

## PART I

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### The Development and Status of the Exclusive Economic Zone

The historical roots of the exclusive economic zone (EEZ) lie in the earliest claims of national jurisdiction over marine resources of various types. The development of the EEZ is partly the result of widespread contemporary national practices and of the diplomatic negotiations that have been conducted at regional and global forums, particularly at the Third United Nations Conference on the Law of the Sea.<sup>1</sup> The two proclamations made in 1945 by the United States, one to fisheries in the areas beyond the territorial sea, the other to natural resources on the seabed of the continental shelf, marked the beginning of contemporary national practices.<sup>2</sup> These were closely followed by the resource-oriented extension of the territorial sea claims made first by the Latin American and subsequently African States, as well as by the perhaps better-known continental shelf claims.<sup>3</sup> Such claims to special interests on the part of the coastal State extending the traditional territorial sea limit soon spread to other parts of the world. This process was reflected in different ways in the three United Nations Conferences on the Law of the Sea – first as successful Western opposition, then as a stalemate, then as widespread and eventually universal acceptance of a compromise solution. The negotiated outcome gave effective priority to coastal States in resource matters within 200 nautical miles from the coast while preserving freedom of communication, including navigation and overflight, for all States.<sup>4</sup>

<sup>1</sup> Francisco Orrego Vicuña, 'The Exclusive Economic Zone: A Latin American Perspective: An Introduction', in Francisco Orrego Vicuña (ed.), *The Exclusive Economic Zone: A Latin American Perspective* (Westview 1984) 1.

<sup>2</sup> 'Official Documents, United States: Proclamation by the President' (1946) 40 Am J Int'l L Sup 45.

<sup>3</sup> Robin Churchill, Vaughan Lowe and Amy Sander, *The Law of the Sea* (4th ed., Manchester University Press 2022) 255–256.

<sup>4</sup> Francisco Orrego Vicuña, *The Exclusive Economic Zone: Regime and Legal Nature under International Law* (Cambridge University Press 1989) 6–7; Myron H. Nordquist, Satya N.

This part begins by looking at the historical development and codification of the 200-mile maritime zone, and then considers the *sui generis* legal regime of the EEZ as codified in the 1982 United Nations Convention on the Law of the Sea.<sup>5</sup> The historical review confirms that the extended coastal State claims and jurisdiction beyond the limit of the territorial waters were primarily for economic benefits. The creation of the EEZ highlighted the gradual expansion of a coastal State's rights over economic interests in the coastal area after the Second World War.<sup>6</sup> The negotiated EEZ is specifically not a zone of sovereignty, but a special functional zone where the coastal State has sovereign rights over the natural resources and jurisdiction with regard to specific activities, while traditional freedoms of the high seas were well preserved. The delicate balance adopted in the EEZ regime is sustained by a body of flexible prescriptions for dynamic adjustment to prevent and resolve conflicts. These include the legal doctrines of attributing rights and freedoms to the coastal State and the other States, and the reciprocal due regard obligation relating to their exercise, as well as a mandatory dispute settlement mechanism that recognises the special features of the EEZ regime.

Nandan and Shabtai Rosenne (eds.), *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. II (Martinus Nijhoff 1993) 491.

<sup>5</sup> United Nations Convention on the Law of the Sea (10 December 1982, in force 16 November 1994) 1833 UNTS 3.

<sup>6</sup> Alexander Proelss, 'Article 55', in Alexander Proelss (ed.), *United Nations Convention on the Law of the Sea: A Commentary* (Hart 2017) 411.