

# The Legal Framework of the Extended Continental Shelf

Joanna Mossop  
Senior Lecturer  
Victoria University of Wellington

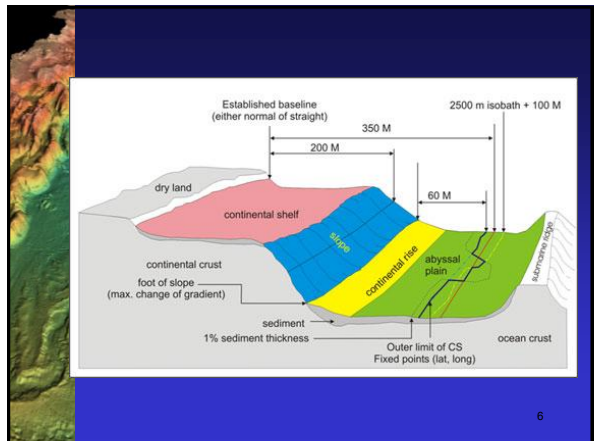
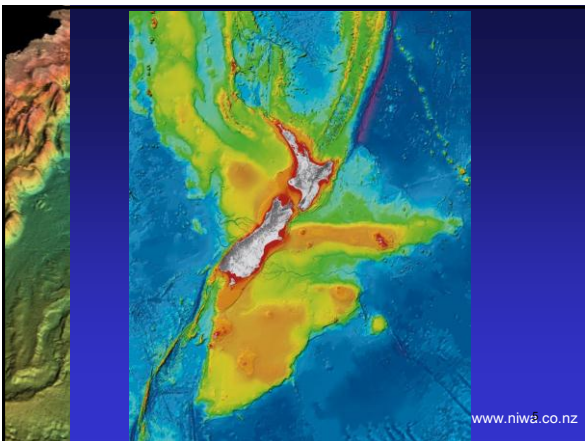
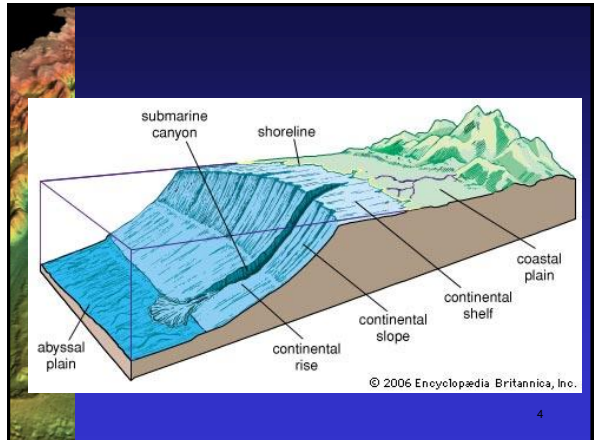
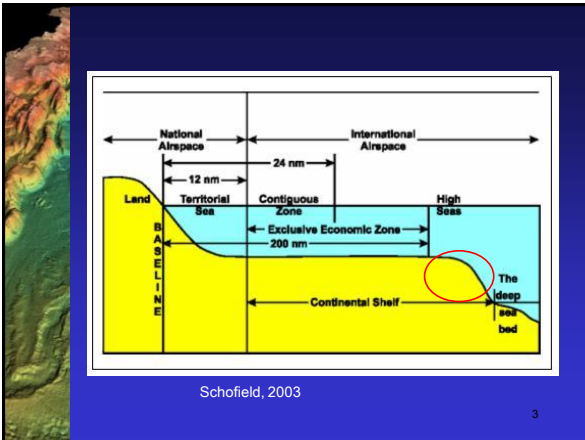
Ocean Policy Research Foundation Seminar  
"What is to be done towards development of resources on the continental shelf for the future"  
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## Outline

- The legal framework relating to the extended continental shelf
- Resources and activities on the continental shelf
- Issues for regulation of the extended shelf

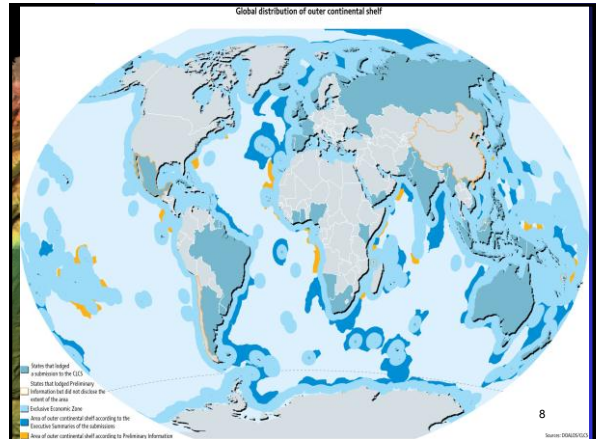
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## Commission on the Limits of the Continental Shelf

- 21 experts in geology, geophysics or hydrography.
- Recommendations only, but a state may rely on these to establish legally binding limits.
- December 2012: 65 full or partial submissions, 45 preliminary information.
- 18 recommendations issued

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## UNCLOS Part VI

- The coastal state exercises sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources. Art 77(1).
- Resources include sedentary species: those which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil. Art (77(4)).

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## UNCLOS Part VI

### Article 78

1. The legal rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters.
2. The exercise of the rights 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 as provided for in this Convention.

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## Marine Scientific Research: article 246(6)

- For MSR beyond 200 nm, states may not refuse consent on the basis that the project is of direct significance for the exploration and exploitation of living and non-living resources

### UNLESS

- The state has publicly designated the area as one in which exploitation is occurring or will occur within a reasonable time.
- Note: a coastal state may still refuse consent if the MSR will introduce harmful substances into the marine environment.
- Paragraph 7: the provisions of paragraph 6 are without prejudice to the rights of coastal states over the continental shelf as established in art 77.

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## Environmental Protection on the OCS

- General obligation to protect and preserve the marine environment (192, 194)
- Customary obligation not to cause transboundary harm or harm to areas beyond national jurisdiction. (*Pulp Mills, Advisory Opinion*)
- Due diligence to ensure harm is not caused including conducting an environmental impact assessment. (*Pulp Mills, Advisory Opinion*, art 194)

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## Current and future activities on the OCS

- Marine scientific research (MSR)
- Fishing
- Mining for seabed minerals
- Hydrocarbon extraction
- Bioprospecting
- Others?

www.nautilusminerals.com

## Mineral deposits

MINING SYSTEM  
Mining Support System (MSS)  
Head & Tail System (HTS)  
Seafloor Mining Technology

## Biological resources: seamounts

## Bottom trawling

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## Biological resources: hydrothermal vents and cold seeps

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## Regulation of activities: what is a 'justifiable interference' with high seas freedoms?

- Potential targets for regulation include activities directly targeting continental shelf resources and activities not directed at those resources but which have an impact on them.
- Some interference with high seas rights anticipated by UNCLOS

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## How to evaluate proposed regulation

1. Evidence of interference with shelf resources
2. Level of harm to the shelf resources
3. Relative importance of the interests
4. Is the interference as minimal as possible?
5. International or regional institutions and soft law instruments

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## Does a coastal state have enforcement jurisdiction over the outer continental shelf?

- No express enforcement right in Part VI
- Compare: article 25 (territorial sea), 33 (contiguous zone), 73 (EEZ for living resources), 220 (pollution).
- Exclusive flag state jurisdiction over vessels on the high seas with limited exceptions. (Art 92, 110)

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## But ...

- Right of hot pursuit includes pursuit when a vessel is "on the continental shelf, including safety zones around continental shelf installations".
- ILC Commentary to the 1958 Geneva Convention:

"The text as now adopted leaves no doubt that the rights conferred upon the coastal State cover all rights necessary for and connected with the exploration of the natural resources of the continental shelf. *Such rights include jurisdiction in connexion with the prevention and punishment of violations of the law*".

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## Further support ...

- Tentative academic approval of an enforcement right
- Legislation of UK, US, USSR and Australia following the 1958 Geneva Convention
- Reports of disputes suggest legal issues related to status of sedentary species, not legality of exercise of jurisdiction.

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## Conclusion

- Activities on the continental shelf beyond 200 nm face unique issues, e.g.
  - Interactions with users in the high seas
  - Different rules re MSR
  - Higher risk of transboundary harm or harm to the commons
- Coastal states, when regulating such activities, should not assume 'business as usual'. Careful consideration is required to take into account the legal differences.
- The differences should be reflected in the regulatory framework to avoid conflict with other states.

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