



Presentation Abstract

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To What Extent may a Coastal State exercise its Rights on its Outer Continental Shelf before the Outer Limit has been established in accordance with Article 76 and Annex II of UNCLOS?

Article 76 and Annex II of UNCLOS require a State wishing to establish the limits of its continental shelf beyond 200 miles from the baseline to make a submission to the Commission on the Limits of the Continental Shelf. The Commission shall then make a recommendation to that State. Limits established on the basis of a Commission recommendation are 'final and binding'.

Somewhere in the region of 100 submissions to establish the outer limit of the continental shelf beyond 200 miles have been, or are likely to be, made to the Commission. At its current rate of progress, it is likely to be several years before the Commission has made recommendations in respect of some of those submissions. That raises the question of whether a coastal State may exercise its rights on the continental shelf beyond 200 miles before the latter's outer limit has been established in accordance with the procedure described above. A coastal State's rights on its outer continental shelf (i.e. the continental shelf beyond 200 miles) include the exploration and exploitation of mineral resources and sedentary species, the authorisation of scientific research, the erection of artificial islands and installations, the delineation of the course of pipelines laid by third States, and, arguably, the establishment of marine protected areas. A coastal State's right to an outer continental shelf is not dependent on a recommendation from the Commission but exists ipso facto and ab initio. However, if a coastal State exercises its rights before it has established the outer limit of its continental shelf in accordance with the procedure laid down in Article 76 and Annex II of UNCLOS, it risks doing so in an area which may subsequently, following the Commission's recommendation, turn out not to be a part of its outer continental shelf. UNCLOS does not suggest how this potential dilemma may be addressed.

The aim of this paper is to attempt to address that dilemma by taking each of the coastal State's outer continental shelf rights in turn and suggesting the degree to which a State may exercise such rights without violating international law. The paper will argue that the position will vary, depending on the right concerned. So, for example, a State is entitled to exploit the sedentary species in the area which it presumes to be its outer continental shelf. If its presumption turns out to be correct, such exploitation will be based on its continental shelf rights to exploit sedentary species (Art. 77). If its presumption proves not to be correct, its exploitation of those sedentary species will nevertheless still be justified, but on the basis of the high seas freedom of fishing. On the other hand, if a State attempts to regulate or prohibit the exploitation of sedentary species by other States, it will have violated the right of those States freely to fish on the high seas if the area where such regulation/prohibition occurred subsequently (following a Commission recommendation) turns out not to be part of its outer continental shelf.

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