The Continental Shelf beyond 200 Nautical Miles – a Crucial Element in the ‘Package Deal’: Historic Background and Implications for Today

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The rules contained in Articles 76 and 77 of the 1982 United Nations Convention on the Law of the Sea (LOS Convention), on the sovereign rights of coastal states in the continental shelf areas both within and beyond 200 nautical miles,¹ are negotiated solutions. They were extensively debated at the Third United Nations Conference on the Law of the Sea (UNCLOS III) held from 1973 to 1982, and have been accepted by the international community.

At first glance, however, some might think that the principle of sovereign rights for the coastal state in regard to the continental shelf is nothing new, and that the provision in Article 77 of the LOS Convention is merely a codification of existing rights. Similarly, it would seem that the principle of the rights of the coastal state to shelf areas beyond 200 miles is in accordance with the rules in existence before 1970, in conventional as well as customary law. There was indeed no limitation based on 200 miles or some other specific distance from the coast.² On this background, one might well say that Articles 76(1) and 77(1) of the LOS Convention represent a codification of traditional law, insofar as those provisions lay down the right of the coastal state to the entire continental shelf, also in areas beyond the distance of 200 miles.

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¹ All references to ‘miles’ hereinafter are nautical miles.
² Theoretically, one might have argued that areas more than 200 miles from the coast were not, as such, ‘adjacent’ to the territorial sea of the coastal state. However, in 1969 the ICJ had clearly stated that the fundamental criterion of ‘adjacency’ – which appears in Art. 1 of the Geneva Convention on the Continental Shelf (text in UNTS, Vol. 499, pp. 311ff) – is not identical with ‘proximity’, or nearness to the coast; see Judgment of the International Court of Justice in North Sea Continental Shelf, Judgment, ICJ Reports 1969, in particular paras. 41 and 42, pp. 30–31.
Nevertheless, the path towards that codification was not an easy one. When the discussions of substance started at the second session of UNCLOS III in Caracas in 1974, the ideas of a truly extensive continental shelf subject to coastal-state rights – as is now laid down in Articles 76 and 77 of the Convention – met with considerable opposition. Not only the coastal-state right to the area beyond 200 miles, but the entire concept of the continental shelf was put in jeopardy. This chapter reviews that development and underlines its continuing relevance today as well.

OBSTACLES TO COASTAL-STATE RIGHTS TO OUTER CONTINENTAL SHELF IN THE EARLY PHASE OF UNCLOS III

The basic principle of coastal-state rights and jurisdiction in respect of the continental shelf in its entirety is traditional, pre-UNCLOS III law. The basic provisions of the LOS Convention are mainly the same as or similar to those found in the 1958 Geneva Convention on the Continental Shelf. The rules on revenue sharing, contained in Article 82 of the LOS Convention, and on precise delimitation of the outer continental shelf (Article 76) are clearly the result of the negotiations at UNCLOS III.

This is in contrast to Part V of the LOS Convention, on exclusive economic zone (EEZ), which establishes a zone of a special character – subject to a specific regime, according to the rules of the Convention. EEZ appears as more of a novelty; prior to UNCLOS III there had been no general acceptance of a right to 200-mile zone in respect of fisheries.

It is only when we study the negotiating processes at UNCLOS III and the events that led up to the general acceptance of what is now Part VI of the LOS Convention, that we can obtain a full understanding of the existing regime of the continental shelf. It is as much an element in the ‘package deal’ concerning all issues decided upon and regulated by the Convention, as this is the case regarding the EEZ. The provisions of Part VI, including those on the ‘outer’ continental shelf, represent a negotiated and agreed solution, one that has secured the rights and jurisdiction of the coastal states, subject to precise conditions detailed in the LOS Convention.

The roots of the negotiated solution lie in the main factors that were the driving forces behind the convening of UNCLOS III. In my opinion, there were three such main factors.

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