



WORK ON THE LIMITS OF THE CONTINENTAL SHELF: PROGRESS AND CHALLENGES

by

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DISCLAIMER

The views expressed herein are solely those of the author and do not necessarily reflect the views of the Commission on the Limits of the Continental Shelf.

The continental shelf – main criteria



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Geneva Convention 1958:

- Water depth (200 m)
- Exploitability

UNCLOS 1982:

- Outer edge of the continental margin
- Constraints: Distance (350 M) and Depth (2,500 m + 100 M)



Three bodies set up under UNCLOS 1982

to implement relevant articles:

1. International Seabed Authority (ISA)
2. International Tribunal for the Law of the Sea (ITLOS)
3. Commission on the Limits of the Continental Shelf (CLCS)



Commission on the Limits of the Continental Shelf (CLCS)

- 21 experts in the fields of
 - Geology;
 - Geophysics; or
 - Hydrography.
- Elected by States Parties to UNCLOS
- Due regard to the need to ensure equitable geographical representation
- Serve in their personal capacities



CLCS functions

- to consider the submissions made by coastal States, and to make recommendations in accordance with article 76 UNCLOS and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea;
- to provide scientific and technical advice to States.

CLCS: past and present terms



- **FIRST COMMISSION:** Elected at the 6th meeting of SPLOS, on 13 March 1997. Served from 16 June 1997 to 15 June 2002;
- **SECOND COMMISSION :** Elected at the 12th meeting of SPLOS, on 23 April 2002. Served from 16 June 2002 to 15 June 2007;
- **THIRD COMMISSION:** Elected at the 17th meeting of SPLOS, on 14 and 15 June 2007. Served from 16 June 2007 to 15 June 2012;
- **FOURTH AND PRESENT COMMISSION:** Elected at the 22nd meeting of SPLOS, on 6 and 7 June 2012 and 19 Dec 2012. Term of office expires on 15 June 2017;
- **FIFTH COMMISSION:** To be elected at the 27th meeting of SPLOS, in June 2017.

Continental shelf: UNCLOS definition



Art 76(1) UNCLOS defines the extent of the continental shelf in two scenarios:

1. Where the outer edge of the continental margin does not extend beyond 200 M from the baselines.
 - to a distance of 200 M from the baselines.

2. Where the outer edge of the continental margin extends beyond 200 M from the baselines. (This requires a submission of complex scientific evidence to the CLCS):
 - to the outer edge of the continental margin;

(Paragraphs 2, 5 and 6 do, however, stipulate some constraints to this definition)

The determination of the outer limits of the continental shelf



According to article 76 of UNCLOS:

- Coastal States shall apply four complex scientific rules for the delimitation of the continental shelf extended beyond 200 M
- Coastal States shall prepare a submission of information and data in support of its outer limits to the CLCS
- Commission considers the submission and makes recommendation.
- The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.
- Coastal States can make a revised submission in case it disagrees with the recommendation.
- Coastal States shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.



Main documents of the Commission

- i. Rules of Procedure (including the Modus Operandi) adopted in September 1997
- ii. Scientific and Technical Guidelines adopted in May 1999 to assist coastal States in the preparation of their submissions to the Commission.



As of 1 November 2016, the CLCS had:

- received a total of 77 submissions and 5 revised submissions from States
- considered a total of 39 submissions (4 are revised)
- issued 26 recommendations, including for 2 revised submissions



Submissions that have arrived at the top of the queue but could not be considered (rule 46 and annex I to the ROP)

- i. As of 1 November 2016, 9 submissions that had arrived at the top of the queue could not be considered by a Subcommission due to disputes.
- ii. These include Myanmar, Yemen, UK (Hatton-Rockall), Ireland (Hatton-Rockall), Fiji, Malaysia/Viet Nam, Kenya, Viet Nam (North Area), and Palau.

No developments to indicate that consent existed on the part of all States concerned which would allow for the consideration of these submissions, except in the case of Kenya, for which a subcommission was formed at the 38th session.



Deposition of outer limits (based on recommendations of the CLCS)

As of 1 November 2016, 5 submissions (1 was a revised) were followed up by a deposit of outer limits to the Secretary-General of the UN based on the recommendations of the Commission. These were the submissions made by

- i. Mexico - in respect of the western polygon in the Gulf of Mexico
- ii. Ireland - in the area abutting the Porcupine abyssal plain
- iii. The Philippines - in the Benham Rise region
- iv. Australia
- v. Russian Federation - partial revised Submission in respect of the Okhotsk Sea

In addition, Mauritius and Seychelles jointly submitted a list of coordinates following recommendations received in the region of the Mascarene Plateau



Some Challenges

- **Work Load:**

A large number of submissions were received leading up to the deadline of 13 May 2009, which was applicable to many States Parties. This resulted in an unprecedented increase in the workload of the Commission.

Issues related to the work load were on many occasions brought to the attention of the MSPLOS

- **Health Insurance**
- **Funding of the Commission.**



30th session decisions re workload: request by SPLOS (SPLOS/229, para. 1)

The Commission consider, in coordination with the Secretariat, to meet in New York for up to 26 weeks but not less than an intended minimum of 21 weeks a year for a period of five years, distributed in such a way that the Commission determines to be the most effective, and that no two sessions would be sequential.



CLCS New working arrangements (response to SPLOS/229, para. 1)

- i. 3 sessions /year of 7 weeks each, including plenary meetings, for a total of 21 weeks of meetings of the Commission and its subcommissions. 4 of these 21 weeks would be devoted to plenary meetings.
- ii. 9- 10 submissions considered simultaneously



Impacts of new working conditions on submissions in the queue

- Considerable progress since past four years
- Formed or reinstated, subcommissions for 19 new or revised submissions
- 46% increase as opposed to the previous term
- 12 subcommissions completed their work
- 8 recommendations adopted by the Commission

However, the Commission is still under heavy workload



Impact on the time required for the examination of submissions resulting from the interaction between subcommissions and delegations of submitting States

- Size and complexity of the scientific and technical information in the submission
- Frequent submissions of extensive new data and information from States, or amendments to submissions
- Requests by the submitting State(s) to delay or suspend the consideration of a submission for a certain period of time to allow for the acquisition of new data and information or the conducting of additional studies
- Delays in the scheduled provision of responses, data and information to subcommissions
- States classifying parts or all of their submissions, with the exception of Part I, as confidential pursuant to annex II to the Rules of Procedure of the Commission.



CLCS workload : the future

- 43 Submissions still in the queue (incl. 1 revised)
- Add submissions from States that have become parties to the Convention in the last 10 years,
- Add up to 25 preliminary information notices to be turned into submissions
- Add submissions from States that may become parties in the future
- Add revised submissions

The total number of submissions may therefore go well beyond the 100 mark.



Short-term solutions proposed by MSP

- General Assembly request that the Secretary-General provide cost-effective, transportable, non-structural improvements to address some of the immediate working space needs.
- Reimburse costs of medical travel insurance for those members who benefit from the Trust Fund established pursuant to General Assembly resolution 55/7. (Partially implemented for 1 session only. No more funds available to implement this)

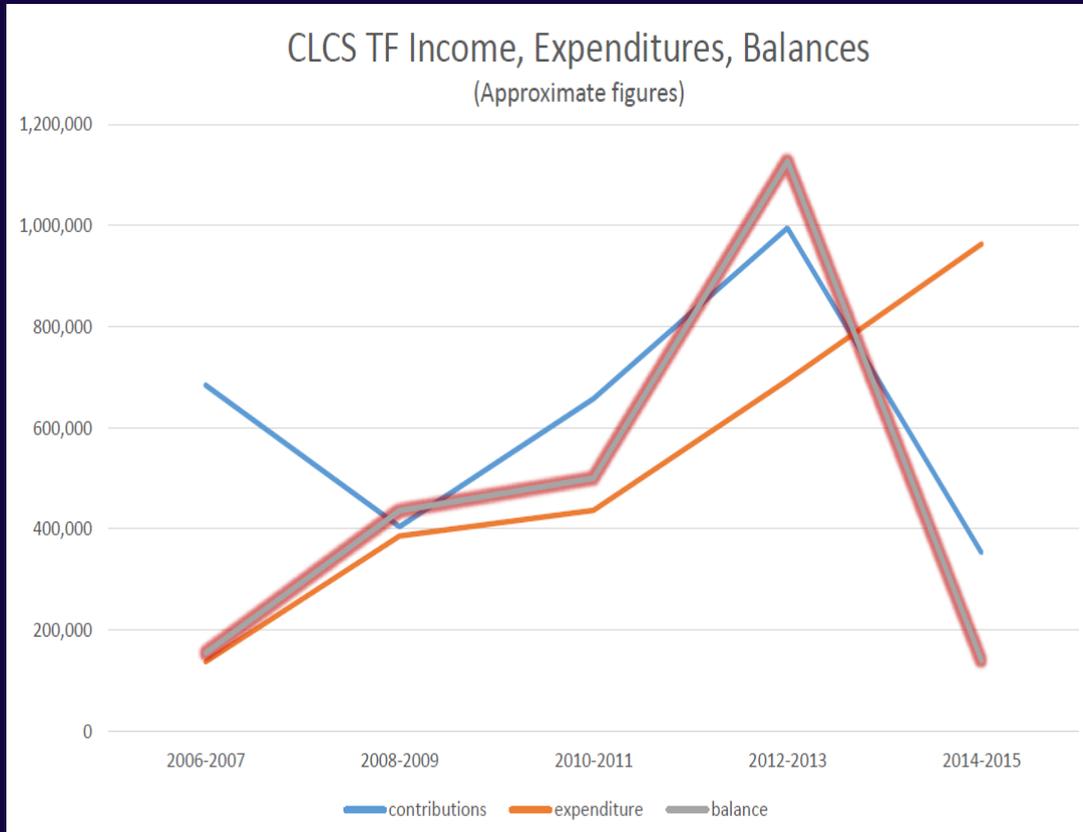


CICS has no funds

- The State Party which submitted the nomination of a member of the Commission shall defray the expenses of that member while in performance of Commission duties (Annex II, art 2(5))
- Trust fund for the funding of members from developing States.



Trust fund for the funding participation of members from developing States: status



- Thick line (gray on orange background) illustrates the fund balance for the period 2006-2015. Fund is nearing depletion
- The blue line illustrates the contributions for the same period
- The thin orange line illustrate the expenditures

At this stage, given the current situation of the fund, it is difficult to predict whether there will be quorum at the 43rd session, scheduled to take place from 30 January until 17 March 2017.



- The cost of participation of a member from a developing country in a seven-week session in New York might be prohibitive for the nominating States concerned.
- The Commission might not have the quorum necessary to complete its work and adopt recommendations during its 43rd session in the first quarter of 2017, which is the last one of the current term of office.
- Following the 41st session, the Chair of the Commission addressed a letter dated 6 September 2016 to the President of the twenty-sixth Meeting of States Parties to the Convention highlighting these concerns and inviting State parties to explore other ways and means to ensure, in a more permanent way, that the Commission would be in a position to fulfil its mandate under the Convention.



CLCS BUDGET: WAY FORWARD

- Reliance on the voluntary trust fund might not represent a sustainable solution to defray the expenses of the members while in performance of Commission duties.
- Fund the Commission from contributions from State Parties or the regular budget of the UN.
- Commission has stated on many occasions that no distinction be made between members of the Commission from developing and developed States.



Past decisions in relation to the implementation of art 76 and the work of CLCS by MSP

- The date of election of the members of the first CLCS.
- The commencement date for the ten-year period of 13 May 1999 (SPLOS/72).
- Preliminary Information Notes (SPLOS/183).

Any decision adopted by MSP hence, relating to funding of the Commission will not be inconsistent with the practice of State parties to adopt a decision vis-a-vis the funding of the Commission



Art 76 and the work of the Commission:

- Peaceful means of extension of States sovereign rights without conflict
- This allows the coastal state to pursue its development aims, peacefully, by counting on the possibility of deriving benefits from the resources within its jurisdiction
- Avoiding uncertainties in the determination of the boundary between maritime spaces under national jurisdiction and the Area.
- During the 19 years of its existence, the Commission has contributed to the implementation of Article 76 which defines the outer limits of the continental shelf up to and beyond 200 M

Commission may no longer be able to function effectively under the present funding mechanism.