadvantaged states. Chapter III deals with India's interests in the exploitation of its E.E.Z. A reference has been made to the relevant constitutional provision, apart from the provisions of the Maritime Zones Act, 1976. The status of fishing, which is primary economic activity in India's E.E.Z., has been focussed upon, alongwith the steps taken for the regulation of the same. Chapter IV encompasses to the NIEO and its link with the New International Maritime Order, which has now come to stay. The role of the E.E.Z. in contributing to the attainment of the NIEO has also been briefly examined. In the end, Chapter V evaluates the problems and prospects at the present juncture.

The methodology has been mainly analytical. The reports of the International Law Commission, resolutions of the General Assembly, the UN Convention on the Law of the Sea, in addition to other secondary sources, have been used for the purpose. Further, discussions with some of the concerned Indian officials have also been undertaken, to have a first hand account of India's present activities and interests in the E.E.Z.

Chapter - I

EVOLUTION OF THE CONCEPT

The Law of the Sea is as much a product of the time of its evolution and crystallisation as any other branch of international law. The legal norms for the regulation of the oceans are also a product of the political imperatives of the time. International law evolved, primarily, through State practice followed by a few big powers. Most of the present-day Third World States did not even attain independence, from the colonial powers, at that time and could not participate in the formation of international law. These Third World States now insist that the existing law do not adequately protect their interests and it should be reformulated in the changed circumstances.[1] The consistent thrust of these states for change has resulted in the examination and reformulation of some previously established rules and

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1 A representative of Argentina expressed this general feeling in a speech at the Third UN Conference on the Law of the Sea, Caracus, 1974 as follows:

"The present law of the sea had developed in a world different from the present one. The traditional rules of the still recent past were aimed at preserving the interest of the great maritime powers in a period when two third of the world was under colonial domination. ... Third World countries were aware that traditional rules of international law, and of the law of the sea in particular, were ill-adapted to the modern world and did not fulfil their hopes for mankind... The new law of the sea must contribute to changing the present system."

the emergence of new legal principles and concepts.[2]

The freedom of navigation on the high seas was crystallized at a time when the European maritime powers' expansion was at its peak. The big maritime powers of the yester years needed an unimpeded freedom of passage for their fleets. The freedom of navigation was reflected by Hugo Grotious in his classic treatise "Mare Liberum". However, he did not consider the entire sea covered by this and recognised the sovereignty of coastal states in an area of the sea adjacent to the coast, which has now come to be known as territorial sea.

With the passage of time, freedom of navigation has got more concrete form and the area of seas has come to be demarcated in various maritime zones, both in terms of jurisdiction of the coastal states as well as rights of other states accruing in the said areas. In this respect, the evolution of the concept of Exclusive Economic Zone (E.E.Z.) has been a phenomenal one, especially as a natural corollary of the philosophy of the Third World states.[3]

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2 Ebere Osieke, "The Contribution of States from the Third World to the Development of the law on the Continental Shelf and the Concept of the Economic Zone" IJIL, vol.15 (1975), p.313.

3 See, Third United Nations Conference on the Law of the Sea, Second Session (Caracus, 20 June - 29 August 1974) Official Records, vol.1, pp.195-96.

The concept of E.E.Z. is economic and non-political or strategic and can be described as one of the most important contributions of the Third U.N. Conference on the Law of the Sea. The examination of the legal regime of the E.E.Z. forms the core of the present study. However, in order to identify the nature, legal characteristics and implications of the regime of the E.E.Z., it is necessary to understand the gradual evolution of the concept itself in the recent past.

International negotiations on the law of the sea have been mainly concentrated on two questions: first, the nature of the legal regime of the sea-bed beyond national jurisdiction[4] and secondly, the scope of coastal state jurisdiction, that is the limits of the Continental shelf, fisheries and the Economic Zone.[5] These questions will be examined below, empirically high-lighting the principal contentions of states

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4 V.S.Mani, "Resources of the Sea-Bed Beyond National Jurisdiction - Who Shall Exploit and How?" IJIL, vol.14 (1974).

5 The concept of E.E.Z. is, like that of the continental shelf is motivated by the desire of the coastal states to safeguard the off-shore resources beyond the territorial sea. The E.E.Z. and continental shelf, have many points of contact. Both zones coincide at least in part in hydrospace; both meet the need to regulate the exploitation of the resources; in both the coastal states would have powers, though limited by functional consideration. Nevertheless, both the concepts are different from each other.

and pointing to the emergent consensus. It would also be useful to describe, analyse and appraise the various proposals submitted to the UN Committee, against the background of codification of the Law of fisheries and recent trends in international regulation of fishery or economic activities.

During the latter part of the nineteenth century, when fishing for particular species was intensified, obviously in response to growing demand, it became increasingly clear that an unrestricted access to the resources of the high seas was tantamount to unregulated competition among nations and fishermen. It was also felt by nations that overfishing of a particular specie could lead to stock depletion or reduction to a point beyond commercial viability. Nations were quick to respond to such critical situations and they did recognise the sovereignty of the coastal states in an area of the sea adjacent to the coast, which came to be known as the "Maritime Belt", "Territorial waters" or "Territorial Sea". Consequently, by the time the first universal attempt at codification of the law of the sea was made, at the conference for the codification of international law held under the auspices of the League of Nations (at the Hague in March-April, 1930), the question of the breadth of the territorial sea was considered to be wide open. It remained so even at the end of that conference. There was consequently no universal and uniform pattern of unshared authority of coastal states over fishery exploitation. The failure of the Hague Conference led to wider claims of territorial jurisdiction in many parts of the world.

League of Nations Sub-committee:

It may be useful here to refer to a definition of the rights of coastal state, prepared by a sub-committee of of the Experts of the League of Nations, which was entrusted with the task of codification of rules relating to territorial waters. The sub-committee recommended as follows:

> The zone of the coastal sea shall extend for three marine miles (60 to the degree of latitude) from low-water mark along whole of the coast .... outside the zone of sovereignty no right of exclusive economic enjoyment may be exercised. Exclusive rights to fisheries continue to be governed by existing practice and conventions.(6)

Significantly, the sub-committee did envisage the possibility of the coastal state having exclusive economic right in a zone adjacent to the coastal sea. Notwithstanding the limited extent of the territorial waters, there was recognition by the league's experts of the coastal states' exclusive rights in the enjoyment of economic resources (particularly fisheries). It does not seem necessary here to trace the origin of the concept of the EEZ to the sub-committee of experts of the League of Nations, since the sub-committee only dealt with economic enjoyment in the territorial sea and not beyond it. However, the sub-committee's formulation is significant in as much as it referred to the

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6 League of Nations, Report of the Committee of Experts for the Codification Conference, p.28.

three elements of the concept of EEZ namely, (i) exclusive (ii) economic, and (iii) zone.[7] One of the major maritime powers - the United States - had been the first to see the futility of keeping the question of fishing tied up with nations related to navigation and safety. The Pacific Coast Salmon fishery was about the most prosperous of all American fishing industries until the Japanese made their appearance. After that American industry was seriously affected. Freedom of the high seas was not supposed to be without any limit and was considered a variable principle, flexible enough to allow a foreign nation to damage an important industry of another ; A high powered Department of State Commission headed by President Roosevelt, which was appointed to find a way of superseding the three mile limit "by a rule of common sense", came out with the right answer under President Truman's regime.[8]

Truman Proclamation

President Truman issued two famous Proclamations[9], one

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7 M.K.Nawaz, "The Emergence of Exclusive Economic Zone: Implications for a New Law of the Sea", IJIL, vol.15 (1976), p.471.

8 Rahmatullah Khan, Indian Ocean Fisheries, (Ankur, New Delhi, 1977), p.57.

9 The Proclamation was issued by the President Hary Truman of the United States on 28 September 1945. It ran as under:

WHEREAS the Government of the United States of America, aware of the long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of

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concerning natural resources and the other on fisheries. The former provided, inter alia, for the exercise of the jurisdiction and control of the Government of the United States over the natural resources of the sub-soil and sea-bed of the continental shelf, and the latter established conservation

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three resources should be encouraged; and

WHEREAS its competent experts are of the opinion that such resources underlie many parts of the Continental Shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

WHEREAS recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development undertaken; and

WHEREAS it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea-bed of the continental-shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land mass of the coastal nation and these naturally appurtenant to it, since these resources frequently form a seward extension of a poll or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of nature necessary for utilization of these resources;

Now, THEREFORE, I, HARRY S.TRUMAN, President of the United States of America, do hereby proclaim the following policy of the USA with ~~the~~ respect to the natural resources of the subsoil and seabed of the continental shelf.

Having concern for the urgency of conserving the prudently utilizing its natural resources, the Government of the US regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the costs of the US as appurtaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf

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zones[10] in an area of the high seas contiguous to the coasts of the United States. In such zones, fishing activities were to be regulated either under the sole control of the United States or by joint agreement with other nations. Both the proclamations explicitly recognised the high seas character of the waters above the continental shelf and in the conservation zones. The basic motivation of the presidential proclamations was the oil and fishing resources in the area abutting the sea.

(Previous f/n. contd...)

extends to the shores of another state or is shared with an adjacent state, the boundary shall be determined by the United States and the state concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected. / For the text of the Proclamation see, Department of State Bulletin (U.S.), September 30, 1945, pp.484-86. Also see AJIL, 1946 Supp. pp.45-47.

10 The right of the coastal state to create such conservation zones came to be incorporated in the 1958 Geneva Convention on fishing. A state whose nationals were fishing in a particular stock of fish (e.g. shrimps salmon etc.) in the adjoining area was given a right to enact a law to restrict fishing for conserving such valuable species as regards the nationals of other states who were also customarily fishing in that stock of fish in adjoining waters of the coastal state. That coastal state was to call upon all the states concerned to convene a conference to conserve such resources. All of such states were to implement such convention. The nationals of other states were given a right to fish in other stocks of fish. If no agreement was possible, the coastal state was to appoint a five men commission to discuss about such convention. If no such convention was adopted within six months, the coastal state could unilaterally make a declaration where it was necessary for the economy of the country, it was based upon the scientific data and there was no discrimination in its enforcement. However, the 1958 Convention on Fishing did not fix any limit of such conservation zones.

The proclamation, which contained no reference to "International Law", constituted a turning point in the classical law of the sea and heralded a new era of extension of maritime jurisdiction, as it stood before 1945.[11] Although certain questions remained unanswered,[12] the freedom of the high seas was expressly recognized in the proclamation, and the continental shelf was limited to the submerged land covered by no more than 100 fathoms (600 feet of water).[13] The United States proclamation formed the basis of similar claims by other states, including some from the Third World. The Latin American nations,[14] taking the cue from the United States, laid

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11 It has been stated that the international law of the sea of the pre-Truman era recognizes, "that the use of the waters beyond the limits of the territorial waters could not be made the exclusive right of a given state", and that the bed of the sea could not be made subject to permanent exclusive occupation. (See Memorandum prepared by the Secretariate of the United Nations in 1950- U.N.Doc. A/CN.4/32-14 July 1950.

12 The proclamation did not contain a definition of the terms "jurisdiction and control", "natural resources", and "continental shelf". It was, therefore, not clear whether the United States claimed "full sovereignty" over the "Living and non-living" resources of the sea-bed and subsoil beneath the high seas contiguous to its coast.

13 The limit of the claim was indicated in a White House press Release which accompanied the proclamation: Department of State Bulletin (U.S.), Sept.30 1945.

14 For example: Chile, Peru, Costa Rica and EL Salvador. See Presidential Declaration of Chile Concerning continental shelf on 23rd June 1947; the Presidential Decree of Peru on 1st August 1947; the Decree Law of Costa Rica on 27 July 1948; and Article 7 of the Constitution of 1950 of EL Salvador.

claims to the seas adjacent to the coasts upto a distance of 200 nautical miles.[15]

Santiago Declaration:

1952 signified a landmark in the development of the new law of the sea, when Chile, Ecuador and Peru (CEP) assembled in Santiago and adopted a statement, which has come to be known as the Santiago Declaration.[16] The Declaration in its main articles asserted the "exclusive sovereignty and jurisdiction" of the declarant states in the adjacent seas upto a distance of 200 nautical miles while saving "innocent and inoffensive passage" in the zone.[17] For the CEP countries, the marine wealth of the South Pacific provided the motivation for the extension of maritime authority. All that time fishing resources near the coast rather than minerals were of immense importance to the Latin American states. Hence, they advanced justification in reserving these resources for themselves, as the United States had already set a precedent regarding the same in 1945. In both the cases, the basic principle at stake was the right of a coastal state to the

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15 The limit of 200 nautical miles was chosen as corresponding to the outer limit of Humbolt current which has been referred to as "the principal cause of riches of our seas" see LDM Nelson, "The Patrimonial Sea", I.C.L.Q., vol.22 (1973), pp.668-86.

16 For the text of Declaration, see UN Doc.A/AC/35/10 Rev.1, pp.11-12.

17 Ibid.

resources in its immediate vicinity which were of crucial importance for their people.

International Law Commission

The International Law Commission dealt with the question of control and regulation of the living resources of the sea while discussing the regime of the high seas as well as the regime of the territorial sea.[18] It needs to be mentioned here that Francois and Lauterpacht proposed, at the 1953 session of the International Law Commission, the concept of a 50-mile fishing zone for the purpose of conserving fisheries.[19] But this proposal was abandoned, since there were objections from some members.[20] Moreover, with reference to the ILC draft of 1955, which was mainly concerned with conservation of marine resources, the Government of Iceland proposed that the draft on the conservation of marine resources should supplement the concept of coastal jurisdiction since the conservation concept could not in any way be substituted for such jurisdiction.[21] Commenting on the same draft, the Government of India also expressed the

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18 Report of the International Law Commission, 1951, p.19.

19 International Law Commission Year Book, 1953, vol.1, p.153.

20 Ibid., p.164.

21 ILC Year Book 1956, vol.8, p.48.

view that it would not protect the legitimate rights of a coastal state. Apart from it, there would be unfair consequences for under-developed areas, which have expanding populations mainly dependent on food from the sea resources surrounding their coast and which for political reasons had been unable to assert their rights or to develop their fishing fleet. The Government of India further maintained that, the coastal state should have an exclusive and pre-emptive right of adopting conservation measures for the purpose of protecting the sea resources within a reasonable belt of high seas contiguous to its coast.[22]

The International Law Commission stated, in one of its reports (1956), regarding claims of exclusive fishing rights on the basis of special economic circumstances that:

> The Commission's attention had been directed to a proposal that where a nation is primarily dependent on the coastal fisheries for its livelihood, the state concerned should have the right to exercise exclusive jurisdiction over fisheries up to a reasonable distance from the coast having regard to relevant local consideration, when this is necessary for the conservation of these fisheries as a means of subsistence for the population. It was proposed that in such cases the territorial sea might be extended or a special zone established for the purpose.(23)

The proposal was included by the International Law Commission in its final draft of the Law of the Sea (1955)

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22 Shigeru Oda, International Control of Sea Resources (Leyden, 1963), p.43.

23 International Law Commission Report, 1956, p.38.

Rome Conference

The United Nations sponsored the Rome Conference in 1955 to deal with the conservation of marine ~~of~~ resources. A number of delegates expressed grave concern regarding under-developed fishing states and at the lack of understanding of their position in the matter. The various proposals that had been made at the Rome Conference were well brought out in the report of the conference. It stated that:

> Points of view expressed concerning the rights and duties of the coastal state covered a wide range. These varied from the proposal ... that the coastal state be regarded as having a special interest in the conservation of the living resources of the sea adjacent to its coast, to the proposal that the coastal state alone should be entrusted with control and conservation measures in area near its coast, with no necessary limitation except that the measures should be in accord with the general principles of technical character adopted at the conference, and should be based on the maintenance of existing ecological system in a given maritime zone. The view was also expressed that in considering the application of conservation measures, the people nearest to, and dependent on the resources for food should be given first consideration...(24)

Geneva Conference 1958

A landmark development in the evolution of the coastal state jurisdiction was reached, when the first conference on the law of the sea was held in Geneva (1958). The Geneva

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24 Rome Conference Report 1955, paras 45 and 46. See also in Oda, n.22, p.43.

Conference adopted four Conventions.[25] The Convention on continental shelf declared that every coastal state has exclusive jurisdiction for the purposes of exploring and exploiting natural resources (including sedentary fisheries), in the submarine areas upto a depth of 200 metres or, beyond that limit, where exploitation is possible. The Convention on Fishing recognized the coastal states' "Special interests in the maintenance of the productivity of the living resources in an area of the seas adjacent to its territorial sea" and the right to initiate "unilateral measures of conservation".[26] However, this consensus at the Geneva Conference was preceded by the Canadian suggestion that the extreme positions of the states, proposing very narrow and unlimited discretionary territorial limits could possibly be avoided by adopting the concept of a contiguous zone of the exclusive fisheries upto 12 miles.[27] Moreover, the United States of America also offered a compromise formula of a 6 miles territorial sea and a further 6 miles contiguous zone of exclusive fisheries,

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25 Convention on the Territorial Sea and the Contiguous Zone, 516. U.N.T.S., 205, 15 US.T., 1606; Convention on the High Seas, 450, U.N.T.S., 82,13 U.S.T., 2312; Convention on the Continental Shelf, 409, U.N.T.S., 311, 15 U.S.T., 417; Convention on Fishing and Conservation of the living resources of the High Seas, 559 U.N.T.S., 285, 17 U.S.T. 138.

26 Article 6 and 3 of the Convention on Fishing and Conservation of the Living Resources of the High Seas, U.N.Doc. A/CONF.13/L.54.

27 Rahmatullah Khan, Indian Ocean Fisheries, (Ankur, New Delhi, 1977), p.71.

provided that nationals of other states, who had been customarily fishing for the past five years in the fishing zone should have the right to continue the same.[28] The Geneva Conference could be credited with formalizing these two strands of development, but not with resolving the inherent contradiction and the logical absurdities found therein.[29] The international community tried in vain to reach an agreement on the maximum breadth of the territorial sea, and as a result of the non-agreement on this question the limit of the fishery zone also could not be agreed upon. It goes without saying that, the Convention on the Continental Shelf has proved to be more successful than the Convention on fishing.[30] Thus, the Geneva Conventions (1958), it is submitted, failed to give to the coastal state a right to an exclusive fishery zone, or in broader terms, a zone of exclusive economic jurisdiction in the waters adjacent to its territorial sea.

Geneva Conference 1960

At the second Geneva Conference on Law of the Sea(1960) the U.S. proposal, referred to earlier, was resubmitted for

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28 Ibid.

29 Rahmatullah Khan, n.27, p.65.

30 The Convention on Fishing has been ratified or acceded by about 35 states (as on 31 December 1974). Some countries which are directly concerned with fishery conflicts (For example, Chile, Ecuador, Peru, Brazil, USSR, Japan, Iceland, etc.) or those which are actively involved in fishing on the high seas have still not ratified, See Nawaz, n.7, p.72.

consideration with a significant modification, in order to attract greater support. The proviso to the 6+6 miles formula of territorial and exclusive fisheries zone, which recognized the rights of states, whose nationals had fished in the latter zone for five years, was altered. The U.S. and the Canadian delegations jointly proposed this time that such historical rights would be phased out in a 10-year period.[31] The new proposal also specifically suggested the recognition of preferential rights for a coastal state in a situation of special dependence on adjacent fisheries.[32] This compromise proposal also failed to be adopted by one vote.[33]

In retrospect, it appears, that the failure to arrive at an agreement on territorial sea limit at both the Geneva Conferences had been purely due to the fact that they had not succeeded in achieving a satisfactory balance between the interests of the distant water fishing countries and the special rights of coastal states in the living resources of adjacent high seas areas.

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31 See Khan, n.27, p.72.

32 Ibid.

33 The proposal secured 54 votes in favour, 28 against with five abstentions. An affirmative vote of 55 would have constituted the required two thirds majority. See Ibid.

Extension of States' Claims

Following the failure of the 1960 Geneva Conference on the Law of the Sea, the trend in virtually all fishing regions of the world was towards further extension of the coastal states' authority over fisheries. Maritime powers with interests in distant water fishing continued to insist that states with rich fishery resources in coastal waters were bound by Article 2 of the Convention of the High Seas which guaranteed, inter alia, freedom of fishing on the high seas, comprising "all parts of the sea that are not included in the territorial sea or in the internal waters of a state".[34] On the other hand, several countries in many parts of the world, were claiming wider exclusive fishing zones rather than an extended territorial sea, whether by unilateral declaration of the coastal state or by agreement with those non-coastal states, that have been engaged in substantial exploitation of the off-coast stocks.[35]

For some years there remained a relative quiet in regard to extension of maritime claims. It has been, however, alleged that a secret modus vivendi between the United States and Ecuador, which became public in 1965, heralded the renewal of the claims of 200 nautical miles.[36] For some

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34 Ibid.

35 Shigeru Oda, n.22, pp.14-16.

36 Laming , "The United States - Peruvian 'Fisheries' Dispute", Standford Law Review, vol.23 (1971), pp.391-453 at p.408.

unexplicable reasons, some of the Latin American states[37] extended their territorial waters to 200 nautical miles in late sixties by municipal legislation. It was also sought to be maintained that the 200-nautical miles territorial sea was intended to safeguard the resources of the coastal states concerned from pillaging by the highly advanced fleets from the ancient sea-faring nations of Western Europe and Asia.

Apart from the bilateral and multilateral events narrated earlier, a few more developments were indicated by the proponents of a 200 mile resources zone in Declarations[38] of some of the Conferences. All those declarations, sought to crystallize a rule in favour of a 200-nautical miles resource zone for the benefit of the coastal state. Several other countries also expanded their jurisdiction in the sea, in order to secure extensive fishery interests as far as possible for themselves.[39] The nature of these expansions remained varied. Some states extended the extent of the territorial sea, thereby automatically enlarging the exclusive fishing limits. Some others claimed rights exclusively for the purpose of fishing, without modifying the extent of their territorial sea.

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37 Cases of Argentina, Nicaragua, Panama and Uruguay can be cited here for the purpose.

38 For example, see the Declaration of Montevideo of 3 May 1970; the Declaration of Santo Domingo of 7 June 1972 and Report of the Asian-African Legal Consultative Committee at its 12th session in Colombo during 18-27 January 1971.

39 Shigeru Oda, n.22, p.15.

These jurisdictional extensions were done either by unilateral proclamations or by municipal legislations.[40] The extent of the exclusive fishing zone of about 77 countries coincided with the extent of their territorial waters. This encompassed countries like the USSR and Japan. About 43 countries extended a limit of 12 nautical miles, 17 countries a limit of 3 nautical miles, 6 countries a limit of 6 miles, 9 countries a limit of 200 miles, one country each had 4,10, 18,25 and 130 miles.[41] The zone was given title to territorial waters by some states while others called it jurisdictional area. Brazil adopted 100 nautical miles as regulatory zone and 100 miles as exclusive fishery zone. Apart from these, about 34 countries claimed exclusive fishing rights beyond their territorial sea. Out of them about 11 countries have 3 miles as territorial sea and 12 mile as exclusive fishery zone.[43]

It needs to be stressed that all of these claims differed in point of distance, terminology as well as mode

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40 For example, "India, Sri Lanka, Pakistan and the USSR, extended the limit of their territorial states through unilateral proclamation while countries like Canada and the USA did it through municipal legislations.

41 Mrs. R.Lakshmanan, "International Regulation on Fisheries", IJIL, vol.13, 1973, p.311.

42 These included countries like the USA, Iceland, Nicaragua, U.K., Turkey and Canada.

43 Kunz, "Continental Shelf and International Law", AJIL, vol.50, 1956, pp.628-633.

of imposition. As noted earlier, there was no uniform limit on the extent of exclusive fishing zone and hence there was no finally settled law so far as exclusive fishery zone of states was concerned. This clash of interests in fisheries, inevitably, led to conflicts between states. In Latin America, the claims to broaden fishing areas were met with strong objections from the United Kingdom and the United States.[44]

By the Santiago Declaration (1952) Chile, Ecuador and Peru proclaimed sovereignty and jurisdiction over the sea adjacent to their respective coasts upto a minimum distance of 200 nautical miles, subject to innocent passage.[45] Subsequently, a series of agreements were concluded which affirmed the declaration of sovereignty over the 200 nautical mile zone.[46] The Santiago Declaration also met with strong objections from Denmark, Sweden, Netherlands, Norway, the United Kingdom and the United States.[47] In addition, some incidents were reported resulting from action by other Latin American countries, especially, Colombia, Mexico and Panama.[48]

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44 The United States sent notes of protests to the Governments of Argentina, Chile and Peru on July, 1948 *See* U.N. Laws and Regulation on the Regime of the High Seas, vol.1, 1951, pp.5,7 and 17.

45 Kunz, "Continental Shelf and International Law", AJIL, vol.50 (1956), pp.628-633.

46 Shigeru Oda, n.22, p.22.

47 Ibid.

48 Ibid., p.24.

Furthermore, the claim of Iceland to a fishing zone in the continental shelf in 1943 and 4-mile fishing zone in 1952, resulted in many conflicts with northern European countries which had an interest in fisheries around Iceland.[49] Japan was similarly involved in conflicts with Korea, U.S.S.R., China and Indonesia.[50]

Iceland Fisheries Cases

These cases arose from the decision of the Government of Iceland to extend their fisheries jurisdiction from 12 to 50 nautical miles.[51] The United Kingdom and the Federal Republic of Germany had filed applications in the International

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49 D.H.N.Johnson, "Icelandic Fishery Limits", I.C.L.Q., vol.1 (1952), pp.71-73 and 350-354.

50 See Oda, n.22, pp.25-35.

51 The Court was requested by both of the countries for interim measures pending final decision in the case. The Government of Iceland refused to appoint an agent on the ground that the I.C.J. had no jurisdiction to deal with the question of extending fisheries jurisdiction by Iceland on 17 August 1972, the I.C.J. gave its decision by 14 to 1 vote and granted interim measures. However, Iceland protested sharply to this decision of the I.C.J. which granted interim measures without establishing its own jurisdiction to entertain the cases. Iceland asserted that it would not consider the I.C.J. order binding on it and it would formally carry out its decision to extend fisheries jurisdiction to 50 nautical miles, as of 1st Sept. 1972, on the basis of the unanimous Resolution passed by parliament of Iceland. See Fisheries Jurisdiction (F.R.G. vs Iceland) interim protection order of 17 August 1972, ICJ Reports (1972), p.30. Also see Fisheries Jurisdiction (U.K. vs Iceland), Jurisdiction of the Court, Judgement, I.C.J. Reports 1973, P.49.

Court of Justice, instituting proceedings against Iceland on April 14 and 5 June 1972, respectively. Iceland had entered into an agreement with the United Kingdom in 1961, as well as with the Federal Republic of Germany. These agreements provided that if Iceland extended fisheries jurisdiction beyond 12 miles, it shall give to the other party six months notice and "in case of a dispute in relation to such extension, the matter shall, at the request of either party, be referred to the International Court of Justice". Both the United Kingdom and the Federal Republic of Germany founded the jurisdiction of the Court on this clause, Iceland asserted that the court had no jurisdiction to deal with the question, since on fulfilment of the object, and purpose of the Agreement, the Agreement had expired.[52] However, the Court held that it had jurisdiction to entertain the Application filed by the United Kingdom and to deal with the merits of the dispute.

Towards A New Law of the Sea and the EEZ

The decade of seventies witnessed two prominent developments in the Law of the Sea namely, emergence of the concepts of Exclusive Economic Zone (E.E.Z.) and patrimonial sea. The former concept is traceable to Nijenga of Kenya,

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52 The I.C.J. decided its jurisdiction by 14 votes to 1 in the case on 2nd February 1973.

who advanced it for the first time at the Asian-African Legal Consultative Committee's Colombo session in January 1971. It was then refined in a working paper presented by Kenya at the Lagos (Nigeria) session of the Committee in January 1972. It constituted a landmark in the evolution of the concept of exclusive economic zone. This proposal came to be confirmed at the African states Regional Seminar on the Law of the Sea at Yaounde (Cameroon) in June 1972.[53] Finally in 1972, at the Geneva session of the UN Sea-bed Committee, Kenya formally submitted the "Draft Articles on Exclusive Economic Zone concept". The Kenyan proposal provided that:

> 1. All states have a right to determine the limit of their jurisdiction over the seas adjacent to their coasts beyond a territorial sea of 12 miles in accordance with the criterian which take account of their own geographical, biological, ecological, economic and national security factors...
> 2. All states have the right to establish an economic zone beyond the territorial sea in which they shall exercise sovereign rights over natural resources for the purpose of exploration and exploitation within the zone, they shall have exclusive jurisdiction for the purpose of control, regulation, exploitation of both living and non-living resources and for the purpose of prevention and control of pollution. Third states or their nationals shall bear responsibility for damage resulting from their activities within the zone...
> 3. The establishment of such a zone shall be without prejudice to the exercise of freedom of navigation, freedom of overflight and freedom to lay sub-marine cables and pipelines as recognized in international law....

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53 UN Doc. A/AC.139/79 (1972).

> 4. The coastal state shall permit the exploitation of the living resources within its zone to neighbouring developing land-locked, near land-locked and countries with small shelf....
>
> 5. The limits of the Economic Zone shall be fixed in nautical miles in accordance with criteria in each Region, but shall not in any case exceed 200 nautical miles measures from the baselines determining territorial sea....(emphasis added)(54)

The Indian delegation[55] also vigorously supported the concept of EEZ at the sea-bed committee apart from, China,[56] Ecuador, Pakistan, Peru[57] and Senegal.[58] In a sense, the proposal received strong support from most of the Third World countries of Asia, Africa, and Latin America. In addition, Canada and Australia were said to be in agreement with some of the points contained in the Declaration of Santa Domingo.[59]

The concept of the patrimonial sea appeared on the international plane for the first time in August 1971, when the Venezuelan delegation submitted a proposal based on it to the U.N. Seabed Committee. However, the term patrimonial sea, is said to have been first used by the Chilean jurist,

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54 See UN Doc. A/AC.138 SC 11/L.100/10th August 1972.

55 UN Doc. A/AC.138/SC.11/SR. 42, p.56.

56 UN Doc. A/AC.138/SC.11/SR 54, pp.76, 80 and 81-86. respectively.

57 UN Doc. A/AC.138/SC.11/SR.51, pp.45-48.

58 Ibid., p.48.

59 That statement was made by Mr.Castaneda of Mexico; UN Doc. A/AC.138/SC.11/SR.59, p.153.

Edmundo Vargas Carreno.[60] It later came to be incorporated in the Declaration of Santo Domingo.[61] The Declaration, inter alia, provided that:

> The coastal state has sovereign rights over the renewable and non-renewable natural resources which are found in the waters, in the sea-bed and in the subsoil of an area adjacent to the territorial sea called the patrimonial sea.
>
> The outer limit of the patrimonial sea shall not exceed 200 nautical miles from the applicable baselines for measuring the territorial sea...(62)

One of the important features of ~~this~~ the provision for patrimonial sea is the right of the coastal state to explore and exploit its natural resources and its rights in the patrimonial sea will extend to the (renewable and non-renewable)[63] natural resources, the adoption of measures to prevent pollution, the regulation of the conduct of scientific

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60 See Kaldone G. Neweihed, "Assessment of the Extension of State Jurisdiction in Terms of the living resources of the sea", Proceedings of the 8th Conference of the Law of the Sea Institute, 1973.

61 The Declaration of Santo Dimingo was adopted on 7 June 1972. Ten states - Colombia, Costa Rica, Dominican Republic, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Trindad and Tobago, and Venezuela - voted in favour of it. Five states - Barbados, EL Salvador, Guyana, Jamaica and Panama abstained. See UN Doc. A/AC.138/80. Also see J. Castaneda, "The Concept of Patrimonial Sea in International Law", IJIL, vol.12 (1972), pp.635-42.

62 UN Doc. A/AC.138/SC.11/L.21.

63 The term 'renewable' has not been defined in the Draft Treaty. It presumably means living and non living resources.

research, and the emplacement and use of artificial islands, but ships and aircraft of all states will enjoy freedom of navigation and overpass with no restrictions.[64]

The concept of exclusive economic zone and patrimonial sea are complementary to each other in form as well as in substance. Both of them contain nearly the same elements, except for Draft Article VI, in the concept of exclusive economic zone, which refers to the position of the land-locked and other disadvantaged states.[65] The resource jurisdiction symbolised in the concepts of economic zone or patrimonial sea, in essence, reflects the need of the African and Latin American countries.

The concept of E.E.Z., like the patrimonial sea, encompasses all resources-renewable or non-renewable - to be found in the waters, on the sea-bed and the sub-soil of the submarine areas of the zone. Although, it is true that the zone covers all types of resources, nevertheless, its main thrust[66] is on the living resources in the zone. The concept

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64 See UN Doc. A/AC.138/SC.11/L 21, pp.2-3.

65 According to Aguilar, among the proposals on patrimonial sea, some provisions were in favour of land-locked countries. They could not be included in all of them because the co-sponsors of some of them had not agreed on the details in respect of the special treatment. It appears to be the case of the countries which signed the Santo Domingo Declaration. Therefore, the proposal of Colombia, Mexico, and Venezuela based on that Declaration, did not include any provision to that effect. (See Andres Aguilar, "The Patrimonial Sea or Economic Zone", San Diego Law Review, vol.11 (1973-74), pp.597-602.

66 As per Chile, Peru, Ecuador and some other countries.

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of E.E.Z., represents a compromise between the 12 miles and 200 miles. It is a compromise between those who maintain that the coastal state should have no right whatsoever over the living resources of the sea beyond a territorial sea of 12 miles, and others who contended that the coastal state should have full sovereignty over the sea and resources upto 200 miles.

Conflicting Views

The concept of E.E.Z. has been assailed by many developed countries on various grounds. It is argued that the establishment of the zone would change the character of a part of the high seas in which all states at present have the freedom of fishing.[67] By accepting the concept of EEZ, according to Dupuy, the world was moving in fact from a state of unorganized freedom permitting states to act without impediment to a condition of organized freedom exercised in the general interest.[68] It is also contended that the concept does not take into account the unequal distribution of living resources in the different seas and finally, that the establishment of the exclusive economic zone may serve as a basis of pretext to claim wider rights in the future, including

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67 Aguilar, n.65, pp.592-95.

68 Rene Jean Dupuy, The Law of the Sea Current Problems (Leyden, 1974), pp.3-23.

actual sovereignty over the zone.[69] Contesting the economic rationality of the concept of exclusive economic zone, Jordon, the Soviet Union and some other countries maintained that it did not help in realizing the optimal catch and that it did not necessarily signify either conservation of the biological resources of the sea or their rational exploitation.[70]

All of the above mentioned arguments against the concept of E.E.Z. or the patrimonial sea,have also been countered by equally forcible arguments. It is argued that all coastal states under the regime of the E.E.Z. would, in principle, be placed on the same footing. The concept was not faulted except by land-locked and geographically disadvantaged states. However, the interest of the geographically disadvantaged states was sought to be accommodated by the proponents of the concept. There appears to be not much substance in the arguments that the states in their own self interest would allow other state to exploit the living resources of their economic zone.[71] Although,it is true that nature has not equally endowed all the marginal seas, nevertheless, bilateral or regional agreements can be made to

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69 Aguilar, n.65, pp.592-95.

70 See UN Docs. A/CONF.A/AC, 138/SR,56, pp.158-9; A/CONF.A/AC.138/SR.53, p.101; A/CONF.A/AC.138/SR 54, p.125 and A/AC.138/SC.11/SR.14, p.5.

71 Nawaz, n.7, p.476.

rectify such natural disadvantages.[72] As regards the argument that E.E.Z. might give rise to further expansionary claims, it is submitted that, an international convention defining the rights and duties of coastal states could have been used to check such tendencies.

By the time the first substantive session of UNCLOS III opened in Caracus in June 1974, the concept of 200 nautical mile E.E.Z. had gained substantial support from countries of Latin American and Africa. It was also recognised as the common aim of the Group of 77.[73]

UNCLOS III

The provisions relating to the E.E.Z. are the manifestation of one of the first "mini-packages" of delicately balanced compromises,[74] which emerged from deliberations in the Third UN Conference on Law of the Sea. The Law of the Sea Convention[75] allows certain rights in the exclusive economic zone for the purposes of economic advantage, notably rights

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72 Ibid.

73 See the Resolution on Marine Resources, 1971, of the Ministerial Meeting of Group of 77 in International Legal Material, vol.11 (1972), p.365.

74 Final Act of the Third United Nations Conference on the Law of the Sea, United Nations (New York, 1983) p.XXV.

75 It is hereinafter referred to as "The Convention".

over fishing and exploitation of non-living resources, as well as concomitant limited jurisdiction in order to realize those rights. At the same time, however, neighbouring land-locked and geographically disadvantaged states must be allowed access to those resources of the zone which the coastal state is unable to exploit. Moreover, the traditional freedom of the high seas need to be maintained in this area. It is, however, to be noted that the recognition of the rights of other states in the E.E.Z. is without prejudice to the rights of the coastal state. The Convention lays down a comprehensive legal framework, of the E.E.Z. The nature and characteristics of the legal regime of the E.E.Z. are examined in the following chapter.

Chapter - II

E.E.Z. REGIME UNDER THE CONVENTION

It is indeed remarkable that the emergence of the concept of Exclusive Economic Zone (EEZ) represents the zenith of efforts to earmark a transitional zone, between the territorial sea in which the coastal state has sovereignty subject to the right of innocent passage and the high seas, which has been traditionally regarded as free for all. The regime of the E.E.Z., as enshrined in Part V of the UN Convention on Law of the Sea (1982), indicates a significant departure from the legal regime of the seas embodied in the Geneva Conventions (1958).[1] It needs to be noted that under the New Law of the Sea Convention, the E.E.Z., has become a "link" connecting the territorial sea and the high seas, whereas in the Geneva Conventions, the high seas began at the outer limit of the territorial sea itself.

It goes without saying that, the legal concept of the E.E.Z. is increasingly gaining support of states.[2] Nevertheless, there are differences regarding the balance of interests

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1 These four Conventions were adopted at the First UN Conference on Law of the Sea at Geneva in 1958.

2 On 1st January 1985, following nations were claimants of an E.E.Z.: Bangladesh, Barbados, Burma, Cape Verde, Colombia, Comoros, Cook-islands, CostaRica, Cuba, Democratic People's Republic of Korea, Democratic Yemen, Djibouti, Dominica, Dominican Republic, Fiji, France, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Icelands, India, Indonesia, Ivory Coast, Kampuchea, Kenya, Madagascar, Malaysia, Maldives,

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it entails as well as on what specific rights and duties the concept encompasses. Therefore, it is necessary to analyse the provisions of part V of the Conventions. It will also be worthwhile to have a glimps of the recent state practice, which has contributed to the evolution of the concept.

A Zone Sui generis

The term sui generis literally means "special" or "specific" or "having its own pecularity". In this sense, the E.E.Z. assumes the status of a zone sui generis, as it does not fit within any of the traditional maritime zones accepted by the states. The term was often used to characterize fishing zones, rather than the usual contiguous zones. The view expressed by the Soviet Legal specialist A.L.Calodkin merits mention:

> (I)n the first and second Conference on the LOS many countries insisted on the recognition of the legitimacy of such zones [i.e. fishing zones]. While the zone was not provided for in the conventions adopted in the Conferences, many countries continue to have fishing zones

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(Previous f/n. cont...)
Mauritania, Mauritius, Mexico, Morocco, Mozambique, New Zealand, Nigeria, Nive, Norway, Omau, Pakistan, Philippines, Portugal, Sao Tome and Principe, Seychelles, Spain, Sri Lanka, Suriname, Thailand, Togo, Trinidad and Tobago, Union of Soviet Socialist Republic, United Arab Emirates, United States of America Vanuatu, Venezuela, Vietnam, Western Samoa.

> where they claim exclusive rights in relation to exploitation and preservation of the fishing stacks. Such zones are not to be regarded as contiguous zones, but zones sui generis.(3)

According to another Soviet writer:

> (N)ot sheerly by chance, therefore, that many developing countries were of the opinion that the E.E.Z. was not part of the high seas, but a zone sui generis(4)

Therefore, it seems that characterizing a zone such as E.E.Z. having its own pecularity and originality, by the term sui generis is nothing unusual.

The E.E.Z. regime under the Convention can be termed a zone 'sui generis', since it is neither a part of the territorial sea nor the high seas. The zone does not extend beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. However, the coastal state does not possess sovereignty in the E.E.Z. The Law of the Sea Convention emphatically describes the rights, jurisdiction and duties of the coastal state in the E.E.Z. as:

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3 A.L.Calodkin, "Territorial Waters and Contiguous Zone", p.129 in V.M. Koretski and G.I.Tunkin (ed.), Essay on International Sea Law (Moscow, 1962) (translation from Russian).

4 S.A.Guriyev, "The Problems of Merchant Shipping in the Economic Zone", The Soviet State and Law, no.8, (Moscow, 1978), p.112 (translation from Russian).

1. In the E.E.Z., 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 sea-bed and of the sea-bed 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;

(ii) marine scientific research;

(iii) the protection and preservation of the marine environment.

(c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal state shall have due regard to the rights and duties of other states and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with part VI. (emphasis added) (5)

"Sovereignty", "sovereign rights", "rights of sovereignty","exclusive rights", "jurisdiction", "control" etc. are some of the terms that are generally used by the coastal

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5 Article 56 of the United Nations Convention on the Law of the Sea, United Nations (New York, 1983),p.8.

states to characterize their rights in the zone. It is important to note here that Article 56 grants to the coastal state "sovereign rights", for designated purposes and not sovereignty.[6] Sovereignty means supreme power that is

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6 In view of the efforts of some of the delegates to enumerate the specific rights and duties of the coastal state in the EEZ at the UNCLOS III, the Peruvian Representative observed that:

> Any such enumeration could be proved insufficient to cover all possible rights and duties of coastal state, especially if we consider the new potential of the oceans. The reasons and reality demand resorting to a different method, it is necessary to enumerate the rights and duties of the non-coastal states, not the rights and duties of the coastal state in their respective EEZ.

Moreover, suggesting that the rights of the coastal state in relation to the resources of the EEZ were more than sovereign, the Kenyan Representative made the following observation:

> The rational management of any natural resource required inter alia that the resource should be clearly understood through knowledge acquired as a result of property conducted fundamental, applied or exploratory research and that it should be exploited in such a manner as to ensure its rational utilization and conservation. It was, therefore, clear that marine scientific research and the prevention and control of pollution of the marine environment were part of the whole process of management development and conservation of any natural resources and that one could not be controlled without the other.... The EEZ therefore must be considered a national area of sovereignty for economic purposes, in which the coastal states' rights and duties within that national zone. On the other hand, the Conference should spell out clearly what rights and interests the international community should enjoy within that zone. These rights and interests must take into account at all times the overriding right of the coastal state to preserve its economic interests. The law established within the economic

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inherent in a state within a particular territory and independence in international relations.[7] Territorial supremacy is one of the basic facts of sovereignty. Since the E.E.Z. is not a part of the state territory which was accepted by the so-called territorialists it is inappropriate to use the term "sovereignty" to signify the rights over the resources of the zone. The term sovereignty was used in many declarations by different states relating to the law of the sea and also in draft articles on the E.E.Z. presented by some states to UNCLOS III. For example, the Declaration of Organisation of African unity (24 May 1973) relating to the Law of the Sea, inter alia, states:

> In such zones [EEZ] the coastal state 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...(8)

(previous f/n. cont....)

> zone must be regarded as a new law and the freedoms to be enjoyed in that zone must be regarded as different from those subsisting under the present so-called region of freedom of the high seas. [Quoted in S.A.Guriyev, "The Problems of Merchant Shipping in the Economic Zones", The Soviet State and Law, no.8 (Moscow, 1978), p.112. (Translated from Russian).

7 Course on International Law, vol.2 (Moscow, 1967), p.33 (Translation from Russian).

8 The Evolving Limit of Coastal Jurisdiction, Collected Documents (Reykjavik, 1974), p.111.

It is well-known that the Law of the Sea has created and recognized in the high-seas, adjacent to the territorial sea, different functional zones for various purposes, for example, immigration, customs, sanitation, security, etc. None ever questioned their having the status of the high seas. But this cannot be said of the EEZ, for here exists sovereign economic rights of the coastal state. These rights are seriously to be taken into consideration by other states while enjoying the freedoms of the high seas that are still valid in the EEZ.

As regards living resources, the coastal state is to ensure that such resources in the EEZ are not endangered by over-exploitation and also to ensure their optimum utilization.[9] A whole series of obligations are imposed on the coastal state under the subsequent provisions, the most important of which calls upon the coastal states to "determine its capacity to harvest the living resources of the exclusive economic zone" - and "give other states access to the surplus of the allowable catch" in order to "promote the objective of optimum utilization of the living resources in the exclusive economic zone."[10] The coastal state is also

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9 Article 61,62.

10 Article 62, paragraph 2 and 3.

obliged to take into consideration the economic dependence and "national interest" of other states, while giving access to the resources in its EEZ. The surplus is to be made available, under certain conditions, to foreign fishermen.[11] It is important to note here that, the "requirement" of the developing states of the region in harvesting part of the surplus should cause "minimum economic dislocation" to those that "have habitually fished in the zone".[12] So far as the rights of landlocked and geographically disadvantaged states to participate in the exploitation of an "appropriate" part of the surplus from the EEZs of other states in the region are concerned, they have been recognized but subject to terms and modalities which are to be negotiated.[13]

While at UNCLOS III there was clearly an attempt to balance the rights of the coastal state and those of the international community. This delicate balance was the result of almost 14 years of efforts of the sea-bed committee and UNCLOS III. However, it still remains to be seen as to how this balance will operate in actual practice. From the perusal of the provisions of the convention it appears that, a precise

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11 Article 62, 69, 70, 71.

12 Article 62(3).

13 Article 69,70.

division of power and responsibility between the coastal state and other states in the zone is missing. The Convention makes provision for the basic structure for the resolution of conflicts in the EEZ. The relevant provision, which contributes to the strengthening of the sui generis character of the EEZ, runs as follows:

> In case where this Convention does not attribute rights or jurisdiction to the coastal state or to other states within the exclusive economic zone, and a conflict arises between the interests of the the coastal state and any other state or states, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances. (emphasis added) (14)

This special provision for conflict resolution and conferment of status on the EEZ, which neither falls in the territorial sea nor in the high seas, seems to be the result of the conscious decision rather than a mere accident. A recent statement made by Chile, makes this amply clear:

> In exercise of the right conferred by article 310 of the Convention, the delegation of Chile wishes first of all to reiterate in its entirety the statement it made at (the April 1982) meeting, when the Convention was adopted...The Convention's pivotal legal concept, that of the 200 mile exclusive economic zone to the elaboration of which (Chile) made an important contribution, having been the first to declare such a concept, 35 years ago in 1947, and having subsequently helped to define and earn it international acceptance. The exclusive economic zone has a sui generis legal character distinct from that of the territorial sea and the high seas. It is a zone under national jurisdiction

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14 Article 59.

> over which the coastal state exercises economic sovereignty and in which third states enjoy freedom of navigation and overflight, and the freedoms inherent in international communication. The convention defines it as a maritime space under the jurisdiction of the coastal state, bound to the latter's territorial sovereignty and actual territory, on terms similar to those governing other maritime space, namely the territorial sea and the continental shelf. (emphasis added).(15)

As a result, it would not be possible to draw analogy as to where the residual powers, not laid down specifically in the Convention, would be raised.[16] The matter of resudial rights can be said to have been left open for development on the basis of questions and controversies which may crop up in the future. This would, naturally, be governed by state practice.

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15 See Law of the Sea Bulletin, no.5, July 1985, pp.43-44. Moreover, views expressed by Cape Verde and Uruguay are also on the same lines:

Cape Verde: The legal nature of the exclusive economic zone as defined in the Convention and the scope of the rights recognized therein to the coastal state leave no doubt as to its character of a "sui generis" zone of national jurisdiction different from the territorial sea and which is not a part of the high seas.
Uruguay: The legal nature of the exclusive economic zone as defined in the Convention and the scope of the rights which the Convention recognizes to the coastal state leave room for no doubt that it is a "sui generis" zone of national jurisdiction different from the territorial sea and that it is not part of the high seas.

16 However, the views expressed by Cape Verde, and Italy reflect views in this respect:
Cape Verde: The regulation of the uses or activities which are not expressly provided for in the Convention but are not expressly provided for in the Convention but are related to the Sovereign rights and to the jurisdiction of the coastal state in its exclusive economic zone falls within the competence of the said

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State Claims:

Even prior to the new Law of the Sea Convention came into being, the concept of extended jurisdiction (EEZ) had been already well established state practice. Almost three quarters of the coastal states (99 states) had extended their jurisdiction over fisheries to beyond 12 miles and almost 2/3 (84 states) to 200 miles by May 1981. The concept of 200 miles coastal state jurisdiction over fisheries had been formally propounded in the Port Moresby Declaration (1977) and was largely implemented by about 13 coastal states in the Western and Central Pacific region. In addition, Fiji and Western Samoa enacted legislations for the extension of their coastal jurisdiction.[17]

The new Law of the Sea Convention provides that the outer limit of the E.E.Z. should not exceed 200 nautical miles

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state provided that such regulation does not hinder the enjoyment of the freedoms of international communication which are recognised to other states.

Italy: (A)ccording to the Convention, the coastal state does not enjoy residual rights in the exclusive economic zone. In particular, the rights and jurisdiction of the coastal state in such zone do not include the right to obtain notification of military exercises or manoeuvres or to authorise them, /See Law of the Sea Bulletin, No.5, July 1985./

17 See "Legislation on coastal state requirement for Foreign Fisheries", FAO Legislation Study, No.21 (Rome, 1981).

from the appropriate baselines.[18] The concept as elaborated by a large number of the developing coastal states of Africa, Asia and Latin America brought to a halt new claims of extension of the territorial sea to 200 nautical miles, though the old assertions continued to be defended until the Third Session of the Law of the Sea Convention.[19] The Convention clearly makes provision regarding the breadth of the exclusive economic zone, It reads as:

> The exclusive economic zone shall not extend beyond 200 nautical miles from the base line from which the breadth of the territorial sea is measured. (emphasis added) (20)

This language indicates that the "territorialist" position would not survive. In this sense the states do not have to assert an E.E.Z. claim all the way upto 200 nautical miles. Thus their EEZ may extend to a lesser distance. States' parties may even decide not to claim an E.E.Z. at all. With only one exception, states which have in practice claimed rights to an EEZ have done so to the maximum geographic extent

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18 See Article 57 and also see the ISNT, UN Doc.A/CONF, 62/WP, 8/Part 11; Article 45 of RSNT. A/CONF. 62/WP, 8/Rev.1/Part 11; Article 570/ICNT and its various revisions, UN Docs. A/CONF.A/CONF.62/WP.10/and Rev.1,2, 3 and Article 570 of the Convention.

19 See the proposals made by Uruguay (UN Doc.A/AC.138/SC IIL.24); Brazil (A/AC./138/SC.11/L.25); Equador, Panama and Peru (A/AC 138/SC 11/L.27 and land 2); Equador (A/CONF.62/C/2/L.10); Nicaragua (A/CONF.62/C.2/ L.17); Equador (A/CONF.62/C.2/L.88).

20 Article 57 of the Convention.

allowable. Only Medagascar with its 1973 assertion of a 100 miles EEZ has claimed less.[21]

In working out the legal regime of the EEZ in the third United Nations Conference on the Law of the Sea (UNCLOS III) things thus came to a deadlock. It become difficult to accept that the EEZ was not the territorial sea. But the developing countries could in no way agree to the idea of an EEZ as part of either the territorial sea or the high seas and considered it expedient to attribute to it a sui generis status that would distinguish the zone from the territorial sea as well as the high seas. This seperation from the territorial sea means that, the breadth of the EEZ would extend from the outer limit of a state's territorial sea to a maximum distance of 200 miles from the baselines. Thus a state with a territorial sea of 12 miles, then, would have at the maximum EEZ of 188 miles. Though the outer limit of the EEZ is clearly identified in the Third Law of the Sea Convention and whereas all claiming states but one have extended their EEZs to the 200-miles line, not all these EEZs have the same breadth because of different nationally asserted claims to territorial seas. Their territorial sea claims are limited by the Convention as follows:

> Every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention. (emphasis added) (22)

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21 Medagascar, Ordinance No.73-060 of September 28, 1973, Article 2.

22 Article 3 of the Convention.

The wording of this article is permissive in the sense that it does not mandate a 12-mile territorial sea. However, it is mandatory in providing that the territorial sea may not extend beyond 12 miles measured from the appropriate baseline. Since more and more states are extending their territorial sea to 12 miles the breadth of the EEZ seems to be moving towards uniformity.

Interestingly, although the territorial sea and the EEZ are designated as two distinct geographical and juridical zones in the new Law of the Sea Convention, nevertheless, this distinction may get blurred in the national EEZ legislation of a significant number of states.[23] The Indian legislation in this respect defines the EEZ of India as an area "beyond and adjacent to the territorial waters",[24] and states that the limit of such zone is 200 nautical miles from the baseline referred to in section 3(2).[25] This

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23 Most of the states, including India, claiming, an EEZ explicitly indicate that the EEZ is "beyond and adjacent to" their territorial seas. Nevertheless, there are a number of states - for example Costa Rica, Democratic Peoples' Republic of Korea, Democratic Yemen, Guatemala, Guinea-Bissau, Haiti, Kenya, Mauritania, Norway, Oman, Philippines, Portugal, Sri Lanka, and Lago - regard their territorial sea as a part of or being encompassed by their EEZ. In addition, there are some other states like - Cape Verde, Comoros, Honduras, Maldives and United Arab Emitrates - whose position does not appear to be still clear on the issue.

24 Section 7(1), The Maritime Zones Act, 1976.

25 Section 3(2) provides that the limit of the territorial waters in the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline.

definition of the EEZ and its limit under the Indian Law fully correspond to the provisions of articles 55 and 57 of the Convention.

The coastal state is also given an exclusive jurisdiction as regards the construction of artificial islands and other installations. The relevant provision states:

> In the EEZ, the coastal state shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:
>
> (a) artificial islands;
> (b) installations and structures for the purposes provided for in article 56 and other economic purposes;
> (c) installations and structures which may interfere with the exercise of the rights of the coastal state in the zone.(26)

The language of this provision recognizes that the coastal state has the exclusive right to authorize construction, operation, and use of artificial islands. However, the installations and structures not covered by clause (b) and (c) would not be subject to the jurisdiction of the coastal state. It may, in practice, be difficult to think of the cases that would not be covered by them. In addition, the Convention confers "exclusive jurisdiction" of the coastal state, over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.[27]

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26 Article 60(1).

27 Article 60(2).

The coastal state is also empowered to establish, where necessary, reasonable safety zones[28] around artificial islands, installations and structures in the EEZ which must not exceed a distance of 500 meters, unless authorized by international standards recommended by the competent international organization.[29] All ships are required to respect these zones and comply with international standards regarding navigation in the vicinity of artificial islands, installations, structures, and safety zones.[30] It, however, appears that direct navigation in the EEZ under certain circumstances is a special derogation from the universal right of freedom of navigation in that zone. Similarly, the right of hot pursuit[31] by the coastal state for violations of legitimate coastal-state laws and regulations in the EEZ is recognized. Nevertheless, such right does not amount to an invitation to interfere with navigation rights exercised by foreign-flag vessels. The coastal state is put under an obligation not to establish artificial islands and other devices "where interference may be caused to the use of recognized sea lanes essential to international navigation".[32] The purpose of the Convention here appears, while taking into account the

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28 Article 60(4).
29 Article 60(5).
30 Article 60(6).
31 Article 111(2).
32 Article 60(7).

importance of the respective interests of the parties as well as those of the international community as a whole, to give priority to the interests of international navigation over those of the coastal state. It, in turn, provides a useful criteria as to how the residual rights under article 59 would have to be interpreted and applied.[33]

Living Resources:

A coastal state has sovereign rights in its EEZ, under the Convention, for exploring and exploiting, conserving and managing living or non-living natural resources.[34] By virtue of the customary international law relating to the continental shelf and the 1958 Convention on the Continental Shelf, most of the non-living resources found in the geographic area encompassed by the new EEZ were under the control of the coastal state prior to the creation of the EEZ.[35] It is in regard to the regime for living resources that the EEZ introduces significant departure from the legal system reflected in the Geneva Conventions adopted in 1958. Under the Continental Shelf Convention, coastal state control of

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33 P. Chandrashekhar Rao, "The New Law of Maritime Zones", Miland (New Delhi, 1983), p.255.

34 Article 56

35 Lawrence Juda, "The EEZ : Compatibility of National claims and the UN Convention on the Law of the Sea", Ocean Development and International Law, vol.16, No.1, 1986, p.20.

fisheries beyond the territorial sea was limited to the special case of sedentary species of the Continental Shelf, a prolongation[36] which for many states was less than 200 miles. The Continental Shelf may, extend beyond the limits of the EEZ. It will, however, be treated as Continental Shelf as such and not as EEZ. The Continental Shelf covers not only the hydrocarbons and such other resources of the sea-bed, but also the fish of the sedentary nature. The Convention, nevertheless, appears to take into account the extension of the:

> (S)overeign rights of the coastal state 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 production of energy from the water currents and winds (emphasis added) (37)

It needs to be emphasized that the extension of the sovereign rights of the coastal state to "other activities" covers other economic uses of the zone which may be discovered in future. The Convention also recognizes the jurisdiction of the coastal state in the matter of establishment and use of artificial islands, installations and structures

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36 Continental Shelf Convention, 1958, Article 2(4).

37 Article 56(1)(a).

and marine scientific research and preservation of the marine environment.[38] It is, therefore, clear that unlike the territorial sea, the sovereign rights of the coastal state are applicable to the resources of the zone, rather than to the zone itself.[39] The Convention gives to the states sovereign rights over and the responsibility for the conservation, utilization and management of the living resources of the EEZ.[40] The coastal state shall "determine the allowable catch" and shall ensure, through proper conservation and management measures, that the maintenance of the living resources in the exclusive economic zone is not endangered by "over exploitation".[41] It shall, in other words, maintain the rate of exploitation at the level of maximum sustainable yield; asses stocks; and keep statistics of the catch.[42] A

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38 Ibid (b)i,ii,iii.

39 E.D.Brown, "The Exclusive Economic Zone: Criteria and Machinery for Resolution of International Conflicts between Uses of Exclusive Economic", Maritime Policy Management, vol.4 (1977), p.333.

40 Articles 51(1)(a), 61 and 62.

41 Article 61(1)(2).

42 Rahmatullah Khan, "Some Reflections on the Legal Implications of Extensions of Exclusive Fisheries Zones", IJIL, vol.21, no.4, 1981; Convention provides guidelines for state practice on conservation based not merely on the biological aspects of fisheries but also on the economic, social and environmental factors as well. The coastal state is allowed a wide latitude in determining the level of allowable catch. If living resources are endangered, because of the failure of the coastal state to take conservation measures, it will be obliged to submit a conciliation procedures. Conservation may impose onerous responsibilities to collect (f/n..contd..n/page)

series of obligations are imposed on the coastal state under the subsequent relevant provisions. One of the obligation calls upon the coastal states to "determine its capacity to harvest the living resources of the exclusive economic zone" and "give other states access to the surplus of the allowable catch" in order to promote the objective of optimum utilization of the living resources in the exclusive economic zone.[43] The major fishing powers, particularly the USSR, laid stress on "Optimum utilization", in order to develop a basis for the continued operation of their distant water fishing fleets[44] in foreign EEZs. It also needs to be noted that "Optimum Utilization" is not the same as "maximum utilization" of fishery resources, since the objective of management may not be conceived of in terms of the largest possible fish catch.[45]

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and exchange scientific information, such as catch and fishing - efforts statistics on each stock but in the long run, responsibilities will save the interests of the coastal state.

43 See William T. Burke, "1982 Convention on the Law of the Sea Provisions of Access to Fisheries subject to National Jurisdiction", in Report of the Expert Consultation on the Conditions of Access to the Fish Resources of Exclusive Economic Zone, FAO Fisheries Report No.293, (Rome : FAO, April 1983), p.29.

44 The fishing fleets of major fishing powers have considerable states in continued access to stocks in the economic zone and believe that without such provisions many coastal states will exclude fishing by outsiders for nationalistic reasons.

45 See n. 43. Ibid.

It is, however, left to the discretion of the coastal state, to determine the full harvesting capacity of the allowable catch. In case the coastal state does not have the requisite capacity to harvest the entire allowable catch, it would be required to give access to other states as regards the surplus within the total allowable catch. This access is provided only by the coastal state after taking into account:

> all relevant factors, including, inter alia, the significance of the living resources of the area to the economy of the coastal state concerned and its other national interests, the provisions of article 69 and 70, the requirements of developing states in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in states whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks. (emphasis added) (46)

According to Burke, "other national interests" could encompass "all conceivable interests that might in varying degrees bear on fisheries, including political military, educational, ecological, cultural, religious or ideological."[47]

The new Law of the Sea Convention also calls for international co-operation either directly or through appropriate sub-regional organizations in regard to stocks within the EEZ shared by two or more coastal states,[48] stocks

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46 Article 62(3).

47 See William T. Burke, n.40, pp.32-35.

48 Article 63(1).

occuring within the EEZ and beyond and adjacent to the EEZ,[49] highly migratory species[50] and marine mammals.[51] The role of the international organizations gets a fillip where marine mammals are involved. The state of origin is recognized to have primary interest in fishing for anadromous stocks within the EEZ. It is also authorised, after consultations with the states fishing these stocks, to establish "total allowable catch for stocks originating in its rivers".[52] Further, all fishing for these stocks should be conducted only in waters landwards of the outer limits of the EEZs, except in cases where this provision would result in economic dislocation for a state other than the state of origin. In the case of anadromous stocks, like Salmon, which migrate into the EEZ of other states, the concerned states are required to co-operate with the state of origin in regard to conservation and management of these stocks.[53] The legal regime concerning catadromous fish requires the coastal state, in whose waters these species spend greater part of their life cycle, to take up the responsibility for their management

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49 Article 63(2).

50 Article 64(1).

51 Article 65.

52 Article 66(2).

53 Article 66(4).

and it should also ensure the ingress and egress of migrating fish within its EEZ,[54] Where these fish migrate through the EEZ of another state, rational management, including harvesting, should be undertaken by agreement between the coastal state[55] and the other states concerned.[56] The fishery regime in the EEZ, in a sense, puts the coastal state in the situation of dispute, which may occur over the sharing of fishery resources. The solution regarding mandatory and binding dispute settlement contained in UNCLOS III, does not extend to the most significant and potentially most controversial conflicts which may arise. It provides that:

> Disputes concerning the interpretation or application of the provisions of this Convention with regard to fisheries shall be settled in accordance with Section 2, except that the coastal state shall not be obliged to accept the submission to such settlement of any dispute relating its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surplus to other states and the terms and conditions established in its conservation and management laws and regulations.(57)

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54 Article 67(1).

55 Here coastal state means the state in whose waters these species spend the greater part of their life cycle.

56 Other state, which should ensure the rational management of these species and take into account the responsibilities of the former state for the maintaining of these species.

57 Article 297(3)(9).

The regime of the EEZ enshrined in the Convention seeks an accomodation between the interests of the coastal state and the interests of other states, with a different balance struck with respect to different types of activities in the zone.[58] The conflicts which may arise out of the clash of national and international interests in exclusive economic zone, are expected to be resolved having due regard to the rights and duties of other states in a manner compatible with the provisions of the Convention.[59] Thus, it is said that the legal mechanism under the Convention is not effective enough to challenge major action taken by the coastal state as it manages its fishery resources in the EEZ.[60] In this respect it may, however, be noted that the conciliation commission shall not substitute its direction for that of the coastal state.[61] It is also necessary to communicate the report of the Commission to the appropriate international organizations.[62] Here the ostensible purpose appears to be to raise international pressure in cases

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58 Jhon R. Stevension and Bernard H. Oxman, "The Third UN Conference on the Law of the Sea : 1975 Geneva Session", AJIL, vol.69 (1975), p.775.

59 Article 56(2).

60 See Lawrence Juda, n.32, p.22.

61 Article 297 (3)(c).

62 Article 297(3)(d).

involving manifest violations by the coastal state.[63]

The legal regime of the EEZ explodes the myth of traditional law that the freedom of the high seas entailed unfettered claims over living resources (and non-living), irrespective of their variant biological and environmental constraints.[64] The laissez faire policy of nations towards what was considered to be common property has proved to be unsatisfactory from the view point of both the resources and the economically less advanced coastal states.[65] As provided in the convention, most of these resources come under national jurisdiction. But the "sovereign rights" of the coastal states are to be exercised,keeping in view the status of the resource itself and a careful balancing of their own need or capabilities and those of others.

The attitude of the United States over the question of coastal-state control over highly migratory species and their management (like Tuna) was that such species should be excluded from the exclusive management and jurisdiction of the coastal state in the EEZ.[66] A majority of the states,

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63 See P.C.Rao, n.30, p.

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65 Khan R., "Some Reflections on the Legal Implications of Extensions of Exclusive Fishery Zones", IJIL, vol.21, No.4, 1981, p.539.

66 William Burk, "Highly Migratory Species in the New Law of the Sea", Ocean Development and International Law vol.14, 1984, pp.303-310.

however, held on to the view that the exclusive management authority in the EEZ of the coastal state extended to the living and non-living resources of that zone, without any qualification or distinction over the highly migrating species. In case of cook islands, Fiji, and Western Samoa, among others, national legislations specifically provide for national management of highly migratory species within their EEZ.[67]

Land Locked and Geographically Disadvantaged States

Geographically disadvantaged states means and includes states which are, from the stand point of geography, unfavourably situated or circumstanced. These states, in the context of the Law of the Sea, are the land-locked states, as also coastal states which are either shelf locked or are endowed with narrow shelves or short coast lines.[68] The concept of exclusive economic zone came to be resisted initially by the land-locked states, hence, it was realized quite early in the debate on the law of the sea that some concessions would have to be made to them to enlist their support for the concept.

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67 See Cook Islands, The territorial Sea Exclusive Economic Zone Act 1977, article 11; Fiji, Marine Species Act 1977, Article 91(4) and Samoa, Exclusive Economic Zone Act 1977 article 11(i).

68 V.C.Govindaraj, "Geographically Disadvantaged States and the Law of the Sea", in R.P.Anand (ed.), Law of the Sea : Caracus and Beyond (Radiant,New Delhi, 1978).

The Convention, consequently, contains a specific provision allowing the neighbouring land-locked and geographically disadvantaged states, to have access to those resources of the EEZ which the coastal state does not exploit, apart from recognizing the traditional freedoms of the high seas in the area. This provision, however, remaines without prejudice to the rights of the coastal state. The protection of so many different interests in the EEZ would, obviously, require respect and accommodation of the rights and legitimate uses of other states in the zone. The Convention deals with the rights of access of the land-locked states and states with special geographical characteristics, to the living resources of the EEZs of other states in the sub-region or region.[69] The relevant provisions of the Convention speak in terms of "Right of land-locked states" and "Rights of geographically disadvantaged states". Imposing an obligation to co-operate with land-locked and geographically disadvantaged states, the Convention provides:

> Land-locked (and Geographically disadvantaged) states shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal states of the same sub-region or region, taking into account the relevant economic and

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69 These provisions depict the agreement arrived at the Seventh session of the Conference as a result of work done in Negotiating Group under the Chairmanship of Ambassador Satya Nandan of Fiji. For Nandan's explanatory memorandum and his compromise suggestions, see Official Records of Third UNCLOS, vol.X, pp.88-95.

> geographical circumstances of all the states concerned and in conformity with the provisions of articles 69 and 70 and articles 61 and 62. (emphasis added) (70)

It was pointed out by many delegations in the Sea-bed Committee and later in the Conference, that the use of the term "right" in this context would be incompatible with the recognition of their "sovereign rights" over the resources in the EEZ. States argued that the term "right" be substituted by "access".[71] Therefore, the "right to participate" remains restricted only to an appropriate part of the surplus living resources. The expression "the sub-region or region" used in the Convention is left unclarified, inspite of the persistent demands during the Conference negotiations. Some states regard this expression as "constructively ambiguous". As a result, disputes over its interpretation in practice can not be ruled out, for there is no internationally accepted meaning of what constitutes "a region" or a "sub-region".[72] The Convention further provides:

> (T)he term and modalities of such participation shall be established by the states concerned through bilateral, sub-regional or regional agreements taking into account inter alia:

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70 See Article 69(1) and 70(1).

71 See Official Records of Third UNCLOS, Vol.IX, for statements by Equador (p.59) E.L.Salvador (p.59), Argentina (p.59), Denmark (p.61), Brazil (p.70), Cameroon (p.74), Peru (p.66), Pakistan (p.68); see also Nandan's Memorandum, n.64, p.90.

72 See the statement made by Denmark on behalf of the member countries of the EEZ (Official Records of Third UNCLOS, vol.ix, p.61.)

> (a) the need to avoid effects detrimental to fishing industries of the coastal states;
>
> (b) the extent to which the land-locked states in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, sub-regional or regional agreements in the exploitation of living resources of the exclusive economic zone of other coastal states;
>
> (c) the extent to which other land-locked and geographically disadvantaged states are participating in the exploitation of the living resources of the exclusive economic zone of the coastal state and the consequent need to avoid a particular burden for any single coastal state or a part of it;
>
> (d) the national needs of the populations of the respective states.(73)

The Law of the Sea Conference witnessed a dual between the coastal states and the landlocked and geographically disadvantaged states on the issue of obligations of the coastal state in cases where it acquired the capacity to harvest the entire allowable catch. It was feared by the coastal states that this obligation may be abused by land locked states, if they were given a priority over their own nationals. Therefore, they wanted a formula to be in corporated in the conversion, that the land-locked and states with geographical characteristics[74] may be given the right under the Convention:

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73 See Article 69(2) and 70(3).

74 Article 70(2).

> (T)o participate, on an equitable basis, in the exploitation of an appropriate part of the surplusof the living resources of the exclusive economic zones of coastal states of the same sub-region or region, taking into account the relevant economic and geographical circumstances of all the states concerned and in conformity with the provisions ....(75)

The insertion of the phrase "an appropriate part of the surplus" in this provision was felt necessary in view of the deadlock created by the insistence of the land-locked and geographically disadvantaged states to a share as a matter of right and the insistence of the coastal states to allow foreign participation only with their permission. It seems that the Convention recognizes the obligation to co-operate with landlocked and geographically disadvantaged states, which are recognized to possess:

> (R)ight to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal states of the same subregion, or region, taking into account the relevant economic and geographical circumstances of all the states concerned.(76)

It may thus be said that the obligation to co-operate is clear and persistant.[77]

Since the coastal state is to decide the surplus of its exclusive economic zone, discretion is left with it in

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75 Article 69(1) of ISNT/Rev.3.

76 Article 69.

77 See Rahmatullah Khan, n.42, p.535.

the matter of exploitation of the living resources. The Convention also provides that:

> When the harvesting capacity of a coastal state approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal state and other states concerned, shall co-operate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing geographically disadvantaged states (developing land-locked states) of the same sub-region or region in the exploitation of the living resources of the exclusive economic zones of coastal states of the sub-region or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of the provision the factors mentioned in paragraph 2 [paragraph 3] also be taken into account.(78)

It is important to note that, it is left to the coastal state to determine its own capacity to harvest the living resources in the exclusive economic zone and to enter into negotiation for bilateral, subregional or regional agreements to give access to others to the surplus of the allowable catch so as to ensure optimum utilization of the living resources.

Maintaining the interests of the land-locked states and geographically disadvantaged states, the Convention seeks to put them on a higher pedestal than those of the developed

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78 . Article 69(3) and 70(4).

land-locked and geographically disadvantaged states. Moreover, the latter would be entitled to participate in the exploitation of living resources only in the EEZs of developed coastal states of the same sub-region or region.[79] These provisions on the land locked states and geographically disadvantaged states are, however, without prejudice to arrangements agreed upon in sub-regions or regions where the coastal states may grant to land-locked states and geographically disadvantaged states of the same sub-region or region something like a preferential rights for the exploitation of the living resources in the exclusive economic zones.[80]

Thus the Convention not only recognizes the rights of the land locked states and geographically disadvantaged states to participate in the exploitation of the living resources in the EEZ, but also requires the establishment of the modus vivendi of the participation by the concerned states. This may be arranged through bilateral, sub-regional or regional agreements. The provision dealing with "access", nevertheless, remains subject to a number of limitations. Therefore, it remains doubtful whether the land-locked states and geographically disadvantaged states would ever be able to exercise their rights meaningfully, since it would largely depend upon the goodwill of the concerned coastal states.

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79 Article 69(4) and 70(5).

80 Article 69(5) and 70(6).

Delimitation of the EEZ

The delimitation of the EEZ of adjacent and opposite states has been relatively an easier task. The Convention prescribes some methods and procedures as applicable to delimitation of opposite or adjacent continental shelf.

The Convention deals with the rules governing the delimitation of EEZ between adjacent or opposite coasts as follows:

> (1) The limitation of the EEZ between states with opposite or adjacent coasts shall be effected by agreement on the basis of International Law, as referred to in Article 38 of the Statute of the International ~~Law~~ Court of Justice, in order to achieve an equitable solution.
>
> (2) If no agreement can be reached within a reasonable period of time, the states concerned shall resort to the procedure provided for in part XV.
>
> (3) Pending agreement as provided for in paragraph 1, the states concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement such arrangements shall be without prejudice to the final delimitation.
>
> (4) Where there is an agreement in force between the states concerned, questions relating to the delimitations of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.(81)

The provisions of this article are analogous to Article 83 of the Convention, which provides for the delimitation of the Continental Shelf between adjacent or opposite states. According to it, the delimitation of economic zone of adjacent

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81 Article 74.

or opposite states shall be effected by agreement in accordance with equitable principles, employing where appropriate, the median, or equidistance line, taking into account all the relevant circumstances; and pending agreement the states concerned shall make provisional arrangements, taking into account the provisions of paragraph which inter alia advocates application of the median or equidistance principle.[82] These provisions reflect contemporary trends following the judgement of the ICJ in the North Sea Continental Shelf Cases.[83] Although, it may not be possible to identify all the applicable circumstances, it may be desirable to illustrate the relevant ones — as the ICJ did in the North Sea Continental Shelf Cases— so that the disputant parties may have certain guidelines for the action.

On the basis of analysis of the EEZ regime under the Law of the Sea Convention, it appears without doubt that, it is of unique character, distinct from the traditional regimes of the territorial sea and the high seas. This sui generis character of the EEZ regime not only ensures flexibility but also leaves enough room for evolving new norms, especially in respect of "residual rights" in the zone. Although, this may, in the process lead to problems of its own kind, nevertheless, the states concerned would, in their own interests, be forced to seek accomodation for the purpose.

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82 It may be recalled that the SNT had a slightly different solution to this problem.

83 See ICJ Reports 1969, p.3.

Chapter - III

EEZ AND INDIA'S INTERESTS

In the emergence of the concept of the EEZ, in the recent past, India has also played a prominent role. From the beginning of UNCLOS III, India has consistently lent support to the claim for extension of the maritime jurisdiction of the states. India's support for 200 miles EEZ was not only in its own interest in view of the vast-coastline but also it was meant to give a fillip to the Afro-Asian solidarity movement.

India's coast line is surrounded by the Arabian sea, the Indian Ocean and the Bay of Bengal. Apart from the coastline (6,536 km), India has over 1280 islands and islets. India has a large shipping line and world wide interests in trade and commerce. Itis, therefore, interested in freedom of shipping and navigation. India is a developing state and is concentrating on attaining rapid strides in its agriculture, fisheries and industries. India's total EEZ is 20,13,410 sq.kms., and it has 4,32,060 sq.kms. of continental shelf.[1] It has a vast scope for fishery resources from its coastal areas.[2] In consonance with the general trend and in order to

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1 Hand Book Fisheries Statistics 1981, Ministry of Agriculture, Govt. of India (New Delhi, 1981), p.(i).

2 Estimates of potential harvest from Indian EEZ is 4.5 million tonnes (and in inland water it is 4.0 million tonnes. Ibid.

protect its economic interests, India has already extended the limit of its maritime zones through a national legislation. The Parliament enacted the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones[3] Act in 1976. It received the assent of the president on 25 August 1976. It may be recalled that the RSNT[4] was issued in 1976. That was the time when it was widely felt that "the law of the sea has changed, for good or for ill.[5] At the same time, several states, including the United States, the Soviet Union, and the member countries of the EEC, enacted national legislation in 1976, on either a 200 mile EEZ or a 200-mile fishery zone. Thus the concept of the EEZ came to gain the acceptance of the international community.[6] Although, the concept has undergone some changes over the years, nevertheless, its basic premise has remained unchanged.

3 See the Gazette of India, Extraordinary, Part II, Section 1, New Delhi, August 26, 1976.

4 The Revised Single Negotiating Text end of the Fourth Session of the Third UN Conference on Law of the Sea at New York (from 15 March to 7 May 1976).

5 Oxman, "The Third United Nations Conference on the Law of the Sea : The 1976 New York Session", AJIL, vol.

6 See the Statement of Objects and Reasons appended to the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones, 1976 (Bill No.XXIIII of 1976).

Constitutional Provision

To give effect to the extension of her Maritime Zones, the Constitution of India was amended in 1976. It was followed by the Maritime Zones Act. The Fortieth Constitutional Amendment substituted the relevant provision as follows:

> 1. All lands, minerals and 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.
>
> 2. All other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union.
>
> 3. The limits of the territorial waters, the continental shelf, the exclusive economic zone, and other Maritime zones of India, shall be such as may be specified, from time to time, by or under any law made by Parliament. (emphasis added) (7)

The amendment vesting in the Union of India the resources within the EEZ, is fully in consonance with the generally agreed principle that the coastal state has sovereign rights over the resources in the EEZ. With this Amendment, India became one of the very few states which have given a constitutional status to the regulation of its maritime zones.

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7 Article 297, as substituted by The Constitution(fourtieth Amendment) Act 1976, Sec.2. The original article stood as under: All lands, mineral and other things of value underlying the ocean within the territorial waters, or the continental shelf, of India shall vest in the Union and be held for the purposes of the Union.

The Maritime Zones Act, 1976

The Maritime Zones Act, 1976, covers, among other things, a general legal frame work, specifying the nature, the scope and the extent of India's rights in various maritime zones[8] in the sea, which are either under the sovereignty of India or under its jurisdiction and control. The Act defines the EEZ of India as:

> The EEZ of India is an area beyond and adjacent to the territorial waters, and the limit of such zone is two hundred nautical miles from the base-line from which the territorial sea is measured.(9)

The Act empowers the central Government, whenever it considers necessary so to do, having regard to international law and state practice to alter by notification in the official Gazette the limit of the EEZ, provided resolutions approving the issue of such notification are passed by both Houses of Parliament. In a sense, section 7 of the Act fully gives effect to the provisions of Articles 55 and 57 of the Convention.[10]

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8 Various maritime zones include the territorial waters, the contiguous zone, the continental shelf, the exclusive economic zone and the historic waters of India.

9 Section 7(1) of the Territorial waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones of India Act 1976 (hereinafter referred as the Act).

10 Article 55 of the Convention contains the specific legal regime of the EEZ and Article 57 lays down the breadth of the EEZ.

Rights, Jurisdiction and Freedoms of India

The Act lays down that within the EEZ, India has/can have:

(a) Sovereign rights for purposes of exploration, exploitation, conservation and management of living and non-living resources, and for producing energy from tides, winds and currents,

(b) exclusive rights for the construction of artificial islands and installations,

(c) exclusive jurisdiction to authorize and control scientific research,

(d) exclusive jurisdiction to protect the marine environment and prevent pollution,

(e) declare any area a designated area for purpose of regulating entry into and passage through by foreign ships specifying traffic separation schemes, and,

(f) extend to any part same or similar restrictions as have been placed on any part of the territory of India.(11)

Section 7(4) clause (a) seeks to give effect to the relevant provisions of the Convention.[12] It is to be noted that the Convention confers sovereign rights on the coastal state as regards all "activities for the economic exploration and exploitation of the zone such as the production of energy from the waters, currents and winds". As compared to it sec.7(4)(a) of the Act appears to restrict the rights "for producing energy from tides,winds and currents". However, section 7(6)(b)(ii)

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11 Section 7(4) and 7(6)(b)(ii) of the Act.

12. Article 56(1)(a) of the Convention.

differs from it,providing that in the context of designated areas, the central Government may make such provisions as it may deem necessary with respect to:

> (a) the economic exploitation and exploration of such designated areas such as the production of energy from tides, winds and currents.

Therefore, it can be said that Section 7(4)(a) does seek to limit sovereign rights of India as compared to those guaranteed under the Convention. The prima facie difference in language of Article 56(1)(a) of the Convention and section 7(4)(a) of the Act is duly taken care of by Sec.7(4)(c), which provides for "such other rights as one recognised by international law". Thus the Indian legislation does not,in any case, lag behind the relevant rights recognized under the Convention.

The effect of clause (b) of sub-section (4), relating to artificial islands, installations, structures,is the same as that of article 60(1) of the Convention. However, this clause should be read with the provision in the Convention which states:

> Artificial islands, installations, structures and other devices mentioned may not be established adversely affecting use of recognized sea lanes essential to international navigation.(13)

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13 Article 60(7) of the Convention.

The provision relating to scientific research[14] in the Convention is embodied in sec.7(4)(c) of the Act. However, the Act goes beyond the provision of the Convention in respect of protection and preservation of marine environment.[15] The jurisdiction of the coastal state as regards pollution from the vessels is not exclusive since it is to be exercised "taking into account internationally agreed rules standards and recommended practices and procedures.[16] In addition, the coastal state is also not given any enforcement authority with respect to pollution from or through the atmosphere, except with regard to vessels flying their flags or vessels or aircraft of their registry.

The Indian legislation specifically vests licensing in the Union Government for the purpose of exploration and exploitation of the resources and research in the EEZ. The relevant provision runs as:

> No person (including a foreign Government) shall, except under and in accordance with, the terms of any agreement with the Central Government or of

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14 See Sec.3 of Part XIII of the Convention pertaining to conduct and promotion of Marine Scientific Research.

15 Article 192 of the Convention provides as follows: "States have the obligation to protect and preserve the marine environment". As compared to this, Sec.7(4)(2) of the Act provides that: (E)xclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution.

16 Article 21(2)(1) of the Convention.

17 Article 221 of the Convention.

> a licence or a letter of authority granted by the Central Government, explore, exploit any resources of the exclusive economic zone or drill therein or construct, maintain or operate any artificial island off shore terminal, installation of other structure or device therein for any purpose whatsoever;
>
> provided that nothing in this sub-section shall apply in relation to fishing by a citizen of India. (emphasis added)(18)

The authority conferred on the Union Government by this sub-section of section 7 is a natural corollary of the sovereign rights of the Union Government enshrined in sub-section(5). However, it contains an additional feature in the form of a proviso which entitles the citizen of India to fish in the EEZ. Thus, it logically emanates from sub-section (5) that all persons, including the citizen of India (except for fishing), are required to seek a licence or letter of authority from the Central Government, to carry out any activity, including research excavation etc., within the EEZ area. Over and above these, the Central Government may extend any existing enactment to the EEZ and make necessary provision for facilitating its enforcement. In case of any such extension of the enactment, the EEZ is deemed to be part of the territory of India.[19] The act is also in consonance with the rules of

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18 Section 7(5) of the Act.

19 See Section 7(7) of the Act runs as: "The Central Government may by notification the official Gazette: (A) extend....the exclusive economic zone or any part thereof; and (B) ...any enactment so extended shall have effect as if the exclusive economic zone or the part thereof, to which it has been extended is a part of the territory of India.

international law in providing that other states shall enjoy in the EEZ of India and the airspace over it, freedom of navigation and overflight and the laying of submarine cables and pipelines, provided that it is not prejudicial to India's own interests.[20]

Delimitation of India's EEZ:

India's continental margin runs into vast expanses of the sea surrounding its mainland and islands. There are, however, seven adjacent or opposite states to India -- Bangladesh, Burma, Indonesia, Thailand, SriLanka, Maldives, and Pakistan -- with which India has to share the maritime areas in the Arabian Sea, the Bay of Bengal, and the Indian Ocean. The Convention provides an identical compromise formula on the principle of delimitation of the EEZ between states with opposite and adjacent coasts. The relevant provision runs as:

> The delimitation of exclusive economic zone between states with opposite or adjacent coasts shall be effected by agreement on the basis of international law as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution. (emphasis added) (21)

The Convention further provides that, where there is an agreement in force between the states concerned, questions

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20 Sub-section (8) and (9) of Sec.7.

21 Article 74(1).

relating to the delimitation of the EEZ should be determined in accordance with the provisions of such an agreement. If no settlement is reached within a reasonable period of time, the states concerned are required to take recourse to the procedures provided for in Part XV (Settlement of disputes) of the Convention.

The Maritime Zones Act also prescribes the same principle for the delimitation of boundaries as:

> The maritime boundaries between India and any state, whose coast is opposite or adjacent to that of India in regard to their...EEZ ... shall be determined by agreement ... between India and such state and pending such agreement between India and any such state, and unless any other provisional agreements are agreed to between them, the maritime boundaries between India and such state shall not extend beyond the line every point of which is equidistance from the nearest point from which the breadth of the territorial waters of India and of such state are measures.(emphasis added) (22)

By this act, India give importance to agreement with the neighbouring coastal states in delimiting its marine zones. It also kept the provision of equidistance in case no provisional settlement was made with the other states. The Indian legislation has rightly provided for such an eventuality and it has already resulted in some settlements with its neighbours. India has so far concluded maritime boundary agreements with four of its neighbouring coastal states --

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22 See Section 9(1).

Indonesia[23], Thailand[24], Sri Lanka[25], and Maldives[26].

India's Interests :

India has high stakes in the exploration of its Ocean

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23 India and Indonesia signed an agreement relating to the delimitation of the continental shelf between two countries on 8th August 1974. This agreement on continental shelf boundary in the Andaman Sea and the Indian Ocean was extended on 14th January 1977 (See the Press release of the Ministry of External Affairs, Government of India dated 14 January 1977).

24 An agreement between India and Thailand on the Delimitation of Sea-Bed Boundary between the two countries in the Andaman sea was signed on 22nd June 1978, which came into force on 15 December 1978 (see IJIL 1979, p.295).

Another agreement between India and Thailand and Indonesia concerning the determination of the Trijunction Point and the Delimitation of the Related Boundaries of the three countries in the Andaman sea was signed on 22nd June 1978. (See IJIL 1979, p.297).

25 An agreement between India and Sri Lanka on the Boundary in historic waters between the two countries and related matters was signed on 26-28 June 1974 (See the Ministry of External Affairs Press release Government of India, dated 5 February 1977).

Moreover on 23rd March 1976 India and Sri Lanka exchanged letters, whereby India agreed to give for a period of three years. (From the date of establishment by India ot its EEZ) limited fishing rights to Sri Lanken fishing vessels in the Wadge Bank, located near Cape Camorin, which lies within the EEZ of India (see for the Exchange of letters, see UN Doc. ST/LEG/SER.B/19, p.415).

26 India and Maldives signed on 28th Dec. 1976, an agreement on Maritime Boundary and Related Matters (see press release of the Ministry of External Affairs, Govt. of India dated 28th Dec. 1976).

India Maldives and SriLanka have also signed an agreement concerning the delimitation of the Trijunction Point between the three countries in the Gulf of Mannar which came into force on 31st July 1976 (See UN Doc. ST/LEG/SER.B/19,p.412).

riches. The Indian Ocean is one of very few areas in the world, where polymetallic nodules rich with mineral are found in high concentration.[27] The exploration of this mineral wealth in future, will give a big boost to India's industrial development. It will also be a fitting finale to the scientific and technological capability, to unearth the rich harvest of minerals, from a depth of nearly 3500 to 6000 meters.[28]

India started giving serious attention to developing its Ocean resources only recently. A study of the Indian Ocean was launched, with the participation of India, in the International Ocean Expedition during 1960-65. In 1966, the National Institute of Oceanography was set up at Goa, for multidisciplinary studies of the Ocean.[29] India, with a vast coast line of about 6,539 km. and EEZ of 2,013,410 sq.kms.[30], needed a separate department to handle the work relating to Oceans. As a result, a fulfledged Department of Ocean Development (DOD) came to be set up in July 1981. The task of the Ocean resource exploration and development is the main responsibility of the DOD. Some other programmes also undertaken by the Department include research, evaluation of energy

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27 Bharat H.Desai, "Harvesting India's Ocean Riches", Link (New Delhi) January 26, 1985, p.67.

28 Ibid.

29 Ibid.

30 See Handbook on Fisheries Statistic 1981, Ministry of Agriculture, Govt. of India (New Delhi, 1981).

from the sea, desalination technology for obtaining potable water, marine chemicals from the sea and assessment of living resources.[31]

India having participated in all the ten sessions of the Sea Law Conference, spawning over a period of nine years and culminating in the Law of the Sea Convention, strongly supports the concept of sharing the mineral wealth, exploited from the international sea-bed area, by all countries. The new sea law has brought in its wake, many benefits to India too. It provides exclusive economic zone of 200 nautical miles. India has the privilege of having continental shelf extending to 250 nautical miles in the Bay of Bengal and 400 nautical miles in the Arabian sea.[31a]

The commercial viability of Indian's sea bed mining programme, however, remains a distant goal. The investment which India has made on the sea-bed mining survey and research itself shows the importance being given to the programme. Nevertheless, India's primary concern, at the present juncture, remains with the exploitation of the economic resources in its maritime zones, especially the EEZ.

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31 See n.27.

31a See n.21.

Status of Fishing

The total maritime zones area[32] of India is 3,287,782 sq.kms; of which the EEZ area comprises 2,013,410 sq.kms. From this, the potential estimate of harvest of fish is put at 4.5 million tonnes per year.[33] The total fishing production at 1981 current prices was of the order of Rs.813 crores.[34] A perusal of marine fish production in India, during the past three decades, reveals only a three-fold increase from 5.34 lakh tonnes to 16 lakh tonnes.[35]

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32 The total length of of India's coastline is 6536 kms.

33 See, n.1, p.1.

34 At 1970-71 constant prices, this fish production was estimated at Rs.294 crores.

35 The fish production (in lakh tonnes) data is follows:

1. Fish Production (in Lakh tonnes)

Year	Marine	Island	Total
1951	5.34	2.18	7.52
1961	6.84	2.77	9.61
1971	11.61	6.90	18.51
1975	14.82	7.84	22.66
1976	13.75	7.99	21.74
1977	14.49	8.63	23.12
1978	14.90	8.16	23.06
1979(P)	14.95	8.48	23.43
1980(E)	16.00	9.00	25.00

(P) : Provisional

(E) : Estimated

The Indian fish catch predominently consists of the pelagic species which are about 2/3 of the total and of the demersal species only prawn is heavily exploited. According to the latest available data,the total marine fish landing in India are put at 125,92,41 tonnes.[36] The species-wise distribution of marine fish (See Table I and II) reveals a wide range of variety of fish being caught in India. This comprises the fish being caught in India's exclusive economic zone. It is contributed by the coastal states and union territories, namely Andhra Pradesh, Orissa, Tamil Nadu, West Bengal, Andamans, Pondicherry, Gujarat,Karnataka, Kerala, Maharashtra, Goa and Lakshadweep. The maximum fish yield is contributed by Kerala (4,24,718 tonnes), followed by Maharashtra (3,21,460 tonnes), Gujarat (2,86,659 tonnes) and Tamil Nadu (2,72,841 tonnes). It is also important to note that, of all the species of marine fish, crustraceans contribute the maximum yield (1,48,784 tonnes).

In 1979, India was at the 8th position in the world fish production, as compared to 7th position in 1951.[37] However, India's percentage contribution in 1979 marginally went up from 3.2% to 3.3% (see Figure I). India is traditionally fishing in shrimps, especially in the Indian Ocean. India is in a privileged position of leading in the world shrimp

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36 M.F.A. No.57, Indian Ocean, Estern, Ministry of Agriculture, Govt. of India, New Delhi, 1984.

37 See n.1, p.(iv).

Table - I

SPECIES-WISE MARINE FISH LANDINGS IN INDIA

(Quantity in tonnes)

S.No.	Name of fish	Andhra Pradesh	Orissa	Tamil Nadu	West Bengal	Andamans	Pondi-cherry	Total
1.	Elasmabranches	10023	2215	13986	-	305	749	27278
2.	Eals	691	148	238	-	-	13	1090
3.	Cat Fishes	5471	6986	11587	8600	35	94	32773
4.	Chirocentrus	1934	733	5935	-	38	123	8763
5.	(a) Oil Sardines	-	-	28077	-	-	866	28943
	(b) Laaser Sardines	21065	1594	1241	-	1019	1118	26037
	(c) Hilsa Illisha	57	885	162	8600	34	230	9968
	(d) Other Hilsa	7195	705	-	-	-	2	7902
	(e) Anchaviella	7951	957	21899	-	114	764	31685
	(f) Thrissaclas	-	157	-	-	18	397	572
	(g) Other Clupeids	6712	1573	1149	-	-	318	9652
6.	(a) Harpodon neheraous	1023	111	-	-	-	15	1149
	(b) Saurida & Saurus	1217	35	872	-	-	537	2661
7.	Hemirhamohus & Balene	138	-	8019	-	18	24	8199
8.	Flying Fish	39	-	-	-	10	382	431
9.	Perches	11105	838	12525	-	603	1620	26691
10.	Red Mullets	948	11	1894	-	-	290	3143
11.	Plynemids	2130	662	824	-	13	348	3977

contd...p.82

Table-I contd....

S.No.	Name of fish	Andhra Pradesh	Orissa	Tamil Nadu	West Bengal	Andamans	Pondicherry	Total
12	Sciaenids	8029	7184	13167	-	6	326	28712
13.	Ribbon fish	6453	774	13039	4900	-	255	25421
14.	(a) Caranx	7758	60	7637	-	314	1029	16798
	(b) Cherinamus	-	876	2878	-	-	121	3875
	(c) Trachynotus	-	600	2787	-	-	-	3387
	(d) Other Carangids	-	-	-	-	-	368	368
	(e) Cayphaena	-	-	-	-	-	-	-
	(f) Elacate	-	-	2054	-	-	62	2116
15.	(a) Laiognathus	5030	230	28686	-	172	1289	35407
	(b) Gazze	-	-	-	-	24	11	35
16.	Lactarius	594	-	1823	-	-	185	2602
17.	Pamfrets	9866	3098	1518	2400	56	353	17291
18.	Mackeral	6405	2639	10130	-	320	617	20111
19.	Seer Fish	8069	565	6503	-	202	329	15668
20.	Tunnies	869	-	4390	-	107	519	5885
21.	Sphyraena	66	-	1796	-	90	32	1984
22.	Mugil	99	254	728	-	172	95	1348
23.	Bregmaceros	150	113	-	-	-	13	276
24.	Soles	597	534	237	-	-	305	1673
25.	(a) Penaeid Prawns	8787	1638	6987	4500	74	1137	23123
	(b) Non-Penaeid Prawns	1183	2204	9468	-	-	189	13044
	(c) Other Crustaceans	2486	170	15677	-	12	377	18722
26.	Cephalepods	450	57	3730	-	-	184	4421
27.	Miscellaneous	1921	8378	31198	-	112	2890	44499
	Total	146511	46984	272841	39000	3868	18576	517780

Source: M.F.A. No.57, Indian Ocean, Eastern, Ministry of Agriculture, Govt.of India, New Delhi, 1984.

Table - II

SPECIES-WISE MARINE FISH LANDINGS IN INDIA 1984

(Quantity in tonnes)

S.No.	Name of fish	Gujarat	Karnataka	Kerala	Maharashtra	Goa	Laksh adweep	Total
1.	Elasmobranches	10070	1692	5036	8397	1190	287	26672
2.	Eals	2635	2844	23	1888	90	-	7480
3.	Cat Fishes	8933	3753	13928	10185	1235	-	38034
4.	Chirocentrus	3825	208	2771	4202	290	-	11296
5.	(a) Oil Sardines	-	39746	101844	5755	9724	-	157069
	(b) Leaser Sardines	-	1080	71880	1666	4414	-	79040
	(c) Hilsa Illisha	6200	-	1269	371	106	-	7946
	(d) Other Hilsa	-	-	-	732	-	-	732
	(e) Anchaviella	-	17051	46624	15253	-	-	78928
	(f) Thrissacles	-	-	504	5828	630	-	6962
	(g) Other Clupaids	20098	10689	18917	1940	9	-	51653
6.	(a) Harpedon nehereeus	48439	-	784	62045	4017	-	115285
	(b) Saurida & saurus	-	-	1854	1335	-	-	3189
7.	Hemirhamphus & Belone	-	-	886	527	-	62	1475
8.	Flying fish	-	-	1125	-	-	15	1140
9.	Parches	1062	-	2808	422	23	115	4430
10.	Red Mullets	-	560	15959	6451	-	24	22994
11.	Plynemids	2407	-	33	337	38	-	2815
12.	Sciaenids	93314	3508	7128	1691	3192	-	108833
13.	Ribbon Fish	5264	1347	2442	27272	435	-	36760
14.								

(Table contd...n/page)

Table-II contd..

S.No.	Name of fish	Gujarat	Karnataka	Kerala	Maharashtra	Goa	Laksha dweep	Total
14.	(a) Caranx	-	-	2071	761	184	145	3061
	(b) Chorinamus	2760	-	42	390	17	-	3209
	(c) Trachynatus	-	-	92	-	-	-	92
	(d) Other Carangids	-	1113	2965	502	-	-	4480
	(e) Coyphaena	-	-	51	-	-	-	51
	(f) Elacate	-	-	7634	131	-	-	7 765
15.	(a) Leiognathus	-	4441	4183	578	2446	-	11648
	(b) Gazza	-	57	-	-	-	-	57
16.	Lactrius	-	1535	1412	1278	335	-	4560
17.	Pomfrets	12495	1263	1423	16167	1852	-	33200
18.	Mackeral	-	9023	20894	2797	1746	-	34460
19.	Seer fish	4810	2704	3988	6146	879	59	18586
20.	Tunnies	-	3625	4715	2539	-	4313	15192
21	Sphyraena	-	-	750	-	-	14	764
22.	Mugil	3120	-	199	54	34	41	3448
23.	Bragmaceres	-	-	-	825	-	29	854
24.	Soles	-	8215	6454	5624	486	-	20779
25.	(a) Ponaeid Prawns	11533	8780	31139	34386	6362	-	92200
	(b) Non-penaeid Prawns	7068	-	-	67393	139	-	74600
	(c) Other Crustaceans	3070	-	93	765	-	-	3928
26.	Caphalopeeds	4723	-	4910	5720	-	14	15367
27.	Miscellaneous	34833	44228	35888	19107	13838	313	148207
	Total	286659	167362	424718	321460	53711	5331	1259241

Source: M.F.A. No.57, Indian Ocean, Eastern, Ministry of Agriculture, Govt. of India (New Delhi, 1984)

'84

production (See Figure II). From the available data, however, it appears that India's actual share in the world shrimp production has gone down from 197.5 thousand tonnes in 1976 to 182.7 thousand tonnes in 1979.

In terms of exports of fish, India has substantially improved its position. The fish exports rose from 22,200 tonnes in 1951-52 to 75,600 tonnes in 1980-81.[38] Out of these exports, Shrimps constitute the biggest share. In 1980, shrimp contributed 64.1% in terms of quantity and 83.8% in terms of value in the total marine product exports from India (See Figure III). In terms of mechanised boats, India is still lagging behind. The bulk of fish production is contributed by traditional fishing methods. India has still not acquired any sophisticated fishing trawlers. During 1979-80, there were 16,100 mechanised fishing boats and 57 large vessels in India, as compared to 14,282 boats and 52 large vessels in

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38 The data of fish exports has been as follows:

EXPORTS

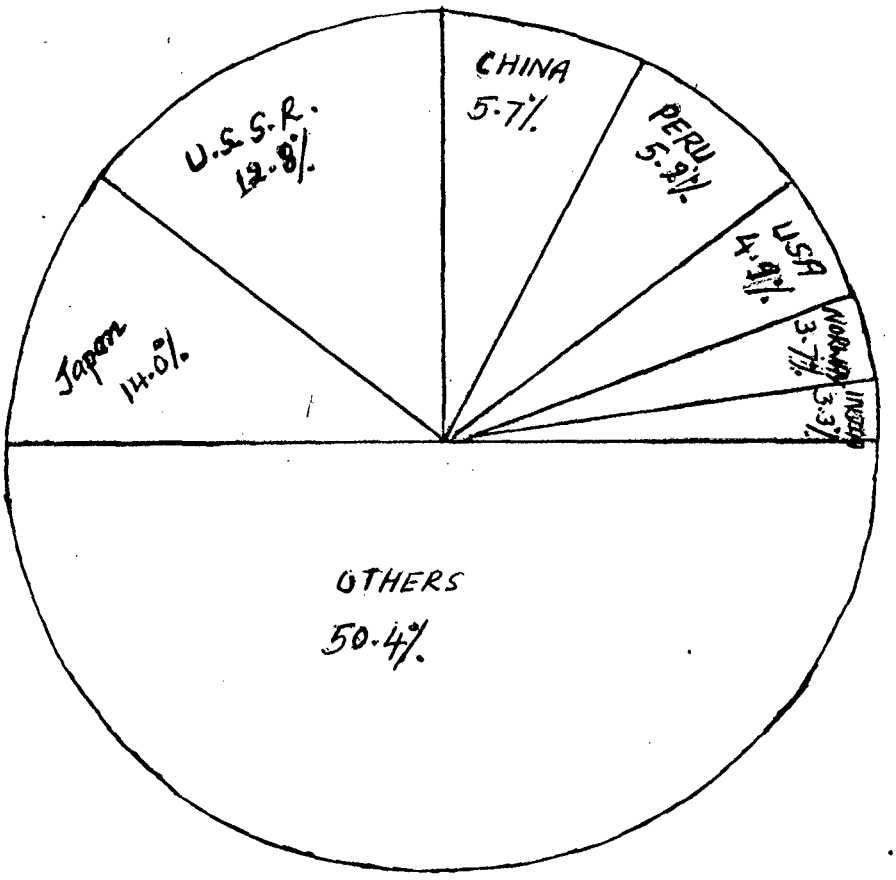
Year	Quantity (in 000 tonnes)	Value (in crores Rs)
1951-52	22.2	3.3
1955-56	24.0	3.9
1966-67	21.1	17.4
1975-76	54.5	124.5
1976-77	66.7	189.1
1977-78	66.0	181.0
1978-79	86.9	234.6
1979-80	86.4	248.8
1980-81	75.6	234.8

(Source: Handbook on Fisheries Statistics, Ministry of Agriculture, Govt. of India New Delhi 1981 p.1)

Figure - I

WORLD FISH PRODUCTION

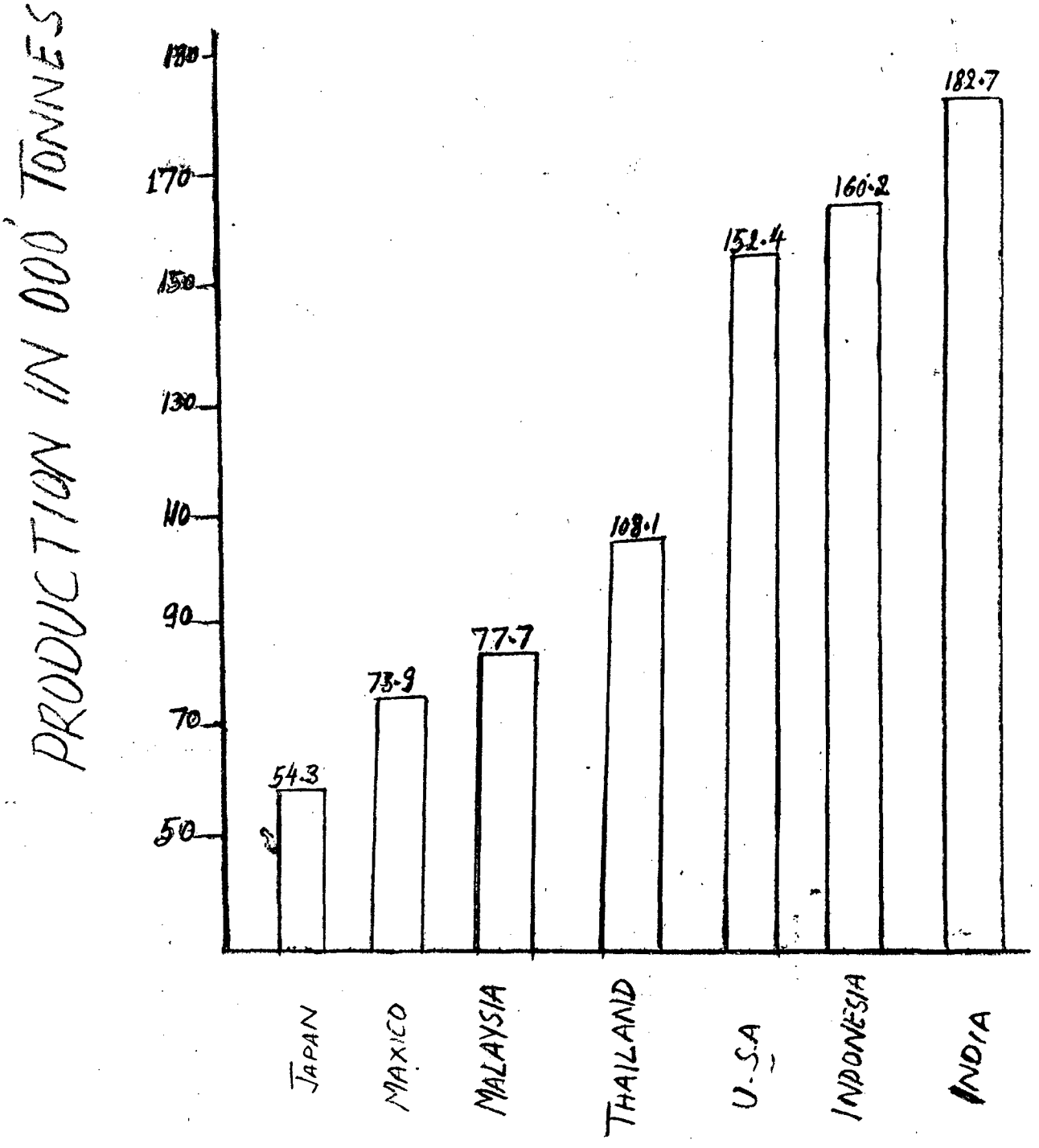
SHARE PERCENTAGE - 1979



Source: Handbook on Fisheries Statistics 1981, Ministry of Agriculture, Govt. of India, (New Delhi, 1981) p. 91

Figure-II

SHRIMP PRODUCTION-1979 IN MAJOR SEVEN COUNTRIES



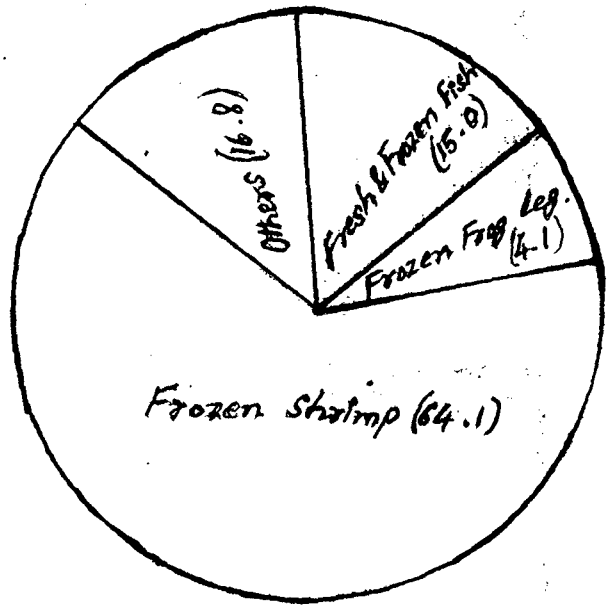
Source: Handbook on Fisheries Statistics 1981, Ministry of Agriculture, Govt. of India (New Delhi, 1981) p. 92.

Figure III

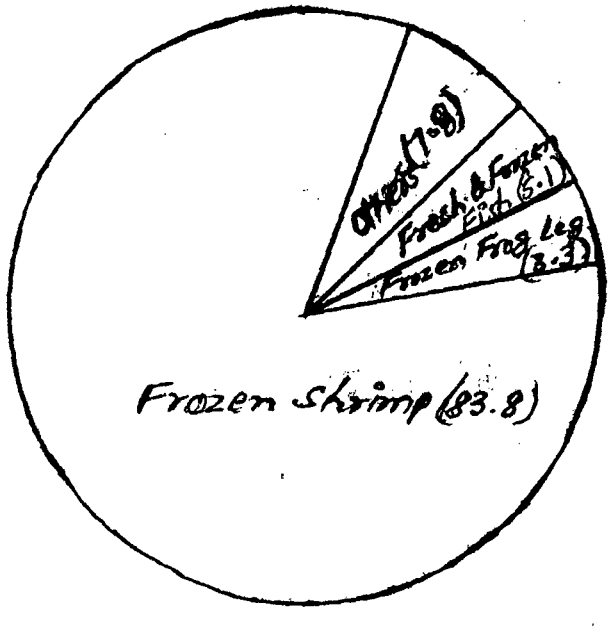
PATTERN OF MARINE PRODUCT EXPORT FROM INDIA - 1980

SHARE PERCENTAGE

QUANTITY



VALUE



Source : Handbook on Fisheries Statistics 1981, Ministry of Agriculture, Govt. of India, (New Delhi, 1981) p. 30.

1977-78.[39] At present, there are 25 foreign fishing vessels, being operated by Indian entrepreneurs in the EEZ.[40] These vessels, mostly of Taiwanese origin, are chartered from Singapore. Moreover, one Japanese vessel is also operating under licence.

India is now ~~gradually~~ having increased iceplants and cold storage capacity, which is very essential for boosting the fish industry. The coastal states(8) and the Union Territories(3), have iceplants capacity of 2,173 tonnes and cold storage capacity of 37,941 tonnes.[41] Out of this, the state of Kerala provides almost 17,304 tonnes of the total cold storage facility in India, followed by Maharashtra (8,372 tonnes) and Tamil Nadu (4,908 tonnes) (For state-wise distribution see Table III).

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39 The fishing fleet with India has been shown below:

Fishing Fleet

(in numbers)

Year	Mechanised Boats	Large Vessels
1977-78 (eve of the VI Plan 1978-83)	14,282	52
1978-79	15,281	57
(eve of the revised VI plan 1980-85)	16,100	57

40 As per the data provided by the Department of Fisheries, Ministry of Agriculture, Govt. of India, March 1986.

41 From the data available from the Marine Production Exports Development Authority.

Table - III

ICE PLANT AND COLD STORAGE CAPACITY IN THE COUNTRY

State/U.Ts.	Ice Plant		Cold Storage	
	Nos.	Capacity (tonnes)	Nos.	Capacity (tonnes)
Andhra Pradesh	24	263	24	2106
Gujarat	15	224	25	4240
Karnataka	22	319	30	2477
Kerala	57	673	140	11304
Maharashtra	5	218	46	8372
Orissa	2	30	16	1406
Tamil Nadu	28	296	58	4908
West Bengal	4	95	31	2284
Goa, Daman & Diu	5	53	13	840
Lakshadweep	-	-	-	-
Pondicherry	1	2	1	5
Total	163	2173	384	37941

Source : Reports of Marine Products Export Development Authority.

Regulation of Fishing:

In view of India's vital interests in fishing in the EEZ, its regulation and monitoring becomes necessary. For this purpose, the Government of India has enacted a separate legislation.[42] It is important to note that at the time of enactment of the Maritime Zones Act 1976, it was specifically stated as follows:

> It is proposed to undertake separate legislation in future as and when need arises for dealing in greater detail with the regulation, exploration and exploitation of particular resources or particular groups of resources of the continental shelf and the exclusive economic zone as well as other matters in which India has jurisdiction in the maritime zones, and with regard to these matters the Bill makes only broad general provisions. (emphasis added) (43)

In recent years, there has been an alarming increase in the poaching activities of foreign fishing vessels in India's EEZ. Sometimes, even foreign fishing vessels chartered by Indian parties have also been found indulging in these activities. Therefore, as stated in the Statement of Objects and Reasons of the 1976 Act[44], a separate legislation was enacted in 1981 to regulate fishing by foreign

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42 The Maritime Zones of India (Regulation of fishing by foreign vessels) Act 1981.

43 See The Statement of Objects and Reasons appended to the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Bill, 1976.

44 For the purpose of the Maritime Zone of India Act 1981, the regulation of fishing by foreign vessels in the maritime zones of India has been defined as applicable to the territorial water and the EEZ of India.

vessels and to prevent poaching.

The Act specifically requires every foreign vessel fishing within the maritime zones of India to seek a licence or a permit granted under the provisions of the Act. Foreign fishing vessels have to obtain a licence.[45] Indian citizens are required to obtain a permit.[46] However, the Central Government is also empowered to permit a foreign fishing vessel to carry out any scientific research or for any investigation or for any experimental fishing within the maritime zones of India.[47]

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45 Section 3 of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Rules 1982 runs as:

> (1) Every owner of a foreign vessel or any other person described in Section 4, who intends to use such vessel for fishing within any maritime zone of India, shall make an application in Form to the Central Government. This form shall include.....
>
> (4) The Central Government or an officer designated by it may, on receipt of an application, after making such enquiry as may be relevant, grant a licence.....

46 "Permit" means a permit granted under Sec.5 or under Sec.8 of the Maritime Zones of India Rules 1982.

47 Section 15 of the Rules, provides as follows:

> Where a foreign vessel is to be used for fishing within any maritime zone of India for the purpose of carrying out any scientific research or investigation or for any experimental fishing, the Central Government may grant a permit to such foreign vessel under Section 8 of the Act. Where such a permission is granted Central Government may apply all or any of the term and conditions prescribed for the licence under rule 5 or for permit under rule 8, as well as such additional conditions as may be specified.

Apart from requiring a foreign vessel to secure licence to fish in India's maritime zones, the Rules also provide for some other measures to protect India's interests. It specifically prohibits any foreign fishing vessel operating under licence or permit from causing any damage (either wilfully or through gross negligence) to any fishing vessel or fishing appliances etc. belonging to an Indian citizen. Moreover, fishing in territorial waters of India is banned, except when specifically permitted.[49]

The Maritime Zones Act 1981, also empowers officers of the Coast Guards or any officer of the Government authorized by it, to stop or board a foreign fishing vessel and search it[50], to ensure compliance with the provisions of the Act. In such cases, however, the concerned officer is required to use such force as may be reasonably necessary.[51] In addition, the Act lays down an important right of hot pursuit to prevent poaching by any foreign fishing vessel.[52]

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48 See section 10 of the Rules.

49 See section 12 of the Rules

50 See section 9(1) of the Act.

51 Ibid(3).

52 Sec. 9(5) runs as follows:
Where in pursuance of the Commission of any offence under this Act, any foreign vessel is pursued beyond the limits of the exclusive economic zone of India, the powers conferred on an authorised officer by this section may be exercised beyond such limits in the circumstances and to the extent recognised by international law and state practice.

It is to be noted that, under customary international law hot pursuit must commence in internal waters or territorial waters of the pursuing state.[53] But the Act seems to permit the pursuit of a foreign fishing vessel, after it has committed any offence, beyond the EEZ.

Thus, it may be said that the Maritime Zones Act, 1976, Maritime Zones Act, 1981, and the Maritime Zones Rules ~~Act~~, 1982, provide a good framework for regulating exploration and exploitation of resources of the EEZ and protection of India's interests therein. In view of India's vast E.E.Z., there is plenty of scope for furthering its economic interests, especially in terms of fishing. Although, at the present juncture, India is not adequately equipped with mechanised fishing fleets of its own, nevertheless, with the necessary infrastructure at its disposal, India will be able to attain rapid strides to harvest a rich bonanza from its EEZ.

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53 See Granville L. Williams, "The Juridical Basis of Hot Pursuit", BYIL, 1934, pp.92-93.

Chapter - IV

EEZ AND THE NEW INTERNATIONAL ECONOMIC ORDER

Efforts to establish a new international legal order for the Ocean space attained their fruition, following the marathon process, spanning over almost 14 years, with the adoption of the new Law of the Sea Convention. This multi-faceted Convention represents a monument to international co-operation and reflects the collective will of the international community, which is unprecedented in treaty-making history. In essence, the Convention represents the concern of the international community, for establishing a just and equitable international economic order governing the Ocean space. The Convention, which encompasses a comprehensive "Constitution for the Oceans"[1] has, in the process, irrevocably transformed the Law of the Sea.

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1 This phrase was used by Mr.Tommy T.B. Koh (Singapore), President of the Third United Nations Conference on the Law of the Sea, in his statement on 6 and 11th December 1982, at the final session of the Conference at Montego Bay, Jamaica.

It finds justification in the sense that, it represents a monumental achievement of the international community, second only to the UN Charter. The Convention is the first comprehensive treaty, dealing with practically every aspect of the uses and resources of seas and oceans. The concept of the "package", which became a leit-motiv of the Conference, was successfully used to accommodate the competing interests of nations from every region of the world.

One of the major contributions of UNCLOS III is the recognition of the concept of the EEZ, having a breadth of 200 nautical miles, within which the coastal state will exercise sovereign rights over all living and non-living resources of the sea-bed and the superjacent waters. Thus the Convention aims to:

> (C)ontribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked....(emphasis added)[2]

In this way the compatibility of the EEZ regime with certain commonly agreed principles constituting the legal foundation of New International Economic Order (NIEO), are sought to be established. How real or tenuous is this nexus?

NIEO Declaration

The Declaration on the establishment of a New International Economic Order and the Programm of Action, were adopted at the Sixth (1974) and Seventh (1975) Special Sessions of the UN General Assembly, which were convened at the initiative of Algeria. Following it, the quest for realization of a NIEO was persued by various organs and institutions, especially the UNCTAD (Nairobi, 1976), the fifth Non-Aligned Summit Conference (Colombo 1976) and efforts

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2 See Preamble to the United Nations Convention on the Law of the Sea, United Nations (New York, 1983), p. 1.

made at the non-governmental level (Rio de Janerio, 1976).[3] The basic thrust of the NIEO, its objectives and strategies point towards restructuring the north-south relations in such a fundamental manner so as to reduce dominance and dependence between the rich and the poor countries.[4] The aim of the NIEO Declaration[5] is the establishment of an economic order based on equity:

> (W)hich shall correct inequalities and redress existing, injustices, make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations ...

As a result, the NIEO promises to generate structural changes in the global development, enabling the poor countries to emerge from their poverty and to move them from relative weekness to strength.[6] The essence of the NIEO has been well defined by J.Galtung:

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3 Elisabeth Mann Borgese, "The New International Economic Order and the Law of the Sea", in Don Walsh (ed.) The Law of the Sea : Issues in Ocean Resource Management , Praeger (New York, 1977), p.83.

4 Upendra Baxi, "The New International Economic Order, Basic Needs and Rights : Notes towards Development of the Right to Development", IJIL, vol.23, 1983, No.2, p.225.

5 See General Assembly Resolution, 320 (S-VI).

6 See S.Amin, "New International Economic Order and Strategy for the Use of Financial Surpluses of Developing Countries", Alternatives, vol.IV (1978-79), p.477.

> The New International Economic Order stands for a new way of ordering the international economic system so as to bring about, first, improved terms of trade between the present day centre and periphery countries (in other words, between the First World and Third World countries); secondly, more control by the periphery over the world economic cycles that pass through them (the controls to include nationalization of natural resources, soil, processing facilities distribution machinery, financial institutions, etc.); and thirdly, increased and improved trade between the periphery countries themselves.(7)

Each of the principal ideas summarized above embodies a wide variety of interlocking and complex constellations of the material interests of the elites (of the first and third worlds as well as of the elites of new world of international organizations). Naturally, while there is substantial agreement on the NIEO package, emphasis on ideas, objectives and strategies vary enormously. It is also emphasised that a favourable change under the auspices of the NIEO can only come out if the nations of the Third World were to adopt self reliant development strategies, even to the point of "delinking" themselves as far as possible from the existing structure of the international division of labour.[8]

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7 J.Galtung, "The New International Economic Order and the Basic Needs Approach", Alternatives, vol.IV (1978-79), pp.458-59.

8 C.F.Diaz Aleandro, "Delinking North and South : Unshaked or Unhinged?", In Rich and Poor Nations in the World Economy 87 (1978, Fish Law et al. eds.)

The principles enshrined in the NIEO Declaration also find place in the Charter of Economic Rights and Duties of states:

> With a view to accelerating the economic growth of developing countries, developed countries should grant generalized preferential, non-reciprocal and non-discriminatory treatment to developing countries in those fields of international economic co-operation where it may be feasible.
>
> ... ...
>
> In furtherance of world economic development, the international community, especially its developed members, shall pay special attention to the particular needs and problems of the least developed among the developing countries, of land-locked developing countries and also island developing countries with a view to helping them to overcome their particular difficulties and thus contribute to their economic and social development.(emphasis added) (9)

With the acceptance of the principle of "positive discrimination", the international community has expressed its recognition of the fundamental norm that all states should benefit from a NIEO. On this basis, henceforth, all economic decisions -- whether taken by the international community or, to the extent that they have a transnational impact, by individual governments -- ought to be compatible with these principles.

There are the legal cornerstones of a NIEO, the establishment of which constitutes an international commitment.

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9 Adopted by the General Assembly during its 29th session by a vote of 120 in favour, 6 against - and 10 abstentions. See UNGA Res. 3281 (XXXIX) 12 Dec. 1974.

The General Assembly, in a Resolution, stated that it:

> Affirms that its resolution on the establishment of a new international economic order reflect a commitment on the part of all countries to ensure equitable economic relations between developed and developing countries and a deliberate, sustained and planned effort to contribute to the development of the developing countries.(10)

In view of the existing inequities of the world economic order,which are at the root of the sufferings of the people in the Third World, the attainment of NIEO would be consistent with the new paradigm of development. Thus the overall objective of the NIEO remains to increase the capacity of nations individually to pursue development.[11] It also contributes substantially to the right to development, by laying down the new conception of the redistribution of power and decision making and sharing of the world resources based on needs.[12]

NIEO and the New Maritime Order:

The basic premise and rationale of the NIEO Declaration came to be reflected in the almost parallel movement for the establishment of the New International Maritime Order(NIMO).

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10 See General Assembly Resolution 31/178. It was adopted by 128 votes in favour, 1 against and 8 abstention.

11 See Report of the Secretary-General,the International Dimensions of the right to Development as a Human Right in Relation with other Human Rights Based on International co-operation including the Right to peace. Taking into account the Requirements of the NIEO and Fundamental Human Needs", E/CN-4/ 1334 at p.83, 1979.

12 Ibid., p.40.

During the arduous negotiations in the ten sessions of the Third UN Conference on the Law of the Sea, the demand for safeguarding the economic interests in the exploitation of the sea bed became a leit-motiv of the thrust of the Third World countries.

Some of the early documents of the NIEO did mention the law of the sea.[13] In a sense, both the NIEO and NIMO are two branches of one historical development. The statements made by some of the spokesmen of the Law of the Sea Conference, throw sufficient light on the interlinking between both the movements. The UN Secretary General, in this respect, observed:

> We will have lost a unique opportunity if the uses made of the sea are not subjected to orderly development for the benefit of all, and if the Law of the Sea does not succeed in contributing to a more equitable global economic system. There is a broad and growing public understanding and appreciation of the issues involved, and the successful outcome of your work would also have a major impact on the establishment and implementation of the new international economic order .... It is not only the Law of the Sea that is at stake. The whole structure of international cooperation will be affected, for good or for ill, by the success or failure of this conference (emphasis added) (14)

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13 See for example, the Charter of Economic Rights and Duties of States, Chapter III.

14 This was observed by Mr.Kurt Waldheim in his statement at the inauguration of the Fourth Session of the Third Law of the Sea Conference.

Moreover, the observation made by the Chairman of the Committee.- I, also merits attention:

(f/n. contd..n/page)

Therefore, one must visualize, not only the contribution of the New Law of the Sea, in building the NIEO, but also as to how far the Convention gives effect to the Resolutions and Programme of Action adopted by the General Assembly, apart from the Charter of Economic Rights and Duties of the states.

The establishment of the International Sea Bed Authority,[15] for the management of the resources of the international sea-bed, is the most innovative and significant contribution of the new Law of the Sea for establishing the NIEO. The Authority, ~~which~~ is based on the principle of sovereign equality of states, through which they will organise and control activities in the area. Apart from its principal organs -- an Assembly, a Council and a Secretariat -- the Authority is to have a commercial arm -- the Enterprise -- to carry out activities in the Area directly and to transport, process and market minerals recovered from it.[16] The Convention prescribes the "parallel system" under which both the Authority's Enterprize and States and their companies would operate on equal terms under the authority. This

(previous f/n. cont..)

> As I explained...I worked in the light of the provisions contained in the Declaration of Principles Governing the Sea Bed and the Ocean floor beyond the Limits of National was another international document commanding wide universal support: the "Declaration on the Establishment of a New International Economic Order" adopted by the General Assembly on 1 May 1974 at its Sixth Special session. (See UN Doc.A/CONF.62/1.16)

15 See Articles 156 and 157 of the Convention.

16 Articles 158 and 170.

adventure, in sharing the "Common Heritage of Mankind",[17] will be a unique experiment in exploiting the economic resources of the oceans.

The "Common Heritage of Mankind" principle was incorporated into the Charter of Economic Rights and Duties of states,[18] as one of the principles of a NIEO. Moreover, the Resolution states that:

> (I)n their interpretation and application the provisions of the present Charter are interrelated and each provision should be construed in the context of the other provisions.(19)

Therefore, it may be said that in respect of the exploitation of the "Common Heritage", the interests and the needs of the developing countries, especially the least developed and disadvantaged countries,[20] shall have to be taken into account. The recognition of the Common Heritage, as one of the principles of NIEO, has come a long way since Arvid Pardo, first raised the issue in 1967. While emphasising the main purpose of the 'Common Heritage' to put an end to the tendancy to

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17 The International Sea bed Area and its resources are the Common Heritage of Mankind (Article 136), Moreover nostale is to claim or exercise sovereignty or sovereign rights over any part of the Area or its resources and no state or person is to appropriate any part thereof, all rights in the resources of the Area are vested in the mankind as a whole, on whose behalf the Authority is to act (Article 137).

18 See G.A.Resolution 3281 (XXIX), Article 29.

19 Ibid., Article 33(2).

20 Ibid., Article 25.

extend the limits of national jurisdiction over seabed areas, Pardo had emphasised that the UN Seabed Committee should deal with:

> (I)mplications of the establishment of an international regime over the deep seas and ocean floor beyond the limits of present national jurisdiction; [and should] draft a comprehensive treaty to safeguard the international character of the sea-bed and ocean floor beyond present national jurisdiction....(21)

Relevance of EEZ for NIEO

Although, there appears to be general agreement that the mineral resources beyond the limits of national jurisdiction were to become "Common Heritage of Mankind", the land-locked and geographically disadvantaged states challenged the E.E.Z. concept. The main rationale for this appeared to be that, the Common Heritage principle was never intended to apply to theliving resources of the oceans. Moreover, they thought that the 200 miles economic zone will deprive the Common Heritage of much of its mineral value.

It is worth noting here that,one of the principles of NIEO requires "the broadest co-operation of all the states members of the international community, based on equity whereby prevailing disparities in the world may be vanished and prosperity secured for all". However, the demand for

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21 UN Doc. A/C.1/PV.1516 (1967).

equity and justice may not be realized since there are a total of 31 land-locked states (with a total population of over 150 million people)[22] which have no E.E.Z. and therefore will get no oil or fish from the seas.[23] Apart from this, there are 22 other geographically disadvantaged states, which can claim only a small E.E.Z. Barring seven oil rich countries of the Middle-East, the remaining disadvantaged states (except Kampuchea) have a total population of 224 million people. These coastal states will, however, have only an insignificant E.E.Z. Thus these 40 states, with a total population of 391.5 million, will get 1.3% of all the EEZ.[24] Despite this, 40 states together will be having only 20th place on the E.E.Z. list. It is feared that, the demands of equity and justice may not be met in view of wide disparities in respect of E.E.Z., for example, Nauru will have

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22 These countries are: 14 from Africa (Botswana, Burundi, Central African Rep., Chad, Lesotho, Malawi, Mali, Niger, Rwanda, Swaziland, Uganda, Upper Volta, Zambia, and Zimbabwe), 5 from Asia (Afghanistan, Bhutan, Laos, Mongolia, and Nepal), 2 from Latin America (Bolivia and Paraguay) and 10 from Europe (Andorra, Austria, Byelonessian SSR, Czechoslovakia, Hungary, Liechtenstein, Luxemburg, San Marino, Switzerland, and the Vatican).

23 With the exceptions of the Byelorussian, S.S.R., and the ministates, Andorra, Liatenstein, San Marino and Vatican, on which the World Bank provides no statistics there are 26 LLS with a total population of 147.4 million (as per World Bank, 1979).

24 These states shall have combined EEZ of 335.83 miles as compared to the total EEZ area of 25,02,186 miles covering about 1/4 of the total ocean space.

an EEZ which is more than 18,000 times as large as its land mass, whereas Zaire will have an E.E.Z. about 3000 times as small as its landmass.[25]

In view of this fait accompli, it appears difficult to attain the NIEO principle of equity whereby "the prevailing disparities in the world may be banished and prosperity secured for all", in the EEZ regime under the Law of the Sea Convention. As aptly put by Ambassador Pardo, it "will enormously increase inequalities between states". The NIEO Declaration, referring to equity and justice, aims at peace for present and future generations. Thus it reminds ~~one~~ of the UN Charter, which seeks to ensure justice and peace. Therefore, it does not now seem practicable to dispute the EEZ regime in respect of its efficacy to realize the principle of the "Common Heritage of Mankind". On the contrary, it will be worthwhile to reconcile both of them, to give effect to the principles of NIEO. As two branches of the one historical movement, the NIEO as well as the NIMO have to be complementary to each other, to realize the common goal. The EEZ regime, as a part of the NIMO, cannot be seen in isolation -- and it must also be channelized towards attaining the same objective.

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25 The comparison made between landmass and sea areas derives its legal relevance from the consideration that the Convention also provides for a link between landmass and the maximum area of archipellagic states may exercise sovereign rights, the total ocean area enclosed byarchipellagic baselines may not be more than nine times the combined islands' land mass. (Comp. ICNT Rev.2 Art.47).

Chapter - V

CONCLUSIONS

The New International Maritime Order, as reflected in the United Nations Convention on Law of the Sea, has now come to stay. It has taken a concrete shape after a long and arduous journey, since the doctrine of freedom of the seas came to be propounded by Hugo Grotious in his classic treatise -- Mare liberum. The international negotiations on the Law of the Sea have been mainly concentrated on: first, the nature of the legal regime of the seabed beyond national jurisdiction and secondly, the scope of the coastal state jurisdiction, i.e. the limits of the continental shelf, fisheries and the economic zone.

The evolution of the concept of the Exclusive Economic Zone has witnessed a phenomenal growth over the years. The concept first found expression in the Report of the League of Nations codification conference, which recognized the coastal states' exclusive rights in the enjoyment of economic resources, especially the fisheries. It subsequently found place in the Truman Proclamation (1945) in terms of conservation zones in an area of the high seas contiguous to the coasts of the United States. It readily got fillip in the Santiago Declaration (1952) of Chile, Ecuador and Peru, which asserted the "exclusive sovereignty and jurisdiction" of the declarant states in the adjacent seas upto a distance of 200 nautical miles, while saving "innocent and inoffensive passage" in the zone. It got further momentum with the recognition by the International Law Commission, in its reports

(1956), on claims of exclusive fishing rights on the basis of special economic circumstances.

The Geneva Conventions (1958) became landmark development in the evolution of the coastal state jurisdiction. Although, it recognised the exclusive jurisdiction of the coastal state for exploring and exploiting the natural resources in the submarine areas as well as coastal states' "Special interests" in the maintenance of the productivity of the living resources in the area of the seas adjacent to its territorial sea", it failed to give to the coastal state a right to an exclusive fishery zone or in broader terms, a zone of exclusive economic jurisdiction in the waters adjacent to its territorial sea. With the passage of time, the coastal states started claiming larger areas of the seas under their jurisdiction. By late sixties, some Latin American states extended their territorial waters to 200 nautical miles by municipal legislation. Some of the countries even claimed exclusive fishing rights beyond their territorial sea.

Despite the above developments the concept of EEZ took a concrete shape only in 1971, when Nijenga of Kenya mooted the idea for the first time at the Asian-African Legal Consultative Committee's, Colombo session. Later Kenya submitted the Draft Articles on Exclusive Economic Zone at the Geneva session of the UN Sea Bed Committee (1972). It got further momentum with the increasing number of countries

landing their support to it. In essence, the concept of EEZ came to represent a compromise between the states which maintained that the coastal state should have no right whatsoever over the living resources of the sea beyond the territorial sea of 12 miles and other states which contended that it should have full sovereignty over the sea and resources upto 200 miles. Thus the precise content of the EEZ became a bone of contention among states. The regime of the EEZ was particularly resented by land locked and geographically disadvantaged states.

However, realizing the winds of change, the states came to seek an accomodation. The EEZ regime, as laid down in the UN Convention on Law of the Sea, is a manifestation of one of the first "mini-packages" of delicately balanced compromises in the course of UNCLOS III. It represents the culmination of efforts to earmark a transitional zone, between the territorial sea in which the coastal state has sovereignty subject to the right of innocent passage and the high seas which has been traditionally regarded as free for all. Thus the EEZ provides a link connecting both of them. Since the EEZ does not fit within any of the traditional maritime zones accepted by the states, it has assumed the status of a zone sui-generis. This is especially so as the coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of the zone, rather than sovereignty as such. Nevertheless, the coastal state is to exercise its sovereign rights in the zone

having due regard to the rights and duties of other states. The coastal state is also under an obligation to ensure that the living resources in the EEZ are not endangered by over-exploitation and also to ensure their optimum utilization. It is required to take into consideration the economic dependance and "national interests" of other states, while giving access to the resources in its EEZ.

The Convention reflects the delicate balance between the rights of the coastal states and the international community, after almost 14 years of efforts of the Sea-bed Committee and UNCLOS III. Keeping this in view, the Convention provides for resolution of conflicts in the EEZ on the basis of equity and in the light of all relevant circumstances.

The concept of extended jurisdiction had already become a well-established practice even before the new regime for the Oceans came to be laid down in the Convention. By May 1981, almost three-fourth (99 states) of the coastal states had extended their jurisdiction over fisheries beyond twelve miles and two-third states (84 states) extended to two hundred miles. Nevertheless, the two hundred miles coastal states jurisdiction came to be formally propounded only in the Port Moresby Declaration (1977), which became a percursor to the recognition of 200 miles limit of the EEZ under the Convention. As per the Convention, the limit of the EEZ is in no case to exceed beyond 200 nautical miles. Therefore, a state with a territorial sea of 12 miles can at the most have an EEZ of

of 188 miles. Inspite of the fact that the Convention prescribes an outer limit of the two hundred miles EEZ, all claiming states have not necessarily extended their EEZs to the full limits.

The coastal state is also given an exclusive authority over construction of artificial islands and installations in the EEZ. The coastal state has been conferred an exclusive jurisdiction to adopt and implement customs, fiscal, health, safety and immigration laws and regulations in the EEZ. A safety zone, not exceeding 500 meters is also permitted around the artificial islands and installations. The coastal state also possesses a right of hot pursuit in the EEZ, for violations of legitimate coastal states laws and regulations, provided it does not interfere with the navigation rights.

The Convention also confers on coastal states the sovereign rights for exploring and exploiting, conserving and managing living and non-living natural resources. In this respect, the regime for living resources in the EEZ introduces a significant departure from the legal system reflected in the Geneva Convention, 1958. The Convention also provides for the extension of the sovereign rights of the coastal states to other activities for the economic exploitation and exploration of the zone. This leaves scope for other economic uses of the zone, which may be discovered in the future. Thus it can be said that, unlike territorial sea, the sovereign rights of the coastal states in the EEZ

are applicable to the resources of the zone rather than over the zone itself. At the same time, the coastal state is put under an obligation to ensure that the living resources in the EEZ. are not endangered by over exploitation; to ensure access to the other states to the surplus of allowable catch; and to promote optimum utilization of the living resources of the zone. The Convention calls for international co-operation in respect of stocks within the EEZ shared by two or more states, stocks within as well as beyond and adjacent to the EEZ, highly migratory species and marine environment. However, it must be pointed out that the fishery regime of the EEZ may place adjacent or opposite coastal state in a situation which may give rise to disputes over the sharing of fishery resources.

It is important to note that,the EEZ regime under the Convention seeks an accommodation between the interests of the coastal state and interests of the other states, while trying to strike a balance with respect to different types of activitiesin the zone. The conflicts are expected to be resolved having due regard to the rights and duties of other states in consonance with the letter and spirit of the Convention. Moreover, the sovereign rights of the coastal states are to be exercised, keeping in view the status of the resource itself and a careful balancing of their own needs and those of others.

The concept of the EEZ was initially resisted by the landlocked states. Therefore, the Convention has come to incorporate a specific provision, allowing a share for the neighbouring land-locked and geographically disadvantaged states over the living resources of the EEZ, which the coastal state does not exploit. This, however, remains without prejudice to the rights of the coastal state to full exploitation. Their right to participate remains restricted only to the appropriate part of the surplus living resources. The obligation of the coastal state to co-operate with these states remains clear and persistant. The Convention also requires the establishment of the modus vivendi of the participation by the concerned states in the exploitation of resources of the EEZ.

The analysis of the EEZ regime thus reveals that it is of a unique character. This sui generis character of the EEZ not only ensures flexibility but also leaves enough room for evolving new norms. It may, in the process, lead to problems of its own kind; but the states would be forced to seek an accomodation, in their own interests.

India has vital stakes in supporting the two hundred miles EEZ in view of its vast coast line. In 1976 India enacted a national legislation for regulation of its maritime zones. It was preceded by a relevant amendment in the Constitution of India. All resources of the EEZ of India are vested in the Union and are to be held for the purposes

of the Union. Section 7 of the Act fully gives effect to the provisions of Article 55 and 57 of the Convention. The Act lays down the rights, jurisdiction and freedoms of India, which are analogous to the Convention. Other relevant provisions of the Convention also find reflection in the Indian legislation. The Act confers licencing authority on the Indian Government for the purpose of exploration and exploitation of the resources and research in the EEZ. All citizens of India are required to seek a licence or letter of authority from the central government, to carry out any activities in the EEZ, including research. The Act is also in consonance with the rules of international law in providing that other states shall enjoy in the EEZ of India and airspace over it, freedom of navigation and overflight and the laying of submarine cables and pipelines provided it is not prejudicial to India's own interests. India has entered into agreements with some of the adjacent or opposite states in respect of delimitation of its EEZ. These countries are Indonesia, Thailand, Sri Lanka and Maldives.

At the present juncture, India's predominant activity in the EEZ remains the exploitation of fishery resources. In 1979, India held 8th position in the world fish production. The bulk of fishing production is still contributed by traditional fishing methods. In order to prevent poaching activities of foreign fishing vessels, India has enacted a separate enactment for regulation of fisheries. The relevant

regulations in India, provide a good framework for regulating the exploration and exploitation of the resources of the EEZ and protection of India's interests therein.

The Law of the Sea Convention, which provides a comprehensive "Constitution of the Oceans", has in the process came to irrevocably transform the law of the sea. The movements for establishing a New International Maritime Order (NIMO) as well as the New International Economic Order, have been part of the one historical process. The basic thrust of the NIEO, its objectives and strategies point towards restructuring the North South relations to reduce dominance and dependance between the rich and the poor countries. The NIMO also seeks to contribute to the establishment of an economic order based on equity in the oceans. Apart from it, the Convention seeks to give effect to the resolutions and programme of action adopted by the General Assembly and the Charter of Economic Rights and Duties of States.

The legal regime of the oceans enshrined in the Law of the Sea Convention, aims at the establishment of an equitable global maritime order. It also establishes a mechanism for sharing the economic resources of the oceans. While doing so, the Convention has sought to accommodate the legitimate interests of the land-locked and geographically disadvantaged states. Thus, it seeks to bridge the gap between the states with a geographically favourable position and those states that are less fortunate in this

regard. This balancing is especially seen in respect of the EEZ regime which confers sovereign rights on the coastal state and at the same time permits the landlocked and geographically disadvantaged states to harvest the surplus living and non-living resources of the zone. The Convention declares areas of the seas, beyond the limits of national jurisdiction, as "CommonHeritage of Mankind". As a result, the mineral wealth to be exploited from the sea-bed is to be equitably shared among all the nations. Thus the NIMO, in essance, reflects the spirit of the NIEO.

BIBLIOGRAPHY

I. Primary Sources

Charter of Economic Rights and Duties of States Chapter III.

Department of State Bulletin (U.S.) 30 Sept.,1945.

Gazette of India, Extraordinary, Part II, Section I, New Delhi, August 26, 1976.

General Assembly Resolution 31/178.

General Assembly Resolution 3281(XXIX) of 12 Dec.1974.

ICJ Reports (1969), p.3.

ICJ Reports (1972), p.30 and p.49.

International Law Commission Yearbook.

Law of the Sea Bulletin, No.5, July 1985 and No.6, October 1985.

League of Nations, Report of the Committee of Experts for the Codification Conference.

Ministry of External Affairs, Press Release, Govt. of India, 5 February 1977.

M.F.A. No.57, Indian Ocean, Eastern, Ministry of Agriculture, Govt. of India (New Delhi, 1984).

Official Records of the Third UN Conference on the Law of the Sea, Vol.X, pp.88-95.

Proceedings of the Eighth Conference of the Law of the Sea Institute, 1973.

Report of the International Law Commission.

Reports of Marine Products Export Development Authority.

Report of the Secretary-General, "The International Dimensions of the Right to Development as a Human Right including the Right to Peace taking into account the Requirements of the NIEO and Fundamental Human Needs", E/CN-4/133 (1979), p.83.

Rome Conference Report 1955, Paras 45 and 46.

The Constitution (Fourtieth Amendment) Act, 1976.

The Maritime Zones of India (Regulation of Fishing by Foreign Vessels), Act, 1981 and the Rules,1982.

The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

Third United Nations Conference on the Law of the Sea, Second Session (Caracus, 20 June - 29 August 1974), Official Records, vol.1.

II. Secondary Sources

A. Articles

Aguilar, Andres, "The Patrimonial Sea or Economic Zone", San Diego Law Review, vol.11, (1973-74),pp.597-602.

Baxi, Upendra, "The New International Economic Order, Basic Needs and Rights : Notes towards Development of the Right to Development", IJIL, vol.23 (1983), No.2.

Brown, E.D., "The Exclusive Economic Zone : Criteria and Machinery for Resolution of International Conflicts between Uses of Exclusive Economic Zone", Maritime Policy Management, vol.4(1977),p.333.

Burk, W.T., "Highly Migratory Species in the New Law of the Sea", Ocean Development and International Law, vol.14 (1984), pp.303-310.

Castaneda, J., "The Concept of Patrimonial Sea in International Law", IJIL, vol.12 (1972), pp.635-42.

Desai, Bharat H., "Harvesting India's Ocean Riches", Link (New Delhi) January 26, 1985), p.67.

Gultang, J., "The International Economic Order and the Basic Needs Approach", Alternatives, vol.IV, (1978-79), pp.458-59.

Johnson, D.H.N., "Icelandic Fishery Limits", ICLQ, vol.1 (1952), pp.71-73 and 350-354.

Juda, Lawrence, "The EEZ : Compability of National Claims and the UN Convention on the Law of the Sea", Ocean Development and International Law, vol.16, no.1 (1986), p.20.

Khan, Rahmatullah, "Some Reflections on the Legal Implications of Extensions of Exclusive Fisheries Zones", IJIL, vol.21, No.4 (1981).

Kunz, "Continental Shelf and International Law", AJIL vol.50 (1956), pp.628-33.

Lanning, "The United States - Peruvian Fisheries Dispute", Stanford Law Review, vol.23 (1971), pp.391-453.

Mani, V.S., "Resources of the Sea-Bed Beyond National Jurisdiction - Who Shall Exploit and How?", IJIL, vol.14 (1974).

Nawaz, M.K., "The Emergence of Exclusive Economic Zone: Implication for a New Law of the Sea", IJIL, vol.15 (1976).

Nelson, L.D.M., "The Patrimonial Sea", ICLQ, vol.22, 1973.

Osieke, Ebere, "The Contribution of States from the Third World to the Development of the Law on the Continental Shelf and the Concept of the Economic Zone", IJIL, vol.15 (1975).

Stevension, J.R., and Oxman, B.H., "The Third UN Conference on the Law of the Sea : 1975 Geneva Session", AJIL, vol.69 (1975), p.775.

Williams, G.L., "The Juridical Basis of Hot Pursuit", BYIL (1934), pp.92-3.

B. Books

Aleandro, C.F.Diaz, "Delinking North and South : Unshaked or Unhinged?" in Fishlaw et al (eds.), Rich and Poor Nations in the World Economy 87 (1978).

Borgese, Elisabeth Mann, "The New International Economic Order and the Law of the Sea" in Don Walsh (ed.) The Law of the Sea : Issues in Ocean Resource Management, (Praeger, New York, 1977).

Burke, W.T., "1982 Convention on the Law of the Sea Provisions of Access to Fisheries subject to National Jurisdiction" in Report of the Expert Consultation on the Conditions of Access to the Fish Resources of Exclusive Economic Zone, FAO Fisheries Report, No.293, Rome : FAO (April, 1983).

Calodkin, A.L., "Territorial Waters and Contiguous Zone", in V.M.Koretski and G.I. Tunkin (eds.), Essay on International Sea Law (Moscow, 1962) (translation from Russian).

Dupuy, Rene Jean, The Law of the Sea Current Problems (Leyden, 1974), pp.3-23.

Govindraj, V.C., "Geographically Disadvantaged States and the Law of the Sea", in R.P.Anand (ed.), Law of the Sea : Caracus and Beyond (Radiant, New Delhi, 1978).

Guriyer, S.A., "The Problems of Merchant Shipping in the Economic Zone", The Soviet State and Law, No.8, (Moscow, 1978), p.112 (translation from Russian).

Handbook on Fisheries Statistics (1981), Ministry of Agriculture, Govt. of India (New Delhi, 1981).

Khan, Rahmatullah, Indian Ocean Fisheries (Ankur, New Delhi, 1977).

Legislation on Coastal State Requirement for Foreign Fishing, FAO Legislation Study, No.21 (Rome, 1981).

Oda, Shigeru, International Control of Sea Resources, (Leyden, 1963), p.43.

Rao, P.C., The New Law of Maritime Zones, (Miland, New Delhi, 1983).

Resolution on Marine Resources (1971) of the Ministerial Meeting of Group of 77, International Legal Materials, vol.11 (1972), p.365.

The Evolving Limit of Coastal Jurisdiction, Collected Documents (Reykjavik, 1974), p.111.

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