

PROTECTING THE MARINE ENVIRONMENT WITHIN THE EXCLUSIVE ECONOMIC ZONE (EEZ) FROM HUMAN ACTIVITIES

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Abstract: *Protecting the states' interests, achieving the balance between exploring and exploiting the resources of the International Seabed Area (the Area) from one side, and protection of environment and human life from the other side are the most important goals which should be the consideration particularly when it comes to usage of the "International Seabed Area". The Exclusive Economic Zone (EEZ) may soon face many enormous environmental challenges related to the Area's activities, especially in front of the modern technological development and increasing state interest in the Area's resources. In the current situation, the EEZ environment needs more protection. It establishes a new protection system that can be acceptable by all the States and provide natural protection to the EEZ from the activities carried out in the designated Area. The Area Mining system shows that the resources need more protection by decreasing the activities and controlling some kinds of the activities, for example the activities related to the exploitation of oil and gas, and making these last kinds of activities far from the EEZ. Establishing the Protection Area as a buffer zone between the EEZ and the Area will provide two kinds of protection to the EZZ environment and reduce the boundaries disputes amongst the continental shelf and the Area. This Area should be subject to the new system and different rules. Consequently, it is thought that one of the main issues confronting the states is the formation of this new territory.*

Keywords: *Environment Protection; Protection Zone; New System; Activities of the Area.*

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1. INTRODUCTION

The Current dispute between Russia and Ukraine shows the considerable need for power resources and other minerals, infrequent ones. With the number of current investments in the seabed area - this shows the high interest of the states in the Area. We trust that this number of activities in the Area will increase to unlimited as long as the prices of power resources and natural minerals increase. Thus, the activities in the Area will undoubtedly create legal problems and conflicts of interest related to the activities of investment (kind and quantity) and protection of the environment.



The marine environment and living resources of the high seas have received particular attention in the system of the “*United Nations Convention of the Law of the Sea (UNCLOS)*”¹. It elucidates the global ocean's legal framework and establishes guidelines for its management and usage.² However, there is no unified approach to safeguarding marine ecosystems from the dangers posed by human activities in the international seabed region, particularly those that take place near to EEZ. It is essential to mention here that the states or any other contractors have the right to start their activities in the International seabed Area directly after the end of the EEZ or after the end of the Continental Shelf, which extends beyond the EEZ, mean after 200 Nautical miles³. Continental Shelf, Mostly these spaces will never be enough to protect the benefits of the states in the EEZ from sudden accidents that may happen close to the EEZ. The UNCLOS system did not clearly define the contractor's responsibility when the damage and compensation need more than 30 million US dollars; also, the contractor is responsible or liable just for damages resulting from illegal activities.⁴ The Authority should seek and intend to draw the attention of potential investors to cooperate with the coastal states to protect and preserve the environment nearby the EEZ. As we know, the resources derived from the EEZ constitute substantial proceeds and incomes for many states, especially the developing ones, but what safeguards guarantee the EEZ's protection? And what are the direct and indirect compensations that can be offered to the affected coastal states in the case of the Exclusive Economic Zone exposed to significant risks because of the activities in the International Area.

As specified earlier, any contractor has the right to start its exploring activities directly at the EEZ and the Continental Shelf, which may pose a potential threat to the marine environment and the interests of the countries in the EEZ specifically for extracting oil and gas. Therefore, this study draws some limitations on the right of the exploitation of the International seabed Area and to create or establish a New Area (protection Zone) to protect the vital interests of all states in the EEZ. Because the effects and impacts will be dangerous to the economies of the states which depend significantly on the fish wealth, what are the limitations of using the International Area? What are the boundaries of the Protection Area? And what is its regime?

We will discuss this study in two parts; will talk in the first part will be about the limitations on the right of exploitation and exploration, while we will discuss the Protection Area boundaries and system in the second part, as follow;

- 1: Restrictions on International Exploration and Development Rights
- 2: The Protection Zone System.

2. RESTRICTIONS ON INTERNATIONAL EXPLORATION AND DEVELOPMENT RIGHTS

Here we must emphasize that the use of the International Area should not be absolute without limitations; instead, we must impose some limitations, for all uses of the International Area, on the states, activities, and places.

2.1. Limitations on the States.

More than ever, the global world is looking to the sea for adequate food and other resources to discharge the weight of the present and the future due to the growing population and diminishing

¹ The Part XII of UNCLOS.

² Kimball, Lee A. "The international legal regime of the high seas and the seabed beyond the limits of national jurisdiction and options for cooperation for the establishment of marine protected areas (MPAs) in marine areas beyond the limits of national jurisdiction." In *Secretariat of the Convention on Biological Diversity, Montreal, Technical Series*, vol. 19, p. 64. 2005.

³ The activities which take place after the continental shelf, which extends beyond the EEZ mean after 200 Nautical miles does not constitute same risk on the EEZ.

⁴ Article 30 of the Annex of regulation on prospecting and exploration for polymetallic nodules in the Area, which stipulates that: "Responsibility and liability of the contractor and of the Authority shall be in accordance with the Convention. The contractor shall continue to have responsibility for any damage arising out of wrongful acts in the conduct of its operations, in particular damage to the marine environment, after the completion of the exploration phase". Available at <http://www.isa.org.jm/files/documents/EN/Regs/MiningCode.pdf> (Accessed on 25-12-2022).



land resources. However, much as on Earth, overexploitation of the ocean's resources might result in depletion. According to the principle of the common heritage of humanity, which clarifies that the use of the Area is for future generations, not just the current one? Every State should have the right to use the International Area for limited times during specific years. For example, every State could have the right to get five explore or exploit contracts in the International Area every 70 years, or some other specific times, which could be more logical and more reasonable. The aim of this principle is to maintain the resources of the Area for future generations and to save these resources from waste and loss, also to protect the other states which produce the same minerals from their territories from the future development of technology, which may well make the using of the Area easier, from another side the states which did not ratify the UNCLOS yet should be prevented with their citizens from any activities related to use the international seabed area, Except the scientific researches, this prevention is concerned to the activities, not the benefits which could come from the international sea bed area.

According to Article 194/1 of UNCLOS: "the States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source". The obligation to reduce and control pollution allows us to justify that the states also have to find all successful ways to protect the marine environment, whether by reducing the Area's activities or taking preventive measures by working far from the EEZ.

2.2. Limitations on the Activities and Places

According to UNCLOS, every State⁵ or contractor has the right to use the International Area as long as this use conforms to the rules of the UNCLOS. But this freedom may lead to a mess and conflict in the use of the International Area; also, the growing international demand for oil and gas will make the states intensify their activities unexpectedly to extract the oil and gas. For these reasons, the activities of the states should be shackled and restricted to certain places. Therefore, the states should not be free to use all places of the International Area; for example, the State has the right to explore and exploit the International Area at two places every 40 years for exploration and exploitation of oil and gas. Moreover, the spaces of exploration and exploitation should be more limited. Furthermore, it should also restrain future probable oil and gas extraction processes. Such activities should be subject to exceptional control and be far from EEZ and affluent biodiversity areas.

On the other side, the International Seabed Authority should determine the activities number and activities kinds in each Area and make the maximum of activities. It should get the right to stop all kinds of activities if any severe or significant environmental risks founded with all respects of the investor's or contractors' rights.

2.3 Protect the marine environment from the Area's activities.

The UNCLOS tried to establish a protection system for the marine environment from the pollution of activities in the seabed Area. Still, many scholars see that is not enough, and UNCLOS will not be able to provide complete safety to the marine environment, whether in EEZ or high seas, especially from the undertakings of the "*International Seabed Area*". While the "*Convention on Biological Diversity*" decides the full responsibility of the State which caused the damage: "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".⁶

⁵ It indicates a country that has ratified the UN Convention on the Law of the Sea (a State Party, a governmental institution or a natural or legal person who holds the nationality of a State Party or is effectively under the control of a State Party or its nationals, if sponsored by a State Party). For further information, please refer to Article 153 of the UN Convention on the Law of the Sea.

⁶ Article 3 of the Convention on Biological Diversity



On the contrary, the convention spoke briefly about the State's obligation for the Area's activities. At the same time, the *SEABED DISPUTES CHAMBER* sees in his *ADVISORY OPINION* that: For the State to be held accountable, there must be proof of a direct causal relationship between its negligence and the harms brought on by the sponsoring contractor's negligence. If the sponsoring State takes "all necessary and suitable means to guarantee" that the sponsored contractor effectively conforms to its duties, the sponsoring State is released from responsibility. To ensure contractors follow their commitments and to shield the sponsoring country from national responsibility, UNCLOS mandates that sponsoring governments implement laws, rules, and administrative procedures. Even if the sponsoring contractor fails, the sponsoring state is not automatically responsible for their actions. It benefits mankind to operate in good faith, and the sponsoring nations do not have complete control over the laws and regulations.⁷

Front of the insufficient protection rules of the marine environment from the activities in the international sea bed area, adopting a regional convention under the supervision of the "International Seabed Authority" will be most effective. In the absence of rules to protect the marine environment from their resources, such as; the convention of protecting the Mediterranean Sea from pollution of 1976 and its following protocols. Some protocols are; "the *Kuwait Regional Convention of 1978 for the cooperation of environment protection from the pollution, and Jada convention of 1982 to protect the red sea and the Gulf of Aden*". Many other regional conventions for marine environment protection because marine environment protection requires and needs high Potentials and Sophisticated technical means, which can be so hard to Available in one country, especially to the developing states, also regional cooperation helps to reduce the hardships of the coastal states to face the marine pollution,⁸ this strategy found in the conventions related to the environment or Biological Diversity protection.⁹

3. THE PROTECTION AREA SYSTEM.

The protection Area can be one of the new parts of existing revolution of the International Law of the Sea, but at the same time will face many challenges to be accepted and recognized by all the states. Some of them will try to hamper this new project, as still happening with the Part XI of the UNCLOS. So what is the Idea of the protection Area? What Are The Boundaries of the Protection Area? And what is its system?

3.1. The Idea of Protection Area

It is noteworthy that many States are concerned about the protection of fish, especially in the exclusive economic zones; for example, Canada tried to introduce a new system to prevent other states from fishing close to EEZ and protect its wealth of fish.¹⁰ In our opinion, this attempt is illegal, instead should be sought to establish a system capable of protecting the fish and all living resources and the marine environment without abusing the rights of the other states regarding fishing. It also protects fishing not only for the coastal State but for all states, either coastal or landlocked. In my opinion, the attempt at Canada conflicts with some states' established rights, primarily in the high sea. Otherwise, many other states will find new reasons to occupy new Areas from the high seas, subject to the freedom principle.

This act shows us that any country will establish new systems to protect its benefits as long as international law cannot protect these interests. We will find many coastal states will refuse the International seabed Authority contracts if there is any potential damage or danger and put many Precautionary measures from one side, which may be against the principles of international law.

It's about us, the people, and our need for a steady supply of food, medication, fresh air, water, a safe place to sleep, and a roof over our heads. Excellent maritime environmental preservation is

⁷ Plakokefalos, Ilias. "Seabed Disputes Chamber of the International Tribunal for the Law of the Sea: Responsibilities and obligations of states sponsoring persons and entities with respect to activities in the Area *ADVISORY OPINION*." *Journal of environmental law* 24, no. 1 (2012): 133-143.

⁸ Driss EDdahak, the law of the sea and its practices in the Arabic countries, 1st Ed, 1987, p. 658

⁹ The convention on the Biological Diversity, Article, 5, 16, 17 and 18.

¹⁰ ICJ, general list no. 96. fisheries jurisdiction Spain V Canada.



predicated on the understanding that plants are just a small part of the environment and biodiversity. At the forefront of this idea is the “*Conference of the Parties to the Convention on Biological Diversity (COP)*”,¹¹ which establishes protected areas for various species of plants and animals.¹² But this policy and protected areas protect some areas which require protection and also need the decision to determine the areas which need such protection. And then it does not protect whole areas related directly to the EEZ; that is why the Protection Area will be more practical and mo. Also, the protected area system will be able to protect the EEZ from the International Seabed Area in the short, medium, and long term.

In addition, the concept of creating protected zones is founded on the notion of safeguarding the legitimate rights and interests of coastal nations, as Paragraph 12 of “the United Nations Declaration of Principles from the year 1970” specifies:

“In their activities in the area, including those relating to its resources, States shall pay due regard to the rights and legitimate interests of coastal States in the region of such activities, as well as of all other States, which may be affected by such activities...”¹³

Some people might argue that adequate conservation measures cannot be found until there is a danger that may damage the value of a protected region and that there is no reason to establish a protected area unless such a threat exists. Some people would argue that the establishment of protected zones is not, in and of itself, sufficient to ward off some kinds of dangers.

One of the key aims of environmental preservation is to realise people’s right to live and flourish in a healthy environment and to strike a balance between economic growth and environmental conservation by reaping the benefits of the international seabed region. It is one of the fundamental systems for realizing human rights. In addition, environmental protection systems consist of methods, conditions, and instruments for the long-term sustainable management of natural resources and the prevention, control, reduction, and restoration of all types of environmental pollution.¹⁴

The subject of the outer boundaries of the continental shelf, as well as the question of the inner limits of the international seabed zone, is now being debated. Both of these questions are related to the international seabed zone. On the other hand, several other policy issues arose; establishing a buffer zone (protected region) between the international seabed area and the continental shelf would eliminate many territorial disputes. It will assist in protecting the ecology of the EEZ from operations in the region of the international seabed.

The relationship between the activities in the Area and the environmental protection of the EEZ reflects the relationship between common heritage and the specific private interest of coastal states, which cannot be balanced without using the sustainable development norm. This norm leads us to find a healthy relationship between the needed activities in the Area and the protection of EEZ biodiversity and the environment. Judge “WEERAMANTRY, in his SEPARATE OPINION”, argued that: “there are other factors to be taken into account - not the least important of which is the developmental aspect, for the Gabčikovo scheme is important to Slovakia from the point of view of development. The Court must hold the balance even between the environmental considerations and the developmental considerations raised by the respective Parties. The principle that enables the Court to do so is sustainable development. The Court has referred to it as a concept in paragraph 140 of its Judgment. However, I consider it to be more than a mere concept, but as a principle with a

¹¹ Fink, Matthäus. “3 Protected Areas under the Convention on Biological Diversity in International Investment Law: Conflicts and Solutions.” In *Frontiers of International Economic Law*, pp. 43-70. Brill Nijhoff, 2014.

¹² Hall, C. Michael. “Tourism and the implementation of the Convention on Biological Diversity.” *Journal of Heritage Tourism* 5, no. 4 (2010): 267-284

¹³ UNGA Resolution NO 2749 (XXV), “Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction of 1970”.

¹⁴ Chen, Min, Qian Liu, Shuai Huang, and Chenlu Dang. “Environmental cost control system of manufacturing enterprises using artificial intelligence based on value chain of circular economy.” *Enterprise Information Systems* 16, no. 8-9 (2022): 1856422.

normative value which is crucial to the determination of this case. Without the benefits of its insights, the issues involved in this case would have been difficult to resolve".¹⁵

And he added: "Since sustainable development is a principle fundamental to the determination of the competing considerations in this case, and since, although it has attracted attention only recently in the literature of international law, it is likely to play a major role in determining important environmental disputes of the future".¹⁶

The decision of the Hong Kong Supreme Court to determine that policymakers have not entirely adhered to the principles of sustainable development is based on the reasoning of a majority of the Court. The judge ruled: "*The concept enables the Court to balance environmental protection and development considerations (...). The Board's approach towards reclamation ... seen in this light, is clearly inadequate*".¹⁷

In the same context, the New Delhi conference stated that: "The objective of sustainable development involves a comprehensive and integrated approach to economic, social, and political processes, which aims at the sustainable use of natural resources of the earth and the protection of the environment on which nature and human life, as well as social and economic development, depend and which seeks to realize the right of all human beings to an adequate living standard based on their active, free and meaningful participation in development and the fair distribution of benefits resulting there from, which due regard to the needs and interests of future generations".¹⁸

The idea of a Protection Area is based on the principle of protecting the coastal State's rights and its legitimate interests, the landlocked State's interests in the EEZ, and human life needs, as well as the principles of sustainable development¹⁹, the common heritage of humankind, and preventive measures.²⁰

3.2. Boundaries of the Protection Area

The width of the Protection Area should not be determined randomly; instead, it should be rationalized by keeping in view the protection of the resources of the EEZ. And considerate the ability of coastal states and the Authority to have enough time and space to besiege the pollution before accessing and influencing the resources of EEZ. In my opinion, the width of the Protection Area should be between 6 and 30 Nautical miles. This width should be determined according to the available possibilities for besieging pollution, where this Area permits besiege pollution before access to the EEZ without causing the confiscation of great places from the International Area. This Area starts from the end of the external borders of the Continental Shelf, which means after 200 Nautical miles as the main principle (200 + (from 6 to 24 Nautical miles)). The Area is between the EEZ and the High Sea when the continental shelf ends at 200 NM or between the "*Continental Shelf and the International Area*" in other cases.

As for the Continental Shelf beyond 200 nautical miles to 350 nautical miles, in this case, we can not talk about the establishment of the Protection Area or a buffer Zone to protect the EEZ because the EEZ will be far enough from the activities that the foreign countries could exercise in the International Area. Therefore, the Protection Area is related to the Continental Shelf, which ends at

¹⁵ ICJ, Gabčíkovo-Nagymaros Project Case (Hungary/Slovakia), Judgment of 25 September 1997, Separate Opinion of Vice-President Weeramantry, P. 88, Separa Not. 4. Available at: <https://www.icj.org/fles/case-related/92/092-19970925-JUD-01-03-EN.pdf>

¹⁶ Ibid.

¹⁷ Hong Kong High Court Judgment, Society for the Protection of the Harbour Ltd v Town Planning Board Case [2003] HKCU 793, [86]-[87] (Hon Chu J).

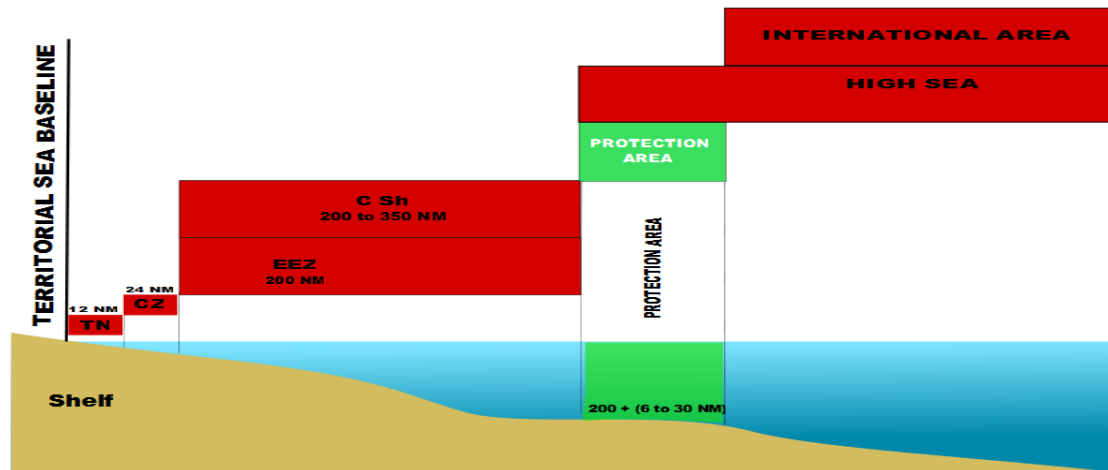
¹⁸ Brus, Marcel MTA. *Soft law in public international law: a pragmatic or a principled choice? Comparing the sustainable development goals and the Paris Agreement*. Springer International Publishing, 2018.

¹⁹ Daran, Driss. "The Sustainable Development and the Right of Future under the International law." *Journal of Law* 16, no. 2 (2019).

²⁰ French, Duncan. "From the depths: rich pickings of principles of sustainable development and general international law on the ocean floor—the seabed disputes chamber's 2011 advisory opinion." *The International Journal of Marine and Coastal Law* 26, no. 4 (2011): 525-568.

200 nautical miles or extends to less than (6 to 30) nautical miles after 200 nautical miles.²¹ But on the other side, we also can use it as a buffer Zone between the Continental shelf and the Area to save the boundaries disputes, as we said before.

Boundaries of the Protection Area.



3.3. Regime of Protection Area (the New Area)

The purpose of establishing protected areas is to maintain and protect the EEZ from the pollution caused by the use of the international seabed area. Additionally, establishing protected areas forms a buffer zone between the continental shelf and the international seabed area. Therefore, differentiation must be established between the condition of the ocean bottom inside a protected region and the water above it.

3.3.1. The regime of the waters above the Protection Area

The waters above the Protection Area are subject to the rules that regulate and govern the High Sea; therefore, such waters are not affected by the New System of the Protection Area. Also, the coastal State has no right to extend its fishing rights or control rights over the water of the Protection area. Additionally, the International seabed Authority has to face any attempt to occupy the water above the new Area; the Authority should have the right to control the new Area or ask for cooperation to control it. Therefore the coastal State has no special right in the new Area, except if the Authority asked for the cooperation from this coastal State.

As for the other states, their rights in the new Area will not be affected, such as the fishing right and the freedom of navigation..., so the status of the new area water will not affect. All the changes will be related to the bed of the new sea area; the role of this water is to protect the extern boundaries of EEZ from international sea bed area activities.

3.3.2. The seabed of the Protection Area

To begin, no one country or group of countries should have the right to claim sovereignty over this Area; instead, it should fall under the protection of the notion of the common heritage of humanity. States have no right to exercise any activities in the Protection Area's seabed except for scientific research exercised by the Authority itself or under the cooperation between the Authority and the states or other persons. And this Area shall be subject to the control of the Authority and the coastal states nearby if the Authority asks for help. All states should inform the Authorities about the abuses that may occur in this Area.

- Therefore, this Area is subject to many principles, such as:
- The common heritage of mankind;
- International and regional cooperation;

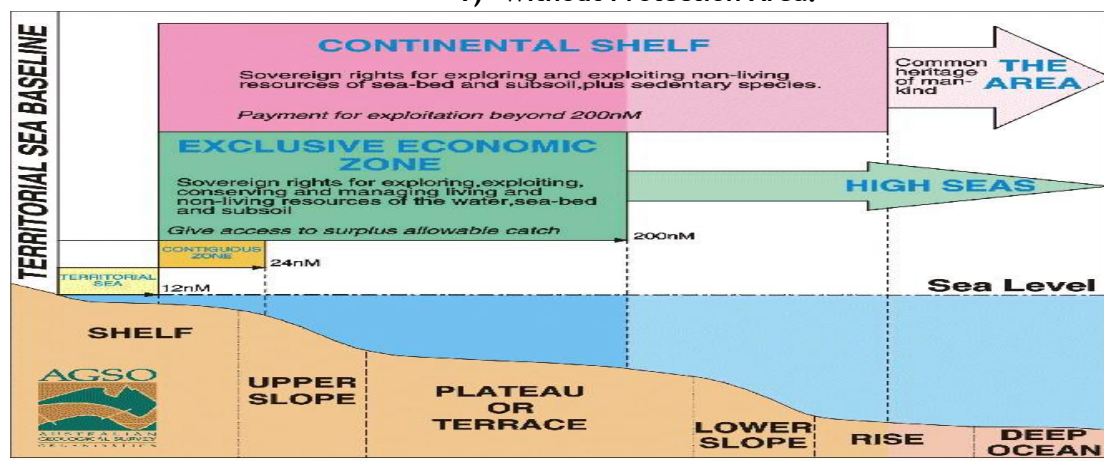
²¹ the UNCLOS, Art. 76, (Para. 1 to 6), which determined the borders of continental shelf.

- Peaceful purposes;
- Control of the international seabed Authority.

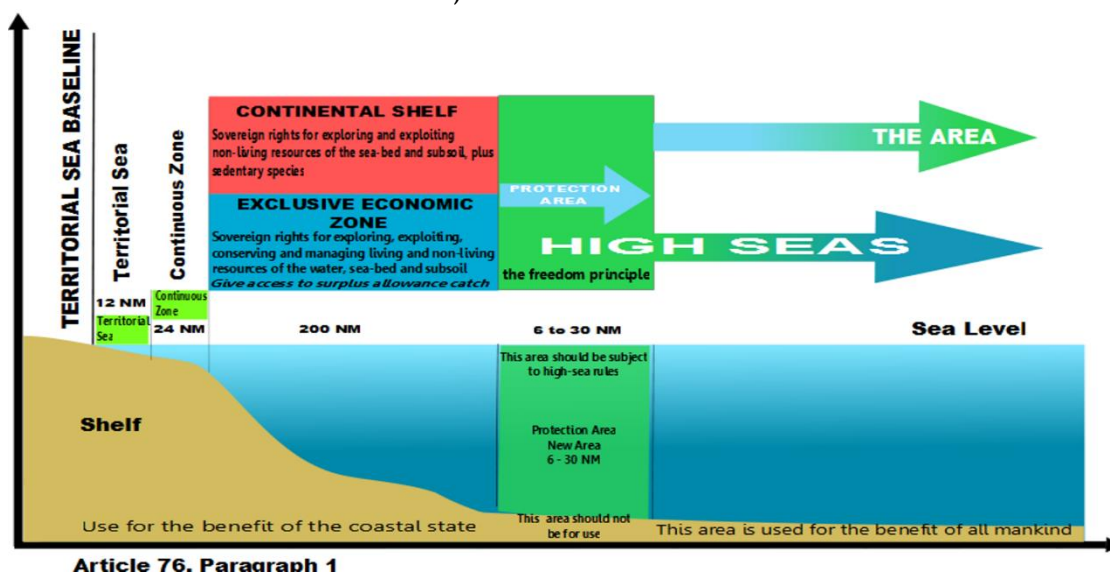
It is more related to the continental shelf, which ends at 200 NM or less than 230NM; I suggested any other distance could determine by the international sea bed authority or any other conference or agreement because this Area can be smaller or bigger according to the outer end of the continental shelf

Comparison between the Sea areas system with and without Protection Areas is specified as under;

1) Without Protection Area.



2) With Protection Area.



4. CONCLUSION

The balanced relationship between the Using of the Sea bed Area and the environmental protection of the EEZ is one of the most important current challenges in front of the Law of the Sea, and the actual protection of the marine environment needs honest and effective initiative from all the countries to achieve this goal.

Putting limitations on the right to use the International Seabed Area -whether on the kind or number of the activities- will help to reduce the damages and push the State or the contractor to focus on limited projects, then provide more protection. These limitations will help to save the economics and interests of other states and the International Seabed Area resources for coming generations and for a long time. The activities that may result in more effects and damage should be more limited and far from human life.



Establishing a new protection area between the EEZ and the Activities of the International Seabed Area will be more practical and reasonable to follow for protecting the EEZ's marine environment and living resources. Moreover, it provides more time for the contractor, coastal State, and the Authority to take emergency measures to stop the pollution before touching the EEZ. Because this Protection Area will be Buffer Zone between the Coastal State Activities on the Continental Shelf and the contractor's activities in the International Seabed Area.

The protection area space can be between 6 to 30 Nautical Miles, and this Area will belong to the high water but will have a unique system as a seabed, and it is located between the EEZ and high sea even if it belongs to the high sea system. Therefore just its seabed will not be able for use. It is located between the continental shelf and the International Seabed Area as Buffer Zone and should be subject to an independent system and principles.

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