Louisiana Law Review

Volume 20 | Number 4
June 1960

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The recent claims made to the continental shelf have raised the fundamental problem of the adaptability of international law to changing international conditions. The distinguishing feature of the discussion of the legal status of the continental shelf thus far has been the general agreement on the uniqueness of these claims and the extremely difficult task of fitting them into the existing body of international law. That there is a general consensus of nations in support of the principle of the continental shelf can hardly be denied after the Convention of the Continental Shelf drafted in Geneva in October 1958. But the problems of what this principle means in concrete terms and where it fits into existing international law are debatable topics. Without unduly belittling the legal academician it does appear that the various attempts at clarifying the legal status of the continental shelf has achieved somewhat less than optimal results. The arguments that have centered around either the absolute principle of the freedom of the seas or the many rationalizations of the claims based on the international law of title to territory are rather inconclusive. One can only agree with Judge Lauterpacht's stricture that the main business of the international lawyer is to explain the nature of these newly claimed rights and attempt to formulate a philosophy that will give them general application consistent with the doctrine of the freedom of the seas.[1] The process of explanation and formulation, however, must be based on a realistic assessment of the factors underlying these claims. The existing "doctrine of the continental shelf" can only be understood in terms of the relationship between national interests, national power, and the law.

For the purpose of elucidating this by no means novel, but sometimes neglected, relationship as it relates to the continental shelf, it will be necessary to define the "doctrine of the continental shelf" as it is manifested in the various claims. There will follow a brief discussion of the concept "natural resource"

*Research Assistant at the Center for the Study of American Foreign and Military Policy and Assistant Professor of Political Science at Northwestern University.

1. Lauterpacht, *Sovereignty Over Submarine Areas*, in THE BRITISH YEAR BOOK OF INTERNATIONAL LAW 376 *et seq.* (1950).

which is peculiarly related to the continental shelf and "national interest" which is fundamental to the understanding of international law. Finally, it will be suggested that the claims made to the continental shelf are part of a more general movement on the part of littoral states to extend their territorial domains seaward and, therefore, are vitally related to the law of the territorial sea and contiguous zones. Thus the fundamental principle of the freedom of the seas is in the process of redefinition under the impact of a new set of national needs and interests. It cannot be claimed that any new insights will be shown through this kind of a discussion but something useful can be gained from the injection of a rather ancient insight into a subject that seems to thrive in the rarified atmosphere of legal abstraction.

The "doctrine of the continental shelf" is essentially the claim that a littoral state has exclusive rights of exploitation of the natural resources on and under the continental shelf contiguous to its territories and outside its territorial waters. This much is recognized by the Convention on the Continental Shelf. When the content of this generalization is spelled out in specific terms from the claims issued up to this time one finds a complex of vague demands which hardly display the degree of consistency or coherence that could be called a doctrine. From a bare enumeration of these claims, however, as trying as it may be to the patience of the reader, certain common characteristics do emerge to provide a modicum of order.

The development of the "doctrine of the continental shelf" is of very recent origin beginning with the treaty between Great Britain and Venezuela relating to the submarine areas of the Gulf of Paria. By this treaty the submarine areas of the Gulf of Paria were divided and annexed to the territories of Trinidad and Venezuela with the stipulation that the superjacent waters would be free to navigation.[2] The "doctrine of the continental shelf," however, had its real beginning with the American proclamation of September 28, 1945, which claimed the areas of the continental shelf as "appertaining to the United States and subject to its jurisdiction and control" for the purpose of "pre-

2. The documents referred to in this enumeration are collected in the following volumes: U.N. LEGISLATIVE SERIES, LAWS AND REGULATIONS OF THE REGIME OF THE HIGH SEAS (1951); *Laws and Regulations on the Regime of the Territorial Sea*, U.N. Doc. ST/LEG/SER.B/1 (1955); *Supplement to Laws and Regulations on the Regime of the High Seas and Laws concering the Nationality of Ships*, U.N. Doc. ST/LEG/SER.B/6 (1959); U.N. Doc. ST/LEG/SER.B/8 (1959). Since specific documents can be found rather handily in these three volumes, a footnoted reference for each claim is unnecessary.

serving and prudently utilizing" its resources. This claim was reaffirmed in 1953 in the Submerged Lands Act and the Outer Continental Shelf Act. This proclamation was followed almost immediately with similar announcements by Mexico (October 29, 1945) and Argentina (October 11, 1946) with the latter claiming sovereignty over the "epicontinental seas and the continental shelf." On June 23, 1947, the Government of Chile proclaimed, rather presumptiously at this date, that since an "international consensus of opinion recognizes the right of every country to consider as its territory any adjacent extension of the continental seas and continental shelf," it regarded as under its "protection and control" all the seas to a distance of 200 nautical miles from its coasts. The Governments of Peru (August 1, 1947) and Costa Rica (November 2, 1949) followed the lines laid down by the Chilean declaration and claimed sovereignty not only over the continental shelf, "whatever the depth and extension of this shelf may be," but also regarded under their protection and control the seas adjacent to their coasts to the extent of 200 miles. The Government of Guatemala by a legislative decree of August 30, 1949, claimed all petroleum deposits "up to the extremity of the Continental Shelf or platform of the Republic" as under its "direct dominium." The Philippine Government by the Petroleum Act of 1949 claimed all petroleum deposits on the continental shelf as belonging "inalienably and imprescriptively" to the state. For the purpose of the conservation of fisheries the Government of Iceland by a legislative act of April 5, 1948, established conservation zones "within the continental shelf of Iceland" which were to be "subject to Icelandic rule and control." Great Britain by an Order in Council of November 26, 1948, declared that the boundaries of the Islands of the Bahamas and Jamaica were extended to include "the areas of the continental shelf." These declarations were followed in 1949 by a series of proclamations by Arab States which were modeled after that of the United States: Saudi Arabia (May 28), Abu Ahabi (June 10), Hjman (June 20), Bahrain (June 5), Dubai (June 14), Kuwait (June 12), Qatar (June 8), Ris al Khaimah (June 17), Shaijah (June 16), and Umm al Qaiwiah (June 20). These proclamations departed from that of the United States in that they claimed jurisdiction and control over the continental shelf without any reference to the purpose of that control.

In 1950 the Honduran Congress (March 7) in an amendment to its constitution declared that the continental shelf "whatever

be its depth and however far it extends" formed part of its national territory. With somewhat more precision the Government of Pakistan declared on March 9, 1950, that the seabed along its coasts to a depth of 100 fathoms was included in its territory. In the fall of 1950, Great Britain extended the sovereignty of British Honduras and the Falkland Islands to cover the continental shelf. Ecuador decreed on November 6, 1950, the extension of its control over the natural resources of the continental shelf to a depth of 200 meters. In this same month, Brazil proclaimed that the "continental and insular territory" of Brazil was under "the exclusive jurisdiction and dominium of the Federal Union." The Constitution of El Salvador proclaimed in 1950 the extreme but at least clearly defined claim to the "adjacent seas . . . the corresponding aerial space, subsoil and continental shelf" to a distance of 200 miles from its coasts.

The Republic of Korea, "supported by well established international precedents," proclaimed on January 18, 1952, its "national sovereignty over the shelf adjacent to the peninsular and insular coasts of the national territory no matter how deep it may be, protecting, preserving, and utilizing, therefore, to the best advantage of national interests, all the natural resources, mineral and marine, that exist over the said shelf, or beneath it, known, or which may be discovered in the future." Israel followed on August 3, 1952, by extending its territory to include the submarine areas "to the extent that depth admits of exploitation." Both of these declarations recognized the right of free navigation. On September 11, 1953, Australia claimed sovereign rights "over the seabed and subsoil of (a) the continental shelf contiguous to any part of its coasts; and (b) the continental shelf contiguous to any part of the territories under its authority." The Australian Pearl Fisheries Act of 1952-1953 gave the Governor General the right to define the limits of the shelf at a depth of 100 fathoms if he was "of the opinion that it is reasonable." The boundaries of Sarawak were extended to the edge of the continental shelf by a British Order in Council in 1954. The Government of India a year later (August 30, 1955) proclaimed that "India has, and always had, full and sovereign right over the seabed and subsoil of the continental shelf adjacent to its territory." On March 21, 1956, Portugal claimed the seabed and subsoil of the continental shelf to a depth of 200 meters.

In addition to this bewildering line of unilateral proclamations, there have been two significant multilateral attempts at

attaining international agreement on the legal status of the continental shelf. The first had its origin in a resolution passed at the Tenth Inter-American Conference in March 1954 which called for a Pan-American conference to consider the conservation of the natural resources of the continental shelf and marine waters. A preliminary study of the subject was made at the Third Meeting of the Inter-American Council of Jurists in February 1956 which accomplished little more than reflect the basic disagreement of the American states in this area. This conference preempted the work of the main conference by coming to the conclusion that the rights of the coastal state extended to the exclusive exploitation and regulation of the mineral resources of the continental shelf and "all marine, animal and vegetable, species that live in constant physical and biological relationship with the shelf." Of the twenty-one nations represented at this meeting, there were eleven reservations to the acceptance of this principle with the United States condemning it as "contrary to international law." At the main conference held at Cuidad Trujillo in March 1956 the following resolution was adopted:

> "The seabed and subsoil of the continental shelf, continental and insular shelf, and other submarine areas, adjacent to the coastal state outside the area of the territorial seas, and to the depth of 200 meters, or beyond that limit, to the depth of the superjacent waters that admits of the exploitation of the natural resources of seabed or subsoil, appertain exclusively to that state and are subject to its jurisdiction and control."

The question of the delimitation of the continental shelf was avoided by the inclusion of the double standard of a specific depth of 200 meters and the rather indefinite standard of the feasibility of exploitation. Only six nations out of twenty accepted the resolution without reservation. The four nations that had previously proclaimed their sovereignty over a 200-mile belt off their coasts — Chile, Ecuador, Peru, and Costa Rica — declared that this resolution in no way invalidated their earlier claims. The one accomplishment of the conference was the recognition by twenty nations of the principle of the continental shelf.[3]

The second multilateral consideration of the continental shelf was that of the United Nations International Law Commission which led ultimately to the Convention on the Continental Shelf

3. *Cf.* Young, *Pan-American Discussions on Offshore Claims*, 50 AM. J. INT. L. 909-16 (1956).

signed at Geneva on April 29, 1958.[4] Article I of this Convention, as in the case of the Latin American resolution, contains the alternate limits to the shelf of 200 meters or the feasibility of exploitation. Article II gives the littoral state "sovereign rights" for the purpose of the exploration and exploitation of the resources of the continental shelf whether or not control is openly exercised and independent of "occupation, effective or national, or any express proclamation." The freedom of the seas over the shelf is guaranteed by Article III with the added stipulation contained in Article V that the exploration of the continental shelf and the exploitation of its resources must not result in any "unjustifiable interference with navigation, fishing, or the conservation of the living resources of the seas." As of October 31, 1958, this convention has been ratified by 27 states.[5]

Three general similarities appear in these various proclamations and conventions. The first is the lack of any precise definition of the limits of the continental shelf. This is quite understandable in view of its uncertainty even as a geographical concept. In general terms the continental shelf is the submarine platform upon which the continental land mass rests and which slopes outward from land to a point where the slope descends abruptly into the depths of the sea. The most commonly mentioned definition of this "falling-off" point is the depth of 100 fathoms. Since the ocean floor may contain a number of these "falling-off" points before it makes its final descent into the depths, probably the soundest generalization along these lines is that offered by the geographer Bourcart who states that "the only accurate method of defining the continental shelf is to consider it as lying between the shore and the first substantial fall off — on the seaward side — whatever its depth."[6] This lack of geographical precision is matched by the extremely flexible use of the term by states to cover a great diversity of geographical configurations. Some nations that have made extreme claims under the "doctrine of the continental shelf," notably those nations along the western coast of South America, are those where the "falling-off" point is almost immediate, thus leaving a shelf scarcely extending beyond territorial waters. The opposite situa-

4. For text see 52 AM. J. INT. L. 858 *et seq.* (1958).

5. See Sorensen, *Law of the Seas*, in INTERNATIONAL CONCILIATION, No. 520, at 256 (November 1958).

6. BOUCART, GEOGRAPHIE DU FOND MERS: ETUDE DU RELIEF DES OCEANS 130. For an extended discussion of the technical definition of the continental shelf, *see* MOUTON, THE CONTINENTAL SHELF 6-45 (1952).

tion prevails in the Persian Gulf which at no point reaches the depth of 100 fathoms nor does it contain any substantial "falling-off" point. The lack of a precise geographical definition coupled with the indiscriminate use of the term by states makes an extended technical discussion of its precise meaning a somewhat fruitless enterprise. The term "continental shelf" is for all practical purposes a convenient label for the staking out of more or less extensive areas of what up to this time had been considered the high seas. The only conclusion that can be drawn here is that the only meaningful definition will necessarily be a political definition. As has been seen, some steps have been taken in this direction with only limited success.

The second characteristic that can be discerned from these various claims is their nearly uniform respect for the principle of the freedom of the high seas. This is to say that nearly all explicitly state that their claims do not interfere with the existing laws of the high seas. This agreement is somewhat diluted by a third characteristic: the general claim, whether explicit or implied, to the rights of sovereignty over the areas claimed. Although many of the claims are qualified, it is difficult to see in them anything less than a pure and simple extension of the national domain and the rights of control that go along with it. There can be no argument in such cases as those of Argentina, Brazil, Chile, Peru, Costa Rica, Honduras, and El Salvador where the claim to sovereignty is made clear. The declaration of the United States and the many others modeled after it make the claim to "jurisdiction and control" over the continental shelf for the purpose of the exploitation of its natural resources. The American declaration taken along with the fisheries declaration of the same date for all practical purposes gives the United States "jurisdiction and control" over all the resources in the area of the continental shelf. The cautious wording of this declaration has been attributed to the constitutional provision that congressional approval must be had for the acquisition of new territories which the administration feared might cause undue delay. In addition, the outright annexation of these territories would conflict with American policies on the Arctic and Antarctic which were based on the principle of effective occupation. Whatever the reasoning behind the wording, the distinction between "jurisdiction and control" and the rights of sovereignty is extremely tenuous. This is to say that in a situation where even the resource potential of the continental shelf and

the technological factors that might be involved in their development are relatively unknown, the choice is left that these proclamations are meaningless or that they are claims to the rights of full sovereignty. Since we must assume that they are not meaningless, whether or not we agree with the extent of some of them, it must be concluded that what is claimed is the exclusive right to determine who will be permitted to use these areas, under what conditions, and for what purpose. Thus, the honor paid to the principle of the freedom of the seas, at least under these highly theoretical conditions, is essentially that of the rules applicable to territorial waters, principally that of the right of innocent passage.

Two general positions have been taken by the legal community on these various claims. The first states that since they conflict with the fundamental principle of the freedom of the seas, they have no legal basis. This school tends to treat the continental shelf outside of territorial waters as *res communis* but is willing to grant that the "doctrine of the continental shelf" is international law *de lege ferenda.* The second position has accepted the principle that nations have certain exclusive rights of exploitation on the continental shelf and has sought to fit these claims into the framework of existing international law, that is, into the law relating to the title to territory. Here the shelf is treated as *res nullius.* It is doubtful whether either of these positions are sufficient in themselves to explain the legal status of the shelf. It can no longer be denied, after the Convention on the Continental Shelf, that nations have exclusive rights of exploitation on the continental shelf. This same convention makes the attempt at rationalizing these claims unnecessary. It would seem doubtful that the doctrinal disputes over whether the high seas are *res communis* or *res nullius* or whether or not the "doctrine of the continental shelf" is international law *de lege ferenda* or *de lege lata* had much meaning from the beginning since the world's leading maritime powers, the United States and Great Britain, had accepted the principle of exclusive rights on the continental shelf by 1945.[7]

In the academic discussion of the continental shelf two elementary but fundamental considerations, with very few excep-

7. For the development of "the doctrine of the continental shelf" the following books and articles are particularly useful: MOUTON, THE CONTINENTAL SHELF (1952) and Hague Academy of International Law, *The Continental Shelf*, 85 RECUEIL DES COURS 347-463 (1954); SCELLE, PLATEAU CONTINENTAL ET DROIT INTERNATIONAL (1955); GIDEL, LA PLATAFORMA CONTINENTAL (1951); AMADOR,

tions, have been dismissed as unimportant or irrelevant. It is vital to the understanding of the legal status of the continental shelf to consider the concepts "natural resource" and "national interest" and their inter-relationship. The concept "natural resource" is one which includes not only geographic, technological, and economic factors but a social aspect as well. For the most part the claims to the resources of the continental shelf are to a resource potential. Thus far the barriers of location, technology, and cost have made the wealth of the shelf inaccessible to exploitation. The factor that determines whether or not a resource potential will be exploited and the extent of this exploitation is its social value. The value placed by national societies on basic industrial resources such as petroleum, needless to say, is extremely high. For the more industrially advanced nations the resource potential of the continental shelf represents important reserves. To many other nations this potential represents the possibility of industrial development and less economic and political dependence upon other nations. This does not take into account fisheries which are vital to the economic existence of some nations. The situation that exists with respect to the continental shelf, therefore, is one based on a potentiality to which nations have attached a high value. It is a potential that nations have considered in their national interest to protect and preserve. This interest must be the basic factor in the consideration of any legal doctrine of the continental shelf.

The principle of the freedom of the seas is regarded by many international lawyers as a self-evident natural law. The body of rules relating to the high seas, however, reflect a consensus of interests based primarily on navigation and fisheries. These rules are neither immutable in themselves nor have they been immune from the impact of the changing needs of nations. The demands made for rights of control and jurisdiction in the area of the continental shelf represent the imposition of a new set of interests which are bound to change the law of the high seas. The

THE EXPLOITATION AND CONSERVATION OF THE RESOURCES OF THE SEA (1959); ANNINOS, THE CONTINENTAL SHELF AND PUBLIC INTERNATIONAL LAW (1953); MATEESCO, VERS UN NOUVEAU DROIT INTERNATIONAL DE LA MER (1950); CECCATIO, L'EVOLUTION JURIDIQUE DE LA DOCTRINE DU PLATEAU CONTINENTAL (1955); Lauterpacht, *Sovereignty over Submarine Areas*, in THE BRITISH YEARBOOK OF INTERNATIONAL LAW 376-433 (1950); Waldock, *The Legal Basis of Claims to the Continental Shelf*, 36 TRANSACTIONS OF THE GROTIUS SOCIETY 115-48 (1951); O'Connell, *Sedentary Fisheries and the Australian Continental Shelf*, 49 AM. J. INT. L. 185-209 (1955); Kunz, *Continental Shelf and International Law: Confusion and Abuse*, 50 AM. J. INT. L. 828-853 (1956); Young, *The Geneva Convention on the Continental Shelf: A First Impression*, 52 AM. J. INT. L. 733-38 (1958).

postwar development of these claims taken along with the rather long-standing discontent over the breadth of the territorial seas and the demands for areas of special jurisdiction beyond the territorial sea can be viewed as a general movement for the seaward extension of national sovereignty. The situation that exists today in this area of international law is that of a complex set of demands for the extension of territorial waters, for contiguous zones, and to the continental shelf that in some cases coincide and in others contradict each other but in all cases tend in the direction of an extension of territorial waters. The total effect of this ferment has been to make the determination of legal rights in contiguous waters primarily a matter of municipal and only secondarily of international limitation.

The only realistic conclusion that can be drawn with respect to the present legal status of the continental shelf is that nearly thirty nations of the world have accepted the principle that littoral states have exclusive rights of exploitation and control of the natural resources in an undefined area off their coasts generally referred to as the "continental shelf." This in essence is as far as international agreement goes, and, indeed, as far as it could go. There is essentially no agreement on the delimitation of the shelf, thus leaving the individual claims the basis for future adjustment. The very vagueness of the Convention of the Continental Shelf makes this a certainty. The content of the rights claimed by their generality tend to be those of full sovereignty. The claims as they stand remain largely untested. Where there have been no substantial conflicts of interest and where there is only limited knowledge of the future exploitation of the continental shelf, little can be conjectured as to the specific impact of these claims on the existing law of the high seas. It would be unreasonable to assume, however, that nations would not exercise the rights of full sovereignty in those areas where a significant extractive industry existed.

It is frequently asserted — by all lawyers and almost all social scientists — that one of man's fundamental drives is for an ordered and reasonably predictable existence. In spite of the danger that there might be a number of interesting studies in the behavioral sciences to dispute this grand generalization, it has a special relevance to the topic under discussion here. It is one of the functions of the international lawyer to provide the legal guidelines for the ordering of international relations. It is important to remember, however, that the drive for an ordered

and predictable existence in international relations is expressed essentially as a national aspiration founded on certain basic national interests which nations as yet are unwilling to leave to the chance of outside judgment. Any attempt at providing order to the many claims that have been made to the continental shelf must begin with this proposition. The spelling out of the general rule of international law relating to the continental shelf waits upon the political accommodation of the interests involved in the various claims. This process of the accommodation of national interests represents the greatest certainty that exists at present in public international law.