

THE LEGAL FRAMEWORK OF THE EXTENDED CONTINENTAL SHELF: TOWARDS EXPLORING IT, EXPLOITING ITS NATURAL RESOURCES AND REGULATION

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To date, the Commission on the Limits of the Continental Shelf has issued 18 recommendations relating to the extended continental shelf of 17 states, including Japan. As of 2012, there were in excess of 65 full or partial submissions and 45 sets of preliminary information 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.

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 resources set out in Article 77 of the United Nations Convention on the Law of the Sea (UNCLOS) are the same across the entire shelf. However, the particular circumstances that apply on the extended part of the continental shelf (ECS) mean that careful consideration needs to be given to the appropriate extent of coastal states’ regulation.

The main complicating factor for the ECS 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 statement makes it clear that *some* interference with high seas freedoms is permissible in order to protect coastal states’ interests in the resources of the sea floor. The more difficult question is how to balance those freedoms in practice. What forms of regulation could the coastal state impose without unjustifiably interfering with the freedoms of the high seas?

This lecture will outline the legal framework that applies to the ECS, noting the legal complications facing regulation there. The lecture will briefly discuss the resources of the continental shelf that states may be interested in, and the types of activity that coastal states may wish to regulate. These include mining, fishing, marine scientific research, and bioprospecting.

The final part of the lecture will focus on two important issues. First, what must states consider when determining whether regulation is an infringement or unjustifiable interference with high seas freedoms? UNCLOS provides some guidance in relation to installations and structures on the continental shelf: the respective rights and obligations are carefully spelt out. But for other activities and issues, states must rely on the dubious assistance of article 78(2). In the lecture I will outline the factors that states should consider in weighing up the interests of the coastal state and other states exercising freedoms above the shelf.

The second issue is the question of whether a state has enforcement rights against foreign vessels operating in the high seas above the ECS. There is no such express right in UNCLOS. However, I will refer to International Law Commission reports, academic writing and state practice to argue that an enforcement right does exist.