UNCLOS Article 82: A Review and the Hurdles to Implementation

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Legal Order in the World’s Oceans: UN Convention on the Law of the Sea 40th Annual Conference of the Center for Oceans Law & Policy
The Continental Shelf Historically

1958 Geneva Continental Shelf Convention
The Continental Shelf

1958 Geneva Continental Shelf Convention

UNCLOS Package
The Continental Shelf

1958 Geneva Continental Shelf Convention

UNCLOS Package

Art. 76-82
Art. 82 Application

Outer Continental Shelf
Impact of Technological Change
Art. 82 Potential Application
Art. 82 Potential Application

beyond 200 nm
UNCLOS Art. 82

Coastal State

Contribution of Payments or In-Kind

UNCLOS State Parties

Distribution to Convention State Parties
Payment Obligation

- Annual payment or contribution in-kind via Authority
- Commence in 6th year of production @ 1% & rise each year until 7%
- Based on all production except that consumed in the operation
- Calculated on value or volume
- Gross royalty
“Collection” Issues

- Domestic legislation as tool to resolve textual ambiguity of terms (*ISA Study 15*)

- Limitations
  - Tax regimes (Norway, UK)
  - Incompatible legislation (e.g. Brazil, resources used for operations)
Domestic legislation (Art. 82 Compatible)

- "resource" - Minimally treated, marketable condition
- "All Production/Volume" - Exclusion of reasonable losses, reinjected gas, production uses
- "Value" - Market value; Transportation & Processing allowance
Entitlement to Funds

- State Parties
- “Equitable sharing criteria”
- Interests & needs of developing States, particularly least developed & landlocked States
“Distribution” Issues

UNCLOS State Parties

Distribution to Convention State Parties

Common Heritage of Mankind?
ISA Role

COUNCIL

Art. 162(2)(o)

ASSEMBLY

Art. 160(2)(f)

“equitable sharing” recommendations

Intra Vires

Art. 160 Regs
State-State Disputes

- Available to State Parties (Art. 291)
- Other entities only as specifically per UNCLOS (Art. 291)
- Can be used to resolve Art. 82 dispute (Arts. 286, 288)
- Binding if used (Art. 296)
ISA-State Disputes

• Art. 187 Criteria

- Excess Jurisdiction Alleged
- State – Authority Dispute
- Activity in the Area
ISA-State Disputes

- ISA immune from legal process (Art. 178)
- No remedy for *ultra vires* regs through UNCLOS (Arts. 187-189)
- Possible advisory opinion (Arts. 159, 191)
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