The protection of the collective interests as a tool to challenge the outer limits of the continental shelf

The extension of the continental shelf beyond 200 nautical miles is carried on at the expense of the international seabed area (hereinafter, the "Area"). The natural resources located in the latter, previously considered as common heritage of mankind, become subject to the sovereign rights of the coastal State.

The coastal State is the only responsible for drawing the outer limits of the continental shelf on the basis of the recommendations issued by the Commission on the Limits and no competence is given to any other party thereon. Challenging the outer limits drawn by a coastal State is not foreseen in the United Nations Convention on the Law of the Sea (hereinafter, "UNCLOS"). UNCLOS only predicts two alternatives: making a revised or a new submission to the Commission.

The delineation of the limits of the continental shelf has not been expressly excluded from the dispute settlement mechanism provided for in Part XV UNCLOS. Therefore, we proceed from the fact that a mechanism for reviewing the recommendations or the outer limits is tenable. The questions that arise are who can initiate the proceedings and on which grounds.

The International Seabed Authority (hereinafter, the "Authority") cannot take legal action against the outer limits of the continental shelf established by a coastal State. Conceiving an Authority which could take legal action against the delineations that are detrimental to its territory and initiate proceedings on behalf of the international community would have been a reasonable measure. The recognition of the legal standing by UNCLOS would have reinforced the protection of the collective interest in the Area.

However, case law has expressly denied this competence. In the case *Delimitation of maritime areas between Canada and France (Saint Pierre et Miquelon,* 10 June 1992*)*, the Court of Arbitration declined to address the delimitation of the continental shelf beyond 200 nautical miles since such pronouncement would concern both States and the international community as a whole, and the latter was not represented in the proceedings.

Another option would be granting individual States the competence to defend collective interests. According to Article 48(1)(b) of the *Articles on the Responsibility of States for Internationally Wrongful Acts*, the State may invoke the responsibility of another State if the obligation breached is owed to the international community as a whole. This idea contains elements of an *actio popularis*.

The fault may not lie solely with the offending States but with the Commission on the Limits if the recommendations are not in compliance with UNCLOS. By validating inaccurate limits, the interests of the international community are harmed.

The competence of the States to take legal action to protect the marine space reserved for mankind is a logical step, otherwise collective interests become meaningless. Limiting the scope of the Area by the extension of the continental shelf results in a lower economic potential to be used by the States. On the basis of these insights, States could defend the common interest and act in their own interest at once.

In short, this is a matter of global commons. UNCLOS negotiators missed the opportunity to create an international entity responsible for initiating proceedings on behalf of the international community. The future contribution will argue why and how opening the dispute settlement mechanism to third States legal action is a necessary step in order to protect common heritage of mankind.

The methodology will involve the analysis of case law, legal doctrine and interpretations of UNCLOS to set the framework where an *actio popularis* could play a role. From the initial rejection of the popular action (ICJ, *South-West Africa* cases, 21 December 1962) to the current thinking on a mechanism for reviewing the outer limits of the continental shelf, we will review the paradigmatic cases and the relationship between the international community, on one side, and the offending States and the Commission on the Limits, on the other side. Great progress has been made thanks to the recognition of collective interest. This is the moment to articulate this factual situation with reality.

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