Chapter 10

STATE PRACTICE IN THE AFTERMATH OF THE UN CONVENTION ON THE LAW OF THE SEA: THE EXCLUSIVE ECONOMIC ZONE AND THE MEDITERRANEAN SEA

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1. INTRODUCTION

The peoples that have lived on the coasts and islands of the Mediterranean Sea have valid reasons for being proud of their contribution to the developments of rules regulating the uses of the seas. In the distant past the *Lex Rhodia de jactu* must be mentioned and there are many initiatives coming from the Mediterranean that have contributed to the development of the Law of the Sea. For example, the Mediterranean Action Plan should always be remembered as the beginning of the whole system of protection of regional seas.

On the other hand, the attitude of the Mediterranean coastal States towards the regime of the exclusive economic zone (EEZ) proves that the behaviour of these States does not always contribute to a sound development and implementation of the legal order of the seas and oceans. Contrary to the States bordering all other seas, the Mediterranean States have had problems in accepting this regime although it has become part of general law of the sea a quarter of a century ago.

2. THE EXCLUSIVE ECONOMIC ZONE – A COMPROMISE REGIME

The regime of the EEZ has been established at the Third United Nations Conference on the Law of the Sea (“UNCLOS III”) in the United Nations Convention on the Law of the Sea (hereafter cited as “LOS Convention”) as the result of a compromise between the majority of the coastal States, mostly developing countries, and the main maritime powers. Developing coastal

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States claimed an extensive territorial sea, in order to protect the living resources off their coasts from the fishing fleets of the most developed countries. On the other hand, the maritime powers wanted to preserve the freedom of the seas, and particularly the freedom of navigation.

The compromise arrived at UNCLOS III – the specific legal regime of the EEZ – has taken care of the main worries of both groups. This marine area, beyond the outer limits of the territorial sea – and therefore outside the State’s territory – may be extended up to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. In the EEZ, the respective coastal State has “sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living”\(^1\). On the other hand, freedom of navigation in the EEZ has been granted to ships flying the flags of all States\(^2\).

In addition to those two basic provisions, Chapter V of the LOS Convention contains rules on other rights and duties of the coastal State and all other States in every EEZ. The coastal State has sovereign rights with regard to activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds. Moreover, the coastal State has jurisdiction with regard to the establishment and use of artificial islands, installations and structures, marine scientific research and the protection and preservation of the marine environment\(^3\).

In addition to the freedom of navigation, all States, whether coastal or land-locked, enjoy the freedom of “overflight and of laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines…”\(^4\).

Be that as it may, the following opinion of the Chairman of the Italian Delegation at UNCLOS III, Ambassador Varvesi, expressed the view of the majority of the States participating at the Conference: “With regard to the rules governing the exclusive economic zone and the freedoms recognized for all States in it, we believe they constitute a well-balanced compromise solution between the aspirations of coastal States, and the requirements of maritime States”\(^5\).

As already mentioned, the regime of the EEZ has become part of general customary international law. Such an opinion was expressed by the Interna-

\(^1\) Article 56(1)(a) of the LOS Convention.
\(^2\) Article 58(1) of the LOS Convention.
\(^3\) Article 56 of the LOS Convention.
\(^4\) Article 58(1) of the LOS Convention.