The Background of the Doctrine of the Continental Shelf and the Outer Continental Shelf Lands Act

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THE BACKGROUND OF THE DOCTRINE OF THE CONTINENTAL SHELF AND THE OUTER CONTINENTAL SHELF LANDS ACT†

ROBERT B. KRUEGER*

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I

INTRODUCTION

Although much has recently been written about the “outer continental shelf”†† of the United States and international aspects of the development of natural resources in the world’s continental shelves and the areas beyond, the developments of the past few years, even the past few months, justify a further examination of the subject.

In February of 1969 the Commission on Marine Science, Engineering and Resources (“Marine Sciences Commission”), appointed by

†The first part of this article, which was written as of May, 1970, provides introductory and background material regarding the Outer Continental Shelf Lands Act. Part two, which will appear in the October, 1970, issue of the Natural Resources Journal, will evaluate the provisions of the Act.

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††The definition of the continental shelf under international and federal law has no relationship to the geologic definition. To the geologist the continental shelf starts with the upland coastal plain and extends seaward to the brink of the continental slope which typically occurs at approximately 200 meters (656 feet). Shepard, Submarine Geology, 105 ff. (1948); 1 Shalowitz, Shore and Sea Boundaries, 182 ff. (1962); Franklin, The Law of the Sea: Some Recent Developments (With Particular Reference to the United Nations Conference in 1958), 53 Nav. War Coll. Bl. Bk. Ser. 16 (1961). From the standpoint of international law, however, the continental shelf begins at the seaward limit of the territorial sea, at least three miles from the low water mark of the coastline, and extends to a depth of 200 meters and possibly far beyond depending upon the technological exploitability of the area in question. Convention on the Continental Shelf, U.N. Doc. A/Conf. 13/L. 55, Art. 1. The Outer Continental Shelf Lands Act, which is the federal vehicle for the mineral development of the nation’s offshore areas, incorporates the broad scope of international law in providing that it is applicable to the “outer continental shelf”, “all submerged lands lying seaward and outside of [state-owned lands] and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.” 43 U.S.C. § 1331(a) (1953). Both the international and the federal definitions may include, therefore, areas that would be known to the geologists as continental slope, continental rise and continental borderlands, rather than continental shelf. It is in this broad sense of a submarine area over which the coastal state has jurisdiction that the terms “continental shelf” and, in the case of the United States, “outer continental shelf” will be used.
President Johnson two years earlier pursuant to the Marine Resources and Engineering Development Act of 1966, reported to the President and Congress in a report entitled Our Nation and The Sea. The basic purpose of the report was to “recommend an overall plan for an adequate national oceanographic program that will meet the present and future national needs.” The proposals made in the report have been studied extensively by the federal government and several designed to effect a better management of the coastal zone are the subject of bills pending before Congress, including proposals for the establishment of a major civilian agency, the National Oceanic and Atmospheric Agency, for the administration of federal civil marine and atmospheric programs, and the enactment of a Coastal Management Act to establish policy objectives and authorize grants-in-aid to state Coastal Zone Authorities to plan and manage coastal waters and adjacent lands.

The Nixon Administration in October of 1969 announced its support of the Commission’s concept of coastal zone management and four additional recommendations made by it: the establishment of coastal laboratories, restoration of the Great Lakes, Arctic environmental research and the International Decade of Ocean Exploration.

In the international area there have also been a number of very significant recent developments. The Marine Sciences Commission recommended in Our Nation and The Sea that the United States “take the initiative to secure international agreement on a redefinition of the ‘continental shelf’ for purposes of the Convention on the Continental Shelf” and that the redefined continental shelf be


5. Our Nation and The Sea, supra note 3, at 29.

6. Id. at 57. The bills introduced, S. 2802, S. 3460, S. 3183, H.R. 14739 and H.R. 14731, all provide for grants to coastal states for designated state authorities to develop long-range plans for their coastal zones. After approval of the plans by a federal agency, the state authorities may also be given up to 50% of the cost of implementing their plans. The coastal zone is described in the bills as being limited to the territorial sea or the seaward boundaries of the states which would probably not cover areas, such as the Santa Barbara Channel, which could prevent planning problems. See Hearings on Coastal Zone Management Conference Before the Subcommittee on Oceanography of the House Comm. on Merchant Marine and Fisheries, 91st Cong., 1st Sess. 195 (1969). With due regard to the organic nature of the changes in political structure which would have to be made in order to bring about “NOAA,” it is questionable whether we will see it for some time, if at all. There is strong Congressional support for the coastal zone management concept, however, and it is quite likely that federal legislation on this subject will be successful. The bills dealing with this concept call for the preparation of a comprehensive coastal zone plan by the coastal state on a matching fund basis. If the plan is then approved by the federal government as meeting federal policy objectives in the coastal zone and the state is determined to be institutionally organized to implement the plan, annual grants-in-aid to the coastal state for the cost of implementing the plan are to be authorized.

fixed at a depth of 200 meters or 50 miles from the coastline, whichever is further.\(^8\) Beyond that distance the Commission recommended an "intermediate zone" extending from the redefined continental shelf to the 2500 meter isobath or 100 miles from the coastline, whichever is further. In this zone the coastal states would administer the resources, but proceeds from it would be paid to the "International Fund" to be used for the benefit of the poor and developing nations of the world. The governing board of the International Fund would be determined by the U.N. General Assembly. To administer areas beyond this buffer zone there would be the "International Registry Authority," similar to the World Bank in organization, which would register the claims of various nations for mineral resources and pay the proceeds to the International Fund.\(^9\)

In 1967 the Mission of Malta to the United Nations proposed a resolution which would call for a conference for the drafting of a treaty which would reserve the sea-bed and ocean floor "beyond limits of present national jurisdiction" as a "common heritage of mankind" and provide for their "economic exploitation . . . with the aim of safeguarding the interests of mankind [and using] the net financial benefits derived [therefrom] to promote the development of poor countries."\(^10\) This highly controversial proposal found strong support from a number of the smaller and lesser developed countries in the United Nations\(^1\) and led to a resolution of the 1967 United Nations General Assembly creating an Ad Hoc Committee to Study Peaceful Uses of the Sea-Bed and Ocean Floor Beyond Limits of National Jurisdiction.\(^12\) This Committee, on which both the Soviet Union and the United States were represented, was given a broad mandate to study the entire international organization with respect to the seas.\(^13\) During the course of its work in 1968, the

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8. Our Nation and The Sea, supra note 3, at 145.
9. Id. at 147.
13. The Ad Hoc Committee was requested to cooperate with the Secretary-General in the preparation of a study with the twenty-third (1968) session of the U.N. General Assembly which would include:

(1) a survey of the past and present activities of the United Nations, the specialized agencies, the IAEA [International Atomic Energy Agency] and other intergovernmental bodies with regard to the sea-bed and the ocean floor, and of existing international agreements concerning these areas;
United States expressed the view that there should be "an internationally agreed precise boundary for the deep ocean floor" and that no nation should "claim or exercise sovereignty" over it.14

In December of 1968 the United Nations General Assembly created a permanent 42 member Committee with essentially the same framework of responsibility.15 During 1969 the Committee considered a number of broad economic, technical and legal issues regarding the exploration, exploitation and use of the sea-beds, including

(2) an account of the scientific, technical, economic, legal and other aspects of this item;
(3) an indication regarding practical means to promote international co-operation in the exploration, conservation and use of the sea-bed and the ocean floor, and the subsoil thereof, as contemplated in the title of the item, and of their resources, having regard to the views expressed and the suggestions put forward by Member States. 

14. U.N. Doc. A/AC. 135/25 (June 28, 1968); U.N. Doc. A/AC. 135/L. 1, Annex III, at 4 (July 16, 1968). The proposal also stated that there should be established "as soon as practicable, internationally agreed arrangements governing the exploitation of resources of the deep ocean floor" which shall include provision for:

(a) the orderly development of resources of the deep ocean floor in a manner reflecting the interest of the international community in the development of these resources;
(b) conditions conducive to the making of investments necessary for the exploration and exploitation of resources of the deep ocean floor;
(c) dedication as feasible and practicable of a portion of the value of the resources recovered from the deep ocean floor to international community purposes; and
(d) accommodation among the commercial and other uses of the deep ocean floor and marine environment. 

15. The Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction was instructed:

(a) To study the elaboration of the legal principles and norms which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction and to ensure the exploitation of their resources for the benefit of mankind, and the economic and other requirements which such a regime should satisfy in order to meet the interests of humanity as a whole;
(b) To study the ways and means of promoting the exploitation and use of the resources of this area, and of international co-operation to that end, taking into account the foreseeable development of technology and the economic implications of such exploitation and bearing in mind the fact that such exploitation should benefit mankind as a whole;
(c) To review the studies carried out in the field of exploration and research in this area and aimed at intensifying international co-operation and stimulating the exchange and the widest possible dissemination of scientific knowledge on the subject; [and]
(d) To examine proposed measures of co-operation to be adopted by the international community in order to prevent the marine pollution which may result from the exploration and exploitation of the resources of this area. 23 U.N. GAOR at U.N. Doc. A/2467 (1968).
the type of administrative machinery that should be established for
the development of natural resources in areas beyond limits of na-
tional jurisdiction and the extent of those limits. The United
States indicated that it was in favor of an international regime pro-
viding for the administered development of deep ocean resources and
international emphasis on a number of goals directed toward greater
and more beneficial uses of the marine environment.

In December of 1969 following extensive and heated debates in
the Sea-Bed Committee and the U.N. First Committee, the United
Nations General Assembly adopted a very important resolution over
the active opposition of the United States and the Soviet Union and
their usual supporting blocs. By a 65-12 vote with 30 abstentions the
General Assembly passed a resolution requesting the Secretary Gen-
eral to determine "the desirability of convening at an early date a
conference on the law of the sea to review the regimes of the high
seas, the continental shelf, the territorial sea and contiguous zone,
fishing and conservation of the living resources of the high seas,
particularly in order to arrive at a clear, precise and internationally
accepted definition of the area of the sea-bed and ocean floor which
lies beyond national jurisdiction, in the light of the international
regime to be established for that area." This resolution is quite

1969), passim.
17. Ambassador Phillips, U.S. Ambassador to the United Nations, stated on October 31,
1969, that "[b]ecause mere registry of claims would probably only contribute to a con-
fused race, it is our view that an international regime should include an international registry
of claims governed by appropriate procedures." See Press Release USUN-141(69).
was introduced by Malta and called for the Secretary-General to determine the views of
member states on the desirability of a conference "for the purpose of arriving at a clear,
precise and internationally acceptable definition" of the area beyond limits of national
jurisdiction (the "continental shelf") and the "prospective establishment of an equitable
1969). It was then broadened by amendments on which the vote was 50 to 25 with 32
abstentions. The combinations of voters is instructive:

In Favour:
Afghanistan, Algeria, Argentina, Barbados, Bolivia, Brazil, Burma, Cameroon,
Central African Republic, Ceylon, Chile, Colombia, Congo (Democratic
Republic of), Cyprus, Dahomey, Ecuador, Ghana, Guyana, Haiti, India,
Indonesia, Jamaica, Jordan, Kenya, Kuwait, Lebanon, Libya, Madagascar,
Maldive Islands, Mauritania, Mauritius, Mexico, Morocco, Nepal, Niger,
Nigeria, Panama, Paraguay, Philippines, Rwanda, Saudi Arabia, Senegal,
Sierra Leone, Singapore, Somalia, Southern Yemen, Sudan, Thailand, Togo,
Trinidad and Tobago, Tunisia, Uganda, United Republic of Tanzania,
Yemen, Yugoslavia, Zambia.

Against:
Austria, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic, China,
Czechoslovakia, El Salvador, France, Gabon, Hungary, Ireland, Israel, Italy,
Japan, Malta, Mongolia, Netherlands, New Zealand, Poland, Portugal, Ro-
significant in that there has been a considerable effort by the United States and others of the developed powers to avoid a broad scale conference of this type and to endeavor to reach international consensus by uniform unilateral declarations of policy. By a vote of 62-28 with 28 abstentions the General Assembly also passed a resolution providing that nations “are bound to refrain from all activities of exploitation of the resources of the area of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction.” This resolution, which is of little legal effect, nevertheless is quite revealing of the political antipathy of the developing nations.

Abstaining:

Australia, Canada, Chad, Costa Rica, Cuba, Denmark, Ethiopia, Finland, Greece, Guatemala, Honduras, Iceland, Iran, Iraq, Ivory Coast, Lesotho, Liberia, Malaysia, Mali, Nicaragua, Norway, Pakistan, Peru, Spain, Swaziland, Sweden, Syria, Turkey, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela.

U.N. Doc. A/7834 (Dec. 9, 1969) at 11. Note that Malta voted against the amendments. Malta’s Ambassador Pardo felt that the amendments made the resolution an “object of controversy” rather than of consensus; he particularly felt that combining living resources with other subjects was an unfortunate “political manoeuvre.” U.N. Doc. A/PV. 1833 (Dec. 15, 1969).


21. Resolutions of the U.N. General Assembly do not have a formal binding effect upon member states. Articles 10 through 17 of the United Nations’ Charter which sets forth powers of the General Assembly provides merely that that body may “discuss,” “consider” and “recommend.” On the other hand, resolutions of the Assembly can contribute substantially to the general body of customary international law. See Higgins, The Development of International Law Through the Political Organs of the United Nations 5 (1963):

Resolutions of the Assembly are not per se binding: though those rules of general international law which they may embody are binding on member states, with or without the help of the resolutions. But the body of resolutions as a whole, taken as indications of a general customary law, undoubtedly provide a rich source of evidence.

In Falk, On the Quasi-Legislative Competence of the General Assembly 60 Am. J. Int’l Law 782, 786 (1966), it is said:

In the search for bases of justification or objection it is clear that the resolutions of the Assembly play a crucial role—one independent of whether their status is to generate binding legal rules or to embody mere recommendations. The degree of authoritativeness that a particular resolution will acquire depends upon a number of contextual factors, including the expectations governing the extent of permissible behavior, the extent and quality of the consensus, and the degree to which effective power is mobilized to implement the claims posited in a resolution.

With due regard to the interest that the General Assembly and its Committees have taken in this area, formal action by it could have considerable weight in establishing a rule of international law in this area. As pointed out by U.S. Ambassador Christopher Phillips to the U.N. Sea-Bed Committee on March 6, 1970, however, Resolution 2467D did not evidence consensus but “sharp controversy and substantial division.” Press Release USUN-27(70) (Rev. 1) at 6.
toward the great powers on the subject of marine resources. This is also vividly illustrated by the passage of a further resolution adopted by acclamation in the General Assembly referring a "Draft Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and the Sub-soil Thereof" which had been prepared and supported by the Soviet Union and the United States back to the Geneva Conference of the Committee on Disarmament because of objections voiced by a number of the smaller nations during debate. The General Assembly also passed without objection by the United States or the Soviet Union resolutions requesting the Sea-Bed Committee to expedite its work and prepare a draft resolution stating the principles which it believes should govern the peaceful uses of the sea-bed and a resolution requesting the Secretary General to prepare a study on various types of international machinery for the exploration and exploitation of sea-bed resources. With due regard to the foregoing it is predictable that there will be intensified discussions and deliberations regarding national and international policy with respect to marine resources in the months and years to come, some of which are now taking place in the U.N. Sea-Bed Committee.

26. The United States has indicated that it is in agreement in principle with a United Kingdom proposal that a regime for the area beyond limits of national jurisdiction (the "continental shelf") be established by treaty or international agreement and that the same should define the area to which it applies. Press Release, supra, note 21, at 2. Any such definition would, of course, necessarily also further define limits of national jurisdiction. The United States further proposed the following as the objectives to be served by the new regime:

1. To encourage exploration and exploitation of seabed resources.
2. To assure that all interested States will have access, without discrimination, to the seabed for the purpose of exploring and exploiting mineral resources.
3. To encourage scientific research and the dissemination of scientific and technologic information related to seabed resources.
4. To encourage the development of services, such as aids to navigation, maps and charts, weather information, and rescue capability.
5. To provide procedures for the assignment of rights to minerals or groups of minerals in specific areas under terms that protect the integrity of investments in seabed resource development, that encourage economic efficiency in the exploration and exploitation of seabed resources, that prevent a race for claims, and that discourage operators from seeking to hold large areas for purely speculative purposes.
6. To provide for a reasonable return on risk investment.
7. To provide revenue to benefit international community purposes, taking special account of the needs of the developing countries, and to meet the operating expenses of the international body established to administer its provisions.
8. To assure that exploration and exploitation of seabed mineral resources will be carried out in a manner that will protect human life, prevent conflicts between
In February of 1969 the Union Oil Company A-21 well began its now well-documented spill into the Santa Barbara Channel. This incident led to a number of investigations with a view toward the adoption of more stringent requirements for the leasing of offshore lands and for the conduct of drilling and exploration activities thereon. In August of 1969 the Secretary of the Interior adopted regulations requiring the Director of the Bureau of Land Management (BLM) prior to the selection of tracts for lease sale to "evaluate fully the potential effect of the leasing program on the total environment, aquatic resources, aesthetics, recreation, and other resources in the entire area during exploration, development and operational phases."\(^2\) The Secretary further announced that it is "the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule-making process."\(^2\) In this regard, the new regulations authorize the BLM Director to hold public hearings to "aid him in his evaluation and determinations."\(^2\) Lastly, the Director is instructed to "develop special leasing stipulations and conditions when necessary to protect the environment and all other resources."\(^3\) The regulations of the Department of the Interior with respect to operations were also consider-

users of the seabed, safeguard other uses of the ocean environment against undue interference, avoid irreparable damage to the environment and its resources, and promote the use of sound conservation practices.

9. To provide terms and procedures governing liability for damage resulting from exploration and exploitation of seabed minerals so that damage will be adequately repaired or compensated

10. To provide for the stability of rules, and yet for the flexibility to introduce modifications over time responsive to new knowledge and new developments.

11. To provide effective procedures for the settlement of disputes.

12. In the overall, to establish an international regime so plainly viable that States will in fact ratify the treaties establishing it. Id. at 3-5.

The Legal Advisor to the U.S. Department of State, John Stevenson, has also indicated that the concept of "a new law of the sea conference or conferences" may be acceptable if issues are dealt with "which were not resolved" at the time of the 1958 conference and "are treated in manageable packages." U.S. Department of State Press Release, No. 49 (Feb. 18, 1970).

The interest of the United States and many other countries has accelerated in recent weeks due to Canada's proposed establishment of 100 mile pollution control zones which is particularly relevant to proposed oil shipping through the Northwest Passage. See New York Times, Apr. 16, 1970, at 6, Col. 1 ("U.S. Seeks International Talks on Maritime Passage in Arctic"); The Wall Street Journal, Apr. 16, 1970 ("Department of State Rejects Canada's Claim Over Arctic Waters"); 114 Canada House of Commons Debates, 28th Parl. (No. 97, 2nd Sess.) April 8, 15-17, 1970, 5623, 5936, 5993.

The Soviet Union presented a very similar position and set of objectives to the Sea-Bed Committee and noted "[t]he legal rights of all States, developed and developing, had to be protected." U.N. Press Release SB/7, (March 5, 1970).

27. 43 C.F.R. § 3381.4 (1969),


30. Id.
ably tightened with authority for "major departures" from specified standards being revested in the Washington office of U. S. Geological Survey (U.S.G.S.).  

President Nixon appointed a panel of experts experienced in the scientific aspects of offshore oil drilling following the Santa Barbara Channel oil spill to make recommendations with respect to offshore leasing and drilling procedures. The panel reported in October of 1969 and recommended that the Secretary of the Interior make a survey to determine which areas may require more extensive supervision and more stringent regulations and suggested that there be public hearings before offshore mineral resources are leased.

Lastly, the International Court of Justice on February 20, 1969, held in the North Sea Continental Shelf Cases that the Convention on the Continental Shelf had not become customary international law, in cases involving the continental shelf boundaries in the North Sea between West Germany and the Netherlands and West Germany and Denmark. Until this decision a quite strong argument could be made that the Convention and its elastic definition of the continental shelf had become law binding on all nations. The decision clearly indicates that there is a doctrine of the continental shelf separate and independent of the Convention in customary international law. This law is applicable to each nation's "natural prolongation [of its] land territory," a concept which developed from President Truman's historic Proclamation of 1945 in which we claimed the natural resources of the continental shelf for this country. The decision complicates and provides uncertainty to an already complicated and uncertain situation.

With due regard to the foregoing developments, a reexamination of the Outer Continental Shelf Lands Act, which is our nation's vehicle for the development of the natural resources of its continental shelf, would appear justified. It should be noted that the writer was the Project Director of a study conducted by his firm for the Public Land Law Review Commission on the Outer Continental Shelf Lands of the United States and that reference is repeatedly

made herein to the results of research conducted in connection therewith.  

Before turning to the legal aspects of the continental shelf, however, it would be helpful to look briefly at some of the resource aspects involved. The recent intense and wide-spread interest in the offshore stems in large part, perhaps solely in some areas, from the fact that today's technology permits the exploration and development of many valuable sea-bed mineral resources. The extent of proven offshore mineral reserves, particularly petroleum and sulphur, is considerable and the potential is enormous. There are today approximately 30 nations which have established offshore oil and gas production with aggregate reserves of approximately 85 billion barrels or 20% of the world's total reserve figures. On a world-wide basis current offshore production is about 6.5 million barrels per day or 16% of the world's total. The Department of the Interior has estimated that by 1980 approximately 30% of the oil requirements and 40% of the gas requirements from this country will come from our offshore.

Looking at the United States alone, its outer continental shelf is at least 850,000 square miles (from established state limits to a depth of 200 meters) and may be as large as 1,329,000 square miles (between established state limits and a depth of 2500 meters). Compared with the area of the uplands contained in the United States and its territories of 3,615,000 square miles, its outer continental shelf is 23% and 36% as large, depending upon which measurement is used. The presently proven reserves of oil and gas on the outer continental shelf are 4.3 billion barrels of oil and 34.2 trillion cubic feet of gas with prospective reserves of an additional 3 to 19 billion barrels of oil and 27 to 97 trillion cubic feet of gas. Sulphur reserves are believed to be approximately 37 million tons. These figures do not include state offshore lands, which have to date produced something in excess of 700 million barrels of oil, and areas, such as Prudhoe Bay, which have immense reserves.

It appears quite clear today that the petroleum resources of the

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37. Nossaman, Waters, Scott, Kneiger & Riordan, Study of the Outer Continental Shelf Lands of the United States (1968), [hereinafter referred to as Nossaman OCS Study]. The Study has been released and is available for purchase through Clearinghouse, 5285 Port Royal Road, Springfield, Virginia 22151.


41. Petroleum and Sulphur, note 40, supra at 51. See also 1 Nossaman OCS Study, supra note 37. § 5.1.

offshore extend into the continental slope (approximately between depths of 200 and 2500 meters) and possibly into the continental rise (approximately between depths of 2500 and 5000 meters). It is, moreover, foreseeable that within the immediate future technology will permit the development of such resources and even mineral resources in areas far beyond. This factor and the immense potentiality of the continental shelves and slopes of the world for other minerals have created the heightened interest in the location of offshore boundaries not only as between the states and the federal government but also as between the federal government and the international community. This points up one of the most significant aspects of the development of law with respect to the sea: the evolution of both national and international law has had a direct and perhaps necessary correlation with the development of technology and the need for exploitation.

II
BACKGROUND OF THE OUTER CONTINENTAL SHELF LANDS ACT

A. Submerged Lands Act

Prior to 1947 it was thought that California and the other coastal states owned the land underlying the territorial sea, the so-called three-mile limit. In California, Texas and Louisiana there had been substantial offshore oil production established under state leases predicated upon this belief. In 1947 the U. S. Supreme Court determined in United States v. California that the federal government had "paramount rights in [and] full dominion over the resources of the soil under that water area, including oil." The same principle was confirmed as to other coastal states in succeeding decisions which brought about the political pressure that resulted in the Submerged Lands Act of 1953, a copy of which is appended hereto as Appendix A. That Act in effect reversed United States v. California by vesting in the coastal states the ownership of lands "beneath

44. Id. at 7. 2 Nossaman OCS Study, supra note 37, App. '5-A at 5-A-53, 5-A-104-105.
45. See notes 16 and 26 supra.
navigable waters within [their respective] boundaries" which were defined as lands lying within three geographical miles of the "coast line." It also permitted historic boundaries in the Gulf of Mexico to the extent of three marine leagues (9 miles), which were subsequently established in the case of Texas and Florida.

The Submerged Lands Act defined "coast line" as the line of "ordinary low water . . . and the line marking the seaward limit of inland waters." Its passage accordingly did not put the federal-state disputes at rest as there remained the question of the standards upon which said lines were to be determined, particularly what constituted inland waters. The State of California, for example, claimed that Monterey Bay, the Santa Barbara Channel and other lands lying between the Channel Islands and the mainland were inland waters and that the baseline for purposes of measurement of the three-mile limit extended from Point Conception in Santa Barbara County to the outermost rocks of the Channel Islands (at their furthest point they are some 50 miles from the mainland) thence to Point Loma in San Diego County. In 1965 the United States Supreme Court decided to resolve the question by adopting the provisions of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone, a copy of which appears in Appendix B hereto, for purposes of the Submerged Lands Act. In the words of the Court:

This establishes a single coastline for both the administration of the Submerged Lands Act and the conduct of our future international relations (barring an unexpected change in the rules established by the Convention).

The result was that California's title to Monterey Bay was con-

50. 43 U.S.C. §§ 1301(a) and 1311(a) (1953).
52. 43 U.S.C. § 1301(c) (1953).
53. United States v. California 381 U.S. 139, 165 (1965). California had contended, quite logically to many, that the Court should restrict itself to legal principles applicable on May 22, 1953, the date of enactment of the Submerged Lands Act. The Court's answer was pragmatic:

We do not think that the Submerged Lands Act has so restricted us. Congress, in passing the Act, left the responsibility for defining inland waters to this Court. We think that it did not tie our hands at the same time. Had Congress wished us simply to rubber-stamp the statements of the State Department as to its policy in 1953, it could readily have done so itself. It is our opinion that we best fill our responsibility of giving content to the words which Congress employed by adopting the best and most workable definitions available. The Convention on the Territorial Sea and the Contiguous Zone, approved by the Senate and ratified by the President, provides such definitions. . . . Furthermore the comprehensiveness of the Convention provides answers to many of the lesser problems related to coastlines which, absent the Convention, would be most troublesome. 381 U.S. at 164-65.
firmed under the 24-mile closing rule of the Convention, but California lost as to all other major areas which it had been claiming.

The holding of United States v. California is a highly unusual one in applying the provisions of a foreign treaty which became effective in 1964 to domestic legislation adopted in 1953, which, itself, was designed to meet a case originally decided in 1947. The incorporation of the comprehensive provisions of the Convention on the Territorial Sea and Contiguous Zone into domestic law, however, has facilitated the settlement of a number of federal-state title disputes in Alaska and Hawaii, and put to rest the long and tedious California litigation which delayed a great deal of significant coastal development. Other cases have also stabilized offshore titles of Texas and Florida in the Gulf of Mexico.

There are, however, a large number of boundary questions remaining in Louisiana and Alaska and the Atlantic Coast states. In addition, due in large part to Maine, in effect, issuing an exploration permit on lands some 80 miles at sea, the federal government in

54. In United States v. Alaska, 236 F. Supp. 388 (D. Alaska 1964), it was held that a ten-mile closure rule was applicable to Yakatak Bay, and that the United States owned all lands beyond the three-mile limit in said Bay seaward of the point of closure. Subsequently the U.S. Court of Appeals for the Ninth Circuit reversed the decision on the basis of the holding in United States v. California regarding the 24-mile rule. Alaska v. United States 353 F.2d 210 (9th Cir. 1965).

The Hawaii Supreme Court, in Application of Island Airlines, Inc., 384 P.2d 536 (Hawaii 1963), held that an inter-island carrier would not be flying "through airspace over any place outside" of the state within the meaning of the definition of "interstate air transportation" as used in the Federal Aviation Act of 1958, 49 U.S.C. § 1301(21)(a) (1964). The Civil Aeronautics Board then obtained an injunction from the U.S. District Court for the District of Hawaii closing down the carrier's inter-island flights because of the absence of federal certificate. Subsequently Island Airlines, Inc. v. C.A.B., 352 F.2d 735 (9th Cir. 1965), held that inter-island flights over channels between the Hawaiian Islands were flights over the high seas, subject to the authority of the C.A.B. The court relied heavily on United States v. California, stating, "We think United States v. California... supports our conclusion, if it does not require it." The court found that although the boundaries of the state are determined by Congress vis-a-vis international law, Congress, by the Hawaiian Statehood Act, did not establish the channels between the Islands as being within the boundaries of the state. In addition, the high seas between the three-mile limits of the Hawaiian Islands were found to be a "place" within the statute defining the jurisdiction of the C.A.B., thereby making such flights interstate commerce and subject to C.A.B. jurisdiction. See also Island Airlines, Inc. v. C.A.B., 331 F.2d 207 (9th Cir. 1964).

55. See note supra.

56. In 1958 the United States filed suit against Alaska to enjoin state leasing in the Cook Inlet more than three miles from shore or from a 24-mile closing line drawn across the Inlet. The State seeks to establish that the entire Inlet is within its jurisdiction as a historic bay. There are many other potentially oil rich areas, such as Bristol Bay, in which similar title disputes are foreseeable in Alaska.

The highly convoluted and unstable Louisiana offshore has been referred to a special master to determine whether various water areas are inland waters on the basis of the application of the principles set forth in the Convention on the Territorial Sea and Contiguous Zone on or on historic grounds. United States v. Louisiana, 394 U.S. 11 (1969).

57. On April 26, 1968, the State of Maine accepted for filing an "application to record the staking out of a claim" accompanied by the required statutory fee.
1969 filed an action in the United States Supreme Court under the title United States v. State of Maine et al. against all Atlantic Coast states to establish offshore boundaries.\(^5\)\(^8\) Maine in its Answer to the Complaint of the federal government asserted that it “is now, and ever since its admission to the Union, has been, entitled to exercise dominion and control over the exploration and development of such natural resources as may be found in, on or about the sea-bed and subsoil underlying the Atlantic Ocean adjacent to its coast line to the exclusion of any other political entity whatsoever, including the Plaintiff [United States] (subject, however, to the limits of national seaward jurisdiction established by the Plaintiff).”\(^9\)\(^5\)\(^9\) Essentially the same position was taken by the States of Massachusetts, New York, South Carolina, Georgia and Virginia.\(^6\)\(^0\) As will be discussed later, the United States may have asserted jurisdiction over the continental slope off the East Coast which lies as far as 300 miles offshore.\(^6\)\(^1\) The claims made by these states, therefore, are quite extensive.

The State of Florida in its Answer claimed “by virtue of its historic boundaries ... the Gulf Stream, wherever the same may be located.”\(^6\)\(^2\) The State of Maryland claimed “the seabed and subsoil underlying the Atlantic Ocean adjacent to its coastline to the limit of ten marine leagues [30 miles].”\(^6\)\(^3\) The State of North Carolina claimed an unspecific distance beyond the territorial sea into the Atlantic Ocean “as being vested in the State of North Carolina through a succession in a chain of title to such lands from the Charter of James I to the Virginia Company in 1606 to the present date.”

United States v. Maine et al. will very likely lead to a new series of offshore boundary decisions by the Court. With due regard to the highly irregular coastline in portions of the Atlantic Coast (e.g. Maine) and in Alaska, a critical issue when these areas are under consideration will be what constitutes “inland waters” or bays. Even if the standards set forth in the Convention on the Territorial Sea and Contiguous Zone are not met, an area may nevertheless be sub-

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\(^5\) The Complaint of the United States dated April, 1969, stated “[i]n the exercise of the rights claimed by it, the State [of Maine] has purported to grant exclusive oil and gas exploration and exploitation rights in approximately 3.3 million acres of land submerged in the Atlantic Ocean in the area in controversy.”

\(^8\) Answer of the State of Maine, 3-4 (Sept. 15, 1969).

\(^9\) Answer of the Commonwealth of Massachusetts, 4 (Sept., 1969); Answer of the State of New York, 4 (Sept. 12, 1969); Answer of the State of South Carolina, 4 (Sept. 15, 1969); Defenses and Answer of the State of Georgia, 3 (Sept., 1969); and Answer of the Commonwealth of Virginia, 2 (Sept. 15, 1969).

\(^6\) See 135-138 infra.

\(^1\) Answer of the State of Florida, 2 (Sept., 1969).

\(^2\) Answer of the State of Maryland, 3 (Sept. 12, 1969).

\(^3\) Answer of the State of North Carolina, 4 (Sept. 11, 1969).
ject to claim by the coastal state if historically it was treated as inland waters or the United States applied a "straight baseline" form of measurement to it in determining its territorial sea. The convention makes an exception with respect to "historic" bays and the treatment of these areas by the United States and others of the community of nations would be relevant. In this regard it is clear


1. 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.

2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

4. Where the method of straight baselines is applicable under the provisions of paragraph 1, account may be taken in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

Article 7 of the Convention provides for a maximum 24-mile closing distance across bays treated as inland waters, but provides in paragraph 6 that its provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article 4 is applied.

Article 12 provides in paragraph 1 that the territorial sea of two States opposite or adjacent to each other shall not extend beyond the median line between the States' respective baselines, but likewise provides an exception

where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

It should also be noted that Article 9 states in part:

Roadsteads which are normally used for the loading and unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea.

As noted in United States v. Louisiana, 394 U.S. 11 (1969), the provisions of the Convention embodied the principle of the Fisheries Case (United Kingdom v. Norway), [1951] I.C.J. 116, in which it was held that Norway properly could draw its baseline for measuring the territorial sea along the tips of thousands of rock ramparts which ring the mainland yet which do not qualify as bays. Id. at 69. The Court held in United States v. California, 381 U.S. 139, 168 (1965), that the choice to use the straight baseline form of measurement is exclusively the federal government's. In the 1969 Louisiana decision, however, it was made clear that the disclaimer of the federal government with respect to this type of measurement would not be binding if inconsistent with its official international stance. 394 U.S. 11, 73 at n. 97. A similar position was taken with respect to historic bays. Id. at 77.

In United States v. Louisiana, 394 U.S. 11, 72, the Court noted that "the straight baseline method was designed for precisely such coasts as the Mississippi River Delta area." This would appear to be equally true for many portions of Alaska and Maine.


There seems to be fairly general agreement that at least three factors have to be taken into consideration in determining whether a State has acquired a historic title to a maritime area. These factors are: (1) the exercise of authority over the area by the State claiming the historic right; (2) the continuity of this
that activities of the coastal states are to be considered as part of the treatment by the United States. See figures 1, 2 and 3 for an application of the provisions of the Convention on the Territorial Sea and Contiguous Zone to various coastal conditions. 

exercise of authority; (3) the attitude of foreign States. First, the State must exercise authority over the area in question in order to acquire a historic title to it. Secondly, such exercise of authority must have continued for a considerable time; indeed it must have developed into a usage. More controversial is the third factor, the position which the foreign States may have taken towards this exercise of authority. Some writers assert that the acquiescence of other States is required for the emergence of an historic title; others think that absence of opposition by these States is sufficient.

67. In the 1965 California case the Court held that the state's evidence of "continuous and exclusive assertions of dominion" by it over the disputed area was questionable and that in view of this the disclaimer of the United States that any of the disputed areas are historic inland waters was "decisive." 381 U.S. at 175. In the 1969 Louisiana case, however, the Court held that this was not the situation and that state activities should properly be considered in the same context as if a national claim were being made by the United States. It was there said:

[A]s we suggested in United States v. California, it would be inequitable in adapting the principles of international law to the resolution of a domestic controversy, to permit the National Government to distort those principles, in the name of its power over foreign relations and external affairs, by denying any effect to past events. The only fair way to apply the Convention's recognition of historic bays to this case, then, is to treat the claim of historic waters as if it were being made by the national sovereign and opposed by another nation. To the extent the United States could rely on state activities in advancing such a claim, they are relevant to the determination of the issue in this case. 394 U.S. at 77-78.

From this it also seems quite clear that claims made by predecessors in interest of the United States as to particular areas and their acceptance by others would be relevant. There is, therefore, the possibility that the treatment accorded offshore areas by England, France, Spain, Russia and others interested in the New World will be relevant.

68. Figure 4 shows "Median Line Boundaries between sovereign states—adjacent coasts and opposite coasts" and suggests that such boundaries are applicable both to the territorial sea and continental shelf of coastal states. It is clear that this is the case under the provisions of the Convention on the Territorial Sea and Contiguous Zone and the Convention on the Continental Shelf. Paragraph 1 of Article 12 of the Convention on the Territorial Sea and Contiguous Zone provides for a median line measurement "failing agreement...to the contrary" except where a different measurement would be called for "by reason of historic title or other special circumstances." This is also true under paragraphs 1 and 2 of Article 6 of the Convention on the Continental Shelf "[i]n the absence of agreement, and unless another boundary line is justified by special circumstances." The North Sea Continental Shelf Cases, [1969] I.C.J. 3, 35, however, make it clear that at least insofar as lateral boundaries of the continental shelf are concerned, the median line principle of Article 6 of the Convention on the Continental Shelf does not constitute or evidence customary international law. See Part II.E infra. The World Court indicated, however, that the equidistance concept might well be applicable in the opposite coast situation and within the territorial sea to both opposite coasts and lateral boundaries. In these cases, therefore, the above Conventions might evidence customary international law. Id. at 37. With respect to lateral boundaries on the continental shelf, however, the median line principle should be accepted as binding only upon signators. The rule under the doctrine of customary international law enunciated in the North Sea Continental Shelf Cases is that the delimitation of lateral boundaries is to be "effected according to equitable principles." Id. at 52.
The Baseline
From Which the Territorial Sea is Measured

Figure 1

Figure 3
MEDIAN LINE BOUNDARIES
Between Sovereign States

- Adjacent Coasts
- Opposite Coasts

The Maine and Alaska situations have also led to negotiations and could possibly lead to litigation of the type involved in the North Sea Continental Shelf Cases—i.e., litigation dealing with the delimitation of lateral boundaries of the territorial sea and continental shelf. On February 12, 1970, the U.S. Department of State served public notice that it does not acquiesce in the assertions of jurisdiction made by Canada in the ownership of Georges' Bank lying between Massachusetts and Nova Scotia. It is expected that the United States will press for a boundary that will follow the geologic features of the continental shelf under the "equitable principles" concept of the North Sea Continental Shelf Cases and that Canada will advocate a median line division.

69. Id.
70. 35 Fed. Reg. 3301 (1970), in which it is said:

[Notice is hereby given that the U.S. Government has refrained from authorizing geologic exploration or mineral exploitation in the area of the Georges Bank continental shelf. Pending agreement on the delimitation of the continental shelf in the Gulf of Maine, the U.S. Government does not acquiesce in or recognize the validity of permits or other authorizations issued by the Government of Canada to explore or exploit the natural resources of any part of the Georges Bank continental shelf, and reserves its right and those of its nationals in that area.]

71. In the North Sea Continental Shelf Cases, [1969] I.C.J. 3, it is said that customary international law imposes an obligation among coastal states to negotiate the limits of their respective continental shelves on the basis of "equitable principles." Id. at 47, 51. With respect to the factors relevant to such principles the Court said:

In fact, there is no legal limit to the considerations which States may take account of for the purpose of making sure that they apply equitable procedures, and more often than not it is the balancing-up of all such considerations that will produce this result rather than reliance on one to the exclusion of all others. The problem of the relative weight to be accorded to different considerations naturally varies with the circumstances of the case.

In balancing the factors in question it would appear that various aspects must be taken into account. Some are related to the geological, others to the geographical aspect of the situation, others again to the idea of the unity of any deposits. These criteria, though not entirely precise, can provide adequate bases for decision adapted to the factual situation.

... The appurtenance of the shelf to the countries in front of whose coastlines it lies, is... a fact, and it can be useful to consider the geology of that shelf in order to find out whether the direction taken by certain configurational features should influence delimitation because, in certain localities, they point-up the whole notion of the appurtenance of the continental shelf to the State whose territory it does in fact belong.

* * * *

Another factor to be taken into consideration in the delimitation of areas of continental shelf as between adjacent States is the unity of any deposits. The natural resources of the subsoil of the sea in those parts which consist of continental shelf are the very object of the legal regime established subsequent to the Truman Proclamation. Yet it frequently occurs that the same deposit lies on both sides of the line dividing a continental shelf between two States, and since it is possible to exploit such a deposit from either side, a problem
One very important aspect of the 1965 decision in *United States v. California* was that it created an ambulatory boundary between the federal government and the various states by providing that it moved "with natural modifications to the shoreline" as well as with lands "enclosed or reclaimed by means of artificial structures." It also provided that the boundary was to be measured from "the outermost permanent harbour works." Thus, the filling of a parcel of tide-lands, the construction of a harbor facility or natural accretion, which occurs on large scale in some areas such as Louisiana, could increase the coastal state's ownership of the offshore. Texas and Florida as to the Gulf of Mexico are exceptions to this rule; the U.S. Supreme Court held that because they wished to claim the three marine league distance on the basis of historic title that they were immediately arises on account of a deposit from either side, a problem immediately arises on account of the risk of prejudicial or wasteful exploitation by one or other of the States concerned. ...

A final factor to be taken account of is the element of a reasonable degree of proportionality which a delimitation effected according to equitable principles to bring about between the extent of the continental shelf appertaining to the States concerned and the lengths of their respective coastlines, these being measured according to their general direction in order to establish the necessary balance between States with straight, and those with markedly concave or convex coasts, or to include very irregular coastlines to their truer proportions. *Id.* at 51-53.

72. Canada is not a signatory to the Convention on the Continental Shelf, as is the United States, but has in the past considered it to evidence customary international law binding upon it and all nations. Paper, Judge T. G. Norris, Q. C. of Canadian Ocean Policy Task Force, to Pacific Northwest Trade Association (April 22, 1969). Even if the Convention is applicable, however, Article 6 would seem to impose an obligation to negotiate in good faith for an agreement on the subject and either party could contend that "special circumstances" were present which justified a boundary other than the median line. See note 68, *supra.* See also Canada, *U.S. to Begin Talks on Outer Shelf Boundaries,* The Oil and Gas Journal, March 23, 1970 at 26, 28.

73. 381 U.S. at 176-77. The Convention on the Territorial Sea and Contiguous Zone contains no provision directly supporting the Court's holding regarding artificially filled areas. Article 3 of the Convention, however, provides that "the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State" which indirectly supports the holding. The Court appeared to rely principally on the ruling of the Special Master

... that lands so enclosed or filled belonged to California because such artificial changes were clearly recognized by international law to change the coastline. Furthermore, the Special Master recognized that the United States, through its control over navigable waters, had power to protect its interests from encroachment by unwarranted artificial structures, and that the effect of any future changes could thus be the subject of agreement between the parties. 381 U.S. at 176.

74. 381 U.S. at 175. The Court expressly adopted Article 8 of the Convention which provides:

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.
bound by coastline conditions as they existed as of the time of admission to the Union.\textsuperscript{75}

The concept of an ambulatory boundary is a sound one from an international standpoint. If the United States or any other country increases its land mass artificially, there are good reasons, such as national defense, for extending its territorial sea appropriately. It is not, however, a good rule of law with respect to federal-state relationships. It could lead to further federal-state litigation over boundaries and title and may have an inhibiting influence on beneficial coastal developments.\textsuperscript{76} It has been recommended that the federal government and the various states adopt appropriate legislation to fix their offshore boundaries.\textsuperscript{77}

Even within the area as to which title was confirmed to the coastal states under the Submerged Lands Act, the federal government has reserved a number of very significant powers. The United States retained as “paramount to” the lands and natural resources confirmed unto the coastal states “all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs.”\textsuperscript{78} In addition the Act provides that nothing contained in it “shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of lands and waters for the purposes of navigation or flood control or the production of power, or be construed as the release or relinquishment of any rights of the

\textsuperscript{75} See note 51 supra.

\textsuperscript{76} The ambulatory boundary concept is unfortunate in that it imposes upon the Secretary of the Army and the Chief of Engineers (Corps of Engineers), who under 33 U.S.C. § § 401 and 403 (1899) have been traditionally empowered with rights over navigation and required by law to consider projects in light of their effect upon free navigation, a duty to consider projects in light of their effect upon title and national interests in the federal v. state context, a task for which they are questionably suited.

\textsuperscript{77} The Court in United States v. Louisiana, 394 U.S. 11, 34 (1969), held that notwithstanding the constantly shifting location of Louisiana’s coastline it was to be determined in accordance with the same standards applicable to California’s: those set forth in the Convention on the Territorial Sea and Contiguous Zone. The Court noted, however, if the inconvenience of an ambulatory coastline proves to be substantial, there is nothing in this decision which would obstruct resolution of the problems through appropriate legislation or agreement between the parties. Such legislation or agreement might, for example, freeze the coastline as of an agreed-upon date. Id.

The Marine Sciences Commission in Our Nation and The Sea (supra, note 3) recommended that “Congress establish a National Seashore Boundary Commission to fix the baselines from which to measure the territorial sea and areas covered by the Submerged Lands Act of 1953 and to determine the seaward lateral boundaries between the States.” Id. at 63. A similar proposal calling for both federal and state legislation was also made in 1 Nossaman OCS Study, supra note 37, at §§ 11.52, 12.55.

\textsuperscript{78} 43 U.S.C. § 1314(a) (1953).
United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control, or the production of power.\textsuperscript{79}\textsuperscript{9} Such broad retained interests could materially deter the development of lands under state jurisdiction for non-mineral purposes, such as the construction of offshore islands, and possibly also for mineral development.\textsuperscript{80}

The Submerged Lands Act then, determines the area in which state offshore leasing is authorized. Outside of that area it is clear that the federal government has exclusive authority. The Submerged Lands Act states:

\begin{quote}
Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.\textsuperscript{81}
\end{quote}

It further is clear that the United States claimed an extensive continental shelf area beyond the territorial sea even prior to the passage of the Submerged Lands Act in 1953.

\textbf{B. 1945 Truman Proclamation}

Prior to 1945 there was no internationally recognized appropriation or right of appropriation to submarine areas outside of a nation's territorial sea, whether the areas were continental shelf or otherwise. There was a great deal of interest, particularly in the United States, regarding the offshore development of oil and gas, but it was directed largely to lands underlying the territorial sea, the three-mile coastal belt. In 1945, however, President Truman issued his landmark proclamation (see Appendix C) in which he expressed the view that "the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just" and proclaimed

\begin{quote}
...the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath
\end{quote}

\textsuperscript{79} 43 U.S.C. § 1311(d) (1953). The Act also provides "all structures and improvements constructed by the United States in the exercise of its navigational servitude" are excepted from the Act's operation. 43 U.S.C. § 1313(c) (1953).

\textsuperscript{80} It is quite clear that any lands or interests therein taken by the federal government pursuant to its reserve powers would be non-compensable irrespective of the breadth of the taking. See United States v. Rands, 389 U.S. 121, 122-23 (1967); United States v. Twin City Power Co., 350 U.S. 222 (1956); United States v. Appalachian Electric Power Co., 311 U.S. 377, 427 (1941); United States v. Chandler-Dunbar Water Power Co., 229 U.S. 53 (1913). See also Nossaman OCS Study § 3.22.

\textsuperscript{81} 43 U.S.C. § 1302 (1953).
the high seas but contiguous to the coasts of the United States as appertaining to the United States [and] subject to its jurisdiction and control.\(^{82}\)

At the same time President Truman issued Executive Order 9633 which ordered that “the natural resources of the continental shelf . . . contiguous to the coasts of the United States . . . [be] placed under the jurisdiction and control of the Secretary of the Interior for administrative purposes, pending the enactment of legislation in regard thereto.”\(^{83}\)

It is clear that the term “continental shelf” as used in the Truman Proclamation was intended to be interpreted in its geologic sense.\(^{84}\) In this sense the continental shelf consists of the natural prolongation of the coastal plain of the continental land mass at least to the point at which it becomes continental slope and drops sharply off to the abyssal plains. This point typically occurs at 600 feet or 100 fathoms, as indicated in a White House press release issued contemporaneously with the Proclamation.\(^{85}\) This is merely a geologist’s rule of thumb, however, and there is no evidence in the history of the Truman Proclamation indicating an intention to arbitrarily restrict the generic classification of continental shelf contained therein.

It thus appears clear that the Proclamation was intended to cover areas such as the “continental borderland” off Southern California which at points lie much deeper than 200 meters, but which are geologically identifiable as a border of the continental land mass.\(^{86}\) As will be discussed in greater detail later in connection with the

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82. Proclamation No. 2667, 3 C.F.R. 67, 68 (1943-1948 Comp.).
83. 3 C.F.R. 437 (1943-1948 Comp.).
84. See 4 M. Whiteman, Digest of International Law 752 (1965).
85. White House Press Rel., (Sept. 28, 1945), 13 Dep’t State Bull. No. 327, at 484 (Sept. 30, 1945). The definition of “Continental Shelf, Shelf Edge and Borderland” approved by the International Committee on the Nomenclature of Ocean Bottom Features is as follows:

The zone around the continent, extending from the low water line to the depth at which there is a marked increase of slope to greater depth. Where this increase occurs, the term “shelf edge” is appropriate. Conventionally, the edge is taken at 100 fathoms (or 200 metres), but instances are known where the increase of slope occurs at more than 200 or less than 65 fathoms. When the zone below the water line is highly irregular, and includes depths well in excess of those typical of continental shelves, the term “continental borderland” is appropriate. 1 Y.B. Int’l L. Comm’n 131 (1956).

This definition was used during the 1958 Law of the Sea Conference which led to the Convention on the Continental Shelf, discussed in part II D infra. See North Sea Continental Shelf Cases [1969] I.C.J. 3, 51; Franklin, supra, note 1 at 17.

86. The controlling factor in determining whether an offshore area is continental shelf in the geologic sense should be whether the area is a natural extension of the continental land mass and is interior of the continental slope. See K. O. Emery, The Sea Off Southern California 5, 325 (1960); P. Keunen, Marine Geology 105, 158, 162, 339 (1950); F. P. Shepard, Submarine Geology 288-89, 425 (2d ed. 1963); Hearings on S. 1901, before the U.S. Senate Comm. on Interior and Insular Affairs, 83rd Cong., 1st Sess. 210, 213 (1953).
Convention on the Continental Shelf and the doctrine of the continental shelf in customary international law, a strong argument can be made that the geologic concept of the continental shelf includes the continental slope which generally extends to 7500 meters.\textsuperscript{87} Whether or not the Truman Proclamation was intended to cover this area when originally issued is doubtful in view of the state of technology at that time. At the present time, however, the premises and purposes of the Truman Proclamation are in most respects applicable to the continental slope and lend support to claims made to it by the coastal state.\textsuperscript{88}

C. Outer Continental Shelf Lands Act

The Outer Continental Shelf Lands Act\textsuperscript{89} was also adopted in 1953 as a companion measure to the Submerged Lands Act. It was the first federal act authorizing the leasing of offshore lands and created a comprehensive system dealing with all such lands which

\textsuperscript{87} See text accompanying notes 123, 151 infra.

\textsuperscript{88} The premises of the Truman Proclamation, discussed in part II B infra, are (1) The United States believes that “efforts to discover and make available new supplies of petroleum and other minerals should be encouraged”; (2) There is expert opinion that “such resources underlie many parts of the continental shelf off the coasts of the United States of America and that with modern technological progress their utilization is already practicable or will become so at an early date”; (c) “Recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken”; and (4) “The effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources.” Proclamation No. 2667, 3 C.F.R. 67-68 (1943-1954 Comp.). It today clearly appears that petroleum resources of the continental shelf may extend into the continental slope in the same fashion as those of the territorial landmass were believed to extend into the shelf at the time of the Truman Proclamation. See notes 43 and 44 supra; U.S. Geol. Survey. Preliminary Map Potential Petroleum Resources, World Subsea Mineral Resources, Map 1-632 (1969). It is also equally clear that petroleum resources of the continental slope and rise are or will in the near future become technologically exploitable. In the National Petroleum Council report, note 14 supra, at 8 it is stated that within five years technology will allow drilling and exploitation into water depths up to 1500 feet and within ten years to 4000 to 6000 feet. Further, the interests of the coastal states in the conservation, use and protection of offshore resources would seem almost as direct and substantive as that of the coastal states in the continental shelf. It would appear to have been for this reason that the Marine Sciences Commission recommended an “intermediate zone” extending from its proposed redefined continental shelf to essentially the foot of the continental slope in which the coastal state would administer the resource. See Our Nation and The Sea at 151; note 8 supra.

\textsuperscript{89} 43 U.S.C. §§ 1331-43 (1964). The codification in United States Code omits §§ 13, 16 and 17 of the original Act. Sections 16 and 17 relate to appropriations and separability, respectively; § 13 revoked Executive Order No. 10,426 which set aside the submerged lands of the continental shelf as a Naval Petroleum Reserve. See Appendix D.
might be claimed by the United States. Section 3 of the Act states in part:

It is hereby declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act.  

Congress was aware that “continental shelf” as used in its geologic sense extended only to lands lying interior of the geologic slope, but the Act was not restricted to those lands. The term “outer Continental Shelf” was defined in Section 2 as including “all submerged lands lying seaward and outside of the area of lands beneath navigable waters [title to which was confirmed unto the coastal states by] the Submerged Lands Act . . . and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.” It is clear, therefore, that the Act applies to all lands properly claimed by the United States under international law whether as continental shelf, continental slope or otherwise.

For this reason the Act itself does not constitute an assertion of jurisdiction by the United States as to any particular offshore area. It is best viewed as a legislative implementation of the 1945 Truman Proclamation.  

We will in some detail later analyze the operation of the Outer Continental Shelf Lands Act. Its basic provisions will, however, briefly be set forth here.

The Act authorizes leasing only for the purpose of mineral development. There is not now any provision of federal law which would authorize the leasing or use of the outer continental shelf by the private sector for other purposes, such as the construction and

93. See Parts II D 4 and II E infra. See Memorandum Opinion (M36615/94127-61) from Assoc. Solicitor, Dep’t Interior to Director BLM (May 5, 1961); Barry, The Administration of the Outer Continental Shelf Lands Act, 1 Natural Resources Law. (No. 3) 38, 46 (1968).
94. S. Rep. No. 133, 83rd Cong., 1st Sess. 2 (1953), stated that the Act was to give “the weight of statutory law to the jurisdiction asserted by the proclamation of the President of the United States in 1945.”
95. See Part III infra, which will appear in the October, 1970, issue of the Natural Resources Journal.
maintenance of offshore islands and the permanent mooring of structures used for non-mineral purposes.\textsuperscript{96}

The Act provides for competitive bidding on all mineral leases with the requirement as to minerals other than oil and gas that the same be on the basis of the highest cash bonus and provide for such royalty, rental and other terms as the Secretary may fix.\textsuperscript{97} Bidding on oil and gas is permitted to be either on the basis of cash bonus or royalty at the discretion of the Secretary of the Interior with royalty to be not less than 121/2% in any case. The Act provides that oil and gas leases shall cover not more than 5760 acres and shall be for "a period of five years and as long thereafter as oil or gas may be produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon [and] contain such rental provisions and such other terms and provisions as the Secretary may prescribe at the time of offering the area for lease."\textsuperscript{98}

Section 4 of the Act extends the "Constitution and laws and civil and political jurisdiction of the United States" to "all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State."\textsuperscript{99} In addition the Act adopts as "the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon" the "civil and criminal laws of each adjacent State" as of the effective date of the Act, August 7, 1953, to the extent the state laws are not inconsistent with the Act or other federal laws and regulations.\textsuperscript{100} Lastly, the Act further extends the "authority of the Secretary of the Army to prevent obstruction to navigation in any navigable waters of the United States ... to artificial islands and fixed structures located on the outer Continental Shelf"\textsuperscript{101} and states that it is

\textsuperscript{96} Compare Cal. Pub. Res. Code § 6501.1 (West 1956), authorizing the leasing by the State Lands Commission of tide and submerged land "for such purpose or purposes as the commission deems advisable, including but not limited to ... leases for commercial or industrial purposes."

\textsuperscript{97} 43 U.S.C. §§ 1337(c)-(e) (1953).

\textsuperscript{98} 43 U.S.C. §§ 1337(a)-(b) (1953).


\textsuperscript{100} 43 U.S.C. § 1333(a)(2) (1953).

\textsuperscript{101} 43 U.S.C. § 1333(f) (1964). Recently in United States v. Ray, 294 F. Supp. 532 (S.D. Fla. 1969) the construction of two island nations on a reef approximately four and one-half miles offshore the southeast coast of Florida was held unlawful in the absence of Federal permits under the provision of the Act and a permanent injunction issued. On
to be "construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected."\textsuperscript{102} An express extension of the Secretary's powers in this regard was necessary because the Rivers and Harbors Act of 1899 is limited to "navigable waters of the United States."\textsuperscript{103} The Act authorizes reservations of various kinds, including the right of the President to "withdraw from disposition any of the unleased lands of the outer Continental Shelf" at any time.\textsuperscript{104}

One aspect of the Act that is quite noticeable today is that it contains no provisions indicating any real concern for or even awareness of values or uses other than mineral ones\textsuperscript{105} and that it provides no procedure for the weighing of and determination of priorities among such values and uses. This is perhaps understandable in light of the history of the Act. There is abundant evidence that the primary, perhaps controlling, purpose of the Act was to authorize and encourage the development of the vast reserves and highly potential prospects of oil and gas on the outer continental shelf. The Act itself states that the leasing power of the Secretary of the Interior was authorized "[i]n order to meet the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf."\textsuperscript{106}

The absence of a procedure to determine and resolve conflicts of multiple use on the outer continental shelf has, however, become less understandable with the passage of time and the obvious growth and importance of non-mineral uses and values. Today the public reaction to the Santa Barbara oil spill and the growing number of other incidents of offshore pollution would seem to render continued legislative inaction impracticable.\textsuperscript{107} Even if practicable, however, it is questionable whether it is today excusable in light of the clear identi-
fication of problems in this area. The State of California in dealing
with its offshore has for many years recognized that special condi-
tions may be present in particular areas which require special leasing

\[108\] It has further recognized that the public interest in
offshore development is sufficiently great to warrant mandatory pub-
lic hearings prior to the determination to lease and as a guide to the

\[109\] The Cunningham-Shell Tidelands Act of 1955, supra, note 108 required the
Commission to publish notice of any proposed offering of tide and submerged lands for oil
and gas lease in which case any "affected city or county" could require a public hearing to
provides as follows:

\begin{quote}
The Commission in determining whether the issuance of such lease or leases
would result in such impairment or interference with the developed riverbank
or shoreline, recreational or residential areas adjacent to the proposed leased
While the situation has been ameliorated by the newly adopted regulations of the Secretary of the Interior, it would appear desirable that there be a statutory resolution of the problem. Congress, in creating the Public Land Law Review Commission and requiring it to study and make recommendations with respect to "disposition or restriction on disposition of the mineral resources ... in the outer Continental Shelf," would clearly appear to have empowered it to speak in this respect. The Commission is required to report not later than June 30, 1970.

D. 1958 Geneva Convention on the Continental Shelf

1. Pre-Convention Claims

The Truman Proclamation gave impetus to a number of claims by other coastal states of submarine areas as "continental shelf" but there was a decided lack of uniformity in them. Most of such proclamations were made without reference to a depth limitation, although some, such as those by Mexico and Ecuador, followed the apparent lead of the United States in asserting jurisdiction to a continental shelf extending to a depth of 200 meters (656 feet). Other countries, such as Chile, Peru, Costa Rica, El Salvador, Honduras, Korea and Saudi-Arabia, asserted claims based upon a precise width of high seas, in most cases 200 miles. The motive for expressing the continental shelf in these terms becomes quite apparent when it is

acreage or in determining such rules and regulations as shall be necessary in connection therewith shall at said hearing receive evidence upon and consider whether such proposed lease or leases would

(a) Be detrimental to the health, safety, comfort, convenience, or welfare of persons residing in, owning real property or working in the neighborhood of such areas;

(b) Interfere with the developed riverbank or shoreline, residential or recreational areas to an extent that would render such areas unfit for recreational or residential uses or unfit for park purposes;

(c) Destroy, impair, or interfere with the esthetic and scenic value of such recreational, residential or park areas;

(d) Create any fire hazard or hazards, or smoke, smog or dust nuisance, or pollution of waters surrounding or adjoining said areas.

Following the Santa Barbara oil spill the section was amended so as to require a public hearing on the matter in any case "within a city or county adjacent to such area [of proposed offering]" and required the Commission at such hearing to "propose ... a plan for the control of subsidence and pollution which might occur as a result of the proposed oil and gas operation." Ch. 1238 [1969] Cal. Stats. See Krueger, supra, note 108 at 448.

10. See supra note 27; infra note 174.
13. Ecuador, in 1951, proclaimed sovereignty to a continental shelf of 200 meters, but in 1952 joined Chile and Peru in claiming an area of 200 miles. See Franklin, supra, note 1 at 49-51.
14. Id. at 51-58.
found that geologically many of these countries have very limited continental shelves. Still other nations, such as Argentina, Israel and Australia, claimed simply the "continental shelf" or in the case of Israel the "submarine areas" adjacent to the territorial sea.\textsuperscript{115} Despite the lack of similarity between the claims made with respect to the continental shelf, the frequency with which they were made and the acquiescence with which they were received by other states led some experts to conclude by the mid-1950's that the principles set forth in the Truman Proclamation had become part of customary international law.\textsuperscript{116} It was not, however, until the Geneva Convention on the Continental Shelf of 1958 that there was any reasonable degree of consensus with respect to the regime applicable to a State's continental shelf.\textsuperscript{117}

2. Continental Shelf Definition

In 1958, the United Nations Conference on the Law of the Sea at Geneva, Switzerland, adopted the Convention on the Continental Shelf which was signed by the majority of the 86 states attending and which became effective in 1964, following ratification by 22 member states, including the United States and the Soviet Union; to date it has been ratified by a total of 39 states.\textsuperscript{118} The Convention

\textsuperscript{115} Id. at 58-62. The Israeli claim made in 1952 is noteworthy in that it used the flexible criterion based upon exploitability that was embodied in the 1951 draft of the International Law Commission and ultimately in the 1958 Geneva Convention on the Continental Shelf: the area claimed was to "where the depth of the superjacent waters admits of the exploitation of the natural resources of the seabed and subsoil." Id. at 59; 1951 Report of Int'l Law Comm., Art. 1, p. 17. See McDougal and Burke, The Public Order of the Oceans 674 (1962).

\textsuperscript{116} Lauterpacht, Sovereignty Over Submarine Areas, 27 Brit. Y.B. Int'l L. 376, 431 (1950); McDougal and Burke, note 115 supra, at 639. Cf. Kunz, Continental Shelf and International Law 828 (1956). It is clear today that the principles of the Truman Proclamation have become part of customary international law. See II. E., infra.


\textsuperscript{118} The Convention on the Continental Shelf, U.N. Doc./A/CONF. 13/L. 55, was signed on April 29, 1958, and became effective on June 10, 1965. (See Appendix E.) As of December 1968, it had been ratified or acceded to by the following 39 nations: Albania, Australia, Bulgaria, Byelorussian SSR, Cambodia, Colombia, Czechoslovakia, Denmark, Dominican Republic, Finland, France (with reservations), Guatemala, Haiti, Israel, Jamaica, Madagascar, Malawi, Malaysia, Malta, Mexico, Netherlands, New Zealand, Poland, Portugal, Romania, Senegal, Sierra Leone, South Africa, Sweden, Switzerland, Uganda, Ukrainian SSR, Union of Soviet Socialist Republics, Thailand, Trinidad and Tobago, United Kingdom, United States of America, Venezuela (with reservations) and Yugoslavia (with reservations). In addition the following 24 nations have signed but not yet ratified the Convention: Afghanistan, Argentina, Bolivia, Canada, Ceylon, Chile, China, Costa Rica, Cuba, Ecuador, Federal Republic of Germany, Ghana, Iceland, Indonesia, Iran, Ireland, Lebanon, Liberia, Nepal, Pakistan, Panama, Peru, Tunisia and Uruguay. See United Nations Publication, Multilateral Treaties in Respect of Which the Secretary-General Performs Depository Functions—List of Signatures, Ratifications, Accessions, etc. as of December 31, 1968.
defines the continental shelf as "the seabed and subsoil of the sub-
marine areas adjacent to the coast [and islands] but outside the area
of the territorial sea, to a depth of 200 metres or, beyond that limit,
to where the depth of the superjacent waters admits of the exploita-
tion of the natural resources of the said areas." Figure 4 shows a
typical section of the defined continental shelf in profile.

The Geneva Convention grew out of draft articles prepared by the
International Law Commission during the period from 1950 to 1956.
Early drafts of the Commission contained no reference to water
depths in defining the continental shelf, but spoke strictly in terms
of depth-by-exploitability. There was a great amount of criticism of
this standard on the ground that it was so vague that it would permit
countries to claim as continental shelf lands far beyond the geologic
shelf or slope. Consequently in 1953, the International Law Commis-
sion rejected the exploitability criterion and adopted a 200-meter
limit. It felt that such a limit "takes into account the practical possi-
bilities, so far as they can be foreseen at present, of exploration and
exploitation." In 1956, however, the Inter-American Specialized
Conference on Conservation of Natural Resources: The Continental
Shelf and Marine Waters led to the preparation and submission of a
definition substantially the same as that contained in the Convention,
which was adopted by the International Law Commission at its
1956 meeting, and later by the 1958 Conference.

Various and conflicting statements have been made since the Con-
ference regarding this definition. Some, including advisors to the
Marine Sciences Commission, have stated that it was the intent of the
Conference that the definition cover only the geologic continental
shelf which normally ends at 200 meters and that the purpose of the
exploitability test was to permit the development of nearby adjacent
areas. Others, including the National Petroleum Council, have

120. 1953 Report of Int'l L. Com. at 113, para. 64. See McDougal and Burke, note
115 supra, at 680.
Union, Background Material on the Activities in the Organization of American States
Relating to the Law of the Sea (1957); McDougal and Burke, supra, note 115 at 674;
Brown, The Outer Limit of the Continental Shelf, 13 Jurid. Rev. 111, 138-43 (1968);
The text of the Resolution of Ciudad Trujillo Approved by Inter-American Specialized
Conference on Conservation of Natural Resources: The Continental Shelf and Marine
122. Our Nation and The Sea at 143-45 supra, note 3; Henkin, Changing Law for
the Changing Seas, Uses of the Seas 69, 79 (Am. Assem. 1968); Henkin, The Outer Limit to
the Continental Shelf: A Reply to Mr. Finlay, 64 Am. J. Int'l L. 62 (1970); Oxman, The
Preparation of Article I of the Convention on the Continental Shelf 74 (1968). See also A
Discussion of the Legislative History and Possible Construction of the Convention on the
Figure 4. Continental Shelf in Profile (Vertical Scale Exaggerated)

interpreted the legislative history of the Convention to support a broad construction of the definition and its qualifier "adjacent" so as to cover the continental shelf and the entire continental slope to the point at which it meets the abyssal depths, assuming the exploitability of mineral resources is established. While the matter is not free from doubt, the latter view appears to be consistent with the "plain meaning" of the Convention and the preponderance of evidence in its legislative history and has found support with the Department of the Interior and most writers in this country. The broad construction also appears to be consistent with the doctrine of the continental shelf in customary international law.

Whether a broad or a narrow construction of the definition is


This view quite clearly appears to be the current one of the Department of Interior. In a paper to the Thirteenth Conference on Naval Minefield Coastal Shelves on January 27, 1970, entitled "The Value of Rights to Coastal Shelves," then Under-Secretary Russell E. Train indicated that the rights of the coastal state to the continental slope and rise were, in fact, vested irrespective of present exploitability. He stated that the Convention on the Continental Shelf "guarantees the United States as a coastal state . . . the present exclusive option to explore and exploit the natural resources of the continental shelf from the limits of present technological capability to the seaward edge of the submerged continental land mass (i.e., the seaward edge of the continental rise) and no farther. . . ." Id. at 9-10.

Even the origin and intent of the 200-meter test is not clear. Statements have been made that the 200-meter figure represented the greatest depth at which exploitation was thought in 1958 to be feasible. See Franklin, supra, note 1 at 29; McDougal and Burke, supra, note 115 at 687. As should be apparent from the manner in which the International Law Commission revised its stand on this subject, however, there is considerable doubt as to the validity of these comments. Even at the Conference there were indications of opinion that the 200-meter criterion was grossly inadequate. See U.N. Doc. A/CONF. 13/42 at 30, 38; Krueger, supra, note 110 at 4. Probably the most realistic view to take of the 200-meter definition of the continental shelf is that of Professor Lauterpacht who states that it "is no more than a general indication of title to areas of indeterminate extent [and] may thus provide a convenient starting point for future regulation and agreement. But it must not be more than that." Lauterpacht, supra, note 116, at 384-85.

125. See infra, note 156; Part II B supra, note 88.
adopted, however, it is clear that it is ambiguous and needs clarification. The strong disagreement within the International Law Commission, at the U. N. Law of the Sea Conference and subsequently in various forms as to what area was intended to be encompassed by the definition, serves to point out the definition's ambiguity. A close examination of the record of the Commission and the Conference indicates that the adoption of the definition probably resulted more from an inability to pass a more precise alternative definition than from any inherent validity. The issue of what limits should be established for the continental shelf would be more profitably examined from the standpoint of the merits of each alternative than from the standpoint of the supportability of each alternative under the "proper" construction of the Convention on the Continental Shelf. The extended dialogue as to the intent of the Convention which has taken place over the last four years would clearly seem to have served, or perhaps more appropriately exhausted, its purpose.  

3. Provisions of the Convention

Article 2 of the Convention provides that the rights of the coastal state in the continental shelf "for the purpose of exploring it and exploiting its natural resources" are "sovereign" and "exclusive." It further provides 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.

The "natural resources" over which the coastal state has jurisdiction are defined to "consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species . . . ."  

Similarly to the Outer Continental Shelf Lands Act, the Convention does not authorize other uses of the sea-bed and subsoil of the defined continental shelf, such as traditional real property, recrea-


127. See Appendix E, Convention on the Continental Shelf Art. 1, Para. 4.
tional and military uses, and it expressly limits the authority of the coastal states as to permitted uses. The Convention authorizes the coastal state only “to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection” and only then where the same do not interfere with “recognized sea lanes essential to international navigation.” Such safety zones are limited to a distance of 500 meters around each installation and device and the Convention expressly negates any territorial status for them.

With respect to overlying waters the Convention provides in Article 3:

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

Paragraph 1 of Article 5 also provides that “[t]he exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation . . . .” The waters above the continental shelf are, therefore, international waters and subject to the Convention on the High Seas and other international conventions pertaining to such waters. The outstanding rights and interests of other nations in the waters above the continental shelf present a further reason to narrowly construe the rights of the coastal state in the use of those waters in connection with the exploration or exploitation of the seabed and subsoil of the continental shelf.

The Convention provides in paragraph 1 of Article 5 that author-
ized exploration and exploitation "must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication" and such requirement is made an express condition to the right of the coastal state to place installations on the continental shelf under paragraph 2 of such Article. The consent of the coastal state is required for "any research concerning the continental shelf and undertaken there;" but it is enjoined "not normally [to] withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf . . . ."133 The rights of the coastal state in its continental shelf are thus again qualified on the face of the Convention.

4. Claims Under the Convention

The elastic definition of the Convention was clearly successful as an interim measure in facilitating a considerable amount of offshore development that might otherwise not have taken place or have taken place under uncertain unilateral extensions of the territorial sea or the continental shelf.134 The experience of the United States is illustrative. Commencing in 1961 the Department of the Interior has issued leases under the Outer Continental Shelf Lands Act covering areas 40 miles offshore and in waters as deep as 4000 feet and 26 miles offshore and in waters from 1200 to 1800 feet in depth.135 In addition the Secretaries of the Interior and the Army asserted jurisdiction under the Act over an area approximately 120 miles off Southern California which is separated from the coastline by waters as deep as 6000 feet.136 Lastly, the Secretary of the Interior has


134. See supra at note 113.

135. A 1961 lease of phosphate deposits lying approximately 40 miles seaward of Southern California was approved by the Solicitor as being authorized under the Outer Continental Shelf Lands Act on the grounds that it was applicable there to "since the United States [by its ratification of the Convention] has now asserted rights to the seabed and subsoil as far seaward as exploitation is possible." Memorandum Opinion, supra, note 124 at 6.

136. The Secretary of the Army, who was given authority under § 4(f) of the Outer Continental Shelf Lands Act to "prevent obstruction to navigation [as to] artificial islands and fixed structures located on the outer Continental Shelf," formally advised the proposed island builders that their work could not be undertaken without the consent of the United States. Such action was taken pursuant to a letter from the Solicitor of the Department of
issued exploratory permits under the Act to conduct core drilling in the Gulf of Mexico in waters as deep as 3500 feet and on the Atlantic seabord for waters as deep as 5000 feet and lying as far as 250-300 miles from the coast. All of these acts are capable of being construed as an assertion of jurisdiction by the United States over the areas in question, notwithstanding the fact that exploration is not necessarily equated with exploitation for purposes of the Convention's definition.

The aggressive attitude which the United States has displayed toward offshore claims under the Convention appears to have been consistent with the pattern of conduct by most members of the world community acting either under the Convention or exclusive of it. As of 1969 approximately 98 coastal nations had asserted general jurisdiction over offshore minerals and of that number at least 37 appear to have done so in areas which appear to be in waters deeper than 200 meters.

Interior to the Los Angeles, California, District Engineer, dated February 1, 1967, which stated in part:

It is our opinion that the Cortes Bank area is within [the Convention on the Continental Shelf] definition of "continental shelf." The publication of our leasing maps [by BLM] is an affirmative assertion of the jurisdiction of the United States over the area, though there have been others, e.g., the emplacement of a buoy at Cortes Bank by the Coast Guard. We also wish to direct your attention to a 1948 publication entitled "Characteristics of Submerged Lands" published by the State Lands Division, State of California. This document contains impressive geologic evidence that Cortes Bank is in fact but an extension of the land mass of Southern California.

See supra, note 101.

137. See Krueger, supra, note 124 at 6-7. The Atlantic core-drilling was clearly considered to be on the continental slope. U.S.G.S. Release No. 94229-67 (May 26, 1967), regarding the permit for this drilling stated in part:

The project, marking the first drill probes, of the Atlantic Continental Slope by a private company, is aimed at gaining further insight into the geology of the submerged Atlantic shelf and slope areas. Such knowledge is a prerequisite to outlining potential "targets" for oil and gas search. It was pointed out that the approval to drill core holes was "not exclusive" and that "no rights to any mineral leases will be obtained."

138. The permits involved appear to have been issued under Section 11 of the Outer Continental Shelf Lands Act which applies to "geological and geophysical explorations in the outer Continental Shelf." There is no other statutory authority for the issuance of this type of permit. With due regard to the fact that Section 2(a) of the Act defines the "outer Continental Shelf" as lands "subject to the [United States'] jurisdiction and control" there is, therefore, good reason to conclude that the permits constitute an assertion of jurisdiction over the areas as continental shelf by the branch of the federal government that has been entrusted with appropriate administrative responsibility. This, moreover, is consistent with what has been the prevailing attitude within the Department of Interior as to the construction of the Convention on the Continental Shelf. See Memorandum Opinion, Barry and Train, supra, note 124; see also Interim Report, Comm. on Deep Sea Min. Res., supra, note 123 at XXVII-XXVIII. Compare Denmark v. Norway, [1933] I.C.J. 148, 192.

5. Recent International Developments

The magnitude of the claims which have been made in offshore areas has been so great as to give concern both to the United States and most nations in the world community that there may be, in the words of President Johnson, "a race to grab and to hold the lands under the high seas."40 This concern clearly appears to have generated the proposals made by the Marine Sciences Commission in this area and the resolutions adopted by the United Nations General Assembly described in the introduction of this article.41

The resolutions of the U. N. General Assembly adopted in late 1969 make it very clear that increased international negotiation and debate can be expected on many of the basic issues of the Convention on the Continental Shelf and its sister Conventions on the Territorial Sea and Contiguous Zone, the High Seas and Fishing, and Conservation of the Living Resources of the High Seas. Logic would indicate that when the Secretary General ascertains the view of United Nations member states as to the desirability of convening a broad-scale Law of the Sea Conference, as requested by the General Assembly, the answer will be in the affirmative in approximately the same magnitude as shown by the vote on the resolution itself.42

The intense friction created by the absence of clearly ascertainable limits to the continental shelf and the absence of any internationally oriented regime for the area beyond makes it probable, even foreseeable, that such limits and such a regime will be established in the near future by one means or another, at this time very probably by a future conference. The role that the United States, the Soviet Union and the other great powers would play in such a conference could depend in large part upon its agenda. This is supported by a recent statement by the Legal Advisor of the U.S. Department of State indicating that "a new international law of the sea conference or conferences" might be acceptable if "issues are treated in manageable packages."43 It is possible that if the agenda included all of the

140. Comments of the President at the commissioning of the new research ship, The Oceanographer, July 13, 1966.
141. See supra, notes 8-26.
142. See supra, note 18.
143. Stevenson, supra, note 26. He has indicated that the first of such conferences could deal with "a new international treaty fixing the limitation of the territorial sea at 12 miles, and providing for freedom of transit through and over international straits and carefully defined preferential fishing rights for coastal States on the high seas." Id. at 6.

While it may be as indicated by Mr. Stevenson that these issues are "old ones which have been examined carefully by the international community in the past and are well understood" (Id.) it can be questioned whether as much preparation work has been done on
issues set forth in the recent U.N. resolution, some of the great powers would not participate.144

E. Customary International Law

The fact that a large number of influential and developed nations had ratified the Convention on the Continental Shelf or unilaterally adopted similar measures led some understandably to the view that it evidenced customary international law.145 In the North Sea Continental Shelf Cases,146 however, the International Court of Justice held that the provisions of Article 6 of the Convention on the Conti-

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144. It is, however, not likely because of the chaotic situation that would result from this course of action. It is much more likely that the great powers would endeavor to shape the conference and its products, irrespective of the number of issues involved. In this regard similarities in approach between the United States and the Soviet Union are noteworthy. See note 26, supra.


Continental Shelf dealing with the delimitation of boundaries between coastal states did not constitute or evidence customary international law in a case involving the lateral boundaries of the continental shelf between West Germany and Denmark and West Germany and the Netherlands. While the World Court avoided adopting any part of the Convention as customary international law, it did make it clear that its decision did not extend to Articles 1 to 3 which define the continental shelf and the rights of the coastal states therein. Such articles, the Court stated,

were then [at the time of the 1958 Geneva Conference on the Law of the Sea] regarded as reflecting, or as crystallizing, received or at least emergent rules of customary international law relative to the continental shelf, amongst them the question of the seaward extent of the shelf.\textsuperscript{147}

More importantly, the World Court recognized that the doctrine of the continental shelf constituted customary international law, exclusive of the Convention on the Continental Shelf, and that no acts by the coastal state were necessary to establish its rights thereunder.\textsuperscript{148} It stated:

[T]he most fundamental of all the rules of law relating to the continental shelf, enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it, [is] that the rights of the coastal State in respect of the area of \textit{continental shelf that constitutes a natural prolongation of its land territory into and under the sea} exist \textit{ipso facto} and \textit{ab initio}, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the sea-bed and exploiting its natural resources. In short, there is here an 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 (and many States have done this) but does not need to be constituted. Furthermore, the right does not depend on its being exercised. To echo the language of the Geneva Convention, it is 'exclusive' in the sense that if the coastal State does not choose to explore or exploit the areas of

\textsuperscript{147} Id. at 39. See also id. at 42.
\textsuperscript{148} Compare Article 1 of the Convention on the Continental Shelf: "'continental shelf' is used as referring . . . to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources." See note 122, supra.
shelf appertaining to it, that is its own affair, but no one else may do so without its express consent.\textsuperscript{149} [Emphasis added.]

In view of the special treatment accorded Articles 1 through 3 of the Convention by the Court, a sound argument can be made today that they, particularly Article 2, evidence customary international law and are binding on the world community.\textsuperscript{150} Moreover, even if these Articles are not accorded this treatment, the case provides criteria for the identification of the continental shelf which indicate that it may extend as far seaward under customary international law as it could under the Convention. In addition to stating that the continental shelf constitutes a "natural prolongation of [a coastal state's] land territory into and under the sea",\textsuperscript{151} the Court stated:

The institution of the continental shelf has arisen out of the recognition of a physical fact; and the link between this fact and the law, without which that institution would never have existed, remains an important element for the application of its legal regime. The continental shelf is, by definition, an area physically extending the territory of most coastal States into a species of platform which has attracted the attention first of geographers and hydrographers and then of jurists.

The appurtenance of the shelf to the countries in front of whose coastlines it lies, is ... a fact, and it can be useful to consider the geology of that shelf in order to find out whether the direction taken by certain configurational features should influence delimitation because, in certain localities, they point-up the whole notion of the appurtenance of the continental shelf to the State whose territory it does in fact prolong.\textsuperscript{152} [Emphasis added.]

The differing schools of thought with respect to the proper construction to be given to the definition of continental shelf contained in the Convention on the Continental Shelf immediately took up the

\textsuperscript{149} \[1969\] I.C.J. at 22-23.
\textsuperscript{150} See note 147, supra. See Jennings, note 124, supra, at 822, 831. Jennings would treat Article 2 as one that "enshrines" the basic principle of general international law and Article 1 as stating an \textit{ad interim} definition that does not foreclose a coastal state from claiming under general law. \textit{Id.} at 831-32.
\textsuperscript{151} \[1969\] I.C.J. at 22.
\textsuperscript{152} \textit{Id.} at 51.
cudgel with respect to the import of the World Court decision, with again disparate conclusions. Advocates of the National Petroleum Council point of view rely upon the foregoing provisions as justifying a claim to the continental slope, and even continental rise.\textsuperscript{153} Supporters of the Marine Sciences Commission dispute this on the basis of language stating that the Court did not regard “a point on the continental shelf situated . . . a hundred miles, or even much less, from a given coast [as being] ‘adjacent’ to it.”\textsuperscript{154}

The facts and some rather mysterious statements in the case\textsuperscript{155} tend to limit its authority. It does, however, expressly incorporate the Truman Proclamation into the stated doctrine of the continental shelf as being “the starting point of the positive law on the subject”\textsuperscript{156} and, as noted earlier, many of the basic concepts of the Proclamation appear as applicable to the continental slope (200-2500 meters) as they are to the shelf proper.\textsuperscript{157} Geologically the slope

\begin{itemize}
\item \textsuperscript{153} Finlay, note 126, \textit{supra}, at 45, 60, Jennings, note 124, \textit{supra}, at 830 would give the coastal state the continental slope but not the rise.
\item \textsuperscript{154} (1969) I.C.J. at 30-31. See Henkin, The Outer Limit, note 122, \textit{supra}, at 70. Jennings, note 124, \textit{supra} explains such language as referring to a particular point rather than the continental shelf as a geologic feature. There is validity to this. Countries and continents may be adjacent to one another even if a given point in either is not. At the very least the clause is grossly ambiguous.
\item \textsuperscript{155} The case involves the issue of whether the median line rule customarily applies to a lateral boundary between and among coastal states. It does not involve the question of whether the rule applies to coastal states in the opposite boundary situation or whether it applies in the case of boundaries interior of the continental shelf. North Sea Continental Shelf Cases, (1969) I.C.J. 3, 36-37. The Court’s opinion in fact indicates that the median line test would be appropriate in the above instances:
\item [11] in fact, whereas a median line divides equally between the two opposite countries areas that can be regarded as being the natural prolongation of the territory of each of them, a lateral equidistance line often leaves to one of the States concerned areas that are a natural prolongation of the territory of the other.
\item Equally distinct in the opinion of the Court is the case of the lateral boundary between adjacent territorial waters to be drawn on an equidistance basis. As was convincingly demonstrated in the maps and diagrams furnished by the Parties, and as has been noted in paragraph 8, the distorting effects of lateral equidistance lines under certain conditions of coastal configuration are nevertheless comparatively small within the limits of territorial waters, but produce their maximum effect in the localities where the main continental shelf areas lie further out. There is also a direct correlation between the notion of closest proximity to the coast and the sovereign jurisdiction which the coastal State is entitled to exercise and must exercise, not only over the seabed underneath the territorial waters but over the waters themselves, which does not exist in respect of continental shelf areas where there is no jurisdiction over the superjacent waters, and over the seabed only for purposes of exploration and exploitation. \textit{Id.} at 37-38. See notes 147, 154 \textit{supra}; (1969) I.C.J. at 44, para. 76.
\item \textsuperscript{156} (1969) I.C.J. at 33.
\item \textsuperscript{157} See note 88, \textit{supra}. See also Proclamation No. 2667, 3 C.F.R. (1943-1948 Comp.) 67, 68.
\end{itemize}
would appear to be as much an "extension of the land-mass of the coastal nation,"158 or a "natural prolongation of [a] land territory"159 as the shelf. Viewed from the standpoint of resources, which have been vital to all law in this area, the shelf and the slope are closely related, if not the same, with an equal probability of shared mineral deposits that was noted in the Truman Proclamation.160 While the issue is not free from doubt and is being actively debated, the doctrine of the continental shelf which exists under customary international law probably does extend to the base of the continental slope.161 The policy questions raised as to the extent of the continental shelf under the Convention are, however, equally relevant to a comparably uncertain definition in customary international law. Again the issue which should be answered and which, indeed, the majority of the world community appears to be forcing upon the great powers is what the rule of law should fairly be.162

**F. May, 1970, Nixon Proposal for the United States Oceans Policy**

In April of 1970 legislation was introduced to the Canadian House of Commons that would establish an Arctic Waters Pollution Control Zone which would extend "seaward from the nearest Canadian land [above the 60th parallel] a distance of one hundred nautical miles," to the median line between Canada and Greenland (which is less than one hundred miles) and to "all waters adjacent [to the one hundred mile zone], the natural resources of whose subjacent submarine areas Her Majesty in right of Canada has the right to dispose of or exploit."163 Within such zone the discharge of any substance that would degrade the quality of the waters "to an extent that is detrimental to their use by man or any animal, fish or plant that is useful to man" is prohibited except as authorized by regulation.164 Further, within such zone Canada would assert the right to control all shipping, to prescribe standards of vessel construction and operation, and to prohibit free passage if deemed necessary.165 A rule of

158. 3 C.F.R. (1943-1948 Comp.) at 68.
161. See Jennings, note 124 supra, at 326-32; Finlay, note 153, supra. See also authorities cited in notes 116 and 121 supra.
162. See note 126, supra.
164. Arctic Waters Pollution Prevention Act, note 163, supra, at Sect. 4.
165. Id. at Sects. 8-12. See also U.S. Dep't State Release No. 121, Apr. 15, 1970.
strict liability is imposed for any damage resulting from an unauthorized discharge whether by vessel or from natural resource development.\textsuperscript{166} A companion measure would establish a 12-mile territorial sea.\textsuperscript{167}

The Canadian proposal was challenged by the U. S. Department of State as constituting "unilateral extensions of jurisdictions on the high seas [which] the United States can [not] accept." Instead the United States proposed "international solutions... within the United Nations framework looking toward the conclusion of a new international treaty dealing with the limit of the territorial sea, freedom of transit through and over international straits, defining preferential fishing rights for coastal states on the high seas [and] for controlling pollution on the high seas."\textsuperscript{168}

The reason for the strong, perhaps overly strong, reaction on the part of the United States became clear when on May 23, 1970, President Nixon announced a proposed new United States oceans policy which could have a very significant effect on offshore resource development and coastal zone management, and consequently environmental protection. The Nixon proposal stated in part:

The issue arises now—and with urgency—because nations have grown increasingly conscious of the wealth to be exploited from the seabeds and throughout the waters above, and because they are also becoming apprehensive about the ecological hazards of unregulated use of the oceans and seabeds. The stark fact is that the law of the sea is inadequate to meet the needs of modern technology and the concerns of the international community. If it is not modernized multilaterally, unilateral action and international conflict are inevitable.

Therefore, I am today proposing 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 (218.8 yards), and would agree to regard these resources as the common heritage of mankind.

The treaty should establish an international regime for the exploitation of seabed resources beyond this limit. The regime should provide for the collection of substantial mineral royalties to be used for international community purposes, particularly economic assistance to developing countries. It should also establish general rules

\textsuperscript{166} Arctic Waters Pollution Prevention Act, note 163, \textit{supra}, Sect. 5.
\textsuperscript{167} Bill C-203, an Act to Amend the Territorial Sea and Fishing Zones Act.
\textsuperscript{168} U.S. Dept. State Release, note 165, \textit{supra}.
to prevent unreasonable interference with other uses of the ocean, to protect the ocean from pollution, to assure the integrity of the investment necessary for such exploitation and to provide for peaceful and compulsory settlement of disputes.

I propose two types of machinery for authorizing exploitation of seabed resources beyond a depth of 200 meters.

First, I propose the coastal nations act as trustees for the international community in an international trusteeship zone consisting of the continental margins beyond a depth of 200 meters off their coasts. In return, each coastal state would receive a share of the international revenues from the zone in which it acts as trustee and could impose additional taxes if these were deemed desirable.

As a second step, agreed international machinery would authorize and regulate exploration and use of seabed resources beyond the continental margins.

The United States will introduce specific proposals at the next meeting of the United Nations Seabeds Committee to carry out these objectives.169

President Nixon also stated that the proposed treaty would provide for a 12-mile limit for territorial seas and for free passage through international straits. The urgency with which the proposal is regarded by the Nixon Administration is evidenced by the fact that on the following working day it was transmitted to the U.N. Seabeds Committee by U.S. Ambassador Phillips with the invitation to Committee members to discuss the same in preparation for the August 1970 meeting of the Committee.170

The Nixon proposal is essentially a liberalized version of that proposed by the Marine Sciences Commission in its 1969 report which would have confirmed unto coastal states exclusive jurisdiction to a depth of 200 meters or 50 miles from coastlines, whichever is further, and established an “intermediate zone” beyond to the 2500 meter isobath or 100 miles from coastlines, whichever is further.171 Within this intermediate zone coastal states would administer the resource but proceeds from it would be paid to an international fund to be used for the benefit of the poor and developing nations of the world.

In many respects the Nixon proposal is a quite clever one that could operate as a *modus vivendi* for achieving consensus on the troublesome jurisdictional issues over which there has recently been

so much open disagreement between the developed and developing countries of the world. This factor was vividly illustrated by the fact that in December of 1969 the United Nations General Assembly, following extensive and heated debates in the Sea-Bed Committee and the U.N. First Committee, adopted a resolution requesting the Secretary General to determine the desirability of convening a conference on jurisdictional problems, over the active opposition of the United States and the Soviet Union and their usual supporting blocs.172 Again with active opposition of the Soviet Union, the United States and their blocs, the General Assembly also passed a resolution providing that nations “are bound to refrain from all activities of exploitation of the resources of the area of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction.” 173

The Nixon proposal espouses most of the principles of the 1967 proposal of Malta to the United Nations calling for the drafting of a treaty which would reserve the seabed and ocean floor “beyond limits of present national jurisdiction” as a “common heritage of mankind” and provide for their “economic exploitation . . . with the aim of safeguarding the interests of mankind [and using] the net financial benefits derived [therefrom] to promote the development of poor countries.” 174 It accordingly can be expected to enjoy the high degree of popularity accorded the Maltese proposal among the smaller and lesser developed countries,175 and by the same token


173. 24 U.N. GAOR at U.N. Doc. A/2574D (1969). Resolutions of the U.N. General Assembly do not have a formal binding effect upon member states. Articles 10 through 17 of the United Nations’ Charter which set forth powers of the General Assembly provide merely that that body may “discuss,” “consider” and “recommend.” On the other hand, resolutions of the Assembly can contribute substantially to the general body of customary international law. See Higgins, The Development of International Law Through the Political Organs of the United Nations 5 (1963). With due regard to the interest that the General Assembly and its Committees have taken in this area, formal action by it could have considerable weight in establishing a rule of international law in this area. As pointed out by U.S. Ambassador Christopher Phillips to the U.N. Seabeds Committee on March 6, 1970, however, Resolution 2467D did not evidence consensus but “sharp controversy and substantial division.” Press Release USUN-27(70)(Rev. 1) at 6, See note 20 and accompanying text.


175. It also found a substantial amount of support in the United States, notably in resolution proposed by Senator Pell that included its basic principles. S. Res. 172, 186, 90th
receive the whole-hearted criticism of the petroleum industry which viewed such proposal as a "U.N. sellout."\textsuperscript{176}

It is, however, questionable whether the Nixon proposal warrants the criticism of extractive industries viewed from an operational standpoint. The proposal, if adopted by the world community, would bring about a stabilization of titles in presently uncertain situations, establish a means for acquiring concessions in deep sea areas that are presently non-existent, maintain national control over the exploitation of resources in the "continental margins,"\textsuperscript{177} and invest national concessions in areas beyond 200 meters with an international trusteeship character which could materially assist the present expropriation problem. Unless, therefore, international participation in the proceeds of resource exploitation is per se undesirable, it would seem attractive to the extractive industries. Even here there is an interesting aspect to the proposal. While it would divert to developing countries very large revenues which the United States could expect to receive from offshore areas that are proven or highly potential for petroleum resources, this might well be compensated for by reducing direct contributions for economic assistance to these countries which have been quite large in the past.

Irrespective of the cleverness of the Nixon proposal from the standpoint of international politics and its efficiency with respect to mineral development, however, it could result in the mismanagement of or impingement upon non-mineral resources and uses. It should be emphasized that it is essentially another measure directed toward the exploitation of the natural resources of the seabed of the type which has predominated the world's thinking regarding the oceans in the


\textsuperscript{177} The proposal does not define this term, but the Department of State has informally indicated that it would extend to the base of the continental rise. It would consequently extend slightly farther seaward than the "intermediate zone" discussed at note 171, supra.
Acknowledgement is dutifully paid to "ecological hazards" and the need to establish "general rules to prevent unreasonable interference with other uses of the ocean [and] to protect the ocean from pollution." Functionally, however, it could only serve to provide a further incentive, indeed a catalyst, for the exploitation of extractive resources of the seabed, particularly petroleum, both from the standpoint of the operator and of the developing countries to whose benefit the exploitation will inure. In its present form the proposal does not contain any functional brakes necessary to permit the coastal state to slow or prohibit offshore development even on its "continental margins," if it thinks it desirable to do so in order to enhance other uses and resources of the offshore and protect its coastal zone.

The proposal would establish as international trust territory lands lying between mainland California and certain of the Channel Islands which lie more than 24 miles offshore (the sum of the two proposed 12-mile territorial seas combined) and are separated by waters more than 200 meters deep. The same situation would also exist in similar areas off Alaska and perhaps in other areas of the United States. It is questionable whether the United States as trustee would be able to resist leasing the proven or highly potential oil properties which lie in these areas particularly where requested to do so within the United Nations structure. There recently has been a great deal of pressure to bring about the cessation of all offshore operations in the Santa Barbara Channel and severely curtail them elsewhere in offshore California. Would not, however, oil pollution in Southern California be quite acceptable in Madagascar, Tanzania and the Maldive Islands Sultanate if it provided income for them? In fact, it is quite likely that pollution from oil development in their own offshore would be very acceptable to these countries, bringing to them as it would greater industrialization and economic growth. It is quite apparent in the international (and even national) discussions on the subject that

178. See note 169, supra.

179. On October 29, 1969, U.S. Senator Cranston introduced S. 3093 which would suspend all further federal leasing in offshore California provided that state law prohibits the issuance of oil and gas leases in offshore areas adjacent to the outer continental shelf. On February 26, 1970, U.S. Senator Muskie introduced S. 3516 which would require the Secretary of the Interior to assume operations with respect to all federal leases in the Santa Barbara Channel and terminate permanently all such operations in an orderly and safe fashion. S. 3516 would authorize actions against the United States to recover damages for the termination of such operations. In addition a number of complementary measures have been introduced in the California Legislature. Even if federal legislation on the subject is not adopted, it is highly unlikely, however, that the Secretary of the Interior would hold any lease sales in Southern California for some time to come.
the current concern over environmental quality is one relevant principally to affluent countries and peoples that can afford what is essentially a new luxury in an industrial society. Lesser developed countries and peoples would like to first enjoy the benefits of industrialization and technology before they begin to control its deleterious aspects. They would also like their first chance to pollute.

This coastal zone management problem could be corrected in large part by the United States asserting jurisdiction over such areas as inland waters under either an "historic bay" or a "straight baseline" concept where the international criteria for doing so are met. Application of a straight baseline form of measurement would clearly seem appropriate in the case of Alaska with its deeply indented coastline and economic dependence on offshore fisheries and other resources. Other situations for favorable application exist in Maine, Massachusetts and Louisiana. In all of these areas and in California as well strong cases exist for the claiming of portions of these areas as historic bays.

The United States is currently in litigation with all of these states as to the location of their offshore boundaries and this appears to account for the reluctance of the federal government to make international assertions of jurisdiction over these areas as inland waters. Under the Submerged Lands Act of 1953 the coastal


181. See note 65, supra.

182. In United States v. Louisiana, 394 U.S. 11, 72, the Court noted that "the straight baseline method was designed for precisely such coasts as the Mississippi River Delta area."


184. In 1958 the United States filed suit against Alaska to enjoin state leasing in the Cook Inlet more than three miles from shore or from a 24-mile closing line drawn across the Inlet. The State seeks to establish that the entire Inlet is within its jurisdiction as a historic bay. There are many other potentially oil rich areas, such as Bristol Bay, in which similar title disputes are foreseeable in Alaska.

The highly convoluted and unstable Louisiana offshore has been referred to a special master to determine whether various water areas are inland waters on the basis of the application of the principles set forth in the Convention on the Territorial Sea and Contiguous Zone or on historic grounds. United States v. Louisiana, 394 U.S. 11 (1969).

On April 26, 1968, the State of Maine accepted for filing an "application to record the staking out of a claim" accompanied by the required statutory fee. In response the United States filed complaint against the State of Maine and all other Atlantic Coast states which it stated "[i]n the exercise of the rights claimed by it, the State [of Maine] has purported to grant exclusive oil and gas exploration and exploitation rights in approximately 3.3 million acres of land submerged in the Atlantic Ocean in the area in controversy" and thereby put in issue all federal-state boundaries on that coast. See Krueger, The Development and Administration of the Outer Continental Shelf Lands of the United States, Proceedings,
states were given ownership of all lands lying three miles seaward of the line of low tide or inland waters, which were regarded as being a part of the state. If the federal government had made or were to make an assertion that an area were inland waters it would, therefore, be a concession of this state’s ownership thereto and the area lying three miles beyond.

It may be that this essentially proprietary concern was sufficiently valid in the past to discourage the federal government from making international claims for which it had proper grounds. In light of the Nixon proposal, however, it would no longer seem to be an intelligent deterrent. The Nixon proposal is sufficiently liberal in its concessions with respect to the continental shelf without a beneficence from the country’s inland waters, particularly one that could come in part from the pocket of the (U.S.) coastal states.

The liberal posture toward settlement of international claims and interests contained in the Nixon proposal may very well be in the national interest, but it would seem incumbent upon the federal government to take equally progressive steps toward the settlement of the state-federal boundary disputes and make such international assertions as appear appropriate, even if the result would inure in part to the benefit of the coastal states. The needs of many of the (U.S.) coastal states for funds for economic development is not irrelevant to this issue.

The issue here extends not merely to ownership of offshore resources, but more importantly to jurisdiction over them. If (U.S.) coastal states do not have jurisdiction over areas that are of functional importance to them, they will be without the ability to coordinate and give priorities among all uses and resources that influence their coastal zone. There seems to be within the federal government a strong and growing recognition that (U.S.) coastal states are the proper repositories for coastal zone management responsibilities. There would not, therefore, appear to be any

186. See United States v. California, 381 U.S. 139, 172-174, (1965); note 18 supra.
187. The Marine Sciences Commissioners recommended the adoption of a Coastal Management Act to establish policy objectives and authorize grants-in-aid to coastal states to plan and manage coastal waters and adjacent lands. Our Nation and the Sea, note 3, supra, at 57.

Bills have been introduced in Congress (S. 2802, S. 3460, S. 3183, H.R. 14730 and H.R. 14731) which all provide for grants to coastal states for designated state authorities to develop long-range plans for their coastal zones. After approval of the plans by a federal agency, the state authorities may also be given up to 50% of the cost of implementing their
valid long-range reason to minimize the jurisdictional position of the states in the offshore.

Similarly, the Nixon proposal in its present form does not give adequate recognition to the interests of the national coastal state over "other uses" of the seabed and ocean waters in the international trusteeship territory for such as traditional real property, recreational and military uses. It would clearly seem that the nexus between the "continental margin" and the coastal nation which justifies coastal management in the case of natural resources of the seabed would also justify management and jurisdiction in the case of these other uses which could equally, perhaps more significantly, affect the condition of the coastal zone. 188 Already there have been attempts to build islands on the Cortes Bank which lies 120 miles off Southern California in an area over which the United States asserted jurisdiction as outer continental shelf of this country in 1967 under the Outer Continental Shelf Lands Act. 189 It would be unfortunate if the authority of the federal government were left to "implied" or "inherent" powers arising under its sovereignty or the "freedom of the seas" as to which world opinion might change as quickly as it may have done regarding the continental shelf. 190 In the future, artificial islands and other fixed living habitats are likely to be of great significance and the coastal states' jurisdiction and control over them in the proposed international trusteeship zone should be well established.
It is recognized that the Nixon proposal is of necessity of preliminary and sparse nature at this point and that its present purpose is clearly to serve as a vehicle for future discussions which should develop detailed provisions on the many and complex subjects with which it deals. It will be unfortunate, however, if national and international discussions on the proposal fail to develop provisions dealing with the foregoing problem areas. If they do not it is questionable whether it will meet the obvious interest of nations in offshore activities and pollution that affect their coastal zones that is evidenced by the recent Canadian legislation or the stated goals of saving "over two-thirds of the earth's surface from national conflict and rivalry [and protecting] it from pollution."  

191. See note 169, supra, and accompanying text.
Appendix

APPENDIX A
SUBMERGED LANDS ACT

AN ACT
To confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, to provide for the use and control of said lands and resources, and to confirm the jurisdiction and control of the United States over the natural resources of the seabed of the Continental Shelf seaward of State boundaries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Submerged Lands Act”.

TITLE I
DEFINITION

SEC. 2. When used in this Act—
(a) The term “lands beneath navigable waters” means—
(1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and refraction;
(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and
(3) all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined;
(b) The term “boundaries” includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term “boundaries” or the term “lands beneath navigable waters” be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;
(c) The term “coast line” means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;
(d) The terms “grantees” and “lessees” include (without limiting the generality thereof) all political subdivisions, municipalities, public and private corporations, and other persons holding grants or leases from a State, or from its predecessor sovereign if legally validated, to lands beneath navigable waters if such grants or leases were issued in accordance with the constitution, statutes, and decisions of the courts of the State in which such lands are situated, or of its predecessor sovereign: Provided, however, That nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein and in their respective grants from the State, or its predecessor sovereign;
(e) The term “natural resources” includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp,
and other marine animal and plant life but does not include water power, or the use of water for the production of power;

(f) The term "lands beneath navigable waters" does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States if such streams were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to the beds of such streams was lawfully patented or conveyed by the United States or any State to any person;

(g) The term "State" means any State of the Union;

(h) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

TITLE II

LANDS BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES

Sec. 3. RIGHTS OF THE STATES—

(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

(b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources (2) the United States hereby releases and relinquishes all claims of the United States if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters; and (3) the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States shall pay to the respective States or their grantees issuing leases covering such lands or natural resources all moneys paid thereunder to the Secretary of the Interior or to the Secretary of the Navy or to the Treasurer of the United States and subject to the control of any of them or to the control of the United States on the effective date of this Act, except that portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States;

(c) The rights, powers, and titles hereby recognized, confirmed, established, and vested in and assigned to the respective States and their grantees are subject to each lease executed by a State, or its grantee, which was in force and effect on June 5, 1950, in accordance with its terms and provisions and the laws of the State issuing, or whose grantee issued, such lease, and such rights, powers, and titles are further subject to the rights herein now granted to any person holding any such lease to continue to maintain the lease, and to conduct operations thereunder, in accordance with its provisions, for the full term thereof, and any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the state issuing, or whose grantee issued such lease: Provided, however, That, if oil or gas was not being produced from such lease on and before December 11, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued, such lease: Provided, however, That within ninety days from the effective date hereof (i) the lessee shall pay to the State or its grantee issuing such lease all rents, royalties, and other sums payable between June 5, 1950, and the effective date hereof, under such lease and the laws of the State issuing or whose grantee issued such lease, except such rents, royalties, and other sums as have been paid to the State, its grantee, the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States and not refunded to the lessee;
and (ii) the lessee shall file with the Secretary of the Interior or the Secretary of the Navy and with the State issuing or whose grantee issued such lease, instruments consenting to the payment by the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States to the State or its grantee issuing the lease, of all rents, royalties, and other payments under the control of the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States or the United States which have been paid, under the lease, except such rentals, royalties, and other payments as have also been paid by the lessee to the State or its grantee;

(d) Nothing in this Act shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of said lands and waters for the purposes of navigation or flood control or the production of power, or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control, or the production of power;

(e) Nothing in this Act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian, relating to the ownership and control of ground and surface waters; and the control appropriation, use, and distribution of such waters shall continue to be in accordance with the laws of such States.

SEC. 4. SEAWARD BOUNDARIES.—The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became member of the Union, or if it has been heretofore approved by Congress.

SEC. 5. EXCEPTIONS FROM OPERATION OF SECTION 3 OF THIS ACT.—There is excepted from the operation of section 3 of this Act—

(a) all tracts or parcels of land together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the law of the State or of the United States, and all lands which the United States lawfully holds under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union (otherwise than by a general retention or cession of lands underlying the marginal sea); all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights the United States has in lands presently and actually occupied by the United States under claim of right;

(b) such lands beneath navigable waters held, or any interest in which is held by the United States for the benefit of any tribe, band, or group of Indians or for individual Indians; and

(c) all structures and improvements constructed by the United States in the exercise of its navigational servitude.

SEC. 6. POWERS RETAINED BY THE UNITED STATES.—(a) The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specific-
ally recognized, confirmed, established, and vested in and assigned to the respective States and others by section 3 of this Act.

(b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor.

SEC. 7. Nothing in this Act shall be deemed to amend, modify, or repeal the Acts of July 26, 1866 (14 Stat. 251), July 9, 1870 (16 Stat. 217), March 3, 1877 (19 Stat. 377), June 17, 1902 (32 Stat. 388), and December 22, 1944 (58 Stat. 887), and Acts amendatory thereof or supplementary thereto.

SEC. 8. Nothing contained in this Act shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this Act and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: Provided, however. That nothing contained in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact or in law applies to the lands subject to this Act, or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything contained in this Act.

SEC. 9. Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.

SEC. 10. Executive Order Numbered 10426, dated January 16, 1953, entitled “Setting Aside Submerged Lands of the Continental Shelf as a Naval Petroleum Reserve”, is hereby revoked insofar as it applies to any lands beneath navigable waters as defined in section 2 hereof.

SEC. 11. SEPARABILITY.—If any provision of this Act, or any section, subsection, sentence, clause, phrase or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase or individual word to other persons and circumstances shall not be affected thereby; without limiting the generality of the foregoing, if subsection 3 (a) 1, 3 (a) 2, 3 (b) 1, 3 (b) 2, 3 (b) 3, or 3 (c) or any provision of any of those subsections is held invalid, such subsection or provision shall be held separable and the remaining subsections and provisions shall not be affected thereby.

Approved May 22, 1953.

APPENDIX B

CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE*

The States Parties to this Convention Have Agreed as follows:

PART I: TERRITORIAL SEA

Section I. General

ARTICLE 1

1. 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.

2. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law.
ARTICLE 2

The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil.

Section II. Limits of the Territorial Sea

ARTICLE 3

Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

ARTICLE 4

1. In localities where the coast line 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.

2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters.

3. Baselines shall not be drawn to and from low-tide elevations unless lighthouses or similar installations which are permanently above sea level have been built on them.

4. Where the method of straight baselines is applicable under the provisions of paragraph 1, account may be taken in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

5. The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.

6. The coastal State must clearly indicate straight baselines on charts, to which due publicity must be given.

ARTICLE 5

1. Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

2. Where the establishment of a straight baseline in accordance with article 4 has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided in articles 14 to 23, shall exist in those waters.

ARTICLE 6

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

ARTICLE 7

1. This article relates only to bays the coasts of which belong to a single State.

2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.
5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6. The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article 4 is applied.

ARTICLE 8

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

ARTICLE 9

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must clearly demarcate such roadsteads and indicate them on charts together with their boundaries, to which due publicity must be given.

ARTICLE 10

1. An island is a naturally-formed area of land, surrounded by water, which is above water at high-tide.

2. The territorial sea of an island is measured in accordance with the provisions of these articles.

ARTICLE 11

1. A low-tide elevation is a naturally-formed area of land which is surrounded by and above water at low-tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

ARTICLE 12

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

2. The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

ARTICLE 13

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks.

Section III. Right of Innocent Passage

Sub-Section A. Rules Applicable to All Ships

ARTICLE 14

1. Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

2. Passage means navigation through the territorial sea for the purpose either of travers-
ing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

3. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress.

4. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.

5. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.

6. Submarines are required to navigate on the surface and to show their flag.

ARTICLE 15

1. The coastal State must not hamper innocent passage through the territorial sea.

2. The coastal State is required to give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea.

ARTICLE 16

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

2. In the case of ships proceeding to internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to those waters is subject.

3. Subject to the provisions of paragraph 4, the coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

4. There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state.

ARTICLE 17

Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation.

Sub-Section B. Rules Applicable to Merchant Ships

ARTICLE 18

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

ARTICLE 19

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage, save only in the following cases:

   (a) If the consequences of the crime extend to the coastal State; or

   (b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

   (c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or

   (d) If it is necessary for the suppression of illicit traffic in narcotic drugs.

2. The above provisions do not affect the right of the coastal State to take any steps
authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2 of this article, the coastal State shall, if the Captain so requests, advise the consular authority of the flag State before taking any steps, and shall facilitate contact between such authority and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

5. The coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

ARTICLE 20

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

Sub-Section C. Rules Applicable to Government Ships Other Than Warships

ARTICLE 21

The rules contained in sub-sections A and B shall also apply to government ships operated for commercial purposes.

ARTICLE 22

1. The rules contained in sub-section A and in article 19 shall apply to government ships operated for non-commercial purposes.

2. With such exceptions as are contained in the provisions referred to in the preceding paragraphs, nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law.

Sub-Section D. Rule Applicable to Warships

ARTICLE 23

If any warship does not comply with the regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea.

PART II. CONTIGUOUS ZONE

ARTICLE 24

1. In a zone of the high seas contiguous to its territorial sea, 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.

2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

3. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured.

PART III. FINAL ARTICLES

ARTICLE 25

The provisions of this Convention shall not affect conventions or other international agreements already in force, as between States Parties to them.

ARTICLE 26

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly to become a Party to the Convention.

ARTICLE 27

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE 28

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 26. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE 29

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

ARTICLE 30

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

ARTICLE 31

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 26:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 26, 27 and 28.

(b) Of the date on which this Convention will come into force, in accordance with article 29.

(c) Of requests for revision in accordance with article 30.

ARTICLE 32

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 26.
In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

Done at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

APPENDIX C

TRUMAN PROCLAMATION ON THE CONTINENTAL SHELF

PROCLAMATION 2667

Policy of the United States with Respect to the Natural Resources of the Subsoil and the Sea Bed of the Continental Shelf.*

WHEREAS the Government of the United States of America, aware of the long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

WHEREAS its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

WHEREAS recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

WHEREAS it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of 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. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 28th day of September, in the year of our Lord nineteen hundred and forty-five, and of the Independence of the United States of America the one hundred and seventieth.

HARRY S. TRUMAN

By the President:
DEAN ACHESON,
Acting Secretary of State.

*See Executive Order 9633, 3 C.F.R. 1943-1948.
OUTER CONTINENTAL SHELF LANDS ACT

AN ACT

To provide for the jurisdiction of the United States over the submerged lands of the outer Continental Shelf, and to authorize the Secretary of the Interior to lease such lands for certain purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Outer Continental Shelf Lands Act".

SEC. 2. DEFINITIONS.—When used in this Act—

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 31, Eighty-third Congress, first session), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

(b) The term "Secretary" means the Secretary of the Interior;

(c) The term "mineral lease" means any form of authorization for the exploration for, or development or removal of deposits of, oil, gas, or other minerals; and

(d) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

SEC. 3. JURISDICTION OVER OUTER CONTINENTAL SHELF.—(a) It is hereby declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act.

(b) This Act shall be construed in such manner that the character as high seas of the water above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected.

SEC. 4. LAWS APPLICABLE TO OUTER CONTINENTAL SHELF.—(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: Provided, however, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this Act.

(2) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this Act are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

(b) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by
pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent State nearest the place where the cause of action arose.

(c) With respect to disability or death of an employee resulting from any injury occurring as the result of operations described in subsection (b), compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act. For the purposes of the extension of the provisions of the Longshoremen's and Harbor Workers' Compensation Act under this section—

(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

(d) For the purposes of the National Labor Relations Act, as amended, any unfair labor practice, as defined in such Act, occurring upon any artificial island or fixed structure referred to in subsection (a) shall be deemed to have occurred within the judicial district of the adjacent State nearest the place of location of such island or structure.

(e) (1) The head of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the islands and structures referred to in subsection (a) or on the waters adjacent thereto, as he may deem necessary.

(2) The head of the Department in which the Coast Guard is operating may mark for the protection of navigation any such island or structure whenever the owner has failed suitably to mark the same in accordance with regulations issued hereunder, and the owner shall pay the cost thereof. Any person, firm, company, or corporation who shall fail or refuse to obey any of the lawful rules and regulations issued hereunder shall be guilty of a misdemeanor and shall be fined not more than $100 for each offense. Each day during which such violation shall continue shall be considered a new offense.

(f) The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is hereby extended to artificial islands and fixed structures located on the outer Continental Shelf.

(g) The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands and fixed structures referred to in subsection (a) or to acts or offenses occurring or committed thereon shall not give rise to any interference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

SEC. 5. ADMINISTRATION OF LEASING OF THE OUTER CONTINENTAL SHELF.—(a) (1) The Secretary shall administer the provisions of this Act relating to the leasing of the outer Continental Shelf, and shall prescribe such rules and regulations as may be necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall apply to all operations conducted under a lease issued or maintained under the provisions of this Act. In the enforcement of conservation laws, rules, and regulations the Secretary is authorized to cooperate with the conservation agencies of the adjacent States. Without limiting the generality of the foregoing provisions of this section, the rules and regulations prescribed by the Secretary thereunder may provide for the assignment or relinquishment of leases, for the sale of royalty oil and gas accruing or reserved to the United States at not less than market value, and, in the interest of conservation, for unitization, pooling, drilling agreements, suspension of operations or production, reduction of rentals or royalties, compensatory royalty agreements,
subsurface storage of oil or gas in any of said submerged lands, and drilling or other
easements necessary for operations or production.

(2) Any person who knowingly and willfully violates any rule or regulation prescribed by
the Secretary for the prevention of waste, the conservation of the natural resources, or the
protection of correlative rights shall be deemed guilty of a misdemeanor and punishable by a
fine of not more than $2,000 or by imprisonment for not more than six months, or by both
such fine and imprisonment, and each day of violation shall be deemed to be a separate
offense. The issuance and continuance in effect of any lease, or of any extension, renewal,
or replacement of any lease under the provisions of this Act shall be conditioned upon
compliance with the regulations issued under this Act and in force and effect on the date of
the issuance of the lease if the lease is issued under the provisions of section 8 hereof, or
with the regulations issued under the provisions of section 6 (b), clause (2), hereof if the
lease is maintained under the provisions of section 6 hereof.

(b) (1) Whenever the owner of a nonproducing lease fails to comply with any of the
provisions of this Act, or of the lease, or of the regulations issued under this Act and in
force and effect on the date of the issuance of the lease if the lease is issued under the
provisions of section 8 hereof, or of the regulations issued under the provisions of section 6
(b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof,
such lease may be canceled by the Secretary, subject to the right of judicial review as
provided in section 8 (j), if such default continues for the period of thirty days after mailing
of notice by registered letter to the lease owner at his record post office address.

(2) Whenever the owner of any producing lease fails to comply with any of the pro-
visions of this Act, or of the lease, or of the regulations issued under this Act and in force
and effect on the date of the issuance of the lease if the lease is issued under the provisions
of section 8 hereof, or of the regulations issued under the provisions of section 6 (b), clause
(2), hereof, if the lease is maintained under the provisions of section 6 hereof, such lease
may be forfeited and canceled by an appropriate proceeding in any United States district
court having jurisdiction under the provisions of section 4 (b) of this Act.

(c) Rights-of-way through the submerged lands of the outer Continental Shelf, whether
or not such lands are included in a lease maintained or issued pursuant to this Act, may be
granted by the Secretary for pipeline purposes for the transportation of oil, natural gas,
sulphur, or other mineral under such regulations and upon such conditions as to the applica-
tion therefor and the survey, location and width thereof as may be prescribed by the
Secretary, and upon express condition that such oil or gas pipelines shall transport or
purchase without discrimination, oil or natural gas produced from said submerged lands in
the vicinity of the pipeline in such proportionate amounts as the Federal Power Commiss-
ion, in the case of gas, and the Interstate Commerce Commission, in the case of oil, may,
after a full hearing with due notice thereof to the interested parties, determine to be
reasonable, taking into account, among other things, conservation and the prevention of
waste. Failure to comply with the provisions of this section or the regulations and conditions
prescribed thereunder shall be ground for forfeiture of the grant in an appropriate judicial
proceeding instituted by the United States in any United States district court having juris-
diction under the provisions of section 4 (b) of this Act.

SEC. 6. MAINTENANCE OF LEASES ON OUTER CONTINENTAL SHELF.—(a) The
provisions of this section shall apply to any mineral lease covering submerged lands of the
outer Continental Shelf issued by any State (including any extension, renewal, or replace-
ment thereof heretofore granted pursuant to such lease or under the laws of such State) if—

(1) such lease, or a true copy thereof, is filed with the Secretary by the lessee or his
duly authorized agent within ninety days from the effective date of this Act, or within
such further period or periods as provided in section 7 hereof or as may be fixed from
time to time by the Secretary;

(2) such lease was issued prior to December 21, 1948, and would have been on June
5, 1950, in force and effect in accordance with its terms and provisions and the law of
the State issuing it had the State had authority to issue such lease;

(3) there is filed with the Secretary, within the period or periods specified in para-
graph (1) of this subsection, (A) a certificate issued by the State official or agency
having jurisdiction over such lease stating that it would have been in force and effect as
required by the provisions of paragraph (2) of this subsection, or (B) in the absence of such certificate, evidence in the form of affidavits, receipts, canceled checks, or other documents that may be required by the Secretary, sufficient to prove that such lease would have been so in force and effect;

(4) except as otherwise provided in section 7 hereof, all rents, royalties, and other sums payable under such lease between June 5, 1950, and the effective date of this Act, which have not been paid in accordance with the provisions thereof, or to the Secretary or to the Secretary of the Navy, are paid to the Secretary within the period or periods specified in paragraph (1) of this subsection, and all rents, royalties, and other sums payable under such lease after the effective date of this Act, are paid to the Secretary, who shall deposit such payments in the Treasury in accordance with section 9 of this Act;

(5) the holder of such lease certifies that such lease shall continue to be subject to the overriding royalty obligations existing on the effective date of this Act;

(6) such lease was not obtained by fraud or misrepresentation;

(7) such lease, if issued on or after June 23, 1947, was issued upon the basis of competitive bidding;

(8) such lease provides for a royalty to the lessor on oil and gas of not less than 12½ per centum and on sulphur of not less than 5 per centum in amount or value of the production saved, removed, or sold from the lease, or, in any case in which the lease provides for a lesser royalty, the holder thereof consents in writing, filed with the Secretary, to the increase of the royalty to the minimum herein specified:

(9) the holder thereof pays to the Secretary within the period or periods specified in paragraph (1) of this subsection an amount equivalent to any severance, gross production, or occupation taxes imposed by the State issuing the lease on the production from the lease, less the State's royalty interest in such production, between June 5, 1950, and the effective date of this Act and not heretofore paid to the State, and thereafter pays to the Secretary as an additional royalty on the production from the lease, less the United States' royalty interest in such production, a sum of money equal to the amount of the severance, gross production, or occupation taxes which would have been payable on such production to the State issuing the lease under its laws as they existed on the effective date of this Act;

(10) such lease will terminate within a period of not more than five years from the effective date of this Act in the absence of production or operations for drilling, or, in any case in which the lease provides for a longer period, the holder thereof consents in writing, filed with the Secretary, to the reduction of such period so that it will not exceed the maximum period herein specified; and

(11) the holder of such lease furnishes such surety bond, if any, as the Secretary may require and complies with such other reasonable requirements as the Secretary may deem necessary to protect the interests of the United States.

(b) Any person holding a mineral lease, which as determined by the Secretary meets the requirements of subsection (a) of this section, may continue to maintain such lease, and may conduct operations thereunder, in accordance with (1) its provisions as to the area, the minerals covered, rentals and, subject to the provisions of paragraphs (8), (9) and (10) of subsection (a) of this section, as to royalties and as to the term thereof and of any extensions, renewals, or replacements authorized therein or heretofore authorized by the laws of the State issuing such lease, or, if oil or gas was not being produced in paying quantities from such lease on or before December 11, 1950, or if production in paying quantities has ceased since June 5, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of such State, and (2) such regulations as the Secretary may under section 5 of this Act prescribe within ninety days after making his determination that such lease meets the requirements of subsection (a) of this section: Provided, however, That any rights to sulphur under any lease maintained under the provisions of this subsection shall not extend beyond the primary term of such lease or any extension thereof under the provisions of such subsection (b).
unless sulphur is being produced in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are being conducted on the area covered by such lease on the date of expiration of such primary term or extension: Provided further, That if sulphur is being produced in paying quantities on such date, then such rights shall continue to be maintained in accordance with such lease and the provisions of this Act: Provided further, That, if the primary term of a lease being maintained under subsection (b) hereof has expired prior to the effective date of this Act and oil or gas is being produced in paying quantities on such date, then such rights to sulphur as the lessee may have under such lease shall continue for twenty-four months from the effective date of this Act and as long thereafter as sulphur is produced in paying quantities, or drilling, well working, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are being conducted on the area covered by the lease.

(c) The permission granted in subsection (b) of this section shall not be construed to be a waiver of such claims, if any, as the United States may have against the lessor or the lessee or any other person respecting sums payable or paid for or under the lease, or respecting activities conducted under the lease, prior to the effective date of this Act.

(d) Any person complaining of a negative determination by the Secretary of the Interior under this section may have such determination reviewed by the United States District Court for the District of Columbia by filing a petition for review within sixty days after receiving notice of such action by the Secretary.

(e) In the event any lease maintained under this section covers lands beneath navigable waters, as that term is used in the Submerged Lands Act, as well as lands of the outer Continental Shelf, the provisions of this section shall apply to such lease only insofar as it covers lands of the outer Continental Shelf.

SEC. 7. CONTROVERSY OVER JURISDICTION.—In the event of a controversy between the United States and a State as to whether or not lands are subject to the provisions of this Act, the Secretary is authorized, notwithstanding the provisions of subsections (a) and (b) of section 6 of this Act, and with the concurrence of the Attorney General of the United States, to negotiate and enter into agreements with the State, its political subdivision or grantee or a lessee thereof, respecting operations under existing mineral leases and payment and impounding of rents, royalties, and other sums payable thereunder, or with the State, its political subdivision or grantee, respecting the issuance or nonissuance of new mineral leases pending the settlement or adjudication of the controversy. The authorization contained in the preceding sentence of this section shall not be construed to be a limitation upon the authority conferred on the Secretary in other sections of this Act. Payments made pursuant to such agreement, or pursuant to any stipulation between the United States and a State, shall be considered as compliance with section 6 (a) (4) hereof. Upon the termination of such agreement or stipulation by reason of the final settlement or adjudication of such controversy, if the lands subject to any mineral lease are determined to be in whole or in part lands subject to the provisions of this Act, the lessee, if he has not already done so, shall comply with the requirements of section 6 (a), and thereupon the provisions of section 6 (b) shall govern such lease. The notice concerning "Oil and Gas Operations in the Submerged Coastal Lands of the Gulf of Mexico" issued by the Secretary on December 11, 1950 (15 F.R. 8835), as amended by the notice dated January 26, 1951 (16 F.R. 953), and as supplemented by the notices dated February 2, 1951 (16 F.R. 1203), March 5, 1951 (16 F.R. 2195), April 23, 1951 (16 F.R. 3623), June 25, 1951 (16 F.R. 6404), August 22, 1951 (16 F.R. 8720), October 24, 1951 (16 F.R. 10998), December 21, 1951 (17 F.R. 43), March 25, 1952 (17 F.R. 2821), June 16, 1952 (17 F.R. 5833), and December 24, 1952 (18 F.R. 48), respectively, is hereby approved and confirmed.

SEC. 8. LEASING OF OUTER CONTINENTAL SHELF.—(a) In order to meet the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the highest responsible qualified bidder by competitive bidding under regulations promulgated in advance, oil and gas leases on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. The bidding shall be (1) by sealed bids, and (2) at the discretion of the Secretary, on the basis of
a cash bonus with a royalty fixed by the Secretary at not less than $0.12 per centum in amount or value of the production saved, removed or sold, or on the basis of royalty, but not at less than the per centum above mentioned, with a cash bonus fixed by the Secretary.

(b) An oil and gas lease issued by the Secretary pursuant to this section shall (1) cover a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may determine, (2) be for a period of five years and as long thereafter as oil or gas may be produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon, (3) require the payment of a royalty of not less than $0.12 per centum, in the amount or value of the production saved, removed, or sold from the lease, and (4) contain such rental provisions and such other terms and provisions as the Secretary may prescribe at the time of offering the area for lease.

(c) In order to meet the urgent need for further exploration and development of the sulphur deposits in the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding sulphur leases on submerged lands of the outer Continental Shelf, which are not covered by leases which include sulphur and meet the requirements of subsection (a) of section 6 of this Act, and which sulphur leases shall be offered for bid by sealed bids and granted on separate leases from oil and gas leases, and for a separate consideration, and without priority or preference accorded to oil and gas lessees on the same area.

(d) A sulphur lease issued by the Secretary pursuant to this section shall (1) cover an area of such size and dimensions as the Secretary may determine, (2) be for a period of not more than ten years and so long thereafter as sulphur may be produced from the area in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon, (3) require the payment to the United States of such royalty as may be specified in the lease but not less than 5 per centum of the gross production or value of the sulphur at the wellhead, and (4) contain such rental provisions and such other terms and provisions as the Secretary may by regulation prescribe at the time of offering the area for lease.

(e) The Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.

(f) Notice of sale of leases, and the terms of bidding, authorized by this section shall be published at least thirty days before the date of sale in accordance with rules and regulations promulgated by the Secretary.

(g) All moneys paid to the Secretary for or under leases granted pursuant to this section shall be deposited in the Treasury in accordance with section 9 of this Act.

(h) The issuance of any lease by the Secretary pursuant to this Act, or the making of any interim arrangements by the Secretary pursuant to section 7 of this Act shall not prejudice the ultimate settlement or adjudication of the question as to whether or not the area involved is in the outer Continental Shelf.

(i) The Secretary may cancel any lease obtained by fraud or misrepresentation.

(j) Any person complaining of a cancellation of a lease by the Secretary may have the Secretary's action reviewed in the United States District Court for the District of Columbia by filing a petition for review within sixty days after the Secretary takes such action.

SEC. 9. DISPOSITION OF REVENUES.—All rentals, royalties, and other sums paid to the Secretary or the Secretary of the Navy under any lease on the outer Continental Shelf for the period from June 5, 1950, to date, and thereafter shall be deposited in the Treasury of the United States and credited to miscellaneous receipts.

SEC. 10. REFUNDS.—(a) Subject to the provisions of subsection (b) hereof, when it appears to the satisfaction of the Secretary that any person has made a payment to the United States in connection with any lease under this Act in excess of the amount he was lawfully required to pay, such excess shall be repaid without interest to such person or his legal representative, if a request for repayment of such excess is filed with the Secretary within two years after the making of the payment, or within ninety days after the effective
date of this Act. The Secretary shall certify the amounts of all such repayments to the Secretary of the Treasury, who is authorized and directed to make such repayments out of any moneys in the special account established under section 9 of this Act and to issue his warrant in settlement thereof.

(b) No refund of or credit for such excess payment shall be made until after the expiration of thirty days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts upon which the determination of the Secretary was made is submitted to the President of the Senate and the Speaker of the House of Representatives for transmittal to the appropriate legislative committee of each body, respectively: Provided, That if the Congress shall not be in session on the date of such submission or shall adjourn prior to the expiration of thirty days from the date of such submission, then such payment or credit shall not be made until thirty days after the opening day of the next succeeding session of Congress.

SEC. 11. GEOLOGICAL AND GEOPHYSICAL EXPLORATIONS.—Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area.

SEC. 12. RESERVATIONS.—(a) The President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf.

(b) In time of war, or when the President shall so prescribe, the United States shall have the right of first refusal to purchase at the market price all or any portion of any mineral produced from the outer Continental Shelf.

(c) All leases issued under this Act, and leases, the maintenance and operation of which are authorized under this Act, shall contain or be construed to contain a provision whereby authority is vested in the Secretary, upon a recommendation of the Secretary of Defense, during a state of war or national emergency declared by the Congress or the President of the United States after the effective date of this Act, to suspend operations under any lease; and all such leases shall contain or be construed to contain provisions for the payment of just compensation to the lessee whose operations are thus suspended.

(d) The United States reserves and retains the right to designate by and through the Secretary of Defense, with the approval of the President, as areas restricted from exploration and operation that part of the outer Continental Shelf needed for national defense; and so long as such designation remains in effect no exploration or operations may be conducted on any part of the surface of such area except with the concurrence of the Secretary of Defense; and if operations or production under any lease theretofore issued on lands within any such restricted area shall be suspended, any payment of rentals, minimum royalty, and royalty prescribed by such lease likewise shall be suspended during such period of suspension of operation and production, and the term of such lease shall be extended by adding thereto any such suspension period, and the United States shall be liable to the lessee for such compensation as is required to be paid under the Constitution of the United States.

(e) All uranium, thorium, and all other materials determined pursuant to paragraph (1) of subsection (b) of section 5 of the Atomic Energy Act of 1946, as amended, to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in the subsoil or seabed of the outer Continental Shelf are hereby reserved for the use of the United States.

(f) The United States reserves and retains the ownership of and the right to extract all helium, under such rules and regulations as shall be prescribed by the Secretary, contained in gas produced from any portion of the outer Continental Shelf which may be subject to any lease maintained or granted pursuant to this Act, but the helium shall be extracted from such gas so as to cause no substantial delay in the delivery of gas produced to the purchaser of such gas.

SEC. 14. PRIOR CLAIMS NOT AFFECTED.—Nothing herein contained shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this Act and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: Provided, however, That nothing herein contained is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact applies to the lands subject to this Act or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything herein contained.

SEC. 15. REPORT BY SECRETARY.—As soon as practicable after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives a report detailing the amounts of all moneys received and expended in connection with the administration of this Act during the preceding fiscal year.

SEC. 16. APPROPRIATIONS.—There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 17. SEPARABILITY.—If any provision of this Act, or any section, subsection, sentence, clause, phrase or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase or individual word to other persons and circumstances shall not be affected thereby.

Approved August 7, 1953.

APPENDIX E

CONVENTION ON THE CONTINENTAL SHELF*


The States Parties to this Convention, Have agreed as follows:

ARTICLE 1

For the purpose of these articles, the term "continental shelf" is used 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 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

ARTICLE 2

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

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.

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

4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the sea-bed 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 sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

ARTICLE 3

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

ARTICLE 4

Subject to its right to take reasonable measures for the exploration of the continental
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shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf.

ARTICLE 5

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 meters around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.

4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

6. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

8. The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless, the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published.

ARTICLE 6

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, 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.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

ARTICLE 7

The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil by means of tunneling irrespective of the depth of water above the subsoil.
ARTICLE 8

This Convention shall, until 31 October 1958, be open for signature by all State Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly to become a Party to the Convention.

ARTICLE 9

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE 10

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 8. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE 11

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instruments of ratification or accession.

ARTICLE 12

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1 to 3 inclusive.

2. Any Contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

ARTICLE 13

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

ARTICLE 14

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 8:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 8, 9 and 10.

(b) Of the date on which this Convention will come into force, in accordance with article 11.

(c) Of requests for revision in accordance with article 13.

(d) Of reservations to this Convention, in accordance with article 12.

ARTICLE 15

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 8.

In witness whereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

Done at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.