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National authority over resources of the sea floor beyond the territorial sea rests on a combination of domestic and international law and regulation. This is particularly true with regard to the offshore oil and gas industry. Multinational corporations that develop resources beyond the territorial sea are funded by domestic and foreign investors and sell their products in international markets. The offshore oil and gas industry has been one of the strongest supporters of the development of international law regarding coastal state authority over the continental shelf, and of US accession to the 1982 Convention on the Law of the Sea, and it presents a pragmatic view of offshore oil and gas development as a domestic industry operating in an international environment.

The United States needs to address international legal aspects of continental shelf development in all of its coastal waters. In the Arctic, the US has yet to establish an agreed maritime boundary with Canada in the Beaufort Sea or an outer boundary to the continental shelf beyond the 200 mile Exclusive Economic Zone. In the Gulf of Mexico, there is an unresolved area of the continental shelf beyond the EEZ that is bordered by the United States, Mexico and Cuba, and the maritime boundary with Cuba in the Florida Strait that was negotiated in 1977 has not been submitted to the Senate for advice and consent. It remains a functional boundary that is provisionally applied but not a durable, legally recognized agreement. Development of hydrocarbon resources of the ocean floor in the region of the state of Florida, Cuba and the Bahamas is guided by principles of international law, the domestic laws and regulations of the coastal states and the Cartagena Convention and its protocols. The areas around the Pacific Ocean Island Territories are largely unexplored so far but may have mineral resources for future development.

The majority of U.S. offshore oil and gas resources are found in the Exclusive Economic Zone (EEZ). The 1982 United Nations Convention on the Law of the Sea (LOS) defines the EEZ for states parties to the Convention. Although the U.S. is not yet a party to it, the Convention's definition of the EEZ has been applied by the United States as proclaimed in the 1983 statement of ocean policy by President Ronald Reagan:

> Third, I am proclaiming today an Exclusive Economic Zone in which the United States will exercise sovereign rights in living and nonliving resources within 200 nautical miles of its coast. This will provide United States jurisdiction for mineral resources out to 200 nautical miles that are not on the continental shelf. Recently discovered deposits there could be an important future source of strategic minerals.

The Law of the Sea Convention details the internationally negotiated statement of rights, authorities and obligations of states within its Exclusive Economic Zone. For its parties, the Convention also provides a mechanism through which parties may secure international recognition of claims to the continental margin beyond the EEZ, an area referred to as the "extended continental shelf." The US, as a non-party, does not have access to this mechanism for obtaining international recognition of rights beyond the EEZ. Without international recognition of US authority in the extended shelf, the oil and gas industry sees domestic development beyond the EEZ as adding increased significant political risk to their international financing and trade relationships.

Initial Steps in Creating the Exclusive Economic Zone

Prior to the end of World War II, international law recognized only two ocean zones: the territorial sea that was generally, but not always, limited to a breadth of 3 nautical miles, and the high seas, which encompassed all waters seaward of the territorial sea. In the territorial sea, the coastal state had sovereign rights subject only to the right of foreign ships to pass through the under the conditions of "innocent passage." On the high seas, ships were under the authority of the flag state, subject to foreign authority in only a few specified cases, such as suspicion of piracy and transport of slaves.

Advances of technology and the improvement of the economics for offshore development of living and mineral resources in the post-WWII period led to expanding claims of jurisdiction by coastal states over widening areas of what had previously been the high seas. In 1945, President Truman proclaimed US authority over the resources of the continental shelf contiguous to the lands of the United States (approximated by the 200 meter isobath). The proclamation was limited to seabed resources and their development and did not extend sovereignty to other activities beyond the territorial sea.

Regardless of US intent, the Truman Proclamation opened the way for other nations to extend claims over the high seas and its resources. In 1958, Iceland extended its claim to a fisheries zone to 12 nautical miles (nm), out from a previous limit of 4 nm. This displaced British fishing fleets from fisheries they had been utilizing and initiated the first so-called "Cod War" with a confrontation between the Icelandic coast guard and the Royal Navy. A subsequent extension of Iceland's fishing zone to 50 nm in 1972 resulted in a renewed maritime confrontation and a third confrontation came with an extension of the zone to 200nm in 1977.

In the 1960s, Chile, Peru and Ecuador extended their territorial sea to 200 nm, a claim that included all of the sovereign rights associated with the territorial sea once limited to 3 nm. American flag tuna boats were regularly impounded by Chile for fishing within the 200 mile zone. US officials protested these actions, but the seizures continued. US flag boats were released on payment of fines and, with the encouragement of the US government, returned to continue to challenge the extensive Chilean claim.

Seeking the Certainty of International Law for the Seabed and its Resources

The sudden collapse of the centuries-old regime of a narrow territorial sea and a vast expanse of ocean subject to high seas freedoms led to an effort to define a new legal order for the seas that

could establish clear agreement on the limits of coastal state authority over the seas and its resources and stem the enclosure of ocean space by coastal nations.

This effort to accommodate changes of practice into a new legal order was undertaken in the 1950s by the International Law Commission. This culminated in the 1958 Law of the Sea Conference in Geneva and the adoption of a set of conventions that addressed four issues: the Territorial Sea and Contiguous Zone, Fisheries, the Continental Shelf, and the High Seas. While the four conventions laid out important principles regarding activities within each of the four issue-areas, it failed to clearly specify the geographic limits to the regions. In particular, the territorial sea convention failed to reach agreement on the breadth of the territorial sea, the fisheries convention failed to recognize exclusive coastal state authority over fisheries beyond the territorial sea and the continental shelf convention produced a vague and self-contradictory definition of the extend of the continental shelf. The first article of the Geneva Convention on the Continental Shelf has this definition:

> 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.

By rejecting the more expansive phrase "continental margin" in order to retain the more limited reference to the "continental shelf" and replacing "contiguous," which had been part of the Truman Proclamation, with "adjacent," which added a vague criteria for nearness, the definition introduced a qualitative limit on the seaward extent of the legal continental shelf. In establishing a depth limit of at least 200 meters but going as far as exploitation could be conducted, the outer limit was left open to debate and disagreement. The result was a definition that was sufficient for the near term, but in need of revisions in order to resolve legal and political impediments to development in the longer term.

A second attempt to define the outer limit of the territorial sea was attempted at a second conference in 1960, but it was unsuccessful. Clarifying the outer limit of the continental shelf would have to wait for a more significant effort to update and clarify the law of the sea.

The Third Conference on the Law of the Sea

A decade after the completion of the four Geneva Conventions of 1958, preparations began on a new effort to define national rights, responsibilities and limits at sea. Instead of seeking separate agreements on different issues, it was decided to seek a comprehensive agreement in which all essential national security interests would be met, while creating a package deal in which nations could seek to maximize their economic, environmental and scientific interests as a whole with tradeoffs between issues in order to facilitate the creation of an overall agreement attractive to all states.

The determination of the breadth of a coastal state resource zone and the jurisdiction a state would have within the zone became a major focus of negotiators at the Third UN Conference on

the Law of the Sea in both the preparatory discussions and the formal negotiations that began in 1973. While the initial focus of coastal state claims to resources in the area beyond the territorial sea had been on living resources, the zone came to include management of resources of the seabed within the zone regardless of whether the seabed was part of the geological shelf or part of the deep ocean floor.

Recognizing the Continental Shelf beyond the EEZ

In 1970, during the preparations for the Third UN Conference on the Law of the Sea, the United States introduced a draft convention that incorporated a three-part system for management of mineral resources of the seabed. It included a continental shelf extending to the 200 meter isobath where minerals were under the exclusive jurisdiction of the coastal state, the deep seabed beyond the continental margin and beyond the jurisdiction of the coastal state where minerals would be managed by an international authority and an intermediate area, described as a trusteeship, in which minerals would be managed by the coastal state for the mutual benefit of the coastal state and the international community. As the EEZ was hammered out during the negotiations, the seabed within 200 miles from shore was incorporated into the EEZ. The negotiation of the provisions for the continental shelf beyond the EEZ took on aspects of the original US proposal for the seabed trusteeship zone.

Under the LOS Convention, coastal state may have jurisdiction over the continental margin beyond the EEZ if it meets the geologic criteria specified in Article 76 of the Convention that establishes conditions and limits to the extent of coastal state jurisdiction. Just as originally proposed by the United States, excessive or frivolous claims are blocked by requiring that continental shelf claims that extend beyond the EEZ be reviewed by an international panel of experts. Under the LOS Convention, the Commission on the Limits of the Continental Shelf serves this role. The Commission is empowered to review claims submitted to it and make recommendations as to whether the claims are in compliance with Article 76 or to recommend how the submissions might be brought into compliance. If claims are found to be in compliance, they are to be recognized by all of the parties to the Convention. The Commission does not resolve disputes between adjacent or opposing states as to how overlapping claims are to be decided, but it may review a joint proposal for recognition of an outer limit to the extended shelf by two or more states, leaving the division of the areas for later resolution among the states that made the joint submission.

Under the definition used by the Convention, the US continental shelf would extend beyond the EEZ in two parts of the Gulf of Mexico, off of the US coast along the Atlantic Ocean and around some of the Pacific Island territories and, most significantly, in the Arctic Ocean north of Alaska. If the US were party to the LOS Convention, the Convention's definition of the continental shelf would allow international recognition of US claims in the Arctic Ocean that may extend as far as 600 miles from shore. While potential claims in the Gulf of Mexico are much more limited, they are adjacent to regions of proven economic potential.

Following the model of the 1970 US Draft Convention, the LOS Convention provides for sharing of revenues from oil and gas production in the extended continental shelf. Negotiations in which representatives of US oil companies played a central role produced a royalty system

that provided for no royalties for the first five years of production, rising one percent per year from year six to 7% in year 12 and remaining at 7% thereafter.

Industry and the Extended Continental Shelf in the Law of the Sea Convention

With regard to the continental shelf, the Law of the Sea Convention represents significant benefits for industry over the preceding Geneva Conventions. There benefits are:

- establishment of a clear definition of the outer extent of the continental shelf, providing essential certainty for investment;
- incorporation of the seabed beyond the continental margin when within the EEZ, an area excluded by the 1958 definition;
- inclusion of the continental margin far beyond the old limits of depth and adjacency;

International Recognition of Claims to the Extended Continental Shelf

For countries whose continental shelf will be developed by private industry, the most important feature of the LOS Convention's regime for the continental shelf is the clear recognition of the authority of the coastal state to license exploration and production, to make licenses exclusive to the developer and to grant clear title to the recovered products. Oil industry representatives on the US delegation to the LOS negotiations made clear that benefits of the Convention's continental shelf provisions greatly outweighed those of its predecessor, the 1958 Geneva Convention on the Continental Shelf.

Revenue Sharing in the Extended Shelf

The revenue sharing provisions for the extended continental shelf are consistent with the US proposal in 1970. The coastal state is authorized to collect royalties on behalf of both itself and the international community. Production is exempt from royalties during the first five years of production, allowing early recovery of investment during the most productive years of a well, rising over a seven year period to a maximum of only 7%, ensuring that coastal states will also be able to share in the revenues of production from the continental shelf.

Industry Statement of the Convention's Provisions on the Extended Shelf

Writing at the conclusion of the LOS negotiations in 1982, John Norton Garrett, who represented the Gulf Oil Exploration and Production Company on the US delegation to the LOS Conference, said:

> In conclusion, I believe that the international petroleum industry can live with a law of the sea treaty incorporating those provisions of the Draft Convention that specifically apply to margin delimitation and revenue sharing seaward of the 200 mile Exclusive Economic Zone as well as navigation and pollution control.

Marine Environmental Pollution, Regional Agreements and Dispute Resolution

Responding to Pollution from Continental Shelf Development in the LOS Convention

The Law of the Sea Convention was negotiated just as marine environmental issues were gaining attention in the international community. As such, they provide a framework for action but identify few specific activities. The provisions related to pollution from seabed activities, listed in Article 208 of the Convention, all fall into good-faith responsibilities of states parties that are not subject to binding dispute settlement:

Article 208

Pollution from seabed activities subject to national jurisdiction

1 Coastal States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.

2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.

3. Such laws, regulations and measures shall be no less effective than international rules, standards and recommended practices and procedures.

4. States shall endeavour to harmonize their policies in this connection at the appropriate regional level.

5. States, acting especially through competent international organizations or diplomatic conference, shall establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment referred to in paragraph l. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

As a non-party that shares interests in preventing or reducing marine environmental pollution from seabed activities, the United States seeks strong environmental protection rules for seabed mineral development and works through the International Maritime Organization, the Arctic Council and other international bodies to ensure effective regulation for activities in the US EEZ and in the EEZs of other nations. Unfortunately, having not yet joined the Convention, US diplomats start from behind in assuring foreign states of commitment to the Convention's principles and face difficulty in leading the development of provisions for marine environmental protection.

The fifth paragraph of article 208 could provide the US with leverage to engage other nations in multilateral discussions of rules, standards and practices for continental shelf development. In the Caribbean Sea, the United States already works through the Cartagena Convention and its protocols to provide a regional approach to marine environmental protection in the Caribbean.

Regional Maritime Governance

The Cartagena "Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region" is the umbrella agreement addressing the marine environment in the region of the Caribbean Sea. The Convention was adopted in conjunction with its protocol on oil spills in 1983.

The oil spill protocol recognizes the responsibility of states parties to take preventative and remedial actions to avoid and respond to oil spills, to share information, to require their nationals to report oil spill incidents, notify other parties of spills, establish operational measures, create subregional arrangements, and establish institutional arrangements.

A protocol to the Cartagena Convention addressing land-based sources of pollution came into force in 2010 and the United States, Cuba and the Bahamas are all parties to the agreement.

Resolving International Disputes

Dispute settlement processes always pose an issue of effectiveness versus freedom of action. The Cartagena Convention provides an arbitral process that parties may use if they agree to do so, but it is clearly not mandatory, though the commitment to resolve disputes peacefully is mandated.

In the LOS Convention, marine environmental disputes related to the continental shelf may be referred to mandatory dispute settlement, but only as allowed by Article 297, Paragraph 1(c), which limits mandatory settlement to cases "when it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have been established by this Convention or through a competent international organization or diplomatic conference in accordance with this Convention." As such, a party to the Convention could only be bound to mandatory settlement when has agreed to "specified international rules" and may, as part of another agreement, establish dispute resolution procedures that supersede those of the LOS Convention, although the default arbitration processes of the convention may be agreeable to parties to the Convention.

Conclusions

The UN Convention on the Law of the Sea provides the international legal framework for a strong US offshore industry to operate in the US extended continental shelf and for protection of US interests in the marine environment. The provisions of the Convention related to the EEZ have largely been accepted as customary international law unaffected by US non-party status other than lack of access to the dispute resolution provisions of the Convention. With regard to the continental shelf beyond the EEZ, however, the United States lacks access to the Commission on the Limits of the Continental Shelf for international recognition of claims beyond the EEZ and cannot expect recognition of claims to an extended shelf by other states as long as the US rejects the revenue sharing provisions of article 82 of the Convention and other provisions that form the package deal agreed to by all parties in return for coastal state authority over mineral resources of the continental shelf beyond the EEZ.

Provisions of the Convention related to marine environmental pollution from activities on the continental shelf are relevant to the United States both as a developer of the continental shelf and as a neighbor of countries that develop their own shelves. If the US becomes a party to the Convention, it will have greater leverage to negotiate rules, standards and practices to protect its marine environment from activities in foreign EEZs. However, consideration must be given to the advantages and disadvantages of mandatory dispute settlement both under the Convention and under regional agreements and ensure that future agreements, treaties and conferences reflect US interests in the balance of mandatory settlement and national autonomy of action. Dispute resolution provisions of conventions and protocols can be negotiated to incorporate their own dispute settlement provisions that provide for negotiation of differences with binding arbitration as an option subject to mutual agreement of the parties, which would resolve any lingering US concerns over the LOS Convention's dispute settlement provisions.