

Should Croatia Declare an Exclusive Economic Zone

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Summary

The paper deals with the EEC legal regime and discusses whether Croatia should declare one. In order to provide comprehensive understanding of the relevant issues, the paper firstly analyses the legal institute of the EEC and gives an overview of all relevant characteristics thereof, as set forth in the third United Nations' Convention on the Law of the Sea (UNCLOS). Then it presents some of the questions arising from the process of the declaration and delimitation of the EEC by reviewing the most relevant case law on this matter. The Republic of Croatia has incorporated all the up to date provisions in its Maritime Code relative to the EEC. However, it decided to proclaim an Ecological-Fishery Zone with only some of the sovereign rights which a state is entitled to exercise in the EEC according to UNCLOS. Subsequently, it suspended this Zone thus making the protection of Croatian maritime resources dubious.

Key words: exclusive economic zone, declaration and demarcation of exclusive economic zone ecological-fishery zone, UN Conference on Law of the Sea, Croatian Maritime Cod

“Freedom of sea represented one of fundamental principles of law on the sea. It provided for technologically developed countries an unlimited possibility to exploit the ocean without taking any consideration towards interests of other countries. When this doctrine was founded during Hugo Grotius' time, it made sense. The level of technology was not in capacity of today's modern ships. However, in the 20th century, technology has advanced to such extent that it endangers not only poorly developed countries but many ocean resources as well. If continued, it could permanently affect the ecological balance with possible catastrophic results for international community.”¹

¹ Rudolf, D.; *Morski gospodarski pojas u međunarodnom pravu*; Split, 1988, p. 41

List of Abbreviations

art.	Article
EEZ	exclusive economic zone
ICJ	International Court of Justice
CMC	Croatian Maritime Code
Nm	nautical miles
para.	paragraph
p.	page
pp.	pages
SFRY	Socialistic Federative Republic of Yugoslavia
UN	United Nations
UNCLOS	United Nations' Conference on Law of the Sea
v.	versus

1. Introduction

Throughout centuries, international maritime law has been developing as a customary law. The mostly often-used methods of adjusting maritime relations between the coastal states were either customs or bilateral and multilateral legal acts with a limited scope of applicability to a certain geographical region. The international legal community was not familiar with widespread treaties that would uniformly regulate usage, manipulation and dispute settlement in the domain of maritime law. Only in the last 50 years, activities of the United Nations (UN) have resulted in the proclamation of several international treaties governing complex relations of the international law subjects at sea. The participants of the first international *UN Conference on Law of the Sea* in Geneva in 1958 signed texts of four treaties, which entered into force subsequently; *Convention on the Territorial Sea and Contiguous Zone*, *Convention on the Continental Shelf*, *Convention on the High Seas*, and *Convention on Fishing and Conservation of Living Resources of the High Seas*. However, the third *UN Conference on Law of the Sea* in 1982 in Montego Bay made the most significant step forward in regulating interstate relations at sea. Among other issues covered by the Convention, it regulated the regime of exclusive economic zones.²

2. Defining the Exclusive Economic Zone (EEZ)

2.1. Historical Development

The legal concept of exclusive economic zones derives from unilateral acts of certain coastal countries in the 2nd part of the 20th century. These countries intended to broaden the scope of their exclusive authorities beyond boundaries of their territorial waters. United States' president Truman proclaimed the very first protected fishery zone on the 28th of September 1945 thus making a precedent of a principle that will subsequently lead to a whole series of similar acts made on the part of Latin American countries. However, these proclamations in most cases were not consistent, or that is to say, different countries used diverse modalities of protecting their rights at sea.³

The four conventions signed at the first *UN Conference on Law of the Sea* in Geneva in 1958 did not define the width of territorial waters nor did harmonize various aspirations of participating countries regarding the question which powers should be exclusive for coastal countries. South American countries facing Pacific asked for exclusive fishery zo-

² Andrassy, J., Bakotić, B., Vukas, B.; *Međunarodno pravo I*; Zagreb, 1993, pp. 193-197

³ Rudolf, D.; *Morski gospodarski pojas u međunarodnom pravu*; Split, 1988, pp. 25-26

nes while countries facing Atlantic wanted special rights on the continental shelf.⁴ However, the resulting status quo situation with non-definition of the width of territorial waters or of some other important issues, complied with the tendencies of South American and Latin American countries, notably Chile, Peru and Ecuador. These Pacific facing countries practically do not have a continental shelf and thus they aspired for a large zone of sea where they could exercise their exclusive powers. The second *UN Conference on Law of the Sea* in 1960 also did not succeed to define the width of territorial waters. The following decade (1960's) evidenced numerous examples of South American countries (except Guiana, Venezuela and Columbia), as well as of some African and Asian countries proclaiming zones of exclusive powers sometimes referred to as patrimonial sea, fishery zone, or economic zone.⁵

First official usage of the term "exclusive economic zone" is accredited to the representative of Kenya on the meeting of African-Asian legal board in 1972.⁶ After only a short period of time, conclusions from this summit appeared before the UN. The third *UN Conference on Law of the Sea* ended in 1982 in Montego Bay, Jamaica and made a great success in regulating many maritime world issues, including definition and regulation of the exclusive economic zone.

2.2. Exclusive Economic Zone (EEZ) in the text of UN Conference on Law of the Sea (UNCLOS)

Part V. (Art. 55-75) of UNCLOS defines the EEZ. It is a sea zone where a state has special rights over the exploration and use of marine resources. Generally, a state's EEZ extends to a distance of 200 nautical miles (approximately 370 km) out from its coast (Art. 57 UNCLOS), except where resulting points would be closer to another country, as explained later in the text. Technically, it does not include the state's territorial waters, so the EEZ's inner boundary follows the borders of the state's territorial waters (usually 12 nautical miles from the coast).

2.2.1. Rights, Jurisdiction and Duties of the Coastal State in the EEZ

According to Art. 56 UNCLOS, in the EEZ, the coastal state has:

- (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
- (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the protection and preservation of the marine environment;
- (c) other rights and duties provided for in this Convention.

Sovereign rights described in Art. 56, para. 1, are to a great extent different from the sovereignty that a coastal country exercises in the territorial waters. Sovereign rights in the EEZ enumerate and emphasize only certain powers that a state has while the soverei-

⁴ Rudolf, D.; *Međunarodno pravo mora*; Zagreb, 1985, p. 204

⁵ Ibler, V.; *Međunarodno pravo mora i Hrvatska*; p. 71

⁶ Oda, S.; *Exclusive economic zone*; Oxford, 1989, p. 104

gnty in the territorial waters encompasses every aspect of a state's authority with a sole exception to allow the right of non-harmful passage to ships of other countries. Thus, when analyzed from aspect of rights and duties of a coastal state, it can be deduced that the EEZ is a type of a transitional area between the territorial waters and the high seas. This solution successfully complied with objectives of countries wanting to broaden their rights and jurisdiction to as far as possible extent and both with aims of countries wanting to limit the scope of the territorial waters.⁷

2.2.1.1 Conservation and Utilization of the Living Resources

The coastal state shall determine the allowable catch of the living resources in its EEZ. In the same manner, it shall ensure through proper conservation and management measures that the maintenance of the living resources in the EEZ is not endangered by over-exploitation. In taking such measures the coastal state shall take into consideration the effects on species associated with or dependent upon harvested species (Art. 61 UNCLOS).

Furthermore, the coastal country has to promote the objective of optimum utilization of the living resources in the EEZ. It has to determine its capacity to harvest the living resources of the zone. Where such a country does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements give other countries access to the surplus of the allowable catch. When accessing maritime wealth in an EEZ, nationals of other states must comply with the conservation measures of the living resources (Art. 62 UNCLOS).

Different measures of conservation and utilization of the living resources are often referred to as the fisheries management. The fisheries management is a governmental system of management rules of the sea wealth based on the defined objectives and on the management mechanisms. These management mechanisms consist of a system of monitoring, control, and surveillance. Modern fisheries management is most often based on biological arguments where the idea is to protect the biological resources in order to make possible the sustainable exploitation.⁸ A sustainable yield is differentiated in two basic forms based on the level of the exploitation. The maximum sustainable yield or MSY is the largest long-term average yield/catch that can be exploited from a stock of fish without depressing the species' ability to reproduce. A typical MSY is about 80% of the total population biomass of the mature fish capable of reproduction. The maximum sustainable yield is usually higher than the optimum sustainable yield or OSY. The OSY is the level of effort that maximizes the difference between total revenue and total cost.

2.2.1.2 Artificial Islands, Installations and Structures in the EEZ

In the EEZ, the coastal country has the exclusive right to construct and to authorize and regulate the construction, operation and use of artificial islands, installations and

⁷ Former are mainly less developed countries of Latin and South America such as Chile, Peru, and Ecuador etc. These countries were afraid that more powerful fishing fleets would ravage their marine resources and therefore wanted to broaden their sovereignty. Before third UNCLOS they even formed so called "The 200 miles club" which gathered countries of South America that proclaimed some sort of patrimonial sea to extent of 200 nautical miles.

Latter countries are those with modern fishing vessels that were able to sail long distances and exploiting remote ocean wealth. It was in their interest to limit the scope of territorial waters to as narrow zone as possible.

⁸ Beverton, R. J. H., and Holt, S. J.; *On the Dynamics of Exploited Fish Populations*, Chapman and Hall, London, Fascimile reprint 1993

structures for exercising sovereign rights, jurisdiction and other economic purposes, installations and structures which may interfere with the exercise of the rights of the coastal state in the zone (Art. 60 UNCLOS).

All above-mentioned objects fall under the exclusive jurisdiction of a coastal country, including customs, fiscal, health and immigration regulations. Furthermore, a coastal state has to make duly notice of its intention to build artificial islands, installations and structures before they are being built and has to remove them when no longer operational or necessary. UNCLOS allows each coastal state, with artificial structures in the EEZ, to set a perimeter of maximum 500 meters around each structure to ensure the security of other naval vessels and of the structure respectively.

2.2.2. Rights and duties of other states in the EEZ

UNCLOS differentiates states to coastal, land-locked, and geographically disadvantaged states. The following paragraphs will explain rights and duties of such states.

Art. 58 UNCLOS grants right to all states, whether coastal or land-locked, to enjoy the freedoms of navigation, overflight, laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms. Such uses may be for instance associated with the operation of ships, aircraft and submarine cables and pipelines. In addition, other countries exercising their rights and performing their duties in the EEZ of another state have to pay due attention to the rights and duties of the coastal state.

As already previously mentioned, Art. 62 UNCLOS imposes a duty for a coastal state to share the surplus of allowable catch from its EEZ. Art. 69 UNCLOS acts as a counterpart of this duty. It indicates right of land-locked states to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the EEZ of coastal states of the same subregion or region. Moreover, it defines terms and modalities of such participation that should be established by the states concerned through bilateral, subregional or regional agreements.

Art. 70 UNCLOS speaks of rights of geographically disadvantaged states. Geographically disadvantaged states are, within the meaning of this provision, all coastal States, including States bordering enclosed or semi-enclosed seas, whose geographical situation makes them dependent upon the exploitation of the living resources of the EEZ of other states in the subregion or region. Furthermore, such states are those coastal States which can claim no EEZ of their own.

However, even though the Convention sets out a duty for a coastal country to share the surplus of the allowable catch, in reality such duty may be indirectly waived by a coastal country not wanting to share it i.e. not wanting to sell its living marine resources. This is possible according to Art. 297 para. 3(a) UNCLOS which provides that any disputes concerning the interpretation or application of the provisions of UNCLOS with regard to fisheries should be settled in accordance with section 2 of the Convention⁹. However, it further reads that the coastal state is not obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the EEZ or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other states and the terms and conditions established in its conservation and management laws and regulations. In reality this actually means that other countries have no efficient legal mechanism to force the coastal state to proclaim higher surplus and thus become obliged to share it

⁹ Part XV, section 2 of UNCLOS regulates compulsory procedures entailing binding decisions.

(according to Art. 62 and 69 UNCLOS), nor can they summon the coastal state before a tribunal for these reasons.¹⁰

3. Declaration and Delimitation of the EEZ

3.1. Declaration of the EEZ

Rights and duties of a coastal country regarding the EEZ come into force only after declaration thereof. It is very important to emphasize that there can be no prescription regarding the right to declare an EEZ.¹¹ According to some authors,¹² until year 2000, 109 countries proclaimed an EEZ, and additional 15 some sort of fishery zone.

When analyzed by geographical regions, the greatest number of declared EEZs can be found in Asian-Pacific region (38), followed by African (30), American (29), and European region (27). Especially interesting situation is in the Mediterranean area. From 25 Mediterranean countries, 11 of them declared an EEZ or fishery zone. Alger, Egypt, Malta, Morocco, Spain and Tunis have an EEZ or fishery zone in Mediterranean Sea, while Bulgaria, Romania, Russia, Turkey and Ukraine declared their EEZ in the Black Sea. France has its EEZ only on the coast facing Atlantic Ocean.¹³ Until now, no country in Adriatic Sea has declared an EEZ.

3.2. Delimitation of the EEZ

Coastal state may declare an EEZ in maximum breadth of 200 nautical miles out from its coast (Art. 57 UNCLOS). However, if two or more neighbouring coastal countries have an area of sea, which is not spacious enough for each of them to proclaim its own EEZ in breadth of 200 nm, rules from Art. 74 UNCLOS come into application. These provisions determine that, in order to achieve an equitable solution, the delimitation of the EEZ between states with opposite or adjacent coasts should be effected by agreement on the basis of international law, as referred to in Art. 38¹⁴ of the Statute of the International Court of Justice. If no agreement can be reached within a reasonable period of time, the states concerned should resort to procedures provided in Part XV UNCLOS. During the time of negotiations, states are strongly encouraged to enter into provisional arrangements of a practical nature, which are without prejudice to the final delimitation. During this transitional period, states must not jeopardize or hamper the reaching of the final agreement.

¹⁰ Vojković, G.: *Gospodarski pojas s posebnim osvrtom na gospodarski pojas Republike Hrvatske*; Split, 1998. p. 15

¹¹ Ibler, V.: *Međunarodno pravo mora*, Zagreb, 2001, p. 192

¹² Turkalj, K.: *Isključivi gospodarski pojas*, Hrvatska pravna revija, vol. 2001, no. 10

¹³ Ibid.

¹⁴ Art. 38 of the Statute of the International Court of Justice:

- "1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
 - b. international custom, as evidence of a general practice accepted as law;
 - c. the general principles of law recognized by civilized nations;
 - d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto."

As some authors (e.g. Oda)¹⁵ stress out, the illustrated mechanism of the EEZ delimitation in the ICJ Statute is rather vague and imprecise because the legal institute of the EEZ is a rather new one and there has not been many examples on how to determine delimitation rules. Thus, it is difficult to establish governing law and render a judicial decision on merits of the EEZ respectively.

3.2.1. Agreement between the Coastal States

Very often, delimitation of the EEZ is in some manner connected with the breadth of the continental shelf¹⁶ of a coastal country. Since there is no declaration necessary for a coastal country to exercise rights and fulfil duties arising from its continental shelf, a coastal state proclaiming an EEZ can rely on already existing mechanism applicable to determination of the breadth of continental shelf with neighbouring countries. From these practices arises a question how does the breadth of the continental shelf influence on the determination of an EEZ?

Calson differentiates four types of agreements between states regarding the breadth of the EEZ based upon their relation to the breadth of the continental shelf. First category of agreements comprises of situations where it is not possible to determine whether the parties used the breadth of the continental shelf to determine the breadth of the EEZ. In the second category are all the agreements where the breadth of the continental shelf formally became the breadth of the EEZ. Into third category, he placed arrangements where the breadth of the continental shelf informally became the breadth of the EEZ as well. Finally, there are agreements where parties decided to draw different delimitation lines for the continental shelf and the EEZ.¹⁷

An equivalently strong argument can be presented either for the solution to follow the same lines of delimitation of the EEZ and the continental shelf or for the solution to chart different lines for these areas. The former method brings simplicity in jurisdiction over the EEZ and the continental shelf. The latter conveys to greater fairness since the wealth of the EEZ does not have to follow the geomorphologic features of the seabed. However, against the latter solution one can argue lack of certainty in jurisdiction and consequently a level of decreased efficiency in management and protection of the sea wealth.

The principle of different delimitation lines has been applied in the cases of *Memorandum of Understanding between Indonesia and Australia* in 1981, in *DR Deutschland and Poland Agreement (Oder Bight)* in 1989, and *Australia and Papua New Guinea Agreement (Torres Strait)* in 1978. However, parties apply the mechanism of identical delimitation lines more often, as it can be concluded from the following arrangements; *Indonesia and Papua New Guinea Agreement* in 1973, *Protocol with Sweden and DR Deutschland Agreement* in 1978, *Finland and USSR Agreement* in 1985, *Turkey and USSR Agreement* in 1987 etc.¹⁸

¹⁵ Oda, S.: *Exclusive Economic Zone*, Encyclopaedia of Public International Law, Amsterdam, Oxford vol. 11, 1989, pp. 102-109

¹⁶ Art. 76, para. 1 UNCLOS:

"The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."

¹⁷ Calson, J.: *The Legal Regime of an Exclusive Economic Zone*, London, 2003. pp. 45-49

¹⁸ Turkalj, K.: *Isključivi gospodarski pojas*, Hrvatska pravna revija, vol. 2001, no. 10

3.2.2. Judicial Delimitation of the EEZ

In order to delimit an EEZ, coastal states have sought for a judicial ruling only on a few occasions. The procedure they used usually resulted with a single all-purpose maritime boundary. First example of such litigation was a process between Canada and USA before the ICJ in 1981. One decade later, in 1991, Qatar and Bahrain came before the ICJ with a dispute over demarcation of the EEZ, the continental shelf and the sea subsoil. Guinea and Guinea Bissau settled their dispute over delimitation of the territorial waters, the EEZ and the continental shelf before an arbitration tribunal in 1983. Canada and France delimited an area surrounding islands St. Pierre and Miquelon in an arbitral procedure in 1989. However, it would be prudent to mention an instance where the ICJ did not demarcate multiple disputed areas with a single all-purpose maritime boundary. It was in the case of proceedings Denmark v. Norway where a disagreement arose regarding the demarcation of an area in the region between Greenland and Jan Mayen Island.

3.2.2.1 Governing Law

When commencing proceedings for the demarcation of the sea area between two or more parties in the dispute, a tribunal primarily has to determine the governing law for the dispute. By designating the applicable law and depending on the existence or lack of the jurisdiction, the tribunal will be able to decide whether it can continue with the proceedings.

If coastal countries in disagreement are at the same time signatories of an international agreement, which regulates the disputed question, then the law set out in that agreement will be applied. Nonetheless, it is possible to imagine that there is no such agreement, that it does not regulate the question at hand, or that these countries did not sign that treaty. In that case, it is possible to designate applicable law by assimilating results of custom law in similar situations.

An example where both parties were signatories to a treaty, which did not however regulate the substantive matter of the disagreement, was the process of Canada v. USA regarding the demarcation of the EEZ and continental shelf in the Gulf of Maine.¹⁹ ICJ concluded that the Convention on Continental Shelf would not be applicable even though both countries signed it. Ratio for this decision was found in the explanation that it would be unfair to submit two substantively different parts of sea territory under one legal regime, which would not take under the consideration specific features of each area.

3.2.2.2 Criteria for Delimitation

ICJ developed its own authoritative opinion on criteria for an equitable delimitation between coastal states. It upheld the opinion that the delimitation at sea between coastal states with opposing or adjacent seashores must not be unilaterally performed by any of the states in concern. Such delimitation must be achieved by a mutual agreement, after *bona fide* negotiations and with a true effort to attain positive results. However, if it is not possible to reach such an agreement, the delimitation should be performed by recourse to a third party possessing the necessary competence. In both cases, the delimitation is to be effected by applying the equitable criteria and other practical methods, which can ensure, having in mind the geographic characteristics of the area and other relevant circumstances, an equitable result.²⁰

¹⁹ ICJ Reports, 1984, para. 124

²⁰ *Ibid.*, p. 292

As set forth in the ruling of the ICJ Chamber in the case *Canada v. USA*, several criteria should be used to attain an equitable solution of a delimitation dispute. One criterion, in the Chamber's opinion, is that the equitable solution can be attained by an equal division of the areas of overlap of the maritime and submarine zones of the two litigant states. Next criterion is that the international law confers on the coastal state a legal title to an adjacent continental shelf or to a maritime zone adjacent to its coasts (classic formula that the land dominates the sea). Another criterion is that, whenever possible, the seaward extension of a state's coast should not encroach upon areas that are too close to the coast of another state. Further, there is a criterion of preventing, as far as possible, any cut-off of the seaward projection of the coast or of the part of the coast of the states concerned. Lastly, the criterion whereby, in certain circumstances, the appropriate consequences may be drawn from any inequalities in the extent of the coasts of two states into the same area of delimitation.²¹

It should be enunciated that the Chamber held that the enumerated criteria are not neither the maximum nor minimum of the possible decisive factors to be used in achieving an equitable solution. The analysis of cases *Qatar v. Bahrain*, *Denmark v. Norway* and *Guinea v. Guinea Bissau* shows that the ICJ actually used a combination of the above-mentioned criteria in order to achieve an equitable dispute settlement. It used a procedure where it primarily drew a provisional line of equidistance between disputed parties which would then be subsequently adjusted with specific geomorphologic configuration and relative circumstances of each coastal state in dispute.

4. Croatia and the EEZ

4.1. The Croatian Maritime Code

The Republic of Croatia acceded to the third UNCLOS by succession to former SFRY, which ratified that Convention. The Croatian *Maritime Code*²² is in parts related to maritime and submarine zones fully harmonized with provisions of the UNCLOS.

The Croatian Maritime Code (CMC) regulates provisions on the Croatian EEZ in Art. 32-41. Republic of Croatia exercises in its EEZ sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, and with regard to the production of energy from the water, currents and winds. Croatia shall cooperate with neighbouring countries in creating and undertaking of the measures necessary to protect and preserve living sea resources in the Croatian's EEZ (Art. 33 CMC).

Authorized institutions of the Republic of Croatia have rights and duties to perform all necessary actions in order to exercise sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources in the Croatian EEZ, including the rights to perform a search, an inspection, capture a ship under a foreign flag, or to initiate judicial procedure. If a ship under a foreign flag has been captured or held in detention, Croatian diplomatic organs will contact the country of the ship's flag without any delay (Art. 34 CMC).

In the EEZ, the Republic of Croatia has the exclusive right to construct and to authorize and regulate the construction, operation and use of artificial islands, installations and structures at sea, sea-bed and subsoil (Art. 35 CMC).

²¹ Ibid., p. 313

²² Narodne novine 118/04

All natural persons and legal entities, which are authorized to construct artificial islands, installations and structures at sea, sea-bed and subsoil in the EEZ, have an obligation to announce publicly all the data relevant to such venture at least 30 days before the construction would begin. Furthermore, they are obliged to install necessary signalization on these objects. After the end of the usage of such structures at sea, natural and legal persons that were using the installation have to dismantle and remove it in the period of 30 days (Art. 36 CMC).

Upon an initiative of the person performing exploration or exploitation of the Croatian EEZ, the Croatian Minister for maritime affairs can establish safety zones in perimeter of 500 meters around artificial objects at sea if necessary (Art. 37 CMC). Artificial islands, installations, structures at sea and safety zones must not be installed at places where they would present an obstruction of usage of renowned international sea routes (Art. 38 CMC). All artificial islands, installations and structures in the Croatian EEZ are subject to Croatian legislature.

Foreign and domestic natural and legal persons can perform scientific experiments in the Croatian EEZ only if they have previously obtained the authorization of Croatian Ministry for maritime affairs (Art. 40 CMC). During the seafaring or overflight across the Croatian EEZ, and throughout the exploration and exploitation thereof, all naval objects, aeroplanes, or all natural and legal persons respectively are obliged to respect international principles, which are generally accepted by the international legal community, for protection of the environment (Art. 41 CMC).

As already previously mentioned in para. 3.1., an EEZ becomes effective only after the coastal country has declared it. The following section will deal with Croatian version of declaration of the EEZ, which is a rather specific one.

4.2. Croatian Ecological-Fishery Zone

On the 3rd of October 2003, the Croatian Parliament voted the *Decision on declaration of protected ecological-fishery zone*, which should have entered into force one year later – on the 3rd of October 2004. However, on June the 3rd 2004, the Croatian Parliament voted suspension of this *Decision* until the *Agreement on Partnership in Fisheries between European Communities and the Republic of Croatia* would be signed.

When initially voting for the *Decision*, the Croatian Parliament presented several rather significant arguments. Firstly, it noted the concern for survival of maritime resources due to the augmenting danger of exploitation from the part of non-Adriatic and non-Mediterranean states. Secondly, it expressed aspirations to prevent ecological catastrophes such as the one of the oil tanker *Prestige*²³. Thirdly, the *Decision* should be a starting point for stronger development of sustainable management of maritime resources in the Adriatic sea.²⁴

As to the issue of zone boundaries, the *Decision* envisaged that the borders of the Croatian Ecological-Fishery Zone would entail a sea zone out from the coast in the direction of open waters, except for the territorial waters. The outer borders of the zone would be governed by international agreements with neighbouring countries. However, until such agreements would be signed, the outer border of the zone towards the Republic of Italy would follow the demarcation line of the continental shelf established by a *Treaty between Italy and former SFRY* in 1968. The border towards the Serbia and Montenegro

²³ The *Prestige* was an oil tanker whose sinking in 2002 off the Galician coast caused a large oil spill. The spill polluted thousands of kilometers of coastline and more than one thousand beaches on the Spanish and French coast, as well as causing great damage to the local fishing industry. The spill is the largest environmental disaster in Spain's history.

²⁴ Grabovac, I.; *Suvremeno hrvatsko pomorsko pravo i pomorski zakonik*; Split, 2005, p. 29

on South would follow the provisional demarcation line of territorial waters as arranged with *Protocol on provisional regime on South border between the Republic of Croatia and the Serbia and Montenegro* from the year 2001.²⁵

It should be noted that the envisaged Ecological-Fishery Zone did not entail all rights allowed by the UNCLOS or the Croatian Maritime Code. It did not foresee sovereign rights for the Republic of Croatia with regard to the production of energy from the water, currents and winds or with regard to the construction of artificial islands, installations and structures at sea, sea-bed and subsoil.

5. Conclusion

When trying to establish reasons why Republic of Croatia has not yet proclaimed its own EEZ, moreover why it has suspended its Ecological-Fishery Zone after that zone has already been declared and internationally notified (!), one must first look upon political reasons and current "eurostrategic" position of Croatia. According to Ibler, the answer to this question is foremost political and only alternatively legal question. The only legal question that can arise in this situation is the one of the EEZ's delimitation procedure. There is no question about the fact that both UNCLOS and Croatian Maritime Code grants Croatia right to declare an EEZ. However, the Republic of Croatia never reached the level to be concerned with these problems.

At a certain point in time, Croatian authorities tried to argument the non-declaration of the EEZ with the fact that Croatian coast guard service does not have appropriate facilities to control the EEZ effectively. However, Ibler strongly disagrees with this argument noting that many countries have proclaimed an EEZ even though they are not even in a capacity to supervise their own territorial waters and not to mention the EEZ.²⁶

The necessity for Croatia to declare at least some of the sovereign rights in the sea zone exceeding territorial waters becomes more than evident if one should analyze a very recent occurrence of sea pollution performed by NATO air forces during the Kosovo conflict. Following a request made to NATO by the Secretary-General of the UN, Mr. Kofi Annan, in October 1999, NATO confirmed in February 2000 the use of depleted uranium²⁷ during the Kosovo conflict and provided the UN with information consisting of a general map indicating the areas targeted and the total number of depleted uranium rounds fired. UN Environment Program (UNEP) was called to make an assessment study of pollution on the field. The UNEP results of investigation performed in November 2000 suggested that there was no immediate cause for concern regarding toxicity. However, the study also emphasized that major scientific uncertainties persist over the long-term environmental impacts of depleted uranium, especially regarding groundwater. Due to these scientific uncertainties, UNEP calls for precaution and stresses that there is a very clear need for action to be taken on the clean-up and decontamination of the polluted sites.²⁸

²⁵ Ibid. p. 30

²⁶ Ibler, V.: *Međunarodno pravo mora*, Zagreb, 2001, p. 194

²⁷ Depleted uranium (DU) is a by-product of the process used to enrich natural uranium ore for use in nuclear reactors and in nuclear weapons. It is distinguished from natural uranium by differing concentrations of certain uranium isotopes. Natural uranium has a uranium-235 (abbreviated as U-235 or 235U) content of 0.7%, whereas the content of U-235 in DU is depleted to about one-third of its original content (0.2 – 0.3%). Like natural uranium, DU is an unstable, radioactive, heavy metal that emits ionizing alpha, beta and gamma radiation. Because of its radioactivity the amount of uranium in a given sample decreases continuously but the so-called half life (the period required for the amount of uranium to be reduced by 50%) is very long – 4.5 billion years in the case of the isotope uranium-238 (U-238 or 238U). In practice, therefore, the level of radioactivity (which is measured in units per second known as 'becquerels' – Bq) does not change significantly over human lifetimes.

²⁸ *Depleted Uranium in Kosovo – Post-Conflict Environmental Assessment*; United Nations Environment Program, 2001

How does this UNEP environmental study for Kosovo relate to Croatian sea zone? It relates through NATO reports made in May 1999 where NATO confirms the existence of five zones with a diameter of 18 km, which were used for deployment of unused depleted uranium ammunition after an air strike in Kosovo. Four of these zones are in the Adriatic Sea (first is located between the river mouth of Pad and Novigrad, second between Cervij and Lošinj, third between Ancona and Dugi Otok, and fourth between Brindisi and Drač), while the fifth zone is in the Jonian Sea at the cape St Maria di Leuca. At the time of this NATO report, there was a strong reaction from the part of Italy regarding the environmental hazards of such deployment of the depleted uranium. The consequence of this reaction was that NATO made an assurance that it will reallocate the deployed ammunition.²⁹ If Croatia had wanted to prevent deployment of depleted uranium in waters relatively close to the coast, it could have done it by referring to the protection of its EEZ. This way, NATO simply unloaded the toxic waste in the zone which was formally an area of open waters.

It is questionable where did disappear all the arguments presented by the Croatian Parliament at the time when the Ecological-Fishery Zone was introduced? Is it not necessary any more to attain a better preservation of living maritime resources, to ameliorate the protection of ecological biosphere, to enhance clean tourism? We can only hope that the maritime biosphere will not suffer too much on the account of the political decisions.

Sažetak

Članak obrađuje pojam *isključivog gospodarskog pojasa* te polemizira treba li ga Republika Hrvatska proglasiti u punom opsegu. Radi iscrpnijeg razumijevanja navedene problematike, u prvom se dijelu članka analizira pravni institut isključivog gospodarskog pojasa prema međunarodnoj Konvenciji o pravu mora (KPM) Ujedinjenih Naroda iz 1982. godine. Nadalje, izlažu se problemi proglašavanja i demarkacije isključivog gospodarskog pojasa kroz prikaz recentne međunarodne sudske prakse. Na kraju članka izlaže se pravna situacija u RH u pogledu isključivog gospodarskog pojasa. Odredbe Pomorskog zakonika RH po tom su pitanju u potpunosti usklađene s odredbama KPM-a. Međutim, hrvatski zakonodavac je 2003. godine izglasao Odluku o proglašenju *ekološko ribolovnog pojasa* koji sadrži tek neka od prava sadržanih u pojmu isključivog gospodarskog pojasa. Štoviše, zakonodavac je naknadno čak i odgodio početak primjene posebnog pravnog režima u području ekološko ribolovnog pojasa, dovodeći time zaštitu morskih resursa u krajnju neizvjesnost.

Cljučne riječi: isključivi gospodarski pojas, proglašenje i demarkacija isključivog gospodarskog pojasa, ekološko ribolovni pojas, UN Konferencija o pravu mora, hrvatski Pomorski zakonik

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²⁹ Račan će od NATO-a ponovo zatražiti podatke o odbacivanju bombi u Jadran; a newspaper article in Vjesnik, 9 January 2001

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