CHAPTER 2

The Outer Limits of the Continental Shelf in International Law

2.1 Introduction

This chapter provides an historical account of the rules on the outer limits of the continental shelf in international law, so as to introduce the provisions of the LOS Convention pertaining to the Commission and the outer limits of the continental shelf.

The chapter is divided into five sections. Section 2.2 briefly deals with the early origins of the continental shelf regime under international law. Section 2.3 reviews the evolution from 1945 and until the mid-1960s. Section 2.4 discusses the last and consolidating phase of the historical development related to the regime of the continental shelf in international law. The focus is on the UNCLOS III negotiations directly relevant to the current legal rules on the outer limits of the continental shelf and the Commission: Article 76 and Annex II of the LOS Convention. Some concluding remarks are offered in section 2.5.

2.2 The Early History of the Legal Regime of the Continental Shelf

Towards the end of the 17th century, the perception among European naval powers was that the principle of the freedom of the seas was more beneficial to them than previous failed attempts to establish national monopolies. Most unilateral claims had been withdrawn, and by the turn of the century, Hugo Grotius’ ideology of *mare liberum* had become a reality. The principle of the ‘free sea’ had proven to be of benefit to international trade and shipping.

The continental shelf was nevertheless not yet perceived as a specific matter of interest. Of course, at that time, states did not know and could not imagine the continental shelf concealed valuable assets. The only example of

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1 Grotius’ influential argument in favour of freedom of navigation trade, and fishing is available in Richard Hakluyt’s translation *The Free Sea*—edited and with an introduction by David Armage. See Armage, David (ed.), *The Free Sea* (Liberty Fund, 2004).
utilization of seabed resources in Europe during the 18th century was the occasional fishing of oysters on the banks in the English Channel.²

It was the USA which first made an official reference to the continental shelf in a legal context. A report of 17 November 1806 dealt with a US proposal for the expansion of the country’s territorial waters.³ During the 19th century, several other states began adopting laws concerning activities on the seabed. In the Cornwall Submarines Act of 1858, the UK invoked the right to build tunnels and mines beneath the seabed outside the limits of its territorial waters.⁴ Similar regulations were also adopted by Canada, Australia, Chile and Japan.⁵ Domestic legislation concerning pearl fisheries off the coasts of Ceylon can be traced back as early as to 1811.⁶ Legislation for sedentary fisheries also applied in Tunisia,⁷ Panama and Venezuela.⁸ In some cases, these regulations were subject to geographical limitations. For example, the regulation of pearl fisheries in Panama applied to a distance of 120 nautical miles from the coast.⁹ Regulation concerning fishing for sponges off the coast of Tunisia applied to a distance of 17 nautical miles.¹⁰ But even though some states at a very early point in time regulated activities on the continental shelf adjacent to their coasts, the claims were so limited that they in reality never challenged the principle of mare liberum.¹¹ Even by the beginning of the 20th century, marine technology had made little significant progress. Commercial activity was still limited to traditional pearl and shell fisheries on banks and close to land.

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7 Ibid., p. 452.
9 Ibid., p. 18.