

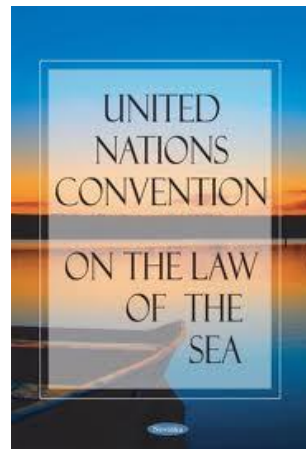
POLICY PERSPECTIVES

The Centre for Resource Management and Environmental Studies (CERMES) has initiated this occasional outreach publication, *Policy Perspectives*, primarily in order to share some of the lessons learnt from ongoing research. The interdisciplinary applied research at CERMES emphasizes learning-by-doing through the collaboration of researchers, beneficiaries and other interested parties. The information in these policy briefs may be used by policy-makers and their advisers to strengthen the linkages between research outputs and policy-making in the Caribbean. This connection is often weak in marine resource governance, but is especially important to develop in complex adaptive social-ecological systems.

State Sovereignty and Fisheries Management *by guest Milton Haughton, CRFM Secretariat*

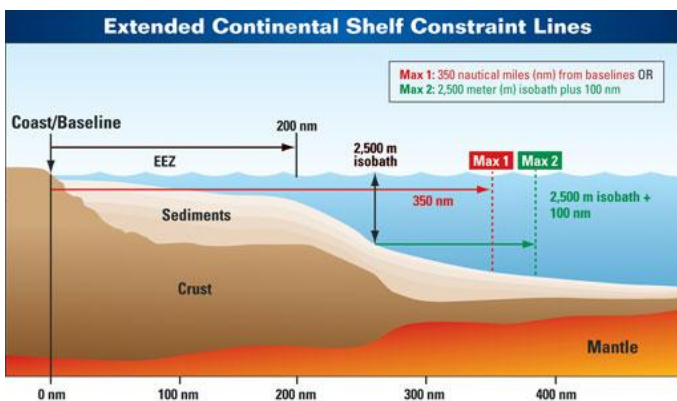
Any serious discussion among representatives of Caribbean States on the subject of cooperation for long-term sustainable use, conservation and management of the fisheries resources of the Caribbean Sea is likely to turn to the sensitive issue of sovereignty over the resources. This is because the exploration, use, conservation and management of the living marine resources in a coastal state's territorial waters and exclusive economic zone (EEZ) is governed mainly by the legal principle called "Permanent Sovereignty over Natural Resources."

It gained prominence in international law during the period of decolonization as former colonies began to assert control over their internal affairs and the natural resources within their territories.



The principle is found in a number of United Nations documents including UN General Assembly Resolution 1803 (XVII) of December 14, 1962; the 1972 Stockholm Declaration; the 1992 Rio Declaration; and Convention on Biological Diversity (CDB). The principle was codified in the 1982 Convention on the Law of the Sea (UNCLOS).

We will examine the concept as it pertains to fisheries within the territorial waters and EEZ. However, before doing so, it is useful to make a few remarks regarding the high seas. The basic rule is that fish stocks on the high seas are outside the jurisdiction of any state. Thus, no state has sovereignty and all States have the freedom to fish subject to a number of far-reaching qualifications. They must operate in a manner that is consistent with the interests of other states and must cooperate with other states or through Regional Fisheries Management Organizations (RFMOs) to conserve and manage the living resources. On the high seas a state is responsible for regulating the activities of vessels flying its flag, and increasingly also has obligations to police its citizens.




Defining the Exclusive Economic Zone (EEZ) and continental shelf. *The National Oceanic and Atmospheric Administration (NOAA)*

According to this principle, a State has sovereign right to use natural resources within its territory in the interest of national development and of the well-being of its people.

The Principle of Permanent Sovereignty

The principle of permanent sovereignty over natural resources is an important part of the wider principle of self-determination, state sovereignty and independence.



With regard to fisheries within the territorial sea, international law provides that a state has permanent sovereignty over their natural wealth and resources to be used in the interest of national development and the well-being of the people of the state.

This principle has been restated in several international instruments including the CDB which, affirms that “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.”

Principle of Permanent Sovereignty: Limitations

The principle of permanent sovereignty over natural resources is, however, not absolute. There are limitations imposed by international law, which vary depending on whether the resource is within the territorial waters or EEZ, and the species in question.

The basic limitation may be illustrated using the concept of the freedom of an individual. In a democratic society each individual is entitled to liberty, but there is a limit. He cannot use his liberty to deprive other individuals of their liberty or cause them harm. In a similar way, international law provides that, as a general rule, a state cannot use its territory or natural resources in a manner that will cause harm to another state.

The CDB, for example, imposes on states the duty “to ensure that activities within their own jurisdiction or control do not cause damage to the environment of other states in areas beyond the limits of national jurisdiction.” Thus, within its territorial sea, a state has absolute right over its fisheries, which is limited only by the duty not to cause harm to the environment, including the fisheries, of other states. A breach of this duty by the state or natural or legal persons under its jurisdiction may give rise to liability on the state in international law.

Within the EEZ, use of fishery resources is still governed primarily by the doctrine of permanent sovereignty, but there are more limitations. In addition to the duty not to cause harm to other states, there are several general conservation and cooperation duties which the coastal state must observe. The United Nations Law of the Sea Convention provides that a coastal state has the sovereign right to exploit, conserve, and manage living and non-living natural resources, giving due regard to the rights and duties of other states.

States may pursue the objective of optimum utilization of the fisheries resources, but without prejudice to certain conservation duties. The state alone is empowered to determine the allowable catch in its EEZ. However, there is a requirement to take into account the best scientific evidence available to ensure that the resources are not endangered by over-exploitation.

In respect of harvested species, the state must adopt conservation and management measures to maintain or restore populations at levels that can produce the maximum sustainable yield, taking into account at least environmental and economic factors.

For species that are not targeted by fishing, the state must adopt conservation and management measures that take into consideration the effects on species associated with, or dependent upon, harvested species. These measures must be designed to maintain or restore non-target species above levels at which their reproduction may become seriously threatened.

The limitations are more far-reaching for species that are shared, straddling and highly migratory. International law imposes a duty on states to cooperate either directly, or through regional organizations, to achieve conservation, management and development of these stocks.

Regional fisheries bodies (RFB) including RFMOs are composed of sovereign states. In becoming members of such organizations states exercise their sovereignty and accept the rules of the organizations. The doctrine of state sovereignty is at the core of the decision-making within RFBs. In consequence, the rules for membership and decision-making, and whether a specific decision is made, are completely in the hands of the states that are members of the RFB. Furthermore, decisions regarding conservation, management and use of the fisheries are not binding on a state without its direct consent.

While there are some limitations, the doctrine of state sovereignty dominates the use and conservation of fisheries within a coastal state’s territorial sea, EEZ and even on high seas where decisions are made in RFMOs.

This policy brief is an output of the CERMES project on *Marine resource governance in the eastern Caribbean* (the *MarGov project*). Its preparation was carried out with the aid of a grant from the International Development Research Centre (IDRC), Ottawa, Canada. The views expressed are those of the author(s) and do not necessarily represent those of the IDRC. The material in this publication may be freely reproduced for non-commercial use provided suitable credit is given. Additional information on MarGov and related initiatives is on the CERMES web site.