Chapter 2

Historical Overview

“Law grows with the growth, and strengthens with the strength of the people”¹

Savigny

2.1 Introduction

Traditionally, international law has been seen as the law of the international communities of states, ² principally governing relations among states. It has been argued that international law originated in maritime affairs. It is generally accepted that the law of the sea has undergone the process of drastic change³. The study is partly historical and analytical and partly a critique of the ideas and events that are affecting a profound transformation in the international law of the sea. The importance of the world’s oceans cannot be overestimated. Life began in the oceans and it remains our link to life through its control of climate, provision of food and minerals, ⁴ sequestration of assimilation of wastes and other irreplaceable services. The legal regime cannot be properly understood without some knowledge of its history. Thus as a preliminary observation one can note that law of the sea is a subject that is the product of slow historical evolution and that something approaching a recognized system of the law of nations. However, many of the matters that are now the concern of law of the sea can be traced back, as far as ancient Roman.

The history of the law of sea reflects a continuing struggle between stages that asserted special rights in vast areas of the sea and other states that insisted on the freedom of navigation and fishing in all the ocean spaces. Through the 1960 and early 1970’s, as mining technology achieved and potential wealth of under sea riches
became known, a number of prominent mining companies formed consortia to
develop seabed mining operations as an alternative to land based resources. All these
factors, which initially appeared as technological phenomena, are aggravated and
made even more complex by a set of legal and political problems that have arisen. In
view of the increasing dependency of states marine resources and the growing
interdependence of international society in general, it is imperative that international
law develops a set of constituent and coherent rules governing this whole Area. From
the historical perspective it is necessary to focus on freedom of high seas, territorial
sea, EEZ and continental shelf without which it would be virtually impossible to
understand the development of legal regime.

2.2 Freedom of High Seas

The sea is naturally neither *mare liberum* nor *mare clausum* but *mare
nostrum*, the seabed theoretically belongs to no none (*res nullius*) and it is subject
to a law similar to the law governing territorial acquisition of lands that belong to no
none (*terra nullius*). It is by all means clear that these assumptions are justified. The
true antecedents of the regime of sea, at least as understood in modern international
law, are not strictly speaking to be found in ancient times. The people of the ancient
world, Greece and Rome did not expect the sea for their own by force whichever
served their political or economic ends and so long as no one stronger than they
came to rule. The Greeks considered the Mediterranean their own, while Alexander
the Great relied on the sea power to conquer nations great and small. The law of
Rhodes was internationally recognized as the first maritime legal code of conduct.
This thinking, in fact, was most consistent with reality as Rome declared the
Mediterranean its own, or *mare nostrum*. But Hugo Grotius, Dutch Jurist and
statesman, writing a thousand years after Justinian, reiterated, “the high seas were
not within the sovereignty of any state”. In early Roman times, due to the infrequency of conflicting claims, there existed a simultaneous absence of political agreements and international custom in the law of the sea. Historically the emergence of the rule is associated with the rise of dominance of maritime powers and of the influence of states, which and forward closed seas. The historical factors which led to the development of the freedom of the seas.

During that time there was no sound principle or hard law to govern the high seas. There was domination by super powers. From Grotius and his predecessors until a fairly recent date, the latter view predominated, as it was acquired that if the high seas were *res nullius*, they could be acquired by occupation, which was impossible because their very nature rendered them incapable of effective occupation and because even if that were not so, no state had the right to appropriate the high seas. Historically, the international law of the sea emerged out of debates in the early 17th century between thinkers such as Dutch legal scholar Hugo Grotius, who advocated open access to the oceans for all nations (*mare liberum*), and those such as British scholars Welwood and Selden, who believed that the world's oceans should be appropriated by and divided among the coastal states or naval powers (*mare clausum*).

The formative period of international law revolved around the law of the sea and was characterized by great scholars who debated issues such as the freedom of the seas. But the reason it started in this arena is that international crises were not necessarily dictated by state-to-state relationships, but instead were characterized by each state vis-a-vis the rest of the world. As far as the law of the sea is concerned, it has more or less remained static for perhaps two or three hundred years.
During the era of 15th century, all states were in favor of appropriation of or at least an exercise of exclusive rights over large expansion of the seas, while the Grotian theory\(^9\) of appropriation is well known that describing the international legal recognition of exclusive rights. In this era, the Papal Bulls of 1493 and 1506 have participated\(^10\) the oceans of the world between Spain and Portugal. Tudor Policies challenged the Spanish monopoly of commerce in the West Indies and Elizabeth I affirmed the freedom of the seas in answer to a Spanish protest arising from the expeditions of Drake. By the second century AD, the free and habitual use of the Mediterranean by all had created a custom, which recognized the common right of all men to the free use of the seas.

The *res nullius* concept may be inconsistent with the traditional theory of freedom of the high seas. After 1609 Stuart Policies extended the principle of closed seas from Scotland to England and Ireland and the political concept of British Seas appeared. During the middle Ages economic and technical conditions in Europe remained as stagnant. Unfortunately they did the same because of ignorance or lack awareness of the resources of the oceans.

They were concerned only to the extent of public because there was no distinction between *res nullius* and *res communis*. In the same process, several states i.e. Venice, Denmark and England claimed rights over portions of the high seas. In the 15th and 16th century, Venice had made territorial claims to the Adriatic Sea, England to the North Sea, the channel and large areas of all the northern seas. In 1493 Spain claimed the Pacific Ocean and the Gulf of Mexico, while Portugal claimed the Indian Ocean and most of the Atlantic.

In the 18th century this process ultimately changed as a result of state practices. It was against this background that Dutch scholar Hugo Grotius published *Mare*
liberum in an attempt to reply res communis theory to the ocean and to thereby reopen the oceans to the use of all states. The major object here was to provide facilities to all states to explore and exploit the natural resources and navigation. Moreover, this commendable job of Hugo Grotius has overruled some long standing drawbacks, loopholes and facets of maritime law. By the end of the 17th century, freedom of the high seas had gradually gained international recognition as a general legal principle, but it has ever since been shaped and reshaped by some politico, economic reality which gave it birth. The dominant principle governing use of the seas for most of the past 400 years has been the freedom of the seas. Since Hugo Grotius published Mare Liberum in 1609, freedom of the seas has reigned supreme, both supporting the interests of the major maritime powers and being enforced by them. It was not until after the Second World War that this principle began to face a serious challenge, ironically, by the United States.

As conflicting claims grew out of the controversy, maritime states came to moderate their demands and base their maritime claims on the principle that it extended seawards from land. Mare Liberum talks about the rights of England, Spain, and Portugal to rule over the sea. If these countries could legitimately control the seas, this would prevent the Dutch from sailing, for example, into the East Indies. Grotius argued that the liberty of the sea was a key aspect in the communications amongst peoples and nations. No one country can monopolize control over the ocean because of its immensity and lack of stability and fixed limits. In international law, terms associated with the historic controversy which arose out of demands on the part of different states to assert exclusive dominion over areas of the open or high sea. These claims gave rise to vigorous opposition by other powers and led to the publication of Grotius’s work (1609) called Mare liberum. In Mare clausum (1635) John Selden
endeavored to prove that the sea was practically as capable of appropriation as territory. Owing to the conflict of claims which grew out of the controversy, maritime states had to moderate their demands and base their pretensions to maritime dominion on the principle that it extended seawards from land.

*Mare clausum* refers to any sea or other navigable body of water which is under the jurisdiction of a particular country and which is closed to other nations. In particular, the history, which shaped that legal regime, has impacted upon subsequent developments in international law, including the evolution of the modern concepts of the territorial sea, the continental shelf and the exclusive economic zones.

The foundation of the modern concept of the freedom of the seas is found in the enduring work of Hugo Grotius. Grotius main thesis was that the seas and oceans of the world could not be the object of private or state appropriation but were to be accessible to all nations. A decade after Grotius wrote, an English scholar, Selden, set out to refuse his arguments and defended the English claims by his work *Mare Clausum*. As the title suggests, Selden argued that the sea could be owned by the maritime powers. *Mare Clausum* means closed sea.

The codification of laws had begun under the auspices of the League of Nations. Ultimately the League convened the Hague Codification Conference in 1930. In strengthening the old doctrine in 1956, the United Nations held First Conference on the Law of the Sea (UNCLOS I) at Geneva, Switzerland. The principle of freedom the seas entails the right to use or exploit its natural resources. It has been incorporated in the Geneva Convention 1958. Art 2 states “the high seas being open to all nations, no state may validly purport to subject any part of them to its sovereignty? Freedom of high seas is exercised under the conditions laid down by these articles and by other rules of international law. It comprises *interalia*, both for
coastal and non coastal states”. Freedoms of the high seas include following components:

1) Freedom of navigation;
2) Freedom of fishing;
3) Freedom to lay submarine cables and pipelines;
4) Freedom to fly over the high seas.

These freedoms and others, which are recognized by general principles of international law, shall be exercised by all states with reasonable regard to the interests of other states in their exercise of the freedom of high seas. The 1958 Convention has developed them to a limited extent. There was no uniformity. Most of the rules of maritime law were based on the practices of a new dominant maritime powers. Many times their interests differed and practices were not uniform. The application of freedoms of high seas to seabed had been subject to several controversies and gigantic issues.

In the present world order, the notion and applicability of freedoms of high seas are *intoto* based on equality. That seabed is a *res communis* is accepted by the world community in justifying continental shelf claims in the early 1950’s. Although these freedoms are enjoyable by both coastal states and land locked states, the Convention 1958 says nothing about deep seabed mining. In spite of this, the international community has not been deprived of multilateral means to regulate deep seabed mining.

Art. 87 of the 3rd Law Conference of the Law of the Sea 1982 states that the high seas are open to all states whether coastal or land locked. Freedoms of high
seas are exercised under the conditions laid down by this both for coastal and land locked states. They include:

a) Freedom of navigation;

b) Freedom of over flight;

c) Freedom to lay submarine cables and pipelines subject to part VI;

d) Freedom to construct artificial islands;

e) Freedom of fishing;

f) Freedom of scientific research.

These freedoms shall be exercised by all states with due regard for the interest of other states in their exercise of the freedom of high seas, and also with due for the rights under this Convention with respect to activities in the Area. The situation was tolerated not only because of the overbearing influence of the maritime power, especially Great Britain along with France, Germany, Russia, United States and Japan, which were all helped by this undefined and wide freedom of the seas, but also because the sea was of great importance and use. The development of technology also revolutionized the seabed exploration and exploitation. The need to protect the seabed has become more prominent. Although many of these issues go beyond the realm of the classical law of the sea, they are becoming more and more important. The history of the international law of the sea has always been one of the conflicts, to economic and ecological interests. The old law relating to the freedom of the seas had to be modified. There was need to revise in the light of present needs and interests. This idea of freedom of the high sea, although essentially negative, could not fail to have positive consequences. In view of this, the purely negative general concept of freedom of the seas that confined each individual user of the high seas to an attitude
of complete observation as regard to all the others does not conform to the aspirations of the international community.

The basic idea of the freedom of the high seas, convinced solely as the contradiction of the sovereignty of the sea,\textsuperscript{18} involves the idea of an absolute freedom to use and explore resource of the seabed. It means sustainability is one of the basic obligatory of all states. Although it is a fundamental one, it has its own limitations. At the present day, however, especially if the economic and social repercussions of technical advances are borne in mind, this concept of the freedom of the seas is logically inadmissible. Thus contrary to the former belief, sea's resources whether living or non-living are not inexhaustible. Moreover, unlike fish, mineral resources do not reproduce themselves and may be more easily exhausted. In a similar vein, it requires harmonious or reciprocal understanding among the states; otherwise it would be virtually impossible to sustain the resources of the seas.

2.3 Territorial Sea

The law of the sea is an ancient sub field of international law, one that had evolved slowly for centuries, until the middle of the 20\textsuperscript{th} Century, when it began to move suddenly in stunning new directions. In the light of this position, the importance of practice and in particular of new facts of practice generated by the existence of the Convention becomes evident. The relevance of such new factors is noteworthy in various fields. However, the new Convention provided universal legal controls for the management of marine resources and the control of pollution. Lack of coherent maritime policy, unplanned ocean management system, and inherent technological backwardness are issues in the history of maritime law. The law of the sea was
essential due to the shortcoming of older freedom of the sea concept dating from 17th century.

National rights were limited to a specified belt of water extending from nations coastlines, normally three nautical miles (5.6 km) from the coastal baseline. This rule is called cannon shot rule, the territorial sea gradually developed as a concept in the 18th century. Its maximum breadth has long been a subject of some dispute, sometimes said to be the range of a land based in that century. All water beyond national boundaries was considered as international water free to all nations, but belonging to none of them i.e. res nullius. Historical research clearly proves that freedom of sea has had no static content a priori, but has been subject to continuous and at times even violent changes. The oceans have been fished and navigated for millennia.

The 3 miles territorial sea limits of coastal state have been generally recognized with a few exceptions such as the historically sanctioned one. The Roman Emperors styled themselves “King of the Ocean”, the republic of the Venice was recognized as sovereignty over the Baltic: and Portugal claimed sovereignty over the Indian Ocean and the South Atlantic, which Spain claimed the Pacific and the Gulf of Mexico in accordance with famous demarcation line based on Papal Bulls of 1494 has modified by the treaty of Torcesillas in 1494. In historical sense, there is no proof of the concept of open sea as such in India neither Manusmruti nor “Yagnavalka Smruti” spoke about the law of the maritime belt or the jurisdiction, which King could control over vessels at the ports of the coastal states. However, Kautilya’s Arthasastra gives a clear idea of the recognition of territorial sovereignty and jurisdiction over harbors waters and a coastal sea belt adjoining the shore and distant from open sea.
The territorial sea developed naturally on the basis of the fact that it is adjacent to the coastal state. During 17th century, the Roman characterized the sea as *res communis* by which they meant that it was beyond appropriation. The coastal states were dominated by the major power or super power. However, with Grotius strong plea for the *Marine Liberum* the concept of the freedom of high seas was well established by this century. According to some historians the commerce between India and Babylon must have been carried out as early as 3000 BC. Even in Europe, it was also recognized rule in Rhodian Maritime Code, which was unequivocally adopted in Roman law and practiced for centuries before the Christian era. Soon after the conflict between Roman Empire and Rhodian tradition of the freedom of the seas came to be debated. In the 20th century, most of the states opinioned that there is a need to extend national right: to include natural resources, to protect fish stocks and to have the means to enforce pollution controls.

The legal system has strengthened through some conventions. The four conventions that were opened for signature at UNCLOS I in 1958 effectively codified the international customary law of the sea existing unto that point in time.

In 1956, the United Nations held its First Conference on the Law of the Sea at Geneva, Switzerland. UNCLOS I resulted in four treaties concluded in 1958:

a) The Convention on the Territorial Sea and Contiguous Zone;

b) The Convention on the Continental Shelf;

c) Convention on the High seas;

d) Convention on Fishing and Conservation of Living Resources of the High Seas.
Section I of the Convention on the Territorial Sea and Contiguous Zone 1958 deals with sovereignty of the states. The sovereignty of a state extends beyond its land territory and its international waters to a belt of the sea adjacent to its coast described as the territorial sea. Article 2 lays down that the sovereignty of a coastal state extends to the air space over the territorial sea as well as to its bed and sub soil. Although UNCLOS I was considered as success, it left open the important issues of breadth of territorial waters. Article 3 of the Convention 1958 says “except where otherwise provided in these articles, the normal baseline for measures in the breadth of the territorial sea is the low water line along the coast of mankind on large scale charts officially recognized by the coastal states.”

In particular, they did not mention a rule on the basic question of width of the territorial sea or on the related question of fishing rights if any of coastal states claimed beyond their territorial sea. They also have been overtaken by events both scientific and political. Of course, technological advances were only part of the relevant setting in mid century. Other events and trends on the world scene would add crucial ingredients to the recipe for revolution in the international law of the sea. The development of new techniques for under water exploitation of oil and other mineral resources have made it necessary to reconsider the regime of the continental shelf and establish a regime for the deep sea bed. Concern for the conservation of fishing resources and the prevention of pollution has grown and has led to general approval of approach based upon control by the coastal state over wide areas of the sea adjacent to its coastal state and with consequential problems for innocent passage and over flight. The International Court of Justice in the *Corfu Channel Case*, between UK and Albania, traditionally recognized rights of innocent passage. Archipelago and land locked states have pressed claims for better treatment. These and other
considerations including the fact that most post colonial states had not signed the draft of the Geneva Convention of 1958, led to the decision to call the Third United Nations Conference on the Law of the Sea. From this point of view, the 1958 Convention has not effectively settled some gigantic or complicated issues of the law of the sea. The same process extended even up to the 1960’s. The 1958 Conventions are not touched upon seabed and sub soil. Third world countries, continued to ignore the traditional three miles limits for territorial seas and adopted for the increasing popular 12-mile breadth and a growing number claimed more.

After 9 long years of negotiations, the 1982 Convention on the Law of the Sea was established. The Convention covers 320 articles and 9 annexes, a coastal state can claim a territorial sea up to 12 nautical miles from the baseline. This was the standard established in UNCLOS after being the subject of much debate during the conferences both in 1958 and from 1974 to 1982. Within the territorial sea, a coastal state has full sovereignty over the seabed, water column, surface and airspace above. However, vessels from other states have a right of innocent passage through territorial sea. A coastal state can also claim a contiguous zone, extending up to 12 nm beyond the territorial sea. In this area, a coastal state has the right to apprehend vessels that may have committed an offense within its territory or territorial sea, or to prevent infringement of certain laws within the territory and territorial sea, such as customs and immigration matters.

2.4 Exclusive Economic Zone

The Exclusive Economic Zone (EEZ) is a complex maritime zone in which the powers of coastal states intermingle with the rights and freedom of other states in a carefully structured way. The new notion or institution was due to the initiations of
developing countries. Historically, states have been claiming for a long period of time, in exclusive coastal authority for specific purposes beyond territorial sea. With the failure of both 1958 and 1960 conferences to agree on the width of the territorial sea, the door was opened to distinguish jurisdiction over fisheries from that over the sea. The desire of coastal states to control the fish harvest in adjacent water was a major driving force behind the creation of the EEZ’s.

Fishing, the prototypical cottage industry before the Second World War had grown tremendously by the 1960 and 1960’s. As compared to fifteen million tons in 1938, the world fish catch stood at 86 million tones in 1989. Apart from the economic reasons, the establishment of fishery zones became important as awareness increased of the growing of fishing resources through over fishing and the need to take conservation measures. Even when the freedom of the open sea was provided, it was simultaneously felt that exercise of some exclusive authority beyond the territorial sea had to be recognized on common interest of all states that wanted the protection of their social process on land. The counter claims were made by non-coastal states for the purpose of navigation, fishing, mineral exploration and so on. The EEZ are a generous endowment indeed about 87% of the all known and estimated hydrocarbon resources under the sea fall under some national jurisdiction as a result. EEZ extended the exploration rights of coastal states to 200 nautical miles (370.4 KM) from shore covering all national rights. The claim for 200-mile offshore sovereignty made by Peru, Chile and Ecuador in the late 1940’s and early 1950’s was sparked by their desire to protect from foreign fisherman. The EEZ were introduced to halt the increasingly heated clashes over fishing rights, although oil was also becoming important. The phrase EEZ was introduced by Kenya in the UN Seabed Committee only in 1972, the eventual context of the EEZ was accepted in international law.
remarkably soon. The concept of EEZ is the solution for many issues in the law of the sea. It covers wide range of issues and represents the philosophy of the developing countries on many aspects of law of the sea.

The evolution of the concept of the EEZ is perhaps the most single contribution of Third Conference of the Law of the Sea. It is one of the most revolutionary features of the Convention and one, which already has had a profound impact on the management, and conservation of the resources of the oceans. However, the special interest of coastal states on the conservation and management of fisheries on adjacent water was first recognized in the 1958 Convention in Fishing and Conservation of the Living Resources of the High Seas. Indeed, it constitutes the most significant development in the law of the sea, since Hugo Grotius wrote his celebrated brief on *mare liberum* coastal or non-coastal states have on the same ground or another manifested their deep interests in the regulation of EEZ.

This survey of some of the more important developments, since the 1958 Geneva Conference has attempted to show that even in the areas of crucial disagreement, this has not resulted in an impasse, which has provided further development. Of course, the legal nature of EEZ is decisive in solving the problem of residual rights. There cannot be a single formula settling all feasible disputes, since the regime of the EEZ is *sui generis*. There is no general rule in the Convention by which, in principle, either the coastal states rights or those of third states would prevail.

The EEZ was neither the high seas with exceptions neither for coastal countries nor on the other hand, territorial waters with exceptions in form of all other states. It is a zone that subject to a specific international legal regime, as it was often called a regime *Sui generis* as in the case of continental shelf. Coastal state does not
enjoy complete sovereignty over the EEZ, but only sovereign rights for the purposes of exploring and exploiting conserving and managing the natural resources, whether living, or non living of the seabed and sub soil and superjacent waters.\textsuperscript{42} It is notable that these sovereign rights also extend to other economic activities, such as the production of energy from the water, currents and winds. This enables coastal states to benefits from new technological developments.\textsuperscript{43}

In brief the EEZ was introduced in concurrent form in early 1973 at the Asian Legal Consultative Committee and after some debate at the Seabed Committee in 1973 and at UNCLOS III in 1974,\textsuperscript{44} it became in 1975 a firm policy of the Informal Single Negotiating Test of UNCLOS III, which the basic idea provided and was established very rapidly, no concrete provisions concerning this concept received any extreme examination or debate at UNCLOS III. Despite the fact that the concept has now been widely accepted as a permanent institution of international law, the relevant provisions seem bound to invite many difficulties of interpretation once any concrete problems arise.\textsuperscript{45} The 1982 Convention does not even at the question of the allocation of high seas fishery resources (a subject wholly unresolved in 1958). Meanwhile with regard to seabed mineral resources, a new regime of the deep seabed floor has been emerging from the decisions of UNCLOS III for international control of these resources, based upon the basic concept of the CHM.\textsuperscript{46}

The provisions of the Convention regarding EEZ have sought to reconcile these competing interests. In addition, states are under an obligation to protect and preserve the marine environment and to take all kind of measures to prevent, reduce and control pollution,\textsuperscript{47} the major innovation in UNCLOS was the creation of the EEZ, which combined rights to the continental shelf with rights over the water column beyond the territorial sea. It was a compromise between states that wanted
more control over offshore areas and those that wanted to retain as large an area as possible as high seas. A coastal state can claim an EEZ extending up to 200 nm from the baseline. Even more laughable is the charge of a conspiracy to create a world government. In reality the Convention expanded national sovereign rights more than any international agreement in history. Its central thrust entails an extension of coastal resource and economic rights in a vastly enlarged EEZ and continental shelf, while furthering sovereign rights and navigational freedom. On the contrary, the corridors of the law of the sea negotiations were predominantly filled with thoughts of nationalism rather than internationalism. And ironically, in their attack on the Convention, the critics join extreme internationalists who have been key opponents of the treaty because it focuses on national sovereign rights.

Within this zone, the coastal state has sovereign rights to explore, exploit, conserve and manage the living and non-living resources of the water column, sea floor and the seabed. A coastal state also has jurisdiction in the EEZ with regard to building and maintaining artificial islands, conducting scientific research and conserving the environment. However, a coastal state cannot restrict freedom of navigation within the EEZ, flight above it or the laying of submarine pipelines or cables through it.

Surely discussions similar to those now taking place on seabed mineral resources will eventually be held on the new concept of the CHM as applicable to ocean fishing.

2.5 Continental Shelf

The continental shelf is the outcome of the fact that petroleum is highly needed, that geologists have located great resources of petroleum below the waters of
the continental shelf and that engineering progress has made possible the extraction of this oil. Unlike in geology and geography, the term continental shelf is relatively new in international law. In ancient times, navigation and fishing were the primary uses of the seas. As man progressed, pulled by technology in some instances and pushing that technology at other times in order to satisfy his needs, a rich bounty of other resources and uses were found underneath the waves on and under the ocean floor minerals, natural gas, oil, sand and gravel, diamonds and gold.

The development in the field of science and technology in the 19th and 20th centuries leads the states to participate in the sea activities. This is not only for the navigation purpose but also for the exploration and exploitation of natural resources available in the sea. What should be the extent of a coastal state’s jurisdiction over the resources? What steps should be taken? Where and how should the lines demarcating their continental shelf be drawn? How should these resources be exploited? These were among the important questions posed in New York in 1973 for Third Conference. So far the historical development of exploration and exploitation of resources of the continental shelf begun in the 1800’s have revealed abundant sources of manganese nodules in the ocean floor.

In the past 20 years or so, international attention has focused on these nodules hold for replacing rapidly disappearing land mined mineral supplies. After the de colonization, many of the Afro Asian states started to participates in the international relations. This includes navigation and exploration and exploitation of natural resources of the sea. The serious problem for the industrialized world and to a lesser degree for the developing world is the fact that mankind to a great extent has exhausted or is rapidly exhausting the mineral resources on land including their petroleum resources because of use in the course of centuries of economic
development. The loss of colonies has dramatized this situation for certain countries and also for multinational corporations. These activities of both of former colonial powers and other industrialized countries have been severely restricted and curtailed by policies of number of developing countries, the aspirations of these countries are to control and to obtain sovereignty over their natural resources.

The Truman Proclamation of 28 Sept 1945 is generally considered as the point of departure for coastal states, claims to exclusive economic jurisdiction over the continental shelf President Truman stated:

“Having concern for urgency of conserving and presently using its natural resources the United States regards the natural resources of the sub soil and sea bed of the continental shelf beneath the high seas, but contiguous to the coasts of the United States, subject to its jurisdiction and control.”

It was the pressures of depleted fishing resources that spurred concern in the early 20th century to deal with the outer limits of coastal state jurisdiction. At that time, the argument was really about whether states should have a three-mile or larger fishing zone. The issue heated up when the so-called Truman Proclamation of 1945 extended or established U.S. jurisdiction over its continental shelf, which drew the other countries. Several countries without shelf resources figured they could follow suit and made similar expansions with respect to their fishing resources.

This is how the notion of a coastal state's 200-nautical mile jurisdiction was born. In 1945, President Henry Truman resolved a dispute between the U.S. Navy, a firm supporter of high seas freedoms, and the interior Department, the custodian of oil reserves on federal lands with an anxious eye on the oil deposits of the continental shelf beyond the three-mile territorial sea. With ocean drilling technology poised to
move into deeper and more distant waters, the president issued a proclamation that extended national control over the mineral resources of the continental shelf off U.S. shores. The proclamation was carefully drafted to apply to the resources of the seabed and not to the waters above them in an effort to avoid encroaching on high seas navigational freedoms. There was little international complaint about this extension and 13 years later, it was codified in the 1958 Geneva Convention on the Continental Shelf.

Although many states had started claiming wide continental shelf jurisdiction since the Truman Proclamation 1945, these states did not use the term continental shelf in the same sense. In fact, the expression became no more than a continental formula covering a diversity of titles or claims to the seabed and sub soil adjacent to the territorial seas of states.

Thus jurisdiction was claimed only over the natural resources of the continental shelf, not over the seabed and its sub soil. The Truman Proclamation did not define the term continental shelf but the White House press release indicated that terms referred to submerged land contiguous to the coast which is covered by no more than 100 fathoms of water. It is interesting to note that in this Truman Proclamation, the claim to jurisdiction over the resources of the continental shelf was described as:

Reasonable and just, some of the effectiveness of measures to protection from the shore, since the continental shelf may be regarded as an extension of the land mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory and since self protection compels the coastal nation to keep close watch over activities over its shores which of their nature necessary for utilization of these resources. All coastal states automatically have jurisdiction over the seabed and subsoil up to 200
nm from the baseline, regardless of whether the physical continental margin extends that far or not. States whose continental margin extends beyond 200 nm must define the outer limits of the continental shelf and submit the claimed limit for approval by the UN Commission on the Limits of the Continental Shelf. Regardless of the physical extent of the margin, state jurisdiction cannot extend beyond 350 nm from the baseline or 100 nm beyond the 2,500-meter isobaths. The rights of the coastal state over the continental shelf are effectively the same as in the EEZ: sovereign rights to explore and exploit the natural resources of the sea floor and sea bed of the continental shelf. However, these do not extend to the water column or to any other rights related to the surface or airspace. Unlike the EEZ, which must be claimed through legislation, rights over the continental shelf exist ipso facto and do not need to be declared.

In the mid 1950s, the International Law Commission made a number of attempts to define the continental shelf and coastal state jurisdiction over its resources. The definition of the continental shelf as prepared by the International Law Commission and contained in its 1956 Report the General Assembly of the United Nations read:

“For the purposes of these articles, the term continental shelf is used only referring (a) to the sea bed and sub soil, if the submarine areas adjacent to the coast but outside the areas of the territorial sea to a depth of 200 meters or beyond that limit where the depth of the superjacent waters admits the exploration of the natural resources the said areas.54 (b) To the seabed and sub soil of similar submarine areas adjacent to the coasts of islands, while the articles of course have no binding force, they are of interest as being the first attempt by an official international body of jurists to formulate systematic principles in this field of growing importance”. Article 2 says
that the coastal state exercise over the continental shelf sovereign rights for the purposes of exploring it and exploiting its natural resources.

In 1958, the first United Nations Conference on the Law of the Sea accepted a definition adopted by the International Law Commission, which defined the continental shelf to include “the seabed and sub soil of the submarine areas adjacent to the coast but outside the area of the territorial sea to a depth of 200 meters or beyond that to where the depth of the superjacent water admits of the exploitation of the natural resources of the said areas.\textsuperscript{55} The definition given under this context does not include the superjacent waters or air space, nor does it extend the breadth of the territorial sea.\textsuperscript{56}

What the Convention has established is the 200-mile zone where states have the right to set up protected seas, develop regional agreements to avoid marine pollution or structure the dumping or release of materials into the sea from ships. However, the Convention does not deal with the problems of pollution that emanate from outside any country's exclusive zone. So in that sense, the coastal states do not have full and unfettered jurisdiction over pollution control.

There had been considerable debate before the International Law Commission in preparing a draft for the conference, as to whether the extent of the continental shelf should have been defined exclusively by the depth of the water lying above it, without the saving clauses of the exploitation test inserted in the Convention as adopted.\textsuperscript{57} Already, as the Third United Nations Conference on the Law of the Sea got under way, there was way a strong consensus in favor of extending coastal state control over ocean resources out to 200 miles from shore so that the outer limits coinciding with that of the EEZ.
The coastal state has limited rights over the continental shelf: its “sovereign rights” are limited to the shelf and exploring of its natural resources. However, the measures taken by the coastal states in exploring and exploiting should be reasonable and must not otherwise impede the laying or maintenance of submarine cables and pipelines on the continental shelf. The question of the outer limits of the continental shelf involved intensive and prolonged negotiations at UNCLOS between 1974 and 1980. The continental shelf is rich in natural resources, it is not surprising therefore that this is one area of the law of the sea where reasonably detailed rules have emerged governing the rights to explore and exploit the resources of this region.

In the North Sea Continental Shelf Cases the ICJ ruled that article 6(2) of the 1958 Continental Shelf Convention did not present customary law at least littoral nation between adjacent states were concerned. In the Anglo French Continental Shelf Case the Court of Arbitration was asked to limits the continental shelf of the United Kingdom and France in the English Channel and in the South Western Approaches. The same position also focused under Gulf of Maine Case (Canada V/s USA) Article 19(2) of Informant Single Negotiating Text (ISNT) proposed outer limits of the continental shelf as follows:

The continental shelf of the coastal state extends beyond its territorial sea to a distance of 200 miles from the applicable baselines and throughout the natural prolongation of its land territory where such nature prolongation extends beyond 200 miles.

Article 76 says that the continental shelf of a coastal state comprises the seabed and subsoil of the submarine area that extend beyond its territorial sea through out the natural prolongation of its land territory to the outer edge of the continent margin or to a distance of 200 nautical miles from the baselines from which the
The breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.\textsuperscript{64}

The Convention has satisfied the maximum expectations of 30 states including Argentina, Australia, Canada, India, Madagascar, Mexico, Sri Lanka and France with respect to its overseas countries by giving them the possibility of establishing a boundary up to 350 miles from these shores or further depending on certain geological criteria. The 1982 Convention reproduced the essential characteristics of the 1958 regime with respect to coastal states right over the continental shelf. As under 1958 Convention, coastal states have sovereign rights for the purpose of exploring the shelf and exploiting its natural resources which include not only mineral and other non-living resources, but also living organisms belonging to sedimentary species.

Article 76 provides that in principle every state has a 200 nautical miles -rule continental shelf. Like its predecessor, the 1982 Convention clearly determinates the legal notion of a continental shelf from the geological continental shelf. The Conference therefore had to negotiate a new definition of the continental shelf to replace the definition contained in 1958 Convention. The legal definition of the continental shelf in Art 76 of the 1982 Convention differs from that in Art 1 of the 1958 Continental Shelf Convention. In cases where the continental margin extends further than 200 miles, nation may claim jurisdiction up to 350 miles from the baseline or 100 miles from the 2,500-meter depth, depending on certain criteria such as thickness of sedimentary deposits. These rights would not affect the legal status of the waters or that of the air space above the continental shelf.

Coastal states are obliged to make contributions for the exploitation of the non-living resources of their continental shelves beyond 200 miles. The payment will
be made to the ISA which will distribute them equitably among states parties to the Convention taking into account the interests and needs of developing states, particularly the least developed and landlocked ones. To control the claims extending beyond 200 miles, the Commission on the Limits of the Continental Shelf was established to consider the data submitted by the coastal states and make recommendations.

The inclusion in the 1958 and 1982 Conventions of living resources as well as mineral resources was probably an instance of progressive development rather than codification. The Truman Proclamation is clearly command with mineral resources only and, the customary international law position before the Convention was probably claims to exploit living resources. Despite the vague definition of the term in the Truman Proclamation and the inadequacy of criteria of contiguity and exploitability to determine the outer edge of the continental shelf, the theory continued in it proved attractive to a diversity of states. The text of the Convention therefore was partly an attempt towards the progressive development of international law. Moreover, there is uncertainty in the interpretation of Article 76 of the Convention because of the lack of precise definitions of the terms sedimentary rock and foot of the slope, in particular. These should undergo some modification of the existing laws.

The Authority would carry out the necessary studies and would prepare technical reports on the development of deep seabed resources exploration and prospects for future exploitation on the continental shelf.
2.6 Seabed

The 1958 Geneva conventions failed to mention specifically the status of the deep seabed, thus leaving open the questions, first, whether it, like the high seas, is free to the use of all nations; and second, whether in time it may be subject to gradual appropriation by coastal states on the grounds of the exploitability criterion. In the years following the 1958 Law of the Sea Conference there was much discussion of the possible effects of the exploitability clause of the Continental Shelf Convention so far as jurisdiction over the outer continental margin is concerned; but there was relatively little discussion of any new types of regime for the seabed beyond national limits until nine years after the First Geneva Conference had ended. In August 1967 Ambassador Pardo of Malta brought the seabed issue into the limelight with his request that there be included in the UN General Assembly agenda an item entitled “Declaration and Treaty Concerning the Reservation Exclusively for Peaceful Purposes of the Seabed and of the Ocean Floor underlying the seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind”. After nearly 10 years of negotiations since 1967 the world community has achieved near consensus on the following ideas: (i) that an ISA be created; (ii) that it should be composed of an Assembly, as a plenary organ responsible for general policy supervision, a Council as an executive arm responsible for day-to-day management, with the assistance of certain subsidiary organs, a Secretariat and an Enterprise as the business organ of the Authority with adequate autonomy and personality of its own. Further, a number of specific functions of each organ of the Authority have also been identified.

The origins of UNCLOS III can be traced back to the setting up of a 35-member ad hoc Committee in 1967 with a mandate to examine the question of the
deep seabed beyond national jurisdiction, in the light of questions raised by new rivalries spreading across the oceans, the implications of technological advances on man’s activities on and under the seas, and conflicting claims over the seabed. The *ad hoc* Committee called for an alternative international regime covering the seabed beyond clearly defined national jurisdiction.

In 1968, the *ad hoc* Committee grew to 41 members and was renamed as Committee on the Peaceful uses of the Deep Seabed and the Ocean Floor beyond the Limits of National Jurisdiction. As a result of the Committee’s work, in 1970 the UN General Assembly adopted resolution 2570 which convened a global Conference to prepare a comprehensive Convention on all aspects of the law of the sea. By the early 1970s, there was clearly a need for a more stable order promoting better use and management of the seas and their resources and the international community began negotiating a comprehensive treaty on the law of the sea.

In addition to creating and supporting the so-called Seabed Committee, the United Nations also responded to the suggestions of Dr. Pardo by adopting in December 1970 a “Declaration of Principles Governing the Seabed and the Ocean Floor and the Subsoil Thereof beyond the Limits of National Jurisdiction”. The Declaration proclaimed that the seabed and subsoil beyond the limits of national jurisdiction, as well as the resources thereof, are the CHM, that the area shall not be subject to appropriation or the exercise of sovereignty by states, and that an international regime shall be established to govern all activities related to the exploration and exploitation of the area’s resources.

In 1968, the United Nations established the Committee on the Peaceful Uses of the Seabed and Ocean Floor beyond National Jurisdiction to study policies for the seabed. In 1970, in light of Resolution 2749, the Seabed Committee was expanded in
scope and size and tasked to prepare draft articles for a seabed regime for a new conference on the law of the sea. Interests were too divergent and understanding of the issues was too rudimentary for the Seabed Committee to prepare a draft text to serve as a starting point for the conference, but it did contribute extensively by building a body of information and alternative approaches that would guide later negotiations.

The first session of UNCLOS III was held in 1973 in New York and was mainly organizational. It elected officers, worked on rules of procedure, and elected Hamilton Shirley Amerasinghe of Sri Lanka as President of the Conference. The second session, held in 1974 in Caracas, adopted the rules of procedure and for the first time considered alternative texts prepared by the Seabed Committee. The third session, in 1975 in Geneva, yielded a Single Negotiating Text. This text set out in treaty language the provisions to be included in the Convention on the Law of the Sea. The fourth session in 1976 in New York produced a Revised Single Negotiating Text. The fifth session, held in New York in 1976, made progress in some areas but stalled on the issue of how deep seabed mining should be organized and regulated.

The sixth session, in New York in 1977, continued deliberations; the seventh session in Geneva and New York in 1978 created seven negotiating groups to tackle hardcore differences; the eighth session, in 1979, also in Geneva and New York, produced the first revision of the 1977 negotiating text and decided to complete the work toward a Convention by 1980.

In the interim period between the Convention’s signing and its entry into force, a Preparatory Commission was set up. The Preparatory Commission dealt with developing land-based producer states who might be adversely affected by the exploitation of seabed minerals; making the Enterprise competitive; interim rules
governing seabed mining; and the tribunal. The Preparatory Commission also implemented an interim regime adopted by the Conference to protect those who had already invested extensively in seabed mining. The Preparatory Commission, established by the Convention in 1983, had prepared draft rules of procedure, but these required considerable revision in light of the 1994 Agreement. The revised rules were adopted in March 1995. Two modifications to the draft rules reflected the agreement's principle of cost-effectiveness. Instead of a 36 member general committee, most of the duties anticipated for that group were assigned to the president and four vice presidents of the Assembly, acting together as the Bureau. The second was the elimination of summary records of the plenary meetings of the assembly, a function that could have doubled the cost of meetings.

The Third United Nations Conference on the Law of the Sea, which first met in Caracas in the summer of 1974 and was followed by a second session in Geneva in May 1974 and three further sessions in New York, was characterized by the failure of the international community to agree on any precise legal regime for the oceans. They felt that the experiments being made constituted the first part of the exploitation process and that this was clear enough from the fact that large commercial companies were spending huge sums of money. These companies would not spend so much money just for the sake of theoretical knowledge, they argued. They, therefore, wanted formal assurances from all states connected with such activities that no commercial exploitation of the resources of the seabed beyond the limits of national jurisdiction would be undertaken before the establishment of an international regime. The UNCLOS convened its first substantive negotiating session in 1974. States with the greatest interest in seabed minerals issues fell into two groups with conflicting, and apparently incompatible, positions. On one side were the advanced industrialized
countries who either had the capability to engage in deep ocean mining or whose economies would benefit from lower prices and more stable supplies of the metals derived from seabed minerals. On the other side were developing countries that saw the economic potential of the seabed in danger of being captured solely for the benefit of the richest capitalist nations.

Industrialized countries felt mining companies licensed by an International Authority should commercially exploit resources; developing countries objected, arguing resources were unique and belonged to the whole of mankind, and that they should be mined by an international public enterprise. The compromise, a parallel system embodied in Part XI of the Convention, allows mining by both public and private sectors on the one hand and collective mining on the other.

On July 29, 1994, the Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea was adopted and opened for signature at the United Nations in New York. The Agreement fundamentally changed the provisions of the Convention (Part XI) that establish a system for regulating the mining of mineral resources from the deep seabed beyond national jurisdiction. The purpose of the Agreement is to remove the obstacles to the acceptance of the Convention that have prevented the United States and other industrialized countries from moving to become parties to it. The deep seabed is not only an Area in which the United States has no sovereignty, but one on which the United States and the entire world have consistently opposed extension of national sovereignty claims. Moreover, to mine deep seabed minerals requires security of tenure for the billion dollar plus costs of such an operation.

In addition to sovereignty issues, the oceans and deep seabed were becoming new strategic grounds for the super powers’ nuclear submarines, submarine launched
ballistic missiles, and anti-ballistic missile systems. New activities were placing unprecedented pressure on oceans and their subsoil and while promising in terms of development and wealth, they were disrupting international stability.

The 1994 Amendment to UNCLOS have brought the major industrialized countries back into the fold through concessions on the seabed regime of 1982, which was seen as too much under the influence of the NIEO and planned economy models prevailing in the 1970s.

2.7 Trend Analysis

Classical law of the sea had only one dimension; essentially a law of navigation on the surface, it was scarcely concerned with the underwater environment. The progressive increase in man’s knowledge of the seabed, that represents a great discovery comparable to that of an unknown continent, has thus restored dimensional unity to the oceanic environment. Here we see clearly the tension between traditional law and the law which is tending to take its place, the regime of freedom of the high seas still proclaimed must come to terms with those increasingly important uses which conflict with it. From the above observation the trend analysis made from an economic point of view can be transposed to the judicial plane where they illustrate the character of law of the sea, a law of movement. Consequently, the entire law of the sea has been constructed around the notion of freedom of navigation that is to say the freedom to move only oceans. It is evident that these rules are not condemned to disappearance today at a time when maritime transport continues to increase in volume.

The problem at the future conferences on the law of the sea will be, precisely, to find the necessary conciliation between the rules submitting the seas and the ocean to a universal regime. With the development of much more effective means and
methods enabling the resources to be worked intensively, the situation radically has been changed. When the two premises on which the right to the free use of the resources of the sea is founded one viewed in the light of the foregoing considerations, it will be rapidly understood that the traditional concept of this right is no longer in harmony with the present state of affairs. In this legal trend in no way implies that the principle of the freedom of the seas in those areas has given way to the principle of the territorial sovereignty of the coastal state. In connection with the foregoing one cannot fail to note the acute and steadily worsening crisis through which the traditional rule of the 200 nautical miles limits on the continental shelf is now passing. It will be readily understood that this tendency, as in the case of the two areas like territorial sea and continental shelf of sea just referred and unlike what occurs in the case of mere extension of specialized competence, implies a right affecting in its essential the freedom to utilize the mineral resources of the sea bed.

These, then in broad outline are the problems set in present day international law by the exploration and conservation of the resources of the seabed. In any case, it is one, which had to be faced, for otherwise the various consequences of the incapability between the traditional system and contemporary problems would very soon have become more serious. This approach to the problems relating to the exploitation and conservation of the resources of the seabed is of particular importance.

The economic and social aspect plays a no less important part. The needs and interest of this type are determining factors in shaping the new regime of the sea.

The most understanding features in the evolution of law through which this task of revision is being performed are undoubtedly the various extension of state
competence over areas of the sea where the principle of free use and exploitation of
its wealth traditionally prevailed.

2.8 Conclusions

From the above discussion we can come to the conclusion that the whole legal
system was not comfortable in order to overcome the legal issues of the seabed. The
legal system, which has focused through some general ideas, is the major reasons for
over exploitation by the developed or industrialized states. Moreover the legal regime
of the seabed is undertaken through some steps like territorial Sea, EEZ and
continental shelf. The legal development has undergone some changes but not fruitful
to the mankind as a whole. The 1982 and 1994 Convention is not adequate in the
present juncture.

The notion of equity and freedom of high seas and CHM principles still
requires some modifications through Conventions, or by way of multilateral treaty
between developed and developing states. The principle of freedom of high seas is
being misused in the present world order. Philosophical values have been come
down because of rapid science and technological development. Due to this approach
many principles like freedom of high seas some extent diluted. But requires some
changes in the present scenario. During 17th, 18th and 19th century the legal system
was intoto based on customary law. In this way anybody can violate the rights and
duties of states. These problems should be removed. There ought to be amendment to
the 1982 Convention. Moreover, there is misunderstanding between socialism and
capitalist countries. Since there is confrontation between these two entities it is
virtually impossible to harmonize among the states. From the point of view Savigny’s
historical approach to the legal system is being developed through growth. According
to this philosophical idea that the legal development or growth is aiming paramount
interest.
Chapter Notes


5. The conflict between the *Mare liberum* theory and the theory of *mare classum* ceased once it was realized that the two notions were neither practical standpoint, but perfectly able to co-exist both in law and in practice because neither excluded the other; See R. P. Anand, *Legal Regime of Seabed and the Developing Countries*, (Delhi, Thomson Press [India] Limited, 1975), p. 234; in “*Mare Liberum*” which appeared as a separate publication on 1608, Grotius stated that the sea is common to all, because it is so limitless that it cannot become a possession of any one, and because it is adopted for the use of all whether we consider from the point of view of navigation or fisheries.

6. This point is also confirmed by the way in which the justice of ancient Rome concerned of rights over the sea. For example Gains described the sea as *res nullius*, Celsus enunciated these of free use of the sea *Mare communis usam Omni bus homnibus*, jurisdiction focused on *jus gentiam*, Moreover, Rome was at the peak.
7. Freedom of the sea is a principle considered by a few to mean that high seas and *res nullius* or without law and beyond the jurisdiction of any nation state except that the flag state. *Res nullius* is an anticipated concept. In fact customary and conventional international law indicates that the high seas and *res nullius* are subject to *res communis* or the law of commons. Freedom seas has meant freedom to use the seas and no uses have been barred. The principal use has been navigation for fishing, trade, travel, and war. In time, the seas began to lend themselves to tunneling, laying of cables, submarine travel, and scientific research.


9. It has given wider power to all states. The recognition of the compatibility of the *Mare liberum* was not of course enough to solve all legal questions during 18th century, since then the idea of the sea as a means of communication and a source of health has been dominated in the doctrine and practice of international law.

10. Malcolm N. Shaw, *International Law*, (UK, 4th Ed, A Grotius Publication, Cambridge University Press 1997), p. 418. The US Government has asked time and again the seabed mining is a freedom of high seas under customary international law. Under this view, the US contended that its national enjoy a right of access to seabed minerals and this right can only be altered by the US acceptance of a different legal regime through the process of conventional or customary international law.

11. Grotius, the Dutch Lawyer who is considered to be the father of international law is regarded as the father of law of the sea as well. His seminal work on the subject, the free seas or *mare liberum* published in 1609, established some of the major concepts in this field. He articulated the principle of the freedom of the sea that the sea should be free and open to use by all countries.


14. US urged that deep seabed mining in a freedom of the high seas under Art. 2 of the High Seas Convention 1958, Art 2 of that Convention provides that every freedom of the high seas must be exercised with reasonable regard to interest of other states on their exercise of the freedom of high seas. The US has placed greater emphasis on reasonableness have arguing that deep-sea bed mining is a reasonable use of the high seas.


20. Ibid p. 1390

21. Ibid p. 1393

22. Ibid-p. 1389

23. Ibid-p. 1389


26. Ibid. Art 3

27. Hugo Cominos, Law of the Sea, (USA Sydney, Ashgate Publication, Dartmouth, Aldershot 2001), p. 38; The Court came to the conclusion that the right of foreign states to extend their warships through straits used for international navigation without previous authorization of a coastal state, provided that this passage is innocent” and see Mc Dougle and Borke, Public order of oceans, 184; See Art. 140 of the Convention (The Territorial Sea and Contiguous Zone 1958), says that “subject to the provisions of this articles ships of all states whether coastal or not, shall enjoy the right of innocent passage through the territorial sea; See Union of Soviet Socialist Republic, United States, Joint statement with attached interpretation rules of international law, governing innocent passage, International Legal Material, 1989, Content Summary, p. 1144.


29. Ibid p.285

30. The assertion of the Group 77 that seabed resources are not subject to unilateral exploitation under the principle of “freedom of high seas”.

31. See 1982 Convention

32. Article 55-75 and relevant provisions of Part XII and XIII.

33. See the provisions of the EEZ, 1982 UNCLOS these aspects of 1982 Law of the Sea Convention that correspond with customary law reflect compromise. This hold true especially for the provisions that establish the boundary or activities upon which coastal states enjoy sovereign rights or jurisdiction and activities that are considered free for all states. As regards such provisions in which the test of the Convention is relatively clear, but customary law is much less so, declaration of states signatures to the Convention may have a particular impact and also see Art 60-65 of 1982 Convention.


37. Dr. Rambe NS, Africa and the international law of the sea, (USA, Nijhoff and Noordott, Alplen, Am Den Rijh, 1980), p. 116. Between 1974 and 1979 alone these were some 20 disputes over cod, anchoresses or tuna and other species between for example, the United Kingdom and Iceland, Morocco and Spain and the United States and Rome; see Osidae E ‘The concept of the patrimonial sea’, Journal of International Law, (Vol. XX, 1975), p. 311.

38. Ibid p.312


46. Ibid-p. 158

47. These duties are spelled out in the Part XII of the Convention, in particular see article 193 [Third Law Conference on the Law of the Sea 1982].

48. The term continental shelf used throughout the Convention did not include with the geographic or geological continental shelf, which was generally a shallow water offshore plain area and which was the nearest landward of three elements of the continental margin. The continental slope and the continental rise were the other two elements.

49. For petroleum and other mineral or biological resources of the seabed, finalization of the continental shelf boundaries will create certainly of jurisdiction for issuing of exploration and exploitation licenses.

50. Corey T. Oliver, Edwin B Firmaga, Christopher L, Bladensly, Richard F, Scott, Sharmer, A William, Cases and Materials on International System (New York, 4th Ed, the Foundation Press Inc, 1995), p. 345. The Truman Proclamation asserting the exclusive jurisdiction of capital state to the mineral resources of continental shelf beyond the territorial sea to claim exclusive rights to fish in water beyond the territorial sea. On Sept 28, 1945, President Harry S. Truman declared the continental shelf to be US government property, say “The Government of United States regards the natural resources of the sub soil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States subject to its jurisdiction and control”. Although Truman used the term continental shelf, he was referring to the entire continental margin, which includes the shelf slope and rise. Truman is statement was a claim of new law was needed to govern the rights and boundaries on the high seas. In 1982, the United Nations stepped on with its Convention on the Law of the Sea; The Truman Proclamation of 1945 is an example of an extension of sovereign rights over resources. The United States proclaimed sovereign rights to the natural resources of the subsoil and seabed of the continental shelf beneath the high seas.

51. International Seabed Authority, Press Release 7th session, Kingston, Jamaica, July 2001 SB/7/05 July 2001. The Truman Declaration was not enough. An
international law was needed to govern the rights and boundaries on the high seas. Fortunately in 1982, the United Nations steeped in with its Convention on the Law of the Sea. Put in force in 1994, the Convention established customary international law was as limiting all coastal countries territorial sovereignty of the sea to 12 nautical miles beyond its shore and maintaining high sea freedom within a 200 nautical miles EEZ. One hundred and thirty seven countries have joined the convention including Russia, the UK, Ireland, India, Australia, New Zealand, Argentina and Brazil.


53. Ibid -p. 826


55. Article 1 of the Geneva Convention on the Continental Shelf 1958, the 1958 United Nations Conference on the Law of the Sea attempted to formulate an agreed legal definition of the continental shelf. This definition contained the criteria of adjacency to the coast and exploitability, which were soon questioned in view of their impressive and open-ended nature. In the late 1960’s oil exploration was moving further and further land and deeper into the bedrock of continental margins. The oceans were exploited as never before. Unlike the definition of continental shelf found in the Law of the Sea Convention 1982 Art 76, the definition in Art. 1 of the Continental Shelf Convention 1958 does not place distance limitations on the outer limits of the shelf. Therefore, under the Continental Shelf Convention, as long as the floor of the high seas adjacent to territorial sea is exploitable it would be treated as part of the continental shelf. An important implication here is that this definition permits states to claim large parts of the deep-sea bed on part of their continental shelf, for example, the US.


57. Ibid- Art 67


60. The proposal that influenced the further development in this regard was as working paper sponsored by Canada, Chile, Iceland, India, Indonesia, Mauritius, Mexico, New Zealand and Norway.


62. Facts of the case: Dispute arose between the Federal Republic of Germany and Denmark and the Federal Republic and the Netherlands concerning the delimitation of the Continental Shelf on the North Sea. By agreements of June 1965 and December 1964 respectively, the boundaries on the vicinity of the coasts had been declared and the court was asked “what principles and rules of international law are applicable to the delimitation of areas of the Continental Shelf in the North Sea” appertaining to each of the parties beyond the coastal boundary already determined. By eleven votes to six the court was of opinion that there was no single method of delimitation that was obligatory and that delimitation should be affected by the agreement. In accordance with equitable principle; see ICJ Report 1969, p. 3 LC Green, *International Law through cases*, (USA, 4\(^{th}\) Ed, Ocean Publications Inc, 1978), p. 482-483. In seeking the basic principle on which this concept of an area national jurisdiction over the seabed and sub soil rests, the Court in its judgment returns to President Truman, his proclamation of Sept 28, 1945, which said the court, has a special status. In its enunciation of the doctrine that a coastal state has an original, natural and exclusive right to the continental shelf of its shores; See Ian Brownlie CBE, QC, FBA, *Principles of Public International Law*, (New York, 5\(^{th}\) Ed, Oxford University Press1999), p.222. See *Continental Shelf Case* (Tunisia Vs/ Libya, 1982, ICJ Rep. 13, *Continental Shelf Libya & Malta*, 1984, ICJ Report.)
63. The content of this proposed with regard redrafting of its text were embodied in Art. 62 of the Informal Single Negotiating Text on May 1975 and see Art 76 of 3rd Law of the Sea 1982. After the informal text ICNT was prepared at UNCLOS in July 1977. Further negotiations continued in UNCLOS on the remaining outstanding issues and seven negotiating groups were established in 1978 to deal with these issues. Negotiating group 6 dealt with the question of outer limits of the continental shelf and related matters. See JS Patil, *Legal Regime of the seabed*, (New Delhi, Deep & Deep Publications, Rajouri Garden, 1981), pp. 30-39.


68. U.N General Assembly Resolution Declaration of Principles Governing the Seabed and Ocean Floor


70. Ambassador Arvid Pardo of Malta proposed CHM status for the deep seabed resources in 1967. The 1982 United Nation Convention on the Law of the Sea (UNCLOS) states that the deep seemed its the CHM, and describes a regime to implement the sharing of the seabed resources, so for the Convention has received 159 signatories and 42 of the sixty ratification on accession required for entry into force.


72. Arvid Parado speeches, 1967,UN; The seabed here referred to is that which is beyond national jurisdiction of coastal states, identified as the "common heritage of mankind." See Declaration of Principles Governing the Seabed and


Kingston, Jamaica 28 July - 8 August 2003
Assembly (AM) SB/9/125; ISA Press Release Ninth Session Kingston, Jamaica 28 July - 7 August 2003
Round-up of Session SB/9/147 August 2003

78. ISA Press Release Seventh Session Kingston, Jamaica 2-13 July 2001
Assembly (AM) SB/7/32 July 2001; ISA Press Release Seventh Session Kingston, Jamaica 2-13 July 2001
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79. ISA Press Release Eighth Session Kingston, Jamaica 5-16 August 2002
Biographical Note SB/8/6/Rev.17 August 2002; ISA Press Release Eighth Session Kingston, Jamaica 5-16 August 2002
Biographical Note SB/8/4; ISA Press Release Eighth Session Kingston, Jamaica 5-16 August 2002
Council (AM) SB/8/57 August 2002 ISA Press Release Eighth Session Kingston, Jamaica 5-16 August 2002
Assembly (AM) SB/8/99 of Secretary-General’s Report $10,509,700 budget to finance the work of the International Seabed Authority in 2003-04 was adopted this morning by the Assembly of the Authority, meeting in Kingston.; ISA Press Release Eighth Session Kingston, Jamaica 5-15 August 2002