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The Continental Shelf Beyond 200 Nautical Miles

Vladimir Jares

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The Continental Shelf Beyond 200 Nautical Miles: The Work of the Commission on the Limits of the Continental Shelf and the Arctic

Vladimir Jares*

ABSTRACT

As policymakers, academia, and the media have paid increased attention to the Arctic region, there is more evidence of a certain lack of knowledge concerning the applicable international law.

The United Nations Convention on the Law of the Sea of December 10, 1982—adopted in 1982 and in force since November 16, 1994—provides both a legal framework within which all activities in oceans and seas must be carried out and, as far as the seabed of the Arctic Ocean international law is concerned, answers to questions related to its legal status and applicable regulations.

If a coastal State wishes to delineate its continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, it has to submit relevant data and information to the Commission on the Limits of the Continental Shelf, an expert body established under the Convention. The Commission issues recommendations, and the limits based on the recommendations of that Commission are final and binding.

In the Arctic region, only two coastal States so far have made submissions to the Commission—the Russian Federation and Norway. The Commission issued recommendations to both; in the case of the Central Arctic Ocean, it recommended that the Russian Federation make a revised submission.

Due to the fact that the other three coastal States of the Arctic Ocean—Canada, Denmark, and the United States—have yet to make their submissions (the United States is still not

* Senior Law of the Sea/Ocean Affairs Officer, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations. The views expressed herein are those of the author and do not necessarily reflect the views of the United Nations.

party to the Convention), and taking into account the workload of the Commission, the delineation of the continental shelf beyond 200 nautical miles and related delimitation of maritime boundaries between States will take many years to finalize.

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I. INTRODUCTION

In recent years, for reasons that are by now well known, the international community's attention has turned to the Arctic region. As policymakers, academia, and the media have paid increased attention to the region, considerable concerns have been raised about the perceived lack of a legal regime for governance in the Arctic. The combination of environmental awareness and sincere desire to prevent unregulated uses of the Arctic resources and ocean space, together with a lack of adequate knowledge concerning the applicable international law, seem to have especially fueled these concerns.

Thus, the ongoing debate about the legal status of the Arctic Ocean, including the seas of the region and its seabed, became part of the broader equation of issues, specific interests, and quests for solutions to present and potential future problems.

There is an important body of applicable international law that governs the waters surrounding the land territory of coastal States of the Arctic Ocean. As a matter of fact, as far as the seabed the Arctic Ocean international law is concerned, the law of the sea provides

answers to most, if not all, questions related to its legal status and applicable regulations.

The most important international instrument, the United Nations Convention on the Law of the Sea of December 10, 1982 (UNCLOS or the Convention),¹ adopted in 1982 and in force since November 16, 1994, provides a “legal framework within which all activities in oceans and seas must be carried out.”² Indeed, one might argue that since December 1982, the Convention has been the ultimate source of the law of the sea. This instrument is one of the most important (and, at the same time, one of the most underappreciated) international treaties ever negotiated under the auspices of the United Nations. Opened for signature on December 10, 1982, it was signed by 159 States by the end of the signing period³ and entered into force on November 16, 1994.⁴ Currently,⁵ this instrument is binding for 157 States and the European Community.⁶ Many States that are not parties to the Convention accept it as reflecting customary international law applicable to oceans.⁷

The Convention’s 320 articles and nine annexes regulate States’ behavior in the world’s oceans; define maritime zones and provide rules for the delineation of their outer limits; assign sovereignty, sovereign rights, and jurisdiction in these zones; specify other rights and obligations of States; provide tools for the settlement of disputes; and specify the mandate for three distinct international bodies established by the Convention, namely the International Tribunal for the Law of the Sea (the Tribunal or ITLOS), the International Seabed Authority (the Authority or ISA), and the Commission on the Limits of the Continental Shelf (the Commission or CLCS).⁸

1. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

2. G.A. Res. 63/111, at 1, U.N. Doc. A/RES/63/111 (Feb. 12, 2009).

3. UNCLOS, *supra* note 1, pt. XVII, art. 305(2).

4. *See id.* pt. XVII, art. 308(1) (to become enforceable twelve months after the date of deposit of the sixtieth instrument of ratification or accession).

5. As of May 30, 2009.

6. For current status of the Convention and related agreements, see United Nations Treaty Collection, Multilateral Treaties Deposited with the Secretary-General, Status of Treaties, United Nations Convention on the Law of the Sea, <http://treaties.un.org/Pages/Treaties.aspx?id=21&subid=A&lang=en> (last visited Oct 1, 2009) (follow link for “United Nations Convention on the Law of the Sea”).

7. Cf. Mary Gray Davidson, *Legal Protections for Coral Reefs*, in CORAL REEF RESTORATION HANDBOOK 143, 153 (William F. Precht ed., 2006) (noting that many commentators regard the Convention as customary international law, which is binding all nations, including those not parties to the Convention).

8. UNCLOS, *supra* note 1, pt. XI, § 1–3 (regulating states’ behavior on the “high seas”); *id.* pts. II, IV–V (defining maritime zones); *id.* pt. VI, art. 76 (providing rules for the delineation of outer limits); *id.* pts. II–VI (assigning sovereignty, sovereign rights, and jurisdiction in maritime zones); *id.* pts. XI, XIII, XV (providing for dispute

It should be noted that, with respect to ocean spaces and maritime zones under national jurisdiction, the Convention is quite specific and contains relatively detailed provisions as to the extent of rights and obligations of both coastal and other States. In some other respects—such as the protection and preservation of marine environment, prevention of pollution, and regulation of marine scientific research—the Convention serves rather as a framework document, providing a basic set of rules that need to be, and in many cases have been, further developed and refined by other relevant international instruments, rules, and standards.

It should be emphasized that the Convention approaches the oceans from an integrated viewpoint and attempts to balance—in a carefully designed package—various major interests, such as those of coastal States in the exploration and exploitation of marine resources off their coastlines as well as the preservation of traditional freedoms of the seas like the freedom of navigation.⁹

The General Assembly of the United Nations annually underscores the Convention's important place in the system of international law. When considering matters related to oceans and the law of the sea, the Assembly emphasizes "the universal and unified character of the Convention" and reaffirms that "the Convention sets out the legal framework within which all activities in the oceans and seas must be carried out."¹⁰

From the very outset, it is important to reemphasize that, from a legal standpoint, the Arctic Oceans and the adjacent seas are fully subject to the provisions of the Convention.

As the five coastal States of the Arctic Ocean stated in the Ilulissat Declaration:

By virtue of their sovereignty, sovereign rights[,] and jurisdiction in large areas of the Arctic Ocean[,] the five coastal States are in a unique position to address these possibilities and challenges. In this regard, we recall that an extensive international legal framework applies to the Arctic Ocean Notably, the law of the sea provides for important rights and obligations concerning the delineation of the outer limits of the continental shelf, the protection of the marine environment, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea. We remain committed to this legal framework and to the orderly settlement of any possible overlapping claims.

This framework provides a solid foundation for responsible management by the five coastal States and other users of this Ocean through national implementation and application of relevant

settlement); *id.* Annex VI (establishing ITLOS); *id.* pt. XI, § 4, arts. 156–85 (establishing ISA); *id.* Annex II (establishing CLCS).

9. The United Nations Convention on the Law of the Sea (A Historical Perspective), http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm (last visited Oct. 1, 2009) [hereinafter Historical Perspective].

10. G.A. Res. 63/111, *supra* note 2, at 1.

provisions. We therefore see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean. We will keep abreast of the developments in the Arctic Ocean and continue to implement appropriate measures.¹¹

Indeed, it appears that the most important task that the coastal States of the region face is the implementation of the Convention's provisions, as developed in some regards by a number of other international instruments. This being said, the implementation of the Convention in the Arctic is not only an issue for the coastal States. Other States have their own share of rights and responsibilities under the Convention; thus, a better understanding of the Convention is critical for all parties that may potentially be implicated.

This Article focuses on only one aspect of the implementation of the regime set up by the Convention in the Arctic Ocean—namely, the process of delineating the continental shelf beyond 200 nautical miles and the related work of the Commission on the Limits of the Continental Shelf.

II. BASELINES AND MARITIME ZONES

It may be useful to begin by outlining, albeit briefly, the regime of maritime zones under the Convention.

The Convention provides for the following maritime zones under national jurisdiction: internal waters, archipelagic waters,¹² the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf.¹³ One of the notable features of the Convention is that it establishes the maximum breadth for the zones as measured from the baselines.¹⁴ In each case, the Convention's provisions also contain very specific packages of rights and obligations for both coastal States and other States, thus settling some of the most

11. Arctic Ocean Conference, Ilulissat, Green., May 27–29, 2008, *Ilulissat Declaration*, paras. 3-4, available at www.oceanlaw.org/downloads/arctic/Ilulissat_Declaration.pdf [hereinafter Arctic Ocean Conference].

12. As there is no archipelagic State in the Arctic region, see Robin R. Churchill, *The Impact of State Practice on the Jurisdictional Framework Contained in the LOS Convention*, in *STABILITY AND CHANGE IN THE LAW OF THE SEA: THE ROLE OF THE LOS CONVENTION* 119–20 (Alex G. Oude Elferink ed., 2005) (Neth.) (listing States that have claimed archipelagic State status), because under UNCLOS, such a State must consist entirely of islands and meet other precisely defined characteristics, UNCLOS, *supra* note 1, pt. IV, art. 46, this Article will not further elaborate on the regime of archipelagic waters.

13. UNCLOS, *supra* note 1, pt. II, § 1, art. 2.

14. *Id.* pt. II, § 2, art. 5.

complex law of the sea matters previously faced by the international community.

It also may be useful to note that the existence of some maritime zones—the territorial sea or the continental shelf—is implied. In the case of the territorial sea, it is an ipso facto result of a State being a coastal one; in the case of the continental shelf, it is by virtue of article 77, paragraph 3, of the Convention, which states: “The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.”¹⁵

Other zones such as internal waters or archipelagic waters are delineated as a consequence of the coastal States’ use of straight or archipelagic baselines or closing lines.¹⁶

On the other hand, zones such as the contiguous zone or the exclusive economic zone are usually proclaimed by the coastal State explicitly through means such as national legislation, proclamation, or declaration made at the time of ratification of or accession to the Convention.¹⁷ The State concerned thus demonstrates its intention to exercise its sovereign rights and jurisdiction within these zones. Contrary to popular belief, the coastal State does not exercise sovereignty in all maritime zones—it has sovereignty only over the territorial sea, internal waters, and archipelagic waters, as the case may be.¹⁸

The determination of the extent or breadth of each maritime zone usually requires an active act of each State.¹⁹ This act is either unilateral (in the form of a national legislative act with regard to the establishment of outer limits of a maritime zone) or bilateral/multilateral where there is an overlap of maritime zones as calculated from the baselines and, thus, a need for the delimitation of maritime boundaries.

The regime of waters, seabed, and subsoil thereof beyond national jurisdiction is also determined by the Convention.²⁰ The traditional high seas freedoms apply beyond the outer limits of the exclusive economic zone (EEZ).²¹ Some of these freedoms of the high seas also apply within the EEZ, subject to the relevant EEZ provisions of the Convention.²² It may be useful to note that the quite popular term “international waters” does not have any legal content under the Convention and, depending on the circumstances, may refer to the waters beyond the twelve-nautical-mile limit of the

15. *Id.* pt. VI, art. 77, para. 3.

16. *Id.* pt. IV, art. 50.

17. *Id.* pt. II, § 2, art. 3.

18. *Id.* pt. II, § 1, art. 2.

19. *Id.* pt. II, § 2, art. 3.

20. *Id.* pt. V, art. 56.

21. *Id.* pt. VII, arts. 86–90.

22. *Id.* pt. V, art. 56.

territorial sea or, alternatively, beyond the 200-nautical-mile outer limit of the exclusive economic zone.²³

The area of seabed and its subsoil beyond the limits of national jurisdiction—beyond the limits of coastal States' continental shelves—the Area is, by virtue of General Assembly resolution 2749 (XXV) of 1970, later codified in UNCLOS,²⁴ a "common heritage of mankind."²⁵

Regarding the Area, the Convention provides, among other things, that "[n]o State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or natural or juridical person appropriate any part thereof" and that "[n]o such claim or exercise of sovereignty or sovereign rights nor such appropriation shall be recognized."²⁶ The Convention further provides that "[a]ll rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act," "[t]hese resources are not subject to alienation," and the minerals recovered from the Area may only be alienated in accordance with Part XI and the rules, regulations, and procedures of the Authority.²⁷

In addition, UNCLOS stipulates that "no State or natural or juridical person shall claim, acquire[,] or exercise rights with respect to the minerals recovered from the Area except in accordance with this Part [XI of the Convention]. Otherwise, no such claim, acquisition or exercise of such rights shall be recognized."²⁸

Under the Convention, "[a]ctivities in the Area shall, as specifically provided for in this Part, be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of developing States . . ."²⁹

On first read, the Convention's provisions relating to maritime zones appear to be deceptively simple. However, for political, legal, and technical reasons, the determination of the outer limits of these maritime zones and the lines of delimitation may turn out to be an extremely complex exercise. This would apply especially in a semi-enclosed body of water such as the Arctic Ocean because of its convergence of coasts; relatively fast-occurring natural changes; and burden of historical, military, and resource-related factors and

23. *Id.* arts. 3, 57.

24. *Id.* pt. XI, § 2, art. 137.

25. G.A. Res. 2749, para. 1, U.N. GAOR, 25th Sess., 1933d plen. mtg. (Dec. 17, 1970).

26. UNCLOS, *supra* note 1, pt. XI, § 2, art. 137

27. *Id.*

28. *Id.*

29. *Id.* pt. XI, § 2, art. 140.

interests.³⁰ In addition, the process of delineation and delimitation of maritime boundaries, especially in the context of the exclusive economic zone, began following the adoption of the Convention and has been complicated by difficulties that emerge only when the State engages in the application of the UNCLOS rules because the rules do not provide all necessary guidance.

III. CONTINENTAL SHELF BEYOND 200M

According to article 76, paragraph 1, of the Convention,

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 the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.³¹

There are two key concepts in this provision—the continental margin and distance—that grant to every coastal State, geography permitting,³² a 200-nautical-mile continental shelf with no need of any proclamation, effective occupation, or proof as to the geomorphology of the seabed.³³ This provision of the Convention also allows for the extension of the continental shelf “beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured” under specific circumstances.³⁴

Paragraph 3 of article 76 defines the continental margin as “the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.”³⁵ This definition creates an important distinction between the “scientific” notion of a continental shelf and the “legal” notion of the continental shelf.

As used in article 76, “land mass” and “continental margin” are scientific (geomorphological) concepts, whereas “land territory” and “continental shelf” are legal concepts. . . . [O]ne of the fundamental components of a State, together with its population and government, is

30. The reference to semi-enclosed bodies of water does not imply that the author shares the view expressed by some that the Arctic Ocean is a semi-enclosed sea. See DONALD R. ROTHWELL, *THE POLAR REGIONS AND THE DEVELOPMENT OF INTERNATIONAL LAW* 211 (1996) (discussing the debate as to whether the Arctic Ocean qualifies as a semi-enclosed sea).

31. UNCLOS, *supra* note 1, pt. VI, art. 76, para. 1.

32. That is to say, in configurations where the distance between States with opposite coasts is more than 400 nautical miles.

33. UNCLOS, *supra* note 1, pt. VI, art. 77, para. 3.

34. *Id.* pt. VI, art. 76, para. 7.

35. *Id.* pt. VI, art. 77, para. 3.

its territory. The land territory is the emerged part whereas the continental shelf is the submerged part or, as the definition puts it, the natural prolongation of the land territory. The legal concepts of territory and continental shelf, however, are defined with reference to the scientific concepts of land mass and continental margin. In other words, the two definitions combined declare that (i) the territory of a coastal State extends under water; (ii) the continental shelf constitutes the submerged prolongation of its land territory; and (iii) the outer limit of such prolongation is measured with reference to the submerged prolongation of the land mass, i.e. the "continental margin". The continental margin is just a yardstick, a reference, for the determination of the "legal" continental shelf. Depending on the various geomorphological circumstances the "legal" continental shelf can be wider or narrower than the continental margin.³⁶

Having defined the continental margin and the legal continental shelf in paragraphs 1–3, article 76 provides specific "formulae" and "constraints" for the purposes of delineating the continental shelf's outer limits beyond 200 M in paragraphs 4–7:

4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 M from the baselines from which the breadth of the territorial sea is measured, by either:

- (i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or
- (ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 M from the foot of the continental slope.

(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.

5. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 M from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 M from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 M from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

36. U.N. DIV. FOR OCEAN AFFAIRS AND THE LAW OF THE SEA, OFFICE OF LEGAL AFFAIRS, TRAINING MANUAL FOR DELINEATION OF THE OUTER LIMITS OF THE CONTINENTAL SHELF BEYOND 200 NAUTICAL MILES AND FOR PREPARATION OF SUBMISSIONS TO THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF at I-18, U.N. Sales No. E.06.V.4, (2006) [hereinafter TRAINING MANUAL] (emphasis omitted).

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 M from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 M in length, connecting fixed points, defined by coordinates of latitude and longitude.³⁷

“The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6 [of article 76].”³⁸ This provision, contained in paragraph 2 of article 76, in particular the reference to paragraph 6 of article 76, is of critical importance in relation to the Arctic Ocean region in view of the presence of seafloor highs, the nature of which would determine the extent of the national jurisdiction beyond 200 nautical miles.³⁹

The following illustration⁴⁰ from the Scientific and Technical Guidelines, which was prepared by the Commission on the Limits of the Continental Shelf, shows the application of various formulas and constraints for establishing the outer limits of the continental shelf.

37. *Id.* at I-25 (quoting UNCLOS, *supra* note 1, pt. VI, art. 76, paras. 4–7).

38. UNCLOS, *supra* note 1, pt. VI, art. 76, para. 2.

39. UNCLOS, *supra* note 1, pt. VI, art. 76, paras. 1, 2, 6.

40. U.N. Comm’n on the Limits of the Cont’l Shelf [CLCS], *Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf*, Annex II, fig. II.7, U.N. Doc. CLCS/11/Add.1 (Sept. 3, 1999) [hereinafter *Scientific and Technical Guidelines*].

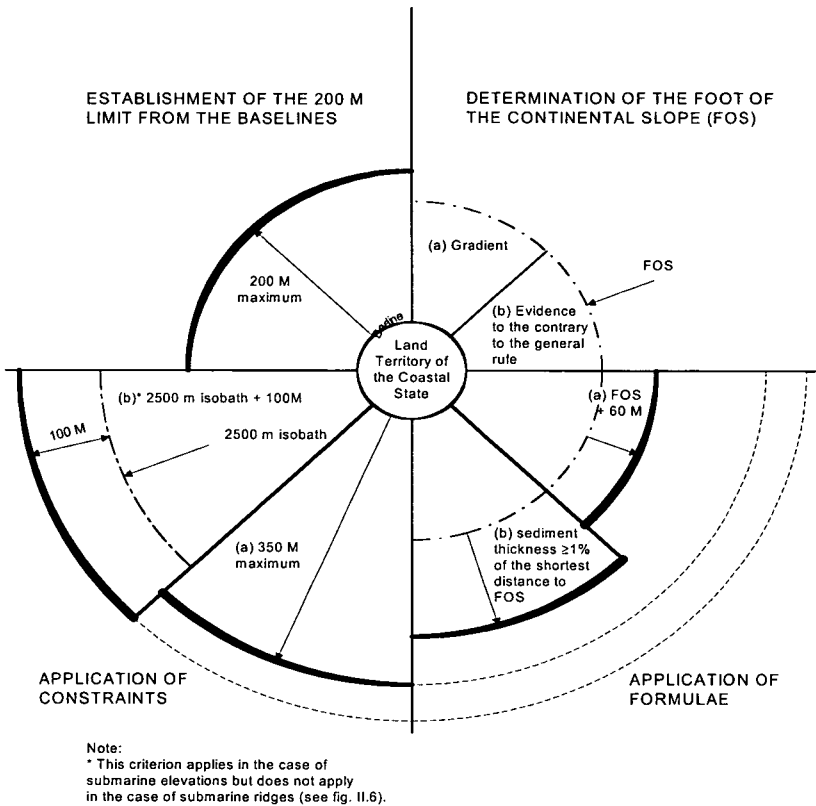


Figure II.7. Illustration of the application of various formulae and constraints for establishing the outer limits of the continental shelf.

Regarding the content of the legal regime on the continental shelf, “[t]he coastal State has sovereign rights for the purpose of exploring [the continental shelf] and exploiting its natural resources.”⁴¹ These rights are (i) exclusive (even “if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State”)⁴²; and (ii) independent from “occupation, effective or notional, or on any express proclamation” on the part of the coastal State.⁴³ The coastal State also has jurisdiction with regard to (i) the establishment and use of “artificial islands, installations, and structures”⁴⁴; (ii) “drilling on the continental shelf”⁴⁵; (iii) cables and

41. UNCLOS, *supra* note 1, pt. VI, art. 77, para. 1.

42. *Id.* pt. VI, art. 77, para. 2.

43. *Id.* pt. VI, art. 77, para. 3.

44. *Id.* pt. VI, art. 80.

45. *Id.* pt. VI, art. 81.

pipelines connected to its exploration and exploitation or to “the operations of artificial islands, installations, and structures”⁴⁶; (iv) marine scientific research⁴⁷; and (v) protection and preservation of marine environment.⁴⁸ The definition of the continental shelf’s “natural resources” covers mineral resources; “other non-living resources of the seabed and subsoil”; and “living organisms belonging to sedentary species” (i.e. at the harvestable stage, these organisms “either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil”).⁴⁹

IV. THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF AND ITS FUNCTIONS

A. *The Commission*

To verify the correct application, by coastal States concerned, of article 76 of the Convention, including the scientific and technical criteria for the establishment of the outer “limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured,”⁵⁰ the Convention provides for a special body of experts—the Commission on the Limits of the Continental Shelf.⁵¹ The Commission was established in 1997,⁵² following the Convention’s entry into force on November 16, 1994.⁵³ The need for an independent verification by a group of experts of a coastal State’s delineation of its continental shelf beyond 200 M, an otherwise unilateral act of a coastal State, is due to two factors: (i) the scientific and technical complexities of the criteria contained in article 76; and (ii) the seabed, ocean floor, and subsoil thereof beyond the outer limit of the continental shelf has been declared, together with its resources, as “common heritage of mankind.”⁵⁴ Thus, despite the unilateral character of the delineation by the coastal State of the outer limits of the continental shelf, the limits of the shelf which are

46. *Id.* pt. VI, art. 79, para. 4.

47. *Id.* pt. XIII, art. 238.

48. *Id.* pt. XII, art. 208, paras. 1–2.

49. *Id.* pt. VI, art. 77, para. 4.

50. *Id.* pt. VI, art. 76, para. 8.

51. *Id.*

52. Commission on the Limits of the Continental Shelf (CLCS): Membership of the Commission from 1997 to 2007, http://www.un.org/Depts/los/clcs_new/commission_members_1997_2002.htm (last visited Oct. 1, 2009) [hereinafter Former Memberships of the Commission].

53. Historical Perspective, *supra* note 9.

54. UNCLOS, *supra* note 1, pt. XI, § 2, art. 136.

beyond 200 M are subject to an “endorsement” by the international community through this expert body.⁵⁵

The functions of the Commission are two-fold:

- (a) 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 in accordance with article 76 and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea; [and] (b) to provide scientific and technical advice, if requested by the coastal State concerned during the preparation of the data referred to [above].⁵⁶

The importance of the Commission’s recommendations is underscored by the fact that “the limits of the shelf established by a coastal State on the basis of these recommendations” are “final and binding.”⁵⁷

The Commission consists of twenty-one members who are “experts in the field of geology, geophysics or hydrography.”⁵⁸ Each member is elected for a five-year term of office by “States Parties to [the] Convention from among their nationals, having due regard to the need to ensure equitable geographical representation.”⁵⁹ Members serve in their personal capacities and may be re-elected.⁶⁰

“[B]y established precedent in respect of similar treaty organs, the members of the Commission can be considered to be experts on mission covered by article VI of the General Convention [on the Privileges and Immunities of the United Nations].”⁶¹

The most recent elections of the twenty-one members of the Commission were held on June 14–15, 2007, during the seventeenth Meeting of States Parties to the Convention.⁶² Mr. Alexandre Tagore

55. See Anna Cavnar, *Accountability and the Commission on the Limits of the Continental Shelf: Deciding Who Owns the Ocean Floor* 12 (Inst. for Int’l Law & Justice Emerging Scholars Papers Working Paper Group, Paper No. 15, 2009), available at <http://www.iilj.org/publications/documents/CavnarESP15-09.pdf> (The Commission “legitimate[s] proposed boundaries with an independent stamp-of-approval.”).

56. UNCLOS, *supra* note 1, Annex II, art. 3, para. 1.

57. *Id.* pt. VI, art. 76, para. 8.

58. *Id.* Annex II, art. 2, para. 1.

59. *Id.*

60. *Id.* Annex II, art. 2, paras. 1, 4.

61. Letter from the Legal Counsel, Under-Sec’y-Gen. of the U.N. for Legal Affairs, to the Comm’n on the Limits of the Cont’l Shelf, para. 5, U.N. Doc. CLCS/5 (Mar. 11, 1998).

62. Commission on the Limits of the Continental Shelf (CLCS): Members of the Commission, http://www.un.org/Depts/los/clcs_new/commission_members.htm#Members (last visited Oct. 1, 2009) [hereinafter Members of the Commission]. The list of members includes: Alexandre Tagore Medeiros de Albuquerque (Brazil), Osvaldo Pedro Astiz (Argentina), Lawrence Folajimi Awosika (Nigeria), Harald Brekke (Norway), Galo Carrera Hurtado (Mexico), Francis L. Charles (Trinidad and Tobago), Peter F. Croker (Ireland), Indurlall Fagoonee (Mauritius), Mihai Silviu German (Romania), Abu Bakar Jaafar (Malaysia), George Jaoshvili (Georgia), Emmanuel Kalngui (Cameroon), Yuri

Medeiros de Albuquerque, a national of Brazil, is the present Chairman of the Commission.⁶³

The Commission holds two sessions a year, usually in March/April and August/September, at the United Nations Headquarters in New York.⁶⁴ These sessions consist of periods of plenary meetings and periods used by the subcommissions for the “[t]echnical examination of submissions at the Geographic Information System laboratories and other technical facilities of the Division [for Ocean Affairs and the Law of the Sea, Office of Legal Affairs (DOALOS)].”⁶⁵ “The meetings of the Commission, its subcommissions and subsidiary bodies are held in private, unless the Commission decides otherwise.”⁶⁶

The Rules of Procedure,⁶⁷ one of the basic documents of the Commission, regulate the interaction between submitting States and the Commission.⁶⁸ There are three annexes to the Rules: Annex I deals with submissions in case of a dispute between States with opposite or adjacent coasts or in other cases of unresolved land or maritime disputes; Annex II is devoted to issues of Confidentiality; and Annex III contains the “[m]odus operandi for the consideration of a submission made to the Commission on the Limits of the

Borisovitch Kazmin (Russian Federation), Wenzheng Lu (China), Isaac Owusu Oduro (Ghana), Yong-Ahn Park (Republic of Korea), Fernando Manuel Maia Pimentel (Portugal), Sivaramakrishnan Rajan (India), Michael Anselme Marc Rosette (Seychelles), Philip Alexander Symonds (Australia), and Kensaku Tamaki (Japan). *Id.*

63. *Id.* Previous Chairmen include: Mr. Yuri Borisovitch Kazmin (1997-2002), The Secretary-General, *Curriculum Vitae of Candidates Nominated by States Parties for Election to the Commission on the Limits of the Continental Shelf*, at 86, delivered to the *Meeting of States Parties*, U.N. Doc. SPLOS/81 (Mar. 2, 2002), and Mr. Peter F. Croker (2002-2007), Former Memberships of the Commission, *supra* note 52.

64. See The Secretary-General, *Oceans and the Law of the Sea: Report of the Secretary-General*, pt. III, paras. 22, 26, delivered to the *General Assembly*, U.N. Doc. A/57/57/Add.1 (Oct. 8, 2002) [hereinafter A/57/57/Add.1] (summarizing previous CLCS sessions).

65. See *Calendar of Meetings*, http://www.un.org/Depts/los/reference_files/calendar_of_meetings.htm (last visited Oct. 1, 2009) (describing meetings in 2009).

66. U.N. Comm’n on the Limits of the Cont’l Shelf [CLCS], *Rules of Procedure of the Commission on the Limits of the Continental Shelf*, pt. VII, R.23, U.N. Doc. CLCS/40/Rev.1 (Apr. 17, 2008) [hereinafter *Rules of Procedure*]. In this regard, to date, there was only one open meeting of the Commission, which was held on May 1, 2000, during the first day of the seventh session of the Commission. See U.N. Comm’n on the Limits of the Cont’l Shelf [CLCS], *Open Meeting of the Commission on the Limits of the Continental Shelf*, May 1–5, 2000, *United Nations Convention on the Law of the Sea and the Delineation of the Continental Shelf: Opportunities and Challenges for States* (Apr. 20, 2000) [hereinafter *Open Meeting*] (Opening Statement of the Chairman); see *infra*. text accompanying note 83 (discussing the purposes and goals of the open meeting).

67. *Rules of Procedure*, *supra* note 66 (contains the latest version of the *Rules of Procedure* of the Commission, embodying amendments and additions adopted by the Commission as of April 11, 2008).

68. *Id.* pt. XI.

Continental Shelf.”⁶⁹ However, the Rules are not binding on States, due to the fact that they are implemented by the Commission.⁷⁰ The Rules and its Annexes provide guidance to States on a number of sensitive matters.⁷¹ The Commission’s pace and manner of considering submissions are also regulated by these rules,⁷² resulting in significant implications for the coastal States.

The Scientific and Technical Guidelines is another basic document of the Commission.⁷³ “The Guidelines are aimed at assisting coastal States to prepare their submissions regarding the outer limits of their continental shelf.”⁷⁴ Applying article 76 criteria involves working with the “complex technical and scientific data” submitted by a coastal State to be considered by the Commission.⁷⁵ “The Scientific and Technical Guidelines were finally adopted by the Commission on 13 May 1999 and published in document CLCS/11.”⁷⁶

Initially, the acceptance of the Guidelines was not unanimous.⁷⁷ “Several States had addressed letters to the Commission containing

69. *Id.* Annexes I– III.

70. See Press Release, Comm’n on the Limits of the Cont’l Shelf, Commission on Limits of the Continental Shelf Adopts Guidelines; Addresses Rules of Procedure, Confidentiality of Information, U.N. Doc. SEA/1681 (Sept. 14, 1998), available at <http://www.un.org/News/Press/docs/1998/19980914.sea1681.html> (“[T]he rules dealt only with the procedures to be followed by the Commission and not with the rights and obligations of States.”).

71. See *Rules of Procedure*, *supra* note 66, Annex I (providing for submissions in cases of unresolved land or maritime disputes between States).

72. *Id.* pt. XI.

73. *Scientific and Technical Guidelines*, *supra* note 40, U.N. Doc. CLCS/11, at 7.

74. U.N. Div. for Ocean Affairs and the Law of the Sea, Scientific and Technical Guidelines, http://www.un.org/Depts/los/clcs_new/commission_guidelines.htm (last visited Oct. 1, 2009) [hereinafter Scientific and Technical Guidelines Summary].

75. *Id.*

76. *Id.*

77. See Scientific and Technical Guidelines Summary, *supra* note 74 (describing the lack of consensus on the Guidelines upon their adoption). Even after the adoption of the Guidelines, matters pertaining to them have reappeared on the agenda of the Commission. See *id.* (summarizing later discussion of the Guidelines). At its eighth session, upon the suggestion of the Chairman,

the members of the Commission deliberated on one issue requiring clarification, namely, as to whether a submission needs to include data documenting sediment thickness, the foot of the continental slope and other relevant criteria of article 76 of the Convention relating to areas within 200 M, in support of the State’s submission regarding an extended continental shelf beyond 200 M. The overall opinion of the members of the Commission was that such data must be submitted as supporting data. One member of the Commission expressed reservations in this respect, based, *inter alia*, on his interpretation of article 76, paragraph 8, of the Convention, and also paragraphs 3 and 4 of Annex II to the Convention. He further stated that such a requirement might not be applicable in the case of the special characteristics of the continental margin as referred to in Annex II to the Final Act of the

comments on the Guidelines.”⁷⁸ “The highly complex nature of the Guidelines, which deal with geodetic, geological, geophysical and hydrographic methodologies stipulated in article 76” of the Convention, required a direct exchange of views with the coastal States concerned.⁷⁹ Therefore, the Commission held an “Open Meeting” on May 1, 2000.⁸⁰ The other goals of the meeting were to point out to policymakers and legal advisors the benefits that “coastal State[s] may derive from implementing the provisions of article 76” and to “explain to the experts in marine sciences who are involved in the preparation of submissions how the Commission considers that its Scientific and Technical Guidelines should be applied in practice.”⁸¹ Approximately 100 participants attended the meeting.⁸²

Several references to the Scientific and Technical Guidelines (e.g., regarding the format of the submission and number of copies) are now contained in the rules of procedure of the CLCS,⁸³ and States assign considerable importance to the Guidelines in spite of their

Third United Nations Conference on the Law of the Sea where the criterion is the thickness of sedimentary rock not less than 1 km.

Chairman of the Commission on the Limits of the Continental Shelf, *Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the Progress of Work in the Commission*, para. 6, delivered to the Commission on the Limits of the Continental Shelf, U.N. Doc. CLCS/25 (Sept. 1, 2000).

78. Scientific and Technical Guidelines Summary, *supra* note 74.

79. Open Meeting, *supra* note 66, Secretariat’s note, U.N. Doc. CLCS/26, para. 2.

80. *Id.* at Secretariat’s note, paras. 2–3.

81. *Id.* at 2 (Opening Statement by Chairman). During the open meeting, the following presentations were made: The United Nations Convention on the Law of the Sea and the Delineation of the Outer Limits of the Continental Shelf (Harald Brekke); The Mandate and Work of the Commission on the Limits of the Continental Shelf (Peter Croker); *Modus Operandi* of the CLCS (Samuel Betah, in collaboration with André Chan Chim Yuk); Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf (Osvaldo P. Astiz, K. R. Srinivasan and Mladen Juračić, in collaboration with Galo Carrera); Geographic Scope and Scientific Challenges Posed by Article 76 of the United Nations Convention on the Law of the Sea (Galo Carrera); An Outline for the Preparation of a Submission to the Commission on the Limits of the Continental Shelf (Galo Carrera and Alexandre Albuquerque). *Id.* at 1 (outline of presentations).

82. The Open Meeting of the Commission on the Limits of the Continental Shelf, http://www.un.org/Depts/los/clcs_new/documents/clcsopen.htm (last visited Oct. 1, 2009).

83. *Rules of Procedure*, *supra* note 66, *passim*. The *Rules of Procedure* state the intention of the Commission to be guided by its Guidelines when making recommendations. *Id.* Annex III, pt. V, para. 11. Paragraph 11 of Annex III to the rules provides that “[t]he recommendations prepared by the subcommission shall be in accordance with article 76 of the Convention, the Statement of Understanding, these Rules and the Guidelines.” *Id.* Paragraph 12 of Annex III notes that “[i]f the submission does not contain sufficient data and other material upon which the outer limits of the continental shelf could be based, the recommendations shall include provisions regarding the additional data and other material that may be needed to support the preparation of a revised or new submission in accordance with the Guidelines.” *Id.* Annex III, pt. V, para. 12.

recommendatory nature, calling them “the basic document[] concerning submissions in accordance with article 76, paragraph 8, of the Convention.”⁸⁴ The eleventh Meeting of States Parties decided to use the date of the adoption of the Guidelines, May 13, 1999, as the date of commencement of the ten-year time period noted in article 4 of Annex II to the Convention for States Parties for which the Convention entered into force before that date.⁸⁵

In addition to adopting the Guidelines, the Commission prepared an “[o]utline for a five-day training course for delineation of the outer limits of the continental shelf beyond 200 nautical miles and for preparation of a submission of a coastal State to the Commission on the Limits of the Continental Shelf.”⁸⁶ At the same time, the Commission recognized that it is not its mandate to organize training.⁸⁷ In view of this fact, DOALOS sought such a mandate from the General Assembly and conducted, on this basis, a series of regional and subregional training courses on the relevant “legal, scientific, logistical and procedural aspects of the delineation of the outer limits of the extended continental shelf” based on a nine-module training manual prepared by DOALOS in cooperation with several members of the Commission.⁸⁸

V. THE ARCTIC REGION, ARCTIC OCEAN, AND ARCTIC COUNCIL.

“The Arctic Region is the northernmost part of the world, and includes the outer edges of the European, Asian, and American continents, and the entire Arctic Ocean with its islands.”⁸⁹ It borders the Northern Polar Circle from the south (66°33') and occupies 21 million square kilometers (10 million sq. km. is land, and 11 million sq. km. is water).⁹⁰

84. *Decision Regarding the Date of Commencement of the Ten-Year Period for Making Submissions to the Commission on the Limits of the Continental Shelf Set Out in Article 4 of Annex II to the United Nations Convention on the Law of the Sea*, at 1, Doc. SPLOS/72 (May 29, 2001) [hereinafter Meeting of States Parties].

85. *Id.*

86. Comm'n on the Limits of the Cont'l Shelf [CLCS], *Outline for a Five-Day Training Course for Delineation of the Outer Limits of the Continental Shelf Beyond 200 Nautical Miles for Preparation of a Submission of a Coastal State to the Commission on the Limits of the Continental Shelf*, U.N. Doc. CLCS/24 (Sept. 1, 2000).

87. The Secretary-General, *Oceans and the Law of the Sea: Report of the Secretary-General*, add., pt. III, § B, para. 45, delivered to the General Assembly, U.N. Doc. A/56/58/Add.1 (Oct. 5, 2001).

88. TRAINING MANUAL, *supra* note 36, at xviii–xix.

89. POLUS–Arctic and Antarctic Expedition Center: Arctic Regions, <http://www.polus.org/cgi-bin/sborka.cgi?name=arktika> (last visited Oct. 1, 2009) [hereinafter Arctic Regions].

90. *Id.*

Traditionally, the Arctic region has been divided into five sectors,⁹¹ with the borders of Russia, the United States, Canada, Norway, and Denmark serving as the base borders; the meridians serving as the side borders; and the North Pole serving as the top border.⁹²

It may be useful to recall that eight States are considered Arctic States: (i) those that have sovereignty over land/island territory within the Arctic Ocean—Canada, Denmark, Norway, the Russian Federation, and the United States; and (ii) those that do not have “direct” access to this body of water—Finland, Iceland, and Sweden.⁹³

“The Arctic Ocean occupies a roughly circular basin and covers an area of about 14,056,000 square [kilometers] (5,440,000 mi²) The coastline length is 45,389 kilometers (28,203 mi). . . . [I]t is surrounded by the land masses of Eurasia, North America, Greenland, and several islands.”⁹⁴ The Arctic Ocean is generally understood to include

Baffin Bay, Barents Sea, Beaufort Sea, Chukchi Sea, East Siberian Sea, Greenland Sea, Hudson Bay, Hudson Strait, Kara Sea, Laptev Sea, White Sea and other tributary bodies of water. It is connected to the Pacific Ocean by the Bering Strait and to the Atlantic Ocean through the Greenland Sea [and Labrador Sea].⁹⁵

This Article will focus on the Central Arctic Ocean and the Barents Sea.

“The Arctic Council is a high-level intergovernmental forum that provides a mechanism to address the common concerns and challenges faced by the Arctic governments and the people of the Arctic.”⁹⁶ Its primary activities include the protection of the Arctic Marine Environment, Arctic monitoring and assessment, conservation of Arctic flora and fauna, emergency prevention, preparedness and response, and the elimination of the pollution of the Arctic.⁹⁷ Canada, Denmark, Finland, Iceland, Norway, the

91. It is important to note that these sectors do not represent negotiated maritime boundaries. See Bob Tkacz, *Arctic Conference Emphasizes Cooperation to Address New Issues*, ALASKA J., June 5, 2009, http://www.alaskajournal.com/stories/060509/loc_4news_001.shtml.

92. Arctic Regions, *supra* note 89.

93. Ingo Winkelmann, Stiftung Wissenschaft und Politik [German Inst. for Int'l and Sec. Affairs], *Fixed Rules of Play for Dividing Up the Arctic Ocean: The Ilulissat Declaration of the Arctic Coastal States*, SWP COMMENTS (F.R.G.), July 2008, at 1–2.

94. Arctic Ocean, http://en.citizendium.org/wiki/Arctic_Ocean (last visited Oct. 1, 2009).

95. *Id.*

96. International Work Group for Indigenous Affairs: The Arctic Council, <http://www.iwgia.org/sw246.asp> (last visited Oct. 1, 2009).

97. Global Marine Oil Pollution Information Gateway, Arctic Environmental Protection Strategy, <http://oils.gpa.unep.org/framework/region-1-next.htm> (last visited Oct. 1, 2009).

Russian Federation, Sweden, and the United States serve as members of the Council.⁹⁸ The Russian Federation served as the chair of the Council from 2004–2006.⁹⁹

As to the applicability of the Convention in the region, it is perhaps useful to note that, with the exception of the United States, all States bordering the Arctic Ocean or otherwise involved with the region (e.g., through the Arctic Council) are States Parties to the 1982 Convention.¹⁰⁰ The United States, the only coastal State bordering the Arctic Ocean that is not yet party, accepts the Convention as a source of customary international law.¹⁰¹

VI. SUBMISSIONS TO THE COMMISSION IN RELATION TO THE ARCTIC OCEAN

A. *Submission by the Russian Federation*

The Russian Federation's submission,¹⁰² made to the Commission on December 20, 2001, was the first submission received by the Commission since the first election in 1997.¹⁰³ "The submission contained the information on the proposed outer limits of the continental shelf of the Russian Federation beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured [in four regions]."¹⁰⁴ A map—part of the submission's executive summary—shows two of these regions, namely those located in the Arctic region.¹⁰⁵ This map indicates the extent of the proposed outer limit of the continental shelf beyond 200 nautical

98. About Arctic Council (Oct. 22, 2007), <http://arctic-council.org/article/about>.

99. *Id.*

100. Betsy Baker, Arctic Chronicles: The UN Convention on the Law of the Sea (Aug. 14, 2009), <http://www.usgs.gov/journals/arctic/2009/08/the-un-convention-on-the-law-of-the-sea/>.

101. Richard McLaughlin, Endowed Chair for Marine Policy and Law, Harte Research Inst., The Importance of U.S. Membership in the Law of the Sea Convention to the Gulf of Mexico (July 2009), http://www.hartheresearchinstitute.org/docs/LOS_white_paper_060309.pdf.

102. Comm'n on the Limits of the Cont'l Shelf [CLCS], *Outer Limits of the Continental Shelf Beyond 200 Nautical Miles from the Baselines: Submission by the Russian Federation*, Ref. No. CLCS 01.2001.LOS (Dec. 20, 2001), http://www.un.org/Depts/los/clcs_new/submissions_files/submission_rus.htm [hereinafter *Submission by the Russian Federation*]. The Convention entered into force for the Russian Federation on April 11, 1997. *Id.*

103. Submissions to the CLCS, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm (last visited Oct. 1, 2009).

104. Submission by the Russian Federation, *supra* note 102.

105. Area of the Continental Shelf of the Russian Federation in the Arctic Ocean Beyond 200-Nautical-Mile Zone, http://www.un.org/Depts/los/clcs_new/submissions_files/rus01/RUS_CLCS_01_2001_LOS_2.jpg (last visited Oct. 1, 2009).

miles of the Russian Federation in the Central Arctic Ocean and in the Barents Sea.¹⁰⁶ The map also shows the 200-nautical-mile limit from the baselines and “provisional line of the delimitation of the continental shelf of the Russian Federation with neighbouring States[,] subject to more precise determination through negotiations.”¹⁰⁷

Receipt of the submission set in motion a mechanism for examination regulated by the rules of procedure of the Commission.¹⁰⁸ “In accordance with rule 49 of the Rules of Procedure of the Commission, a communication has been circulated to all States-Members of the United Nations, including States Parties to the Convention, in order to make public the proposed outer limits of the continental shelf pursuant to the submission.”¹⁰⁹

All other four coastal States of the Arctic region commented on the Russian submission.¹¹⁰ Canada stated that it was “not in a position to determine whether it agrees with the Russian Federation’s Arctic continental shelf submission without the provision of further supporting data to analyse and that [its] inability to comment at that point should not be interpreted as either agreement or acquiescence by Canada” to the submission.¹¹¹ Canada also pointed out that the Russian Federation’s submission to the Commission “on the limit of its continental shelf beyond 200 miles and any recommendations by the Commission in response are without prejudice to the question of delimitation of the continental shelf between Canada and the Russian Federation.”¹¹²

Denmark, which was not yet party to the Convention at that time, also stated that it was “not able to form an opinion on the Russian submission” and that “[a] qualified assessment would require more specific data.”¹¹³ Similarly to Canada, Denmark observed that “such absence of opinion at [that] moment [did] not imply [its]

106. *Id.*

107. Legends to the Attached Maps, http://www.un.org/Depts/los/clcs_new/submissions_files/rus01/RUS_page5_Legend.pdf (last visited Oct. 1, 2009).

108. *See Rules of Procedure, supra* note 66, pt. XI, R.49 (providing that the proposed outer limits of the continental shelf become public upon receipt of the submission).

109. Submission by the Russian Federation, *supra* note 102 (citation omitted).

110. *Id.*

111. Note Verbale, Permanent Mission of Canada to the United Nations, Notification Regarding the Submission Made by the Russian Federation to the commission on the Limits of the Continental Shelf, Ref. No. CLCS.01.2001.LOS/CAN (Jan. 18, 2002), available at http://www.un.org/Depts/los/clcs_new/submissions_files/rus01/CLCS_01_2001_LOS_CANtext.pdf.

112. *Id.*

113. Note Verbale, Permanent Mission of Den. to the U.N., Notification Regarding the Submission Made by the Russian Federation to the Commission on the Limits of the Continental Shelf, Ref. No. CLCS.01.2001.LOS/DNK (Feb. 4, 2001), available at http://www.un.org/Depts/los/clcs_new/submissions_files/rus01/CLCS_01_2001_LOS_DNKtext.pdf.

agreement or acquiescence to the Russian Federation's submission" and that the "submission and the Commission's recommendations are without prejudice to the delimitation of the continental shelf between Denmark/Greenland and the Russian Federation."¹¹⁴ Denmark also noted that it was not, at that time,

in a position to evaluate the possible impact of an extended Russian continental shelf beyond 200 nautical miles on the extended shelf appurtenant to Greenland, and therefore unable to state that the Russian claim would not be met by overlapping Danish/Greenlandic claims to continental shelf areas beyond 200 nautical miles in the Arctic.¹¹⁵

Norway submitted its comments concerning the Russian submission in relation to "the unresolved delimitation issue between Norway and the Russian Federation with regard to the continental shelf in the Barents Sea"¹¹⁶; it also did so "in agreement with the Russian Federation."¹¹⁷ Norway stated that "[t]he delimitation of the continental shelf between Norway and the Russian Federation has not yet been settled and [was] the object of ongoing consultations."¹¹⁸ Thus, "[t]he unresolved delimitation issue in the Barents Sea [was] . . . to be considered as a 'maritime dispute' for the purposes of rule 5(a) of Annex I to the Rules of Procedure of the Commission."¹¹⁹ Norway submitted two lists of coordinates—one for each of the Norwegian and Russian positions on the delimitation.¹²⁰

Norway also observed that

[i]n the central Barents Sea a sizeable area is located beyond 200 nautical miles from the respective baselines of Norway and the Russian Federation. Bathymetric and seismic data show this area to be part of the shallow waters of the Barents Sea, which in its full extent is situated landward of the foot of the continental slope.¹²¹

It further stated that "no part of this area extends beyond 350 nautical miles from the baselines of either of the two coastal [S]tates."¹²² Referring to applicable provisions of article 76 of the Convention, Norway noted that it was "clear that this area beyond

114. *Id.*

115. *Id.*

116. Note Verbale, Permanent Mission of Nor. to the U.N., Notification Regarding the Submission Made by the Russian Federation to the Commission on the Limits of the Continental Shelf, U.N. Doc. CLCS.01.2001.LOS/NOR (Mar. 20, 2002), available at http://www.un.org/Depts/los/clcs_new/submissions_files/rus01/CLCS_01_2001_LOS_NORtext.pdf.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

200 nautical miles may be considered as being part of the continental shelf still to be delimited by the two coastal [S]tates concerned without any need for further scientific and technical documentation.”¹²³

The communication from Norway commented further on matters relating to maritime boundary delimitation and concluded by stating that “[o]n all the above understandings, Norway consent[ed], in accordance with . . . rule 5(a), to an examination by the Commission of the Russian submission with regard to the ‘area under dispute.’”¹²⁴

The position of the United States focused on the Central Arctic Ocean region of the submission.¹²⁵ The United States stated that, having reviewed the executive summary of the Russian submission, it believed “that the submission ha[d] major flaws as it relates to the continental shelf claim in the Arctic.”¹²⁶ It pointed out that “[t]he integrity of the Convention and the process for establishing the outer limit of the continental shelf beyond 200 nautical miles ultimately depends on adherence to legal criteria and whether the geological criteria and interpretations applied are accepted as valid by the weight of informed scientific opinion.”¹²⁷

Quite importantly for a major State not party to the Convention, the United States of America stressed in its communication “the importance of promoting stability of relations in the oceans, and of complying with the provisions of Article 76 of the . . . Convention.”¹²⁸ In its comments, the United States first addressed the issue of baselines, inviting the Commission, which in its view “has no competence over questions of baselines,” to “ensure that it does not, on a global basis, endorse baselines, whether or not they may be inconsistent with international law.”¹²⁹

123. *Id.*

124. *Id.*

125. Letter, U.S., Notification Regarding the Submission Made by the Russian Federation to the Commission on the Limits of the Continental Shelf, Ref. No. CLCS.01.2001.LOS/USA (Feb. 28, 2002), *available at* http://www.un.org/Depts/los/clcs_new/submissions_files/rus01/CLCS_01_2001_LOS_USA.txt.pdf.

126. *Id.* (Letter from Mr. Negroponte).

127. *Id.* (Letter from Mr. Negroponte).

128. *Id.* at 1.

129. *Id.* With the exception of Norway, none of the other coastal States Parties to the Convention bordering the Arctic Ocean has yet officially deposited the baselines with the Secretary-General pursuant to Article 16(2) of the Convention. Deposit of Charts, <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/depositpublicity.htm> (last visited Oct. 1, 2009). However, national legislation of Canada and Denmark/Greenland on baselines has been made public. Table of Claims to Maritime Jurisdiction, tbl. (May 28, 2008), *available at* http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/table_summary_of_claims.pdf. The baselines of the Russian Federation, which do not necessarily coincide with the baselines established by the U.S.S.R. in the 1980’s, *see* 4604 Declaration (Feb. 7, 1984), *available at* http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/RUS_1984_Declaration.pdf (listing coordinates); 4450 Declaration (Jan. 15, 1985),

Regarding maritime boundaries, the United States noted that “the Russian submission utilize[d] the boundary embodied in the Maritime Boundary Agreement between the United States of America and the Union of the Soviet Socialist Republics (signed on June 1, 1990), notwithstanding the fact that the Russian Duma ha[d] not yet approved the treaty.”¹³⁰ It also stated that

the use of that boundary [was] consistent with the mutual interests of Russia and the United States in stability of expectations, and with Article 9 of Annex II of the Convention, which provides that the actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts.¹³¹

The United States then discussed the more scientific aspects of the submission. It noted that “[c]ritical to the Russian submission relating to the Arctic Ocean [were] the positions of the 2,500 meter isobath and the foot of the continental slope.”¹³² The United States also stated that “[t]he positions of these lines in the Russian presentation [submission] could not be examined for accuracy and completeness, because they [were] not included in the executive summary.”¹³³ The paper attached considerable importance to the issue of ridges, namely the characteristics of Alpha-Mendeleyev Ridge and Lomonosov Ridge. It maintained that the Alpha-Mendeleyev Ridge system is not “a submerged prolongation of land mass of Russia” and that the Lomonosov Ridge “is a freestanding feature in the deep, oceanic part of the Arctic Ocean Basin, and not a natural component of the continental margins of either Russia or any other State.”¹³⁴

Under the heading “Submarine Ridges,” the United States observed that

the issue of ridges is complicated by the provision of Article 76, paragraph 6, which speaks of “submarine ridges.” In that regard, the Government of the United States of America [understood] that the first sentence of that paragraph was not used by [the Russian Federation] in

available at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/RUS_1985_Declaration.pdf (same); seem to still await their official publication or deposit with the Secretary-General of the United Nations, even though they were provided to the Commission on the Limits of the Continental Shelf, *see* Russian Federation, <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/RUS.htm> (last visited Oct. 1, 2009) (indicating a submission to the CLCS on behalf of the Russian Federation, but no submission in compliance with deposit obligations).

130. *Id.* at 1.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.* at 2–3.

establishing the outer limit of the continental shelf beyond 200 nautical miles. Furthermore, that provision could not be so applied.¹³⁵

The consideration of the submission made by the Russian Federation was included in the agenda of the tenth session of the Commission held in New York from March 25 to April 12, 2002.¹³⁶ At that session,

[t]he presentation of the submission of the Russian Federation was made by Mr. Ivan Gloumov, Deputy Minister for Natural Resources of the Russian Federation, accompanied by a delegation of experts from the submitting State. Following the presentation, the representative of the Russian Federation was invited by the Chair to state the position of his Government regarding the communications addressed to the Secretary-General by Canada, Denmark, Japan, Norway and the United States of America, which had been circulated by the Secretariat to all members of the Commission as well as to all States. He stated that the Russian Federation did not regard any of those communications as an impediment to the consideration of the submission.¹³⁷

Mr. Gloumov also stated that the Russian Federation's experts would be available "to answer any questions the Commission or its Subcommittee might have during the subsequent examination of the submission."¹³⁸ He invited the "members of the Commission to visit the Russian Federation with a view to examining its relevant databases in situ."¹³⁹ However, the Commission never availed itself of this offer.¹⁴⁰

"[T]he Commission decided that the most efficient way to address the submission would be through establishing a

135. *Id.* Paragraph 6 reads:

[n]otwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

UNCLOS, *supra* note 1, pt. VI, art. 76, para. 6.

136. The Chairman of the Commission on the Limits of the Continental Shelf, *Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the Progress of Work in the Commission, delivered to the Commission on the Limits of the Continental Shelf*, U.N. Doc. CLCS/32 (Apr. 12, 2002) [hereinafter CLCS/32].

137. *Id.* para. 10.

138. *Id.* para. 11.

139. *Id.*

140. *See id.* (consideration of the submission continued without resort to *in situ* examination.). Sessions of the Commission and its subcommittees are typically held at the United Nations Headquarters in New York. *Rules of Procedure*, *supra* note 66, pt. II, R.4. Another venue "may be designated by the Commission in consultation with any coastal State which made a submission to be considered at the meeting and the Secretary-General, subject to the requirements established by the United Nations that no additional costs are directly or indirectly incurred by the United Nations." *Id.*

subcommission, as provided for in the Convention and the Rules of Procedure of the Commission.”¹⁴¹ It also held that,

in order to ensure the highest possible integrity of the proceedings, the members of the Commission who were nationals of a State with opposite or adjacent coasts, or of a State which might have a dispute with the submitting State regarding the submission, should not be selected as members of the Subcommission.¹⁴²

It may be of interest to note that at that time the only other coastal State of the Arctic Ocean whose national was member of the Commission was Norway.¹⁴³

The process of the examination is described in a broad outline in the addendum to the report of the Secretary-General on oceans and the law of the sea, issued in October 2002.¹⁴⁴ From that account, it is clear that the data of the submission were quite complex and voluminous.¹⁴⁵ The Subcommission was not obviously “in a position to complete the preparation of the recommendations by the end of the tenth session.”¹⁴⁶ At that session, it merely commenced the detailed examination of the submission, meeting twice daily and convening “six meetings devoted to consultations in the form of questions and answers between its members and the experts of the delegation of the Russian Federation.”¹⁴⁷ The Subcommission “requested additional information from the Russian Federation on certain elements of its submission” and then “reconvened from 10 to 14 June 2002, before the expiration of the term of office of the [first] membership of the Commission on 15 June 2002.”¹⁴⁸ “It continued the examination of the data and other materials contained in the submission, including the additional information received on 15 May 2002.”¹⁴⁹

The Subcommission prepared the recommendations in a relatively short time: “On 14 June [2002], the Subcommission completed the recommendations and forwarded them to the eleventh session of the Commission, which was . . . held from 24 to 28 June [2002] following the election of the new membership of the Commission by the Meeting of States Parties.”¹⁵⁰

At its eleventh session, the Commission “continued the consideration of the Russian submission” and of the recommendations

141. CLCS/32, *supra* note 136, para. 13.

142. *Id.* para. 15.

143. Former Memberships of the Commission, *supra* note 52.

144. A/57/57/Add.1, *supra* note 64, pt. III.

145. *Id.* pt. III.

146. *Id.* para. 31.

147. *Id.*

148. *Id.* paras. 31–32.

149. *Id.* para. 32.

150. *Id.* paras. 18–35.

forwarded to it by the Subcommission.¹⁵¹ After dealing with procedural matters relating to the participation of the representatives of the Russian Federation in the relevant proceedings in accordance with article 5 of annex II to the Convention,¹⁵²

[t]he Commission continued its deliberations on the recommendations in closed meetings, at which the Chairman of the Subcommission, Mr. Carrera, made a presentation on its work and on its recommendations. The Commission made several amendments and adopted the recommendations by consensus. In conformity with the provisions of the Convention, the recommendations of the Commission were submitted in writing to the coastal State that had made the submission, the Russian Federation, and to the Secretary-General of the United Nations. . . . The recommendations contain the results of the examination of the data and information submitted by the Russian Federation, with particular reference to the question of the entitlement of the Russian Federation to the continental shelf beyond 200 nautical miles, as well as whether the formulae and the constraints had been applied as required by article 76 of the Convention. The Commission presented its recommendations to the Russian Federation regarding the four areas relating to the continental shelf extending beyond 200 nautical miles contained in the submission: the Barents Sea, the Bering Sea, the Sea of Okhotsk and the Central Arctic Ocean.¹⁵³

In the case of the Barents and Bering seas, the Commission recommended to the Russian Federation, upon entry into force of the maritime boundary delimitation agreements with Norway in the Barents Sea, . . . to transmit to the Commission the charts and coordinates of the delimitation lines as they would represent the outer limits of the continental shelf of the Russian Federation extending beyond 200 nautical miles in the Barents Sea . . .¹⁵⁴

As regards the Central Arctic Ocean, the Commission recommended that the Russian Federation make a revised submission in respect of its extended continental shelf in that area based on the findings contained in the recommendations.¹⁵⁵

Neither the content of these recommendations nor its summary have been made public.¹⁵⁶ In view of the interest of States in the

151. *Id.* para. 33.

152. *Id.* paras. 33–36. The Commission decided by vote that it “may discuss the recommendations of the subcommission and Commission in a closed meeting, and consider those proceedings as ‘not relevant’ for the purposes of inviting the coastal State pursuant to article 5 of annex II to the Convention and rule 51 of the Rules of Procedure of the Commission.” *Id.* para. 36. Since then, rule 51 has become rule 52 and has been amended. See *Rules of Procedure*, *supra* note 66, pt. XI, para. 52 (latest version of the rule).

153. A/57/57/Add.1, *supra* note 64, paras. 37–38.

154. *Id.* para. 39.

155. *Id.* para. 41.

156. See The Chairman of the Commission on the Limits of the Continental Shelf, *Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the Progress of Work in the Commission*, para. 59, delivered to the Commission on the Limits of the Continental Shelf, U.N. Doc. CLCS/60 (Sept. 26, 2008) [hereinafter CLCS/60] (The Commission did not prepare a summary of the recommendation in response to the submission by the Russian Federation.).

outcome of the first examination of a submission, a brief summary of the recommendations was provided in the Secretary-General's annual report on oceans and the law of the sea.¹⁵⁷

The Russian Federation responded to the recommendations in a letter received by the Chairman of Commission on June 3, 2003.¹⁵⁸ "The letter contained questions and comments relating to the Commission's recommendations."¹⁵⁹ The members of the Subcommittee who dealt with the submission prepared a response, and the Commission endorsed the content and approach taken therein.¹⁶⁰

It is to be noted that from an international standpoint, as of 2009, the situation concerning the continental shelf remains at that. In July 2007, the Information and Press Department of the Russian Ministry of Foreign Affairs released a "Commentary Regarding a Question from RIA Novosti Concerning the Russian Expedition in the Arctic Ocean Area."¹⁶¹

This commentary, which explains at the outset the notion of the continental shelf as defined by the Convention and informs about the Commission, its functions and composition, states, *inter alia*:

After considering our submission in 2002, the Commission concluded, in particular, that the data submitted at that stage were insufficient for the classification of the Arctic floor sections indicated in it as a Russian continental shelf, this making it necessary to submit an additional substantiation on that score. It has to be noted that, as the practice of the work of the Commission shows, the process of determining the outer limits of an extended continental shelf is quite complicated. Suffice it to say that not a single country has so far established such limits over the past period. Neighboring states quite often claim one and the same area of the continental shelf. Issues relating to the delimitation of the areas in dispute are tackled in accordance with international law through negotiations or, by mutual agreement of the sides, using other peaceful means to resolve the disputes. The Commission on the Limits of the Continental Shelf does not concern itself with the consideration of disputes.¹⁶²

The commentary continues:

157. A/57/57/Add.1, *supra* note 64, paras. 38–41.

158. See The Chairman of the Commission on the Limits of the Continental Shelf, *Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the Progress of Work in the Commission*, para. 20, U.N. Doc. CLCS/39 (Apr. 30, 2004).

159. *Id.*

160. *Id.*

161. Press Release, Ministry of Foreign Affairs of the Russian Fed'n, Russian MFA Information and Press Department Commentary Regarding a Question from RIA Novosti Concerning the Russian Expedition in the Arctic Ocean Area (July 30, 2007), available at http://www.un.int/russia/new/MainRoot/docs/off_news/300707/newen1.htm.

162. *Id.*

As far as a possible delimitation in the central part of the Arctic Ocean is concerned, this is a question of the future so far. Its substantive discussion will be required when clear scientific and legal evidence emerges to assert that the continental shelf of Russia is contiguous, in this oceanic area, to the continental shelf of Denmark or Canada. This is premature right now, among other things because these two countries, as far as we know, have not yet determined their position on this matter. The current Russian expedition to the North Pole area is an important stage of the considerable and systematic work in which a whole array of agencies and organizations led by the Russian Ministry of Natural Resources takes part. Based on the results of this and other expeditions after their processing by Russian specialists, our country will have to additionally substantiate the correspondence of their conclusions on the extent of the Russian continental shelf to the criteria of the Commission and to receive a positive recommendation of the Commission on this matter. Of course, the work on the substantiation of the outer limits of the Russian continental shelf proceeds in the conditions of a continuous diplomatic follow-up. It should be noted that from the outset the Russian side has exerted efforts to ensure that the appropriate research be carried out in cooperation with experts from other Arctic states concerned. The contacts that were established with them even before Russia's submission are maintained and develop at this stage as well.¹⁶³

B. *Submission by Norway*

The second State bordering the Arctic Ocean to make a submission was Norway.¹⁶⁴ On November 27, 2006, it submitted to the Commission its

information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured 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.¹⁶⁵

“According to the submitting State: ‘[t]he present submission deals only with the outer limits of the continental shelf in these three areas. A further submission may be made in respect of other areas.’”¹⁶⁶

“The consideration of the submission made by Norway,” the seventh received by the Commission, “was included in the agenda of the nineteenth session of the Commission held in New York from 5 March to 13 April 2007.”¹⁶⁷

163. *Id.*

164. See Submissions to the CLCS, *supra* note 103. For Norway, the Convention entered into force on July 24, 1996. Comm'n on the Limits of the Cont'l Shelf [CLCS], *Outer Limits of the Continental Shelf Beyond 200 Nautical Miles from the Baselines: Submission by the Kingdom of Norway*, Ref. No. CLCS.07.2006.LOS, http://www.un.org/Depts/los/clcs_new/submissions_files/submission_nor.htm (last visited Oct. 1, 2009).

165. *Id.*

166. *Id.*

167. *Id.*

Two Arctic States—Denmark and the Russian Federation—issued communications in connection with the submission by Norway. Denmark stated,

[r]eferring to section 6.2 of the Executive Summary, that the Danish Government together with the Greenland Home Rule Government have no objection to the Commission considering and making recommendations on this part of the submission and that such consideration and recommendations will be without prejudice to the submission at a later stage of documentation by Denmark/Greenland or to any future delimitation of the continental shelf between Denmark/Greenland and Norway.¹⁶⁸

In its submission, the Russian Federation noted that

[t]he delimitation of the continental shelf between the Russian Federation and Norway had not yet been settled and [was] the object of ongoing consultations. The unresolved delimitation issue in the Barents Sea [was] therefore to be considered as “maritime dispute” for the purposes of rule 5(a) of Annex I to the Rules of Procedure of the Commission. The Norwegian and Russian claims cover an overlapping area which for the said purposes constitutes the “area under dispute.” Accordingly, any action of the Commission shall, in accordance with UNCLOS Annex II, article 9, not prejudice matters relating to the delimitation of the continental shelf between Norway and the Russian Federation.¹⁶⁹

It went on to state that

[t]he Commission ha[d] already considered this issue while examining the submission made by the Russian Federation and has recommended to the Russian Federation upon entry into force of the maritime boundary delimitation agreement with Norway to transmit to the Commission the charts and coordinates of the delimitation line as it would represent the outer limits of the continental shelf of the Russian Federation extending beyond 200 nautical miles in the Barents Sea. On the above understandings, the Russian Federation consent[ed], in accordance with the said rule 5(a), to the examination by the Commission of the Norwegian submission with regard to the “area under dispute” in the Barents Sea.¹⁷⁰

Finally, the Russian Federation declared that

[n]othing in this note shall prejudice [its] position . . . towards the Spitsbergen archipelago and its continental shelf. The

168. Note Verbale, Permanent Mission of Den., Notification Regarding Norway's Submission on the Continental Shelf Beyond 200 Nautical Miles to the Commission on the Limits of the Continental Shelf, at 2, Ref. 119.N.8 (Jan. 4, 2007), available at http://www.un.org/Depts/los/clcs_new/submissions_files/nor06/dnk07_00218.pdf.

169. Note Verbale, Permanent Mission of the Russian Fed'n, Notification Regarding Norway's Submission on the Continental Shelf Beyond 200 Nautical Miles to the Commission on the Limits of the Continental Shelf, at 1, (Feb. 21, 2007), available at http://www.un.org/Depts/los/clcs_new/submissions_files/nor06/rus_07_00325.pdf.

170. *Id.* at 2 (citation omitted).

recommendations of the Commission in regard to the submission made by Norway shall be without prejudice to the provisions of the Treaty concerning Spitsbergen of 1920 and, accordingly, to the regime of the maritime areas adjacent to Spitsbergen.¹⁷¹

The Commission started to actively examine the presentation in April 2007.¹⁷² “The presentation on the submission of Norway was made on 2 April 2007 by Rolf Einar Fife, Director General, Legal Affairs Department, Ministry of Foreign Affairs of Norway.”¹⁷³

Regarding neighbouring States, Mr. Fife said that the Norwegian team had worked in close contact with peer institutions in the neighbouring States—the Russian Federation, Denmark together with the Faroe Islands and Greenland, and Iceland. Their cooperation involved sharing of data, joint venture data-acquisition projects and data processing and analysis. Data and information were also acquired through cooperation with international scientific research institutions, in particular from Germany, the Russian Federation, Sweden and the United States of America. That cooperation included participation in major Arctic research projects such as the Scientific Ice Expedition (SCICEX), the International Bathymetric Chart of the Arctic Ocean (IBCAO), Arctic Ocean 2001 and Beringia 2005.¹⁷⁴

In respect of disputes related to the submission, Mr. Fife stated that some unresolved questions remained with regard to bilateral delimitation of the continental shelf with neighbouring States and that those questions ought to be considered by reference to rule 46 of and annex I to the rules of procedure of the Commission.¹⁷⁵

As far as the region of the Arctic Ocean is concerned, Mr. Fife referred to Denmark (in respect to Greenland) and the Russian Federation. In relation to the latter, Mr. Fife observed that the Russian Federation had “made it clear that it had no objection to the Commission considering and making recommendations with regard to the area under dispute without prejudice to any future delimitation.”¹⁷⁶

“Addressing the modalities for the consideration of the submission, the Commission decided,” based on its established practice at that time, that “the submission of Norway would be addressed through the establishment of a subcommission.”¹⁷⁷ The Subcommission, under the chairmanship of Mr. Philip Symonds, first met from April 9–13 “to conduct its preliminary analysis of the data

171. *Id.* at 2.

172. See The Chairman of the Commission on the Limits of the Continental Shelf, *Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the Progress of Work in the Commission*, paras. 41, 50–52, delivered to the Commission on the Limits of the Continental Shelf, U.N. Doc. CLCS/54 (Apr. 27, 2007).

173. *Id.* para. 41.

174. *Id.* para. 43.

175. *Id.* para. 44.

176. *Id.*

177. *Id.* para. 47.

and other materials contained in the submission.”¹⁷⁸ At the outset, the Subcommission “met with the delegation of Norway on three occasions from 9 to 13 April 2007, during which it was given a number of presentations by the Norwegian delegation, requested clarifications on several points and posed questions in writing.”¹⁷⁹ The Subcommission then continued carrying out its examination of the Submission during the “twentieth, resumed twentieth, twenty-first, resumed twenty-first, twenty-second, resumed twenty-second, and twenty-third” sessions.¹⁸⁰ “During these sessions the Subcommission held fifteen meetings with the Delegation of Norway in which it posed fourteen questions in writing, presented six preliminary considerations involving documents and PowerPoint presentations and one consolidated set of views and general conclusions covering the whole Submission.”¹⁸¹

The Subcommission submitted its “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” to the Commission on March 13, 2009, introducing the document through a series of presentations to the plenary of the Commission.¹⁸² Unlike in the case of the Russian Federation, paragraph 15 (1 bis.) of annex III to the latest revision of the rules of procedure (CLCS/40/Rev.1) allowed for a meeting at this advanced stage of the preparation of the recommendations.¹⁸³ At the request of the delegation, a meeting was held between the delegation of Norway and the Commission, on March 25, 2009, during which Mr. Rolf Einar Fife provided an overview of the submission and of the exchange of views between the delegation of Norway and the Subcommission; Mr. Fife also recalled Norway’s close cooperation with its neighbouring States, including the Russian Federation and Denmark (together with Greenland).¹⁸⁴

178. *Id.* para. 51.

179. *Id.* para. 52.

180. Comm’n on the Limits of the Cont’l Shelf [CLCS], Subcomm’n Established for the Consideration of the Submission Made by Nor., *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*, Annex VI, para. 4 (Mar. 13, 2009) [hereinafter *Norway Recommendations*], available at http://www.un.org/Depts/los/clcs_new/submissions_files/nor06/nor_rec_summ.pdf.

181. *Id.*

182. *Id.* at 1.

183. *Rules of Procedure*, *supra* note 66, pt. VI, para. 15, 1 bis.

184. The Chairman of the Commission on the Limits of the Continental Shelf, *Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the Progress of Work in the Commission*, para. 17, delivered to the Commission on the Limits of the Continental Shelf, U.N. Doc. CLCS/62 (Apr. 20, 2009).

The Commission adopted the Recommendations, with amendments, by consensus on March 27, 2009.¹⁸⁵ The recommendations, including a summary thereof, were submitted in writing to the coastal State and to the Secretary-General, who made the summary publicly available.¹⁸⁶

The summary provides a useful geographical description of areas. Regarding the Barents Sea, the Commission states:

The Barents Sea is a large, shallow-water shelf area situated north of Mainland Norway and the Russian Federation. It is bounded in the north and west by the archipelagos of Franz Josef Land and Svalbard and the deep waters of the Norwegian and Greenland Seas, and in the east by Novaya Zemlya and the Kara Sea . . . The *Loop Hole* area in the central part of the Barents Sea is the area beyond and totally enclosed by the 200 M limits of Mainland Norway and Svalbard, and the Russian Federation . . . As this area is beyond 200 M of both of these neighbouring coastal States, it is subject to establishment of the outer limits of the continental shelf in accordance with article 76 and subsequent delimitation between the two coastal States.¹⁸⁷

Referring to previous considerations by the Commission of the area beyond the 200-nautical-mile limits of Norway and the Russian Federation in the central part of the Barents Sea, the Commission recalls its recommendations as contained in the short summary that appeared in the Addendum to the Report of the Secretary-General on oceans and the law of the sea to the fifty-seventh session of the General Assembly (A/57/57/Add. 1 paragraph 39).¹⁸⁸

The Commission noted that

[i]n both the Executive Summary and Main Body of its Submission, Norway referred to that summary and noted that the recommendations were made without prejudice to the bilateral delimitation, and stated that “[t]he delimitation line will represent the western boundary of the continental shelf of the Russian Federation, as well as the eastern boundary of the continental shelf of Norway . . .”¹⁸⁹

The summary further observes, in relation to the “submerged prolongation of the landmass and entitlement to the continental shelf beyond 200 M,” that

[t]he seabed and subsoil beyond 200 M in the *Loop Hole* is located on the shallow geomorphic shelf of the central Barents Sea . . . and is undoubtedly part of the submerged prolongation of the land masses of the two coastal States (Norway and the Russian Federation) that lie adjacent to it. General information contained in Norway’s Submission and regional considerations, indicate that the *Loop Hole* lies completely landward of the foot of the continental slope in the region. . . . Thus, the outer edge of the continental margin, established from this foot of the continental slope by applying the provisions of article 76, paragraph 4,

185. *Id.* para. 19.

186. *Id.* para. 14.

187. *Norway Recommendations*, *supra* note 180, paras. 10–11.

188. *Id.* pt. IV, § A.2, para. 12.

189. *Id.* para. 13.

extends beyond 200 M from the territorial sea baselines of Norway in the *Loop Hole*.¹⁹⁰

“On this basis, the Commission [recognized] the legal entitlement of Norway to establish continental shelf beyond its 200 M limits in this area,”¹⁹¹ and stated:

[A]s recogni[z]ed by the Commission in its recommendations on the Submission of the Russian Federation, the entire area of seabed and subsoil within the *Loop Hole* located beyond 200 M limits of Norway and the Russian Federation is part of the continental shelf of these coastal States. No fixed points connected by straight lines not exceeding 60 M in length defining the outer limits of the continental shelf in accordance with article 76 need be delineated by either coastal State with respect to the *Loop Hole* in the Barents Sea.¹⁹²

[The] Commission acknowledges that the information for the *Loop Hole* contained in the Submission of Norway of 27 November 2006 fully satisfies the requirements of a submission for continental shelf beyond 200 M from the territorial sea baselines of Norway in accordance with article 76, paragraph 8, and article 4 of Annex II to the Convention. Only a bilateral delimitation between Norway and the Russian Federation remains to be carried out to delineate the extent of each coastal State’s continental shelf in the *Loop Hole*.¹⁹³

The Commission [went on to recommend] that Norway proceed with the delimitation of the continental shelf beyond 200 M in the *Loop Hole* by agreement with the Russian Federation with the assurance that both coastal States share entitlement to the seabed and subsoil located beyond 200 M in this part of the Barents Sea as the natural prolongations of their land territories¹⁹⁴

and that Norway,

in accordance with article 84 of the Convention, upon entry into force of a maritime boundary delimitation agreement with the Russian Federation in the central Barents Sea, [should] deposit with the Secretary-General of the United Nations charts, or a list of geographical coordinates of points, showing the line of delimitation of the continental shelf beyond 200 nautical miles.¹⁹⁵

For the *Western Nansen Basin* in the Arctic Ocean, the Commission provided the following geographical description:

The *Western Nansen Basin* area incorporates part of the Eurasian Basin of the Arctic Ocean with the Gakkel Ridge, a currently active seafloor spreading system, and the Nansen Basin lying to the southeast of the ridge The continental margin of Norway in this area formed by extension and rifting of the continent and subsequent opening of the Eurasian Basin by seafloor spreading along the Gakkel Ridge. The

190. *Id.* § A.3, para. 14.

191. *Id.* para. 14.

192. *Id.* para. 21.

193. *Id.* para. 22.

194. *Id.* para. 23.

195. *Id.* para. 24.

margin includes the Yermak Plateau and a number of glacial sub-marine fans. The most prominent of these fans is the Franz-Victoria Fan, which was once fed by sediments from the Franz-Victoria Trough. The trough was incised by glacial erosion into the shallow Barents Sea shelf to the southeast of the area.¹⁹⁶

With regard to the “submerged prolongation of the landmass and entitlement to the continental shelf beyond 200 M,” the Commission noted:

The outer edge of the continental margin established from the foot of the continental slope of the *Western Nansen Basin* area by applying the provisions of article 76, paragraph 4, extends beyond the 200 M limits of Norway. On this basis, the Commission recognises the legal entitlement of Norway to delineate continental shelf beyond its 200 M limit in this area (Figure 5).¹⁹⁷

The Commission then recommended:

Based on its consideration of the technical and scientific documentation contained in Norway’s Submission of 27 November 2006 and the additional information provided . . . the Commission concludes that, in the *Western Nansen Basin* area, the FOS [foot-of-the-continental-slope] points listed in Table 1 of Annex I [to the Recommendations], fulfill the requirements of article 76 and Chapter 5 of the Guidelines. The Commission recommends that these FOS points should form the basis for the establishment of the outer edge of the continental margin in the *Western Nansen Basin* area.¹⁹⁸

It went on to recommend that

in the *Western Nansen Basin* area, the outer edge of the continental margin beyond 200 M is based on points on the 60 M arcs and sediment thickness points . . . in accordance with article 76, paragraphs 4(a) and 7. . . . The Commission recommends that these arcs and points are used as the basis for delineating the outer limits of the continental shelf in this area.¹⁹⁹

Finally, on the delineation of the outer limits of the continental shelf, the Commission recommended that “the outer limits of the continental shelf should be based on the established outer edge of the continental margin, taking into consideration the constraints contained in article 76, paragraphs 5 and 6”²⁰⁰ and that

the outer limits of the continental shelf in the *Western Nansen Basin* area as submitted by Norway in its Submission of 27 November 2006 and revised under letter dated 20 January 2009 (NOR-LET-030-20-01-2009), consist of fixed points connected by straight lines not exceeding 60 M in length The fixed points are formula points established by the provisions contained in article 76, paragraph 4(a). One formula point, AO94, is located on the 200 M line of Greenland. Norway

196. *Id.* para. 25.

197. *Id.* § B.2, para. 26.

198. *Id.* para. 31.

199. *Id.* para. 34.

200. *Id.* para. 35.

proposed that the outer limits of the continental shelf to the east of formula point AO1, will be based on a straight line not exceeding 60 M in length, preliminarily connected to formula point AO95 . . . that lies east of a computed median line between Norway and the Russian Federation as contained in the Submission of Norway of 27 November 2006 In this regard, the Commission notes Norway's statement in NOR-DOC-027-24-11-2008 with respect to the new formula point AO95 that, "[n]otwithstanding this submission, Norway still reserves the right to make use of the westernmost fixed formula point of the outer limit of the continental shelf of the Russian Federation as its easternmost connecting point, at the time when such point is formally deposited with the Secretary-General by the Russian Federation."²⁰¹

According to the conclusion of the summary, the

Commission agree[d] with the determination of the fixed points listed in Table 1, Annex I [to the Recommendations], establishing the outer edge of the continental margin in the *Western Nansen Basin* area. The Commission recommend[ed] that the delineation of the outer limits of the continental shelf in the *Western Nansen Basin* area be conducted in accordance with paragraph 7 of article 76 by straight lines not exceeding 60 M in length, connecting fixed points, defined by coordinates of latitude and longitude. Further, the Commission agrees with the principles applied in delineating the outer limits of the continental shelf in the *Western Nansen Basin* area, including the determination of the fixed points listed in Table 2, Annex I, and the construction of the straight lines connecting those points east to fixed point AO1. The Commission recommend[ed] that Norway [should proceed] to establish the outer limits of the continental shelf from fixed point AO94 to fixed point AO1 of the *Western Nansen Basin* area accordingly. The delineation of the final outer limits of the continental shelf of Norway to the east of fixed point AO1 may depend on delimitation between States. The Commission recommend[ed], taking into consideration article 9 of Annex II, that Norway [should proceed] to establish the outer limits of the continental shelf in this part of the *Western Nansen Basin* area on the basis of the outer edge of the continental margin recommended in paragraph 34 [of the Recommendations] and in accordance with article 76, paragraphs 7, 8, 9 and 10.²⁰²

VII. SUMMARY OF THE SITUATION IN RELATION TO THE ARCTIC SEABED

All coastal States bordering the Arctic Ocean possess, by virtue of the relevant provisions of the United Nations Convention on the Law of the Sea (and, arguably, through customary international law), "a continental shelf up to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured."²⁰³ Information

201. *Id.* para. 39.

202. *Id.* para. 40.

203. *Id.* para. 1.

on these baselines is available only for some of the coastal States,²⁰⁴ and not all of these baselines are internationally recognized as conforming to the provisions of the Convention.²⁰⁵ However, due to the smoothing effect as a result of computation of 200-nautical-mile arcs from relevant points on the coast, issues related to excessive maritime claims raised in connection with some baselines—in particular those raised by the United States—may not be of great importance (at least in relation to some of the 200-nautical-mile limits measured from these baselines).²⁰⁶

On the continental shelf, which represents the seabed and its subsoil, the coastal States enjoy sovereign rights in relation to natural resources, including sedentary species, and jurisdiction in relation to a number of activities related to the exploration and exploitation of these resources.²⁰⁷

Regarding the continental shelf beyond 200-nautical-miles from the baselines, the delineation of its outer limits is subject to the recommendations of the Commission pursuant to article 76 of the Convention.

Under article 4 of annex II to the Convention, a coastal State intending to establish the outer limits to its continental shelf beyond 200 nautical miles is obligated to submit particulars of such limits to the Commission on the Limits of the Continental Shelf along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of the Convention for that State.²⁰⁸

This provision was subsequently implemented through a Decision of the Meeting of States Parties to the Convention regarding the date of

204. Compare, e.g., Norway, <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/NOR.htm> (last visited Oct. 1, 2009) (indicating a submission of charts of baselines for Norway), with United States of America, <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/USA.htm> (last visited Oct. 1, 2009) (showing no such submission for the U.S.).

205. For example, there is an active dispute between the United States of America and Canada, regarding the application of the system of straight baselines by Canada under its *Territorial Sea Geographical Coordinates (Area 7) Order of 10 September 1985*. Robert Dufresne, Law and Gov't Div., Parliamentary Info. and Research Serv., Canada's Legal Claims Over Arctic Territory and Waters (Dec. 6, 2007), <http://www.parl.gc.ca/information/library/PRBpubs/prb0739-e.pdf>.

206. See Gayl S. Westerman, *Straight Baselines in International Law: A Call for Reconsideration* 82 AM. SOC'Y INT'L L. PROC. 260, 260–274 (1988) (arguing that straight baselines, presented as a technique for smoothing seaward boundaries, were being used in an excessive manner).

207. The Secretary-General, *Report of the Secretary General on Oceans and the Law of the Sea*, para. 179, delivered to the General Assembly, U.N. Doc A/60/63/Add.1 (July 15, 2005).

207. *Id.*

208. Issues with Respect to Article 4 of Annex II to the Convention (Ten-Year Time Limit for Submissions), http://www.un.org/Depts/los/clcs_newissues_ten_years.htm (last visited Oct. 1, 2009).

commencement of the ten-year period for making submissions to the Commission on the Limits of the Continental Shelf set out in article 4 of Annex II to the United Nations Convention on the Law of the Sea of May 29, 2001 (SPLOS/72).²⁰⁹ This decision provides that, for a State for which the Convention entered into force before May 13, 1999, the date of commencement of the 10-year time period for making submissions to the Commission is May 13, 1999.²¹⁰

Two States bordering the Arctic Ocean have so far made their submissions to the Commission—the Russian Federation and Norway; both have also done so within the time limit prescribed by the Annex II to the Convention and decision SPLOS/72.²¹¹ The Commission has issued recommendations in response to both submissions.²¹² Regarding the “area under dispute” in the Barents Sea, the Commission assured both coastal States that they share entitlement to the seabed and subsoil located beyond 200 M in this part of the Barents Sea as the natural prolongations of their land territories and that they need only to agree on the maritime boundary delimitation.²¹³ Regarding the *Western Nansen Basin* area, the Commission recommended,

taking into consideration article 9 of Annex II, that Norway [should proceed] to establish the outer limits of the continental shelf in this part of the *Western Nansen Basin* area on the basis of the outer edge of the continental margin recommended in paragraph 34 [of the recommendations] and in accordance with article 76, paragraphs 7, 8, 9 and 10.²¹⁴

Finally, regarding the Central Arctic Ocean, the Commission recommended that the Russian Federation should make a revised submission.²¹⁵

All recommendations of the Commission are made “without prejudice to delimitation between States.”²¹⁶ As it is apparent from the communications to the Commission, through the Secretary-General, the issue of maritime boundary delimitation remains very sensitive, and there are only several maritime boundaries treaties of

209. Meeting of States Parties, *supra* note 84.

210. *Id.*

211. Submissions to the CLCS, *supra* note 103 (note that both Russia and Norway submitted prior to 2009.).

212. *Norway Recommendations*, *supra* note 180; A/57/57/Add.1, *supra* note 64, paras. 38–41 (summary of recommendations on the submission by the Russian Federation).

213. *Norway Recommendations*, *supra* note 180, pt. IV, § A.1, para. 14.

214. *Id.* para. 40.

215. A/57/57/Add.1, *supra* note 64, para. 41.

216. *Id.* para. 8.

relevance to the continental shelf that have been negotiated in relation to the Arctic Ocean,²¹⁷ one of which is not in force.²¹⁸

As to the potential time-frame for a final resolution of all maritime limits and boundaries in the Arctic Ocean, the following factors need to be taking into consideration.

It is extremely difficult to make an independent assessment of the potential extent of the continental shelf beyond 200 nautical miles without adequate data. The gathering of bathymetric and seismic data and information in the ice-covered areas is extremely expensive and complex. Many data of this nature gathered in the Arctic region are not in the public domain. Those who study issues related to the continental shelf and maritime boundaries have to rely on data provided by the coastal States, among them important maritime powers. However, in accordance with the rules on confidentiality, "[t]he coastal State making a submission may classify as confidential any data and other material, not otherwise publicly available, that it submits . . ." ²¹⁹ "Confidential material so classified by the coastal State shall remain confidential after the consideration of the submission is concluded unless decided otherwise by the Commission with the written consent of the coastal State concerned."²²⁰ Therefore, as is evident in relation to some aspects of the submission by the Russian Federation, there exists information and data that may not be publicly available anytime soon.

Three coastal States of the Arctic region have yet to make their submissions to the Commission.²²¹ The ten-year period expires for Canada on December 6, 2013 and for Denmark on December 15,

217. *E.g.*, Agreement Relating to the Delimitation of the Continental Shelf Between Greenland and Canada, Can.-Den., Dec. 17, 1973, 950 U.N.T.S. 151; Agreement Relating to the Delimitation of the Continental Shelf, Den.-Nor., Dec. 8, 1965, 634 U.N.T.S. 75.

218. *See* Agreement on the Maritime Boundary, U.S.-U.S.S.R., June 1, 1990, S. TREATY DOC. No. 101-22 (1990) (entered into force provisionally); *see also* Robert W. Smith, *United States-Russia Maritime Boundary*, in: 5 MARITIME BOUNDARIES 91 (Gerald Blake, ed. 1994) (explaining that after the treaty was signed, the two governments separately entered into an agreement to apply the terms of the treaty pending ratification and that although the United States ratified the treaty in 1992 that Russia had not yet ratified the treaty); Bureau of European and Eurasian Affairs, *Status of Wrangel and Other Arctic Islands*, U.S. DEPARTMENT OF STATE, Sept. 8, 2009 (explaining that although the Russian Federation informed the United States in 1992 that it "continues to perform the rights and fulfill the obligations flowing from the international agreements" that the Russian Federation has never formally ratified the treaty and the countries currently apply the treaty on a provisional basis).

219. *Rules of Procedure*, *supra* note 66, Annex II, para. 21.

220. *Id.* para. 2.3.

221. *See* United Nations Convention on the Law of the Sea, Meeting of States Parties, June 13-20, 2008, *Issues Related to the Workload of the Commission on the Limits of the Continental Shelf - Tentative Dates of Submissions*, Note by the Secretariat, Annex, U.N. Doc. SPLOS/INF/20 (Jan. 16, 2008) (listing Norway and the Russian Federation as the only coastal States that have made submissions).

2014.²²² The United States is not a State Party to the Convention, and the possible timing for its submission is, therefore, undetermined. Due to the much discussed potential for available resources in the Arctic Seabed and the complex geographical and geomorphological configuration of the region, it does not seem likely that coastal States will attempt to finalize maritime boundary negotiations without having received from the Commission recommendations on the outer limits of their continental shelves beyond 200 nautical miles with which they can agree.²²³

The Russian Federation has yet to make its revised submission regarding the Central Arctic Ocean.

The most recent developments show that, for years to come, the Commission will face a considerable workload. From 2002 to 2009, it has adopted only eight recommendations, devoting to the consideration of each of these submissions, on average, 1½–2 years.²²⁴ Working by way of seven-member subcommissions and spending only approximately 12–14 weeks on average at the United Nations Headquarters in New York, where it has at its disposal the support of the specialized technical (GIS) staff of the Secretariat of the United Nations and sophisticated laboratories equipped with state-of-the-art software and hardware, the Commission is not in a position to maintain more than three or four active subcommissions at the same time. It resorted to queuing of submissions, refraining during the twenty-second and twenty-third sessions from establishing subcommissions to consider submissions for which presentations had been made by several coastal States.²²⁵

However, due to the impact of the decision SPLOS/72, thirty-nine new submissions have been received between November 2008

222. Under the Convention, a state that “intends to establish . . . the outer limits of its continental shelf beyond 200 nautical miles . . . shall submit particulars . . . as soon as possible but in any case within 10 years of the entry into force of this Convention for that State.” UNCLOS, *supra* note 1, Annex II, art. 4 (emphasis added). Canada signed the Convention on December 10, 1982 and the Convention entered into force for Canada on November 7, 2003. United Nations Treaty Collection, Multilateral Treaties Deposited with the Secretary-General, Status of Treaties, United Nations Convention on the Law of the Sea, *available at* <http://treaties.un.org/Pages/Treaties.aspx?id=21&subid=A&lang=en> (last visited Oct. 20, 2009) (follow link for “United Nations Convention on the Law of the Sea”). Denmark signed the Convention on December 10, 1982 and the Convention entered into force for Denmark on November 16, 2004. *Id.*

223. UNCLOS, Annex II, art. 8 provides that “[i]n the case of disagreement by the coastal State with the recommendations of the Commission, the coastal State shall, within a reasonable time, make a revised or new submission to the Commission.” UNCLOS, *supra* note 1, Annex II, art. 8.

224. Recommendations Issued by the Commission on the Limits of the Continental Shelf, http://www.un.org/Depts/los/clcs_new/commission_recommendations.htm (last visited Oct. 1, 2009).

225. CLCS/60, *supra* note 156, paras. 27, 34, 61.

and June 2009 alone, none of them in relation to the Arctic Ocean.²²⁶ Moreover, in view of the decision of the Meeting of States Parties²²⁷ that allowed coastal States to satisfy the time period referred to in article 4 of Annex II to the Convention and the decision contained in SPLOS/72, paragraph (a),

by submitting to the Secretary-General preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles and a description of the status of preparation and intended date of making a submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf,²²⁸

there is an indication that forty-two additional submissions might be made in the future. The examination of new submissions that are already queued and those that may be received before the expected submissions by Canada and Denmark in 2013 and 2014, respectively, will take many years even under the most optimistic estimates.

The nature of processes before the Commission—within national governments after receiving its recommendations with a view to finalizing the delineation and in the context of the negotiation of maritime boundaries—is such that, for a considerable period of time, there will be no clarity on the extent of national jurisdiction of individual coastal States over the continental shelf beyond 200 nautical miles in the Arctic Ocean. There is no doubt, however, that each coastal State will continue to defend its interests in the Arctic Ocean. It is only encouraging to note that these coastal States, setting yet another example of the implementation of the rule of law, in accordance with the Charter of the United Nations and the United Nations Convention on the Law of the Sea, will do so by peaceful means and in the spirit of cooperation. It is possible that regional cooperation may lead, at least in some areas, to the adoption of provisional measures of a pragmatic nature that would allow them to implement efficiently the regime of the Convention and to benefit from the resources of the Arctic Ocean.

Only at the very end of this process will States Parties and the International Seabed Authority know the limits of the Area in the Central Arctic Ocean and be in a position to organize and control

226. Submissions to the CLCS, *supra* note 103.

227. *Decision Regarding the Workload of the Commission on the Limits of the Continental Shelf and the Ability of States, Particularly Developing States, to Fulfill the Requirements of Article 4 of Annex II to the United Nations Convention on the Law of the Sea, as well as the Decision Contained in SPLOS/72, Paragraph (a)*, para. 1.a, Doc. SPLOS/183 (June 20, 2008).

228. Press Release, Comm'n on the Limits of the Cont'l Shelf [CLCS], Commission on Limits of Continental Shelf to Hold Plenary of Twenty-Third Session From 23 March to 3 April, U.N. Doc. SEA/1910 (Mar. 19, 2009), available at <http://www.un.org/News/Press/docs/2009/sea1910.doc.htm>.

activities therein, particularly with a view to administering the yet unknown resources of that part of the Arctic seabed and its subsoil. Only at the end of this process will coastal States know the final and binding extent of their continental shelf and be able to implement effectively their sovereign rights and jurisdiction with regard to activities on the seabed.
