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THE EFFECTS OF THE PROPOSED EXCLUSIVE ECONOMIC ZONE IMPLEMENTATION ACTS ON THE MAGNUSON ACT.

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On March 10, 1983 President Reagan issued a proclamation[1] claiming for the United States all mineral and fishing rights within 200 nautical miles of the United States coast, including areas around United States-controlled islands in the Pacific and the Caribbean.

By establishing the Exclusive Economic Zone, President Reagan exercised a right already claimed by more than 50 nations and recognized in the recently adopted Convention on the Law of the Sea. Due to the fact that President Reagan decided against the United States becoming a party to the Convention, a legal foundation for the presidential action must be found in customary international law.

Immediately after the President proclaimed the establishment of the exclusive economic zone two bills were introduced in the United States Congress to implement the Presidential proclamation.[2] One was introduced in the United States Senate by Senator Ted Stevens from Alaska and the other in the United States House of Representatives by Representative John Breaux from Louisiana. No action was taken by the 98th Congress with regard to either of the proposed Exclusive Economic Zone Implementation Acts (EEZIA), but information obtained from the Congressional staff indicates that the bills may be reintroduced in the 99th Congress. This possibility warrants inquiry into the implications of the bills on existing legislation. The two bills are nearly identical except for provisions concerning the rights of foreign fishermen. For the purposes of this article both bills will be referred to as the EEZIA except in the discussion on the rights of foreign fishermen in the Exclusive Economic Zone of the United States.

The EEZIA cover the broad spectrum of issues related to the management of the newly established exclusive economic zone, including United States jurisdiction over the marine resources off the United States coast, presently regulated by the Magnuson Fisheries Conservation and Management Act of 1976 (Magnuson Act).[3]

This article focuses on the effects of the EEZIA on the Magnuson Act, analyzing the effects of the proposed legislation from the standpoint of international law. The analysis concentrates on the internationally recognized bases for the extension of the United States fisheries jurisdiction off its coast, including the legal questions raised by the proposed limitation on the rights of foreign fishermen in the exclusive economic zone.

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1. The proposed changes in the findings, purposes, and policy of Congress in the Magnuson Act

One of the purposes of the proposed EEZIA is to replace the fisheries conservation zone of the United States by the exclusive economic zone. Consequently, the authors of the EEZIA suggest that Section 1801(c)(1) be deleted from the Magnuson Act. Section 1801 (c)(1) states the purpose of the Magnuson Act on the extent of the territorial and jurisdictional claims of the United States as: "to maintain without change the existing territorial and other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources". Under the Magnuson Act, the United States only asserts fisheries jurisdiction, not sovereign rights, over the fisheries conservation zone. Under the EEZIA the United States would exercise in its exclusive economic zone not only fishery management authority but also sovereign rights.[4] Thus the establishment of the exclusive economic zone would substantially broaden the scope of the jurisdiction asserted by the United States over the seawaters around its coasts and the declaration contained in Section 1801(c)(1) would become obsolete.

In Section 1801 (c)(5) of the Magnuson Act, Congress expressed its support for, and encouraged, the efforts to conclude "an internationally accepted treaty, at the Third United Nations Conference on the Law of the Sea". This subparagraph would be deleted by the EEZIA. Instead, in light of the fact that the United States did not become a party to the Convention on the Law of the Sea, the authors of the EEZIA propose to declare a new policy of Congress with regard to the international cooperation in maritime matters. This new policy would aim at negotiating "widely accepted international agreements that provide for effective conservation and management of fishery resources, including highly migratory species". By adopting this provision, Congress would express its support for future international agreements which would create fishery resources conservation and management measures more in line with the interests of the United States than the measures already contained in the Convention on the Law of the Sea.

2. The Outer Limits of the Continental Shelf

Under Section 1802(3) of the Magnuson Act,

> [T]he term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superadjacent waters admits of the exploitation ofthe natural resources of such areas.

The definition of the continental shelf in Section 1802(3) was taken, almost verbatim, from Article I of the 1958 Geneva Convention on the Continental Shelf.[5] The EEZIA proposes to replace this definition of the continental shelf with the definition found in Section 2(a) of the 1952 Outer Continental Shelf Lands Act.[6] The Outer Continental Shelf Lands Act, which predates the Geneva Convention, defines the outer continental shelf of the United States as the "subsoil and seabed [that] appertain to the United States and are subject to its jurisdiction and control".[7]

The proposed change, if adopted, would result in eliminating from the text of the Magnuson Act the two criteria for the delimitation of the outer limits of the continental shelf: a) the 200 meter isobath and b) exploitability. Consequently, there would be no standards whatsoever by which the seaward extent of the continental shelf of the United States could be determined.[8]

The deletion from the text of the Magnuson Act of these two criteria is not a coincidence. From the perspective of the author of this study, its purpose seems to be the preparation of the grounds for territorial extension of the jurisdiction of the United States over the continental shelf beyond the limits permitted by the Geneva Convention. This possible extension of the jurisdiction of the United States over the continental shelf raises the issue of the compatibility of such an act with both international law and domestic law of the United States.

Under international law, the extension of jurisdiction beyond the limits permitted by Article I of the Geneva Convention would be justified only if it were permitted by a rule of international law, either a treaty or a custom. The rejection by the United States of the Convention on the Law of the Sea makes it rather improbable that the Geneva Convention would be replaced by a new rule of treaty law as far as international obligations of the United States are concerned.[9] The United States could assert however, that Article I of the 1958 Convention was superseded by a new rule of customary international law and that the United States is no longer bound by its obligations arising under Article I. The outcome of such a challenge rests on whether there is a rule of customary international law superseding Article I of the Geneva Convention.

Article I of the Geneva Convention on the Continental

Shelf constituted the first international codification of the legal issues of the continental shelf, including the question of its outer limits. In the North Sea Continental Shelf cases, the International Court of Justice pronounced that as of 1958, the rule of Article I was regarded as ". . . reflecting, or as crystallizing, received or at least emergent rules of customary international law relative to the . . . question of the seaward extent of the continental shelf".[10] In a relatively short period of time, however, the criteria for the determination of the outer limit of the continental shelf set forth in Article I proved to be inadequate. The combination of the exploitability test with the fixed depth of 200 meters created ambiguity, leaving room for different interpretations. The problem became even more apparent when technological advances moved the limits of exploitability past the continental slope, through the continental rise, and finally to the deep-seabed.[11] These technological advances brought a need for a more precise definition of the seaward extent of the states' jurisdiction over the continental shelf.

Different states, including the United States, started exercising jurisdiction over the seabed areas far beyond the depth of 200 meters.[12] In the 1970's, the discussion on the extent of jurisdiction over the continental shelf moved to the forum of the Third United Nations Conference on the Law of the Sea. In defining the continental shelf, the Conference abandoned both criteria of the 1958 Convention. Instead, the new definition was based on the concept of natural prolongation and fixed distance from baselines.

The proposals favoring the extension of the coastal states' jurisdiction to the outer edge of the continental margin met strong opposition at the Conference from the land-locked states and states with narrow geological margins.[13] The fact that this opposition was overcome during the Conference suggests that the rule governing the outer limit of state jurisdiction over the continental shelf, adopted at the Conference and incorporated in Article 76(1) of the Convention on the Law of the Sea, is, at the present time, more of a political compromise than a new rule of customary international law.

However, a rule of customary law defining the outer limit of the continental shelf could have emerged independently from the Third United Nations Conference on the Law of the Sea. Analysis of state practice, and the opinio juris, justifies the conclusion that there is a rule of customary international law which abrogates the two criteria in Article I of the Geneva Convention. However, the rule of customary international law that defines the permissible seaward extent of the coastal state jurisdiction is still in an early stage of development.

The adoption of the Convention on the Law of the Sea will certainly speed up the process of the final crystallization of a new rule of customary law governing the seaward extent of the coastal states jurisdiction. Whether this new rule will be identical with that of Article 76(1) remains to be seen. In light of the fact that Article 76(1) was approved by 160 negotiating states (including the United States) this result appears very probable.

The foregoing discussion leads to the conclusion that, from the standpoint of international law, the United States may extend its jurisdiction over the continental shelf beyond the limits set by the 1958 Geneva Convention. Lack of criteria for the determination of the seaward extent of jurisdiction over the continental shelf under the Outer Continental Shelf Lands Act and the EEZIA would allow the Government to adjust its position in respect to the final form of the new custom.

The expected extension by the United States of its jurisdiction over the continental shelf beyond the limits permitted by the Geneva Convention might also create some problems in the domestic law of the United States. Under the Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel[14] and United States v. Ray[15] cases the Geneva Convention forms part of the domestic law of the United States. This raises the issue of whether it would automatically be replaced by a new rule of customary international law.

The Restatement of the Foreign Relations Law advanced the view that a new rule of customary international law binding the United States supersedes "any inconsistent preexisting provision in the law of the United States".[16] The position taken by the authors of the Restatement has been challenged on two grounds.[17] First, under the dualist approach adopted by the United States (and reaffirmed by the Restatement), the rules governing the relations between customs and treaties at the international level are not necessarily the same as the rules governing the same relations on a domestic plane. Second, under the rule of Paquet Habana,[18] the leading precedent in the United States law relating to the relations between customary international law and treaty, customary international law is to be resorted to only in the absence of a treaty. International custom cannot supersede a treaty.

The uncertainty with regard to the rules governing the relations between customary international law and

treaty in the domestic law of the United States might be of crucial importance if the extension of the jurisdiction over the continental shelf were to be challenged in a United States court. As long as the Geneva Convention forms part of the domestic law of the United States and Treasure Salvors and Ray are controlling jurisprudence the courts might be reluctant to enforce new jurisdictional claims based on customary international law.

3. The jurisdiction over fisheries beyond the exclusive economic zone

The EEZIA classifies the jurisdiction of the United States over fishery resources into two groups. First, it declares that the United States will have sovereign rights and fishery management authority over all fish and continental shelf fishery resources within the exclusive economic zone. Second, it provides for exclusive fishery management authority (but not sovereign rights) of the United States beyond the exclusive economic zone. The fishery jurisdiction beyond the economic zone would cover two groups - anadromous species and other continental fishery resources. Under Sections 1812(2) and (3) of the Magnuson Act the United States asserts jurisdiction over these same groups beyond the fishery conservation zone. The EEZIA repeats the provisions of Section 1812, replacing the phrase "fishery conservation zone" with the "exclusive economic zone."

The issue of the coastal states' jurisdiction over anadromous species was addressed by Article 66 of the Convention on the Law of the Sea. Article 66 gave the coastal states the right to regulate fisheries of anadromous species beyond their economic zones, although it subjected this right to serious limitations. This jurisdiction can be exercised only by an agreement with the other states that fish these species. There were also other provisions in Article 66 which departed from the concept of the exclusive fishery management authority of a state of origin embodied in the Magnuson Act.[19] The states of origin may establish total allowable catches for anadromous species originating in their rivers only after consultations with other states engaged in fishing these species. Fishing of anadromous species beyond the limits of the economic zones was only permitted in a situation where the prohibition of such fishing would result in an economic dislocation for a state other than a state of origin. The states of origin were put under the obligation to cooperate with other states fishing the stocks in order to minimize the economic dislocation of the latter states.

The rejection of the Convention on the Law of the Sea by the United States and the retention of the exclusive jurisdiction over the anadromous species as defined in the Magnuson Act makes the inquiry into the legal basis for the assertion of this jurisdiction particularly relevant. To address this issue, the developments in the anadromous species fisheries in view of the evolution of customary international law must be examined.

Although Article 66 does not represent a rule of customary international law, it constitutes an important step in the process of the creation of a new custom. Article 66 recognized (although only in a limited scope) the primary interest and responsibility that a state of origin had over the anadromous species. The fact that 160 states agreed on that principle appears to be a significant breakthrough which might facilitate the recognition of the new claims. Moreover, other developments which took place outside the Third United Nations Conference on the Law of the Sea might lead to the emergence of a new customary international law regulating this issue.[20] At the present time however, customary international law regarding the jurisdiction over the anadromous species appears to be at a very early stage of development. It cannot, therefore, serve as the basis for any jurisdictional claims.

The jurisdiction of the United States over the anadromous species has gained the recognition of a considerable number of states. This was achieved by means of bilateral agreements concluded between the United States and nations applying for the right to fish within the fishery jurisdiction of the United States. The agreements containing the provisions acknowledging the jurisdiction of the United States as provided by Section 1812 of the Magnuson Act were concluded with Bulgaria,[21] Denmark and Faeroes,[22] German Democratic Republic,[23] Japan,[24] Republic of Korea,[25] Mexico,[26] Norway,[27] Poland,[28] Rumania,[29] Portugal,[30] Soviet Union,[31] The European Economic Community[32], and Spain.[33] The same clause was also contained in the Agreement between the American Institute in Taiwan and The Coordination Council for North American Affairs Concerning Fisheries off the Coast of the United States.[34] A similar provision is included in a proposed treaty between Canada and the United States on the division of west coast salmon catches.[35]

This wide recognition of the United States' jurisdiction over the anadromous species constitutes an important step in finding a solution for the protection of anadromous species and of the economic interests involved. The fisheries agreements concluded by the United States

also fulfill the requirement of Article 66 of the Convention on the Law of the Sea that the jurisdiction over the anadromous species beyond the exclusive economic zones be exercised by agreement with other fishing nations. Thus, the policy of the United States with regard to anadromous species furthers the future recognition of the rule of Article 66 as the rule of customary international law.

The jurisdiction exercised by the United States over the anadromous species is not based on a general rule of international law and therefore it cannot be asserted against any state which does not recognize such jurisdiction. As a practical matter however, the system of bilateral treaties with other nations engaged in anadromous species fishing will provide a sufficient basis for the United States interests in protecting the anadromous species resources spawning in United States' rivers.

4. The Rights of Foreign Fishermen in the Exclusive Economic Zone of the United States

Under the fishery management regime established by the Magnuson Act, foreign fishing in the United States fishery conservation zone is allowed by agreements between the United States and interested nations. The total allowable level of foreign fishing (TALFF) is established as the difference between the optimum yield[36] for a given harvesting season and the domestic harvest.[37] The surplus of domestic fish arrived at in this manner is then allocated to foreign fishermen by the Secretary of State. Subsection d(4) of Section 1821 of the Magnuson Act, containing this provision uses mandatory language: " the Secretary of State shall allocate such portion for use during the harvesting season by foreign fishing vessels".[38]

Both Senator Stevens and Representative Breaux propose to rephrase subsection d(4) by replacing its mandatory language with the phrase "the Secretary of State may allocate".[39] In this way, the obligation to allocate the surplus to the foreign fishermen would be replaced by the complete discretion of the Secretary of State.

The version of the bill submitted by Senator Stevens in the Senate goes even further and aims toward the complete exclusion of foreign fishing from the exclusive economic zone of the United States.[40] Senator Stevens proposes to achieve this goal gradually. From 1984 to 1987, foreign fishing would be reduced respectively by 15, 30, 65, and 80 percent annually. Finally, after the close of the 1987 harvesting season, foreign fishing in the exclusive economic zone of the United States would be totally excluded.

The proposed changes in the Magnuson Act raise the issue of whether the exclusion of foreign fishing from the exclusive economic zone is compatible with the international obligations of the United States. The crucial inquiry involves the question of whether a coastal state is under an obligation to allow foreign fishing in its fishery or economic zone. Such an obligation is stipulated in the Convention on the Law of the Sea. Under the legal regime of Articles 61 and 62 of the Convention a coastal state has three clear obligations in that respect:

1) The obligation to determine the allowable catch in the exclusive economic zone;

2) The obligation to determine the harvesting capacity of the local fishermen in the exclusive economic zone; and

3) The obligation to allocate the surplus to the foreign fishermen.[41]

Since the United States is not a party to the Convention it is not bound by the provisions of Article 61 and 62. However, if Article 61 and 62 merely codify existing customary international law, the United States would have to fulfill the three obligations enumerated above.

The idea of expanding the jurisdiction of the coastal states over the living resources in the adjacent seawaters has been justified by the necessity of introducing measures aimed at the protection, conservation, and management of the living resources. Mexico, Portugal, Bahamas, Fiji, New Zealand, Australia, Soviet Union, and Gambia included this justification in their domestic legislations establishing exclusive fisheries or economic zones.[42] The same provision can be found in the Magnuson Act.[43]

If the rights of coastal states over their fisheries and economic zones are justified by, and designed to, promote and protect the conservation of stocks and the related interests of local fishermen, these rights do not then possess an absolute or truly exclusive character.[44] The rights of the coastal states are qualified by the interests they are designed to protect. Consequently, the establishment of the fishery or economic zone does not eliminate the right of foreign fishermen to harvest living resources from that area. It merely imposes an obligation to conduct fishing activities in a manner not contrary to the needs which lead to the establishment of the zone. Fishing the surplus of the allowable catch which cannot be harvested by the local fishermen certainly does not hamper the protection, conservation, or management of the living

resources of a coastal state. It appears therefore that by adopting Articles 61 and 62 in their present form the Third United Nations Conference on The Law of The Sea cofified existing customary international law.

While establishing the fishery conservation zone of the United States, Congress underlined the necessity of protecting the fishery resources which "contribute to the food supply, economy, and health of the Nation and provide recreational opportunities."[45] Further on, Congress declared that the "[f]ishery resources are finite but renewable. If placed under sound management before overfishing causes irreversible effects, the fishery can be conserved and maintained so as to provide optimum yields on a continuing basis."[46] Although Congress has found that the "activities of massive foreign fishing fleets" have contributed to the danger facing the fishery resources off the coast of the United States,[47] it nevertheless declared its policy to permit foreign fishing according to the rules spelled out in the Magnuson Act.[48]

The policy of Congress with regard to foreign fishing, as expressed in the Magnuson Act, is fully consistent with the Congressional findings which lead to the establishment of the fishery conservation zone. Since the establishment of the zone was aimed at the protection of United States fishery resources, foreign fishing not endangering this effort should be permitted. Section 1821 of the Magnuson Act, setting the rules under which the foreign fishing activities are permitted, supports the conclusion that Congress did not see any danger to the United States' interests in allowing the foreign fishermen to harvest the surplus of the domestic catch, providing that such a harvest would not exceed the optimum yield.

Regardless of the incompatability of excluding foreign fishing with the international obligations of the United States, neither of the two bills propose new findings or point to any developments which could justify a change in the policy towards foreign fishing. The provisions of the Magnuson Act regarding the optimum yield, as well as those setting the goals of the management and conservation policy, would changed by the new legislation. Moreover, Section (4) of the Magnuson Act which stipulates that foreign ing will be permitted if consistent with the provisions of the Act regulating foreign fisheries would be left unchanged by the new legislation. In this context, proposed changes aiming at the total exclusion of foreign fishing seem to contradict the policy of Congress declared in the Magnuson Act. The proposed amendments to the Magnuson Act would have no basis whatsoever in the findings of Congress which served as the ground for the adoption of the Magnuson Act nor in the declared purposes of the two bills.

In this context, it is to be noted that exclusion of foreign fishing is possible even under the legal regime of the Magnuson Act as it presently stands. This result could be achieved by the establishment of the optimum yield level equal with the domestic harvest. Since there would be no surplus, there would be nothing to allocate to foreign fishermen.[49] Due to the fact there are no generally recognized standards for establishing the optimum yield such an "indirect" exclusion is relatively easy to accomplish.[50]

Although the results of the "indirect" and "direct" exclusion of foreign fishing are essentially the same, their status in international law might be different. Exclusion (or restriction) of foreign fishing achieved by the manipulation of the optimum yield (indirect exclusion) leaves unchallenged the principle that foreign fishermen have the right to fish in the economic zones of the coastal state unchallenged.

Outright prohibition of foreign fishing (direct exclusion) violates the rule of customary international law which gives foreign fishermen the right to catch the surplus of the coastal state's harvest in the latter's exclusive fisheries and economic zones.

It seems important that the right of foreign fishermen to catch the surplus of the coastal state's harvest be maintained and protected from both direct and indirect limitations. The existence of this principle appears to ease international tensions caused by the establishment of the exclusive economic and fishery zones. The right of foreign fishermen to fish the surplus of the domestic harvest of a coastal state appears also to constitute the backbone of the special status granted by the Convention on the Law of the Sea to the landlocked and the geographically disadvantaged states. This special status was one of the main reasons for their recognition of the extended jurisdictional claims of the coastal nations. Negation of the foreign fishermen's right in the economic zone might thus jeopardize the compromise supporting the rule of customary international law permitting the establishment of the economic zones.

CONCLUSION

The establishment of the exclusive economic zone of the United States is clearly consistent with existing international law. It is of particular importance, therefore, that the implementing regulations conform with the rules of international law.

The proposed Exclusive Economic Zone Implementation

Act as it presently stands, may come into conflict with international rules. The proposed limitation, or, even total exclusion, of foreign fishing in the economic zone is not supported by any rule of general international law.

It appears highly desirable that Congress adopt the legislation implementing the Presidential Proclamation establishing the economic zone as soon as possible. It has been almost two years since the establishment of the zone has been proclaimed by the President and the need for the implementing legislation is obvious.

FOOTNOTES

1. Exclusive Economic Zone of the United States, Proclamation No. 5030, 48 Fed. Reg. 10605 (1983).

2. S. 750, 98th Cong., 1st Sess. (1983); and H.R. 2061, 98th Cong. 1st Sess. (1983).

3. 18 U.S.C. 1801 - 1887.

4. Section 102 of Representative Breaux's bill (identical language is in Section 102 of Senator Steven's bill) states:

> Within the exclusive economic zone, the United States asserts, and will maintain -
> (1) sovereign rights for the purpose of exploring, exploiting, conserving, and managing the living resources (other than highly migratory species of fish) and the nonliving resources of the seabed and subsoil and superjacent waters;
> (2) sovereign rights for the purpose of carrying out economic exploration and exploitation not covered under paragraph (1), including, but not limited to, the production of energy from the water, currents, and winds; and
> (3) jurisdiction with regard to -
> (A) the establishment and use of artificial islands,
> (B) other installations and structures having economic purposes, and
> (C) the protection and preservation of the marine environment.

5. Article I of the 1958 Geneva Convention on the Continental Shelf runs as follows:

> 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 territorial sea, to the depth of 200 meters or, beyond that limit, to where the depth of the superjacent water admits of the exploitation of the natural resources of said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Convention on the Continental Shelf, 499 U.N.T.S. 311, 15 U.S.T. 471, T.I.A.S. No. 5578.

6. 43 U.S.C. 131(a).

7. The definition of the continental shelf used in the Outer Continental Shelf Lands Act is based on the language of the Truman Proclamation on the Continental Shelf, which proclaimed the jurisdiction of the United States over the "subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coast of the United States as appertaining to the United States, subject to its jurisdiction and control". Proclamation No. 2667, 10 Fed. Reg. 12303 (1945)

8. Under Treasure Salvors and Ray the criteria of the delimitation of the seaward extent of the continental shelf contained in the Geneva Convention implemented the definition of the continental shelf in the outer Continental Shelf Lands Act. See text accompanying notes 14 and 15.

9. According to the rule "pacta tertis nec nocent nec prosunt" (a treaty does not create either obligations or rights for a third State without its consent), the obligations of the United States will not be affected by a treaty to which the United States is not a party.

10. 1969 I.C.J. 39.

11. See figure (below).

12. See e.g. Griffin, The Law of the Sea and the Continental Shelf. An address delivered before the International Academy of Trial Lawyers on February 17, 1967 in Mexico City, pp. 18-19 (available in the Louisiana State University Law Center Library); Comment, The Interaction of Law and Technology: The Continental Shelf Problem, 1968 Cornell Int'l L.J. 50, 58 and sources cited therein. See also Amin, U.K. Practice on the Continental Shelf, 25 J. L. Soc. Scot. 12, 14 (1980). According to Anand, in 1970 at least 31 states granted offshore concessions in areas which included waters deeper than 200 m. or otherwise asserted jurisdiction over these areas, without any opposition or protest from other states. R. Anand, Origin and Development of the Law of the Sea 202 (1983).

13. Anand, supra note 12, at 216.

14. 569 F.2d 330 (5th Cir. 1978).

15. 423 F.2d 16 (5th Cir. 1970).

16. Tentative Draft No. 1, Section 135(1). Although the Restatements of Law do not have any legal force they are treated as a digestion of the law of the United States on a given subject.

17. Murphy, Customary International Law in U.S. Jurisprudence - A Comment on Draft Restatement II, 20 Int'l Practitioner's Notebook 17, 17-18 (1982).

18. 175 U.S. 677, 700 (1900).

19. For the comparative analysis of Article 66 and the Magnuson Act see Burke, U.S. Fishery Management and the New Law of the Sea, 76 Am. J. Int'l L. 24, 45-46 (1982).

20. Beside the United States, some other nations have asserted jurisdiction over the anadromous species originating in their waters e.g. Soviet Union and Japan. See Article 2 of the Soviet Edict on Provisional Measures for the Preservation of Living Resources and the Regulation of Fishing in Marine Areas, 15 Int'l Legal Materials 1381 (1976). For the description of Japanese practice and legislation see Krueger, Nordquist. The Evolution of the 200-Mile Exclusive Economic Zone: State Practice in the Pacific Basin, 19 Va. J. Int'l L. 321, 353 (1979).

21. T.I.A.S. 9045, 29 U.S.T. 3955.

22. T.I.A.S. 9649.

23. T.I.A.S. 8527, 28 U.S.T. 1793.

24. 1 Marine Fisheries Management Reporter 1-4068 (G. Knight ed. 1982).

25. Id. at 1-4079.

26. T.I.A.S. 8852, 29 U.S.T. 781.

27. T.I.A.S. 1007.

28. T.I.A.S. 8542, 28 U.S.T. 1681.

29. T.I.A.S. 8825, 29 U.S.T. 387.

30. T.I.A.S. 9929.

31. 16 Int'l Legal Materials 62 (1977).

32. Id. at 257.

33. 1 Marine Fisheries Management Reporter 1-4153 (G. Knight ed. 1982)

34. Id. at 1-4014.

35. Kaufman, Alaska Balks at Salmon Treaty with Canada, N.Y. Times, Aug. 4, 1983, at A7, col. 5. See also Chandler, Double-dealing could kill treaty, 65 Nat'l Fisherman, Nov. 1984, at 6. While this treaty is still being negotiated, the concept of jurisdiction over salmon beyond the Fishery Conservation Zone has been accepted by both sides.

36. Some modifications to the method in which TALFF was calculated were introduced by the American Fisheries Promotion Act, Title IX of Public Law 96-561 in § 230. For an analysis of these modifications from the point of view of the Convention on the Law of the Sea see Burke, supra note 19, at 40.

37. The Magnuson Act, defines optimum yield in Section 1802(18) as

> The term "optimum", with respect to the yield from a fishery, means the amount of fish:
> (A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and
> (B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

38. Italics supplied.

39. Italics supplied.

40. Supra note 2.

41. Note that the last obligation is defined in the Article 62(2) in a mandatory language "shall".

42. Moore, National Legislation for the Management of Fisheries Under Extended Coastal State Jurisdiction, 11 J. Mar. L. & Comm. 153, 161-63 (1980); Krueger, Nordquist, supra note 20, at 331-370.

43. Section 1801 (a).

44. Cf. W. Extavour, The Exclusive Economic Zone 272-73 (1979).

45. Magnuson Act Section 1801(a)(1).

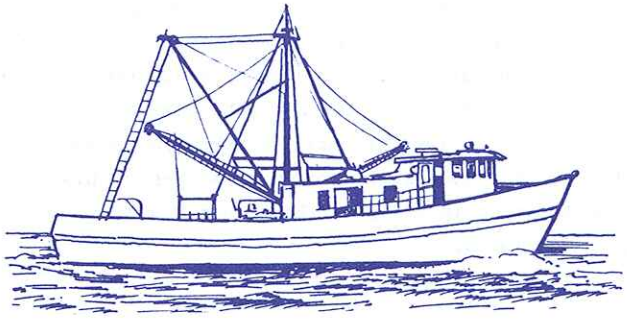
46. Magnuson Act Section 1801(a)(5).

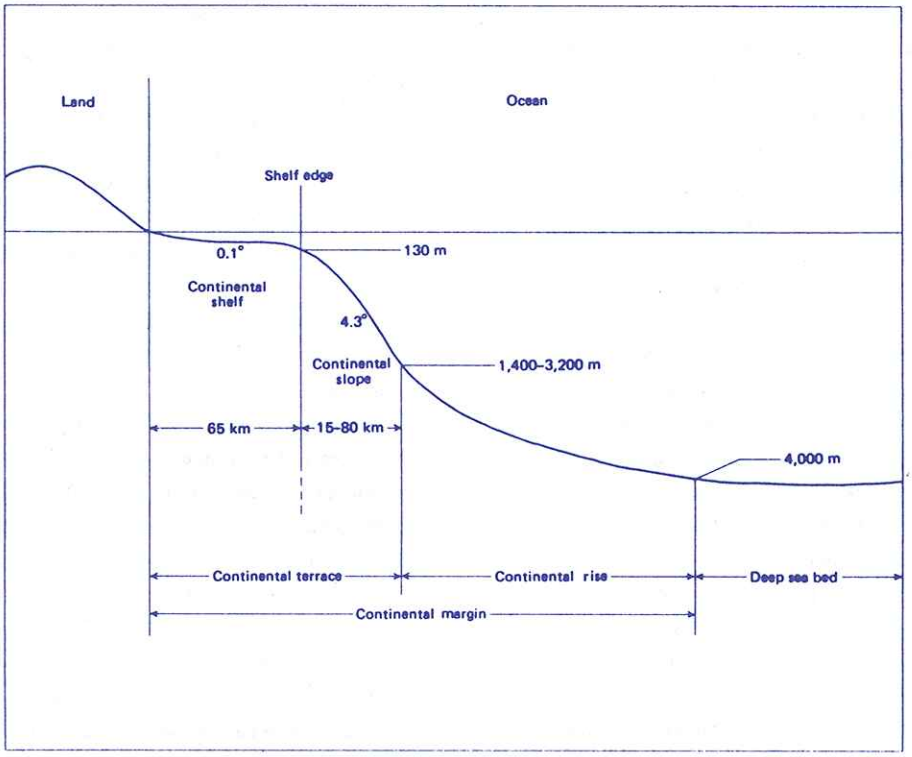
47. Magnuson Act Section 1801(a)(3).

48. Magnuson Act Section 1801(c)(4).

49. Extavour, supra note 43, at 263.

50. Burke, supra note 19, at 28.





Schematic profile of the continental margin (from Berryhill, The Worldwide Search for Petroleum Offshore - A Status Report for the Quarter Century, 1947 - 1972, U.S. Department of the Interior, 1974).

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