



January 1952

The Continental Shelf: International Aspects

W. E. Benton

Recommended Citation

W. E. Benton, *The Continental Shelf: International Aspects*, 6 Sw L.J. 448 (1952)
<https://scholar.smu.edu/smulr/vol6/iss4/2>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in SMU Law Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

THE CONTINENTAL SHELF: INTERNATIONAL ASPECTS

W. E. Benton*

TECHNOLOGICAL developments in recent years have made possible the exploration and exploitation of the natural resources of the subsoil and sea bed of the continental shelf. The seaward expansion of the oil industry has created a need for international legislation which will insure freedom of the seas and, at the same time, regulate industrial activity in that part of the continental shelf lying beyond the territorial waters of coastal States. In recognition of this need, the United Nations International Law Commission has prepared some Draft Articles on the Continental Shelf and Related Subjects.

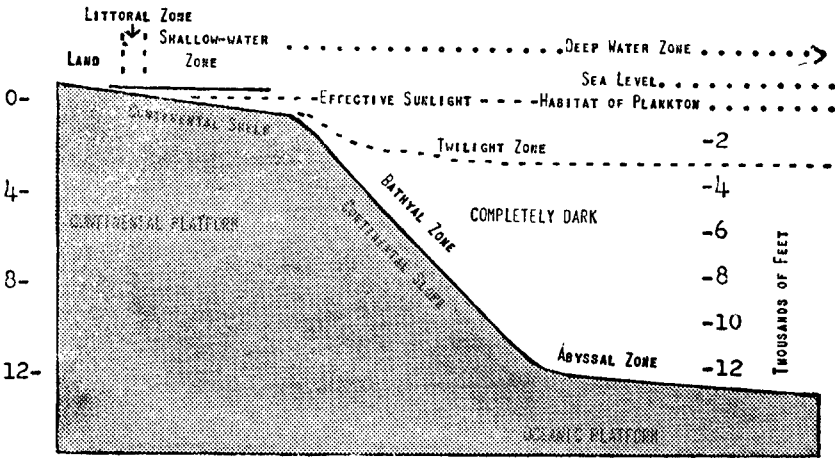


FIG. 171 — Schematic section to show the zones of marine sedimentation.¹

*Ph.D., The University of Texas; Assistant Professor of Government, Southern Methodist University.

¹ ARTHUR HOLMES, PRINCIPLES OF PHYSICAL GEOLOGY (The Ronald Press Co., New York, 1945) 313, 314, (reproduced by permission of the publisher). See also ROBERT M. GARRELS, A TEXTBOOK OF GEOLOGY (Harper & Brothers, New York, 1951) 17, 18.

"In general the edges of the continental platforms do not correspond with coast lines. Instead the descent, continental slope, to the deep ocean basins is usually a

The term "continental shelf" has been used in various ways by scientists and laymen alike. For example, the geologists consider the continental shelf to be that area extending seaward from coast to a point where the sea covering the continental shelf reaches a depth of 200 meters.² At this point, according to the geologists, the continental shelf ends, and the continental slope begins, falling steeply to a great depth. Because of the varied use of the term, the Commission found it impossible to adopt the geological concept as a basis for the legal regulation of the problem. Therefore, it became necessary for the Commission to formulate its own concept.

As used in The Draft Articles,³ the continental shelf "refers to the sea bed and subsoil of the submarine areas contiguous to the coast, but outside the area of territorial waters, where the depth of the superjacent waters admits of the exploitation of the natural

considerable distance off-shore and begins at an average depth of 600 feet. The area of shallow-water bottom, more or less wide, between the shore line and the top of the relatively steep continental slope is called the continental shelf. . . ." O. D. von ENGELN, *GEOMORPHOLOGY* (The Macmillan Co., New York, 1942) 46 (quoted by permission of the publisher).

"The large areas of low-lying land have their counterpart in the relatively large areas in shallow water between the surface and approximately 200 m. . . . These coastal areas of shallow depth correspond to the continental shelves. Below the continental shelf there is a relatively small area of depths between 200 m and 3000 m, corresponding to the continental slope, and then follows the extensive oceanic abyss, with depths between about 3500 and 6000 m. . . . The continental shelf is generally considered to extend to depths of 100 fathoms, or 200 m, but Shepard (1939) found that the limit should be somewhat less than this; namely, between 60 and 80 fathoms (110 and 146 m). . . . The continental shelf varies greatly in width and slope. In some cases, as off mountainous coasts, the shelf may be virtually absent, whereas, off glaciated coasts and off the mouths of large rivers and areas with broad lowlands, the shelf may be very wide. For the world as a whole, the shelf width is approximately 30 miles, with a range from zero to over 800 miles. This extremely wide shelf is found in the North Polar Sea along the coast of Siberia." H. U. SVERDRUP, MARTIN W. JOHNSON, AND RICHARD H. FLEMING, *THE OCEANS THEIR PHYSICS, CHEMISTRY, AND GENERAL BIOLOGY* (Prentice-Hall, Inc., New York, Copyright, 1942) 19-22 (quoted by permission of the publisher).

² 100 fathoms is 600 feet or 182.88 meters; 200 meters is 109.36 fathoms.

³ The Draft Articles on The Continental Shelf and Related Subjects may be found in 45 Am. J. Int. Law, *Official Documents*, pp. 139-147 (1951). Report of The International Law Commission, Third Session, May 16-July 27, 1951, U. N. General Assembly, 6th Sess., Official Records, Supp. No. 9, Doc. A/1858; see also Doc. A/CN. 4/48, July 30, 1951.

resources of the sea bed and subsoil."⁴ The Commission refused to adopt "a fixed limit for the continental shelf in terms of the depth of the superjacent waters."⁵ Neither did the Commission see any practical need "of fixing both minimum and maximum limits for the continental shelf in terms of distance from the coast."⁶

The Commission admitted in an explanatory note "that a limit fixed at a point where the sea covering the continental shelf reaches a depth of 200 meters would at present be sufficient for all practical needs."⁷ Nevertheless, technical developments in the future may make it possible for the resources of the sea bed to be exploited at a greater depth than 200 meters. Furthermore, "the continental shelf might well include submarine areas lying at a depth of over 200 meters but capable of being exploited by means of installations erected in neighboring areas where the depth does not exceed this limit.⁸ For those reasons, among others, the Commission did not specify a depth-limit of 200 meters.⁹

Nevertheless, the Commission did place limitations on the term "continental shelf." These limitations may be summarized as follows: (1) *the term "continental shelf" refers to the sea bed and subsoil of the submarine areas* (it in no way extends to the waters covering the continental shelf; this limitation was designed to protect the legal status of the superjacent waters as high seas) (2) *contiguous to the coast* (the words "continental coast" and "coastal state" are omitted in Article I; therefore, the word "con-

⁴ The Draft Articles, Pt. I, Art. 1.

⁵ *Ibid.*, n. 6.

⁶ *Ibid.*, n. 7.

⁷ *Ibid.*, n. 6. Some "claims have been made up to as much as 200 miles; but as a general rule the depth of the waters at that distance from the coast does not admit of the exploitation of the natural resources of the subsoil." *Ibid.*, n. 8.

⁸ *Ibid.*, n. 6. The Commission made it clear that it had no intention of restricting "exploitation of the subsoil of the sea by means of tunnels driven from the main land." *Ibid.*

⁹ "There was yet another reason why the Commission decided not to adopt the geological concept of the continental shelf. The mere fact that the existence of a continental shelf in the geological sense might be questioned in respect of submarine areas where the depth of the sea would nevertheless permit exploitation of the subsoil in the same way as if there were a continental shelf, could not justify the application of a discriminatory legal system to these 'shallow waters.'" *Ibid.*, note 2.

tinental" in the term "continental shelf" does not apply exclusively to continents, but also applies to islands, and possibly other areas, which have contiguous submarine areas) (3) *but outside the area of territorial waters* (territorial waters — as well as the continental shelf below and air space above — are subject to the sovereignty of the coastal State) (4) *where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea bed and subsoil* (excluded from the continental shelf are those areas in which exploitation is not technically possible because of the depth of the waters; even so, technological developments may cause this limitation to be altered from time to time).

Having defined or delimited the term "continental shelf" in Article I, the Commission proceeded to develop the concept. Accordingly, in Article II the Commission declared: "The continental shelf is subject to the exercise by the coastal State of control and jurisdiction for the purpose of exploring it and exploiting its natural resources." In other words, the control and jurisdiction to be exercised by the coastal State is limited to the purpose stated — that being the exploration and exploitation of the natural resources of the sea bed and subsoil. Also "the article excludes control and jurisdiction independently of the exploration and exploitation of the natural resources. . . ." ¹⁰

One member of the Commission was of the opinion that the exploitation of the natural resources of the continental shelf might be entrusted to the international community. This view was not shared by the other members of the Commission. The majority believed that under present circumstances "such internationalization would meet with insurmountable practical difficulties, and it would not ensure the effective exploitation of the natural resources which is necessary to meet the needs of mankind." ¹¹

The Commission thought it would "serve no purpose to refer to the sea bed and subsoil of the submarine areas in question as

¹⁰ Pt. I, Art. 2, n. 1.

¹¹ *Ibid.*, n. 2.

res nullius, capable of being acquired by the first occupier." Such a conception might create a number of problems, "and it would disregard the fact that in most cases the effective exploitation of the natural resources will depend on the existence of installations on the territory of the coastal State to which the submarine areas are contiguous."¹² Therefore, the exercise of the right of control and jurisdiction over such submarine areas would be independent of the concept of occupation. Effective occupation, at least under present conditions, would be almost impossible. Also, the Commission advised that resort to a fictional occupation would not be desirable. Thus, "The right of the coastal State under Article 2 [would be] independent of any formal assertion of that right by the State."¹³

It will be noted that Article 2 does not stipulate that the coastal State would have "sovereignty" over the submarine areas of the continental shelf. "As control and jurisdiction by the coastal State would be exclusively for exploration and exploitation purposes, . . . [such power could not] be placed on the same footing [with] the general powers exercised by a State over its territory and its territorial waters."¹⁴

Consequently, it appears that the International Law Commission was of the opinion that the exercise of territorial sovereignty over the continental shelf area might not only interfere with freedom of the seas and air navigation, but also might require some sort of occupation to meet the requirements of orthodox international law. But what type of occupation and state control would be necessary? Would the area have to be settled, or would the mere patrolling of the area by the fleet meet the requirements of law? The latter method of control would prove difficult for those nations with small navies. Realizing the practical problems involved, the International Law Commission specifically limited control and jurisdiction over the continental shelf to the exploration and ex-

¹² *Ibid.*, n. 4.

¹³ *Ibid.*, n. 5.

¹⁴ *Ibid.*, n. 7.

ploitation of its natural resources. Thus, the question of occupation, at least in the traditional sense, does not arise. Even if one admit that effective occupation is required by international law, the concept could, of course, be modified by a multilateral convention.

The Draft Articles further provide that "the exercise by a coastal State of control and jurisdiction over the continental shelf does not affect the legal status of the superjacent waters as high seas.¹⁵ . . . [Nor does it affect] the legal status of the airspace above the superjacent waters."¹⁶ Furthermore, ". . . the exercise by such coastal State of control and jurisdiction over the continental shelf may not exclude the establishment or maintenance of submarine cables."¹⁷ Despite these limitations a coastal State would have the right "to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources."¹⁸ What constitutes "reasonable measures" might create a number of legal problems in the future.

The International Law Commission realized that the presence of installations necessary for the exploration and exploitation of the subsoil of the continental shelf would interfere with navigation and fishing on the high seas. In an effort to limit such interference, the Commission included a separate Article in the Draft which provides:

(1) The exploration of the continental shelf and the exploitation of its natural resources must not result in substantial interference with navigation or fishing. Due notice must be given of any installation constructed, and due means of warning of the presence of such installations must be maintained.¹⁹

(2) Such installations shall not have the status of islands for the purpose of delimiting territorial waters, but to reasonable distances

¹⁵ Pt. I, Art. 3.

¹⁶ Pt. I, Art. 4.

¹⁷ Pt. I, Art. 5. This Article was designed to protect the rights of non-nationals to establish and maintain submarine cables in the superjacent waters.

¹⁸ Pt. I, Art. 5.

¹⁹ Governments and interested groups would be notified of the existence of installations. Such notification would make it possible to include the latter on navigation charts. Furthermore, it would be necessary to equip the installations with warning devices, *i.e.*, lights, audible signals, radar, buoys, etc.

safety zones may be established around such installations, where the measures necessary for their protection may be taken.²⁰

The above Article stipulates that navigation and fishing will be considered a primary interest since the exploration and exploitation of the natural resources of the continental shelf must not result in "substantial interference" with these rights. But what constitutes "substantial interference"? Certainly the exploitation of the subsoil resources in a narrow channel which is essential for navigation would be prohibited by the Article. In such an area "the claims of navigation should have priority over those of exploitation."²¹ Nevertheless, the meaning and interpretation of "substantial interference" could produce numerous conflicts in the future.

It is possible that the same continental shelf would be contiguous to the territory of two or more States. The Commission suggested, as a means of preventing conflict, that the States concerned establish boundaries in the area of the continental shelf by agreement. "Failing agreement, the parties [would be] under . . . obligation to have the boundaries fixed by arbitration."²² Since no general rule exists for the establishment of such boundaries, the States concerned would, if they failed to reach an agreement, be obligated to submit the matter to arbitration or adjudication *ex aequo et bono*.

Another boundary problem would arise in the event "the territories of two States [were] separated by an arm of the sea." In such case "the boundary between their continental shelves would generally coincide with some median line between the two coasts."²³ The configuration of the latter might make it difficult to establish a median line. This difficulty could be resolved by arbitration or adjudication.

²⁰ Pt. I, Art. 6. In regard to the establishment of safety zones around installations, "The Commission felt that a radius of 500 meters would generally be sufficient, though it was not considered advisable to specify any definite figures." *Ibid.*, n. 4.

²¹ *Ibid.*, n. 1.

²² Pt. I, Art. 7. The term "arbitration" is used in the broad sense. It includes the submission of such controversies to the International Court of Justice for settlement.

²³ Pt. I, Art. 7, n. 2.

The Commission was of the opinion that certain related subjects, such as the regulation of fishing activities and the conservation of the resources of the sea, should not be included in the Articles on the Continental Shelf. Therefore, in Part II of the Draft, the Commission submitted separate articles on the Resources of the Sea, Sedentary Fisheries, and Contiguous Zones. These articles need not be considered in this paper.

In pursuance of the Statute of the Commission, The Draft Articles on the Continental Shelf and Related Subjects have been transmitted to the various Governments in order that the latter may submit their comments within a reasonable time. At some later date, the Rapporteur and the members appointed for the purpose will reconsider the draft, taking into consideration the comments submitted by the Governments. When their work is completed, a final draft and explanatory report will be presented to the Commission for consideration and adoption. Upon the approval of the Commission, the Draft and recommendations of the latter will be submitted to the General Assembly.²⁴

Until an international agreement is concluded, individual States may continue to regulate the exploration and exploitation of the minerals beneath the continental shelf. For example, the American Proclamation, which is in accord with the Draft Articles, declares as follows:

* * * * *

Whereas it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources;

²⁴ Statute of The International Law Commission, Art. 16.

Therefore,

* * * * *

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected. . . .²⁵

In the Preamble of the American Proclamation the continental shelf is considered an extension of the land-mass of the coastal Nation and thus naturally appurtenant to it. Furthermore, the Government of the United States has declared in the body of the Proclamation that it "regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control." Thus, the United States has declared that both the seaward land-mass and the natural resources of the subsoil and sea bed of the continental shelf appertain or belong to the United States. Do the provisions relating to appurtenance amount to a declaration of sovereignty over the continental shelf? Furthermore, does jurisdiction and control over the natural resources of the subsoil and sea bed of the continental shelf amount to sovereignty over the sea bed and subsoil itself?²⁶ Some observers, including Professor Brierly,²⁷

²⁵ U. S. Proclamation with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, September 28, 1945, 10 Fed. Reg. 12303.

²⁶ "It is difficult to see what distinction there is between control over the 'natural resources' and control over the subsoil and sea bed themselves. Anything of value might be included in 'natural resources,' and any use or interference with the subsoil or sea bed might equally be regarded as a use of or interference with their 'natural resources.'" Vallat, *The Continental Shelf*, 23 Brit. Y.B. Int. L. 333, 336, 337 (1946).

²⁷ "If the littoral State had exclusive rights of control and jurisdiction over the subsoil, it could be regarded as enjoying sovereignty." (1950) U. N. Doc. A/CN.4/SR. 68, p. 8.

Sir Cecil Hurst,²⁸ Mr. F. A. Vallat,²⁹ Mr. L. C. Green,³⁰ and Mr. Richard Young,³¹ have answered the latter question in the affirmative. Therefore, some contend the American Government has not been as forthright as those Governments which used the term "sovereignty" in their Proclamations.

The American Proclamation declares that the contiguous nation has the right to exercise jurisdiction and control over the natural resources of the subsoil and sea bed of the continent shelf beneath the high seas. Does this mean the United States invoked the doctrine of contiguity to justify the exercise of sovereignty over the seaward land-mass? According to Mr. L. C. Green,

... the United States accepted the award in the *Palmas* arbitration.³² In that case Judge Huber declared that "title of contiguity, understood as a basis of territorial sovereignty, has no foundation in international law. . . . Nor is this principle of contiguity admissible as a legal method of deciding questions of territorial sovereignty, for it is wholly lacking in precision and would in its application lead to arbitrary results." The doctrine of contiguity has about as much validity as the similar concepts of "spheres of influence" and "hinterland. . . ."³³

²⁸ "It is difficult to see in what respect the rights which are claimed are less than sovereignty . . . : if the rights claimed over the Continental Shelf are less than sovereignty, then it is difficult to see the justification for the exclusive nature of the control claimed." Summary of a paper read to The Grotius Society by Sir Cecil Hurst, on Dec. 1, 1948. See by the same author, *The Continental Shelf*, 2 Int. L. Q. 640 (1948-49).

²⁹ "... '[J]urisdiction and control' are tantamount to sovereignty." Vallat, *op. cit. supra* note 26 at 337.

³⁰ "It is difficult . . . to see the difference between asserting that something 'appertains to the United States, subject to its jurisdiction and control,' and say simply that the subject-matter is 'subject to the sovereignty of the United States.'" *The Continental Shelf*, 4 Current Legal Prob. 54, 73 (1951).

³¹ "... [R]egarding the sea bed and subsoil, it is difficult to see much distinction in practical effect between sovereignty on the one hand and appurtenance, jurisdiction and control on the other." *Recent Developments With Respect to The Continental Shelf*, 42 Am. J. Int. Law 849, 855 (1948).

³² United States — The Netherlands, Tribunal of The Permanent Court of Arbitration, 1928. Publication of the International Bureau of the Permanent Court of Arbitration (1928); also published in 22 Am. J. Int. Law 867 (1928).

³³ *Op. cit. supra* note 30 at 76, 77. In a note from Mr. Olney to Sir Julian Pauncefote, dated June 22, 1896, the United States referred to "spheres of influence" and the theory or practice of the 'Hinterland' idea . . . [as] new departures which certain great European powers have found necessary and convenient in the course of their division among themselves of great tracts of the continent of Africa, and which find their sanction solely in their reciprocal stipulations. . . ." *Ibid.* See also 1 JOHN BASSETT MOORE, HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN A PARTY (1898) 976, 979, 980.

It will be recalled that in the above arbitration the United States presented a claim of territorial sovereignty over the Island of Palms (Miangas) which was located about twenty miles within the boundary line of the Philippine Islands specified in the Treaty of December 10, 1898, between the United States and Spain. If the award had been made in favor of the United States, sovereignty over the Island, as well as the air spaces above, would have been vested in the United States.³⁴ Such an extensive claim to territorial sovereignty was not included in the American Continental Shelf Proclamation. Furthermore, the occupation and settlement³⁵ of an island make relatively easy the peaceful and continuous display of state authority. The exploitation of the natural resources of the subsoil and sea bed of the continental shelf is more contingent upon cooperation and protection from the coastal State than the exploitation of the natural resources of an island. Also an island might or might not be an extension of the land-mass of the coastal State. Therefore, considering the type of territory and claim involved, one may doubt the wisdom of applying the rationale of the *Palmas* arbitration to the continental shelf.

Even if one admit that the United States has declared sovereignty over the continental shelf, "The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected. . . ." No attempt

³⁴ Judge Huber held that the peaceful and continuous display of state authority over the Island of Palmas by the Dutch, which was unchallenged by any power from 1700 to 1906, gave the Netherlands a valid title to the area. Therefore, Spain could not cede the Island to the United States.

³⁵ Mr. L. C. Green, a staunch supporter of the doctrine of effective occupation, has declared, "Without some act of effective occupation these State acts [continental shelf proclamations] have no more value than the Papal Bull *inter caetera* of 1493, which purported to award the yet undiscovered New World to Ferdinand and Isabella; or of the empty flamboyant gestures of the conquistadores who would enter the seas and claim all that lay beyond for their sovereigns. . . ." Nevertheless, Mr. Green does admit "the requirements for effective occupation depend on the nature of the terrain, the difficulty of settlement and the like. What is necessary for land, therefore, may be more than the minimum required for the sea-bed. Nevertheless, mere proclamations and unilateral declarations can amount to no more than inchoate titles requiring some measure of occupation or exploitation to perfect them. . . ." *Op. cit. supra* note 30 at 79, 80.

was made, under the shelf doctrine, to interfere with the right of freedom of the seas or to establish control over fisheries or other resources in the sea. However, it might be contended that the President's Coastal Fisheries Proclamation of September 28, 1945 (the date of the Continental Shelf Proclamation), authorizing the establishment of conservation zones in those areas of the high seas contiguous to the coasts of the United States, was, in effect, a declaration of sovereignty over such areas.³⁶ Nevertheless, the two proclamations considered together in no way amount to a declaration of sovereignty over the high seas contiguous to the coast of the United States. If the United States had sovereignty over what is now considered high seas above the continental shelf, as well as sovereignty over the waters of the conservation zones, it could restrict the right of navigation on the high seas, deny nationals of other States the right to fish in these areas, and exercise control over the air spaces above such waters. Therefore, no attempt has been made by the United States to exercise territorial sovereignty over either the waters or air spaces in those areas now considered beyond territorial limits. The extension of the jurisdiction of the United States to the high seas in the vicinity of its coast is limited to a "special jurisdiction" over the waters of the

³⁶ The Proclamation provided in part as follows: "... the Government of the United States regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale. Where such activities have been or shall hereafter be developed and maintained by its nationals alone, the United States regards it as proper to establish explicitly bounded conservation zones in which fishing activities shall be subject to the regulation and control of the United States. Where such activities have been or shall hereafter be legitimately developed and maintained jointly by nationals of the United States and nationals of other States, explicitly bounded conservation zones may be established under agreements between the United States and such other States; and all fishing activities in such zones shall be subject to regulation and control as provided in such agreements. The right of any State to establish conservation zones off its shores in accordance with the above principles is conceded, provided that corresponding recognition is given to any fishing interests of nationals of the United States which may exist in such areas. The character as high seas of the areas in which such conservation zones are established and the right to their free and unimpeded navigation are in no way thus affected...." 10 Fed. Reg. 12304.

conservation zones and the sea bed and subsoil of the continental shelf.

Some of the American States have gone far beyond the Proclamation of the United States. For example, a law passed by the Texas Legislature in 1941, as amended in 1947, declares, "The Gulfward boundary of the State of Texas is hereby . . . declared to be a line beginning in the Gulf of Mexico at the mouth of the Sabine River . . . to the farthestmost edge of the continental shelf from the Gulf Shore line. . . ."³⁷ The Texas law further provides,

That, subject to the right of the government of the United States to regulate foreign and interstate commerce under Section 8 of Article 1 of the Constitution of the United States, and to the power of the government of the United States over cases of admiralty and maritime jurisdiction under Section 2 of Article 3 of the Constitution of the United States, the State of Texas has full sovereignty over all the waters of the Gulf of Mexico and of the arms of the Gulf of Mexico within the boundaries of Texas, as herein fixed, and over the beds and shores of the Gulf of Mexico and all arms of the said Gulf within the boundaries of Texas, as herein fixed.³⁸

Under the above law Texas "owns, in full and complete ownership,"³⁹ the waters, arms, and sea bed and subsoil of that part of the Gulf of Mexico located within the boundary of the State. As a result of this off-shore legislation, Texas has assumed a territorial sovereignty over a large area of the high seas.

The action taken by the American Government on September

³⁷ Acts 1947, c. 253, § 1, p. 451; amending Acts 1941, c. 286. Section 1 of the latter law provided that "the gulfward boundary of the State of Texas is hereby fixed and declared to be a line located in the Gulf of Mexico parallel to the three (3) mile limit, as determined according to said ancient principles of international law, which gulfward boundary is located twenty-four (24) marine miles further out in the Gulf of Mexico than the said three (3) mile limit." A similar law was passed by the Louisiana Legislature in 1938. La. Acts 1938, No. 55, p. 169.

³⁸ Acts 1941, c. 286, § 2, pp. 455, 456.

³⁹ § 3, p. 456. See Ireland, *Marginal Seas Around The States*, 2 La. L. Rev. 252, 436 (1940) (contains review of the boundaries of coastal States).

28, 1945, was soon followed by other nations.⁴⁰ Some of the proclamations, as for example those issued by the Latin-American States, are more extensive than the American Declaration. To illustrate, the Argentina Declaration of October 9, 1946, declares:

In the international sphere conditional recognition is accorded to the right of every nation to consider as national territory the entire extent of its epicontinental sea and of the adjacent continental shelf;

Relying upon this principle, the Governments of the United States of America and of Mexico have issued declarations asserting the sovereignty of each of the two countries over the respective peripheral epicontinental seas and continental shelves.

* * * * *

Article 1. — It is hereby declared that the Argentine Epicontinental Sea and Continental Shelf are subject to the sovereign power of the Nation;

Article 2. — For purposes of free navigation, the character of the waters situated in the Argentine Epicontinental Sea and above the Argentine Continental Shelf, remains unaffected by the present Declaration. . . .⁴¹

It will be noted that the extent of the shelf and sea claimed by Argentina is not defined in the above proclamation. In view of

⁴⁰ Proclamations comparable to the American Declaration, with important modifications, were issued by Mexico (1945), supplemented (1949), Argentina (1946), Nicaragua (1947), Chile (1947), Peru (1947), Costa Rica (1948), by British Orders in Council for Jamaica and the Bahamas (1948), Saudi Arabia (1949), and by Bahrein and certain Arabian sheikhdoms (1949). According to Richard Young, "... some thirty governments have put forward claims to jurisdiction over submarine areas lying beyond the traditional limits of their territorial waters." *The Legal Status of Submarine Areas Beneath The High Seas*, 45 Am. J. Int. Law 225, 226 (1951). For a list of these states see *op. cit.*, ns. 1, 2, 3, 4, 5, and 6. For a comprehensive tabular summary of offshore claims see Boggs, *National Claims in Adjacent Seas*, Geographical Review, April, 1951, p. 185. Also see Young, *The Continental Shelf in The Practice of American States*, to appear in 3 Inter-American Juridical Y.B. (1950).

⁴¹ Argentina, Declaration Proclaiming Sovereignty over the Epicontinental Sea and the Continental Shelf, Oct. 9, 1946, Decree No. 14.708; translation from 41 Am. J. Int. Law (1947), Supp. 11. This decree amplified the effects of Decree No. 1,386 of Jan. 24, 1944. The Executive Power, in Article 2 of the latter Decree, "issued a categorical proclamation of sovereignty over the 'Argentine Continental Shelf' and the 'Argentine Epicontinental Sea,' declaring them to be 'transitory zones of mineral reserves.'" *Ibid.*

Argentina's Antarctic claims, such lack of definiteness may be of some significance in the future.⁴²

In a note to the Argentine Government, on July 2, 1948, the United States declared "...that the principles underlying the Argentine Declaration differ in large measure from those of the United States Proclamations and appear to be at variance with the generally accepted principles of international law."⁴³ Therefore, the American Government informed the Argentine Government that it reserved "the rights and interests of the United States so far as concerns any effects of the Declaration of 11 October 1946 or of any measures designed to carry that Declaration into execution.

The continental shelf proclamations of other Latin-American States are rather interesting. For instance, Chile and Peru have asserted sovereignty over the continental shelf and epicontinental sea. Furthermore, they have declared that they will exercise protection and control over an area 200 marine miles distant from and parallel to their respective coasts. A similar zone or belt was claimed around the island possessions of both countries.⁴⁴ Thus, the proclamations of Chile and Peru represent a departure from

⁴² According to Mr. Richard Young, "Argentina has laid considerable stress on the argument of geographical propinquity; and though the waters between South America and Antarctica considerably exceed 100 fathoms in depth, there are connecting geological structures between the two land masses which might be brought within an expanded continental shelf doctrine." *Op. cit. supra* note 31 at 853. It is interesting to note in regard to Argentina's claims that "the Falkland (Malvinas) Islands are located on the South American continental shelf, even under the 100-fathom definition." *Ibid.*, n. 18.

⁴³ "In these respects, the United States Government notes in particular that (1) the Argentine Declaration decrees national sovereignty over the continental shelf and over the seas adjacent to the coasts of Argentina outside the generally accepted limits of territorial waters, and (2) the Declaration fails, with respect to fishing, to accord recognition to the rights and interests of the United States in the high seas off the coasts of Argentina." United States note to Argentina, July 2, 1948, Replies from Governments to Questionnaires of the International Law Commission, U. N. Doc. A/CN.4/19, 23 March 1950, p. 115. Similar notes were sent by the United States to Peru (*id.*, p. 113), Chile (*id.*, p. 114), Salvador (D. S. Bull., XXIV, No. 600, Jan. 1, 1951) and to Saudi Arabia (reproduced in 44 Am. J. Int. Law 675 (1950).

⁴⁴ As far as Chile is concerned, this might include "such points as Juan Fernandez, which is some 400 miles from the mainland, and Easter Island, which is more than 2,000 miles distant." Young, *op. cit. supra* note 31 at 853, 854.

the pattern established by other States. The inclusion of the 200 mile limit may have been due, at least in part, to the existence of a narrow continental shelf (in the strict 100-fathom sense) along the entire Pacific Coast of South America. Also, Chile, like Argentina, is interested in a segment of the Antarctic, and it may be that her continental shelf policy was formulated to support Chilean claims in this area.⁴⁵ This national interest, as well as the geological conditions, may encourage some Latin-American jurists to support a regional convention embodying the 200-mile limit. Such a convention, if ratified by the necessary States in the Western Hemisphere, would have the effect of codifying certain principles of "American International Law" on this important topic.⁴⁶ Any further development of the 200-mile concept (either by the action of individual States or by means of a regional pact) should be discouraged, because it will only tend to create more suspicion and fear in a world community already torn by distrust.

There are certain areas in the world where no continental shelf exists; for example, the Persian Gulf is merely a shallow basin on the Asian Continental Mass. Therefore, the policy formulated by Saudi Arabia differs somewhat from the continental shelf proclamations of other States. According to the Royal Decree "the subsoil and sea bed of those areas of the Persian Gulf seaward from the coastal sea of Saudi Arabia but contiguous to its coasts' appertain to Saudi Arabia and are subject to its jurisdiction and

⁴⁵ "On his visit to the Antarctic in February, 1948, the President of Chile declared that Chilean territory now 'extends from Africa to the South Pole.'" Young, *op. cit.* at 854, n. 21.

⁴⁶ Dr. Alejandro Alvarez of Chile has been a continuous spokesman for the codification of both private and public international law. At the Fourth Pan-American Conference which met in Buenos Aires in 1910 he made a proposal to the effect that the principles of universal application be separated from those of American application. According to Dr. Alvarez, "The American states may proclaim directly . . . or indirectly in their political life, rules on matters which they deem necessary either *because they do not deem existing rules acceptable*, or because they are unable to follow those which have been created for different circumstances or finally, because there is no rule governing the matter." *Le droit International Americain* (1910) 260, quoted in Bullington, *Is There An American International Law?*, Proceedings of the Fourth Annual Conference, Institute of Public Affairs, Southern Methodist University (The Arnold Foundation, 1937) 247, 249.

control. The boundaries of these areas are to be settled equitably by agreement with other states concerned." Furthermore, no attempt was made to alter "the character as high seas of the waters of such areas or to interfere with navigation by sea or air, fishing or pearling."⁴⁷ Under this decree Saudi Arabia will exercise jurisdiction and control over the subsoil and sea bed of the seaward area. Thus, the pronouncement is somewhat broader than the American Proclamation which limits jurisdiction and control to the "natural resources" of the subsoil and sea bed of the continental shelf. Nevertheless, the Saudi Arabian Decree represents "one approach to the difficult problem of how to divide amicably submarine areas of narrow seas where the continental shelf doctrine is not applicable."⁴⁸

Many other nations have issued continental shelf proclamations. Such unilateral action on the part of the States was to be expected in the absence of any positive rule of international law on the subject. Nevertheless, the time is approaching when these State declarations must be transformed into a more uniform and universal rule; otherwise, serious conflicts may develop among the States concerning the regulation of the exploration and exploitation of the natural resources of the continental shelf. There is a definite need for international legislation in this particular area.

It should be noted that under Article 2 of the Draft Articles "the continental shelf is subject to the exercise by the coastal State of control and jurisdiction for the purpose of exploring it and exploiting its natural resources." What is meant by the expression "coastal State?" It would appear that, in a Federal System, the control and jurisdiction referred to would be vested in the Central Government (coastal Nation) rather than in the governments of the constituent states, provinces or cantons. Such an interpretation creates a serious problem in the United States. In the event Congress passes legislation vesting title to the tidelands in the

⁴⁷ Young, *Saudi Arabian Offshore Legislation*, 43 *Am. J. Int. Law* 530, 531 (1949).

⁴⁸ *Id.* at 531, 532.

States, the Senate would not ratify the Treaty in its present form without reservations. If ratified by the United States, the treaty, being of a later date, would override the law passed by Congress. The United States might suggest that the International Law Commission insert a Federal-State clause, or the United States could ratify with the Federal-State clause attached as a reservation.⁴⁹

This brief survey of the Draft Articles prepared by the International Law Commission, and the proclamations issued by some States, indicates that steps have been taken to establish a legal regime for the continental shelf. Features of the theory upon which there appears to be general agreement may be summarized as follows: (1) there is little support for the internationalization of the natural resources of the continental shelf located outside territorial waters; (2) a distinction should be made between the legal status of the sea bed and subsoil of the continental shelf and the exercise of jurisdiction over a contiguous zone of the high seas for certain purposes, *e.g.*, customs, navigation, and fisheries; (3) the sea bed and subsoil of the continental shelf beyond territorial waters should not be considered *res nullius* — that is, such sea bed and subsoil is not capable of being acquired by the first finder or occupier; (4) the sea bed and subsoil of the submarine areas in question should not be considered *res communes*; (5) jurisdiction and control over the continental shelf should be vested in the littoral State; (6) such jurisdiction and control is independent of the concept of occupation; and (7) the jurisdiction

⁴⁹ During the 1950 session of the United Nations Commission on Human Rights, the United States proposed a Federal-State Article to be included in the Draft International Covenant on Human Rights. The proposed Article provided:

In the case of a Federal State, the following provisions shall apply:

(a) With respect to any articles of this Covenant which are determined in accordance with the constitutional processes of that State to be appropriate in whole or in part for federal action, the obligations of the federal government shall to this extent be the same as those of parties which are not Federal States:

(b) With respect to articles which are determined in accordance with the constitutional processes of that State to be appropriate in whole or in part for action by the constituent states, provinces or cantons, the federal government shall bring such articles, with favorable recommendation, to the notice of the appropriate authorities of the states, provinces or cantons at the earliest possible moment.

The consideration of this Article was postponed.

and control exercised by the littoral State over the continental shelf in no way affects the character of the high seas above the continental shelf.

The major conflict between the Draft Articles and the proclamations of some of the nations involve the nature and extent of the jurisdiction and control to be exercised by the littoral State over the continental shelf. According to the Draft Articles, the control and jurisdiction to be exercised "does not affect the legal status of the superjacent waters as high seas" (Article 3), nor does it "affect the legal status of the airspace above the superjacent waters" (Article 4), and "may not exclude the establishment or maintenance of submarine cables" (Article 5). Thus, the Draft Articles do not vest a territorial sovereignty over the continental shelf in the coastal State. Neither do the Draft Articles claim for the littoral State sovereignty over the high seas beyond the continental shelf. Unless some of the States are willing to modify their position concerning territorial sovereignty over vast areas of the high seas, we may expect a great number and variety of reservations once the Convention is submitted to the States for ratification. These exaggerated concepts of national sovereignty could, if put into practice by a number of States, encourage the emergence of a new form of *mare clausum*.

The problem of the continental shelf involves the matter of establishing a legal regime which will safeguard the concept of *mare liberum* and, at the same time, provide for a regulated exploitation of its submarine resources. In this regard, it appears to the author that the International Law Commission has taken a realistic view of the problem. "The law of nations, like other systems of law, is progressive. Its principles are expanded and liberalized by the spirit of the age and country in which we live. Cases [and international legislation], as they arise under it, must be brought to the test of enlightened reason and of liberal principles. . . ."⁵⁰

⁵⁰ Bergman v. De Sieyes, 71 F. Supp. 334, 337 (S. D. N. Y. 1946).