

## REPORT OF THE COMMITTEE ON SUBSOIL OF THE SEA

Your Committee on the Subsoil of the Sea submits the following report.

At the Copenhagen Conference of the Association in August 1950, its Committee on Rights to the Sea Bed and its Subsoil presented a report and recommendations substantially in accord with the tenets of the report which this Committee submitted last year. There ensued considerable debate in which Attorney General Price Daniel of Texas, Mr. Chrys Dougherty of this Committee and the Chairman of this Committee participated. Opposition to the proposals of the Committee of the Association for recognition of coastal state jurisdiction over the soil and subsoil resources of the continental shelf beyond the territorial limits without previous occupation was voiced by a number of gentlemen, including M. de la Pradelle of France, on traditional doctrinal grounds concerning freedom of the seas. Although a majority of those present favored the committee report, it was decided not to press the issue to a vote. Consequently by common consent a motion was adopted to refer the report to the Committee for further study and discussion with a recommendation that some of the objectors to the report at the Conference be added to the committee membership.

During 1950 and 1951 there have been several occurrences pertaining to the Committee's work. During 1950 the problem of the continental shelf was discussed at meetings of the International Law Commission of the United Nations, of the Institut de Droit International at Bath, and of the International Bar Association in London.

At its first session in 1949, the International Law Commission included in the provisional list of topics selected for codification the Regime of the High Seas and appointed one of its members, Mr. J. P. A. Francois of the Netherlands,

special rapporteur for that topic. At its meeting in 1951 at Geneva, the Commission discussed again the revised report of Mr. Francois which included Draft Articles on the Continental Shelf and Related Subjects. The Commission decided to give this report a limited publicity and to communicate it to governments for their comments.

The report of the Commission is printed in the October 1951 number of the American Journal of International Law, Supplement Section of Documents, pp. 103-147. (See for Regime of the High Seas, pp. 136-147)

The Draft Articles of the International Law Commission on the Continental Shelf accord with the thesis of the Truman Continental Shelf Proclamation of 1945 and with the main principle of the 1950 report of this Committee. However, the Articles do not adopt the geological definition of the term "continental shelf" nor do they set definite spatial limits to the extra-territorial jurisdiction of a coastal state over the mineral resources of sea bed and subsoil. The following passages from the Articles and comment will give an idea of the variance between the tentative views of the Commission majority and those of our 1950 report as well as of the general concord between them.

#### "PART I. CONTINENTAL SHELF"

##### "ARTICLE 1"

"As here used, the term 'continental shelf' refers to the sea bed and subsoil of the submarine areas contiguous to the coast, but outside the area of territorial waters, where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea bed and subsoil.

"1. This article explains the sense in which the term 'continental shelf' is used for present purposes. It departs from the geological concept of that term. The varied use of the term by scientists is in itself an obstacle to the adoption of the geological concept as a basis for legal regulation of the problem.

“2. There was yet another reason why the Commission decided not to adopt the geological concept of the continental shelf. The mere fact that the existence of a continental shelf in the geological sense might be questioned in respect of submarine areas where the depth of the sea would nevertheless permit exploitation of the subsoil in the same way as if there were a continental shelf, could not justify the application of a discriminatory legal system to these ‘shallow waters.’

“3. The Commission considered whether it ought to use the term ‘continental shelf’ or whether it would not be preferable, in accordance with an opinion expressed in some scientific works, to refer to such areas merely as ‘submarine areas.’ It was decided to retain the term ‘continental shelf’ because it is in current use and because the term ‘submarine areas’ used alone would give no indication of the nature of the submarine areas in question.

“4. The word ‘continental’ in the term ‘continental shelf’ as here used does not refer exclusively to continents. It may apply also to islands to which such submarine areas are contiguous.

“5. With regard to the delimitation of the continental shelf the Commission emphasizes the limit expressed in the following words in Article 1: ‘. . . where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea bed and subsoil.’ It follows that areas in which exploitation is not technically possible by reason of the depth of the waters are excluded from the continental shelf here referred to.

“6. The Commission considered the possibility of adopting a fixed limit for the continental shelf in terms of the depth of the superjacent waters. It seems likely that a limit fixed at a point where the sea covering the continental shelf reaches a depth of 200 metres would at present be sufficient for all practical needs. This depth also coincides with that at which the continental

shelf, in the geological sense, generally comes to an end and the continental slope begins, falling steeply to a great depth. The Commission felt, however, that such a limit would have the disadvantage of instability. Technical developments in the near future might make it possible to exploit resources of the sea bed at a depth of over 200 metres. Moreover, the continental shelf might well include submarine areas lying at a depth of over 200 metres but capable of being exploited by means of installations erected in neighbouring areas where the depth does not exceed this limit. Hence the Commission decided not to specify a depth-limit of 200 metres in Article 1. The Commission points out that it is not intended in any way to restrict exploitation of the subsoil of the sea by means of tunnels driven from the main land.

“7. The Commission considered the possibility of fixing both minimum and maximum limits for the continental shelf in terms of distance from the coast. It could find no practical need for either, and it preferred to confine itself to the limit laid down in Article 1.

“8. It was noted that claims have been made up to as much as 200 miles; but as a general rule the depth of the waters at that distance from the coast does not admit of the exploitation of the natural resources of the subsoil. In the opinion of the Commission, fishing activities and the conservation of the resources of the sea should be dealt with separately from the continental shelf.

“9. The continental shelf referred to in this article is limited to submarine areas outside territorial waters. Submarine areas beneath territorial waters, are like the waters above them, subject to the sovereignty of the coastal State.

“10. The text of the article emphasizes that the continental shelf includes only the sea bed and subsoil of submarine areas, and not the waters covering them.

## “ARTICLE 2”

“The continental shelf is subject to the exercise by the coastal State of control and jurisdiction for the purpose of exploring it and exploiting its natural resources.

“1. In this article the Commission accepts the idea that the coastal State may exercise control and jurisdiction over the continental shelf, with the proviso that such control and jurisdiction shall be exercised solely for the purpose stated. The article excludes control and jurisdiction independently of the exploration and exploitation of the natural resources of the sea bed, and subsoil.

“2. In some circles it is thought that the exploitation of the natural resources of submarine areas should be entrusted, not to coastal States, but to agencies of the international community generally. In present circumstances, however, such internationalization would meet with insurmountable practical difficulties, and it would not ensure the effective exploitation of the natural resources which is necessary to meet the needs of mankind. Continental shelves exist in many parts of the world; exploitation will have to be undertaken in very diverse conditions, and it seems impracticable at present to rely upon international agencies to conduct the exploitation.

“3. The Commission is aware that exploration and exploitation of the sea bed and subsoil, which involve the exercise of control and jurisdiction by the coastal State, may to a limited extent affect the freedom of the seas, particularly in respect of navigation. Exploration and exploitation are permitted because they meet the needs of the international community. Nevertheless, it is evident that the interests of shipping must be safeguarded, and it is to that end that the Commission has formulated Article 6.

“4. It would seem to serve no purpose to refer to sea bed and subsoil of the submarine areas in question as

*res nullius*, capable of being acquired by the first occupier. That conception might lead to chaos, and it would be disregarded the fact that in most cases the effective exploitation of the natural resources will depend on the existence of installations on the territory of the coastal State to which the submarine areas are contiguous.

“5. The exercise of the right of control and jurisdiction is independent of the concept of occupation. Effective occupation of the submarine areas in question would be practically impossible; nor should recourse be had to a fictional occupation. The right of the coastal State under Article 2 is also independent of any formal assertion of that right by the State.

“6. The Commission has not attempted to base on customary law the right of a coastal State to exercise control and jurisdiction for the limited purposes stated in Article 2. Though numerous proclamations have been issued over the past decade, it can hardly be said that such unilateral action has already established a new customary law. It is sufficient to say that the principle of the continental shelf is based upon general principles of law which serve the present-day needs of the international community.

“7. Article 2 avoids any reference to ‘sovereignty’ of the coastal State over the submarine areas of the continental shelf. As control and jurisdiction by the coastal State would be exclusively for exploration and exploitation purposes, they cannot be placed on the same footing as the general powers exercised by a State over its territory and its territorial waters.”

It will be observed that the tentative Draft Articles of the International Law Commission quoted above differ materially from the proposals of your committee only in their definition of the spatial extent of the property interests and jurisdiction of a coastal State over the resources of the adjacent soil

and subsoil of the sea-bed beyond territorial waters. The Commission discards the geological definition of the continental shelf as a limitation and substitutes a variable one—i.e. the extent to which it is technically possible to exploit sea-bed resources from the coastal State, either by tunnels or borings from its shore or by shafts driven from installations over the adjacent subsoil. This limitation probably allowed today a jurisdiction at least as extensive as that of the geological continental shelf (100 fathoms depth—see paragraph 6 of “comments” to Article I, *supra*). Therefore substantially the International Law Commission and your Committee are in accord in support of President Truman’s Continental Shelf Proclamation.

The Chairman of your Committee is also a member of the special committee of the general Association on “Rights to the Sea Bed and its Subsoil” appointed in response to a resolution passed at the 1948 Conference of the Association. In the spring of 1951 Mr. Leopold Dor of France, President of that committee wrote Jonkheer P. R. Feith, of the Netherlands, rapporteur of the committee, suggesting that in view of the difference of opinions concerning international law on the topic developed at the Copenhagen Conference, the Committee proceed to draft a convention on the topic and urge its adoption on governments and through the United Nations. Jonkheer Feith replied that apparently the International Law Commission of the United Nations was on the way to a codification of the topic in accord with the views of the majority of the committee of the Association and that it would be better to wait until November 1951 to see the results of the Commission’s deliberations before proceeding with Mr. Dor’s suggestion. Mr. Dor concurred and asked the Secretariat to obtain the views of the other members of the Committee. The Chairman of your Committee replied to the inquiry of Mr. Dor by expressing approval of the views of Jonkheer Feith and their acceptance by Mr. Dor.

The topic “Juridical Status of the Continental Shelf” was on the agenda of the Seventh Conference of the Inter-Ameri-

can Bar Association at Montevideo, November-December 1951. The topic was assigned to the State Bar of California for a report. At the request of the State Bar of California, the Chairman of your Committee prepared a report which was sent to the Secretary General of the Inter-American Bar Association at Montevideo.

Your Committee adheres to the tenets of its 1950 report and proposes to continue to urge support of the Truman Proclamation of 1945 and confirmation of its concord with international law.

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