

THE CONTINENTAL SHELF

The continental shelf concept emerged primarily in 1958, the concept of the exclusive economic zone at the 1973-1982 Conference. Provisions derived from both concepts expressly state that the coastal state has sovereign rights to the non-living resources of the sea-bed and its subsoil within the area of each of the zones¹. But whereas the continental shelf concept is dependent on the rise of the continental shelf and can basically be applied only up to a certain depth of the sea-bed, the exclusive economic zone's outer limits are determined solely in terms of a distance from the coast (baseline), regardless of the depth of the water (and whether there is a continental shelf or not)². A distinction between the exclusive economic zone and the continental shelf zone is therefore necessary for two reasons:

- (a) a state party has to proclaim an exclusive economic zone, whereas the continental shelf rights exist for the coastal state independent of any proclamation or occupation, etc.³. Consequently, a coastal state may exercise sovereign rights to resources of the sea-bed beyond the territorial sea, even where an exclusive economic zone has not been established or where it has not been established to the full extent permitted;
- (b) if an exclusive economic zone has been established to the full extent permitted, a continental shelf subject to the coastal state's jurisdiction exists beyond the 200 nautical mile limit, if the topography of the sea-bed displays shelf character. The shelf may not exceed 350 nautical miles from the baseline from which the territorial sea is measured or 100 nautical miles from the 2,500 meter isobath, a line connecting the depth of 2,500 meters.⁴

If an exclusive economic zone has been established - and this will be the general rule - two legal regimes exist with regard to the sea-bed subject to coastal state sovereign rights. Part of the shelf (sea-bed) is then subject to the regime of the exclusive economic zone and is governed generally by its provisions, which include reference to continental shelf provisions.⁵ To avoid confusion, one should speak of the "sea-bed of the exclusive economic zone" or, synonymously, the "primary sea-bed," and call the sea-bed beyond the limits of the exclusive economic zone the "outer shelf." The "outer shelf" would be governed by an independent legal regime under the application of the provisions of Part VI for the "continental shelf" only.

The sovereign rights of the coastal state always include the exploitation of living organisms belonging to sedentary species,⁶ drilling,⁷ tunneling,⁸ and the use of artificial islands, installations, and structures.⁹ On the outer shelf beyond the 200 mile limits, the coastal state has no rights with regard to the superjacent waters to the sea-bed and the air space above those waters¹⁰. It must avoid interference with navigation and other rights and freedoms of other states¹¹ as laid down in the regime of the high seas.¹² The coastal state must make annual payments or contributions to the Sea-Bed Authority for resources exploited from the outer shelf, beginning five years after the start of production and increasing yearly to a maximum of seven percent of the value or volume of production at the site.¹³ The delimitation of the outer shelf is to be undertaken by the coastal state on the recommendation of the Commission on the Limits of the Continental Shelf;¹⁴ corresponding charts and relevant information are to be deposited with the Secretary-General of the United Nations¹⁵ or the Secretary-General of the Authority (charts showing outer limits) and published¹⁶. The coastal state can exclude compulsory settlement of disputes¹⁷ which might arise from delimitation of the outer shelf where other states have opposite or adjacent coasts¹⁸.

¹ Art. 56(1)(a); 77(1)

² Art. 57, 76

³ Art. 77, Para. 3

⁴ Art. 76, Para 5

⁵ Art. 56, Para. 3

⁶ Art. 77, Para. 4; Art. 68

⁷ Art. 81(Art. 56, Para. 3)

⁸ Art. 85(Art. 56, Para. 3)

⁹ Art. 60, 80

¹⁰ Art. 78, Para. 1

¹¹ Art. 78, Para 2

¹² Part. VII

¹³ Art. 82

¹⁴ Annex II

¹⁵ Art. 76, Para. 8-9, Art. 84

¹⁶ Art. 84, Para. 2

¹⁷ Art. 298, Subpara. 1(a)

¹⁸ Art. 76, Para. 10; Art. 83

RIGHTS OF FOREIGN NATIONALS IN THE EXCLUSIVE ECONOMIC ZONE, ON THE CONTINENTAL SHELF, AND ON THE HIGH SEAS

- (1) Exclusive Economic Zone including its sea-bed, the "Primary Sea-bed" (see text)
 (2) Continental Shelf/"Outer Shelf" (see text)
 (A) If no exclusive economic zone has been established, then beyond territorial sea, and
 (B) If exclusive economic zone has been established, then only "outer shelf"
 (3) High Seas: As defined in Article 86

ACTIVITY	(1) EXCLUSIVE ECONOMIC ZONE, INCL "PRIMARY SEA-BED"	(2) CONTINENTAL SHELF OR "OUTER SHELF"	(3) HIGH SEAS
Navigation	Free, if compatible with Convention (Articles 58, Paragraph 1, 87, 58, Paragraph 2, 88-115)	Equal rights for all (Article 87)	Equal rights for all (Articles 87 and 90)
Overnight	Free, if compatible with Convention (e.g., Article 222, Pollution)	Equal rights for all (Article 87)	Equal rights for all (Article 87)
Fishing	Access through agreements (Article 62) Land-locked, geographically disadvantaged states (Articles 69,70)	Equal rights (Articles 87,116-120), except sedentary species (Article 77, Paragraph 4)	Equal rights (Articles 87, 116-120)
Scientific research	Consent necessary (Article 246)	Water column: Equal rights (Article 87) Sea-bed. Consent (Article 246)	Equal rights (Article 87) Except, on the — "outer shelf" (Article 246) — Area. requires co-operation (Article 143)
Cables	Free, consent for routing required (Articles 56, Paragraph 3, 58, 1; 79, 112-115)	Free, consent for routing required (Article 79)	Equal rights (Articles 87, 112-115)
Mining	No rights	No rights	Equal rights (Article 141) management by Sea-Bed Authority (Article 137)
Marine Environment	Jurisdiction as provided by Convention (Article 56, Subparagraph 1(b); Part XII)	Rights of coastal states (Articles 192, 208) with regard to sea-bed activities	Equal responsibility (Article 192); activities in Area (Articles 209, 215), flag state (Articles 211, 217), port state jurisdiction (Article 218)