

THE CONTINENTAL SHELF CONVENTION AND AFRICAN RATIFICATION

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The representatives of 86 countries met in Geneva from February 24 to April 27, 1958, pursuant to resolution 1105 (XI) of February 21, 1957, by which the United Nations General Assembly recommended a conference be convened to examine the law of the sea. This Conference prepared and opened for signature four Conventions.¹ This paper is concerned with the Convention on the Continental Shelf and its adoption and application by the African States. Before the Convention itself is examined, a brief look at the development of the continental shelf concept in international law is necessary in order to provide a historical context.

The concept of the continental shelf is relatively new in international law. It first appeared in practice in 1942 in a treaty between Venezuela and the United Kingdom. This treaty delimited spheres of influence over the sea-bed and subsoil of the Gulf of Paria, situated between Venezuela and the Bahamas. The division of the sea-bed and subsoil of areas covered by the high seas was based on the idea that the sea-bed beyond the limit of territorial waters is a res nullius over which sovereignty could be acquired by occupation. Based as it was on this idea of res nullius, the Gulf of Paria Treaty represented an annexation of a portion of the sea-bed by each state. This treaty also marked a turning point in the application of the continental shelf concept from the protection of fishing rights

¹Convention on the Territorial Sea and Contiguous Zone (A/CONF.13/L.52); Convention on the High Seas (A/CONF.13/L.53); Convention on Fishing and Conservation of the Living Resources of the High Seas (A/CONF.13/L.54); Convention on the Continental Shelf (A/CONF.13/L.55). The Conference also adopted an Optional Protocol of Signature concerning the compulsory settlement of disputes (A/CONF.13/L.57) and several resolutions concerning various aspects of the law of the sea (A/CONF.13/L.56). E. Katin, The Legal Status of the Continental Shelf as Determined by the Conventions adopted at the 1958 United Nations Conference on the Law of the Sea, (1967), p. 23.

to the exploitation of natural resources.² The treaty did not, however, use the term "continental shelf" but merely referred to the sea-bed and subsoil. The emergence of the term in a juridical context was precipitated by the Truman Proclamation of September 28, 1945.³ The Proclamation stated that: "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." The Proclamation explicitly sets forth the rationale for such a claim:

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 nations 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 sea-ward 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....⁴

This Proclamation remains the most explicitly expressed rationale for the assertion of sovereignty over the natural resources of the continental shelf.

After 1945 there were an assortment of claims to the continental shelf; Saudi Arabia and the Philippines claimed only jurisdiction and control over the mineral resources of the continental shelf; Pakistan among others claimed sovereignty over the sea-bed and subsoil of the shelf itself. None of these claims were objected

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G. Steele, The Development of Law on the Continental Shelf (1966), p. 15.

3 J.A.C. Gutteridge, "Geneva Convention on the Continental Shelf" 35 British Yearbook of International Law 102 (1959), p. 102.

4 Presidential Proclamation 2667, September 28, 1945, 10 Fed.Reg. 12303 (1945).

to by other states. A number of Latin American states made much broader claims: sovereignty over the sea-bed, subsoil, seas and airspace of a belt extending up to two hundred miles from their coasts. This latter group of claims caused protest from the United States and others.⁵ The great majority of claims to the shelf were unopposed and there has developed a tendency to recognize them as part of customary international law through acquiescence. It is doubtful, however, that this body of claims and practice has evolved into an established principle of international law.⁶ The different claims were based on two different rationales - effective control and continuity - and these two different rationales served to complicate the process of institutionalizing the concept.

The effective control approach was based on the idea that the sea-bed beyond a state's territorial waters was res nullius subjects to occupation. This approach raised serious problems for preserving the freedom of the high seas, and lost popularity as a concept. The continuity approach, which gained ascendancy as the shelf concept developed in importance, stemmed from the idea that a coastal state has a preeminent interest in the marine subsoil contiguous to its territory. In a sense this approach caused the shelf concept at times to be merged with the extension of territorial waters.⁷ As advances in science and technology made it possible to exploit the oil-bearing strata of the shelf the question of the rights which a coastal state possessed in relation to the continental shelf adjacent to its territory became a matter of great importance.⁸

The Truman Proclamation, the British Six Orders in Council made between 1948 and 1954 under the Colonial Boundaries Act of 1895, and a number of proclamations made by rulers of the British protected states in the Persian Gulf, all asserted

⁵W.G. Friedmann, O.J. Lissitzn, & R.C. Pugh, eds., International Law: Cases and Materials p. 561, n. 1.

⁶L. Kutner, "Habeas Marinus: Due Process of Inner Space--A Proposal" 22 U. of Miami L. Rev. 629 (Spring 1968) p. 644.

⁷Ibid.

⁸Gutteridge, op. cit., p. 102

that nothing be deemed to effect the high seas status of the waters above the sea-bed and outside territorial waters. Declarations and decrees made by various South American states asserted their sovereignty over the shelf adjacent to their coast, and while they recognized freedom of navigation over the shelf, they made no reservation of the character as high seas of the superjacent waters.⁹

It was with this background of indefinite international custom and varying practice and approach that the Conference in Geneva was convened.

The divergence of views as to the nature and extent of the rights over the continental shelf were reflected at the deliberations of the Fourth Committee, which was entrusted with the development of a convention on the continental shelf. Both state practice and the writing of jurists in the period preceding the Conference made it impossible to gain any support for the contention that the continental shelf was res communis and should be controlled by an international regime.¹⁰ Britain and the United States took the view that the coastal state's rights in the shelf should be of a functional nature and should be precisely set out. This approach was concurred in a variety of countries including the Soviet bloc, and the final compromise was a reflection of this approach.¹¹ A small group of developed nations, including Germany, was opposed to granting sovereignty rights to the coastal state and favored a loose international arrangement for the regulation of continental shelf activities.¹² Norway, France, Sweden, and Italy firmly reiterated the principle of freedom of the seas and opposed any attempts to confer more than minimal rights on the coastal state.¹³ The less developed nations favored granting broad

⁹Gutteridge, op. cit., p. 104

¹⁰Gutteridge, op. cit., p. 105.

¹¹Steele, op. cit., p. 100.

¹²Steele, op. cit., pp. 97-98.

¹³Ibid..

general rights to the coastal areas and giving them maximum control over the resources of the shelf and the superjacent waters, even though they themselves lacked the means to develop these resources. This approach is representative of the tendency of newly independent nations to place great emphasis on their sovereignty and the means to extend it.¹⁴

Areas of disagreement were discussed and compromises reached. The Conference adopted the Convention presented by the Fourth Committee on April 26, 1958. The adoption of the Convention indicated the formal decision of the policy-makers that the claims of a coastal state to the resources of the sea-bed and subsoil were justifiable and met reasonable standards.¹⁵

The Convention on the Continental Shelf is now in force. The twenty-second requisite ratification or accession was deposited on June 10, 1964 with the Secretary-General of the United Nations. As of November 15, 1971 49 nations have ratified, acceded to, or succeeded to the Convention.

Article I of the Convention defines the term "Continental Shelf" as it is to be used in the subsequent articles of the Convention. Continental shelf refers:

- a) to the sea-bed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas;
- b) to the sea-bed and subsoil of similar submarine areas adjacent to the coasts of islands.¹⁶

This formulation represents an attempt to establish a workable definition of the shelf for legal purposes. A geological definition would present problems because of the irregularities

¹⁴ Steele, op. cit., p. 101.

¹⁵ Kutner, op. cit., pp. 656-657.

¹⁶ UN Doc. A/CONF.13/L.55.

of the topography and the varying width of the shelf in different portions of the world.¹⁷

The dual criteria of 200 meter water depth and exploitability must be viewed as complementary. Exploitability at depths greater than 200 meters is to be determined by actual exploitation. If there is no exploitation there is no right to assert. If there is exploitation, regardless of who undertakes it, exclusive rights automatically accrue to the adjacent coastal state. When the resources of the sea-bed remain unexploited, the Convention merely asserts a potential right.¹⁸ As technology advances and the means to exploit resources lying at greater and greater depth are developed, the area which is comprised under the definition will increase.

Article II grants to the coastal state the exercise of sovereign rights over the shelf for the purpose of exploring it and exploiting its natural resources. This is not a grant of complete sovereignty over the shelf as national territory, but only over its mineral and other natural resources. The Article also stipulates that these rights are exclusive in the sense that no one may undertake the exploration or exploitation without the express consent of the coastal state regardless of whether the coastal state does or does not exercise its rights of exploration and exploitation. The rights of the coastal state do not depend on occupation or any express proclamation. The article also defines natural resources as "mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species...." Sedentary species are those which "at harvestable stage either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil."

Certain imprecisions in Article II raise issues of interpretation. The definition of sedentary species has caused particular problems because of an inability to classify the organisms

¹⁷Anninos, The Continental Shelf and Public International Law (1953), p. 9.

¹⁸Katin, op. cit., p. 70.

with scientific accuracy. As a result questions have arisen as to rights to certain species. Another issue is whether the coastal state may utilize the shelf for purposes other than the exploitation of natural resources, such as the maintenance of radar stations.¹⁹ The Convention is mute on this point.

Article III insures that the rights of the coastal state to the shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters. This clause reiterates the nearly uniform respect for freedom of the high seas in earlier unilateral proclamations and bilateral agreements. The clause also effectively serves to separate the continental shelf from the area encompassed by a state's territorial waters.

Article IV forbids the interference of a coastal state with the laying or maintenance of submarine cables or pipe lines on the shelf. This indicates a certain limitation on the state's exercise of sovereign rights over aspects of the use of the shelf other than the exploration and exploitation of resources. Certain international requirements such as communication supercede a state's individual interest.

Article V contains several clauses which more precisely delineate the outlines of the Convention in actual practice. Clause 1 safeguards navigation, fishing, conservation of living resources, and oceanographic research from any unjustifiable interference by the coastal state. Clauses 2, 3, 4, 5 and 7 discuss the coastal state's right to construct and maintain installations on the shelf necessary for the exploration and exploitation of natural resources, and to establish safety zones to a distance of 500 meters around such installations for their protection. Under clause 6 such installations and safety zones are prohibited from being established where they may interfere with international navigation. Clause 8 requires the consent of the coastal state for any research concerning the continental shelf. Such consent may not be withheld if the request is submitted by a qualified institution for purely scientific research but the coastal state may exercise its right to participate in the research. Article V is

¹⁹ Katin, op. cit., pp. 101-102.

indicative of the Convention's goal of delineating exclusive claims of the coastal state while providing for maximum accommodations for the interests of the world community in the use of the sea.

Article VI sets out the means for determining the boundary of the continental shelf in the case 1) where the same continental shelf is adjacent to the territories of two or more states whose coasts are opposite each other and 2) where the same shelf is adjacent to the territories of two adjacent states. The formulations have caused some difficulty in actual application but in most situations have proved adequate.

Article VII preserves the right of a coastal state to exploit the subsoil by means of tunneling regardless of the depth of water above the subsoil.

Articles VIII through XV relate to procedural aspects of signature, ratification, accession and notification. A procedure for amending the Convention is included, but no changes have been made since its coming into force.

Africa played little part in the development of the law on the continental shelf. The shelf of Africa is generally narrow and unexplored. Most African states are technologically unable to exploit the resources of the sea-bed and subsoil without foreign capital and expertise.²⁰ In 1958, when the Conference was held many of the African states, were not independent. Only six African states were represented at the Conference: Ghana, Liberia, Libya, Morocco, Tunisia, and the Union of South Africa.²¹ Of these six states, South Africa is the only one which has acceded to the Convention, though Ghana, Liberia, and Tunisia have signed but not ratified it. The following table lists the African states which have acceded to the Convention as of December 31, 1971.

<u>State</u>	<u>Date of Accession or Succession (d)</u>
Kenya	June 20, 1969
Madagascar	July 31, 1962
Malawi	November 3, 1965

²⁰Steele, *op. cit.*, p. 92.

²¹UN Doc. A/CONF.13/L.55.

Mauritius	October 5, 1970 (d)
Nigeria	April 28, 1971
Senegal	April 25, 1961
Sierra Leone	November 25, 1966
South Africa	April 9, 1963
Swaziland	October 16, 1970
Uganda	September 14, 1964

The Sudan, by Convention on the Continental Shelf Ratification) Act [No. 62/70] affirmed Sudan's accession to the Convention, but notification of the accession has not been deposited with the Secretary-General of the United Nations in accordance with Article II.

Several African states, including some who are party to the Convention and some who are not, have passed domestic legislation concerning the continental shelf. This legislation has taken various forms. In some cases the form of the Convention is followed and the legislation basically incorporates the Convention into domestic law. Sudan's Territorial Water's and Continental Shelf Act [No. 106/70] is of this type. The language of the Act is almost identical to that of the Convention, including a verbatim definition of the continental shelf, and sections of the Act are parallel to the substantive articles of the Convention. Mauritius' Continental Shelf Act [No. 5/70] is also similar in form.

Other countries have chosen to amend existing legislation, concerning oil and mineral rights in the territorial waters, to include the continental shelf. This type of legislation is typified by Ghana's Territorial Waters and Continental Shelf Act [No. 175/63] which amends the Mineral Act [No. 126/62] to include the continental shelf and vests the rights to any minerals and organic matter in the President on behalf of the Republic in trust for the people of Ghana. It integrates the continental shelf into the existing body of law on natural resources and territorial waters.

A particular problem is exhibited by Nigeria because of its status as a federation of states. The Offshore Revenue Decree [No. 9/71] vests all royalties, rents and other revenues derived from or relating to the exploitation of territorial waters and the continental shelf in the federal military government. This forecloses any claim to the shelf or its petroleum by any individual state of the Nigerian Federation.

The legislation of other African states in general conforms to these models; following is a list of legislation concerning the Continental Shelf:

Congo (Brazzaville) - Ordinance no. 21-70 of July 14, 1970 [8/1 p.427] promulgates regulations applicable to all societies or persons, public or private with regard to the exploitation of the Continental shelf with the Congo's jurisdiction.

Ivory Coast - Law no. 70-489 of August 3, 1971 [8/12 p.1275] revises the Petroleum Code to cover exploitation of the petroleum deposits of the continental shelf.

Malagasy - Law no. 70-016 of July 15, 1970 [7/25 p.1582] regulate installations and other apparatus on the continental shelf.

Sierra Leone - Continental Shelf Bill [B 9/71] would provide for exploration and exploitation of the continental shelf.

Senegal - Law 68-30 of July 24, 1968 [8/17 p.1034] establishes a contiguous zone of 6 miles beyond the territorial water and specifically declares that such a zone is not in conflict with the Continental Shelf Convention.

Mauritius - Petroleum Act [No. 6/70] vests all petroleum resources in the Crown and provides for prospecting and mining of petroleum including the areas of the territorial sea and continental shelf.

It is to be expected that as technological ability increases and the exploitation of mineral, oil and other resources become more plausible, an increasing number of African states will become party to the Convention on the Continental Shelf and enact legislation to regulate the rights as established by the Convention.

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