CHAPTER 9

Exclusive Economic Zone

As we will see in Chapter 10, coastal state assertions of jurisdiction over the continental shelf began in the mid-20th century, prompted in large measure by changes in oil drilling and mining technology. Changes in technology also contributed to assertions of coastal state control over fisheries zones extending beyond the territorial sea, as distant-water foreign flag trawlers and factory ships became able to capture and process huge quantities of fish near the shores of coastal states. Coastal states regarded expanded coastal zones as a way to protect, or promote the development of, their local fishing and economic interests.

In 1945 the United States made unilateral claims concerning the continental shelf and fisheries. These claims, which President Truman asserted by two proclamations issued on the same day, provide good starting points for our consideration of the law concerning the continental shelf and the exclusive economic zone (EEZ). The content of the two Truman proclamations differed significantly, as we will see, as did their impacts on the development of the law of the sea.

Iceland was the first country to proclaim a separate exclusive fishery zone beyond its territorial sea during the 1950s. Other countries that had historically fished in these waters, such as Germany and the United Kingdom, firmly objected to this unilateral behavior. Iceland increased the width of the newly proclaimed zone from four nautical miles in 1952 to twelve nautical miles in 1958 and 50 nautical miles in 1972. All sides involved their navies, and the so-called Cod Wars ensued. The dispute finally ended up before the International Court of Justice (ICJ). The Court rendered its decision in 1974, a rather awkward time because the Third United Nations Conference on the Law of the Sea (UNCLOS III), which would profoundly reshape the law of fisheries, had just started its work a year earlier. Section A covers these early developments.

The EEZ became firmly established in international law soon after UNCLOS III concluded in 1982 and states signed the United Nations Convention on the Law of the Sea (LOS Convention). The creation of this new maritime zone is a good example of how codification may sometimes precede and contribute to the formation of customary international law. Section B highlights this phenomenon.

Section C then examines some applications of the EEZ in state practice. Some activities taking place in the EEZ clearly fall under the competence of
the coastal state, while others remain part of the freedoms of the high seas. However, legal competence concerning certain activities remains debatable.

A Early Developments

Early assertions of coastal state jurisdiction or control over the waters of the high seas adjacent to the territorial sea related to interests in fisheries. This section includes an example of a unilateral coastal state claim (the 1945 Truman Proclamation on fisheries) and a judicial analysis of competing claims concerning the right to fish in fisheries zones proclaimed by a coastal state (the 1974 decision of the ICJ in the United Kingdom-Iceland Fisheries Jurisdiction case).

PRESIDENTIAL PROCLAMATION NO. 2668 (TRUMAN PROCLAMATION REGARDING FISHERIES)

Whereas for some years the Government of the United States of America has viewed with concern the inadequacy of present arrangements for the protection and perpetuation of the fishery resources contiguous to its coasts, and in view of the potentially disturbing effect of this situation, has carefully studied the possibility of improving the jurisdictional basis for conservation measures and international cooperation in this field; and

Whereas such fishery resources have a special importance to coastal communities as a source of livelihood and to the nation as a food and industrial resource; and

Whereas the progressive development of new methods and techniques contributes to intensified fishing over wide sea areas and in certain cases seriously threatens fisheries with depletion; and

Whereas there is an urgent need to protect coastal fishery resources from destructive exploitation, having due regard to conditions peculiar to each region and situation and to the special rights and equities of the coastal State and of any other State which may have established a legitimate interest therein;

Now, therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to coastal fisheries in certain areas of the high seas:

In view of the pressing need for conservation and protection of fishery resources, the Government of the United States regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coasts