

EXTENDED ENGLISH SUMMARY

Introduction

The creation and existence of the institution of the continental shelf is not only a new conventional invention of international law. Awareness of interest vis-à-vis this new maritime area during the last sixty years shows primarily the peculiarity of the evolution of the new Law of the Sea and the particular perception that modern international law maintains between State and maritime spaces.

From Truman's Declaration to the work of the International Law Commission (ILC), the States' interest in the continental shelf was very sudden and proportional to the post-WWII economic revival, stimulated by the last industrial revolution and the rapid progress of science. Although the 1958 negotiations on the Law of the Sea in Geneva were able to create a convention dedicated to the new maritime area that represents the continental shelf, the recognition and ratification of the convention was very poor. Despite the creation of a legal system devoted exclusively to the continental shelf by the convention of 1958, States have continued to claim, sometimes in a chaotic way, more and more large maritime spaces both at the surface and on the soil and subsoil of the oceans. This pressing interest, driven by economic and political concerns, found its expression through a cascade of unilateral claims outside the law established in 1958. This sudden acceleration of unilateral claims on new ocean areas revealed the need to rethink the Law of the Sea in a more integrated way, taking into account the technological advances, the upheaval of the post-war society marked by the end of the era of colonization, and especially, the needs and desires of State expansion.

The New Law of the Sea, negotiated and defined within the framework of the Third United Nations Conference of the Law of the Sea (UNCLOS III) responds to a particular goal: redraw boundaries of maritime zones and regulate the Law of the Sea as a "Constitution", encouraging synergy and coherence between the different relevant issues.

Under this Convention, the continental shelf regime was redesigned and many changes were added, mainly relating to the definition of this space.

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The continental shelf, once defined in terms of adjacency, depth and exploitability, is now understood in a profoundly different way. From an uncertain single continental shelf limit in 1958, the continental shelf is now apprehended in terms of its extent and its geomorphological and geological reality. This profound change in the definition of the continental shelf was also guided by the creation of new maritime zones, enclosing the debate in a very tight grip. Thus, the creation of the Exclusive Economic Zone (EEZ), in line with the continental shelf within 200 nautical miles, and the International Seabed Area, in line with the outer limits of the continental shelf beyond the 200 nautical miles, significantly influenced the way of understanding, considering and debating the continental shelf regime, both through its *raison d'être* and its definition.

The evolving definition of the continental shelf, particularly the creation of the extension procedure, is not only a novel procedure of the New Law of the Sea. The extension procedure does not only represent the technicality and complexity of the provisions of the New Law of the Sea. The new continental shelf regime, and particularly the phenomenon of the extension of the shelf, reflects the changing relationship between the State and its continental shelf. Thus, beyond the scientific and technical considerations, often exposed when interpreting the continental shelf regime, the approach taken in this study aims to distinguish from them by adopting a new and wider perspective, focusing on the reasons for this extension to explain its impact on the Law of the Sea. To this end, the writer endeavours to take into account the history of the formation of this regime and analyse the work of the ILC, the output of two conferences on the Law of the Sea in 1958 (UNCLOS I) and in 1982 as well as the current work of the Commission on the Limits of the Continental Shelf (CLCS).

The emergence and evolution of the continental shelf area is furthermore a reflection of the profound changes in the International Society. This profound evolution is clear since it has created a differentiation within a single legal regime between two different shelves, the one within and the one beyond 200 nautical miles. The birth of the extended continental shelf in the New Law of the Sea has therefore been achieved in the context of an important break, which has prompted the author to study the continental shelf from a specific perspective being:

“What is the impact of the extended continental shelf on the New Law of the Sea?”

Focusing on the study of the extended continental shelf, that is to say the plateau from 200 to a maximum of 350 nautical miles or a distance of 100 nautical miles from the 2 500m isobath, does not exclude the area of the continental shelf within 200 nautical miles. This is because, firstly, such an

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exclusion would be difficult given the single legal regime of the continental shelf, and secondly, it would limit the study's purview of precious information which is necessary to understand the uniqueness of this new zone beyond 200 nautical miles.

The purpose of this study is not to only focus on the evolution of the continental shelf doctrine that led to this extension. Nor is it to simply analyse, in a systematic way, each provision of the continental shelf regime. Rather, this study seeks to adopt a broader spectrum of analysis. Given the context of UNCLOS III and the development of the new structure and dynamics of the International Community, the study of the impact of the extended continental shelf on the Law of the Sea will be conducted through the prism of the *territorial obsession* that drives States. The extended continental shelf will be understood as a perspective from which to analyse, under a new light, the institution of the continental shelf and the reasons for its evolution. This research angle offers the opportunity to return to the heart of the key concepts of international law, combining a consideration of the State space and its territory with discussions regarding the sovereignty concept. However, this return to the key concepts of international law and the Law of the Sea will be strictly understood. Thus, the study does not attempt to review and reformulate concepts in the broad sense, but merely endeavours to apply and reinterpret them vis-à-vis their direct applications, that is to say the extension of the continental shelf and its impact on the Law of the Sea.

The purpose of this study is to highlight the debates and omissions concerning the continental shelf doctrine, from its origin until today, in order to explain the reasons for this extension and its special significance within the Law of the Sea. This analysis takes a transverse position, taking into account both the *horizontal issues* of the continental shelf and its interaction with other marine areas, and particularly the International Seabed Area, and also the *verticality of these issues* including the special relationship that this extension has with the High Sea. The relationship of the various maritime zones is thus proving to be an indispensable element for understanding the particularity of the area of the extended continental shelf. Moreover, the resumption of basic provisions of the regime of the Geneva Convention in the Convention of Montego Bay of 1982 (LOS Convention) has brought to the fore significant difficulties concerning the articulation of the new definition of the continental shelf, strongly influenced as it is by technical scientific definitions and interpretation. Thus, the new definition's relationship with the remaining provisions of the continental shelf regime, deriving from the Geneva Convention, pose significant interpretation challenges.

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This study of the extended continental shelf is original and crucial for several reasons. Original, because few studies nowadays return to the fundamental key concept of the Law of the Sea, that is to say, to the issues related to the definition of maritime areas and their rationale. Crucial, because this research topic is not emphasized enough, mainly due to the loss of interest vis-à-vis the Law of the Sea. Crucial, also because of the importance that the continental shelf has to the surface of our globe. Indeed, of a surface ocean covering nearly 71% of the earth, the continental shelf, as defined by the LOS Convention, represents a considerable portion: almost 7.5% of the sea surface of the Earth and almost 1/5th of land surface, or the equivalent of the area of Latin America or Europe. This corresponds to an extension of 11% of control over marine areas. Finally, after the negotiations of the LOS Convention and the important influence of the New Economic Order, most of the jurisprudence has focused its attention on the other creations of the LOS Convention, including the International Seabed Area and the symbiosis with the continental shelf and exclusive economic zone, at the forefront of much of the research on fishing issues. Thus, recent studies on the extended continental shelf are rare, despite the fact that this regime is an integral part of the LOS Convention since it was signed in 1982.

From a methodological point of view, this subject of study does not permit the use of empirical research methods. This is due to the lack of preparatory work of UNCLOS III, the confidentiality of the work of the CLCS, and also the very recent State practice in this regard. States are thus in the phase of "discovery" of the extension. However, it is expected that many conflicts of interpretation will arise as to the implementation of the continental shelf regime. A study of the impact of the regime of the extended continental shelf on the New Law of the Sea would therefore be a guide for the interpretation and the implementation of the key provisions of the regime of the extended continental shelf. The research and interpretation presented here are therefore upstream of the work of the judge. This thesis wishes to go beyond the debate and reflection that have littered the creation and evolution of the continental shelf to reveal the hidden face of these developments, and to bring into consideration the relevant provisions of the LOS Convention so that they will continue to be a focus in future.

The context of negotiations of UNCLOS I and III, but also the changing expectations and needs of States, both from a political and economic standpoint, are all key elements in the quest for an understanding of this race to the continental shelf (Part I). While necessary to this study, they are nevertheless only a partial view. Indeed, the extended continental shelf touches more fundamentally on the theme of space and territory. Although the State's rights over its continental shelf have been created by the 1958 Convention and incorporated by the LOS Convention, their articulation, by

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reference to the definition of the continental shelf of 1982 and particularly the extension procedure of the continental shelf, requires an analysis of the weaknesses of the scheme that will put into perspective the nature of the title of the coastal State over the continental shelf (Part II). Finally, returning to the heart and fundamentals of public international law, this study will go beyond the wording of the LOS Convention and reveal the very meaning of this procedure-extended continental shelf, which is generating so much attention today. Recognizing the very great difficulties concerning the definition of the continental shelf, G. Scelle expressed in 1955, before the Geneva Convention of 1958:

"The very definition of the continental shelf is imprecise, approximate, and therefore the delineation of its extent and its borders will be more complicated and may often be impossible."¹

More than 50 years after this declaration, the implementation of criteria for defining the outer limits of the continental shelf, under the direction of the CLCS, faces many significant challenges, and attracts the interest of all states, whether or not they are parties to the LOS Convention. This is not without significance. The extension of the continental shelf reveals, through its implementation phase, its special nature: as a procedure of defining the outer limits of the continental shelf, as described by Article 76, the extension procedure for the continental shelf is actually an integral phase of delimitation of boundaries (Part III).

Part 1 **The renewed interest of States:** **The race to the extended continental shelf.**

The implementation of criteria for claiming an extended continental shelf does not explain the reasons prompting States to extend their continental shelf beyond 200 nautical miles. The procedure for extending the shelf does not promote the transparency of State interests motivating this extension, and its implementation alone does not allow an outside perspective that could help to understand the challenges inherent in this extension. Thus, a reading of the procedure instituted by the LOS Convention can not answer this simple question: Why extend the shelf? Why did States want to change the definition of the continental shelf of the Geneva Convention and

¹ Translated by the author. G. Scelle, « Plateau continental et droit international », *Revue générale de droit international public*, Tome 26, N° 1955, p. 11.