International jurisprudence about exclusive economic zone of coastal states.

KALLIOPI KALAMPOUKA, IOULIA APOSTOLOU, AGLAIA VLACHOPOULOU
Department of Accountancy and
Department of Forestry and Management of Natural Environment
Kavala Institute of Technology
Agios Loukas, Kavala.
GREECE
pkalab@teikav.edu.gr, julia_apostolou@hotmail.com

Abstract: - Until the first United Nations Conference on the Law of the Seas (1958) fishing rights for the coastal states was exercised only inside the territorial waters, which in no case were extended beyond 12 nm. This led to the need of establishment of an economic zone within the coastal states would have the possibility of exploitation of their sources, while the other states will not be excluded from exercising their basic rights deriving from the establishment of freedom of the seas. In a sense, therefore, the exclusive economic zone (EEZ) appeared in order to compensate the economic needs of coastal states without, on the other hand, increase the breadth of territorial waters.

Key-Words: - legislation, jurisprudence, jurisdiction, UNCLOS, exclusive rights, exploration, exploitation.
1 Introduction

The coastal State has sovereign rights to the resources of the exclusive economic zone. This includes both living and non living resources in the water column, the seabed and its subsoil. It also has the exclusive right to undertake activities for the economic exploration and exploitation of the zone, such as the production of energy from the water, currents and winds. According to the United Nations Convention on the Law of the Sea, 1982, the exclusive economic zone extends no further than 200 nautical miles from the baselines (art. 57). A coastal state also has jurisdiction with regard to the establishment and use of artificial islands, installations and structures, to scientific research, to the protection and preservation of the marine environment, with due regard to the rights and duties of other states (art. 56). The latter rights refer to the freedoms of navigation, over-flight, and the laying of submarine cables and pipelines. UNCLOS reaffirms the exclusive MSP rights of coastal states regarding the regulation of the construction, operation and use of artificial islands, installations and structures for the economic exploration and exploitation of the EEZ, including energy production, and exclusive jurisdiction over those islands, installations and structures (art. 60(1)(2)). Article 60 further addresses the implications of these activities for the freedom and safety of navigation and regulates the duties of the coastal state in this regard. Due notice must be given of the construction of offshore facilities and permanent means for giving warning of their presence must be maintained (art. 60(3)). “The coastal state may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures” (art. 60(4)). The breadth of these safety zones shall be determined by the coastal state taking into account ‘applicable international standards’. [1] In principle this breadth shall not exceed 500m, except as authorized by ‘generally accepted international standards’ or as recommended by the IMO (art. 60(5)).

2 Problem Formulation

2.1. Methodology

The research of the current legislative framework and the review of international jurisprudence were the methodologies which this study was followed.

2.2. Relevant Legislation

According to the Legal Committee of IMO, any such safety zone exceeding 500 metres must be submitted to IMO for adoption. Ships must respect those safety zones and comply with ‘generally accepted international standards’ regarding navigation in the vicinity of artificial islands, offshore installations and structures, as well as safety zones (art. 60(6)). However, offshore installations and safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation (art. 60(7)). Article 211(1) of UNCLOS prescribes that states, acting through the competent international organization (IMO) or a general diplomatic conference, shall wherever appropriate promote the adoption of routing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline and related interests of coastal states. [4] In case rules and standards referred to in article 211(1) UNCLOS are inadequate to
meet special circumstances and coastal states have reasonable grounds that an area in their EEZ needs “special mandatory measures” to prevent pollution, they can start the procedure of article 211(6) UNCLOS. The area need not only be clearly defined, the adoption of special measures must be required for recognized technical reasons in relation to the oceanographic and ecological conditions, as well as the utilization or the protection of the resources and the particular character of the traffic of the area concerned. Within 12 months after receiving such a communication, the organization shall determine whether the conditions in that area correspond to the requirements set out above. If the organization so determines, the coastal States may, for that area, adopt laws and regulations for the prevention, reduction and control of pollution from vessels implementing such international rules and standards or navigational practices as are made applicable, through the organization, for special areas.[2] These laws and regulations shall not become applicable to foreign vessels until 15 months after the submission of the communication to the organization. The coastal state is obliged to publish the limits of the particular defined area where the special mandatory measures are to be applied. In case the coastal state intends to adopt additional laws and regulations for that same area, the procedure for these new measures will start again and the same time frame is applied. These laws and regulations cannot require foreign vessels to observe design, construction, manning or equipment standards other than generally accepted international rules and standards.

3 Problem Solution
3.1. International Legislation Concerned

3.1.1. The Monte Confurco case (Seychelles v. France)

On 8 November 2000, the Monte Confurco was boarded by the crew of a French surveillance frigate in the exclusive economic zone of the Kerguelen Islands in the French Southern and Antarctic Territories. The Monte Confurco was escorted under the supervision of the French navy to Port-des-Galets, Réunion, where it arrived on 19 November 2000. The Master of the vessel was charged and placed under court supervision. In its order of 22 November 2000, the Court of First Instance at Saint-Paul noted, among other things, that the vessel Monte Confurco entered the exclusive economic zone of the Kerguelen Islands without prior authorization or declaring the tonnage of fish carried on board (in violation of the provisions of article 2 of Law 66-400 of 18 June 1966, as amended by the Law of 18 November 1997). These circumstances raised the “presumption” that the whole of the catch was unlawfully fished in the exclusive economic zone of the Kerguelen Islands. The Court declared that the release of the vessel and its Master would be subject to the payment of a bond in the amount of 56,400,000 FF. The Applicant submitted that the bond set by the Court of First Instance at Saint-Paul was not a “reasonable bond or other security” within the meaning of article 73, paragraph 2, of the United Nations Convention on the Law of the Sea (UNCLOS), and that the International Tribunal for the Law of the Sea should, in exercise of its powers under article 292 of the Convention, fix a “reasonable” bond and order the release of the vessel upon the posting of such a bond, as well as the release of the Master without a bond, since he could not be subject to imprisonment. The Government of the French Republic requested the Tribunal to reject the submission made by the Republic of Seychelles.

The Tribunal examined the question of non-compliance with article 73, paragraphs 2, of the Convention. It was accordingly necessary for the Tribunal to determine whether the bond imposed by the French Court was “reasonable”. The Tribunal found that Article 73 identified two interests, the interest of the coastal State to take appropriate measures as may be necessary to ensure compliance with the laws and regulations adopted by it
on the one hand and the interest of the flag State in securing prompt release of its vessels and their crews from detention on the other. It provided for a fair balance between the two interests. Similarly, the object of article 292 of the Convention was to reconcile the interest of the flag State to have its vessel and its crew released promptly with the interest of the detaining State to secure appearance in its court of the Master and the payment of penalties. The balance of interests emerging from articles 73 and 292 of the Convention provided the guiding criterion for the Tribunal in its assessment of the reasonableness of the bond. In this connection, the Tribunal would treat the laws of the detaining State and the decisions of its courts as relevant facts.[5] The Tribunal considered that the value of the fish and of the fishing gear seized was also to be taken into account as a factor relevant in the assessment of the reasonableness of the bond. On the basis of the above considerations, the Tribunal considered that the bond of 56,400,000 FF imposed by the French court was not “reasonable” within the meaning of article 292 of the Convention. The Tribunal unanimously found that it has jurisdiction under article 292 of the Convention to entertain the Application made on behalf of Seychelles, that the claims of Seychelles that France failed to comply with article 73, paragraphs 3 and 4, of the Convention were inadmissible, and that the Application with respect to the allegation of non-compliance with article 73, paragraph 2, of the Convention was admissible. The Tribunal found that the allegation made by the Applicant was well-founded by 19 votes to 1. By 19 votes to 1, the Tribunal decided that France shall promptly release the Monte Confurco and its Master upon the posting of a bond or other security to be determined by the Tribunal. The Tribunal determined, by 17 votes to 3, that the bond or other security shall consist of: (1) an amount of nine million French francs (9,000,000 FF) as the monetary equivalent of the 158 tonnes of fish seized by the French authorities and (2) a bond in the amount of nine million French francs (9,000,000 FF). The Tribunal unanimously determined that the bond shall be in the form of a bank guarantee or, if agreed to by the parties, in any other form. By 18 votes to 2, the Tribunal decided that the bank guarantee shall be invoked only if the monetary equivalent of the security held by France was not sufficient to pay the sums as may be determined by a final judgment or decision of the appropriate domestic forum in France.

3.1.2. Case concerning pulp mills on the river Uruguay (Argentina v. Uruguay)

On 20 April 2010, the International Court of Justice (ICJ) announced its highly anticipated judgment in the environmental dispute between Argentina and Uruguay. The dispute arose from the authorization by Uruguay of the CMB pulp mill and the actual construction of the Botnia pulp mill and its associated facilities on the banks of the River Uruguay, which constitutes an international boundary between the two sovereign States of Argentina and Uruguay. The most notable contribution of this judgment to international environmental law and the law on shared watercourses is the fact that the ICJ explicitly recognized Environmental Impact Assessment (EIA) as a practice that has attained customary international law status. The Court in its Judgment dealt with three main issues: i) the scope of its jurisdiction, ii) the alleged violation of the procedural obligations incorporated in the 1975 Statute and iii) the alleged violation of the substantive obligations included in the same instrument. Both States were in agreement that the jurisdiction of the ICJ was based on Article 36(1) of the ICJ Statute in combination with Article 60 of the 1975 Statute. However, the point on which the two States differed was whether any kind of environmental damage was within the ratione materiae jurisdiction of the Court by virtue of Article 60 of the 1975 Statute. The ICJ held that a plain reading of both Articles 60 and 36 of the 1975 Statute did not support such an understanding and therefore, that the Argentinean claims relating to noise, ‘visual pollution’, and
bad odours’ could not be examined. Within the context of its jurisdiction, the ICJ was also called to make a pronouncement on whether Articles 1 and 41 of the 1975 Statute were ‘referral clauses’. A ‘referral clause’ is a clause, which incorporates within the text of a specific treaty, certain provisions or the entirety of other treaties. Argentina argued that Articles 1 and 41(a) of the 1975 Statute were such clauses and for this reason the ICJ had jurisdiction to apply: the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora, the 1971 Ramsar Convention on Wetlands of International Importance, the 1992 United Nations Convention on Biological Diversity, and the 2001 Stockholm Convention on Persistent Organic Pollutants. In addition to this, both Argentina and Uruguay agreed that the 1975 Statute should be interpreted by taking into consideration “all relevant rules of international law”. However, interpretation via Article 31(3 c) and ‘referral clauses’, are two completely different matters and the Court correctly points that out. Taking into consideration the ‘relevant rules of international law’ as required by Article 31(3 c) of the VCLT is a matter of interpretation not of applicable law. The international judge does not apply these rules as such, but only for interpretative purposes. Consequently, which rules are ‘relevant’ under Article 31(3 c) is not an issue of applicable law.35 As to whether Articles 1 and 41(a) of the 1975 Statute are referral clauses, the ICJ by referring to the authentic Spanish text and juxtaposing it with the French and English translations, came to the conclusion that the aforementioned provisions were not intended to function as referral clauses and, thus, the conventions referred to by Argentina were not directly incorporated within the 1975 Statute and thus were not applicable.

4 Conclusion

The regime for the exclusive economic zone is sui generis. Under it the coastal states and other states have specific competences. The legal regime of the exclusive economic zone is thus different from those of the territorial sea and the high seas. It is a zone which incorporates certain characteristics of both regimes but belongs to neither. The zone represents a politico-legal compromise and its various elements constitute a complete unit whose structural harmony and functional balance will be destroyed if it were to be assimilated into any pre-existing concept. In the exclusive economic zone a coastal state has been given sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources. In exercising its rights and performing its duties under the Convention, the coastal state is obliged to have due regard to the rights and duties of other states and to act in a manner compatible with the Convention (Article 56). The coastal state has been given considerable discretion in the management of the zone; however, the Convention also imposes specific management responsibilities on the coastal state, especially as concerns the living resources of the zone. In the light of these management responsibilities, a coastal state which has claimed an exclusive economic zone cannot pursue a policy of inaction with respect to its living resources. The Convention refers to specific matters which a coastal state should take into account in the management of the zone. It contains provisions requiring a state to enter into agreements with other states, either bilaterally, sub-regionally or regionally. These references in some cases serve to highlight the interests of other states in the zone or to create preferences in their favour and they were essential elements in the compromises which made the concept of the exclusive economic zone generally acceptable. They now require to be implemented in good faith by all concerned.

The regime of the exclusive economic zone is clearly a revolutionary legal concept which evolved very quickly. In about a 30-year time span, an ocean regime has emerged from many diverse ideas and interests and has found universal acceptance establishing the unlikely
proposition that the whole is greater than the sum of its parts. Finally, UNCLOS has provided coastal states with new rights and duties especially in the exclusive economic zone. Although coastal states cannot plan unilaterally their marine space under their jurisdiction when the marine spatial planning affects freedom of navigation in the exclusive economic zone. For this reason the international marine organization has adopted some procedures that can restrict these rights due to safety and environmental concerns. There are many states that are making use of those procedures, such as routeing measures to protect particularly sensitive areas at the sea. [6]

Additionally, UNCLOS rarely mentions approach about ecosystems, it does not exclude marine spatial planning and cannot be isolated of other developments in international law. For this reason coastal states should apply the Convention on Biological Diversity in relatively occasions.

To sum up the coastal state must adopt proper conservation and management measures which ensure the exclusive economic zone. This zone has a peculiar legal status for this reason it is necessary for each case of infraction the coastal state to judge on its merit as it happened in the cases which were mentioned above.

References: