

THE CONTINENTAL SHELF

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The unending vastness called the sea has always posed a mystery for man. For one thing this liquid mass appears to be unique in this part of the universe. How it came to be is as elusive as how life itself originated on this planet. Equally fascinating has been the sea's system of sustaining the very life which it supposedly nurtured. Man is only beginning to understand these complexities and hopefully he will learn to appreciate and respect the delicate balance of interactions upon which the earth's support system and man's existence depends. It is ironic then that modern science has given more emphasis to space exploration where the immediate returns appear remote, neglecting 71% of the earth with its tremendous potential for food and minerals. The last decade has witnessed a feverish seaward search for raw materials particularly in the continental shelf area. It is to the evolving legal regime of this shelf that this paper hopes to introduce the student of law.

Geophysical and Legal Aspects

The idea of mining the sea is of very recent origin. For those who had entertained the thought, the technological obstacles seemed insurmountable. It was really only a matter of time. Estimates of possible mineral reserves trapped beneath the ocean floor are astronomical. Of special interest are petroleum, natural gas, manganese nodules with their copper, nickel and cobalt content, tin and even diamonds.¹ A leading geologist² estimated that at least 1,000 billion barrels of oil remain locked in the sea bottom. About 16% of the world's total output of oil is now derived from off-shore resources. It is estimated that by 1980, 35% of oil production will come from the sea-bed areas and 50% by the year 2000.³

The continental shelf is a world-wide geological feature and is not limited to any one continent or hemisphere. It is the name given to the submarine base on which all continents and all off-shore islands and rocks

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¹ Bascom, *Mining in the Sea*, in ALEXANDER, *LAW OF THE SEA* 161 (1967).

² Pratt, *Petroleum on the Continental Shelves*, 31 *BULL. AM. ASSN. PETROL. GEOLOGISTS* 657, 699 (1947) as cited in MCDUGALL & BURKE, *PUBLIC ORDER OF THE OCEANS* 570 (1962).

³ Yango, *Proposed Regimes for the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction*, 3 *P.Y. INT'L L.* 122 (1974) (A paper read at the Joint Annual Meeting of the Philippine Society of International Law and the Philippine Commission of Jurists held on February 24, 1973 at the Memorial Hall, Ramon Magsaysay Center, Roxas Blvd., Manila).

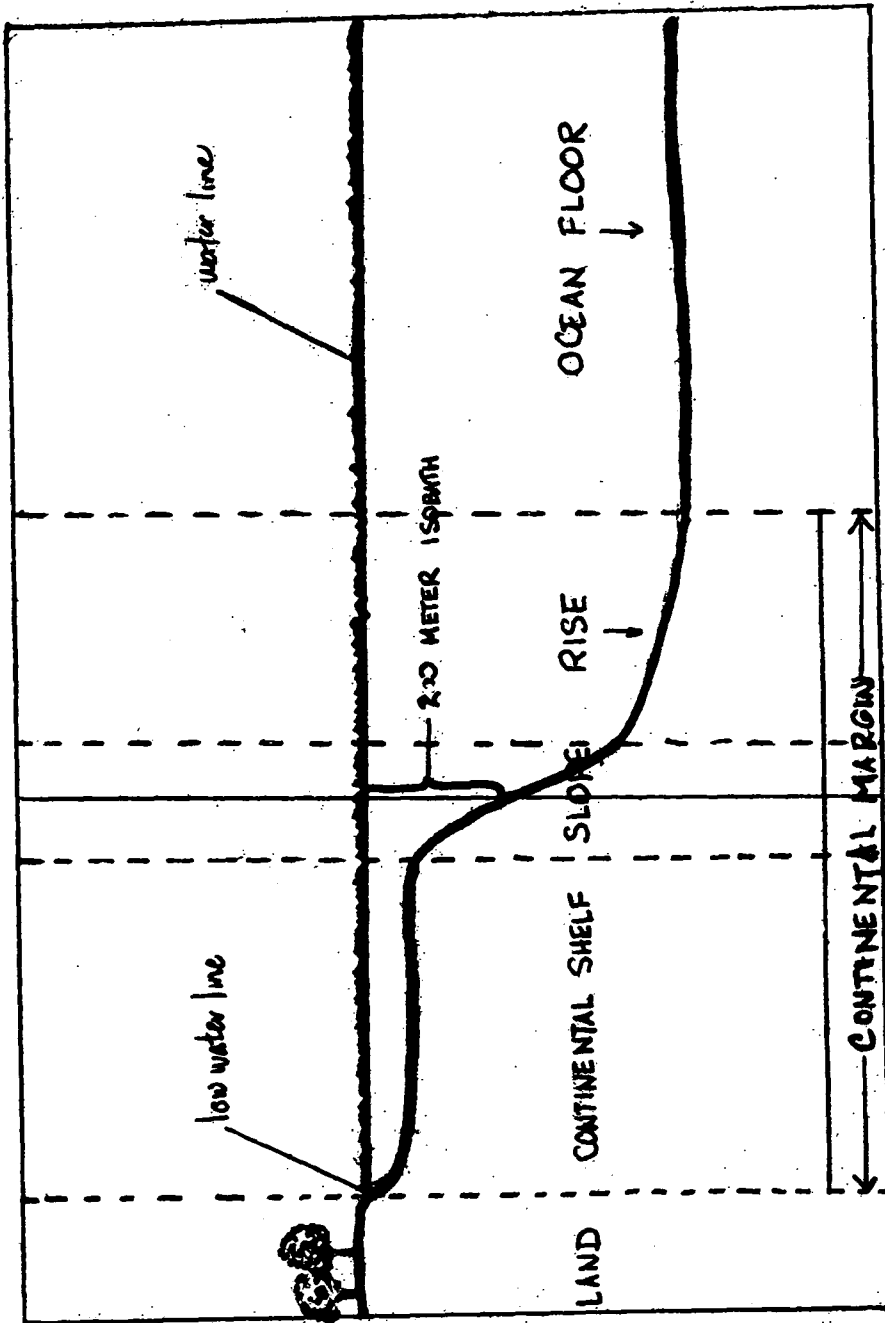


Illustration 1. Nature of a Continental Shelf

rest. Specifically it has been defined as the submerged portion of a continent or island which slopes gently seaward from the low water line to a point where a substantial break in grade occurs, at which point the bottom slopes seaward at a considerable increase in slope until the great ocean depths are reached.⁴ The nature and structure of a continental shelf⁵ reveal an inherent unity with the land mass of which it is an extension or continuation. The shelves and slopes of the world have an area of about 55.4 million square kilometers. This area is more than one third of the 149.8 million square kilometers of the subaerial parts of the continents. If added to the sovereign territory of adjacent nations it would expand some of them by a factor of more than ten while adding nothing to the areas of such inland nations as Bolivia, Czechoslovakia, and Mongolia.⁶

Illustration 1 is a graphic example of the stereo-type geomorphological model of a continental shelf. The shelf, the slope and the rise are basic components of the continental margin which in essence represents a zone separating the emerging continents from the deep sea bottom or abyssal depths. It has been estimated that the edge of the continental margin extends down to from 2,500 to 3,500 meters deep.⁷ The continental slope is bounded on its seaward side by the continental rise, a vast apron of debris from the continent and of calcareous skeletal material from near the sea surface. The apron shape reflects the landward source of most of the sediment (brought by turbidity currents and suspended sediment) and its movement and redeposition by bottom currents that appear to flow parallel to the contours.⁸

The continental shelf is by no means as simple as the illustration may impress. Often times its contour is irregular and jagged with crevices and depressions; it may be wide in certain areas and narrow or even absent in others; there is no fixed design for a continental shelf and authorities disagree on its outer limits. This indefiniteness is and will continue to be the nemesis of attempts to define the concept in a legally precise manner that would be internationally acceptable. A firm grasp of the geophysical concept is essential in order to obviate the confusion spawned by the various legal concepts that have since developed.

⁴ Manansala, *The Philippines and the Third Law of the Sea Conference: Scientific and Technical Impact*, 3 P.Y. INT'L, L. 137 (1974) (Author is the Chief Geophysicist, Bureau of Coast and Geodetic Survey and Member of the Philippine Delegation to the U.N. Sea-Bed Committee 1971-73).

⁵ Referred to also as the "geomorphological or geophysical" nature and structure.

⁶ Emery, *Geological Aspects of Sea-Floor Sovereignty*, in ALEXANDER, *LAW OF THE SEA*, 151 (1967).

⁷ 3 P.Y. INT'L, L. 138 (1974).

⁸ ALEXANDER, *LAW OF THE SEA*, 150 (1967).

The first recorded undersea boundary agreement was the Treaty of the Gulf of Paria entered into by the United Kingdom (representing Trinidad which was then a British possession) and Venezuela in February 26, 1942 to settle the dispute on off-shore oil drilling. No mention is made of a continental shelf but reference was made to "submarine areas" to denote the sea-bed and the subsoil outside of the territorial waters of the contracting parties.⁹

It was however, the United States of America, fresh from victory in World War II and upon whom the world's esteem was heaped, who made the first official pronouncement on the continental shelf. On September 23, 1945 President Truman issued Proclamation No. 2667¹⁰ which unceremoniously annexed the continental shelf:

"Having concern for the urgency of conserving and prudently utilizing its natural resources, the government of the United States regards the natural resources of the subsoil and sea bed of *the continental shelf beneath the high seas but contiguous to the coasts of the United States* as appertaining to the United States, subject to its jurisdiction and control."

An accompanying White House press release revealed the national interest of safeguarding 750,00 square miles of submerged land reported to have an oil reserve potential of 22 billion barrels plus other minerals. The Department of Interior compared the purchase of Alaska for \$7,200,000, the Danish West Indies for \$25,000,000 and Louisiana for \$27,000,000 to the annexation of the continental shelf which cost only the "forethought that was required to assert our sovereignty over it".¹¹

On June 23, 1947 the President of Chile likewise appropriated the "land surface or continental shelf adjacent to the continental and island coasts of its national territory, whatever may be their depth below the sea."¹²

On October 29, 1945 the President of Mexico claimed for his nation "the whole submarine shelf or platform adjacent to the coasts of the Republic and of its islands."¹³

In 1952 Israel defined the continental shelf as the submarine areas contiguous to the coast outside the territorial sea to the extent depth allows exploitation.¹⁴

⁹ U.N. Leg. Ser. 4447.

¹⁰ U.N. Leg. Ser. 3841.

¹¹ *Ibid.*

¹² 1 U.N. Leg. Ser. 6-8.

¹³ 1 U.N. Leg. Ser. 13.

¹⁴ 2 LAY, CHURCHILL & NORDQUIST, *NEW DIRECTIONS IN THE LAW OF THE SEA* 846 (1973).

In the Outer Continental Shelf Land Act of August 7, 1953, the United States further qualified the outer continental shelf to refer to all submerged land lying seaward and outside of the area of lands beneath navigational waters.¹⁵

For eight years preceding the Convention in Geneva of 1958 the International Law Commission studied, debated and formulated what they considered to be the traditional law of the sea. The conventions approved in Geneva show generally no radical departure from the commissions, recommendations.¹⁶ Four conventions were separately passed namely:

1. Convention on the Territorial Sea and the Contiguous Zone
2. Convention on the High Seas
3. Convention on Fishing and Conservation of the Living Resources of the High Seas
4. Convention on the Continental Shelf.

Article 1 of the last convention defines the continental shelf as referring — a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas and b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands. This definition is full of ambiguities. There are conflicting views on the extent of the word "adjacent". A liberal interpretation could authorize coastal states to lay claim to areas far out to the sea and a strict interpretation would exclude all areas where there is a break or a severance.¹⁷ Another view asserts that there must be a geophysical unity between the shelf and the land mass. The breadth of the territorial sea is likewise an unsettled issue with countries like the U.S. claiming three miles and others like Peru claiming two hundred miles. The most telling criticism of the definition adopted by the convention is the 200 meter isobath or depth criterion which was based on the technological capabilities then and which is nullified by the "exploitability test" The exploitability clause itself is subject to at least two interpretations:

1. that the outer boundaries of the shelf are dependent upon the actual technological ability of the particular nation concerned or
2. that boundaries are determined by the technological ability of the most advanced nation.¹⁸

¹⁵ 67 Stat. 462-71 (1953), 43 U.S.C. Secs. 1331-43 (1958).

¹⁶ Neblett, *The 1958 Conference on the Law of the Sea: What Was Accomplished*, in ALEXANDER, *op. cit.*, 36 (1967).

¹⁷ An example is the Norwegian Trench that adjoins most of the coastline of Norway. Water depths here are less than 100 fathoms.

¹⁸ Dean, *The Law of the Sea Conference, 1958-60 and Its Aftermath*, in ALEXANDER, *op. cit.*, 247 (1967).

Article 2 of the Convention on the Continental Shelf further provides:

Sec. 2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal state does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal state.

Sec. 3. The rights of the coastal state over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

Sec. 4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms 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 the subsoil.

Sections 2 and 3 bestow on the coastal state a kind of natural right over the continental shelf to the exclusion of all others. This principle was underscored in the North Sea Continental Shelf Boundary Judgment where the International Court of Justice affirmed this inherent right. "In order to exercise it, no special legal process has to be gone through, nor have any special legal acts to be performed. Its existence can be declared but does not need to be constituted."¹⁹

Section 4 was the subject of a dispute between France and Brazil in the form of a lobster war. Basically France took the view that lobster are high-seas fishery while Brazil took the opposite conclusion and arrested a number of French vessels off their coasts. The issue involves the interpretation of "living organisms belonging to sedentary species". It was alleged that crabs are within the Convention because they do not swim but lobster are not because they swim.²⁰

It is unlikely that the 1958 Convention's provisions on the continental shelf will be retained in the succeeding agreements. Modern technology and marine science are now capable of commercially exploiting resources beyond the 200 meter isobath or depth. This is projected to reach at least 1,800 meters with the next decade.²¹

Among the proposals discussed in the ongoing Conference on the Law of the Sea is the definition incorporating the Economic Zone idea of the African states:

¹⁹ North Sea Continental Shelf Judgment, (1969) ICJ REP. 4-257.

²⁰ BOWETT, *THE LAW OF THE SEA*, 36 (1967).

²¹ Mendoza, *Current Developments on the Law of the Sea Relevant to the Philippines*, 3 P.Y. INT'L L. 8 (1974), (Author is concurrently Solicitor General of the Philippines).

The continental shelf of a coastal state comprises the seabed and the subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the continental margin does not extend up to that distance.²²

The legal concept of a continental shelf is obviously an unsettled one, which explains why only fifty (50) states have either ratified or acceded to the 1958 Convention on the Continental Shelf as of June 1, 1972.²³ This number is further reduced by the states who made reservations on particular sections and those who did not ratify the accompanying protocol which provided for compulsory arbitration by the International Court of Justice.

A discussion of the concept of a continental shelf is incomplete unless related to internal waters, territorial waters, contiguous and economic zones and the use of baselines and median lines. The 1958 Conventions on the Continental Shelf and the Territorial Sea and the Contiguous Zone taken together explain these terms as follows:

Internal Waters. This usually refers to rivers, bays, gulfs and even coastal waters which are on the landward side of the baseline of the territorial sea.²⁴ The distinguishing feature of internal waters, unlike territorial waters, is that there is no right of innocent passage.

Territorial Waters. The sovereignty of a state extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea. This sovereignty of a coastal state extends to the airspace over the territorial sea as well as to its bed and subsoil. The three-mile concept of a territorial sea was presumably the area that could be dominated by shore guns or as put by Mouton, "the hypothetical range of an imaginary gun" in the late eighteenth century or simply a unit of one league. As the guns improved, one would suppose that the boundaries would have marched seaward; instead, little change occurred until recently when a great demand for fish and mineral resources coincided with the development of intercontinental ballistic missiles and of world-encircling satellites.²⁵ Different states observe ranges from three miles for the United States and two hundred miles for Peru depending on their national interest. The right of innocent passage is enjoyed by all

²² Context of Proposals at the Conference on the Law of the Sea held in Geneva (1975), Art. 62 Part IV. Copies of which were distributed to participants after the close of the sessions.

²³ LAY, CHURCHILL & NORDQUIST, *op. cit.*, 800-805 (1973).

²⁴ Refer to Illustration 2.

²⁵ Emery, *Geological Aspects of Sea-Floor Sovereignty*, *supra*, note 6 at 141.

states here with the qualification that submarines have to navigate on the surface and display their flag.²⁶ The airspace above these waters, however, is not subject to the same right and intrusions must be governed by special agreements. Important to note is that the concept of continental shelf transcends and is not limited by the extent of territorial waters.

Contiguous Zone. This zone refers to an area adjacent to the territorial sea over which the coastal state may exercise the control necessary to:

a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;

b) Punish infringement of the above regulations committed within its territory or territorial sea. The convention limits the breadth of this zone to a maximum of 12 miles from the baseline used to measure the extent of the territorial sea. This simply means that if one state already claims a territorial sea of 12 miles, such is co-extensive with its contiguous zone. This has particular relevance in regulating the depletion effect of over-fishing by one state near the coastal waters of another state.²⁷

Economic Zone. This is often confused with the contiguous zone but in actuality the two refer to different rights. In the economic the coastal state has exclusive rights of exploitation and supervision. In the contiguous zone the coastal state has supervisory powers only unless the same is co-extensive with territorial waters.

Baselines. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.²⁸ Baselines are straight lines drawn to connect the outermost portions of the outermost islands;²⁹ the waters on the landward side are internal waters and territorial waters on the seaward side.³⁰

Equidistance or median lines. A median line is one every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each state is measured.³¹ Median lines are often employed to equitably allocate portions of the continental shelf

²⁶ Convention on the Territorial Sea and the Contiguous Zone (1958), Art. 14 (6).

²⁷ This may be nullified by a recently invented electronic device that can attract fish from a distance of several miles.

²⁸ Convention on the Territorial Sea and the Contiguous Zone, Art. 3 (1).

²⁹ Baselines are usually drawn using the low water line.

³⁰ The United States follows a modified rule where all navigable waters within the three mile zone is within the jurisdiction of the adjacent state; beyond this the federal government exercises jurisdiction.

³¹ Convention on the Continental Shelf (1958), Art. 6 (1).

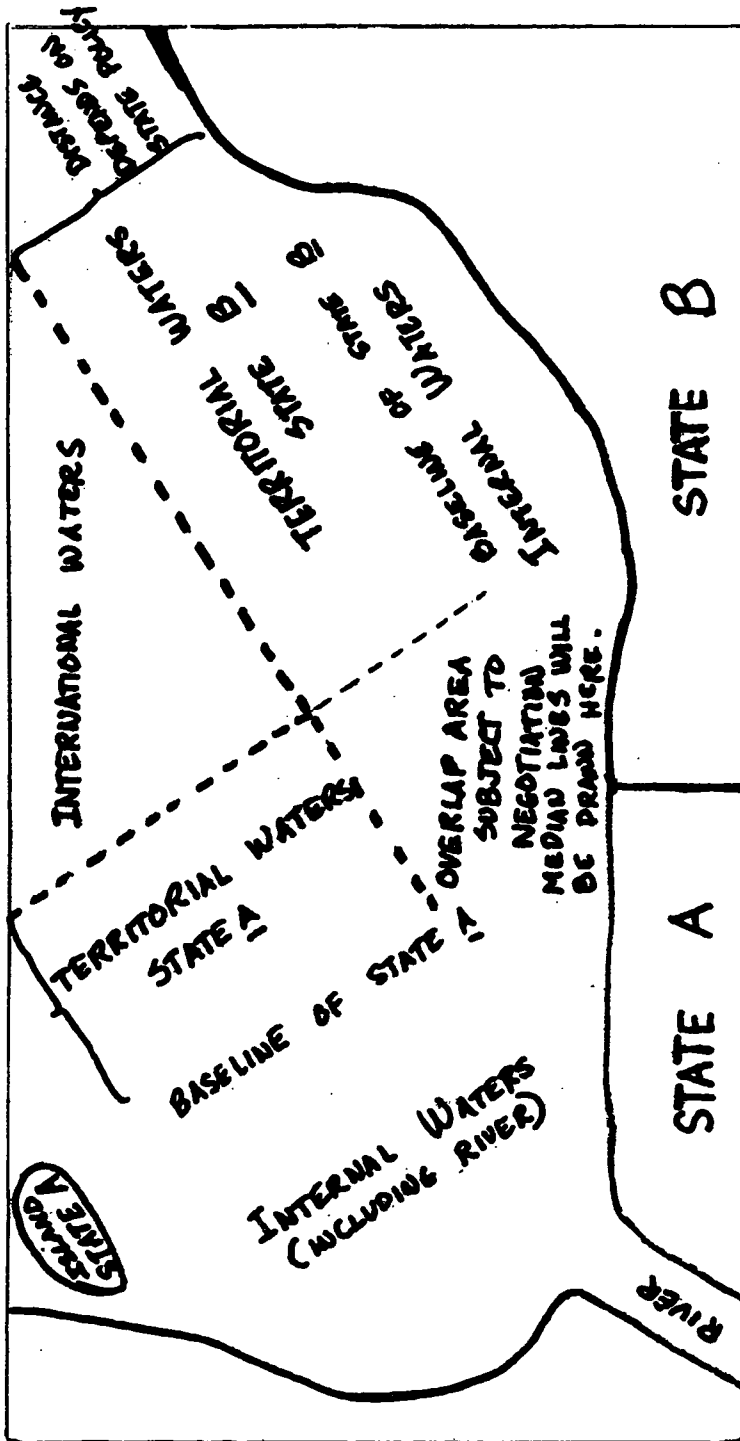


ILLUSTRATION 2

shared by adjoining coastal states or states whose coasts are opposite each other.

The Case of the Philippine Continental Shelf

Our vital interest in the continental shelf immediately becomes apparent in the staggering figures of foreign exchange required to finance our crude oil imports from Saudi Arabia and Kuwait. In 1973 this added up to \$133.47 million; in 1974 \$494.42 million and in 1975 this is projected to hit \$700 million. During the same periods our total exports were \$1.59 billion; \$3.14 billion and a projected \$2.8 billion respectively.³² Our continental margin is estimated to be about 615,000 sq. kilometers³³ — the widest and most important at the moment being the shelves located on the southern flanks of Palawan where traces of oil have recurred.

The Mining Act of 1936 contained no provision for the exploitation of mineral resources in the offshore areas. This was partially corrected by the Petroleum Act of 1949 which stipulated:

Art. 3. State Ownership. All natural deposits or occurrences of petroleum or natural gas in public and/or private lands in the Philippines whether found in, or under the surface of dry lands, creeks, rivers, lakes or other submerged lands within the territorial waters or on the *continental shelf*, or its analogue in an archipelago, seaward from the shores of the Philippines *which are not within the territories of other countries*, belong to the State, inalienably and imprescriptibly.³⁴

In March 20, 1968 Presidential Proclamation No. 370 declared "that all the minerals and other natural resources in the seabed and subsoil of the continental shelf adjacent to the Philippines but outside the area of its territorial sea to where the depth of the superjacent waters admits of the exploitation of such resources including living organisms belonging to the sedentary species, appertain to the Philippines and are subject to its exclusive jurisdiction and control for purposes of exploration and exploitation."

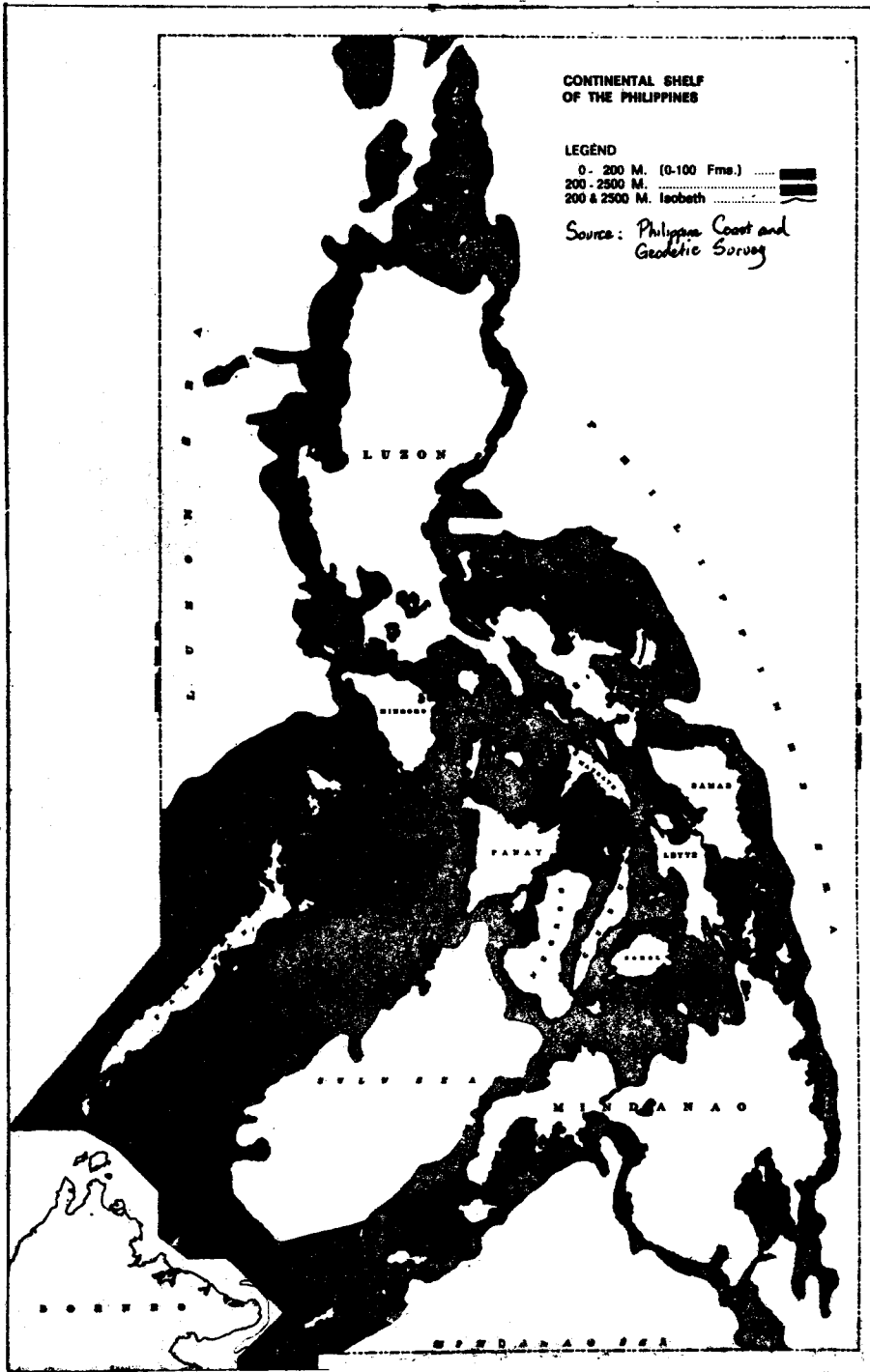
The New Constitution defines Philippine territory as follows:

Art. 1. The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all the other territories belonging to the Philippines by historic right or legal title, including the territorial sea, the air space, the subsoil, the sea-bed, *the insular shelves*, and *the other submarine areas* over which the Philippines has sovereignty or jurisdiction.

³² Private Development Corporation of the Philippines, "Impact of the Economic Crisis on Philippine Foreign Trade, March 3, 1975 Mimeo publication.

³³ 3 P.Y. INT'L. L. 139 (1974).

³⁴ 45 O.G. 3192 (1949).



As early as November 24, 1969 the Secretary of Agriculture and Natural Resources issued Mines Administrative Order No. V-34 providing for "Rules and regulations governing the location and surveying of mining claims located on the offshore areas or lands covered by the territorial waters and the *continental shelf* of the Philippine Islands." It was however on June 30, 1970 that the continental shelf was officially declared open for concessions:

"All areas forming part of the aforesaid *continental shelf of the Philippine Islands which are not within the territories of other countries* are hereby open to application for exploration and exploitation."³⁵

In this order the Philippine government translated its policy of consistently claiming the continental shelf into actual exploitation and, significantly, because these areas are outside our territorial limits.³⁶ The qualification in the saving clause "provided it is not within the territories of other countries" reiterates our uncomfortable position in this undefined area.

The submarine platform upon which our archipelago rests flows narrowly from Batanes, widens in the midportions of Luzon, forks into an east vein consisting of Visayas and Mindanao and a west vein crossing through Palawan; relinked by the Zamboanga-Sulu bridge and finally converging in the Borneo land mass.³⁷

The geomorphological structure of our southern shelf exemplifies the inadequacy of the International Court of Justice notion that the continental shelf must be a natural prolongation or continuation of a territory or an extension of it under the seas in order to grant title to the appertaining coastal state.³⁸ What is a natural prolongation? The I.C.J. answered this by a negative example in its opinion that because of a trench that lines the coast line of Norway, the adjoining shelf "cannot in any sense be said to be adjacent to it, nor to be its natural prolongation."³⁹ This opinion is by no means uncontroverted. The series of North Sea agreements concede to Norway an adjoining shelf disregarding the trench. (This issue may have particular relevance in certain portions of the shelf off Palawan where there are cleavages.) In the case of interconnecting continental shelves, such as our southern shelves, it is difficult to surmise which is the prolongation and which is the main stem. At any rate there are two areas in our southern continental shelf that deserve the immediate attention of the framers of our foreign policy. First is the Reed Bank Area off southeastern Palawan and second is the boundary area delineated

³⁵ Bureau of Mines Administrative Order V-37 (June 30, 1970).

³⁶ As defined by the Treaty of Paris.

³⁷ Refer to attached Map of the Continental Shelf of the Philippines.

³⁸ North Sea Continental Shelf Judgment (1969), ICJ REP. 4-257.

³⁹ *Ibid.*

by the Treaty of Paris and clarified by the U.S.-U.K. agreement of April 2, 1930 which stretches from Balabac Island south of Palawan across the Muligi and Turtle Islands up to the Sibutu area. In the event oil is discovered, these areas could be the scene of international friction, if not actual confrontation.

In the Reed Bank area we have garrisoned at least five islands⁴⁰ and, a little farther off, the Vietnamese and the Nationalist Chinese have likewise occupied others. Undoubtedly, we have a positional advantage in this area by virtue of proximity, adjacence and the continental shelf concept. The islands we occupied are approximately 170 miles off Palawan; 480 miles west of South Vietnam; 620 miles off the People's Republic of China;⁴¹ and 900 miles from the Republic of China (Taiwan). The head-lined island discovered by Tomas Cloma⁴² is 230 miles from Palawan; 400 miles from South Vietnam, 620 miles from the People's Republic of China and 920 miles from the Republic of China (Taiwan).⁴³ From the point of view of the continental shelf this area is adjacent to and prolongations of our land mass. Only Malaysia (North Borneo) could possibly claim contiguity and this has reference to the second area.

The Philippines, Malaysia and Indonesia, in a limited sense, share a connected continental shelf. The borders of the territorial limits of each country are relatively well-defined but this is never sufficient from the point of view of the continental shelf which transcends territorial limits. Considering the nature of an oil deposit, for example, it is quite possible that an oil deposit may encompass two or more territorial boundaries.⁴⁴ This oil deposit may be tapped from either side; a mischievous neighbor may even "steal" another's deposit by drilling in a slanted fashion or by underwater tunnels. Drilling by one State from its own side could result in the depletion of the resources lying on the other side of the boundary, to the detriment of the other State, so that, some equitable apportionment of resources seems to be called for.⁴⁵ It is a known fact that Malaysia is conducting its own oil exploration program on their side of the border. Recalling Presidential Proclamation 370, the President noted that "In any case where the continental shelf is shared with an adjacent state, the boundary shall be determined by the Philippines and that state in accordance with legal and equitable principles." An agreement with Malaysia to

⁴⁰ Lawak, Pagasa, Kota, Likas and Parola.

⁴¹ They have likewise made overtures of claiming these islands although no troops have actually been deployed.

⁴² Itu Aba Island.

⁴³ Estimates of distances based on maps of the Bureau of Coast and Geodetic Survey.

⁴⁴ Opinion of Geologist Guillermo Balce, Bureau of Mines.

⁴⁵ Bowett, *op. cit.*, 3 (1967).

regulate activities in this area immediately presents complications because of our pending claims in North Borneo which the Malaysians have refused to submit to the International Court of Justice for compulsory arbitration. Malaysia is a signatory to and has ratified the 1958 Convention of the Continental Shelf while the Philippines is not. In the case of Indonesia there is a remote corner area off Sibutu where a shelf may be shared together with North Borneo. Any agreement here must take into consideration the delimitations of the Treaty of Paris as well as the Indonesian method of computing their territorial limits twelve miles from their baselines. The question of the status of Palmas Island is more pressing considering that it is technically Indonesian territory but it lies within the Philippine territorial limits as defined by the Treaty of Paris. There is a proposal to consider the waters around the Indonesian island as still within the jurisdiction of the Philippines — which does not settle the issue of mineral resources in the seabed area. Considering however the cordial relations between Indonesia and the Philippines and the relative unimportance of these two contact areas, negotiations will not be difficult.

Our legal position *vis-a-vis* these continental shelves at issue is firm. In the event of a confrontation in this area our geographical position is militarily advantageous. In fact we have very little to gain by entering into any sharing agreement with regards the mineral resources in these seabed areas. It would be folly however to adopt a myopic policy in this regard. Our vital interests in the resources of the shelf must be balanced with the exigencies of peace, economic cooperation and development in our region. Our economies have a common interest in the integrated development of our area. The ramifications on the Association of Southeast Asian Nations (ASEAN) must likewise be considered. It is imperative that some kind of a formalized legal framework on the continental shelf similar to the bilateral agreements between Indonesia and Malaysia,⁴⁶ the North Sea states and more recently between South Korea and Japan should be formalized prior to the impending discovery of oil in the mentioned areas.

Review of Developments and Conclusion

McDougall and Burke advocated that the "historic function of the law of the sea has long been recognized as that of protecting and balancing the common interests, inclusive and exclusive, of all people in the use and enjoyment of the oceans, whilst rejecting all egocentric assertions of special interest in contravention of general community interests."⁴⁷ It is believed that, just as happens in any municipal society, the society of states must move toward a concept of community interests.⁴⁸

⁴⁶ 9 INT'L. LEG. MATERIALS 1173 (1970).

⁴⁷ McDougall & Burke, *op. cit.*, 1 (1962).

⁴⁸ Bowett, *op. cit.*, 3 (1967).

Unfortunately, the moving force in the development of the concept of the continental shelf has always been national interest, pure and simple. The 1945 Truman Proclamation set a very bad precedent if not an irreversible trend. It contributed in an immeasurable degree to the "grab mentality" that predominated subsequently. A month after this unilateral appropriation by the United States the President of Mexico promptly claimed the whole of the continental platform adjoining its coast line and to each and all of the natural resources existing there, whether known or unknown.⁴⁹ Argentina, Chile, Peru, Saudi Arabia and many others including the Philippines followed suit.

Twenty-five years later President Nixon, perhaps in an effort to nullify the avaricious attitude that had been spawned on the continental shelf issued the following statement dated May 23, 1970:

"At issue is whether the oceans will be used rationally and equitably and for the benefit of mankind or whether they will become an arena of unrestrained exploitation and conflicting jurisdictional claims in which even the most advantaged states will be losers. . . . It is proposed that all nations adopt as soon as possible a treaty under which they would renounce all national claims over the natural resources of the seabed beyond the point where the high seas reach a depth of 200 meters and would agree to regard these resources as *the common heritage of mankind.*"⁵⁰

Back in 1969 the U.N. General Assembly, confronted with conflicting and overlapping claims on the shelf area, declared a moratorium on these unilateral appropriations.⁵¹ The same idea was underscored in a declaration dated December 17, 1970 where it was resolved that:

1. The sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction as well as the resources of the area, are *the common heritage of mankind.*
2. The area shall not be subject to appropriation by any means by states or persons, natural or juridical, and no state shall claim or exercise sovereignty or sovereign rights over any part thereof.⁵²

This appeal to "community interests" or to the "common heritage of mankind" appears unheeded. The scramble for off-shore oil triggered by the Arab embargo has fueled the fires of national interest on the continental shelf. The depletion of terrestrial mineral deposits and the development of technology have shifted attention to the sea, particularly the continental shelf. Unrelentingly, coastal states will jealously continue ex-

⁴⁹ 1 U.N. Leg. Ser. 13.

⁵⁰ 2 LAY, CHURCHILL AND NORDQUIST, *op. cit.*, 751 (1973).

⁵¹ U.N. General Assembly Resolution 2574-D (XXIV) (1969).

⁵² U.N. Brochure on the Law of the Sea, 16.

panding their claims to this area, conceding perhaps to the claims of adjoining states, but definitely to the exclusion of mankind.

In a declaration dated October 23, 1968 the German Democratic Republic (East Germany), the Polish People's Republic (Poland), and the USSR asserted their claims over the continental shelf in the Baltic Sea to the "exclusion of non-Baltic states, nationals and firms."⁵³

The trend seems to be in the direction of bilateral, not multi-lateral, agreements, between adjoining coastal states to delimit the portion of the shelf appertaining to each. The classic example is the case of the North Sea where a series of bilateral agreements among Norway, the United Kingdom, Denmark, Netherlands and Germany have produced an acceptable allocation of the shared continental shelf.⁵⁴ The irregular contour of the shelf and the diversity of national interests pressing for recognition militate against multi-lateral treaties. Furthermore, despite the advances of modern science, the depths remain as incomprehensible as ever. Estimates of the resources that lie in store in the ocean bottom are at best speculative, for which reason most states remain non-committal about the limits of the shelf lest they be deprived of a heretofore unknown resource. Thus the skepticism with regards the success of an international convention to govern the continental shelf. The tendency in the on-going Conference on the Law of the Sea seems to be to draft a set of rules that would be as accommodating as possible.

The democratic rule of the majority observed in these conferences may also undermine the acceptability of a uniform rule to govern all. The attending member nations are all entitled to one vote and the end result is to equate the interest in the continental shelf of coastal states like the Philippines with that of a land-locked state like Laos. The coastal states consider this anomalous. There are other interrelated questions which have to be settled such as the status of the waters above the continental shelf outside of a state's territorial waters, the sharing of sophisticated technology, the rules on installations adhered to the shelf and even pollution. According to Shigeru Oda, "It is difficult to imagine a situation in which a monopoly of submarine resources can be properly protected without the exercise of the jurisdictional power of the coastal state on the superjacent waters."⁵⁵

The United States has suggested the creation of an International Authority to control and supervise the exploitation of the mineral resources of the shelf beyond the 200 meter isobath. Others have proposed the es-

⁵³ 2 LAY, CHURCHILL & NORDQUIST, *op. cit.*, 110-111.

⁵⁴ Indonesia and Australia; Indonesia and Malaysia; Italy and Yugoslavia and more recently Japan and North Korea have entered into similar agreements.

⁵⁵ ODA, INTERNATIONAL CONTROL OF SEA RESOURCES 148-150; (1963) citing the views of SCHARZENBERGER in FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW.

establishment of a Torrens Title system for the continental shelf. At the rate the discussions in the Conference on the Law of the Sea are proceeding, it will take some time before an internationally acceptable agreement with the proper enforcement mechanism can be formulated.