Abstract

To date, the Commission on the Limits of the Continental Shelf has issued 14 recommendations relating to the outer continental shelf of 15 states. As of 2010, there were in excess of 50 full submissions and 40 partial submissions that had been lodged with the Commission. If most (or all) of these submissions are upheld, then many states will have to consider how to appropriately regulate activities on the continental shelf.

The main complicating factor for the OCS is that, above the shelf, the freedoms of the high seas prevail. Article 78 establishes that the rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters. In addition, “the exercise of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States”. This paper considers the implications of this legal framework for safety and environmental regulation of activities taking place on and above the OCS.

I. Introduction

Concerns about environmental protection and safety of operations on the continental shelf were brought into sharp relief by the Deepwater Horizon event in the Gulf of Mexico in July 2010. This event highlighted the potential impacts on human and environmental interests when things go wrong on the continental shelf. Much needed attention is being paid to how regulation could better protect such interests in the future. However, it is sometimes overlooked that regulation of the areas of the continental shelf beyond 200 nm (the “outer continental shelf” or “OCS”) needs to take into account the different international legal framework that applies to that zone.

To date, the Commission on the Limits of the Continental Shelf has issued 18 recommendations relating to the outer continental shelf of 17 states. As of 1 March 2013, there were 57 states that had lodged submissions with the Commission and a further 25 states have lodged preliminary information prior

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to full submissions. If most (or all) of these submissions are confirmed, then many states will have to consider how to appropriately regulate activities on the continental shelf.

From the coastal State’s perspective, there is no juridical difference between the continental shelf within 200 nautical miles, and the continental shelf beyond 200 nautical miles. The rights to the living and non-living resources set out in article 77 of the United Nations Convention on the Law of the Sea (LOSC)\(^2\) are the same across the entire shelf. However, the particular circumstances that apply on the outer part of the continental shelf (OCS) mean that careful consideration needs to be given to the appropriate extent of coastal States’ regulation.

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Although in many cases the prospect of activities taking place beyond 200 nm from the coast seems to be a distant one, the reality is that increasing interest is being taken in the exploitation of resources on the outer continental shelf. If states are to realise the economic value of their resources whilst also ensuring environmental protection, they should clearly understand the limitations and possibilities of the legal framework for the OCS. This paper will explore the implications of this legal framework for safety and environmental regulation of activities taking place on and above the OCS.

II. Activities on the Outer Continental Shelf and Their Potential Environmental and Safety Consequences

The perceived value of the resources of the continental shelf encouraged states to seek sovereign rights to these resources beyond 200 nm from the coast during the LOSC negotiations. The LOSC introduced significant changes to the pre-existing concept of the continental shelf under the 1958 Geneva Convention.\(^3\) The juridical continental shelf was extended to 200 nm to coincide with the exclusive economic zone (EEZ) regardless of whether a physical shelf existed.\(^4\) Where the physical continental shelf extended beyond 200 nm, article 76 established a formula by which a coastal State could establish the outer limits of the

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\(^3\) Convention on the Continental Shelf 1958, 499 UNTS 312.

\(^4\) Article 76(1), LOSC.