Chapter Seven

Exclusive Economic Zone and Continental Shelf

7.1. Historical Development

Since gaining independence, African States have worked tirelessly for a reform of the international economic order.\(^1\) That struggle included addressing during UNCLOS III their lack of control over the exploitation of the marine resources beyond their territorial seas.\(^2\) Although, as already explained, South Africa did not influence the negotiations in that regard, it undoubtedly greatly benefited from the outcome of those negotiations, in contrast with many other African States.\(^3\)

South Africa had a clear interest in becoming a party to the CSC. Indeed, by 1960, diamonds were beginning to be exploited on the country’s western seaboard and the State confirmed its exclusive right to exploit those resources as far offshore as it was possible, in terms of the TWA in 1963.\(^4\) At the same time, South Africa was concerned that the very rich fishing grounds along its western seaboard were increasingly the focus of attention by Japanese, Russian and Spanish fishing vessels especially.\(^5\) To address this problem, the South African Parliament took advantage of the strong support demonstrated in 1960 for an EEZ extending 6 nm beyond the territorial sea,\(^6\) when it adopted the TWA.\(^7\) A decade later, South Africa was confronted with the fact that many States, including its neighbours Angola and Mozambique were extending their

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1 See e.g. the 1974 UNGA Declaration on the Establishment of the New Economic Order.
4 Section 7 TWA.
5 1963 Assembly Debates 9101.
7 Section 3 TWA. Ten years later, the ICJ confirmed in *Fisheries Jurisdiction (United Kingdom v Iceland)*, that “the extension of the fishery zone up to a 12-mile limit from the baselines [was] generally accepted” [1974 ICJ Reports 3 para. 52].
exclusive fishing jurisdiction to 200 nm. In order to avoid foreign fishing fleets turning their sight to an even greater extent on the South African demersal fishery, Parliament chose to extend its fishing zone to 200 nm. It refrained from converting the fishing zone into an EEZ in view of the fact that there was still debate as to the latter’s legal status. It is only since 1994 that South Africa claims an EEZ, which is defined in accordance with LOSC as the water of the sea, as well as the bed of the sea and the subsoil thereof “beyond the territorial waters . . . but within a distance of two hundred nautical miles from the baselines”. This comprises an area of about 1,050,000 km² off the mainland and roughly 450,000 km² around the Prince Edward Islands, compared with a land territory of about 1,200,000 km². Moreover, South Africa is also part of a minority of States that claim a continental shelf as defined in article 76 of LOSC.

7.2. Exclusive Economic Zone

7.2.1. Status

With regard to the legal status of the EEZ in South African law, section 7(2) of the MZA merely states that, “[s]ubject to any other law [South Africa] shall have, in respect of all natural resources in the exclusive economic zone, the same rights and powers as it has in respect of its territorial waters”. This is far from accurately reflecting the complex legal status of the EEZ in international law. In terms of the latter,