

Commission on the Limits of the Continental Shelf

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¹ The views expressed in this paper are strictly those of the author and in no way represent or reflect the views or position of any institution or government.

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I. Introduction

The Commission on the Limits of the Continental Shelf (hereinafter CLCS) is one of the three institutions created under the 1982 United Nations Convention on the Law of the Sea (hereinafter the Convention).² The Commission has been assigned to play mainly two significant roles in the establishment of the outer limits of the continental shelf beyond 200 nautical miles of a Coastal State.

First, the CLCS is tasked to evaluate the claim of a Coastal State for an area of the continental shelf beyond 200 nautical miles. Second, the CLCS may, upon request, also provide scientific and technical advice to the Coastal State in its preparation of its submission of the claim.

² The other two institutions are the International Tribunal for the Law of the Sea and the International Seabed Authority. United Nations Convention on the Law of the Sea, UNTS Vol. 1833 No. 31363.

Following the entry into force of the Convention in November 1996, the first elections were held for the 21 members of the CLCS in March 1997. The CLCS held its first session in June 1997. During the first year, the CLCS adopted the first version of its Rules of Procedure.³ Since their adoption, the Rules of Procedure have undergone several revisions. The other significant document which the CLCS drafted and completed were the Scientific and Technical Guidelines (hereinafter Guidelines).⁴ They were adopted on 13 May 2009. In considering which date to use in order to extend the ten-year deadline for filing submissions with the CLCS, the Meeting of States Parties decided to refer to the date of adoption of the Guidelines, namely,

“for a State for which the Convention entered into force before 13 May 1999, the date of commencement of the 10-year time period for making submissions to the Commission is 13 May 1999.”⁵

The Guidelines contain the Commission’s “authoritative interpretation of Article 76.”⁶ One reason why many states felt the need for the

³ Doc. CLCS/40/Rev.1 contains the latest edition of the Rules of Procedure as of 11 April 2008. It contains Annexes I and II which were adopted during the 4th Sess., held from 31 August to 4 September 1998, and Annex III, which was adopted during the 13th Sess., held from 26 to 30 April 2004. Annex III replaced the *modus operandi* of the Commission (Doc. CLCS/L.3 of 12 September 1997) and the internal procedure of the Sub-commission of the Commission on the Limits of the Continental Shelf (Doc. CLCS/L.12 of 25 May 2001).

⁴ The Guidelines were adopted by the Commission on 13 May 1999, Doc. CLCS/11.

⁵ <http://www.un.org/Depts/los/clcs_new/issues_ten_years.htm>. When the CLCS was established in 1997, the most thorny issue many Coastal States were faced with was the provision contained in article 4 of Annex II of the Convention which provides that a Coastal State intending to establish the outer limits of its continental shelf beyond 200 nautical miles is obligated to submit particulars of such limits to the CLCS along with supporting scientific and technical data as soon as possible but in any case within ten years of the entry into force of the Convention for that state. Aware of the high costs involved and the advanced level of science and technology required to prepare submissions in accordance with article 76, proposals were made at the Meeting of States Parties to extend the deadline. The Meeting of States Parties decided to extend the deadline, see the Decision regarding the date of commencement of the ten-year period for making submissions to the CLCS set out in article 4 of Annex II to the United Nations Convention on the Law of the Sea (29 May 2001), Doc. SPLOS/72.

deadline to be extended was because they wanted comprehensive scientific and technical guidance from the CLCS before they could adequately prepare their submissions.

Out of the 51 submissions made to the CLCS since its establishment in 1997,⁷ evaluation has been completed and recommendations have been made on nine submissions. As had been predicted by many observers, there was a sharp increase in the workload of the CLCS in the months before the deadline of 13 May 2009.⁸ In addition to the 42 claims currently undergoing evaluation at various stages, the following submissions will also add to the workload of the CLCS,

- (a) Up to 44 additional submissions from states that have submitted preliminary information to the Secretary-General pursuant to the Decision of the Meeting of States Parties contained in Document SPLOS/183;⁹
- (b) Submissions from states that have become parties to the Convention less than ten years ago;
- (c) Submissions from states that may become parties in the future and could therefore make submissions to the Commission within 10 years of the entry into force of the Convention;
- (d) Additional submissions from states that have thus far made only partial submissions.¹⁰

This article takes stock of the law and practice of the CLCS from 1997 to 2009 and includes comments and analysis of its procedure and of the completed submissions as of 2009.

⁶ S. Suarez, *The Outer Limits of the Continental Shelf - Legal Aspects of their Establishment*, 2008, 125.

⁷ <http://www.un.org/Depts/los/clcs_new/commission_submissions.htm>, United Nations Division for Ocean Affairs and the Law of the Sea, "Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982."

⁸ <http://www.un.org/Depts/los/clcs_new/commission_submissions.htm>, List of submissions to the CLCS as of 30 October 2009.

⁹ <http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm>, Preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles.

¹⁰ <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/304/19/PDF/N1030419.pdf?OpenElement>>, para. 26, Issues related to the workload of the CLCS, Doc. SPLOS/208 of 5 April 2010.

II. Mandate of the Commission on the Limits of the Continental Shelf

The CLCS has a two-pronged mandate under article 3 of Annex II of the Convention:

1. To consider the data and other material submitted by Coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles and to make recommendations; and
2. To provide scientific and technical advice, if requested by the Coastal State concerned during the preparation of the submission.

The first task of the CLCS is to consider the data and other materials submitted to it by the Coastal States concerning the outer limits of the continental shelf and to make recommendations. The methods, data, and other material, as well as analysis, which were undertaken by the Coastal State in establishing its outer limits shall be evaluated as to whether they are in accordance with article 76 of the Convention. The CLCS does not have a direct mandate to establish the outer limits. The right and the power to establish the outer limits belong to the Coastal State. The recommendatory nature of the first task is therefore an acknowledgement of the Coastal State's sovereign right. Though technically it is not part of the territory of a Coastal State, the continental shelf possesses characteristics which are similar to those of a territory. Para. 3 of article 77 of the Convention confirms this,

“The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.”

The second task of the CLCS refers to the advisory role it could play during the preparation of the submission by the Coastal State. The preparation of the Coastal State of its submission includes its initial determination of the outer limits of the continental shelf. At the time of preparation of its submission, the Coastal State may request the CLCS for a scientific and technical advice.

While the nature of the work of the CLCS is scientific and technical, nevertheless, one should accentuate the inherently legal nature of its work. In a previous work, the present author described the nature of the work of determining the outer limits of the continental shelf under article 76 as follows,

“(I)t is in fact difficult to maintain the illusion of a boundary between legal interpretation on the one hand and scientific/technical interpretation on the other. Article 76, a legal provision, is replete with scientific terms and formulae that can be properly understood and implemented via the application of science and technology, which is to say, by scientists and technical experts. At the same time, scientists and technical experts cannot sustain a credible application of Article 76 by relying purely upon science ...”¹¹

The two-pronged mandate of the CLCS is a result of the distinctive role that the delegates at the third United Nations Conference on the Law of the Sea (UNCLOS III) envisioned for it. Early on, the delegates at UNCLOS III acknowledged that Coastal States have sovereign rights over their continental shelves, including over areas beyond 200 nautical miles. There was a realization, however, that the establishment of the outer limits of the continental shelf beyond 200 nautical miles needs science and technology for its proper implementation. The goal was therefore to establish procedures that would satisfy the two concerns.

With respect to the first task, the delegates debated whether to give the CLCS the power to determine the outer limits or grant it powers that were more restrictive. In the final text of article 76 the delegates opted to give the CLCS the authority to evaluate and make recommendations on the particulars, data and other materials submitted by a Coastal State concerning the outer limits. To ensure that the recommendations are regarded by the Coastal State, the Convention has placed a further condition: for the outer limits to be final and binding on the Coastal State, they must be determined by the Coastal State on the basis of the recommendations of the CLCS.

This formulation, in the view of the present author, complements and respects the legal status of the continental shelf, which, earlier in this article, was described as possessing characteristics similar to those of a territory. At the same time it assures the international community that a procedure is in place to evaluate the scientific and technical aspects of claims of a Coastal State.

¹¹ Suarez, see note 6, 132.

III. Membership

The 21 members of the CLCS must be experts in the field of geology, geophysics or hydrography (article 2 para. 1 of Annex II of the Convention). The composition of the CLCS gives due regard to the need to ensure equitable geographical representation. The Convention requires that at least three members come from each geographical region.¹² Except for the first Commission (1997-2002), this requirement had been observed in practice.¹³ Members serve for a period of five years and may be re-elected.¹⁴ In practice, some members of the CLCS have been re-elected more than once.¹⁵ Almost half of the membership of the CLCS is serving their third term.¹⁶ A few are on their second term.¹⁷ This means that a significant number of Commissioners who participated and took the lead in drafting all important documents the CLCS relies on to implement its tasks under article 76 and Annex II of the Convention, namely, the Scientific and Technical Guidelines and the Rules of Procedure, continue to be active. These Commissioners are also experienced in testing and applying the formulae and rules of article 76 in relation to specific submissions.

¹² Article 2 para. 3 of Annex II of the Convention. Report of the 6th Mtg. of States Parties, Doc. SPLOS/20 of 20 March 1997; para. 12.

¹³ Eastern Europe decided not to fill the third seat in the first Commission. See Doc. SPLOS/20, para. 13, which recorded the decision of the Mtg. of States Parties to give the extra seat to the Western European and Other States Group on the proviso that such was not to be considered a precedent for future elections.

¹⁴ Para. 4, Annex II of the Convention, see note 2.

¹⁵ <http://www.un.org/Depts/los/clcs_new/commission_members.htm#Members>, list of the current members of the CLCS. Compare with <http://www.un.org/Depts/los/clcs_new/commission_members_1997_2002.htm>, list of past membership.

¹⁶ Albuquerque, Alexandre Tagore Medeiros de (Argentina); Astiz, Osvaldo Pedro (Brazil); Awosika, Lawrence Folajimi (Nigeria); Brekke, Harald (Norway); Carrera Hurtado, Galo (Mexico); Croker, Peter F. (Ireland); Kazmin, Yuri Borisovitch (Russian Federation); Jaafar, Abu Bakar (Malaysia); Lu, Wenzheng (China); Park, Yong-Ahn (Korea).

¹⁷ Pimentel, Fernando Manuel Maia (Portugal) and Symonds, Philip Alexander (Australia).

IV. Expenses of the Members of the CLCS and Issues Relating to the Workload

The state which nominated the member is responsible for his/her remuneration and payment of expenses in the performance of the work.¹⁸ In practice, some states are not able to meet this obligation. Some states only include in their budgets the expenses relating to the attendance of the sessions, but exclude the work that members have to undertake at the Sub-commission level. At its 55th session in October 2000, the United Nations General Assembly approved the request of the Tenth Meeting of States Parties of the Convention and requested the Secretary-General to establish a voluntary trust fund to meet the costs of participation in the meetings of the CLCS of members from developing countries.¹⁹ The fund is administered by the United Nations Division for Ocean Affairs and the Law of the Sea.²⁰

Notwithstanding the trust fund, financing the remuneration and expenses of the work of the members of the CLCS remains an extremely critical issue in light of the workload of the CLCS. With normally only three Sub-commissions functioning at the same time, the CLCS estimated that it would finish consideration of the first 51 submissions only in the year 2030.²¹ Discussion on how to address the problem in a sustainable manner continues. Among the solutions proposed, two ideas appear to be sensible, and in the long-term, sustainable. First, the proposal to include the payment of expenses and emoluments of the members of the CLCS in the regular budget of the United Nations.²² This is the proposal favored by the CLCS.²³ The second proposal is to require all parties to the Convention to contribute to the expenses of the CLCS. The system of assessed contributions used in maintaining the International Tribunal for the Law of the Sea is considered as a model.

¹⁸ Para. 5 of article 2 of Annex II of the Convention, see note 2.

¹⁹ A/RES/55/7 of 30 October 2000, op. para. 20.

²⁰ As of the end of July 2009, the trust fund had a balance of US\$ 432,000, para. 139, Doc. CLCS/64, 28.

²¹ Slide 15, Presentation of the CLCS to the Bureau of the MSP. Concerning the workload of the Commission, 1 September 2009, <http://www.un.org/Depts/los/clcs_new/workload/presentation_to_bureau_msp_2009.pdf>.

²² Suarez, see note 6, 92.

²³ Statement by the Chairman of the CLCS on the progress of work in the Commission – 17th Sess., Doc. CLCS/50, 14-15.

Both proposals are considered by the Meeting of States Parties via an Informal Working Group.²⁴

In economic terms the international community has an interest in the determination of the outer limits of the continental shelves of all Coastal States as this would be the basis for determining the area of the international seabed. Since the international seabed area legally speaking belongs to the common heritage of mankind, the international community has a share in the future income that would be derived from the exploitation of the resources in the international seabed area. One should also point out that a portion of the income derived by the respective Coastal State from its exploitation activities in the area of its continental shelf beyond 200 nautical miles must be shared with the international community (article 82 of the Convention). To share the administrative costs of determining the outer limits of the continental shelves under national jurisdictions would therefore make economic sense.

In addition to the legal and economic argument, either proposal is faithful to the international nature of the legal procedure agreed upon by the negotiators in the establishment of the outer limits of the continental shelf. The negotiators at UNCLOS III intentionally designed a procedure which involves the collective work of the Coastal State and the international community, represented by the CLCS. Notwithstanding the soundness of both proposals, they are admittedly not in compliance with the Convention. For either proposal to proceed, the Convention must be amended. Concerning the first proposal, it must be pointed out that there exist already precedents in the UN practice approving the inclusion of the budget of a treaty organ in the budget of the UN.²⁵ Given the lengthy negotiations at UNCLOS III, it is understandable that any proposal to amend the Convention is not favored. However, the problem is a real one and has already affected the work of the CLCS. Tangible solutions must therefore be considered even if they involve the rather complicated procedure of amendment of the Convention.

Another proposal which should be considered by the Meeting of States Parties to the Convention is to impose administrative fees on the Coastal State making the submission to the CLCS. The fees could pay

²⁴ <http://www.un.org/Depts/los/clcs_new/workload/tto_letter.pdf>, Letter dated 15 March 2010 from Mr. Eden Charles, Head of the Informal Working Group to the Director of UNDOALOS.

²⁵ Suarez, see note 6, 92.

for items other than “expenses” of the Commissioners while performing work for the CLCS during regular sessions; this may include for example remuneration for the work in a Sub-commission during intersessional periods. The term “expenses” could be restricted to refer to the cost of accommodation and meals incurred by a member of the CLCS while in the UN Headquarters in New York. In the understanding of the present author it is current practice, that some states only pay for the expenses of the member they nominated during regular sessions.²⁶

The Coastal State stands to benefit the most from a determination of the outer limits of a continental shelf beyond 200 nautical miles. Submission fees should therefore be treated as part of the Coastal State’s costs in preparing and completing the procedure of fixing the outer limits of the continental shelf. The Meeting of States Parties would be the ideal forum to deal with this proposal. Consideration of this proposal does not necessarily imply an amendment of the Convention. An understanding could be arrived at among the Parties to the Convention for submitting states to pay for the administrative costs of evaluating their claims. States which nominated the respective member of the Commission shall continue to defray the expenses incurred as provided for under the Convention.

V. Procedures

1. Submission

Unless otherwise decided by the CLCS, it shall function by way of Sub-commissions composed of seven members. Hence, each claim for an extended continental shelf is evaluated by a Sub-commission.²⁷ Under the Rules of Procedure, other members of the CLCS are not precluded from examining the submission, its materials, additional presentations, written materials, data, and any written communication submitted by the Coastal State, provided, however, that their confidentiality shall be observed.²⁸ Further, other members of the CLCS may also discuss the submission among themselves.²⁹

²⁶ Ibid., 90.

²⁷ Article 5, Annex II, Convention, see note 2.

²⁸ Rule 44 bis, Rules of Procedure, CLCS, see note 3.

²⁹ Rule 44 bis para. 3, Rules of Procedure, CLCS, see note 3.

The actual composition of each Sub-commission depends on the specific elements of a submission,³⁰ as well as, as far as possible, the need to ensure a scientific and geographical balance.³¹ Under the Convention, members of the CLCS who have provided advice to the Coastal State during its preparation are not allowed to become members of the Sub-commission.³² In its Rules of Procedure, the CLCS would also exclude from the Sub-commission members “who may, for other reasons, be perceived to have a conflict of interest regarding the submission, e.g. members who are nationals of a State which may have a dispute or unresolved border with the coastal State.”³³ With the exception of the submission of the Russian Federation,³⁴ the procedure in establishing a Sub-commission has been as follows,

“(T)he nomination of members of the sub-commission would be conducted in two rounds: (a) during the first round of nominations, each group of members from the same region would nominate one member to the sub-commission to satisfy the requirement of geographical balance while at the same time attempting to maintain a scientific balance; (b) the Chairman would coordinate that process by way of informal consultations; and (c) the names of those nominated would then be announced to the Commission and the nominees deemed appointed members of the sub-commission by acclamation.

(I)n a separate, second round of nominations to be conducted after the announcement of the results of the first round, each regional group might nominate one further member, taking into account the particular scientific skills required for a specific submission and the composition of the sub-commission. Should the total number of members from both rounds exceed seven, the Commission would undertake consultations as to how to appoint the required number of members from the second round of nominations.”³⁵

The procedure agreed by the CLCS reveals the importance it places on maintaining a geographical balance, on the one hand, and scientific

³⁰ Ibid.

³¹ Rule 42 para. 1 lit. c, Rules of Procedure, CLCS, see note 3.

³² Ibid.

³³ Rule 42 para. 1 lit. b, Rules of Procedure, CLCS, see note 3.

³⁴ The members of the Sub-commission in the Russian submission were elected by consensus.

³⁵ Statement by the Chairman of the CLCS on the progress of work in the Commission – 14th Sess., Doc. CLCS/42, paras 19- 20.

and technical competence, on the other. The procedure, however, does give the impression that geographical balance is given primary significance over scientific requirements. The members after all make the selection not as individuals but always through their regional groups. On the other hand, the second round of selection, which is a separate round, does require members to make a further selection taking into account the scientific requirements of a particular submission. In a previous work, the present author took the view that “(t)he objectivity of a technical and scientific expert body rests not only on the scientific expertise of its members but also on its equitable geographical composition. In this context, equitable geographical representation becomes a tool of neutrality and objectivity.”³⁶

It should also be underlined that other members of the Commission have the opportunity to participate in the work of the Sub-commission as advisers. Section 10 para. 2 of Annex III to the Rules of Procedure, provides,

“If necessary, the sub-commission may request the advice of other members of the Commission and/or, on behalf of the Commission, request the advice of a specialist in accordance with rule 57, and/or the cooperation of relevant international organizations, in accordance with rule 56.”

The Sub-commissions, in the following completed submissions, requested the advice of another member of the Commission, taking the total number of members participating in their work to eight: Brazil,³⁷ Australia,³⁸ Ireland,³⁹ and Norway.⁴⁰

What happens when some of the members of the Sub-commission are not re-elected and therefore become ineligible to continue working in the Sub-commission? This scenario occurred in the first submission considered by the CLCS, the Russian submission. Two of the members of the Sub-commission were not re-elected for a second term: Mr. Karl Hinz of Germany and Mr. Ian Lamont of New Zealand. The CLCS decided to invite them as experts.

³⁶ Suarez, see note 6, 87.

³⁷ Doc. CLCS/42, 5, para. 24, see note 35.

³⁸ Statement by the Chairman of the CLCS on the progress of work in the Commission – 15th Sess., Doc. CLCS/44, para. 31, 6.

³⁹ Statement by the Chairman of the CLCS on the progress of work in the Commission – 16th Sess., Doc. CLCS/48, para. 29, 7.

⁴⁰ Statement by the Chairman of the CLCS on the progress of work in the Commission – 19th Sess., Doc. CLCS/54, para. 51, 11.

The Sub-commission's evaluation is undertaken in two stages. First, it is required to conduct an initial examination within a period of not more than a week.⁴¹ During the initial examination, the Sub-commission will conduct a preliminary analysis of certain issues, including a determination whether the Coastal State's claim satisfies the test of apurtenance, and an estimate of the time required by it to review all the data and prepare its recommendations to the Commission.⁴² At the initial examination, information concerning any disputes related to the submission shall also be considered and the Sub-commission, if necessary, shall take action thereto.

During the initial examination, clarifications may be sought from the representatives of the Coastal State in the form of written questions and answers. The written communication may be combined with consultations between national experts when they are present at the UN Headquarters in New York, and the members of the Sub-commission. The clarification may also be in the form of presentations and/or additional materials submitted through the Secretariat.⁴³

The second stage of evaluation by the Sub-commission is the main scientific and technical examination. The items to be considered at the main examination are based on the Scientific and Technical Guidelines and are enumerated in Section V para. 9 of the *Modus Operandi* for the consideration of a submission made to the CLCS.

A submission is evaluated in private by the Sub-commission. This means that there will be "(no) records of the oral deliberations and personal notes distributed among members of the sub-commission shall be

⁴¹ Section III, para. 8, Annex III, Rules of Procedure, CLCS, see note 3.

⁴² Section III, para. 5, Annex III, Rules of Procedure, CLCS, see note 3. Other issues that will be considered at the initial examination are (b) Which portions of the outer limits of the continental shelf are determined by each of the formulae and constraint lines provided for in article 76 of the Convention and the Statement of Understanding; (b bis) Whether appropriate combinations of foot of the continental slope points and constraint lines have been used; (c) If the construction of the outer limits contains straight lines not longer than 60 M; (d) If the Sub-commission intends to recommend that the advice of specialists, in accordance with rule 57, or that the cooperation of relevant international organizations, in accordance with rule 56, be sought.

⁴³ Section III, para. 6.3, Annex III, Rules of Procedure, CLCS, see note 3.

disclosed to other members of the Commission who are not members of the sub-commission.”⁴⁴

During the period of evaluation, the Coastal State has opportunities to interact with the Sub-commission. One occasion is when the Sub-commission determines that it needs additional data, information or clarification from the Coastal State.⁴⁵ Also, at an advanced stage of the examination, the Sub-commission shall invite the delegation of the Coastal State to meetings at which “it shall provide comprehensive presentation of its views and general conclusions arising from the examination of part or all of the submissions.”⁴⁶ The printed format and electronic copies of the presentations made shall be made available to the Coastal State.⁴⁷ During such meetings, the Coastal State will have the opportunity to respond to the presentations made by the Sub-commission.⁴⁸

At its 18th session, the CLCS allowed five Sub-commissions to function simultaneously. The members of the CLCS took note of the difficulties encountered and decided by consensus to allow only three Sub-commissions to conduct examinations at the same time.⁴⁹ Exceptions were made in certain submissions.⁵⁰ After meetings at an advanced stage of the examination have taken place, the Sub-commission shall prepare its recommendations for consideration of the entire CLCS.⁵¹

Under Rule 53 para. 1 of the Rules of Procedure, the “Commission shall consider and approve or amend the recommendations prepared by the sub-commission.” In approving the recommendations, the Commission “shall make every effort to reach agreement on substantive matters by way of consensus and there shall be no voting on such matters until all efforts to achieve consensus have been exhausted.”⁵²

⁴⁴ Rule 44 bis para. 4, Rules of Procedure CLCS, see note 3.

⁴⁵ Section IV, para. 10.1, Annex III, *ibid.*, see note 3.

⁴⁶ Section IV, para. 10.3, Annex III, *ibid.*, see note 3.

⁴⁷ Section IV, para. 10.4, Annex III, *ibid.*, see note 3.

⁴⁸ *Ibid.*

⁴⁹ Statement by the Chairman of the CLCS – 18th Sess., Doc. CLCS/52, 8, para. 38.

⁵⁰ The CLCS made exceptions to Mexico, see Statement by the Chairman of the CLCS on the progress of work in the Commission – 20th Sess., Doc. CLCS/58 and Indonesia, Statement by the Chairman of the CLCS on the progress of work in the Commission – 23rd Sess., CLCS/62.

⁵¹ Section IV, para. 10.5, Annex III, Rules of Procedure CLCS, see note 3.

⁵² Rule 35 para. 2, *ibid.*, see note 3.

The recommendations of the Commission respecting the outer limits of the continental shelf shall be in writing and submitted to the Coastal State and to the Secretary-General.⁵³ If the Coastal State does not agree with the recommendations of the CLCS, it has the option to make a new submission or revise its submission.⁵⁴

2. Advice to Coastal States

Advice to the Coastal State in the preparation of its submission is not automatically provided by the members of the CLCS. To implement article 3 para. 1 (b) of Annex II of the Convention, the CLCS has established a standing subsidiary body composed of five members who upon request could provide a list of proposed members being able to provide advice. The main factors in determining who among the members could be proposed are the technical and scientific particulars of the request.⁵⁵ The CLCS has limited the maximum number of members who could provide advice in each request to three. The members who provide advice to a Coastal State are not compelled to disclose the substance of the advice given. However, they are required under the Rules of Procedure to submit to the CLCS a report outlining their activities.⁵⁶ The Coastal State also has to disclose the names of the members of the CLCS who provided advice during the preparation of its submission.⁵⁷ In practice, the Coastal State making a submission reveals the name(s) of the members of the CLCS who provided advice at the time of its first presentation of its outer limits before the plenary of the Commission.

3. Resort to Experts and other Technical and Scientific Organizations

In order to assist the CLCS in discharging the above mentioned functions, it is noteworthy to point out that the Convention authorizes it to cooperate, to the extent considered necessary and useful, with the fol-

⁵³ Rule 53 para. 3, *ibid.*, see note 3.

⁵⁴ Article 8, Annex II, Convention, see note 2; Rule 53 para. 4, Rules of Procedure CLCS, see note 3.

⁵⁵ Rule 55 para. 2, Rules of Procedure CLCS, see note 3.

⁵⁶ Rule 55 para. 5, *ibid.*, see note 3.

⁵⁷ Rule 45 para. b, *ibid.*, see note 3.

lowing organizations: Intergovernmental Oceanographic Commission of the UNESCO, the International Hydrographic Organization and other competent international organizations with a view to exchanging scientific and technical information.⁵⁸ In the submission of the Russian Federation, for example, some members of the Sub-commission visited the Lamont-Doherty Earth Observatory in Palisades, New York, to examine “the SCICEX-1999 data in the Ocean Drilling Program Data Bank in order to review recent data containing several seismic tracklines and multi-channel seismic and swath bathymetry data.”⁵⁹

4. Participation of Coastal States Representatives in the Proceedings

Article 5 of Annex II of the Convention provides,

“The coastal State which has made a submission to the Commission may send its representatives to participate in the relevant proceedings without the right to vote.”

The CLCS has interpreted this to mean, first, that the Coastal State is not entitled to participate in all proceedings. Second, it is up to the CLCS to identify which proceedings are relevant. In the current Rules of Procedure which were adopted in 2008, the CLCS has identified three proceedings which are deemed relevant:

- (a) The meeting at which the Coastal State makes its presentation to the Commission concerning the submission;
- (b) Meetings at which the representatives of the Coastal State wish to provide additional clarification to the submission on any matters relating to the submission; and
- (c) Meetings at which the representatives of the Coastal State wish to provide additional clarification to the Sub-commission on any matters relating to the submission.

One final presentation opportunity is also granted to the Coastal State after the Sub-commission has presented its recommendations to the Commission and before the Commission considers and adopts the

⁵⁸ Article 3 para. 2, Annex II, Convention, see note 2.

⁵⁹ <http://www.un.org/Depts/los/clcs_new/submissions_files/submission_rus.htm>, (CLCS) Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: Submission by the Russian Federation.

recommendations.⁶⁰ The presentation shall be up to half-a-day. No discussion shall be allowed between the Coastal State and the Commission at such presentation.

5. Participation of Third States

Under para. 10 of article 76 of the Convention, the establishment of the outer limits of the continental shelf beyond 200 nautical miles is without prejudice to the question of the delimitation of the continental shelf between states with opposite or adjacent coasts. Article 9 of Annex II of the Convention reiterates this principle.

According to the CLCS, there is,

“only one role to be played by other States in regard to the consideration of the data and other material submitted by coastal States concerning the outer limits of the continental shelf beyond 200 nautical miles. Only in the case of a dispute between States with opposite or adjacent coasts or in other cases of unresolved land or maritime dispute would the Commission be required to consider communications from States other than the submitting one.”⁶¹

The United States of America sent a letter in relation to the submission of Brazil. Noting that the United States had no delimitation dispute with Brazil,

“the Commission concluded that the content of the letter from the United States should not be taken into consideration by the Commission. The Commission also instructed the Subcommittee to disregard the comments contained in that letter during its examination of the Brazilian submission.”⁶²

The United States appealed the decision of the CLCS. Following a discussion on the appeal, “it was concluded that the Commission did not consider it necessary to change its previous decision.”⁶³

Communications received from states which possess interest in the relevant area under consideration by the CLCS are considered, along

⁶⁰ Section VI, para. 15, Annex III, *Modus Operandi*, Rules of Procedure CLCS, see note 3.

⁶¹ Doc. CLCS/42, 3-4, para. 17, see note 35.

⁶² *Ibid.*, 4, para. 17.

⁶³ *Ibid.*

with all the information and materials received from the submitting Coastal State.

VI. Submissions

As of 30 October 2009, 51 Coastal States have submitted information and the particulars of the outer limits of the continental shelves beyond 200 nautical miles to the CLCS. Evaluations of nine submissions have been completed and recommendations have been given to the following Coastal States: Russian Federation, Brazil, Australia, Ireland, New Zealand, Joint Submission by France, Ireland, Spain and the United Kingdom of Great Britain and Northern Ireland, Norway, France, and Mexico.⁶⁴ Four of the completed submissions dealt only with portions of the continental shelf areas of the Coastal States concerned. One completed submission was a joint effort of four Coastal States which share a common continental shelf, the outer limits of which lie beyond 200 nautical miles from the baseline of the territorial sea. The nine completed submissions and the recommendations adopted by the CLCS will be considered separately in this section.

Depending on the complexity of a submission, the Commission spends two to four years on each submission before recommendations are adopted. Normally, only three Sub-commissions work at the same time. The Sub-commissions work during sessions, and if necessary, also during intersessional periods.

1. General Principles and Rules on which Recommendations are Based

Article 76 and the Scientific and Technical Guidelines form the bases of the principles on which recommendations adopted by the CLCS are based. Article 76 provides for the definition, composition and breadth of the continental shelf (paras 1 and 3), it limits (paras 4 to 6), and the methods by which the outer limits may be established (paras 4 to 7).

Para. 1 of article 76 provides that,

⁶⁴ See list of recommendations given at <http://www.un.org/Depts/los/clcs_new/commission_recommendations.htm>.

“the continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.”

Paras 4 to 6 provide the methods by which the outer edge of the continental margin of continental shelves determined as natural prolongations of the land territory shall be made. In general, article 76 speaks of formulae and constraint rules in determining the outer limits of the continental shelf. A Coastal State may establish its outer limits by either,

- a. Delineating a line by reference to the outermost fixed points at each of which the thickness or sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or
- b. Delineating a line by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

In either of the formulae, the reference is to the location of the foot of the slope. The first decisive determination is therefore to determine where the foot of the continental slope in each claim lies. If the foot of the continental slope is not determined by either of the formulae above, Coastal States may turn to article 76 para. 4 (b), “In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base”. Evidence to the contrary refers to geophysical evidence.

After determining the fixed points following the application of the formulae in paras 4 (a) (i) and (ii), the Coastal State must ensure that these points either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 meter isobath, which is a line connecting the depth of 2,500 meters.⁶⁵ These two rules are also called constraint lines.

For continental shelves composed of submarine ridges, para. 5 of article 76 requires that the outer limits shall not exceed 350 nautical miles from which the breadth of the territorial sea is measured. The Convention underscores that the constraint of 350 nautical miles applies only to

⁶⁵ Article 76 para. 5, Convention, see note 2.

submarine ridges but not to “submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.”⁶⁶

The Coastal State shall thereafter delineate the outer limits of the continental shelf beyond 200 nautical miles, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.⁶⁷

Following completion of the preparation, the Coastal State shall then submit the information and data concerning the particulars of the limits of the continental shelf beyond 200 nautical miles to the CLCS. As mentioned earlier, the CLCS shall evaluate the submission of the Coastal State and shall make recommendations thereon. “The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.”⁶⁸

Finally, article 76 requires the Coastal State to deposit with the Secretary-General of the United Nations, the charts and relevant information, including geodetic data, which permanently describe the outer limits of the continental shelf.⁶⁹ The Secretary-General shall give due publicity to the charts and relevant information.⁷⁰

Notwithstanding the details of article 76, the terms, rules and formulae contained therein are not sufficient for Coastal States and the CLCS to determine and establish the outer limits of the continental shelf. None of the terms in article 76 are defined. The legal meaning of some of the terms does not have corresponding definitions in science. In practice, Coastal States and the Commission refer to the Guidelines in interpreting and applying the provisions of article 76.

The Guidelines contain ten sections. The first section, which is an introduction contains the Commission’s objectives in drawing up the Guidelines which are essentially to guide Coastal States during the preparation of the submission and to “clarify its interpretation of scientific, technical and legal terms contained in the Convention.”⁷¹ The Commission also intends that the Guidelines lead to a “uniform and extended State practice” with respect to the methodologies used in the

⁶⁶ Article 76 para. 6.

⁶⁷ *Ibid.*, para. 7, see note 2.

⁶⁸ *Ibid.*, para. 8, see note 2.

⁶⁹ *Ibid.*, para. 9, see note 2.

⁷⁰ *Ibid.*

⁷¹ Doc. CLCS/11, para. 1.3, Guidelines, see note 4.

preparation of the technical and scientific data and analyses undertaken in order to establish the outer limits of the continental shelf.⁷²

The rest of the section includes guidelines on geodetic methodologies; determination of the 2,500 meter isobath and the sources of data and type of modeling that could be used for the analysis; locating the foot of the continental slope determined as the point of maximum gradient at its base and its sources of data; identifying the foot of the continental slope by means of evidence to the contrary to the general rule and the geological and geophysical evidence needed to do so; the different types of ridges and submarine elevations; delineation of the outer limits based on sediment thickness; and the data necessary for the submission of the information on the limits of the extended continental shelf (bathymetric and geodetic data, geophysical and geological data, and digital and non-digital data) and other relevant supporting information and data. Section ten of the Guidelines contains references and bibliography which Coastal States could use. There is also an Annex listing international organizations which might possess data and information which Coastal States could use in preparing their submissions.

2. Russian Federation

The Russian Federation was the first Coastal State to submit the particulars of the outer limits of the continental shelf beyond 200 nautical miles to the CLCS on 30 December 2001. The Russian submission was related to four areas: the Barents Sea, the Bering Sea, the Sea of Okhotsk and the Central Arctic Ocean. There is no available executive summary containing information on the submission of the Russian Federation.

The recommendations were adopted by the CLCS by consensus on 27 June 2002.⁷³ A short summary of the recommendations adopted by the CLCS was included in the Report of the Secretary-General of the United Nations to the 57th Sess. of the General Assembly under the agenda item Oceans and the Law of the Sea.⁷⁴ As for the Barents and Bering seas, the CLCS' recommendation to the Russian Federation was for it to transmit the charts and coordinates of the delimitation lines

⁷² Ibid., para. 1.4, see note 4.

⁷³ Statement by the Chairman of the CLCS on the progress of work in the Commission – 11th Sess., Doc.CLCS/34, 4, para. 33.

⁷⁴ Doc. A/57/57/Add.1, paras 38-41.

agreed with Norway in the Barents Sea and with the United States of America in the Bering Sea.⁷⁵ These delimitation lines would be considered the outer limits of the continental shelf of Russia in these two seas.⁷⁶ For the Sea of Okhotsk, the recommendation was mainly for the Russian Federation to “make a well-documented partial submission for its extended continental shelf in the northern part of that sea” and “to make its best efforts to effect an agreement with Japan.”⁷⁷ For the area of the extended continental shelf claimed in the Central Arctic Ocean, the Russian Federation was requested to make a revised submission based on the findings contained in the recommendations given by the CLCS.⁷⁸

3. Brazil

On 17 May 2004, Brazil proceeded to make a submission to the CLCS for the consideration of the information and other materials in relation to its extended continental shelf. Brazil’s submission included four geographical regions: Northern and Amazonas fan region, Northern Brazilian and Fernando de Noronha ridges, Vitória-Trinidad ridge, and São Paulo plateau and southern regions.⁷⁹ The executive summary provided by Brazil showed that the submission was divided into five segments.⁸⁰

Following a series of interactions between the Sub-commission and Brazil, additional materials and an additional Executive Summary were submitted.⁸¹ In the additional Executive Summary, Brazil delineated the following lines in the chart: foot of the continental slope, 60 nautical miles from the foot of the continental slope, thickness of sedimentary rocks that is at least one per cent of the shortest distance to the foot of the continental slope, 100 nautical miles from the 2,500 meters isobath, 350 nautical miles from the baselines from which the breadth of the ter-

⁷⁵ Ibid., para. 39.

⁷⁶ Ibid.

⁷⁷ Ibid., para. 40.

⁷⁸ Ibid., para. 41.

⁷⁹ Doc. CLCS/54, 4, para. 14, see note 40.

⁸⁰ <http://www.un.org/Depts/los/clcs_new/submissions_files/bra04/bra_exec_sum.pdfExecutive Summary>, Brazil.

⁸¹ <http://www.un.org/Depts/los/clcs_new/submissions_files/bra04/bra_add_executive_summary.pdf>, Additional Executive Summary, Brazil Submission.

ritorial sea is measured, and 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.⁸² The additional Executive Summary showed eleven segments, compared with the five segments in the original submission. As a result, the area of the Brazilian continental shelf increased from 911,847 sq. kilometers to 953,525 sq. kilometers.⁸³

The recommendations concerning the Brazilian submission were adopted by the CLCS on 4 April 2007 by a vote of 15 to 2, with no abstentions.⁸⁴ There is no summary of recommendations available concerning the submission made by Brazil. Brazil informed the CLCS, that as a result of the recommendations of the Sub-commission following the series of meetings and interaction between them, Brazil had made revisions which “led to an increase of only 5.5 per cent in the total area of the extended continental shelf.”⁸⁵

4. Australia

On 15 November 2004, Australia submitted information, materials and data concerning the extended continental shelf of ten regions: Argo Region, Australian Antarctic Territory, Great Australian Bight Region, Kerguelen Plateau Region, Lord Howe Rise Region, Macquarie Ridge Region, Naturaliste Plateau Region, South Tasman Rise Region, Three Kings Ridge Region, Wallaby and Exmouth Plateaus Region.⁸⁶ Despite submission of information, data and other documents concerning the Australian Antarctic Territory, Australia, in a note verbale attached to the Executive Summary, referred to the “circumstances of the area south of 60 degrees South latitude and the special legal and political status of Antarctica under the provisions of the Antarctic Treaty”, and therefore requested the CLCS “not to take any action for the time being.”⁸⁷

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Doc. CLCS/54, 6, para. 22, see note 40.

⁸⁵ Ibid.

⁸⁶ <http://www.un.org/Depts/los/clcs_new/submissions_files/aus04/Documents/aus_doc_es_web_delivery.pdf>, Executive Summary, Continental Shelf Submission of Australia. The submission did not include the continental shelf area of Australia in the Antarctica region.

⁸⁷ Ibid.

The CLCS took note of the reaction of eight states to the submission of Australia concerning the outer limits of the continental shelf. The notes from the United States of America, the Russian Federation, Japan, Netherlands, Germany and India, referred to their support of Australia's decision to exclude from the consideration of the CLCS, the Australian Antarctic Territory.⁸⁸ The note from the Democratic Republic of Timor-Leste referred to the Timor Sea and the note from France concerned the areas of Kerguelen Plateau region and the Three Kings Ridge.⁸⁹

The CLCS adopted recommendations concerning the nine regions on 9 April 2008, confirming that Australia was entitled to extended areas of the continental shelf in all nine regions in accordance with article 76, para. 4 of the Convention.

The CLCS accepted the application of Australia of the formulae and constraint rules in establishing the outer limits of the following: Argo Region, Great Australian Bight Region, Kerguelen Plateau Region, Lord Howe Rise Region, Macquarie Ridge Region, Naturaliste Plateau Region, South Tasman Rise Region, Three Kings Ridge Region, Wal-laby and Exmouth Plateau Region. However, it disagreed with Australia over the method it employed in connecting the outer limits continental shelf points beyond 200 nautical miles in the above regions since this resulted in inclusion of areas of the continental shelf that fall outside the continental margin as defined in article 76 paras 4 and 7. The CLCS therefore made specific recommendations including the replacement of points and lines in order to comply with article 76.

As for the Three Kings Ridge region, the CLCS noted that it is located within the New Zealand maritime space pursuant to a treaty between Australia and New Zealand and therefore stated that the final outer limits may depend on the delimitation between New Zealand.⁹⁰

For all nine regions, Australia did not require evidence to the contrary to locate the foot of the continental shelf.⁹¹ It relied mainly on

⁸⁸ <http://www.un.org/Depts/los/clcs_new/submissions_files/aus04/aus_summary_of_recommendations.pdf>, Summary of the Recommendations of the Commission on the Limits of the Continental Shelf (CLCS) in regard to the submission made by Australia on 15 November 2004, 1, para. 3.

⁸⁹ *Ibid.*, 1, para. 4.

⁹⁰ *Ibid.*, 33, para. 117.

⁹¹ *Ibid.*, 1, para. 6.

morphology or morphology combined with geology to determine the foot of the continental slope.⁹²

Altogether, Australia's extended continental shelf covers an area of over 2.5 million kilometers as evaluated and confirmed by the Commission when it adopted the recommendations concerning Australia's submission on 9 April 2008 by a vote of 14 to 3, with 1 abstention.⁹³ Australia's decision to exclude the information and data concerning the Australian Antarctic Territory was considered by some to be a successful "high-latitude diplomacy."⁹⁴ On the one hand, it "was thus able to symbolically preserve its options for future generations by asserting its claimed Antarctic sovereignty, but without deriving any benefit or creating any rights of sovereignty in Antarctica while the matter was effectively locked up under Article IV.2 of the Treaty."⁹⁵ On the other hand, it succeeded in establishing the area of the continental shelf arising from the Heard Island and the McDonald Islands, two sub-Antarctic islands whose continental shelves overlap with the area of application of the Antarctic Treaty.⁹⁶ The agreement of the CLCS with Australia concerning the outer limits of the continental shelves of the two islands resulted into a situation where "(f)or the first time, seabed resources inside the Antarctic Treaty area have an undisputed sovereign 'owner'."⁹⁷ It remains to be seen what Australia will do concerning the resources of the continental shelf of Heard Island and the McDonald Islands and what the reaction of the international community will be.

5. Ireland (Porcupine Abyssal Plain)

For purposes of submitting the particulars of the outer limits of its continental shelf, Ireland divided its continental shelf into three zones.⁹⁸

⁹² Ibid.

⁹³ <<http://www.ga.gov.au/ausgeonews/ausgeonews200806/inbrief.jsp>>, Australia's marine jurisdiction extended, *Geo News*, June 2008 Issue No. 90.

⁹⁴ J. Jabour, "High latitude diplomacy: Australia's Antarctic extended continental shelf", *Marine Policy* 30 (2006), 197 et seq.

⁹⁵ Id., "The Australian continental shelf: Has Australia's high-latitude diplomacy paid off?", *Marine Policy* 33 (2009), 429 et seq.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ <http://www.un.org/Depts/los/clcs_new/submissions_files/irl05/irl_summ_ary_of_recommendations.pdf>, Summary of the Recommendations of the

The subject of the partial submission of 25 May 2005 is located in Zone B, Porcupine Abyssal Plain. Two notes verbale were received respecting the submission: one from Denmark on 19 August 2005 and the other from Iceland on 24 August 2005.⁹⁹ Both notes indicated that the submission and the subsequent recommendations from the CLCS are without prejudice to future submissions of both Coastal States.¹⁰⁰ The partial submission was made “in accordance with paragraph 3 of Annex I to the rules of procedure, in order not to prejudice unresolved questions relating to the delimitation of boundaries between Ireland and some of its neighbours in other portions of the extended continental shelf claimed by Ireland.”¹⁰¹

The Porcupine Abyssal Plain, located in the North Atlantic which is half the size of Europe’s landmass, is the continental margin of Ireland. Five locations of the foot of the continental slope were found to be acceptable. During the submission process, Ireland proposed to adjust the limit by introducing a new fixed point, FP 15, by generating from the point called FOS 53.¹⁰² The Sub-commission prepared a 3D view of FOS 53 based on the multi-beam bathymetry data of FOS 53 submitted by Ireland “which clearly shows that the high is separated from the lower slope.”¹⁰³ For scientific and technical reasons therefore, the proposal to introduce FP 15 from FOS 53 was not supported. Ireland accepted this view.¹⁰⁴ The CLCS also accepted Ireland’s determination of sediment thickness and its application of both constraint lines at 350 M and 2,500 m isobath + 100 M.¹⁰⁵ The CLCS thus recommended that Ireland should establish the outer limits of the Porcupine Abyssal Plain in accordance with Table 3 of the Executive Summary.¹⁰⁶

The CLCS adopted the recommendations on information submitted by Ireland on 5 April 2007 by a vote of 14 to 2, with 2 abstentions.¹⁰⁷

Commission on the Limits of the Continental Shelf (CLCS) in regard to the Partial Submission Made by Ireland on 25 May 2005.

⁹⁹ Ibid., 1, para. 2.

¹⁰⁰ Ibid.

¹⁰¹ Ibid., 1, para. 4.

¹⁰² Ibid., 19, para. 36.

¹⁰³ Ibid., 19, para. 37.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid., 21, para. 47.

¹⁰⁶ Ibid., 22, para. 57.

¹⁰⁷ Doc. CLCS/54, 8, para. 37, see note 40.

6. New Zealand

For purposes of its submission to the CLCS on 19 April 2006, New Zealand divided its continental shelf beyond 200 nautical miles into four regions: Northern Region, Eastern Region, Southern Region and the Western Region.¹⁰⁸ On 22 August 2008, the CLCS adopted its recommendations concerning New Zealand's submission.¹⁰⁹

New Zealand identified the different areas and features found within each region. The Northern Region covers the Three Kings Ridge, Colville Ridge, and northern Kermadec Ridge and Kermadec Trough.¹¹⁰ In the Eastern Region, the following are included: southern Kermadec Ridge and Kermadec Trench, Hikurangi Plateau, Chatham Rise, Bounty Trough, and northern Campbell Plateau.¹¹¹ The Southern margin of the Campbell Plateau constitutes the Southern Region.¹¹² While the Norfolk Ridge System, New Caledonia Basin, Challenger Plateau, Lord Howe Rise, and the Macquarie Ridge Complex made up the Western Region.¹¹³

The CLCS confirmed New Zealand's entitlement to an extended continental shelf in all four regions in accordance with para. 4 of article 76 of the Convention. The CLCS accepted New Zealand's application of the 60 M distance criterion, the application of sediment thickness formula and constraint lines.

A few remarks should be made concerning ridges and submarine elevations. In the Eastern Region, the CLCS classified the Wishbone Ridge as a submarine elevation based on literature and the evidence submitted by Australia; the application of the depth constraint line was therefore accepted.¹¹⁴ Based on literature and the evidence submitted,

¹⁰⁸ <http://www.un.org/Depts/los/clcs_new/submissions_files/nzl06/nzl_summary_of_recommendations.pdf>, Summary of Recommendations of the CLCS in regard to the submission made by New Zealand 19 April 2006. The full text of the Recommendations of the CLCS in regard to the submission made by New Zealand 19 April 2006, has been made available at <<http://www.linz.govt.nz/docs/hydro/programmes/continentalshelf/un-continental-shelf-recommendations.pdf>>.

¹⁰⁹ Ibid.

¹¹⁰ Ibid., 38, para. 129.

¹¹¹ Ibid., 38, para. 130.

¹¹² Ibid., 38, para. 131.

¹¹³ Ibid., 38, para. 132.

¹¹⁴ Ibid.

the Kermadec and Colville Ridge systems and in the Three Kings Ridge with the Fantail Terrace these features were considered by the CLCS as submarine elevations in the context of article 76 para. 6 of the Convention.¹¹⁵

Approximately 1.7 million square meters were confirmed by the CLCS as New Zealand's extended continental shelf area.¹¹⁶

7. Joint Submission by France, Ireland, Spain and the United Kingdom of Great Britain and Northern Ireland (in the Area of the Celtic Sea and the Bay of Biscay)

France, Ireland, Spain and the United Kingdom of Great Britain and Northern Ireland, submitted a partial Joint Submission to the CLCS on 19 May 2006. According to the four Coastal States, the submission was of “a joint nature, comprising a single project prepared collectively and collaboratively by the four coastal States.”¹¹⁷ They also informed the CLCS that the area concerned – in the Celtic Sea and the Bay of Biscay – is not subject of any dispute among them and would not cause prejudice on matters relating to the delimitation of the continental shelf in the area.¹¹⁸

Based on the additional data provided by the four Coastal States and the application of article 76 para. 4, the CLCS concluded that the four states were entitled to a continental shelf in the area beyond 200 nautical miles.¹¹⁹ The CLCS confirmed the methodologies used by the four states as to the locations of the foot of the slope points and the application of the 60 M distance criterion. As for the application of the distant constraint lines, the CLCS noted that one fixed point FP 30, “lies within the Spanish 350 M constraint” but “beyond all other 350 M con-

¹¹⁵ Ibid., 43, para. 145.

¹¹⁶ <<http://www.beehive.govt.nz/release/un+recognises+nz+extended+seabed+rights>>, UN recognizes NZ's extended seabed rights, 22 September 2008.

¹¹⁷ <http://www.un.org/Depts/los/clcs_new/submissions_files/frgbires06/fisu_clcs_recommendations_summary2009.pdf>, Summary of the Recommendations of the Commission on the Limits of the Continental Shelf in Regard to the Joint Submission Made by France, Ireland, Spain and the United Kingdom of Great Britain and Northern Ireland in Respect of the Area of the Celtic Sea and the Bay of Biscay on 19 May 2006, 4, para. 2.

¹¹⁸ Ibid.

¹¹⁹ Ibid., 7, paras 10-11.

straint lines.”¹²⁰ The CLCS was of the view that the “relevant constraint with respect to FP 30 is the 350 M line constructed from the baselines from which the territorial sea of Ireland is measured.”¹²¹ The recommendation was adopted by the four states.¹²²

The CLCS therefore concluded that the outer limits of the continental shelf of the four states consist of fixed points connected by straight lines not exceeding 60 M in length defined by coordinates of latitude and longitude as listed in Table 3 of the Summary of Recommendations for the four states.¹²³ The CLCS adopted the recommendations on the joint submission on 24 March 2009 by consensus.¹²⁴

8. Norway (in the North East Atlantic and the Arctic)

On 27 November 2006, information on the limits of the continental shelf was submitted by Norway to the CLCS for three separate areas in the North East Atlantic and the Arctic: the Loop Hole in the Barents Sea, the Western Nansen Basin in the Arctic Ocean and the Banana Hole in the Norwegian Sea. Notes verbales were received from the following states: Denmark, Iceland, the Russian Federation, and Spain.¹²⁵

The Loop Hole is an area of the continental shelf in the Barents Sea. Bound in the north by mainland Norway and the Russian Federation. It is beyond the 200 nautical-mile limit of both states and is therefore subject of delimitation between them. The CLCS referred to the submission of the Russian Federation and its recommendations concerning the delimitation of the continental shelf between it and Norway¹²⁶ and confirmed the entitlement of Norway over the continental shelf in the area.¹²⁷ Delimitation between Norway and Russia was the final recom-

¹²⁰ Ibid., 13, para. 26.

¹²¹ Ibid., 13, para. 27.

¹²² Ibid.

¹²³ Ibid., 13-14, paras 28-30.

¹²⁴ CLCS/62, 4, para. 14, see note 50.

¹²⁵ <http://www.un.org/Depts/los/clcs_new/submissions_files/submission_nor.htm#Recommendations>, Summary of the Recommendations of the Commission on the Limits of the Continental Shelf in Regard to the Submission Made by Norway in Respect of Areas in the Arctic Ocean, the Barents Sea, and the Norwegian Sea on 27 November 2006.

¹²⁶ Ibid., 5, para. 12.

¹²⁷ Ibid., 5, para. 14.

mendation of the CLCS for the determination of the outer limits of the continental shelf located in the Loop Hole in the Barents Sea.¹²⁸

As for the Western Nansen Basin in the Arctic Ocean, the Sub-commission's consideration of the foot of the slope point located in Franz Victoria Fan, should be mentioned. Due to the intensive sedimentation in the said area, "the location of the base of the continental slope is not readily identifiable on the basis of morphology."¹²⁹ The Sub-commission was not convinced that Norway produced sufficient geological and geophysical data in support of the location of the foot of the slope in that area. The Sub-commission therefore advised Norway to "explore more landward possibilities for the foot of the continental slope." Norway presented additional evidence including a high-resolution, Parasound, sub-bottom profiler data which was "relevant to the consideration of the base of the slope zone associated with the Franz Victoria Fan."¹³⁰ The additional evidence convinced the Sub-commission to agree to a revision of the critical foot of the slope point to a more seaward location.¹³¹

The submission of Norway for an extended continental shelf in the Banana Hole in the Norwegian and Greenland Seas is highly remarkable not only for its geological complexity but also for the novelty of its approach. In this area, Norway claimed an extended continental margin that "consists of two parts – that of Mainland Norway and Svalbard in the east, and that associated with the island of Jan Mayen in the west."¹³² Norway justified its decision based on morphology, stating that "it appears evident that these two continental margins link with each other via the Iceland-Faroe Ridge inside the 200 M zones of Iceland and the Faroe Islands."¹³³ In Norway's submission, it made clear its position that the two relevant continental margins are indeed separate but that "each contributes individually to continental shelf beyond 200 M in the Banana Hole area."¹³⁴

Following the evaluation of the technical and scientific documentation in the submission and in the additional materials submitted by Norway, the CLCS agreed with all the foot of the slope points identi-

¹²⁸ Ibid., 9, para. 23.

¹²⁹ Ibid., 11, para. 29.

¹³⁰ Ibid., 12, para. 29.

¹³¹ Ibid., 12, para. 29.

¹³² Ibid., 18, para. 41.

¹³³ Ibid.

¹³⁴ Ibid.

fied by Norway,¹³⁵ stating that it fulfilled the requirements of article 76 of the Convention and Chapter 5 of the Guidelines. It therefore recommended that the foot of the slope points should “form the basis for the establishment of the continental margin in the Banana Hole.”¹³⁶

The CLCS also confirmed its agreement with the 60 M distance formula which was applied in all the three parts comprising the continental margin of Norway in the Banana Hole, stating that it was in accordance with article 76 para. 4 (a) (ii).

For the constraint lines, both the distance and depth constraints were applied by Norway. The CLCS was of the view that with respect to the depth constraint line, it had to determine whether the relevant seafloor highs in the Banana Hole could be considered natural components of the continental margin. Based on evidence submitted, the CLCS agreed with Norway that the Vøring Plateau is a natural component of the continental margin of Mainland Norway in the context of article 76 para. 6.¹³⁷ Depth constraint may therefore be applied. As for the Vøring Spur, though the CLCS agreed that it is part of the submerged prolongation of the landmass of Mainland Norway¹³⁸ and the additional material provided by Norway indicated that it is “underlain by thick magmatic crust and has a different evolution and geological character to the adjacent Vøring Plateau.”¹³⁹ The CLCS therefore did not consider it as a natural component of the continental margin of Mainland Norway in accordance with article 76 para. 6.¹⁴⁰

Overall, the CLCS recommended that Norway establishes its outer limits based on the fixed points listed in Table 1, Annex I of the Summary of Recommendations.¹⁴¹ It further recommended that the delineation be undertaken in accordance with article 76 para. 7, by straight lines not exceeding 60 M in length, connecting fixed points, defined by coordinates of latitude and longitude, and dependent on delimitation between states.¹⁴² The recommendations concerning the extended continental shelf of Norway in the three areas were adopted on 27 March

¹³⁵ Ibid., 18-23, paras 45-54.

¹³⁶ Ibid., 23, para. 55.

¹³⁷ Ibid., 27, para. 75.

¹³⁸ Ibid., 27, para. 76.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid., 30, para. 80.

¹⁴² Ibid.

2009 by consensus.¹⁴³ The reaction of Norway to the recommendations of the CLCS were stated in a press release.^{144 145}

9. France (in respect of the areas of French Guiana and New Caledonia)

Submitted on 22 May 2007, this is the second submission made by France to the CLCS.¹⁴⁶ This particular submission requested the CLCS to make recommendations in two geographically separate areas. The first area with respect to French Guiana in the North Eastern part of South America, between Brazil and Suriname in the Atlantic Coast. The second area concerns New Caledonia composed of the main island of New Caledonia, the Chesterfield Islands and the Bellona Reefs, which are located between the northern parts of the Fiji Basin in the east and the Tasmania Sea in the west.

In a note verbale, the Republic of Suriname stated that the submission was without prejudice to any future submission it will make to the CLCS and to the delimitation of the continental shelf between it and France. For the second area, Vanuatu sent a note verbale stating that the “area to the south east of New Caledonia will have serious implications and ramifications on Vanuatu’s legal and traditional sovereign territory of Matthew and Hunter Islands, south of Vanuatu.”¹⁴⁷ In response to Vanuatu’s note verbale, France requested the Sub-commission not to proceed with the examination of the south-east area of submission, “leaving only the south-west area between the New Caledonia Basin and the Tasman Sea.”¹⁴⁸ New Zealand also sent a note verbale to inform

¹⁴³ Doc. CLCS/62, para. 19, 5, see note 50.

¹⁴⁴ Ministry of Foreign Affairs, “Extent of Norway’s continental shelf in the High North clarified”, Press release, 15 April 2009, No.: 025/09, <http://www.regjeringen.no/en/dep/ud/press/News/2009/shelf_clarified.html?id=554718>.

¹⁴⁵ <http://www.norway-un.org/News/Archive_2006/Important_agreemen>, Agreement on Continental Shelf in the Norwegian Sea.

¹⁴⁶ <http://www.un.org/Depts/los/clcs_new/submissions_files/fra07/COM_REC_FRA_02_09_2009_summary.pdf>, Summary of the Recommendations of the Commission on the Limits of the Continental Shelf in Regard to the Submission Made by France in Respect of French Guiana and New Caledonia Regions on 22 May 2007.

¹⁴⁷ *Ibid.*, 13, para. 43.

¹⁴⁸ *Ibid.*, 13, para. 44.

of the “potential overlap between the areas of the extended continental shelf of the two States in the Loyalty Ridge and the Three Kings Ridge region” and of the delimitation between it and France.¹⁴⁹ It assured the CLCS that it had no objection to the submission nor to the consideration and recommendations to be made.¹⁵⁰

The CLCS confirmed France’s entitlement over an extended continental shelf in both areas. As the basis of France’s claim in the area of New Caledonia, France was of the view that the “whole elevated area between the South Fiji basin in the east and the Tasman Sea in the west constitutes the submerged landmass of the island of New Caledonia.”¹⁵¹ The Sub-commission disagreed with this position principally and recommended to France to view the Lord Howe Rise as “one entity not connected to the ridges further east,” and for it to become the “basis for the submerged prolongation of the nearest land territory of New Caledonia dependencies, in this case the Bellona Islands, to the area beyond 200 M in the Western Area.”¹⁵² Although not in agreement with the view taken by the Sub-commission, France agreed to implement the recommendation of the Sub-commission and was able to demonstrate “that in terms of both crustal characteristics and morphology, this area is underlain by the submerged prolongation of the landmass of the Bellona Islands.”¹⁵³ On this revised submission, the Sub-commission thereafter confirmed that France was entitled to an extended continental shelf in the area.¹⁵⁴

The CLCS also agreed with the methodologies used by France in implementing the formulae and constraint rules under article 76. In the first area, the Sub-commission and France engaged in a series of discussions concerning the location of the fifth critical foot of the slope point. Clarifications were asked and responses and additional information, including publications, were provided. Following the revision of the location of the fifth critical point by France, the Sub-commission agreed with all the locations of the five critical points as well as the other points, including the data and the methodology used in determining the points. The CLCS also agreed with France’s decision, including the methodology used, to apply the 350 M constraint.

¹⁴⁹ *Ibid.*, 13, para. 45.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*, 14, para. 47.

¹⁵² *Ibid.*

¹⁵³ *Ibid.*, 15, paras 48, 50.

¹⁵⁴ *Ibid.*, 15, para. 51.

In order to take into consideration the revised view of the submerged prolongation in the second area, France added one critical foot of the slope point and revised another critical foot of the slope point.¹⁵⁵ The CLCS confirmed its agreement with the establishment of the two foot of the slope points and recommended these as the basis for establishing the outer limits of the continental margin of France.¹⁵⁶

In the second area, France applied only the distance constraint criterion but the Sub-commission advised France that it should be combined with the depth constraint criterion. The CLCS stated that the Lord Howe Rise and its northern extension which “is continental in origin” “were once parts of the Australian continent and separated from it by extension and possible seafloor spreading.”¹⁵⁷ Accordingly, the CLCS classified it as a submarine elevation that is a natural component of the continental margin of France in the context of article 76 para. 6 of the Convention and in accordance with the Guidelines.¹⁵⁸

The CLCS adopted its recommendations on 2 September 2009 by consensus.¹⁵⁹ The size of the continental shelf in the French Guiana region had been estimated to be 43,538.9 square kilometers and 46,256.9 square kilometers in the New Caledonia region.¹⁶⁰

10. Mexico (in respect of the Western Polygon in the Gulf of Mexico)

Mexico submitted the particulars of the outer limits of its continental shelf beyond 200 nautical miles for one region in the Western Polygon in the Gulf of Mexico on 13 December 2007. Following an application of article 76 para. 4, the CLCS concluded that Mexico was indeed entitled to an area of the continental shelf in the said region beyond 200

¹⁵⁵ Ibid., 16, paras 54-55.

¹⁵⁶ Ibid., 18, para. 57.

¹⁵⁷ Ibid., 19, para. 68.

¹⁵⁸ Ibid.

¹⁵⁹ Statement by the Chairman of the CLCS on the progress of work in the Commission – 24th Sess., Doc. CLCS/64, 5, para. 13.

¹⁶⁰ <<http://earthtrends.wri.org/text/coastal-marine/variable-62.html>>, World Resources Institute, Coastal and Marine Ecosystems — Marine Jurisdictions: Continental shelf area.

nautical miles.¹⁶¹ The CLCS was in agreement with Mexico's identification of the locations of the base of the continental slope and the foot of the slope as well as the methodologies it used in constructing the 60 M distance formula, and the sediment thickness formula. For the sediment thickness formula, the CLCS noted the ease by which it was applied by Mexico due to the "considerable sediment thickness (ca. 9-10 km) in this part of the Gulf of Mexico." As for constraint lines, Mexico applied both the distance and depth criteria which were accepted by the CLCS. The CLCS adopted its recommendations on 31 March 2009 by consensus.¹⁶²

VII. Assessment

Assessment concerning the work and achievements of the CLCS should be focused on two areas: its procedures and its practice relating to article 76 of the Convention.

Concerning its procedures, there were two issues that were most pressing: the issue concerning the participation of Coastal States in the relevant proceedings and the issue concerning the role of third states.

The submission procedure had been designed by the delegates at UNCLOS III to involve mainly the submitting Coastal State and the CLCS. Each has its own spheres of responsibilities and tasks to complete. The submission process allows the two entities to have an interaction in order to evaluate the outer limits of the continental shelf beyond 200 nautical miles. The Convention is very clear in the respect that the Coastal State participates without a vote only in the proceedings that are deemed relevant. It is for the CLCS to determine which proceedings are relevant. During the submission of the Russian Federation, it was obvious that there were not too many occasions for the CLCS or the relevant Sub-commission to interact with the submitting state. The CLCS was under a strong pressure to open its proceedings to the Coastal State, including its deliberations of the submission. In the view of the present author, it would have been clearly in violation of the

¹⁶¹ <http://www.un.org/Depts/los/clcs_new/submissions_files/mex07/summary_recommendations_2009.pdf>, Summary of the Recommendations of the Commission on the Limits of the Continental Shelf in Regard to the Submission made by Mexico in respect of the Western Polygon in the Gulf of Mexico on 13 December 2007, 2, para. 9.

¹⁶² Doc. CLCS/62, 7, para. 26, see note 50.

Convention. The solution found was to provide more possibilities for interaction between the submitting state and the Sub-commission. The interactive arrangement in the view of the present author has made the submission process truly a dialogue between the Coastal State and the CLCS.

It seems that many of the Coastal States which have received recommendations from the CLCS found the interaction with the CLCS very productive. In the Norwegian submission, for example, the Sub-commission was not convinced of the location of the foot of the slope in the Franz Victoria Fan. The interactive phase of the Sub-commission examination enabled Norway to present additional evidence which not only convinced the Sub-commission but also made it agree to a revision of the foot of the slope to a more seaward location.

If there is, thus, an opportunity for a claim to be maximized, the practice of the CLCS has been to make such recommendation to the Coastal State. In the case of Brazil, it reported an increase of 5.5 per cent of the area of its extended continental shelf after it followed the recommendation of the Sub-commission. Nevertheless, the CLCS has also been vigilant in informing the Coastal State to make revisions in cases where it thought the lines as established by the Coastal State included areas that were legally already outside the continental margin in the sense of article 76. For example in the Joint Submission made by France, Ireland, Spain and the United Kingdom. The four states relied on the distance constraint rule. The CLCS noted that one fixed point FP 30, "lies within the Spanish 350 M constraint" but "beyond all other 350 M constraint lines."¹⁶³ The CLCS was of the view that the "relevant constraint with respect to FP 30 is the 350 M line constructed from the baselines from which the territorial sea of Ireland is measured."¹⁶⁴ The recommendation was adopted by the four states.¹⁶⁵

Concerning the role of third states, the present author agrees that only those third states which have delimitation or territorial disputes with the submitting Coastal State may participate to a limited extent in the submission process. These third states may submit communications which then are normally considered by the Sub-commission along with the information and other materials submitted by the Coastal State. All other states which do not possess any juridical interest should not have access to the submission process. Any communication by these states is

¹⁶³ See note 108, 13, para. 26.

¹⁶⁴ *Ibid.*, 13, para. 27.

¹⁶⁵ *Ibid.*

not considered by the CLCS or by the Sub-commission. This practice had prompted severe criticisms by some observers. According to one, the CLCS has not changed this practice. It has nevertheless made revisions in the ways it shares and makes public information concerning the submissions and recommendations it adopts. For example, except for the first two submissions, the CLCS now makes available very detailed summaries of all submissions for which recommendations have been adopted. Information which is confidential or proprietary in nature is not included in the summary of recommendations adopted. Charts of the outer limits established by the Coastal State and confirmed by the CLCS are also published online. The Coastal State making a submission has also been required to submit and make available an executive summary of its submission. The executive summaries include concise descriptions of how the various rules of article 76 have been applied as well as charts depicting the various lines, including the lines depicting the outer limits of the continental margin. The progress of the work of the CLCS in any submission is contained in the statements by the chairman which are published after the completion of each session.

On substantive matters, there is no doubt that the CLCS has made major contributions to the further development of the law on the establishment of the outer limits of the continental shelf beyond 200 nautical miles. In the recommendations it has adopted, the CLCS has provided life to the provisions of article 76. On the matter of ridges and submarine elevations, for example, the international community now has a good sampling of the types of ridges and the features of submarine elevations that would be considered in the context of article 76 para. 6. The CLCS has also shown that it would not hesitate to consider new approaches used by Coastal States in determining the outer limits of the continental shelf. The case of Norway in the area in the Banana Hole may be cited as an example. Norway attempted to claim an area of the continental shelf by enclosing it from two opposite references: that of Mainland Norway and Svalbard and the island of Jan Mayen. The CLCS agreed with Norway's approach and confirmed its entitlement as well as the way it established the outer limits.

The recommendations studied here also show that the CLCS would not hesitate to make cross-references in submissions which involve the same or adjacent areas of the continental shelf. In the case of the Norwegian submission, the CLCS referred to the earlier submission of the Russian Federation for the Loop Hole in the Barents Sea. The CLCS made reference to the relevant parts of the Australian submission when

it considered and made recommendations in the submission made by New Zealand.