National Studies of the Law Applicable on the Continental Shelf and in the EEZ

The Law Applicable on the Continental Shelf and in the Exclusive Economic Zone: The Belgian Perspective

Eduard Somers and Frank Maes
Department of Public International Law, Faculty of Law, Ghent University, Belgium

INTRODUCTION

The development in Belgium from a central unitary state to a federal state since the 1970s has made it necessary to find a suitable organisation for the attribution of competences for the exploration and exploitation of natural resources of the sea, the seabed and the subsoil of the Belgian part of the North Sea. The division of competences has been elaborated in the Special Acts of 8 August 1980 and 8 August 1988, as well as in the Special Finance Act of 16 January 1989. According to the (amended) article 6, paragraph 1, VI of the 1980 Special Act, several competences have been transferred to the Regions,1 including economic competences. As such, “natural resources” come within the jurisdiction of the Regions (article 6, paragraph 1, VI, 5°) implying exploitation, and in particular prescribing conditions and issuing concessions. The Council of State was of the opinion that it was also possible to attribute such competences with respect to the natural resources of the continental shelf to a Region or a decentralised public organ.2 However, the government at the time – although not substantially of a different view – was of the opinion that for reasons of international liability, a national input was required. Therefore, the conditions for the exploitation as well as the exploitation concessions or permits for the natural resources of the territorial sea and the continental shelf were left with the central (federal)

1. There are three regions: the Flemish Region, the Walloon Region and the Brussels Capital Region.

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Lacking a specific legislative initiative, the transfer of competences concerning natural resources to the Regions remains limited to the area within their boundaries. Since the continental shelf and the territorial sea are maritime areas beyond the boundaries of the adjacent Flemish Region, jurisdiction with respect to the natural resources of these maritime areas is not included within the Flemish Region. The transfer of competences in the Special Acts mentioned does not therefore change anything about the existing situation, in general leaving jurisdiction with the federal State authorities. For the exploitation of natural resources at sea, there is however one exception: fisheries. Fisheries competence at sea has been transferred from the federal level to the Flemish Region by amending article 6, par 1, V of the 1980 Special Act on 13 July 2001. From 1 January 2002, the Flemish Region is the competent authority for fisheries at sea.

Belgium has a coastline of 65 km. The portion of the North Sea under Belgian jurisdiction (Belgian part of the North Sea: BPNS) amounts to a surface area of 3,600 km², the smallest maritime area in northwest Europe. The surface area of the continental shelf is about 2,017 km².

The Belgian Parliament approved two acts in 1999: the 1999 Act on the Exclusive Economic Zone (1999 EEZ Act) and the Marine Environmental Protection Act (1999 MEPA). The 1999 EEZ Act and the 1999 MEPA contribute to a more sustainable management of the BPNS as well as to the conservation of its biological diversity. The 1999 EEZ Act, inter alia, divides the BPNS into a territorial sea, a contiguous zone, a continental shelf, an EEZ, and a fishery zone, in accordance with the 1982 United Nations Convention on the Law of the Sea (1982 LOSC) and in respect of the boundaries agreed upon with neighbouring countries in bilateral agreements that precede the EEZ Act. Belgian legislation does not diverge from the principles of the 1982 LOSC. The 1999 EEZ Act introduces a contiguous zone of 12 nautical miles (NM) beyond the territorial sea, brings exploration and exploitation of sedentary species under the Belgian fishery acts, and amends the Continental Shelf Act (1969). The 1999 EEZ Act introduces new legislation proclaiming exclusive Belgian jurisdiction over artificial islands, installations, and structures; introduces procedures to be followed when other states intend to conduct scientific marine research in the EEZ; and introduces consent provisions for the laying of cables and pipelines entering its territory or territorial sea or used in connection with exploitation of the continental shelf, and operations of artificial islands, installations and structures within Belgian jurisdiction. In other cases, delineation of the course for the laying of cables and pipelines will be subject to Belgian approval. Conservation and protection of the marine environment in Belgium’s EEZ and territorial sea is regulated by the 1999 MEPA.

In 1978 Belgium established a fishery zone, the boundaries of which were adjusted by the 1999 EEZ Act to coincide with the boundaries of the continental shelf. Fishing in the territorial sea is reserved for Belgian fishermen and, under certain conditions, also for French and Dutch fishermen. Fisheries are