Indonesian Journal of International Law

Volume 18 | Number 2 Article 7

1-31-2021

HISTORIC FISHING RIGHTS AND THE EXCLUSIVE ECONOMIC ZONE

Leonardo Bernard
Australian National Centre of Ocean Resources and Security, lbernard@uow.edu.au

Recommended Citation
Bernard, Leonardo (2021) "HISTORIC FISHING RIGHTS AND THE EXCLUSIVE ECONOMIC ZONE," *Indonesian Journal of International Law*: Vol. 18 : No. 2 , Article 7.
DOI: 10.17304/ijil.vol18.2.807
Available at: https://scholarhub.ui.ac.id/ijil/vol18/iss2/7

Indonesian Journal of International Law (2021), Vol. 18 No. 2, pp. 161-182
https://doi.org/10.17304/ijil.vol18.2.807

HISTORIC FISHING RIGHTS AND THE EXCLUSIVE ECONOMIC ZONE

Leonardo Bernard

Australian National Centre of Ocean Resources and Security
Correspondence: lbernard@uow.edu.au

Abstract

The exclusive economic zone (EEZ) regime under Part V of the LOS Convention grants coastal States the exclusive right to fisheries within 200 nautical miles (M) of their coasts. However, the EEZ seems to recognise the exclusive fishing rights of coastal States at the expense of historic fishing rights. Yet, is this an accurate reading of applicable law? Despite the fact that historic fishing rights are not expressly recognised in the LOS Convention, many States still claim these rights in areas beyond their EEZ. China, for example, has consistently made claims that it has historic rights over the fisheries resources within the nine-dashed line in the South China Sea. This article seeks to explore this issue, by analysing the relationship between the EEZ regime and historic fishing rights, and identifying the circumstances where historic fishing rights can exist alongside the EEZ regime. The article will also distinguish between historic waters and historic fishing rights; as well as discuss the practice of States and precedents of international courts and tribunals in relation to historic fishing rights.

Keywords *: exclusive economic zone, historic rights, historic water, law of the sea, traditional fishing*

Submitted : 29 July 2020 | Revised : 18 October 2020 | Accepted : 2 December 2020

I. INTRODUCTION

The establishment of the Exclusive Economic Zone Regime (EEZ) by the United Nations Convention of the Law of the Sea 1982 (LOS Convention)[1] created a new fisheries regime for coastal States. The EEZ regime under Part V of the LOS Convention grants coastal States the exclusive right to fisheries within 200 nautical miles (M) of their coasts.[2] However, the EEZ regime, which has now been widely accepted as a rule of customary international law, seems to recognise the exclusive fishing rights of coastal States at the expense of historic fishing rights. Yet, is this an accurate reading of applicable law? Despite the fact that historic fishing rights are not expressly recognized in the LOS Convention, many States still claim these rights in areas beyond their

[1] United Nations Convention on the Law of the Sea, opened for signature10 December 1982, 1833 UNTS at 3 (entered into force 16 November 1994).

[2] The EEZ regime also grants coastal States exclusive rights to exploit the natural resources, both living and non-living, of the seabed and subsoil, and over other economic exploitation within the zone up to 200 nm from the coastlines; LOS Convention, *ibid,* Article 56(1)(a).

EEZ. China, for example, has consistently made claims that it has historic rights over the fisheries resources within the nine-dashed line in the South China Sea.[3] These claims generally are based on two arguments: that the LOS Convention actually recognizes the existence of historic fishing rights; and that historic fishing rights are regulated under customary international law (which applies alongside the LOS Convention). This article seeks to explore these arguments, as well as the relationship between historic fishing rights and the EEZ regime. Further, this article will identify the circumstances where historic fishing rights can exist alongside the EEZ regime.

Part I of the article will distinguish between historic waters (a body of water treated as internal waters, i.e., sovereign territory) and historic fishing rights (a lesser set of rights in the maritime space that do not translate into sovereignty). Part II will discuss the establishment of the concept of the EEZ, as influenced by the various declarations of States regarding fishing jurisdiction up to 200 M, and how those developments affect the historic fishing rights of coastal States. In Part III, the article will discuss the practice of States and precedents of international courts and tribunals in relation to historic fishing rights. Cases such as the 1959 *Anglo-Norwegian Fisheries Case* between UK and Norway, the 1969 *Fisheries Jurisdiction Case* between UK and Iceland, the 1984 *Gulf of Maine Case* between USA and Canada, the 1993 *Jan Mayen Case* between Greenland and Norway, and the *Eritrea/Yemen* award in 1999, as well as the 2006 maritime delimitation case between Barbados and Trinidad and Tobago, will be examined to see whether historic fishing rights can indeed exist within the maritime zones as defined by the LOS Convention. Finally, Part IV of the article will analyze the compatibility of historic fishing rights with the EEZ regime.

II. HISTORIC FISHING RIGHTS AND HISTORIC WATERS

The term historic fishing rights should not be confused with the term historic waters. Historic waters are 'waters over which the coastal State, contrary to the generally applicable rules of international law, clearly, effectively, continuously, and over a substantial period of time, exercise sovereign rights

[3] In the communication to the Commission on the Limits of the Continental Shelf (CLCS) in response to the Joint Submission of Malaysia and Viet Nam, China asserted that 'China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil (see attached map)', which referred to the nine-dashed line map. See CLCS, "Communication received from China with regard to the Joint Submission by Malaysia and the Socialist Republic of Viet Nam," accessed on 7 May 2009, http://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf.

with the acquiescence of the community of States'.[4] The International Court of Justice (ICJ) in the *Fisheries Jurisdiction* case stated that historic waters means 'waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title'.[5] The LOS Convention also recognizes the concept of historic waters, albeit limited only to the regime of historic bays.[6] Generally, there are three factors that must be proven in order to successfully establish title of historic waters over a certain ocean space: effective exercise of sovereignty, prolonged usage, and the recognition of other States.[7] These strict requirements for establishing historic waters make it difficult for States to successfully claim part of their waters as historic waters. Currently, most claims of historic waters made by States are only unilateral claims that are not recognized by the international community.[8]

In comparison, a claim of *historic rights* means that a State is claiming to

---

[4] L.J. Bouchez, *The Regime of Bays in International Law* (Leiden: Sythoff, 1964), 281; "Limits in the Seas," United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, United States Responses to Excessive National Maritime Claims (9 March 1992) No. 112, 8; for general discussion of historic waters, see Clive R. Symmons, *Historic Waters in the Law of the Sea: A Modern Re-Appraisal* (Leiden/Boston: Martinus Nijhoff Publishers, 2008).

[5] Anglo-Norwegian Fisheries Case (United Kingdom v. Norway) (1951), ICJ Reports 1951, 116, at 130; see also Case Concerning the Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras, Nicaragua intervening) (1992), ICJ Reports 1992, 351, at para. 384.

[6] UNCLOS, Article 10(6); although the concept of historic title is not discussed in length in the LOS Convention, it is generally accepted that the concept rest upon customary international law; see Continental Shelf (Tunisia v. Libyan Arab Jamahiriya) (1978), Judgment, ICJ Reports 1982, at 74; see also Clive R. Symmons, *Historic Waters in the Law of the Sea: A Modern Re-Appraisal*, 9.

[7] ICJ, Tunisia v. Libya, at 74*;* Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (1986), Judgement, ICJ Reports 1992, at 589; see "Juridical Regime of Historic Waters, Including Historic Bays," in *International Law Commission Yearbook Volume 2* (New York: United Nations,1962), 6; see also L.J. Bouchez, *The Regime of Bays in International Law*; Yehuda Z. Blum, "Historic Rights," in *Encyclopedia of Public International Law Instalment 7*, Rudolf Bernhardt, ed., (Amsterdam: North-Holland Publishing Co, 1984), 121; Epsey Cooke Farrel, *The Socialist Republic of Vietnam and the Law of the Sea* (The Hague: Martinus Nijhoff Publishers, 1998), 68-69.

[8] For example: Libya claimed the Gulf of Sidra as Libyan internal waters in 1973, which was protested by the US, Australia, France, Federal Republic of Germany, Norway and Spain; Cambodia and Viet Nam on 7 July 1982 made a claim to a part of the Gulf of Thailand as historic waters, which was met with protests from the US, Thailand, Singapore and Germany; see "Limits in the Seas*,*" United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, 13. China also claims some form of historic title over the South China Sea based on their nine-dashed line, which was challenged by the Philippines, Viet Nam, Malaysia and Brunei Darussalam, see CLCS, "Communication received from China with regard to the Joint Submission by Malaysia and the Socialist Republic of Viet Nam,". The Philippines on 22 January 2013 submitted a legal challenge to China's nine-dashed line to arbitration under Annex VII of the LOS Convention; see Notification and Statement of Claim of the Philippines dated 22 January 2013.

exercise certain rights, usually fishing rights, in what are usually deemed to be international waters.[9] The requirements that must be satisfied in order to successfully establish historic rights are the same as those required to establish historic waters: long-established activities and the continuous exercise of these activities that are recognized by other States.[10] Although the jurisprudence of decisions of international courts and tribunals reflects a reluctance to recognize a State's claim of historic rights, a State will have a better chance of successfully bringing a claim of historic rights than it would have bringing a claim of historic waters. This is because even though the elements for establishing historic rights are the same as those required for establishing historic waters, there are a few significant differences between the two concepts.

First, historic rights claims do not amount to a sovereignty claim. Historic rights merely give the claiming State fishing rights by long usage.[11] As the ICJ stated in the *Qatar/Bahrain* case*,* the historic pearling activities of Bahrain have never led to the recognition of a 'quasi-territorial right' to the fishing ground itself.[12] This means that even if the historic pearling rights of Bahrain were recognized, it would not have amounted to sovereignty or any form of 'quasi-sovereignty' over the pearling banks or to the superjacent waters.[13] It would be easier for a State to provide evidence of historic fishing activities in an area of water as opposed to trying to establish an historic exercise of sovereignty over the area. It is important to remember that a State's claim to historic rights does not mean that this right gives the claiming State sovereignty over the relevant body of water.

Second, a historic right claim is not exclusive. Since the existence of a historic right in one area does not amount to sovereignty, it is possible for certain rights of other States to exist concurrently in the same body of water. In the *Eritrea/Yemen* arbitration, for example, the Tribunal declared that 'Yemen shall ensure that the traditional fishing regime of free access and enjoyment for the fishermen of both Eritrea and Yemen shall be preserved for the benefit of the lives and livelihood of this poor and industrious order of men' around the islands of *Hanis* and *Zuqar,* as well as around the islands of *Jabal al-Tayr* and the *Zubayr* group.[14]

---

[9] Clive R. Symmons, *Historic Waters in the Law of the Sea: A Modern Re-Appraisal*, 4.

[10] ICJ, Tunisia v. Libya, para. 98-99; Fisheries Jurisdiction (United Kingdom v. Iceland)*,* Merits, Judgment (1974), ICJ Reports, para. 63-65.

[11] See Separate Opinion of Judge De Castro, Fisheries Jurisdiction (United Kingdom v. Iceland), at 99.

[12] Maritime Delimitation and Territorial Questions between Qatar and Bahrain*,* Merits, Judgment (2001), ICJ Reports 40, para. 235-236.

[13] *Ibid*.

[14] Award of the Arbitral Tribunal in the First Stage - Territorial Sovereignty and Scope of the

Third, a claim of historic rights is specific, whether it is a historic right to fishing activities or historic rights over the fishing resources. Even when a State has claimed historic rights to fishing activities, the specific activities and the species of fish were clearly described. For example in *Qatar/Bahrain,* Bahrain claimed the historic rights of pearling;[15] in *Barbados/Trinidad and Tobago,* Barbados argued that it had historic rights of fishing for the flying fish in the waters of Trinidad and Tobago;[16] and in the *Jan Mayen* case, Norway claimed that its fishermen had traditionally conducted whaling, sealing and fishing for capelin in the waters between Jan Mayen and Greenland.[17]

Although the threshold to prove historic fishing rights is not as high as the one needed to prove historic waters, and although such a concept is recognized under customary international law, proving historic fishing rights is still not an easy feat. The question, however, is how to reconcile the existence and recognition of historic fishing rights with the EEZ regime contained in the LOS Convention, which is binding on all States parties.

III. THE ESTABLISHMENT OF THE EEZ REGIME

Although the concept of the EEZ was only formally introduced during the negotiation of the Third United Nations Conference on the Law of the Sea (UNCLOS III), the importance of a 'fishing zone' to coastal States has been recognized since at least the 20th century. For example, in 1916, Spain's then Director-General of Fisheries urged the Spanish Government to extend Spain's territorial sea to include the continental shelf, as most of the edible species of fish were found in the continental shelf area, although the claim did not expressly mention the term 'fishing zone'.[18] Similarly, the United States issued two declarations on 28 September 1945. The first contained the United States' declaration of its right to explore the natural resources in the continental shelf contiguous from its land territory.[19] The second declaration, albeit over-shadowed by the first, was no less important. It stressed the United States' policy on the need for conservation zones and protection of fishery re-

Dispute (Eritrea v. Yemen), Permanent Court of Arbitration 1998, para. 525-526.

[15] ICJ, Qatar v. Bahrain, para. 235-236.

[16] Award of the Arbitral Tribunal (Barbados/Trinidad and Tobago), Permanent Court of Arbitration 2006, para. 247.

[17] Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway), ICJ Reports 1993, 38, at 15.

[18] League of Nations Committee of Experts for the Progressive Codification of International Law, "Questionnaire No. 2: Territorial Waters," *American Journal of International Law* 20, no. 3 (1926): 125-126 62-147.

[19] US Presidential Proclamation No. 2667, Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed of the Continental Shelf (1945), 10 Fed. Reg. 12,305.

sources in areas of the high seas 'contiguous to its coasts', although it did not claim sovereignty over the living resources in those waters.[20] These unilateral declarations are the first influential recognition of the right of the coastal State to extend its jurisdiction over natural resources beyond the territorial sea.

The 1945 Truman Declarations asserted the right to regulate and control fishing activities in waters beyond the territorial sea of a coastal State, and it was no surprise that it prompted a trend of unilateral declarations by countries claiming 'entitlement' or 'sovereignty' over extended maritime zones.[21] In 1947, for example, Chile[22] and Peru[23] proclaimed sovereignty and jurisdiction over the seas adjacent to their coasts, up to a distance of 200 M, in order to protect their offshore fishing industries from distant-water fishing fleets. Although there were inconsistencies in relation to the nature and geographical extent of sovereignty claims over offshore fishing activities following the Truman Declarations, these claims were important to the development of the EEZ regime. Although no agreement on any fishing zone regime was reached during the First United Nations Conference on the Law of the Sea (UNCLOS I) in 1958,[24] the post-Truman Declaration positions of the Latin American countries that claimed 200 nautical miles jurisdictions over fishing activities was the pre-cursor for the EEZ regime.

In 1960, the Second United Nations Conference on the Law of the Sea (UNCLOS II) was held, focusing on questions as to the breadth of the territorial sea and how far coastal States could extend their fishery rights beyond their territorial seas. However, the UNCLOS II failed to reach agreement on either issue. UNCLOS III began in 1973 and lasted for nine years. It sought to resolve the two issues outstanding from the first two conferences, these

---

[20] US Presidential Proclamation No. 2668, Policy of the United States with Respect to Coastal Fisheries in Certain Areas of the High Seas (1945), 10 Fed. Reg. 12,304. See also Harry N. Scheiber, "Origins of the Abstention Doctrine in Ocean Law: Japanese-US Relations and the Pacific Fisheries, 1937-1958," *Ecology Law Quaterly* 16, no.1 (1989): 23. -99

[21] For more detailed discussion on the claims made immediately following the Truman Declaration, see Richard Young, "Recent Development with Respect to the Continental Shelf," *American Journal of International Law* 42, no. 4 (1948): 850 (849-857); see also Scheiber, Harry N. Scheiber, "Origins of the Abstention Doctrine in Ocean Law: Japanese-US Relations and the Pacific Fisheries, 1937-1958," 23.

[22] Chile, *Presidential Declaration Concerning Continental Shelf of 23 June 1947 (El Mercurio),* 29 June 1947.

[23] Peru, *Presidential Decree No. 781 of 1 August 1947, El Peruano: Diario Oficial,* Vol. 107, No. 1983, 11 August 1947.

[24] UNCLOS I, however, managed to produce four conventions: Convention on the High Seas (entered into force on 30 September 1962), Convention on the Territorial Sea and the Contiguous Zone (entered into force on 10 September 1964), Convention on Fishing and Conservation of the Living Resources of the High Seas (entered into force on 20 March 1966), and Convention on the Continental Shelf (entered into force on 10 June 1964).

being the breadth of territorial sea and limits of the fishing zone. During this conference, the concept of an exclusive fishing zone, influenced by the various declarations of States regarding fishing jurisdiction up to 200 M, evolved even further. In 1974, the concept of the EEZ was introduced in the conference to replace the freedom of fishing beyond the territorial sea and open access to the high seas fisheries up to 200 M. The concept rapidly received strong support from most coastal States.[25]

The EEZ is neither under the sovereignty of the coastal State nor part of the high seas. It is a specific legal regime whereby coastal States have sovereign rights and jurisdiction over the natural resources in the body of water and subsoil up to 200 M from the shore and where other States have certain rights and freedoms as provided for in the LOS Convention.[26] This means that within their EEZ, coastal States have an exclusive right to the fisheries and other living resources of the sea and to the oil and gas resources of the seabed and subsoil. Coastal States do not have any 'residual' jurisdiction in the EEZ and only have such jurisdiction as provided for in the LOS Convention, such as jurisdiction with regard to artificial islands, installations, marine scientific research and the protection and preservation of the marine environment.[27] With respect to jurisdiction over matters outside of economic activities or outside of those specifically provided for in the LOS Convention, the principles of jurisdiction governing the high seas apply in the EEZ of a coastal State.

It is clear from the discussions undertaken during the negotiation of the EEZ provisions during UNCLOS III that any claims of historic/traditional fishing rights made by non-coastal States are not compatible with the concept of EEZ.[28] A coastal State's sovereign rights over all living resources within 200 M as recognized in the EEZ has completely superseded the freedom of fishing beyond the territorial sea and open access to the high seas fisheries.[29]

---

[25] John Stevenson and Bernard Oxman, "The Third United Nations Convention on the Law of the Sea: The 1974 Caracas Session," *American Journal of International Law* 69, no.1 (1975): 2. Although the concept of extended fishing zones beyond the traditional territorial waters limits had been discussed and/or instituted in the previous decade, the concept of EEZ was first advanced by Ambassador Njenga of Kenya in the Asian-African Legal Consultative Committee in 1972; see *Report of The Thirteenth Session of the Asian-African Consultative Committee*, Lagos, 18 -25 January 1972.

[26] UNCLOS, art. 56 and 57.

[27] UNCLOS, art. 56(b).

[28] During the 1974 Caracas Session, there was a widespread support for the coastal States' sovereign or exclusive rights for the purpose of exploration and exploitation of living resources within the 200 nm economic zone. See John Stevenson and Bernard Oxman, "The Third United Nations Convention on the Law of the Sea: The 1974 Caracas Session," 16-18.

[29] Barbara Kwiatkowska, *The 200 Mile Exclusive Economic Zone in the New Law of the Sea* (Dordrecht: Martinus Nijhoff Publishers, 1989), xxv.

During the negotiation of Article 55 of the LOS Convention, Japan and the Soviet Union tried to 'soften' the EEZ regime, by proposing granting preferential rights to coastal States in relation to fisheries, rather than exclusive rights.[30] This concept would have allowed preferential rights of coastal States to overlap with the historic/traditional fishing rights of other States. Even the ICJ back then was trying (not so subtly) to influence the direction of the negotiation of UNCLOS III in its 1974 *Fisheries Jurisdiction* case judgment.[31] In that case, the Court acknowledged Iceland's right to establish a 50 M fishing zone. However by still recognizing the United Kingdom's historic rights and economic dependency on certain fish stocks located in such a fishing zone,[32] the Court implied that Iceland did not have the right to claim an *exclusive* fishing zone.[33]

Furthermore, Australia and New Zealand proposed recognition of historic rights of developed distant-water fishing States, but clarified that such rights should also eventually be phased out.[34] Malta and Zaire also proposed that the right of the coastal States to exploit the living resources in their waters up to 200 M should take into account the historic/traditional fishing rights of other States.[35] However, in the end, the view of States seeking a strong economic zone prevailed. The only consideration given to those looking for some form of recognition to historic rights was provided for in Article 62 of the LOS Convention, which allows other States access to the surplus of the allowable catch of the living resources in the EEZ of a coastal State. In giving this access, the coastal State must take into account the States whose nationals have habitually fished in the zone. However, such access is dependent on the coastal State's consent and the coastal State has the discretion to deny this access to other States.

IV. INTERNATIONAL PRECEDENTS ON HISTORIC FISHING RIGHTS

The significance of historic fishing rights was acknowledged in Article 12

[30] UN GAOR, 27th Session No. 21, UN Doc A/8721 (Seabed Committee), at 158-161 and 188-196.

[31] ICJ, Icelandic Fisheries Jurisdiction, at 26.

[32] ICJ, Icelandic Fisheries Jurisdiction, at 27-28.

[33] Churchill criticized the Court's judgment in this case, saying that the Court trying to rule on a question being discussed in the Third Law of the Sea Convention (of the establishment of the exclusive economic zone); see Robin R. Churchill, "The Fisheries Jurisdiction Cases: The Contribution of the International Court of Justice to the Debate on Coastal States' Fisheries Rights," *International and Comparative Law Quarterly* 24 24, no. 1 (1975): 82-105 (104).

[34] UN GAOR, UN Doc A/8721, Seabed Committee, at 183-187.

[35] *Ibid.*, at 114-115.

of the 1958 Convention on the Territorial Sea and the Contiguous Zone, which states that the equidistance method of delimitation does not apply where it is necessary by reason of historic title to delimit the territorial seas in a way that is at variance with this method.[36] Similar words are used in Article 15 of the LOS Convention, which states that the median line may be adjusted to take into account 'historic title or other special circumstances'.[37]

The relevance of historic use and economic dependency to fishery zones has been recognized even prior to UNCLOS III, since fishing resources, unlike hydrocarbon resources in the continental shelf, have been exploited for centuries.[38] Even prior to the conclusion of the LOS Convention, fisheries interests were considered as one of the factors to be taken into account in the delimitation of territorial sea boundaries between States. For example, the Permanent Court of Arbitration (PCA) in drawing the territorial sea boundary between Norway and Sweden in 1909 took into account the Grisbadarna fishing bank, which had long been fished by Swedish fishermen, and awarded the bank to Sweden.[39]

Another pre-LOS Convention case where historic fishing rights played a significant role is the 1951 *Anglo-Norwegian Fisheries.* In this case, Norway sought to rely on 'historic title clearly referable to the waters of Lopphavet, namely the exclusive privilege to fish and hunt whales granted at the end of the 17th century'.[40] The ICJ acknowledged that traditional fishing rights of Norway in Lopphavet basin, based on very ancient and peaceful usage, should be taken into account in drawing the delimitation line.[41] This consideration of historic rights was used by the ICJ to support the use of straight baselines in closing the Lopphavet basin, which extended over 44 M across. It is important to note, however, that the consideration of economic factors and historical rights in this case was unique, because geographical factors clearly established the right to use straight baselines to close the Lopphovet basin.[42]

In the *Gulf of Maine* dispute between Canada and the United States in 1984, the ICJ rejected the suggestion of both Canada and the United States that historic fisheries activities should be taken into account in determining

[36] Convention on the Territorial Sea and the Contiguous Zone, opened for signature 29 April 1958, 516 UNTS 205 (entered into force 10 September 1964), art. 12

[37] UNCLOS, art. 15.

[38] Edward Collins Jr. and Martin A Rogolf, "The International Law of Maritime Boundary Delimitation," *Maine Law Review* 34, no. 1(1982): 54. 1-62

[39] Grisbådarna Case (Norway v. Sweden), Permanent Court of Arbitration 1909.

[40] Anglo-Norwegian Fisheries Case, at142.

[41] *Ibid.*

[42] Edward Collins Jr. and Martin A Rogolf, "The International Law of Maritime Boundary Delimitation," 56.

the single maritime boundary between the two States. Instead, after drawing a provisional boundary line based almost entirely on geographical criteria, the Court looked to see whether such a line was equitable in light of 'all the relevant circumstances', and completely ignored the traditional fishing practices of the parties. In its judgment, the Court clearly stated that the ICJ will only consider fisheries as relevant circumstances if the Court's provisional line likely entails 'catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned'.[43] The Court's decision to draw the boundary line without considering the historical fishing practices of both States drew heavy criticisms from both Canada and the United States, as the disruption caused to historical fishing patterns in the area gave rise to serious violation problems along the boundary.[44] Notwithstanding the criticism, the ICJ's threshold of 'catastrophic repercussions' in relation to the effect of fishing activities on maritime boundary delimitation was followed in subsequent cases.[45] A year after the *Gulf of Maine* decision, the Arbitral Tribunal in Guinea and Guinea Bissau held that fishing activities as an economic circumstance were not sufficient enough reason to justify departure from the provisional boundary line.[46]

In its 1993, however, the ICJ took a slightly different view and considered access to traditional fishing resources as a factor in adjusting the provisional line in determining the maritime boundaries between Greenland (Denmark) and Jan Mayen (Norway). In that case, the ICJ observed that the delimitation line between both parties should ensure equitable access to the capelin fishery resources, which was important for both States.[47] In their submissions to the Court, both parties stressed their coastal communities' traditional dependence on the exploitation of the resources in the waters between Greenland and Jan Mayen, especially access to capelin stock, whaling and sealing, and also emphasized the traditional character of different types of fishing carried out by the populations concerned.[48] The ICJ found that the median line proposed by Norway was too far to the west for Denmark to be assured equitable access to the capelin stock, and adjusted the median line eastwards.[49] However, it is important to note, that fisheries interests were not the main reason the ICJ

[43] Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. United States of America) (1984), ICJ Reports 1984, 246, at para. 237.

[44] Glen J. Herber, "Fisheries Relations in the Gulf of Maine: Implications of an Arbitrated Maritime Boundary," *Marine Policy* 19, no. 4 (1995): 303 (301-316)

[45] Barbados/Trinidad and Tobago, at para. 241.

[46] Arbitration Tribunal for the Delimitation of a Maritime Boundary between Guinea and Guinea-Bissau (1985) 77 ILR 635, at para 121-123.

[47] ICJ, Denmark v. Norway, at para. 75.

[48] *Ibid.*, at para. 73.

[49] *Ibid.*, at para. 76.

decided to adjust the median line. Rather, it was the length of the coast of Greenland compared to the coast of Jan Mayen that influenced the Court to adjust the median line in favour of Greenland to achieve an equitable result. Access to the capelin stock was only considered by the ICJ in deciding *how far east* the median line should be adjusted.

In 1999, an Arbitral Tribunal decided to recognize the traditional fishing rights of Eritrea fishermen that exist within the territorial sea of Yemen. In that case, both parties claimed traditional fishing rights in the waters around the Hanish and Zuqar islands and the islands of Jabal al-Tayr and the Zubayr group, which are under the sovereignty of Yemen.[50] Both parties agreed to ask the Tribunal whether the nature of this traditional fishing regime should be a consideration in the delimitation of the international boundary between them, which included the territorial sea, EEZ and continental shelf. This traditional fishing regime was one of the main contentions during the first stage of the arbitration, where both parties claimed sovereignty over the islands of Hanis and Zuqar, as well as the islands of Jabal al-Tayr and the Zubayr group. In awarding the sovereignty of these islands to Yemen, the Tribunal declared that 'Yemen shall ensure that the traditional fishing regime of free access and enjoyment for the fishermen of both Eritrea and Yemen shall be preserved for the benefit of the lives and livelihood of this poor and industrious order of men'.[51]

During the second stage of the arbitration, when the Tribunal was tasked with drawing the maritime boundaries in the northern and southern parts between Eritrea and Yemen, Eritrea submitted that in order to ensure the fulfilment of the order relating to traditional fishing rights in the award of the first stage of arbitration concerning sovereignty of the islands, a joint resource zone was needed.[52] Yemen argued that 'the traditional fishing regime should not have any impact on the delimitation of the maritime boundaries', and that it was for Yemen, in exercising its sovereignty, to ensure the preservation of the traditional fishing regime of both parties.[53] Both parties argued that they had always dominated fishing activities in the area, that their Red Sea coastal population was dependent on fishing, and that their fishermen had long fished in the waters around the islands of Hanis and Zuqar, as well as the islands of Jabal al-Tayr and the Zubayr group. The Tribunal found that it was impossible and unnecessary for it to conclude which country was more dependent on fishing than the other, but that it was sufficient to say that fishing, fishermen and

[50] Award of the Arbitral Tribunal in the Second Stage - Territorial Sovereignty and Scope of the Dispute (Eritrea v. Yemen), Permanent Court of Arbitration 1998, at para. 56-57.
[51] Permanent Court of Arbitration, Eritrea v. Yemen First Stage, para. 525-526
[52] Permanent Court of Arbitration, Eritrea v. Yemen Second Stage, para. 89.
[53] *Ibid.*, para. 90.

fisheries were of importance to both parties.[54]

In determining the territorial sea boundary in the southern part between Eritrea and Yemen, the Tribunal recognized that fishermen from both parties had, from time immemorial, used the islands of Hanis, Zuqar, Jabal al-Tayr and the Zubayr group for fishing and related activities.[55] Moreover, fishermen from both parties had always used these islands as way stations and as places of shelter, and not just as fishing grounds. These special factors 'constituted a local tradition entitled to the respect and protection of the law'.[56] The Tribunal further observed that the traditional fishing regime is not limited to the territorial waters of certain islands, and boundaries between the two parties were not required to be drawn by reference to claimed past patterns of fishing. Since the regime had existed for the benefit of the fishermen of both countries throughout the region, by its very nature it is not qualified by the maritime zones specified in the LOS Convention.[57] This was the Tribunal's way of saying that the existence of such traditional fishing rights would not affect the drawing of the territorial sea boundary between the two States. The traditional fishing regime operates throughout those waters beyond the territorial waters of each party, as well as in their territorial waters and ports.

Thus, the existence and protection of this traditional fishing regime did not depend upon the drawing of international boundaries by the Tribunal. The Tribunal instead relied on an Islamic legal concept that has been the basis for the existence and recognition of the traditional fishing regime in the said waters. Such Islamic legal concept ignored the principle of 'territorial sovereignty' and recognizes the existence of continuous cross-relationships between the fishermen of the two parties, even having a professional fishermen's arbitrators (*aq* '*il*) to settle disputes in accordance with local customary law.[58] Hence, the Tribunal still recognized the existence of the traditional fishing regime for Eritrea's fishermen, as well as for Eritrea's fishermen to continue to have access to and use of the waters around the islands, the islands themselves, as well as access to Yemen's port.[59]

The *Jan Mayen* case in 1993 and the *Eritrea/Yemen* arbitration in 1999 indicate a change in the views of international courts and tribunals with regard to fishing rights and the delimitation of maritime boundaries. However, the catastrophic repercussions doctrine adopted in the *Gulf of Maine* case contin-

[54] *Ibid.*, para. 64.
[55] *Ibid.*, para. 95.
[56] *Ibid.*, para. 95.
[57] *Ibid.*, para. 109.
[58] Permanent Court of Arbitration, Eritrea v. Yemen First Stage, para. 129-130.
[59] Permanent Court of Arbitration, Eritrea v. Yemen Second Stage, para. 110.

ues to be the threshold that must be met before fishing rights will have any effect on maritime boundary delimitation. For example, in the 2006 delimitation case between Barbados and Trinidad and Tobago, Barbados contended that the delimitation of EEZ boundaries in the western part between the two States should take into consideration the history of Barbadians fishing in the waters off Tobago, that Barbadian fisherfolk were critically dependent on the access to such fisheries, and that the fisherfolk of Trinidad and Tobago did not fish in those waters, and thus did not depend upon that fishery for their livelihood.[60] Trinidad and Tobago denied Barbados' claims, maintaining that Barbadian fisherfolk only started fishing in the waters off Tobago in the late 1970s, and thus, this could not be considered as a historic tradition.[61] Trinidad and Tobago also argued that Barbados did not critically depend on fisheries, and that in fact, fisheries only represented less than one percent of the gross national product of Barbados.[62]

The Tribunal agreed with Trinidad and Tobago and rejected Barbados' argument. The Tribunal further stated that even if the fisherfolk of Trinidad and Tobago have preferred inshore fishing to fishing in the waters off Tobago, 'it does not justify the grant to Barbadian fisherfolk of a right of access to flying fish in the EEZ of Trinidad and Tobago'.[63] Although the Tribunal decided that fishing activities in the waters off Trinidad and Tobago did not warrant the adjustment of the provisional equidistance line as the EEZ boundary in the western part between the States, it did not mean that the argument based upon fishing activities was not and cannot be considered.[64] The Tribunal stressed that determining an international maritime boundary between two States on the basis of traditional fishing by nationals of one of those States can only be done in exceptional cases, and that this case was not one of them.[65]

The Tribunal also looked into Barbados' request to allow Barbadian fishermen access to the stocks of flying fish in the waters of Trinidad and Tobago, despite the fact that the Tribunal did not adjust the equidistance line.[66] In its consideration, the Tribunal noted that taking fishing activity into account in order to determine the boundary was not the same thing as considering fishing activity in order to rule upon the rights and duties of the parties in relation to fisheries with waters that fall into the EEZ of one party.[67] The Tribunal then

[60] Barbados/ Trinidad and Tobago, para. 250.
[61] *Ibid.*, para. 254-255.
[62] Barbados/ Trinidad and Tobago, para. 256.
[63] *Ibid*., para. 268.
[64] *Ibid*., para. 272.
[65] *Ibid*., para. 269.
[66] *Ibid*., para 273.
[67] *Ibid*., para. 276.

draw a distinction between the facts of the case and the *Eritrea/Yemen* case. In the *Eritrea/Yemen* case, the Tribunal was given powers to consider the historic rights of the parties. It is therefore understandable that the Tribunal in that case found that any pre-existing traditional fishing rights in the region, which included the right of access, were not extinguished even though the waters in question fell under the jurisdiction of one party.[68]

The Tribunal stated that in the present case, such a dispute fell outside of the jurisdiction of the Tribunal.[69] However, since both Barbados and Trinidad and Tobago requested the Tribunal to express its view on the issue of Barbadian fishing within the EEZ of Trinidad and Tobago, the Tribunal stated that in this case both parties were under a duty 'to agree upon the measures necessary to co-ordinate and ensure the conservation and development' of the flying fish stocks, since the flying fish stocks could be considered as a species that occur within the EEZ of two States, as provided for in Article 63(1) of the LOS Convention.[70] Since Trinidad and Tobago had stated its willingness to find a reasonable solution to the dispute over the flying fish stocks, the Tribunal found that Trinidad and Tobago was obliged to negotiate in good faith an agreement with Barbados that would give Barbadians access to fisheries within its EEZ. [71]

V. THE COMPATIBILITY OF HISTORIC FISHING RIGHTS AND THE EEZ

So what happened to historic fishing rights after the establishment of the EEZ regime? Post-1982, most unilateral claims of historic fishing rights were abandoned, since almost all of these claims were in waters within 200 M off the coast of the States that were claiming such historic fishing rights. In other words, most of the historic fishing rights claims that existed immediately post-1982 were absorbed into the EEZ regime. The ICJ in its 1982 decision on *Tunisia/Libya* recognized the emerging concept of the EEZ, even though the LOS Convention had just been adopted and was not yet in force. The ICJ stated that Tunisia's claim of historic rights and titles basically formed parts of their EEZ, since the area of waters in which Tunisia claimed such rights were well within 200 nm off their coast.[72]

However, this does not mean that all historic right claims were just disap-

[68] *Ibid*., para. 279.
[69] *Ibid*., para. 283.
[70] *Ibid*., para. 285-286.
[71] *Ibid*., para. 288 and 292.
[72] ICJ, Tunisia v. Libya, para. 100.

peared. The concept of historic title is unique one. When the provisions on bays and on the delimitation of territorial sea were codified during the negotiation of the LOS Convention, historic title was inserted in these provisions as an exception.[73] This exception allows a closing line being drawn in 'historic bays' that did not meet the requirements in Article 10, particularly the 'semi-circle' test or the maximum width of mouth of the bay.[74] Additionally, Article 15 recognizes that a historic claim can affect the delimitation of territorial sea boundaries.[75]

Unlike the provisions on bays and territorial sea delimitation where historic title was specifically mentioned as an exception, historic title has not been explicitly reserved in the LOS Convention provisions dealing with the EEZ.[76] However, Article 62 of the Convention provides a 'consideration' for traditional fishing in the EEZ, although the article does not use the terms 'traditional' or 'historic'.[77] The article states that if a coastal State is unable to entirely fish the total allowable catch of fish within its EEZ, it may permit other States to fish the surplus.[78] The article further states that in considering giving third States access to such surplus, the coastal States should take into account 'the need to minimize economic dislocation in States whose nationals have habitually fished in the zone'.[79]

This provision, although acknowledging third States that might have traditionally fished in the waters that are now part of the EEZ of another State, does not intend to allow traditional fishing right to supersede the coastal State's rights under the EEZ regime. The coastal State is solely responsible for determining its own total allowable catch, and therefore the surplus, if any.[80] Furthermore, the provision only requires the coastal States to 'consider' other States that have traditionally fished in their EEZ, but the final decision remains at the discretion of the coastal State. Finally, there are no ways to challenge any decision made by the coastal States in relation to the fishing

---

[73] UNCLOS, art. 10(6) and 15. Although the concept of historic title is not discussed in length in UNCLOS, it is generally accepted that the concept rest upon customary international law; see ICJ, Tunisia v. Libya, para. 74; see also Clive R. Symmons, *Historic Waters in the Law of the Sea: A Modern Re-Appraisal*, 9.

[74] Clive R. Symmons, *Historic Waters in the Law of the Sea: A Modern Re-Appraisal*, 19-20.

[75] UNCLOS, art. 15.

[76] The only other mention of historic title in the UNCLOS is in Article 298(1)(a)(i), where the issue of historic bays or title in relation to maritime delimitation was excluded from the dispute settlement mechanism.

[77] UNCLOS, art. 62, which arguably implying non-recognition of traditional fishing rights in general.

[78] *Ibid*., art. 62(2).

[79] *Ibid*., art. 62(3).

[80] *Ibid*., art. 61(1).

capacity, allowable catch and access within their own EEZ, as Chapter XV of the LOS Convention excluded this issue from its compulsory dispute settlement mechanism.[81] Consequently, after the establishment of EEZ, past third parties' fishery practices are only one of several considerations (not rights; and not even prioritised) that the coastal State may take into account in its discretion as to surplus catch allocation.[82] This suggests that the sovereign rights of the coastal State in the EEZ supersede any third State's traditional or historic rights.[83]

In practice, however, some States still recognize historic rights that existed prior to the Convention. For example, India and Sri Lanka agreed on the delimitation of a boundary in the historic waters of Palk Bay, in which traditional fishing rights of both countries' fishermen are recognized and protected.[84] Japan established a 200 M fishery zone after the adoption of the LOS Convention in 1982, but by terms of their 1977 Law on Provisional Measures relating to the Fishery Zone, Japan still recognized the fishing rights of fishermen from Korea and China.[85] The boundary agreement between Australia and Papua New Guinea also recognizes the 'traditional way of life and livelihood' in the established protected zone.[86] The Arbitral Tribunal in *Eritrea/Yemen* also recognized the existence of traditional fishing rights of Eritrea's fishermen to continue to have access to and use of waters around the islands, the islands themselves, as well as access to Yemen's port.[87] Thus, it is clear that historic/traditional fishing rights of a third State can exist in the EEZ of a

[81] *Ibid*., art. 297(3)(a).

[82] This should not come as a surprise, as prior to the third Conference most States have no history of fishing beyond their territorial sea. Thus, they did not have any particular interest in recognizing the concept of historic right. See William T. Burke, Northcutt Ely, Richard Young, Bernard E. Jacob, Bruce A. Harlow and Quincy Wright, "A Symposium on Limits and Conflicting Uses of the Continental Shelf," in, *The Law of the Sea: Offshore Boundaries and Zones*, Alexander, Lewis M. Alexander, eds. (Ohio: Ohio State University Press, 1967),137.

[83] Robert Beckman, "The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea," *American Journal of International Law* 107, no. 1 (January 2013):158.142-163,

[84] Agreement between India and Sri Lanka on the Boundary in Historic Waters between the Two Countries and Related Matters 1974 (entered into force 8 July 1975). However, that other States had protested India's and Sri Lanka's claim of historic waters in Palk Bay, see "Limits in the Seas," United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, 14.

[85] This ended, however, in 1996 when Japan issued Law No. 74 of 14 June 1996 on the Exclusive Economic Zone and the Continental Shelf; see Yutaka Kawasaki-Urabe and Vivian L Forbes, "Japan's Ratification of UN Law of the Sea Convention and Its new Legislation on the Law of the Sea," *Boundary and Security Bulletin* 4, no. 4 (1997): 97. 92-100

[86] Treaty concerning Sovereignty and Maritime Boundaries in the area between Australia and PNG (Australia-Papua New Guinea), 1978; see also David Joseph Attard, *The Exclusive Economic Zone in International Law* (Oxford: Clarendon Press, 1987), 268.

[87] Permanent Court of Arbitration, Eritrea v. Yemen First Stage, para. 525-526

coastal State, but they are subject to recognition and approval by the coastal States.

VI.CONCLUSION

The role of historic fishing rights in maritime delimitation to date seems to have only a small amount of attention received from scholars. However, even if historic rights and economic dependency on fisheries only result in a minor modification of a maritime boundary line, issues of fishing rights are still an important factor to be considered by States when negotiating maritime boundaries. State practice seems to indicate that States prefer to resolve fisheries issues by agreements to cooperate for conservation, development, and equitable exploitation of the fishing resources, rather than fighting over how to adjust the boundary line to the satisfaction of both parties.[88]

The wide acceptance of the LOS Convention also means that all State parties are obliged to recognize each other's rights over their respective EEZ. Part V of the LOS Convention was clearly drafted so that the economic rights of coastal States in their EEZ have greater weight than any rights accorded to other States by customary international law.[89] The concept of historic fishing rights only survived in the LOS Convention to the extent that the coastal State, when giving access to surplus fish, would take such rights into consideration.[90] This means that a State's claim to historic fishing rights within waters 200 M off the coast of another State is subject to the coastal State's exclusive fishing rights in that zone as accorded by the LOS Convention.

In cases where historic fishing rights of a third State continues to exist within the EEZ of a coastal State, such rights were usually recognized through bilateral agreements between the States concerned. Indeed, the ICJ also stated that the most appropriate solution for a dispute between rights of the coastal State based on the EEZ and the rights of a third State based on historic rights is negotiation.[91] International courts and tribunals seem to be more comfortable deciding maritime boundaries which were mainly based on geographical factors, leaving fisheries issues to be decided by mutual agreement of the parties.[92]

[88] Edward Collins Jr. and Martin A Rogolf, "The International Law of Maritime Boundary Delimitation," 58.
[89] *Ibid.*, 60.
[90] UNCLOS, art. 62(3).
[91] ICJ, Icelandic Fisheries Jurisdiction, 31.
[92] Such was the case in the *Gulf of Maine* decision, where the ICJ refused to consider fisheries interests as a factor in drawing the maritime boundaries between the United States and Canada, even though both parties specifically asked the Court to take fishing into consideration; see ICJ,

There is little precedent to suggest that international courts or tribunals give much weight to fisheries factors in determining maritime boundaries. This is somewhat ironic, since the creation of the EEZ was to put increased resources, including fisheries, under the jurisdiction of the coastal States. Most of the time, however, fisheries interests or historic fishing rights were non-detrimental factors in the delimitation of EEZ. One of the reasons why claims to historic fishing rights are not normally relevant to boundary delimitation is because such historic rights are not exclusive.[93] In the case of the South China Sea, for example, China, Viet Nam and the Philippines all claim that there their fishermen have traditionally or historically fished in at least some parts of the oceans area in question. No single Claimant State can therefore claim an exclusive fishing right based on historic title. If, for example, China's claim of historic fishing rights is recognized, such recognition does not preclude the rights of other claimants in the South China Sea, either based on the EEZ regime or historic fishing rights.[94] The non-exclusivity of historic fishing rights also means that they do not raise a legitimate claim to sovereignty or title to territory, but only give rise to right of the State making the claim to continue fishing within the waters in question.[95]

This does not mean that historic/traditional fishing rights would not be taken into consideration in maritime delimitation. Such fishing rights, however, can only be considered as relevant circumstances in maritime delimitation in exceptional circumstances, known as the '*Gulf of Maine* exception', that provides for catastrophic social and economic repercussions if fisheries rights are ignored.[96] The decision in the case between Barbados and Trinidad and Tobago also reiterated that only in exceptional cases can fishing activity be deemed to be 'circumstances relevant' to maritime delimitation.[97] The only example of the ICJ taking into consideration fishing rights in determining maritime boundaries was in the *Jan Mayen* case, when the ICJ considered the realities of access to the capelin stocks in adjusting the boundary line between

Gulf of Maine (Canada v. United States of America), at para. 237

[93] Edward Collins Jr. and Martin A Rogolf, "The International Law of Maritime Boundary Delimitation," 58.

[94] China, of course, claimed more than historic fishing rights in the South China Sea. For more detailed discussion on China's fisheries claims in the South China Sea, see Leonardo Bernard, "The Right to Fish and International Law in the South China Sea," *Journal of Political Risk* 4, no. 1 (January 2016): 1-34.

[95] Gerald Fitzmaurice, "The Law and Procedure of the International Court of Justice, 1951-1954: General Principles and Sources of Law," *British Yearbook of International Law* 30, no. 1 (1953): 50. 1-70.

[96] ICJ, Gulf of Maine (Canada v. United States of America), at para. 237.

[97] Barbados/Trinidad and Tobago, at para. 269.

Denmark and Norway.[98] But again, this was only an additional consideration, as the extreme difference in coastal length between Greenland and Jan Mayen was deemed to be the main factor justifying the adjustment of the provisional median line.

Furthermore, the *Eritrea/Yemen* arbitration shows that even if historic fishing rights are recognized in overlapping maritime zones, they did not modify the boundaries between Eritrea and Yemen. This case shows how, in certain circumstances, historic fishing rights can exist within the maritime zones as defined by the LOS Convention. Although the traditional fishing rights did not affect the delimitation of boundaries between Eritrea and Yemen, the Tribunal recognized that both parties have equal traditional fishing rights over the overlapping territorial sea, which should be maintained by the parties.[99]

In conclusion, although the LOS Convention is silent on how traditional/historic fishing rights can exist within the EEZ of another State, there are certain circumstances where such rights exist and must be respected. However, such circumstances are rare and exceptional. Additionally, claims of historic fishing rights are subject to recognition by the coastal States, and coastal States are under no obligation to recognize them, since by accepting the EEZ regime, States have given up any claims they may have had based on traditional or historic fishing rights.

[98] ICJ, Jan Mayen Case (Denmark v. Norway), para. 76.

[99] For further discussion on the effect of historic fishing rights and maritime boundary delimitation, see Leonardo Bernard, "The Effect of Historic Fishing Rights in Maritime Boundaries Delimitation," in *Securing the Ocean for the Next Generation*, Harry N. Scheiber and Moon Sang Kwon, eds. (Berkeley: Berkeley Law School, 2013), 327-354.

BIBLIOGRAPHY

Journals and Periodicals

Beckman, Robert, 'The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea', (2013) 107 *American Journal of International Law, Agora: The South China Sea* 142-163

Bernard, Leonardo, 'The Effect of Historic Fishing Rights in Maritime Boundaries Delimitation', in *Securing the Ocean for the Next Generation*, ed. Harry N. Scheiber and Moon Sang Kwon, 327-354. Berkeley: Berkeley Law School, 2013

Bernard, Leonardo, 'The Right to Fish and International Law in the South China Sea', 4:1 *Journal of Political Risk* (2016)

Churchill, Robin R, 'The Fisheries Jurisdiction Cases: The Contribution of the International Court of Justice to the Debate on Coastal States' Fisheries Rights', (1975) 24 Int'l & Comp LQ 82

Collins Jr, Edward and Martin A Rogolf, 'The International Law of Maritime Boundary Delimitation' (1982) 34 Maine Law Review 1

Fitzmaurice, Gerald, 'The Law and Procedure of the International Court of Justice, 1951-1954: General Principles and Sources of Law', 30 Brit YB Int'l L 1

Herber, Glen J, 'Fisheries Relations in the Gulf of Maine: Implications of an Arbitrated Maritime Boundary' (1995) 19:4 Marine Policy 301

Kawasaki-Urabe, Yutaka and Vivian L Forbes, 'Japan's Ratification of UN Law of the Sea Convention and Its new Legislation on the Law of the Sea', IBRU Boundary and Security Bulletin, winter 1996 – 1997

Scheiber, Harry N, 'Origins of the Abstention Doctrine in Ocean Law: Japanese-US Relations and the Pacific Fisheries, 1937-1958', (1989) 16 Ecology LQ 23-99.

Stevenson, John and Bernard Oxman, 'The Third United Nations Convention on the Law of the Sea: The 1974 Caracas Session' (1975) 69 AJIL 1

Young, Richard, 'Recent Development with Respect to the Continental Shelf' (1948) 42:4 AJIL 849

Books and Book Chapters

Attard, David Joseph, *The Exclusive Economic Zone in International Law* (Oxford: Clarendon Press, 1987)

Blum, Yehuda Z, 'Historic Rights' in Rudolf Bernhardt, ed, *Encyclopedia of Public International Law,* Instalment 7 (Amsterdam: North-Holland Publishing Co, 1984)

Bouchez, LJ, *The Regime of Bays in International Law* (Leyden: Sythoff, 1964)

Burke, William T, Northcutt Ely, Richard Young, Bernard E Jacob, Bruce A Harlow and Quincy Wright, 'A Symposium on Limits and Conflicting Uses of the Continental Shelf', in Alexander, Lewis M Alexander, ed, *The Law of the Sea: Offshore Boundaries and Zones* (The Ohio State University Press, 1967)

Farrel, Epsey Cooke, *The Socialist Republic of Vietnam and the Law of the Sea* (The Hague: Martinus Nijhoff Publishers, 1998)

Kwiatkowska, Barbra, *The 200 Mile Exclusive Economic Zone in the New Law of the Sea* (Dordrecht: Martinus Nijhoff Publishers, 1989)

Symmons, Clive R, *Historic Waters in the Law of the Sea: A Modern Re-Appraisal* (Leiden/Boston: Martinus Nijhoff Publishers, 2008)

Legal Documents

United States. Presidential Proclamation No. 2667, Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed of the Continental Shelf (1945), Fed. Reg. 12,305.

United States. Presidential Proclamation No. 2668, Policy of the United States with Respect to Coastal Fisheries in Certain Areas of the High Seas (1945), Fed. Reg. 12,304.

Convention on the Territorial Sea and the Contiguous Zone. 516 UNTS 205 (opened for signature 29 April 1958, entered into force 10 September 1964).

Convention on the High Seas. 450 UNTS 11 (opened for signature 29 April 1958, entered into force 30 September 1962).

Convention on the Continental Shelf. 499 UNTS 311. (opened for signature 29 April 1958, entered into force 10 June 1964).

Convention on Fishing and Conservation of the Living Resources of the High Seas. 559 UNTS 285. (opened for signature 29 April 1958, entered into force 20 March 1966).

Treaty concerning Sovereignty and Maritime Boundaries in the area between Australia and Papua New Guinea 1978. (signed 18 December 1978, entered into force 15 February 1985.

Agreement between India and Sri Lanka on the Boundary in Historic Waters between the Two Countries and Related Matters 1974. (entered into force 8 July 1975).

Arbitration Tribunal for the Delimitation of a Maritime Boundary between Guinea and Guinea-Bissau (1985)

Award of the Arbitral Tribunal (Barbados/Trinidad and Tobago), Permanent Court of Arbitration, 2006.

Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. United States of America) (1984), ICJ Reports 1984.

Case Concerning the Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras, Nicaragua intervening) (1992), ICJ Reports 1992.

Continental Shelf (Tunisia v. Libyan Arab Jamahiriya) (1978), Judgment, ICJ Reports 1982.

Award of the Arbitral Tribunal in the First Stage - Territorial Sovereignty and Scope of the Dispute (Eritrea v. Yemen), Permanent Court of Arbitration 1998.

Award of the Arbitral Tribunal in the Second Stage - Territorial Sovereignty and Scope of the Dispute (Eritrea v. Yemen), Permanent Court of Arbitration 1999.

Anglo-Norwegian Fisheries Case (United Kingdom v. Norway) (1951), ICJ Reports 1951.

Fisheries Jurisdiction (United Kingdom v. Iceland), Merits, Judgment, (1974) ICJ Reports 1974.

Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Merits, Judgment (1991), ICJ Reports 2001.

Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway) (1993) ICJ Report

Norway v Sweden (Grisbadarna case*)* (1909)

Presidential Declaration Concerning Continental Shelf of 23 June 1947, *El Mercurio,* Santiago de Chile, 29 June 1947

Presidential Decree No 781 of 1 August 1947, *El Peruano: Diario Oficial,* Vol 107, No 1983, 11 August 1947

United Nations Convention on the Law of the Sea, 10 December 1982, UNTS 1833 at 3 (entered into force 16 November 1994)

Other sources

CLCS, *Communication received from China with regard to the Joint Submission by Malaysia and the Socialist Republic of Viet Nam,* 7 May 2009

International Law Committee, 'Juridical Regime of Historic Waters, Including Historic Bays'*,* in *International Law Commission Yearbook,* vol II (1962)

League of Nations Committee of Experts for the Progressive Codification of International Law, *Questionnaire No 2: Territorial Waters* (1926) 20:3 AJIL Supp 62

Report of The Thirteenth Session of the Asian-African Consultative Committee, Lagos, 18 -25 January 1972

Sea-Bed Committee, UN GAOR, 27th Sess, Supp No 21, UN Doc A/8721

United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, *Limits in the Seas,* No 112, United States Responses to Excessive National Maritime Claims (9 March 1992)