

A Legal Regime for the Outer Continental Shelf? An Inquiry as to the Rights and Duties of Coastal States within the Outer Continental Shelf

David M. Ong^δ

Introduction

The purpose of this paper is to examine the evolving legal regime governing relations between coastal states and other states in respect of activities take place within the outer continental shelf (OCS). Much attention is currently being devoted to the legal procedure for the establishment of OCS limits and its delineation *vis-a-vis* the deep sea bed Area as well as possible delimitation with opposing and adjacent states. The focus here is on the *content* of the interested states' rights and duties in the OCS area, both in the seabed and its superjacent waters, as opposed to its geographical *extent*. Now that a large majority of states in the world are parties to the 1982 Law of the Sea Convention, this paper will examine state practice in the form of the national regulation of various activities within the OCS marine sector to see how well the balance of rights and duties initially provided by the 1982 Convention has been preserved. In particular, the legal regime governing the following activities in the OCS sector will be examined: 1) Article 82 governing the 'revenue sharing' provision for mineral resource exploitation beyond the 200 nm limit; 2) Article 142 governing resource deposits that lie across coastal states' OCS limits and the (deep seabed) Area; and 3) Art.246.6 governing marine scientific research activities beyond the 200 nm limit.

Background

The adoption in 1982, and subsequent entry into force in 1994, of the Law of the Sea Convention (LOSC) established both a codified and developed legal regime governing the sea bed area beyond the 200-nautical mile (nm) seaward limit prescribed for the Exclusive Economic Zone (EEZ). Within this regime, coastal states have sovereign rights and certain other jurisdictional powers over the sea bed and subsoil of the outer continental shelf (OCS) area beyond 200 nautical miles. For parties to the 1982 LOSC, the outermost extent of the continental shelf beyond the initial 200-nm limit must fulfil certain geomorphological and geological criteria specified in Article 76 of the Convention. It remains to be seen whether non-State parties are also bound by this criteria when claiming their outer continental shelf area beyond 200-nm. Much attention is currently being devoted to the legal procedure for the establishment of OCS limits and its delineation *vis-a-vis* the deep sea bed Area

^δ Reader, Department of Law, University of Essex, Wivenhoe Park, Colchester, Essex CO4 3SQ, UK. Also Co-Rapporteur to the International Law Association (ILA)'s Committee on the Legal Issues of the Outer Continental Shelf. The views expressed in this paper are his own.

as well as possible delimitation with opposing and adjacent states.¹ The legal issues and problems arising from and associated with the delimitation of the outer continental shelf both between states and between states and the Deep Sea Bed Authority are the subject of the first Co-Rapporteur's Report to the International Law Association (ILA)'s Committee on Outer Continental Shelf Issues.² This paper attempts to conduct a preliminary examination of the evolving legal regime governing relations between coastal states and other states in respect of activities take place within the outer continental shelf (OCS) area.³ The focus here is on the legal *content* of the interested states' rights and duties in this area, both in the sea bed and its superjacent waters, and not the legal *extent* of OCS limits. Now that a large majority of states in the world are parties to the 1982 Convention, this study will examine various state practice within the OCS maritime space to see how well the balance of rights and duties initially provided by the 1982 Convention has been preserved.

As we noted at the very outset of this paper, few coastal states have even enumerated in their national legislation or other state practice the full catalogue of sovereign rights, jurisdictional powers and especially, their legal duties within the continental shelf area. None have specifically provided for their rights and duties within the outer continental shelf, beyond the 200-nm limit, as distinct from the inner continental shelf within this limit. This is unsurprising given that we have already noted above that the OCS regime must be derived from the different legal regimes under the LOSC, 1982 governing a coastal state's maritime jurisdiction zones such as the continental shelf, EEZ and high seas regimes, or regimes governing specific activities such as marine scientific research (MSR). What should be present within coastal states' maritime zones jurisdiction legislation, but is not so far forthcoming, however, is an appreciation of the difficulties involved with the regulation of activities on or in the seabed beyond 200-nm where the superjacent waters are high seas. As Oda points out, the offshore petroleum development in continental shelf areas under superjacent high seas waters necessarily impinges upon the traditional uses of these high seas waters. It is therefore unrealistic to assume that, merely because the superjacent waters above an OCS area remains part of the high seas, the coastal State will not interfere with any foreign vessels approaching the area.⁴

¹ To date there has been only one outer continental shelf (OCS) limits application by the Russian Federation to the Commission on the Limits of the Continental Shelf (CLCS). However, many publicists have written on this the legal and technical criteria required to make such an application and the CLCS decision-making process.

² Preliminary Report of the International Committee on Outer Continental Shelf Issues to the Biennial ILA Conference in New Delhi, India on 5 April, 2002. See International Law Association, *Report of the Seventieth (70th) Conference*, New Delhi, 2-6 April, 2002 (London: ILA) 741-53.

³ Aspects of this paper have been published in the ILA, *Report of the 70th Conference*, 2002, *ibid.*, 753-63.

⁴ Oda *International Control of Sea Resources*, Reprint with New Introduction, Dordrecht: Martinus Nijhoff Publishers (1989) at 156.

Non-living Resources in the Outer Continental Shelf: The Revenue Sharing Obligation

Apart from the definitional issues noted above, one of the major differences between the so-called ‘inner’ continental shelf regime, within the 200-nm zone and the outer continental shelf (OCS) area beyond this 200-nm limit, consists of the revenue-sharing requirement under Article 82 of the LOSC, 1982. At the outset, as with the technical criteria that can be used by LOSC States parties to extend their continental shelf jurisdiction beyond 200-nm miles under Article 76, it should be enquired of non-State parties as to whether they are bound by this revenue-sharing requirement under customary international law, in parallel fashion to States parties under Article 82 of the Convention? Schmidt for example notes that while the ICJ pronounced on the customary international law status of the Exclusive Economic Zone (EEZ) in two maritime boundary delimitation cases, ‘it avoided answering the question whether claims to sovereign rights to exploit the margin beyond 200 nautical miles are part of customary international law.’⁵

Notwithstanding the continuing debate over the possible application of Article 82 provisions to non-parties to the LOSC 1982, we shall proceed with an analysis of these provisions on the assumption that they are certainly applicable to the 143 states that are currently parties to the Convention.⁶ Article 82 deals with the amounts, types and method of payments or contributions that the coastal state is required to make to the international community as a result of its exploitation of the OCS area. Under this provision, states exploiting the continental shelf beyond the 200-nm limit shall make payments or contributions in kind through the International Sea-Bed Authority to other states parties of the Convention. (Art.82(4))

It is submitted here that this requirement is arguably an application, albeit in limited form, of the Common Heritage of Mankind (CHM) principle within the outer continental shelf area, even though the OCS is within the coastal state’s maritime jurisdiction. As Oda points out, this provision was ‘instituted in such a manner that the concept of the common heritage of mankind plays a role in controlling over-expansion of the exclusive interests of coastal States in their continental shelves.’⁷ Brown notes that ‘(A)rticle 82 reflects an attempt to modify the consequences of the (Third Law of the Sea) Conference’s policy of recognising that the coastal state’s continental shelf

⁵ Markus G. Schmidt, *Common Heritage or Common Burden? The United States Position on the Development of a Regime for Deep Sea-bed Mining in the Law of the Sea Convention*, Oxford: Clarendon Press (1987)? at 12, citing *Gulf of Maine* case 1984, at 52 para.94 and *Tunisia v Libya* (1982) ICJ Reports 1982 p.74, para.100.

⁶ Albania acceded to the Convention on 23 June, 2003. See http://www.un.org/Depts/los/reference_files/status2003.pdf (Last accessed: 26 October, 2003)

⁷ Oda (1989) *op. cit.*, at xxxii.

rights extended to those parts of the continental margin which lay beyond the 200-mile line.⁸ The fact that the payments are apparently to be collected and administered by the International Deep Sea Bed Authority,⁹ the main LOSC institutional organ responsible for the implementation of the Common Heritage of Mankind principle is also evidence of the partial implementation of the CHM principle in the OCS area. In so far as this is the case, then in light of the widespread acceptance of the Common Heritage of Mankind principle, as evidenced by the 1970 United Nations General Assembly (UNGA) resolution adopted without dissent applying it to the sea bed beyond the limits of national jurisdiction,¹⁰ it can be argued that even non-Parties to the LOSC, 1982 are bound by the limited application of this principle under Article 82.

Moreover, it is widely accepted that this limited inclusion of the CHM principle, on behalf of the global community of States, within the otherwise singular jurisdiction of the coastal state in the OCS area, was the *quid pro quo* for allowing the so-called broad continental margin states to maximise their potential continental shelf limits. Vasciannie, for example, notes that the revenue-sharing provisions were an essential element of a specific ‘package deal’ directly related to the outer continental shelf limits.¹¹ The LL/GDS sought to maximise the proportion of revenue from the exploitation of OCS non-living resources to be shared with developing countries in return for allowing broad margin coastal states to extend their outer continental shelf limit beyond 200-nm. However, they were arguably unsuccessful in this quest, with Vasciannie noting that the Article 82 provisions fell short of the LL/GDS aspirations.¹² Only the least developed, land-locked (LL) states are to be given preference in respect of the disbursement of the revenue collected.¹³ Even the least developed Geographically Disadvantaged States (GDS) are not prioritised in the relevant revenue-sharing provisions.¹⁴

This compromise can be contrasted with the general presumption in favour of the coastal state in the case of shared or common hydrocarbon deposits found lying across the OCS limits and the deep sea bed Area. The proposed legal treatment of such resource deposits that lie across the boundary signifying the limits of national jurisdiction and the Area serves to underline the presumptive nature of coastal state rights within OCS regime, in comparison with the Authority acting on behalf of the international community in the Area. Specifically, Article 142(2) requires the prior consent of the coastal state concerned before the commencement of any activities in

⁸ E.D. Brown, *The International Law of the Sea, Volume 1: Introductory Manual*, Aldershot: Dartmouth (1994) at 262.

⁹ Article 82(4) provides that the payments or contributions shall be made ‘through’ the Authority.

¹⁰ UNGA Resolution 2749 (XXV), 17 December, 1970.

¹¹ S. C. Vasciannie, *Land-Locked and Geographically Disadvantaged States in the International Law of the Sea*, Oxford: Clarendon Press (1990) at 127, citing the mandate to negotiating Group 6 at UNCLOS III (1973-1982), Doc. A/CONF.62/62

¹² Vasciannie (1990) *ibid.*

¹³ See Article 82(4).

¹⁴ Vasciannie (1990) *ibid.*, at 127-8.

the Area that may result in exploitation of resources lying within national jurisdiction. This provision arguably establishes an unbalanced legal relationship in favour of coastal states against the International Sea Bed Authority, the Enterprise and its partners in relation to transboundary deposits between the OCS limits and the Area. Significantly, there is no corresponding right provided for the consent of the International Sea Bed Authority should a coastal state propose to exploit resources that may extend across national jurisdiction limits and thus lie within the deep sea bed Area. The clear implication of this provision is that while the interested states can go ahead with the unilateral exploitation of such a transboundary deposit, the Authority and Enterprise does not have such discretion, except possibly where formal attempts to resolve the issue have been rebuffed in circumstances evincing a lack of good faith or abuse of rights by the states concerned.¹⁵ This appears to go beyond the requirement under customary international law regarding similar circumstances involving two opposing or adjacent coastal states. Customary international law arguably proposes that all interested states in such circumstances co-operate on the basis of co-relative rights over the common deposit and negotiate an equitable solution to this dilemma, usually in the form of a joint development agreement.¹⁶ The clear difference here, in contrast to the relationship between a state and the International Sea Bed institutions under Article 142.2, is that all these states are assumed to have equal and undivided interests in the common deposit that cannot be explored without their consent. While customary international law does not appear to specifically require an interested state to obtain the consent of the other interested states before commencing with the unilateral exploration of a common petroleum deposit, the clear implication is that lack of consent may result in injury to the other interested states.

The juxtaposition of, on the one hand, the coastal state's limited revenue-sharing requirement with the Authority for hydrocarbon development within the OCS area, and on the other hand, its presumptive rights over any transboundary resources found in the OCS/deep sea bed interface suggests that the ultimate decisions on OCS mineral resources development are still very much within the hands of the coastal state. This is despite the revenue-sharing requirement with the international community once profits are forthcoming from such OCS development. The slightly incongruous legal situation that therefore arises out of the juxtaposition of Articles 82 and 142 can perhaps partly be explained by noting that the Common Heritage of Mankind principle certainly as advocated by Prado in his seminal speech in 1967 was not of itself territorial in its intention. Instead it was directed mainly towards ensuring that the international community of states, in particular to ensure that the least developed of these would actually benefit from any wealth deriving from deep sea-bed exploitation in the Area. This can be discerned from the fact that the very same United Nations General Assembly (UNGA) Resolution adopted by consensus in 1970, providing that the deep sea bed beyond the limits of

¹⁵ The principle of good faith is provided in Article 308 of the LOSC 1982.

¹⁶ See David M. Ong, 'Joint Development of Common Offshore Oil and Gas Deposits: 'Mere' State Practice or Customary International Law?', *American Journal of International Law*, Vol. 93, No.4 (October, 1999) 771-804.

national jurisdiction constituted the Common Heritage of Mankind, also noted that these limits were yet to be determined, leaving it to the soon to be convened Third UN Conference on the Law of the Sea (UNCLOS III) to establish these limits.¹⁷

Quite apart from the issues raised by the relationship between Articles 82 and 142, further questions have been raised regarding the interpretation and application of Article 82 provisions. Lodge suggests that there are many interpretation issues that need to be resolved before the revenue-sharing system can be implemented.¹⁸ Other commentators have expressed misgivings about the economic viability of the revenue-sharing obligation embodied in Article 82. These concerns focus on petroleum industry perceptions of the overall investment returns that can be expected from OCS petroleum development projects, bearing in mind that these projects will normally involve deep water seabed exploration,¹⁹ often using state of the art, cutting edge technology with significant added costs and increased risk factors. According to Prescott, Article 82 is therefore a disincentive for oil and gas production in respect of sea bed resources exploitation in the OCS area beyond 200-nm.²⁰ Lagoni too has remarked on the need to examine whether the revenue-sharing obligation that was the product of economic concerns and thinking of the 1970s during the UNCLOS III negotiations still reflected the economic realities of offshore petroleum development today.²¹ A number of submissions can be made here in response to the views of these eminent international law publicists.

First, it should be noted that the economic viability (or otherwise) of such projects is not necessarily the first, or even the most important, priority of the OCS revenue-sharing regime, even if this concern has the potential to derail the entire scheme for bringing the benefits of OCS resources to less developed countries. Considerations of international equity, socio-economic justice and wealth-distribution between richer and poorer states, with a view to

¹⁷ Lawrence Juda, *International Law and Ocean Use Management: The Evolution of Ocean Governance*, London: Routledge (1996) at 213-5.

¹⁸ See Michael Lodge, 'The International Sea Bed Authority - Its Future Directions', paper presentation delivered at the Conference on Legal and Scientific Aspects of Continental Shelf Limits', in Reykjavik, Iceland, 25-27 June, 2003.

¹⁹ One exception is in the Gulf of Mexico where the continental shelf basin is uncommonly shallow as well as broad, thus allowing for relatively simple exploration and exploitation of its petroleum resources. According to Lodge (2003) *op. cit.*, deep water production in the Gulf of Mexico surpassed shallow water production in 2000 for the first time since lease activities in that region started in 1996.

²⁰ See J. R. V. Prescott, 'National Rights to Hydrocarbon Resources of the Continental Margin beyond 200 Nautical Miles', in Gerald Blake, Martin Pratt, Clive Schofield and Janet Allison Brown (eds.), *Boundaries and Energy: Problems and Prospects*, The Hague: Kluwer Law International (1998) 51-82, at 79.

²¹ See comments by Professor Rainer Lagoni, ILA Committee Member, in Discussion following the presentation of the Preliminary Report of the International Law Association (ILA) Committee on Legal Issues of the Outer Continental Shelf meeting at the Biennial ILA Conference, New Delhi, India (2002) 741-771, at 769.

redress huge and growing disparities between the developed and less developed states in this world may be accorded equal or even higher priority in the assessment of the Article 82 regime. These considerations of course echo the ideals and aspirations expressed by many of the Group of 77 developing states under the banner of the New International Economic Order (NIEO) that formed the backdrop for their collective stance during the UNCLOS III negotiations of this revenue-sharing regime. The fact that the application and implementation of the revenue-sharing obligation may not be the most economically efficient method of stimulating offshore petroleum production in the OCS area does not necessarily mean that it must be allowed to supercede equally imperative political and arguably legal principles.

Second, from a practical perspective, any assessment of the viability of such projects must consider the overall taxation regime that states habitually impose upon offshore petroleum exploration companies. In other words, how does the proposed payments or contributions system compare with the overall tax burdens imposed on the offshore hydrocarbon industry? As might be expected, states have developed a whole range of taxation systems and methods in respect of their domestic hydrocarbon industries. Nevertheless, it is possible to discern several common taxation principles at work in most jurisdictions. From here we can determine whether the Article 82 revenue-sharing obligation will compare favourably with what is already being applied to petroleum industry globally wherever it works. For example, a vast majority of developing countries now apply their own variations of the Production Sharing Agreements (PSAs) with their petroleum industry contractors. As Jennings notes in relation to this type of petroleum development agreements, '(B)roadly speaking, the oil company invests, by invitation of the host government, in the exploitation of the area, and is rewarded, if a development follows, first with the recovery of its costs and then with a share in production, such share being determined by the agreement.'²² An important factor of a PSA, especially for dependent developing countries, is that revenues are generated as soon as the field comes on stream.²³ On the other hand, once the government portion has been taken and any other taxes paid, all subsequent revenues go to the company and these may yield potentially very high profits.²⁴ Reverting to our Article 82(2) scenario, should the government require the petroleum company concerned to pay a further 1% of the cash value or volume of production at the site to fulfil the coastal state's revenue sharing obligation, this should mean reduced profits, but not ruinously so. Taverne suggests that the average government's take of a similar character to that envisaged by the Article 82(2) provision amounts to about 10% to 15% of the petroleum market value.²⁵

²² Anthony Jennings, *Oil and Gas Exploration Contracts*, London: Sweet & Maxwell (2002) at 5, para. 1-21.

²³ *Ibid.*, at 7, para. 1-26.

²⁴ *Ibid.*

²⁵ Bernard Taverne, *An Introduction to the Regulation of the Petroleum Industry: Laws, Contracts and Conventions*, London: Graham & Trotman (1994) at 24.

Another petroleum industry taxation method, commonly utilised by states that operate licensing as opposed PSA regimes, involves royalty payments, which is a levy calculated as a percentage of the value of the petroleum production, this being assessed at the wellhead or at the point of sale. Moreover, the royalty can be required to be paid in kind.²⁶ These general aspects of royalty-style levies appear to accord most with what was provided in Article 82. In the United Kingdom's continental shelf (UKCS), for example, the North Sea Royalty tax, which has been abolished from 1 January 2003, and in any case was only levied on fields approved before 31 March 1982, amounted to 12.5% of the landed value of petroleum, less an allowance for the cost of bringing the petroleum ashore and treating it.²⁷ Across the North Sea, on the Norwegian continental shelf, similar royalty levies range from a standard 10% rate for 1965 licences whereas the royalty rates for newer fields were matched to their daily average production area figures, increasing in 2% steps, from 8% to 16%.²⁸

Scientific Research in the Outer Continental Shelf and Superjacent Waters

As alluded to above, the legal regime governing marine scientific research is different within the 200-nm inner continental shelf/EEZ limit as opposed to the OCS beyond 200-nm. This difference is all the more important when it is considered that the overall MSR regime for the continental shelf was revised from what was laid down under the Continental Shelf Convention, 1958. The LOSC, 1982 MSR regime is therefore the product of explicit negotiation and ultimate agreement by the negotiating states at UNCLOS III, including many developing countries that were very possibly participating in their first multilateral treaty negotiations. It is not merely the continued application of the previous MSR regime obtaining under the 1958 Convention.²⁹

Within Part XIII of the 1982 Convention on the other hand, the main divergence relates to the coastal states' discretion as to whether to consent to marine scientific research in the EEZ or continental shelf. Within the 200-nm limit, the legal regime is to be found in Article 246.1 to 246.5 This generally provides that the coastal state's consent is required to conduct marine scientific research (MSR) in another state's EEZ or continental shelf. (Art.246.2) Thus, within the continental shelf area but beyond the 200-nm limit, in other words, within the OCS; the right to refuse consent for MSR is qualified. Coastal states' discretion in relation to consenting to marine scientific research in the inner CS is therefore restricted in the outer CS area. Coastal states may not withhold permission for MSR in such areas unless they have been designated as areas within which exploitation or detailed

²⁶ Taverne (1994) *ibid.*, at 31.

²⁷ See The Energy Report, 25 Years of the Brown Book 1973-1998, Oil and Gas Resources of the United Kingdom, Chapter 2, p.15. Accessed at: <http://www.dbd-data.co.uk/bb1998/uk.htm>. (26 October, 2003)

²⁸ Taverne (1994) *op. cit.*, at 68.

²⁹ See generally, Alfred H.A. Soons, *Marine Scientific Research and the Law of the Sea*, The Hague: Kluwer (1982).

exploration is being undertaken or contemplated within a reasonable period of time. (Art.246.6) As Landale and Burmester note, many ‘broad margin’ states were unwilling to accept this shift in the presumption of the consent requirement for MSR but did not manage to overturn it within the final text of the 1982 LOSC.³⁰ It is therefore no surprise that, according to Kwiatkowska, Article 246.6 had been (as of 1991) incorporated in only one ‘broad margin continental shelf’ state, namely the MSR regulations of Trinidad & Tobago.³¹ Francalanci also notes that a series of regulations concerning the scientific research carried out by foreign ships on the Italian continental shelf reproduce exactly Part XIII of the 1982 LOSC governing marine scientific research, presumably including the restriction on coastal states’ discretion to allow such MSR on the outer continental shelf under Article 246.6.³² This highly significant restriction on the legal discretion otherwise afforded to coastal states under the continental shelf and EEZ regimes in respect of consent to MSR is further confirmed when we examine the MSR legal regime in the superjacent waters above the outer continental shelf area of a coastal state, under Article 257. Indeed it is possible to argue that two separate legal regimes for marine scientific research exist even within the OCS marine sector, one for the sea bed beyond 200-nm until the final limits of the legal continental shelf and the other governing the superjacent waters above this OCS area.

However, as Prescott notes, ‘(T)his is far from being a cast-iron guarantee for research workers, and coastal states will be able to stall (research) programmes without contravening the letter of this provision.’³³ Indeed, much state practice on the regulation of MSR points in the opposite direction, *i.e.*, towards a qualitative encroachment of the freedom to conduct MSR in the continental shelf. This is achieved in two ways: first and most commonly by a lack of distinction between the inner and outer continental shelf regimes for MSR activities and secondly, by effectively subordinating the freedom to conduct MSR to the coastal state. A good example of this latter encroachment is found in the Brazilian continental shelf legislation already noted above. As a consequence of subscribing to itself the exclusive right to regulate MSR in its continental shelf (without distinguishing between the inner and outer CS), Brazil follows this up by requiring that MSR may only be carried out by other states with the consent of the Brazilian government.³⁴

³⁰ Michael Landale & Henry Burmester, *Australia and the Law of the Sea – Offshore Jurisdiction*, in K.W. Ryan (ed.) *International Law in Australia*, 2nd ed., Sydney: Law Book Co (1984) 390-416, at 407, citing the Report of the Australian Delegation to the Ninth Session of the Law of the Sea Conference (1980) at 23.

³¹ Kwiatkowska (1991) *op. cit.*, at 160.

³² Giampiero Francalanci, ‘Problems of Management of Continental Shelf: Italian Perspective’, in Donat Pharand and Umberto Leanza (eds.) *The Continental Shelf and the Exclusive Economic Zone: Delimitation and Legal Regime*, Dordrecht: Martinus Nijhoff (1993) 251-262, at 258.

³³ J.R.V. Prescott, *The Maritime Political Boundaries of the World*, London: Methuen (1985) at 44.

³⁴ See: Para. 1, Article 13 of Law No.8617 of 4 January, 1993 *op. cit.*

Conclusions: Balancing Coastal States' and Other States' Rights and Duties in the Outer Continental Shelf Regime

Although up to as many as forty (40) coastal states may be able to claim outer continental shelves beyond the 200M limit, this preliminary enquiry has found little evidence to suggest that these states have even recognised, let alone legislated for, an outer continental shelf regime as distinct from their 'inner' continental shelf or 200M EEZ regime. Indeed, very few coastal states appear to have contemplated the specific duties and jurisdictional limitations in respect of the outer continental shelf regime within their marine policy and legal framework. Moreover, aside from the relatively uniform preservation of navigation rights for vessels within the superjacent waters above outer continental shelf areas, it may be concluded that the coastal state regulation of nearly all the other types of activities undertaken within the OCS area represent *qualitative* expansions of jurisdiction by these states that impinge upon the rights and freedoms of other states within the outer continental shelf marine space.

It is at least arguable that there is a legal presumption that non-states parties to the LOSC, 1982 nevertheless should follow procedures laid down by Article 76, Annex II and the CLCS Guidelines for the delineation of their outer continental shelf limits *vis-a-vis* the deep seabed Area. Once this task has been accomplished and when non-living resources (usually petroleum) development of the OCS area has commenced, the further operation of Article 82 should also be presumed for at least two reasons. First, acceptance that the wider continental shelf limits allowed for broad margin states by other states at UNCLOS III was predicated upon the acceptance by these broad margin states in turn to submit to the revenue-sharing undertaking. In other words, it is not a separate requirement but in fact two sides of the same coin. Second, and more pertinently for non-parties to the LOSC 1982, the Article 82 revenue-sharing provisions are clearly at least a partial application of the Common Heritage of Mankind principle which is in itself a well accepted principle of customary international law, if not indeed a peremptory norm of *jus cogens*. Thus, even non-parties to LOSC, 1982 are bound by the common heritage of mankind principle under international law with the consequence that the Article 82 revenue sharing provisions are equally binding upon them as on LOSC parties.

The situation is more precarious with respect to the legal regime governing marine scientific research in the OCS area, beyond 200 nautical miles and its superjacent waters. Here, even States parties to the 1982 Convention have been slow to accept their jurisdictional limitations under both Articles 246.6 and 257. The situation regarding non-Parties must therefore be considered to be even more uncertain. The lack of confirming state practice to the Part XIII regime for marine scientific research under the Convention generally is especially detrimental to the continued freedom of marine scientific research both in the OCS area and the superjacent high seas waters above it.