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Daniel Margolies. "Jurisdiction in Offshore Submerged Lands and the Significance of the Truman Proclamation in Postwar U.S. Foreign Policy." *Diplomatic History* 44:3 (June 2020): 447–465.

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Daniel Margolies's article begins with a valid observation: while the declaration on the continental shelf made by President Harry S. Truman in 1945 extended the territory under U.S. control in ways that are only comparable to the Louisiana Purchase, it is rarely if ever mentioned in textbooks on the history of US foreign relations. This is a further example of the field's deplorable blind spot regarding international law, as every international law textbook has a section on the law of the sea in which the Truman Declaration will be cited in the section on maritime delimitation. Margolies further argues that the way in which the continental shelf concept was introduced and established in the 1940s and 50s holds wider lessons for international politics and history. That point can indeed be made – it is quite something to look at a map of the world and in an instant claim substantial parts of it for your nation, even if these parts are under water.

Until 1945, the continental shelf had been a geological concept, describing the submerged but relatively shallow continuation of a continental landmass until it meets the continental margin, the beginning of a steep descent into the abyssal plain under the deep ocean. The extent and geology of the continental shelf is different on every coastline: in the case of the United States, the continental shelf is less extensive on the Pacific side but stretches out far into the Atlantic Ocean and the Gulf of Mexico. The United States pioneered the idea that this part of the sea bed, which lies far outside the traditional three mile limit for the territorial sea, should be exclusively controlled and exploited by the coastal state. There were clear rules guaranteeing freedom of navigation in the high seas, whether there was a continental shelf beneath them or not, but the United States developed the idea that the sea level and the sea bed beneath it could be governed by two different legal regimes. This represented a radical departure from existing thinking on maritime boundaries.

On 28 September 1945 Truman declared that "the Government of the United States regards the natural resources of the subsoil 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. (...)The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected."¹

It is indeed remarkable that both the coastal state's right to the exploitation of the continental shelf and the separation of sea level and sea bed into separate zones entered the corpus of international law almost immediately, and by 1958 formed key parts of the UN Convention on the Continental Shelf. So why did it work, and why were the core ideas of the declaration (namely that states are entitled to the control and exploitation of maritime zones far beyond currently accepted limits, and that the status of the sea level and the sea bed can differ) so swiftly accepted as international law?

¹ Proclamation by the President with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, 28 September 1945, *The American Journal of International Law* 40:1, Supplement: Official Documents (January 1946): 45–48.

Margolies concludes that at that historic moment, the United States enjoyed a position of pure, unadulterated world domination and could make rules and grab territories as it pleased: “What mattered in 1945, in other words, is what U.S. policymakers asserted. The redefinition of offshore space was what they pronounced them to be. Legal fictions allowed policymakers to conceive of a particularistic expansion of U.S. jurisdictional infrastructure and to produce the space for its articulation” (464). In other words, U.S. policymakers could create new rights out of legal fiction, and secure their acceptance by the international community by simply demanding it.

The implications of this conclusion are clear: rules of international law become mere expressions of the interests and ambitions of whoever happens to be the dominant state at any given time. That, however, is not how international law usually works, and arguably this is also not what happened here. When telling the story, Margolies makes a series of curious omissions. First, he does not mention that the desire to go far beyond the currently accepted three mile limit for the territorial sea did not come out of the blue. The topic had been under discussion by a Committee of Experts regarding the law of the sea established by the League of Nations Assembly in 1924. Forty-four states attended the subsequent Hague Codification Conference in 1930, also convened by the League of Nations. The delegates failed to produce a treaty on the laws of sea, but it was clear that there was a strong tendency in favour of expanding maritime jurisdictions.² The Second World War had put an end to further codification conferences and indeed the League itself, but when the United States raised the issue of the extension of maritime boundaries just after the end of the war, states were unlikely to complain about the somewhat dubious use of geological concepts but embrace the opportunity to get exclusive control over rich fishing grounds and mineral reserves. The Truman Declaration served as the starting shot for a development desired by many states, namely the development of a large maritime zone where the coastal state has exclusive sovereign rights for the exploitation and control of it but not sovereignty in the way it enjoys in its territorial waters. Thus, the declaration on the continental shelf led directly to what is now known as the 200-mile “Exclusive Economic Zone.” The added attraction of offshore drilling on the continental shelf was that even if a state did not have the required technology, it could still earn a substantial income by selling licenses to foreign companies.

That is why the subsequent codification efforts in the first round of the United Nations Convention of the law of the Sea emerged with a rather surprising definition of the continental shelf based on its exploitability, with Article 1 of the 1958 convention on the Continental Shelf delimiting the shelf “to the seabed and subsoil 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 limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas” or “to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.”³ The latter idea that every island should have a continental shelf as well would not have occurred to a geologist, but it made eminent political and economic sense for states owning islands. To clarify the question as to just how the ideas of the Truman declaration became accepted as law, these codification conferences are of crucial importance. It is therefore unfortunate that the author has left the United Nations Law of the Sea (UNCLOS) conferences outside of the scope of his article since it makes it difficult for non-lawyers to understand what is happening here. The author also does not mention the North Sea continental shelf cases decided by the International Court of Justice a decade later where the court had to rule whether all provisions in the convention signed only ten years earlier had already become customary law and thus binding not only on Denmark and the Netherlands, which had signed the convention, but also for West Germany, which had not.⁴ This omission means the entire question of just how the

² Manley O. Hudson, The First Conference for the Codification of International Law, *The American Journal of International Law* 24:3 (July 1930): 447-466.

³ Convention on the Continental Shelf, Done at Geneva on 29 April 1958, https://legal.un.org/ilc/texts/instruments/english/conventions/8_1_1958_continental_shelf.pdf.

⁴ Wolfgang Friedmann, ‘The North Sea Continental Shelf Cases – A Critique’, *American Journal of International Law* 64 (1970), 229; L.D.M. Nelson, ‘The North Sea Continental Shelf Cases and Law-Making Conventions’, *The Modern Law Review* 35:1 (1972), 52-56.

process of norm creation works is barely touched, bar a short reference to Michael Scharf's "Grotian moments" concept.⁵ But this "Grotian moment" that transformed international law depended on solid preparation and universally shared interests in expanding oil production and fishing rights, and even transcended the ideological battles of the day.

In addition to its point on the impact of the Truman declaration, the article claims to have new insights into its genesis. To his credit, the author seems to have done archival work to establish his hypothesis that it was mainly driven by the desire to expand oil production. On the other hand this is not a particularly surprising finding given that this is the motivation stated in the first sentence of the Truman Declaration. Fifty years ago, Robert B. Krueger came to the same conclusion, but also found an interesting dynamic between the states and the federal government: Washington found itself under pressure to act since states had shown great eagerness to expand their own state boundaries into the ocean beyond the three mile limit in order to be able to license more offshore drilling projects.⁶ Sadly, this aspect is not discussed by Margolies, nor is the article cited. Even more baffling is the omission of an article by the great Donald Cameron Watt covering the precise questions of the origins and impact of the Truman Declaration and offering a focus on the U.S.-UK dynamic.⁷ It is not clear how an article on the exact topic by a well-known and highly respected scholar of diplomatic history could end up being overlooked.

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In conclusion, this article feels like a missed opportunity. In discussing the ways in which the League of Nation's preparatory work and U.S. unilateralism linked up and exploring the ways in which the declaration of one state can end up having huge significance for an entire field of international law, the author laid the groundwork for a great article which could at the same time could have explored the broader international context of the U.S.-UK dynamic and the beginning Cold War and the domestic legal battles with states which were unwilling to wait until Washington had summoned the courage to challenge the three mile limit. However, since all these elements are either barely touched upon or omitted, the story appears to be that of an utterly dominant United States making global rules on a whim, with the implication that power politics enjoys a vast remit in the field of international law. Yet, the ways in which international law and power politics interact are more complicated, and there is an entire field of scholars from various disciplines committed to understanding these dynamics.⁸

With none of their work considered, and some of the key publications on the Truman declaration and its impact not discussed at all, what is left is an article struggling to explain what it describes, or turning these observations into a real argument. This is especially unfortunate because the original idea of lifting the Truman declaration from its little niche in maritime boundary delimitation and using it to highlight norm setting processes in international law is a rather brilliant one. One wonders why the peer reviewers of the article did not call attention to the existing literature on the topic that should have been addressed.

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⁵ Chapter 5: "The Truman Proclamation on the Continental Shelf" in Michael P. Scharf, *Customary International Law in Times of Fundamental Change: Recognizing Grotian Moments* (New York: Cambridge University Press, 2013), 107-122.

⁶ Robert B. Krueger, "The Background of the Doctrine of the Continental Shelf and the Outer Continental Shelf Lands Act," *National Resources Journal* 19:3 (1970), <https://digitalrepository.unm.edu/nrj/vol10/iss3/2>.

⁷ Donald Cameron Watt, "First Steps in the Enclosure of the Oceans: The Origins of Truman's Proclamation on the Resources of the Continental Shelf, 28 September 1945," *Marine Policy* 3:3 (July 1979): 211-224.

⁸ A foundational piece of work that has shaped much of the research in this field is Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52:4 (1998): 887-917.

2010 thesis prize. It was published with Palgrave Macmillan under the title *Power, Law and the End of Privateering* (2014). He is the chairman of the European Society of International Law's interest group History of International Law. He has taught at the LSE, Christ Church and Pembroke College Oxford, the University of Southern Denmark and currently Copenhagen Business School.