



**UiT**

THE ARCTIC  
UNIVERSITY  
OF NORWAY

# **Continental shelf delimitation in areas beyond 200nm: The relationship between the CLCS, its recommendations and international Courts and Tribunals.**

Ngonsah Melvis Fru

Master's Thesis in Law of the Sea. September 2019.



# Contents

|                                                                                                                                                                                          |    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Chapter 1: Introduction. ....                                                                                                                                                            | 3  |
| 1.1 Context.....                                                                                                                                                                         | 3  |
| 1.2 Objectives of the thesis.....                                                                                                                                                        | 5  |
| 1.3 Legal sources and methodology. ....                                                                                                                                                  | 5  |
| 1.4 Structure of the thesis. ....                                                                                                                                                        | 6  |
| Chapter 2: The origin of the establishment of a continental shelf beyond 200nm.....                                                                                                      | 8  |
| 2.1 Development from 8th September 1945 to the 1982 UNCLOS. ....                                                                                                                         | 8  |
| 2.2 The Continental shelf under the LOSC.....                                                                                                                                            | 10 |
| Chapter 3: What is the Commission on the limits of the Continental shelf (CLCS)?.....                                                                                                    | 13 |
| 3.1 Introduction. ....                                                                                                                                                                   | 13 |
| 3.2 What is the responsibility of the CLCS?.....                                                                                                                                         | 14 |
| 3.3 The Status of the CLCS' recommendations. ....                                                                                                                                        | 16 |
| 3.4 Meaning of 'on the basis of' .....                                                                                                                                                   | 16 |
| 3.5 Meaning of 'final and binding' .....                                                                                                                                                 | 17 |
| 3.6 The role of the CLCS in maritime boundary delimitation. ....                                                                                                                         | 19 |
| CHAPTER 4. An analysis of the relevance of CLCS recommendations in case law.....                                                                                                         | 22 |
| 4.1 Introduction. ....                                                                                                                                                                   | 22 |
| 4.2 The role of International Courts and Tribunals in outer continental shelf disputes. .                                                                                                | 23 |
| 4.3 Dispute concerning the delimitation of maritime boundary between Ghana and Cote<br>D'Ivoire in the Atlantic Ocean ( <i>Ghana/Cote D'Ivoire</i> ).....                                | 25 |
| 4.4 Dispute concerning delimitation of the maritime boundary between Bangladesh and<br>Myanmar in the Bay of Bengal. ( <i>Bangladesh/Myanmar</i> ).....                                  | 28 |
| 4.5 Dispute concerning delimitation of the maritime boundary between Bangladesh and<br>India in the Bay of Bengal. ( <i>Bangladesh/India</i> ). ....                                     | 32 |
| 4.6 Territorial and maritime dispute ( <i>Nicaragua v. Colombia</i> ) .....                                                                                                              | 34 |
| 4.7 Question of the delimitation of the continental shelf between Nicaragua and Colombia<br>beyond 200nm from the Nicaraguan coast ( <i>Nicaragua/Colombia</i> ) preliminary objectives. | 37 |

|                  |                                                                                                                            |           |
|------------------|----------------------------------------------------------------------------------------------------------------------------|-----------|
| 4.8              | Maritime boundary delimitation between Kenya and Somalia ( <i>Somalia/Kenya</i> ). ....                                    | 39        |
| <b>5.1:</b>      | <b>Impact of the CLCS recommendations on the admissibility of delimitation disputes to third party adjudication.</b> ..... | <b>43</b> |
| 5.2              | Findings on the research questions.....                                                                                    | 45        |
| BIBLIOGAPHY..... |                                                                                                                            | 46        |
|                  | Literature. ....                                                                                                           | 46        |
|                  | Conventions and others. ....                                                                                               | 48        |
|                  | List of cases. ....                                                                                                        | 49        |

# Chapter 1: Introduction.

## 1.1 Context.

According to the United Nations Convention on the Law of the Sea,<sup>1</sup> the continental shelf extends to a distance 200nm from the baseline from which the breadth of the territorial sea is measured.<sup>2</sup> The right to this distance of 200nm do not depend on occupation or any express proclamation.<sup>3</sup> For a coastal state to claim a continental shelf beyond 200nm, it has to satisfy a complex geographical/scientific criteria laid down by LOSC.<sup>4</sup> The coastal state is required to submit information on the outer limits of its continental shelf beyond 200nm from the baseline from which the breadth of the territorial sea is measured to the Commission on the Limits of the continental shelf(CLCS). The CLCS will intern make recommendations on the area beyond 200nm and if the coastal state establish its outer limits beyond 200m based on these recommendations, the limits shall be final and binding.<sup>5</sup>

The CLCS is an independent body of technical specialists established under the Convention conferred with two functions by article 3(1) of Annex II to the LOSC. First, the CLCS is to consider the data and other material submitted by coastal states and make recommendations to the coastal states in this matter in accordance with Article 76 and the Statement of Understanding adopted on the 29 of August 1980 by UNCLOS III. Second, the Commission is to provide scientific and technical advice if requested by the coastal state concerned.

The purpose of the CLCS in aiding the coastal state to establish its continental shelf beyond 200nm is to avoid excess proclamations by coastal states which can encroach in the international sea bed area(usually referred to as the ‘Area’),<sup>6</sup> beyond the limits of national jurisdiction seen as the common heritage of mankind.<sup>7</sup> The establishment of a boundary between the areas under national jurisdiction and the Area is referred to as the delineation of the continental shelf.

---

<sup>1</sup> Adopted 10 December 1982, entered into force 16 November 1994, 1833 UNTS 396 (LOSC),

<sup>2</sup> LOSC Art. 76(1).

<sup>3</sup> LOSC Art. 77(3). This provision of LOSC does not specifically state that the right of a coastal state over a continental shelf without express proclamation or occupation is limited to 200nm.

<sup>4</sup> LOSC Arts. 76(4-8).

<sup>5</sup> LOSC Art. 76(8).

<sup>6</sup> Article 1(1) of LOSC defines the Area as ‘the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction’

<sup>7</sup> LOSC Art. 136.

The *delimitation* of the continental shelf beyond 200nm is different from the process of *delineation*. The former is relevant when opposite or adjacent coasts have an overlapping entitlement in an area beyond 200nm. The delimitation of a continental shelf is described in Article 83 of LOSC obligating the states to try to reach an agreement on the delimitation, failure of which they should now resort to the dispute settlement procedure under Part XV of LOSC. Though it doesn't differentiate between the continental shelf within 200nm and beyond 200nm, but it equally applies to the Continental shelf beyond 200nm from the baselines.

Article 9 of Annex II, together with Article 76(10), makes it clear that the actions of the Commission shall not prejudice matters relating to delimitation of boundaries between states with opposite or adjacent coasts. The CLCS further clarifies its role with regards to amongst others, delimitation disputes for the purpose of avoiding prejudicing the delimitation of opposite or adjacent states by preparing its Rules of Procedure (RoP),<sup>8</sup> for the purpose of ensuring the implementation of Article 76(8) and Annex II to the LOSC.<sup>9</sup>

Currently, 84 complete or partial claims have been made to the entitlement on continental shelves beyond 200nm. Many of these claims are subject to unresolved delimitation disputes and in relation to some of the disputes, the parties have withheld their consent in accordance with paragraph 5(a) of Annex 1 of the RoP (this is to the effect that if delimitation disputes exist, the CLCS may only consider a submission made under Article 76(8) by any of the states concerned in the dispute if all states parties to the dispute have given their prior consent). This blocks the CLCS from considering the submission waiting for the parties to either settle the dispute by agreement or adjudication or uplift their objections to the CLCS procedure.

The wordings of Articles 76(8), 83 and 76(10) seem to suggest that coastal states who want to bring a dispute before the courts and tribunals should have complied with the article 76(8) obligations but that has not been the case with the disputes on the delimitations beyond

---

<sup>8</sup> CLCS, Rules of Procedure of the Commission on the Limits of the Continental Shelf (17 April 2008), Doc. CLCS/40/Rev.1, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/309/23/PDF/N0830923.pdf?OpenElement>.

<sup>9</sup> Busch, S. (2018). The Delimitation of the Continental Shelf beyond 200 nm. In A. Oude Elferink, T. Henriksen, & S. Busch (Eds.), *Maritime Boundary Delimitation: The Case Law: Is It Consistent and Predictable?* pp. 319.

200nm. The relationship between the CLCS, its recommendations and international Courts and Tribunals is therefore unclear.

## **1.2 Objectives of the thesis.**

This thesis sets out to analyse available case law on the delimitation of the continental shelf beyond 200 nm for the purpose of clarifying the relationship between the Commission, its recommendations and international courts and tribunals.

In *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)* in 2017, the Special Chamber of the International Tribunal for the Law of the Sea (ITLOS) was the first adjudicative body to delimit the continental shelf beyond 200 nm where one of the parties to the dispute had already received recommendations from the CLCS concerning the location of the outer limits of its continental shelf.

This thesis will in particular discuss whether the existence of CLCS recommendations impacted the work of the Special Chamber in delimiting the continental shelf and compare the *Ghana/Côte d'Ivoire* delimitation with previous judicial practice on delimitation beyond 200 nm, where the CLCS has not issued recommendations. For the purpose of shedding light on the relationship between the CLCS, its recommendations and continental shelf delimitation in international courts and tribunals, the following research questions are addressed in the thesis:

1. Is the judiciary bound by “final and binding” limits established by the coastal State “on the basis of” CLCS recommendations?
2. Is the *Ghana/Côte d'Ivoire* delimitation in accordance with previous judicial practice for delimitation of the continental shelf beyond 200 nm?
3. Does the progress in the CLCS recommendation procedure impact the admissibility of delimitation disputes to third party adjudication?

## **1.3 Legal sources and methodology.**

Article 38(1) of the International Court of Justice (ICJ Statute)<sup>10</sup> outlines ‘international conventions, [...] international custom, [and] general principles of law recognised by civilized

---

<sup>10</sup> Statute for the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 1 NTS XVI. <https://www.icj-cij.org/en/statute>.

nations' as legal sources, coupled with 'judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law'. Article 38(2) states that the provision of Article 38(1) shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto. Customary international norms set out by Court's judgement, lay important general principles. This thesis will rely on the above sources and the available literature on the subject matter.

The central task will be to analyse the state practice in the presence of *opinio juris*. While *opinio juris* in some cases can be difficult to ascertain, state practice can be understood in relatively simple terms as what states do and say. State practice on the disputes presented to Courts and Tribunals relating to the delimitation of continental shelf beyond 200nm will focus on how the Courts and Tribunals deal with the question of admissibility and the circumstances which can cause the Courts or International Tribunals to refrain from exercising their jurisdiction.

All interpretations concerning any relevant International Conventions shall be guided by Article 31 of Vienna Convention on the Law of Treaties (VCLT).<sup>11</sup> It states that 'a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'. In certain circumstances, the preparatory work of a treaty and the circumstances of its conclusion may be referenced as supplementary means of interpretation. The analysis of individual treaty provisions especially articles 76 and 83 and terms, which is necessary to this thesis, will be done in accordance with the VCLT's rules on the interpretation of treaties.

The international disputes where the Courts and Tribunals have delimited a continental shelf beyond 200 are limited, accordingly they will all be analysed. Due to the scope and research objectives of this thesis, the analyses of this judgment are limited to the procedural aspects of the disputes, and substantive matters will not be subject to discussion.

#### **1.4 Structure of the thesis.**

This thesis will proceed with four chapters. Chapter 2 will examine the origin the continental shelf through its establishment under LOSC. This chapter will discuss how the continental shelf beyond 200nm originated up until its definition in the third United Nations Convention

---

<sup>11</sup> Vienna Convention on the Law of Treaties (adopted 23 June 1969, entered into force 27 January 1980) 1155 UNTS 331.

on the Law of the Sea (UNVLOS III). The subsequent chapter 3 which is closely linked to chapter two will discuss what the CLCS is all about examining its role, the significance of its recommendations and whether it is an independent body or if its role relates to the functions of the Courts and Tribunals.

Chapter 4 which is based on case law analyses will analyse the disputes where the continental shelf beyond 200nm have been delimited and the *Bangladesh/Myanmar* (2016) in *the Bay of Bengal* where the admissibility question has been decided on, but the merit phase is pending judgment. The chapter further investigates how the presence or absence of final and binding limits established on the basis of recommendations by the CLCS have aided the Courts or Tribunals in deciding on their jurisdiction on the cases and whether they will be interfering with the functions of the CLCS if they exercise their jurisdiction in the various cases.

Chapter 5 which is the concluding chapter discusses whether the progress in the CLCS recommendation procedure impact the admissibility of delimitation disputes to third party adjudication and give remarks to answer the research questions posed at the beginning of the thesis.



## **Chapter 2: The origin of the establishment of a continental shelf beyond 200nm.**

### **2.1 Development from 8th September 1945 to the 1982 UNCLOS.**

In order to analyse the continental shelf beyond 200nm, it is essential to understand where the legal regime of the continental shelf stemmed from. The international concept of the Continental Shelf originated from the statement of the United States' President Harry

Truman (the Truman Proclamation) on the 28<sup>th</sup> of September 1945<sup>12</sup> stating that 'the government of the United States regards natural resources of the subsoil and sea bed of the continental shelf beneath the High Sea but contiguous to the coasts of United States, subject to its jurisdiction and control'.<sup>13</sup> Although, the idea of extended seabed jurisdiction had already been introduced before the Truman Proclamation it was the Proclamation itself that 'came to be regarded as the starting point of the positive law on the subject'.<sup>14</sup> The proclamation was at that time rejected by Venezuela believing that it contradicted the principle of the freedom of high sea,<sup>15</sup> but many other coastal states made claims similar to that of the United States.<sup>16</sup> The legal continental shelf was codified for the first time in the First United Nations Conference on the Law of the Sea in 1958 as:

'For the purpose of these articles, the term 'continental shelf' is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the suprajacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands'.<sup>17</sup>

---

<sup>12</sup> US Proclamation No. 2667 (1945), Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed of the Continental Shelf. Retrieved from <[www.gc.noaa.gov/documents/gcil\\_proc\\_2667.pdf](http://www.gc.noaa.gov/documents/gcil_proc_2667.pdf)>.

<sup>13</sup> Ibid.

<sup>14</sup> North Sea Continental Shelf Cases (Federal Republic of Germany v. Netherlands & Denmark) (Judgement) [1969] ICJ Rep 3, 32-3, para. 47 (North Sea Case).

<sup>15</sup> Kaldone Nweihed, 'Trinidad and Tobago-Venezuela (Gulf of Paria)' Report Number 2-13(1) in IMB 1 (supra note 11.) 639, 641.

<sup>16</sup> Churchill and Lowe (1999), *The Law of the Sea*, p. 144.

<sup>17</sup> Article 1 of the 1958 Continental Shelf Convention.;

Though it is possible to interpret this provision differently, it was already acknowledged at the 1958 conference that the addition of the exploitability test made the seaward limit of the continental shelf dangerously imprecise<sup>18</sup> because there was an understanding that:

‘[i]t was clear that new technology would push the limit farther and farther from the shore, and that “exploitability” – which could mean anything from the ability to drag up a basket of sedentary fish to the ability to establish a full-scale profit-making offshore oil complex – was itself an elusive criterion’.<sup>19</sup>

In subsequent years after the 1958 Continental Shelf Convention was concluded:

‘[i]t was feared that the consequence of continued adherence to the exploitability test in the face of rapidly developing technology, rendering ever deeper areas “exploitable”, would be the eventual extension of coastal State “continental shelf” claims so as to cover the entire ocean floor’.<sup>20</sup>

Another issue was that developing countries were concerned that the resources of the oceans would only be ‘exploited by a few powerful States that would in this way be able to control the world’s economy’<sup>21</sup>. These fears were calmed by the speech of the Ambassador Arvid Pardo in 1967 before the United Nations General Assembly (UNGA) which introduced an idea about the common heritage of mankind in the seabed and ocean floor beyond national jurisdiction.

The *North Sea Continental shelf* case(1969) was the first delimitation case that went before an international court where the ICJ made a judgement which laid much emphasis on the continental shelf being the natural prolongation of the coastal State’s land mass although no mention is made of this concept in the 1958 Continental Shelf Convention.<sup>22</sup>

This legal concept was developed further in a 1970 United Nations General Assembly resolution, which called for the formal establishment of a legal regime and institutional

---

<sup>18</sup> Supra note 15, p. 147.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Andree Kircher, ‘The Outer Continental Shelf: Background and Current Development: Liber Amicorum Judge Thomas A. Mensah’ in Tafsir Ndiaye & Rüdiger Wolfrum (eds.) *Law of the Sea, Environmental Law and Settlement of Disputes* (Martinus Nijhoff 2007) 593, 595.

<sup>22</sup> B.M. Magnússon, *Dispute Settlement and the Establishment of the Continental Shelf Beyond Nautical Miles* (PhD thesis, University of Edinburgh, 2012), p. 19, available at [www.era.lib.ed.ac.uk/bitstream/handle/1842/7809/Magn%C3%BAsson2013.pdf?sequence=1&isAllowed=y](http://www.era.lib.ed.ac.uk/bitstream/handle/1842/7809/Magn%C3%BAsson2013.pdf?sequence=1&isAllowed=y)

machinery for the management of the international seabed area.<sup>23</sup> Thus, a key mandate for the Third United Nations Conference on the Law of the Sea (1974-82, hereinafter UNCLOS III) was the need to clearly delineate the limits of national jurisdiction, expressed as the outer limits of the continental shelf, so as to define the international seabed area and give effect to the common heritage of mankind principle.<sup>24</sup>

## **2.2 The Continental shelf under the LOSC**

The negotiations at UNCLOS III on the definition of the continental shelf was faced with different views expressed by several blocks of states. States with broad continental margins argued for a definition of the continental shelf which would extend throughout the natural prolongation of their land territory, to the edge of the continental margin, whilst landlocked or geographically disadvantageous states advocated that the continental shelf should be limited to 200nm from the baseline from which the breadth of the territorial sea is measured to ensure that, the size of the international seabed area is not diminished unreasonably.

These conflicting opinions summed to a compromise definition codified in article 76(1) of UNCLOS III as:

‘The continental shelf of a coastal state comprises the sea-bed 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’.

The above definition accommodates both the distance criterion (a continental shelf of 200nm irrespective of the physical characteristics of the seabed) advocated by the landlocked or geographically disadvantageous states and a geomorphological criterion (to the edge of the continental margin) advocated by the states with broad continental margins. This definition has evidently moved away from ‘the principle that natural prolongation is the sole basis of title’.<sup>25</sup> The definition of the continental shelf in article 76(1) of UNCLOS III is immediately qualified by article 76(2) stating that the continental shelf of a coastal state shall not extend beyond the limits provided for in paragraphs 4 to 6. Furthermore, article 76(3) defines a

---

<sup>23</sup> UNGA Resolution 2749 (XXV) of 17 December 1970.

<sup>24</sup> UNGA Resolution 2750 C (XXV) of 17 December 1970.

<sup>25</sup> Case Concerning the Continental Shelf (Tunisia v. Libyan Arab Jamahiriya) (Judgement) [1982] ICJ Rep. 48, para. 48 (*Tunisia/Libya Case*).

continental margin comprising the submerged prolongation of the landmass of a coastal state, consisting of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with the oceanic ridges or the subsoil thereof.<sup>26</sup>

The technical criteria for coastal states to delineate the outer limits of their continental shelf where the outer edge of a continental margin extends beyond 200nm is defined in articles 76(4) to 76(6). A captious issue for a coastal state that is seeking to establish the continental shelf beyond 200nm is to determine the location of the foot of the slope.<sup>27</sup> There are two methods (Irish or Gardiner formula and the Hedberg formula) used to determine the outer limits of a continental margin: Either ‘(...)the outermost fixed points at each of the thickness of the sedimentary rocks is at least 1 per cent (...)’ or ‘(...)fixed points not more than 60nm’<sup>28</sup> A common thing in the two methods is that the location of the outer edge of the continental margin is found through measurements from the foot of the slope.<sup>29</sup> The application any of these methods will guide the state to identify the precise location of the outer edge of its continental margin.<sup>30</sup> A coastal state is free to choose the method its comfortable with and the final limits of whatever method chosen by the coastal state should not exceed 350 nm from the baselines, or 100 nm from the 2,500 meter isobath which is a line connecting the depth of 2,500 meters.<sup>31</sup> Submarine ridges are however limited to the limits of 350nm from the baselines from which the breath of the territorial sea is measured. But it doesn’t apply to “submarine elevations that are natural components of the continental margin such as plateaux, rises, caps, banks and spurs.”<sup>32</sup>

The above methods are however not free from difficulties. The former method is problematic<sup>33</sup> as it is difficult and expensive to obtain the data needed, but the latter is

---

<sup>26</sup> LOSC Article 76(3).

<sup>27</sup> LOSC Article 76(4)(b) states “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.”

<sup>28</sup> LOSC Article 76(4)(a).

<sup>29</sup> Supra note 22, p. 32.

<sup>30</sup> Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh v. Myanmar) (Judgement) 2012, 127, para. 431.

<sup>31</sup> LOSC Article 76(5).

<sup>32</sup> LOSC Article 76(6).

<sup>33</sup> [I]n certain cases sedimentary rocks will not be distributed evenly and there may be more than one point on a profile line that meets the 1 per cent criterion. The inclusion of the word ‘outermost’ in paragraph 4(a)(i) indicates that the coastal State is not obliged to select the point that meets the 1 per cent criterion that is situated most landward, but may select another point that meets the 1 per cent criterion seaward of that most landward point. ( The ILA Committee (First Report) in International Law Association Report of the Seventy First Conference (Berlin 2004) (International Law Association 2004) 795-796 (2004 ILA Report).

satisfied by geometric measurements.<sup>34</sup> A legal analyses of the difficulties faced by coastal states with the use of the above methods is beyond the limits of this thesis. However, the delegations which negotiated UNCLOS recognised the complexity of article 76, the need for its provisions to be applied consistently and the sensitivity of the coastal state claiming sovereign rights over the seabed.<sup>35</sup> Therefore, the Commission on the Limits of the Continental Shelf (CLCS) was established by Article 76(8) of UNCLOS III with one of the purposes being to safeguard the outer limits of the Area and has been explained thus:

‘Having reached agreement on the outer limit, coupled with revenue sharing, it was next realized that some mechanism was necessary to verify that the limit established by any particular coastal state was in accord with the rules set forth in Article 76. If this mechanism was not institutionalized in the treaty, then the potential for conflict between an individual coastal state and the Authority would be great, with resulting uncertainties and delays. It was also understood that this mechanism could not be institutionalized within the Seabed Authority itself, since the Authority was an interested party. Obviously, an independent body was the answer, one that had no ties either to the coastal state or to the Authority’.<sup>36</sup>

The relationship between the coastal State and the CLCS presents remarkable challenges to both parties.<sup>37</sup> Both the coastal State and the CLCS possess not merely ‘static forms of rights’ but they also exercise certain powers.<sup>38</sup> Indeed, article 76 is ‘not only a complex structure of technical and legal elements but also a sophisticated balance of powers and responsibilities’.<sup>39</sup> Accordingly, article 76 does not only define technical and legal elements but also strive to balance the powers and functions of the Convention’s bodies.

---

<sup>34</sup> Serdy, Andrew (2011) The Commission on the Limits of the Continental Shelf and its Disturbing Propensity to Legislate. *The International Journal of Marine and Coastal Law*, 26(3) pp. 357. (doi:10.1163/157180811X582175).

<sup>35</sup> LOSC Art. 76(5).

<sup>36</sup> Thomas Clingan, ‘Dispute Settlement among Non-Parties to the LOS Convention with Respect to the Outer Limits of the Continental Shelf’ in Thomas Clingan (ed.) *The law of the sea – what lies ahead?* (The Law of the Sea Institute William S. Richardson School of Law University of Hawaii 1988) 495, 496.

<sup>37</sup> Suarez, S. (2013). The Commission on the Limits of the Continental Shelf and its Function to Provide Scientific and Technical Advice. *Chinese Journal of International Law*, 12(2), p. 348.

<sup>38</sup> Tommy Koh, (1983) The Third United Nations Conference on the Law of the Sea: What was accomplished?, 46 *Law & Contemp. Probs.* 5, 7.

<sup>39</sup> Philip Allott, Power sharing in the law of the sea, 77 *American JIL* (1983),

## Chapter 3: What is the Commission on the limits of the Continental shelf (CLCS)?

### 3.1 Introduction.

The CLCS is one of the legal instruments that was established by UNCLOS III defining its principal role.<sup>40</sup> Annex II of the LOSC directs whom the Commission is to be composed of together with its functions. As will be explained further in this chapter, the CLCS was established with a limited mandate to consider data from coastal states on its continental shelf where the outer limits of the continental shelf continues beyond 200nm and to give recommendations on the location of such limits in accordance with article 76(8) and Annex II of UNCLOS III. It is important to mention that an unusual peculiarity attached to the recommendations of the Commission; the limits established by the coastal state are ‘final and binding’ if established on the basis of the CLCS’ recommendations.<sup>41</sup>

The CLCS thought it wise to enact certain instruments that will serve as guiding principles as they perform their function: The Rules of Procedure of the CLCS<sup>42</sup> and the Scientific and Technical guidelines of the CLCS.<sup>43</sup> These scientific guidelines were adopted ‘with the aim of assisting coastal states in fulfilling their obligation to submit data and other information to the Commission to be able to establish the outer limits of the continental shelf.’<sup>44</sup> The RoP are more detailed than Annex II of UNCLOS III in expanding the how the obligations and functions indicated in article 78(8) and Annex II are operated.<sup>45</sup> Even though there is no rule in UNCLOS III that specifically give the commission the right to establish these rules, their

---

<sup>40</sup> LOSC Article 76(8).

<sup>41</sup> Supra note 22, p.54.

<sup>42</sup> *Rules of Procedure of the Commission on the Limits of the Continental Shelf* (17 April 2008), Doc. CLCS/40/Rev.1, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/309/23/PDF/N0830923.pdf?OpenElement>. Herein after referred to as the RoP.

<sup>43</sup> CLCS/11 - Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf

<sup>44</sup> Ibid note 27.

<sup>45</sup> Supra note 22, p. 56. «They include three annexes. The first addresses submissions in the event of a dispute between States with opposite or adjacent coasts or in other cases of unresolved land or maritime disputes. It has been questioned whether some of its provisions are in conformity with UNCLOS, as will be discussed later in this chapter. The second annex establishes the rules of confidentiality concerning information and data submitted to the Commission. The third annex contains the modus operandi for the consideration by the Commission of a submission made thereto»

action can be justified on the basis that international institutions have the powers to adopt rules for their internal function.<sup>46</sup>

### 3.2 What is the responsibility of the CLCS?

As noted earlier, article 76(8) is the key provision of the LOSC concerning the CLCS which is word verbatim reads as:

‘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 shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographic representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.’

The CLCS is composed of 21 members coming from the sciences of hydrography, geology and oceanography.<sup>47</sup> Members enjoy a term of office of five years and may be re-elected.<sup>48</sup> The candidates are nominated and elected by the State Parties to UNCLOS.<sup>49</sup>

Annex II of LOSC points out the functions of the CLCS thus:

(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;

(b) to provide scientific and technical advice, if requested by the coastal State concerned during the preparation of the data referred to in subparagraph (a).<sup>50</sup>

The role of considering data and other materials from coastal states and making recommendations there of ‘implies a power to establish whether the scientific and technical data submitted by a coastal State prove that the conditions which allow the specific delineation of the outer limit of the continental shelf are met’<sup>51</sup> While performing this

---

<sup>46</sup> Philippe Sands & Pierre Klein (2009), *Bowett's Law of International Institutions* (6th edn, Sweet and Maxwell) 455-6.

<sup>47</sup> LOSC, Annex II, Art. 2(1).

<sup>48</sup> *Ibid.*, Art. 2(4).

<sup>49</sup> *Ibid.*, Art. 2(3).

<sup>50</sup> LOSC, Annex II, Art. 3(1). The issues relating to the provisions by the CLCS of scientific and technical advice to coastal states during the preparation of their submission will not be elaborated on this thesis.

<sup>51</sup> The ILA Committee (First Report) in *International Law Association Report of the Seventy First Conference (Berlin 2004)* (International Law Association 2004) 779, (2004 ILA Report).

function, the CLCS has to answer the question of ‘whether (...) the scientific and technical data submitted by the coastal State actually supports the conclusions which are drawn from them ... and ... [whether] these conclusions are in accordance with article 76’<sup>52</sup> The underlying objective was however not to replace the sovereign rights of the coastal State over its continental shelf but to enable the coastal State to apply and implement the complex rules in article 76 as well as to ensure that no encroachment onto the international seabed area results.<sup>53</sup> It is clear from the wordings of article 3(1)(a) of Annex II of LOSC that there is a link between the works of the CLCS and legal standard since the CLCS in general does not only consider the technical and scientific data submitted by the coastal state but will also find itself in a position to interpret the provisions of article 76.<sup>54</sup> This link however doesn’t charge the CLCS to consider and make recommendations on legal matters,<sup>55</sup>

Nevertheless:

‘the consideration of a submission by the CLCS in general will not only be concerned with the evaluation of scientific and technical data, but may also require findings on the interpretation or application of the legal terms contained in article 76 and other provisions of the Convention’<sup>56</sup>

Accordingly, while performing its functions, the CLCS will find itself in a position where it has to interpret or apply the legal terms ‘to the extent that is necessary to carry out the functions which have been assigned to it under the Convention’,<sup>57</sup> thereby limiting its competence.<sup>58</sup> Other scholars also recognize that the competence of the CLCS to interpret article 76 must be carried out strictly within the parameters of its two functions under UNCLOS.<sup>59</sup> Wolfrum points out that the role of the CLCS in this context is rather to direct the state to delineate the outer continental shelf in conformity with article 76 without

---

<sup>52</sup>Ibid fn. 27.

<sup>53</sup> Supra note 37, p. 348.

<sup>54</sup> John Noyes, ‘Judicial and Arbitral Proceedings and the Outer Limits of the Continental Shelf’ (2009) 42 Vand. J. Transnat’l Law 1211, 1232.

<sup>55</sup> 1 The ILA Committee (First Report) in International Law Association Report of the Seventy First Conference (Berlin 2004) (International Law Association 2004) 778. (2004 ILA Report).

<sup>56</sup> Ibid 775.

<sup>57</sup> Ibid 779-780.

<sup>58</sup> Supra note 38, p. 348.

<sup>59</sup> Nuno Marques Nantunes and Fernando Maia Pimentel, Reflecting on the Legal Technical Interface of Article 76 of LOSC: Tentative Thoughts on Practical Implementation, a paper presented at the ABLOS Conference entitled Addressing Difficult Issues in UNCLOS, 28–30 October 2003, Monaco, at 8 ([www.gmat.unsw.edu.au/ablos/ABLOS03Folder/PAPER3-1.PDF](http://www.gmat.unsw.edu.au/ablos/ABLOS03Folder/PAPER3-1.PDF) (last visited 30 June 2019)).



infringing upon the sovereignty of the State.<sup>60</sup> Therefore ‘the fundamental nature of the relationship between the coastal State and the CLCS is, therefore, co-operative, and not competitive.’<sup>61</sup> Accordingly, the CLCS’ function doesn’t conflict with the sovereign rights of the coastal state, instead, their recommendations aid them in establishing their ‘final and binding’ outer limits likewise the submissions by the coastal state to the CLCS facilitate their job in issuing recommendations.

### **3.3 The Status of the CLCS’ recommendations.**

The wordings of article 76(8) summarizes the importance of CLCS recommendations to the coastal state for them to establish the outer limits of their Continental shelf. The statement: ‘The limits of the shelf established by a coastal state on the basis of these recommendations shall be final and binding.’ ‘These’ in the statement refers to the CLCS recommendations. Thus the statement can be literally understood to mean that limits established by the coastal state on the basis of the CLCS recommendations are final and binding. Therefore, the analyses of the meaning of ‘on the basis of’ and ‘final and binding’ are important for the interpretation of this provision which help in the analyses of the cases in the next chapter.

### **3.4 Meaning of ‘on the basis of’**

These wordings ‘provides certainty and consistency for the international community, while preserving sufficient, although unspecified, flexibility for the coastal State’<sup>62</sup> It can be argued that the coastal state uses the CLCS recommendations as guidelines in the process of establishing final and binding limits in order to ensure that the limits established are in accordance with article 76. Article 8 of Annex II to the UNCLOS provides that ‘In 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.’ This implies that even though coastal states have the discretion on how to use the recommendations issued by the CLCS, they are however somehow bound to use them to a certain degree (UNCLOS is silent on the degree). Since the outer limits established by a

---

<sup>60</sup> Rüdiger Wolfrum, ‘The Role of International Dispute Settlement Institutions in the Delimitation of the Outer Continental Shelf’ in Rainer Lagoni & Daniel Vignes (eds.) *Maritime Delimitation* (Koninklijke Brill N.V. 2006) 23.

<sup>61</sup> *Supra* note 38, p. 349

<sup>62</sup> Robert Smith & George Taft, ‘Legal Aspects of the Continental Shelf’ in Peter Cook & Chris Carleton (eds.) *Continental Shelf Limits: The Scientific and Legal Interface* (Oxford University Press 2000), p. 20.

coastal state are considered final and binding when established on the basis of the recommendations.

It follows that if the CLCS perform its functions of considering data and other materials submitted by the coastal state and make recommendation in accordance with the prescriptions of UNCLOS, the limits established by the coastal state on the basis of such recommendations will definitely be in accordance with article 76. As such for the limits to be final and binding, they must be established on the basis of the CLCS recommendations.

### **3.5 Meaning of ‘final and binding’**

Article 76(8) stipulates that limits establish on the basis of the recommendation shall be ‘final and binding.’ The word ‘shall’ in the phrase signifies certainty on the limits. It has been noted that ‘[t]he terms ‘final and binding’ actually consists of two separate terms, each of which has a separate meaning. The reference to “final” entails that the outer limit line shall no longer be subject to change but becomes permanently fixed.’<sup>63</sup> While ‘[t]he references to “binding” implies an obligation to accept the outer limit line concerned’<sup>64</sup>

The role of the CLCS ends when it has given its recommendation, it has no duty to ensure whether final limits established by coastal states are in accordance with its recommendation. The coastal state only has to make its limits available to the Secretary-General of the United Nations and the secretary General shall give due publicity thereto<sup>65</sup> with no legal consequences attached to the submissions.<sup>66</sup>

The ILA Committee explains this thus:

‘The recommendations of the Commission upon a submission by a coastal State are not decisions which are binding upon that State or any other State party to the Convention. Only the coastal State is competent to decide what follow-up it will give to the recommendations of the Commission and to establish the outer limits of its continental shelf’.<sup>67</sup>

The Committee notes that:

---

<sup>63</sup> Supra note 54, p. 805.

<sup>64</sup> Ibid.

<sup>65</sup> LOSC Art. 76(9).

<sup>66</sup> Ted McDorman, ‘The Role of the Commission on the Limits of the Continental Shelf: A Technical Body in a Political World’ (2002) 17 IJMCL. p. 316.

<sup>67</sup> Supra note 54, p. 786.

‘[t]his indicates that, also in cases in which the coastal State has established the limits of its outer continental shelf on the basis of the recommendations of the Commission, it is the coastal State which is responsible for the interpretation and application of the relevant provisions of article 76’<sup>68</sup>

Article 76(8) does not indicate the parties bound by the ‘final and binding’ limits established by the coastal state on the basis of CLCS recommendations or the situation where such ‘final and binding’ limits can be contestable. In relation to the parties bound by the limits, the coastal state establishing the limits is automatically bound at the time of its establishment which cannot revisit these limits.<sup>69</sup> McDorman puts it convincingly:

‘[Final and binding] refers only to the submitting state in that the submitting state, having delineated its outer limit of the continental shelf and that limit not being challenged by other states, cannot subsequently change the location of its outer limit. To this extent, and this extent only, would the outer limit be ‘final and binding’, not to be contestable and perhaps become an obligation *erga omnes*.’<sup>70</sup>

In the *Bangladesh/Myanmar* judgment, ITLOS recognized that, while the establishment of the limits of the continental shelf beyond 200 nm

‘is a unilateral act, the opposability with regard to other States [...] depends upon satisfaction of the requirements specified in article 76, in particular compliance by the coastal state with the obligation to submit to the Commission information on the limits.’<sup>71</sup>

This ITLOS’ observation means that if the coastal state satisfies the requirements prescribed by article 76 to establish its outer limits, it will limit the possibility of other states opposing the limits established. This observation of the Tribunal is consistent with the position taken previously by the ILA Committee on Legal Issues of the Outer Continental Shelf:

‘if the outer limits of the continental shelf have been established in accordance with the substantive and procedural requirements of article 76, they will be final and binding on the coastal State concerned and other States Parties to the Convention.’<sup>72</sup>

Article 76(4-6) establish the process which coastal states are to follow to delineate their outer continental shelf, as such, if coastal states deviate from this process in its submission to the

---

<sup>68</sup> Alex Oude Elferink, ‘The Continental Shelf Beyond 200 Nautical Miles: The Relationship Between the CLCS and Third-Party Dispute Settlement’ in Alex Oude Elferink & Donald Rothwell (eds.) *Ocean Management in the 21st Century: Institutional Frameworks and Responses* (Martinus Nijhoff 2004) 119.

<sup>69</sup> ILA Committee on Legal Issues of the OCS (2006), Conclusion No. 11.

<sup>70</sup> *Supra* note 66, p. 315.

<sup>71</sup> *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar)* (Judgment) [2012] ITLOS Rep.16, para 407.

<sup>72</sup> *Supra* note 69.

CLCS and the CLCS gives recommendations based on this, then the outer limits can be contestable. Also, if they establish outer limits that are not based on the recommendations of the CLCS, they can also be contested. Furthermore, in a situation where the CLCS while giving recommendations acts beyond the prescriptions of UNCLOS, the outer limits established based on such recommendations will be contestable.

### **3.6 The role of the CLCS in maritime boundary delimitation.**

The works of the CLCS end when it reviews the data and other materials submitted to it by the coastal state and give recommendations thereof. There is a difference between delineating and delimitating outer limits of the continental shelf.<sup>73</sup> UNCLOS provides that all coastal states are entitled to a continental shelf, defined as natural prolongation to a distance of 200nm without an express proclamation.<sup>74</sup> In a situation where the natural prolongation of the coastal states' continental shelf extend beyond 200nm, it has to make submissions to the CLCS<sup>75</sup> applying the criteria prescribed by article 76(4-6) to the CLCS for it to review and give recommendations thereof. The coastal state will internally use these recommendations to delineate the outer limits of its continental shelf which will be considered final and binding if established on the basis of such recommendations. Suppose the outer limits delineated by the coastal state overlap with the entitlement of another coastal states' continental shelf, they will now potentially resort to a judiciary body to delimit the overlapping entitlements.<sup>76</sup>

Article 9 of Annex II which provides that:

‘The actions of the commission shall not prejudice matters relating to delimitation of boundaries between states with opposite or adjacent coasts.’

together with article 76(10):

‘The provisions of this article are without prejudice to the question of delimitation of the continental shelf between states with opposite or adjacent coasts.’

makes it clear that the actions of the commission shall not prejudice matters relating to delimitation of boundaries between states with opposite or adjacent coasts. The ILA Committee explains that ‘[a]rticle 76(10) guarantees that the implementation of article 76 by

---

<sup>73</sup> The process of delineating of found in article 76 of LOSC while that of delimitation is in article 83 of LOSC.

<sup>74</sup> LOSC art. 76(1) and 76(3)

<sup>75</sup> LOSC art. 76(8).

<sup>76</sup> LOSC art.83.

one State does not affect the rights of another State, in a case where the delimitation of the continental shelf between the States concerned is at issue'.<sup>77</sup> Article 76(10) is generally referred to as the saving clause of article 76. Though Article 9 of Annex II to have reiterated Article 76(10) of LOSC, Aex G. Oude Elferink explains that they have a significant difference:

'There is a significant difference between Article 76(10) and Article 9 of Annex II. Article 76(10) implies that Article 76 is without prejudice to the delimitation of boundaries. It does not prescribe a specific course of action for coastal states making the submission or commission. On the other hand, Article 9 does not indicate that the actions of the commission are without prejudice to the matters of the commission are without prejudice to matters related to boundaries, but instead instructs the commission that no such prejudice results from its actions.'<sup>78</sup>

This means that Article 76 is without prejudice to the delimitation of boundaries but does not directly mention the actions of the CLCS or that of the coastal state in making its submissions but article 9 of Annex II of LOSC is specific that the CLCS actions should not prejudice the delimitation process.

When the CLCS was established, it found a need to clarify its function and so it adopted Rules of Procedure<sup>79</sup> to among others clarify among others 'Submissions in case of a dispute between States with opposite or adjacent coasts or in other cases of unresolved land or maritime disputes.'<sup>80</sup> Rule 46 provides that:

1. In case there is a dispute in the delimitation of the continental shelf between opposite or adjacent States or in other cases of unresolved land or maritime disputes, submissions may be made and shall be considered in accordance with Annex I to these Rules.
2. The actions of the Commission shall not prejudice matters relating to the delimitation of boundaries between States.

These coastal states are not stopped from making submissions to the CLCS in a situation where there is a dispute in the delimitation of continental shelf between them. Paragraph 1 of

---

<sup>77</sup> Supra note 53.

<sup>78</sup> Elferink, A., & Symmons, C. (2011). Chapter Twelve. Causes, Consequences, And Solutions Relating to the absence of final and binding outer limits of the continental shelf. In *Selected Contemporary Issues in the Law of the Sea* (Vol. 68, Publications on Ocean Development, pp. 257-258).

<sup>79</sup> Supra note 42.

<sup>80</sup> Annex 1 of the RoP.

annex 1 to the rules states: '[t]he Commission recognizes that the competence with respect to matters regarding disputes which may arise in connection with the establishment of the outer limits of the continental shelf rests with States', this is so, so the sovereign rights of the coastal state are not tempered with.

The provisions of articles 76(10) and article 9 of Annex II added into the RoP as paragraph 5 of annex 1 which reads thus:

a) In cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by any of the States concerned in the dispute. However, the Commission may consider one or more submissions in the areas under dispute with prior consent given by all States that are parties to such a dispute.

b) The submissions made before the Commission and the recommendations approved by the Commission thereon shall not prejudice the position of States which are parties to a land or maritime dispute.

The CLCS has done all to stay within the limits of the functions accorded to it in matters of delimitation regarding the establishment of the coastal state continental shelves beyond 200nm. UNCLOS article 76(8) was clear on the fact that these limits are final and binding when they are established on the basis of the recommendations of the CLCS thus the CLCS recommendations cannot be ignored.

## CHAPTER 4. An analysis of the relevance of CLCS recommendations in case law.

### 4.1 Introduction.

There are no provisions in UNCLOS that explains the role of the CLCS in the *delimitation* of the continental shelf boundary beyond 200nm. Even though UNCLOS clearly provides that ‘[t]he actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts’,<sup>81</sup> it is not clear whether a coastal state is first required to receive recommendations from the CLCS on the outer limits of its continental shelf before it seeks the help of third-party dispute settlement mechanisms of UNCLOS to delimit such outer limits in situations where the area overlaps with that of an opposite or an adjacent coast.

For the past twenty-five years, the international courts or tribunals have been requested to delimit a continental shelf between opposite or adjacent states from the baseline only on nine occasions, the jurisdiction of the court or tribunal, and its decision on whether it could and should exercise jurisdiction has been adjudicated on six cases for the past six years. In addition, *Newfoundland and Labrador/Nova Scotia*<sup>82</sup> ‘is also considered as relevant, although it did not concern an interstate arbitration, and accordingly not being opposable to any international process for the determination of the outer limit of the Canadian continental shelf’.<sup>83</sup> The available jurisprudence follows from ITLOS, ICJ, and Arbitral tribunals.

*Bangladesh/Myanmar* was the first case where ITLOS decided on a delimitation dispute and the first adjudicative body to undergo a detailed discussion of the relationship between courts and tribunals on the one hand, and the CLCS on the other.<sup>84</sup> So, the relevant cases for this chapter will be the dispute between *Bangladesh/Myanmar* and the subsequent disputes up to date. However, the analyses of the cases in this chapter will begin with the dispute between *Ghana/Cote D’Ivoire*<sup>85</sup> before proceeding to that of *Bangladesh/Myanmar* and the subsequent

---

<sup>81</sup>Article 9 of Annex II to UNCLOS.

<sup>82</sup> *Newfoundland and Labrador/Nova Scotia* (Award of the Tribunal in the Second Phase) [2002]128ILR504.

<sup>83</sup> Supra note 9.

<sup>84</sup> *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar)* (Judgment) [2012] ITLOS Rep.16. Declaration of Judge Wolfrum, 140.

<sup>85</sup> *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d’Ivoire)* (Judgment), 2017], Judgment, ITLOS Rep. 23.

disputes that followed. This order is chosen because the dispute between *Ghana/Cote D'Ivoire* stands out as the only case among the six disputes where one of the parties have actually received recommendations from the CLCS and established its outer limits on the basis of the recommendations.

The analyses of this case will set to find out if the recommendations helped the Special Chamber in deciding on its jurisdiction on the dispute and whether there were any circumstances why it should refrain from exercising its jurisdiction. Also, it will seek to find out if the Special Chamber followed the reasoning of the Courts and Tribunals in the previous delimitation disputes or the presence of the recommendations made any difference. Before commencing the analyses of the cases, the next section will give a brief overview of the role of International Courts and Tribunals in outer continental shelf disputes.

## **4.2 The role of International Courts and Tribunals in outer continental shelf disputes.**

The delimitation of the continental shelf is described in Article 83, providing that:

‘The delimitation of the continental shelf [...] shall be effected by agreement on the basis of international law[...]. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV’.<sup>86</sup>

Disputing states over an overlapping continental shelf entitlement are obligated to try to reach an agreement between them on the delimitation, but if they fail to reach this agreement, they should resort to the dispute settlement procedure under Part XV of LOSC.<sup>87</sup> Part XV of UNCLOS is dedicated to the settlement of disputes, containing ‘a complex dispute settlement system that entails both traditional consent-based processes as well as mandatory procedures’.<sup>88</sup> The traditional consent-based processes are enshrined in section 1 of Part XV which provides various peaceful means of settling disputes. Article 280 provides that nothing in Part XV ‘impairs the right of any States Parties to agree at any time to settle a dispute between them concerning the interpretation or application of [UNCLOS] by any peaceful means of their own choice’.<sup>89</sup> The choice of the means to be used is entirely in the hand of the

---

<sup>86</sup> LOSC, Art.83 (1)– (2).

<sup>87</sup> Supra note 84. pp. 323.

<sup>88</sup> Natalie Klein, *Dispute Settlement in the UN Convention on the Law of the Sea* (Cambridge University Press 2005) 29.

<sup>89</sup> Art. 33(1) of the UN Charter states the peaceful means to be ‘negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means’



disputing parties.<sup>90</sup> States have the right to withdraw from an ongoing dispute to settle through a peaceful means of their choice if they so desire.<sup>91</sup> Failure to arrive a solution using the peaceful means will leave the parties with the option of compulsory procedures under part XV.

Article 286 which is the first provision of the compulsory procedure part of LOSC provides thus:

‘Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section’.

The compulsory nature of this provision is expressed by the word ‘shall’ which signifies an obligation to submit the dispute under section 2 as oppose to the options available under the traditional consent-based procedures.<sup>92</sup> Also, a state is bound by the applicability of the dispute settlement procedure under section 2 of Part XV once it ratifies the LOSC without a need for any further agreement between the parties to the dispute to submit the dispute to the procedures specified in section 2 of that Part.<sup>93</sup> As a result of this, ‘[u]nilateral action is sufficient to vest the court or tribunal with jurisdiction, and that court or tribunal may render a decision whether or not the other party participates in the process’.<sup>94</sup>

The choice of the means to settle dispute is addressed by article 287 providing that when a State signs, ratifies or accedes to LOSC, or at any time thereafter, it shall be free to choose, by written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of the Convention:

- (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;
- (b) the International Court of Justice;
- (c) an arbitral tribunal constituted in accordance with Annex VII;

---

<sup>90</sup> Satya Nandan & Louis Sohn (eds.) United Nations Convention on the Law of the Sea; A Commentary vol. V (Martinus Nijhoff 1989) pp.20.

<sup>91</sup> Ibid., pp. 20-21.

<sup>92</sup> Ibid., pp. 39.

<sup>93</sup> Ibid., pp. 38.

<sup>94</sup> Ibid., pp. 39.

(d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

This provision '[r]eflects the trend of modern international law with its diversity and flexibility of response in terms of peaceful settlement of disputes tailored to meet the need of present-day international society'.<sup>95</sup> In a case where a party doesn't declare a procedure from the list above, it is considered to have accepted arbitration as a default procedure., where parties to a dispute declare reference to the same procedure, the dispute will be heard under that procedure but when they declare preference to different procedures, the dispute will be heard in arbitration, unless there is an alternative agreement.<sup>96</sup> Summarily, arbitration is the default method for compulsory dispute settlement under the LOSC. Any chosen court or tribunal will apply the LOSC and international law to resolve the dispute. In case of conflict between the two applicable laws, the LOSC shall prevail.<sup>97</sup>

### **4.3 Dispute concerning the delimitation of maritime boundary between Ghana and Cote D'Ivoire in the Atlantic Ocean (*Ghana/Cote D'Ivoire*)**

In this dispute, Ghana requested the special chamber of ITLOS to delimit all maritime areas belonging to Ghana and Côte d'Ivoire in the Atlantic Ocean, with the continental shelf beyond 200nm inclusive.<sup>98</sup> This dispute is the first time an international court or tribunal is faced with the task of delimiting a continental shelf beyond 200nm where one of the parties had already received recommendations from the CLCS regarding the location of the outer limits of its continental shelf. This makes the case unique for the purpose of further understanding the impact of the CLCS recommendation in a dispute before an international court or tribunal requiring the delimitation of the continental shelf beyond 200nm.

The parties agree that the special chamber has jurisdiction to delimit the continental shelf beyond 200m since it requires the special chamber to interpret and apply articles 76 and 83.<sup>99</sup> The special chamber notes their position but still had to decide on its position *proprio motu*

---

<sup>95</sup> L.D.M. Nelson, 'The Settlement of Disputes Arising from Conflicting Outer Continental Shelf Claims' (2009) 24 IJML 409, 418 fn. 19; See also Alex Oude Elferink, 'Openness' and Article 76 of the Law of the Sea Convention: The Process Does Not Need to be Adjusted' (2009) 40 ODIL 36ff.

<sup>96</sup> LOSC Art. 287.

<sup>97</sup> LOSC Art. 293.

<sup>98</sup> Supra note 85, para 2.

<sup>99</sup>Ibid., para 483.

and whether the submissions of the parties concerning the continental shelf beyond 200nm are admissible.<sup>100</sup>

On this note, the special chamber emphasized that:

‘there is in law only a single continental shelf rather than an inner continental shelf and a separate extended or outer continental shelf (see Arbitration between Barbados and the Republic of Trinidad and Tobago relating to the delimitation of the exclusive economic zone and the 138 continental shelf between them, Decision of 11 April 2006, RIAA, vol. XXVII, p. 147, at pp. 208-209, para. 213, quoted by the Tribunal in its Judgment in the dispute concerning Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012, p. 4, at pp. 96-97, para. 362). 491’.<sup>101</sup>

The delimitation of a continental shelf is only possible if such continental shelf exists. In the case between *Ghana/Cote D’Ivoire* it was evident that a continental shelf existed since Ghana has made submissions to the CLCS and received recommendations thereof. The identical nature of its geological situation with that of Ghana for which affirmative recommendations of the CLCS exist erased any doubt on the existence of a continental shelf beyond 200nm.<sup>102</sup>

Accordingly, the fact that Ghana had received recommendations and delineated its outer limits on the basis of the recommendations could be said to have eased the considerations the Special Chamber had to make in order to be certain on the existence of a continental shelf since the ‘geological situation’ of Côte d’Ivoire was ‘identical’ with that of Ghana. Had it been that Ghana had not established its outer limits the ‘identical’ nature of the ‘geological situation’ of the two parties would not have been of much help to the tribunal.

After confirming its jurisdiction to delimit the continental shelf beyond 200nm, the special chamber turned to address the question if it would be interfering with the competence of the CLCS in reaching a decision.<sup>103</sup> In the view of the special chambers, the admissibility of the submission is unquestionable as long as Côte d’Ivoire has made submissions to the CLCS notwithstanding the fact that the commission has not given recommendations, emphasizing that there is a difference between the functions of the CLCS and that of the special chamber

---

<sup>100</sup> Ibid., para 489.

<sup>101</sup> Ibid., para 490.

<sup>102</sup> Ibid., para 491.

<sup>103</sup> Ibid., para 492, see also ITLOS in the case of *Bangladesh/Myanmar* (at para 369).

and referred to the Judgment of the Tribunal in Delimitation of the maritime boundary in the *Bay of Bengal (Bangladesh/Myanmar)*:

‘There is a clear distinction between the delimitation of the continental shelf under article 83 and the delineation of its outer limits under article 76. Under the latter article, the Commission is assigned the function of making recommendations to coastal States on matters relating to the establishment of the outer limits of the continental shelf, but it does so without prejudice to the delimitation of maritime boundaries. The function of settling disputes with respect to delimitation of maritime boundaries is entrusted to dispute settlement procedures under article 83 and Part XV of the Convention, which include international courts and tribunals. (Judgment, ITLOS Reports 2012, p. 4, at p. 99, para. 376).’<sup>104</sup>

According, the special reiterated the functions of the CLCS are not to prejudice that of the courts or the tribunals following the previous judicial practice in *Bangladesh/Myanmar*.

The special chamber do not find the need to clarify the actual existence of a continental shelf even though Côte d’Ivoire has not received recommendations from the CLCS by turning to the arguments advanced by the two parties in relation to the existence of a continental shelf ‘which includes the question of relevance to the present proceedings of the procedure before the CLCS’. The special chamber notes that the parties agree on their entitlement to a continental shelf beyond 200nm but disagree on the scope of such entitlement.<sup>105</sup>

Ghana states that it has made full submissions to the CLCS and ‘has already accepted outer limits of its outer continental shelf based on the CLCS recommendations’ and Ghana reasons that with reference to article 76(8), such limits established by the coastal state on the basis of CLCS recommendations become ‘final and binding’.<sup>106</sup> Ghana also restate the fact that this case is the first case where one of the parties to the case has received recommendations before the case is being decided and as such the special chamber is bound to respect the CLCS’ decision on the outer limits.<sup>107</sup> Ghana thus notes that:

[a]ny delimitation effected by the Special Chamber beyond 200 M would have to be contingent on the CLCS finding that Côte d’Ivoire does, in fact, have an outer continental shelf entitlement that extends to the established outer continental shelf entitlement of Ghana in the area to be delimited.<sup>108</sup>

---

<sup>104</sup> Ibid., para 493.

<sup>105</sup> Ibid., para 498.

<sup>106</sup> Ibid., para 500.

<sup>107</sup> Ibid., para 501.

<sup>108</sup> Ibid., para 502.

Côte d’Ivoire does not dispute Ghana’s entitlement to a continental shelf beyond 200nm from the baseline from which the breadth of its territorial sea is measured<sup>109</sup> especially since the CLCS has already issued recommendations on it. But it however emphasizes that “the delineation by the CLCS is in the form of a recommendation, without prejudice to the (lateral) delimitation between the States with adjacent or opposite coasts.”<sup>110</sup> Based on this, Côte d’Ivoire finally maintains that: ‘[t]he effect of the CLCS’s recommendations concerning Ghana’s submission does not establish an entitlement enforceable against Côte d’Ivoire’. It argues that those recommendations ‘in no way invalidate the right of Côte d’Ivoire to claim a continental shelf in the area to which these recommendations relate’.<sup>111</sup>

This means that the fact that the CLCS has given recommendations and Ghana has established limits on the basis of these recommendations doesn’t stop Côte d’Ivoire from claiming a continental shelf in this area. This view was supported by the ICJ in the *Nicaragua/Colombia* where it explained that, the outer limits of a continental shelf established on the basis of CLCS recommendations are ‘final and binding’ on the state parties to LOSC but however emphasized that the role of the CLCS relates to outer limits of the continental shelf and not to delimitation. Drawing from article 76(10), the provisions of article 76 shall not prejudice the question of delimitation of the continental shelf between opposite or adjacent coast.<sup>112</sup>

#### **4.4 Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal.**

##### ***(Bangladesh/Myanmar)***

The *Bangladesh/Myanmar* concerning delimitation in the *Bay of Bengal* is considered a milestone in the delimitation jurisprudence, not only as the first delimitation dispute decided by the ITLOS, but also because the ITLOS was the first adjudicative body to undertake a

---

<sup>109</sup> Ibid., para 507.

<sup>110</sup> Ibid., para 510.

<sup>111</sup> Ibid., para 512.

<sup>112</sup> *Nicaragua/Colombia*, paras 108 and 110.

thorough discussion of the relationship between courts and tribunals on the one hand, and the CLCS on the other.<sup>113</sup>

The government of Bangladesh instituted arbitral proceedings against the Union of Myanmar to delimit Bangladesh's maritime boundaries with Myanmar in the territorial sea, the exclusive economic zone and the continental shelf in accordance with international law. The parties agree that the Tribunal has jurisdiction to delimit the continental shelf within 200nm but disagree on the Tribunal's jurisdiction to delimit the continental shelf beyond 200nm.

Myanmar's arguments to support this point are that the delimitation line end before reaching 200nm from the baseline from which the breadth of the territorial sea is measured.<sup>114</sup> Also, it argues that in a situation where the tribunal determine that such continental shelf exist, the tribunal should refrain from exercising its jurisdiction because any judicial pronouncement on these issues might temper with the rights of third parties alongside those relating the international sea bed area.<sup>115</sup> Myanmar further argues that the delineation of the outer limits of a continental shelf was a precondition for any delimitation between opposite or adjacent states and the CLCS is crucial to this condition since the outer limits are established by the coastal state on the basis of recommendations from the CLC under article 76(8). According to Myanmar, the CLCS should issue its recommendations before the tribunal determines any delimitation in an overlapping area between states and 'to reverse the process [...], to adjudicate with respect to rights the extent of which is unknown, would not only put this Tribunal at odds with other treaty bodies, but with the entire structure of the Convention and the system of international ocean governance'.<sup>116</sup> On this note, Myanmar argued that even if the tribunal were to consider the admissibility of the application, it should suspend the judgement until the CLCS has made recommendations on the outer limits of the continental shelves.<sup>117</sup>

---

<sup>113</sup> R. Churchill, 'The *Bangladesh/Myanmar* Case: Continuity and Novelty in the Law of Maritime Boundary Delimitation,' (2012) 1 Cambridge Journal of International and Comparative Law 137, 152.

<sup>114</sup> Supra note 84, para 343.

<sup>115</sup> Ibid., para 344.

<sup>116</sup> Ibid., para 345. Myanmar supported this argument by referring to the Arbitral Award in the *Case concerning the Delimitation of Maritime Areas between Canada and France* of 10 June 1992, which states: "[i]t is not possible for a tribunal to reach a decision by assuming hypothetically the eventuality that such rights will in fact exist" (Decision of 10 June 1992, ILM, Vol. 31 (1992), p. 1145, at p. 1172, para. 81). 347. (*Bangladesh/Myanmar* para., 346.)

<sup>117</sup> Ibid., para 349.

Bangladesh on the other hand had no objection on the Tribunal's jurisdiction on the area beyond 200nm stating that article 83 expressly empowers the tribunal to delimit a continental shelf making no distinction between the continental shelf within 200nm and the one beyond 200m, thus the delimitation of the entire continental shelf is covered by article 83.<sup>118</sup>

Bangladesh also does not see the function of the CLCS and that of the tribunal conflicting in any way, rather, she sees them as complimentary.<sup>119</sup> According to Bangladesh, if the arguments presented by Myanmar are to be considered:

'[t]he Tribunal would have to wait for the Commission to act and the Commission would have to wait for the Tribunal to act. According to Bangladesh, the result would be that, whenever parties are in dispute in regard to the continental shelf beyond 200 nm, the compulsory procedures entailing binding decisions under Part XV, Section 2, of the Convention would have no practical application. Bangladesh adds that '[i]n effect, the very object and purpose of the UNCLOS dispute settlement procedures would be negated. Myanmar's position opens a jurisdictional black hole into which all disputes concerning maritime boundaries in the outer continental shelf would forever disappear'.<sup>120</sup>

This means that the approach Myanmar advanced will frustrate the functions of both bodies as it will lead to a standstill on any dispute since both the CLCS and the tribunal will be waiting on each other to finish performing their roles making the LOSC dispute settlement procedures useless.

Based on these arguments, the tribunal has to consider whether it has jurisdiction to delimit the continental shelf beyond 200nm and it analysed that considering the fact that the exclusive sovereign right accorded to the coastal state on the continental shelf by article 77(1)(2) does not distinguish between a continental shelf within and beyond 200nm, likewise the tribunal's role to delimit a continental shelf under article 83 does not make any such distinction.<sup>121</sup> Also referring to the arbitral tribunal's decision in *the Arbitration between Barbados and Trinidad and Tobago*,<sup>122</sup> the tribunal finds that it has jurisdiction to delimit the continental shelf beyond

---

<sup>118</sup> Ibid., para 350.

<sup>119</sup> Ibid., para 356.

<sup>120</sup> Ibid., para 358.

<sup>121</sup> Ibid., para 361.

<sup>122</sup> the Arbitral Tribunal decided that "the dispute to be dealt with by the Tribunal includes the outer continental shelf, since [...] it either forms part of, or is sufficiently closely related to, the dispute [...] and [...] in any event there is in law only a single 'continental shelf' rather than an inner continental shelf and a separate extended or outer continental shelf" (Decision of 11 April 2006, RIAA, Vol. XXVII, p. 147, at pp. 208-209, para. 213)'.

200nm and now has to consider whether it will be appropriate to exercise such jurisdiction given the circumstances of the case.<sup>123</sup>

The Tribunal also has to consider whether it should refrain from exercising its functions to delimit the continental shelf beyond 200nm since neither of the disputes had not received recommendations from the CLCS .<sup>124</sup> The Tribunal ‘points out that the absence of established outer limits of a maritime zone does not preclude delimitation of that zone.’<sup>125</sup> However, the tribunal acknowledges the fact that that the CLCS plays an important role to aid the coastal state exercise the right to establish final and binding limits<sup>126</sup> but explained that there is a difference between delimitation and delineation.<sup>127</sup> Article 76(10) as confirmed by article 9 of Annex II provides that ‘the provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts’ and that the ‘actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts’ thus the tribunal believed that:

‘Just as the functions of the Commission are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts, so the exercise by international courts and tribunals of their jurisdiction regarding the delimitation of maritime boundaries, including that of the continental shelf, is without prejudice to the exercise by the Commission of its functions on matters related to the delineation of the outer limits of the continental shelf.’<sup>128</sup>

The special chamber observed that the arbitral tribunal in the *Arbitration between Barbados and the Republic of Trinidad and Tobago* and the ICJ in the case concerning *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)* gave different reasons why they refrained from exercising their jurisdiction though they had the jurisdiction to adjudicate in those cases.<sup>129</sup> The tribunal observed ‘that the determination of whether an international court or tribunal should exercise its jurisdiction depends on the procedural and substantive circumstances of each case’.<sup>130</sup>

---

<sup>123</sup> Ibid., para 363.

<sup>124</sup> Ibid., para 369.

<sup>125</sup> Ibid., para 370.

<sup>126</sup> Ibid., paras 374/375.

<sup>127</sup> Ibid., para 376(see explanation of details above, supra note 74.)

<sup>128</sup> Ibid., para 379.

<sup>129</sup> Ibid., paras 382/383.

<sup>130</sup> Ibid., para 384.



Turning to the circumstances of the case at hand, Bangladesh argued that the CLCS could not consider and qualify the submissions by Myanmar on the outer limits of its continental shelf in an outstanding dispute concerning the delimitation of a continental shelf beyond 200nm until all parties to the dispute had consented.<sup>131</sup> The CLCS took into consideration Bangladesh's position and deferred the submissions of both parties.<sup>132</sup>

The above decision by the CLCS made the tribunal to observe that if it does not delimit the continental shelf beyond 200nm in accordance with article 83 of UNCLOS, the dispute might never be resolved (since an evaluation of the circumstances of the case gives the tribunal little basis to assume that the parties can resort to agree on another means of dispute settlement) which will be contrary to the 'object and purpose of the convention'.<sup>133</sup>

The tribunal concluded that it had to fulfil its obligations under Part XV, Section 2, of the Convention by delimiting the continental shelf beyond 200nm in the present case without prejudice to the establishment of the outer limits of the continental shelf in accordance with article 76, paragraph 8, of the Convention.<sup>134</sup>

#### **4.5 Dispute concerning delimitation of the maritime boundary between Bangladesh and India in the Bay of Bengal. (*Bangladesh/India*).**

Bangladesh by a 'Notification and Statement of Claim' dated 8 October 2009 initiated arbitral proceedings against India requesting the Arbitral Tribunal to:

'delimit, in accordance with the principles and rules set forth in UNCLOS, the maritime boundary between Bangladesh and India in the Bay of Bengal, in the territorial sea, the EEZ, and the continental shelf, including the portion of the continental shelf pertaining to Bangladesh that lies more than 200 nautical miles from the baselines from which its territorial sea is measured'.<sup>135</sup>

Both parties agreed that the tribunal has jurisdiction to delimit the continental shelf beyond 200 nm.<sup>136</sup> Though the parties did not object the Tribunal's jurisdiction, the tribunal still had to determine whether there were any circumstances warranting it to refrain from exercising such jurisdiction. In connection to this, the Tribunal observes that international jurisprudence

---

<sup>131</sup> Ibid., para 387.

<sup>132</sup> Ibid., paras 388/389.

<sup>133</sup> Ibid., para 390/392.

<sup>134</sup> Ibid., para 394.

<sup>135</sup> *Bay of Bengal Maritime Boundary Arbitration (Bangladesh/India)*, Award (July 7, 2014), p 1, para 2.

<sup>136</sup> Ibid., p 20, para 74.

on the delimitation of the continental shelf beyond 200 nm is rather limited but noted three<sup>137</sup> previous disputes.<sup>138</sup>

This dispute has a lot of similarities with the *Bangladesh/Myanmar* in many aspects like the fact that the cases are both concerning a delimitation in the Bay of Bengal, and the outer limits of the continental shelf have not yet been established in accordance with article 76 and Annex II to the Convention.<sup>139</sup> As a result of this close similarities, the Arbitral Tribunal recalls the reasoning of ITLOS in *Bangladesh/Myanmar* (Judgment of 14 March 2012, paragraphs 369-394) and concluded that it sees no grounds why it should refrain from exercising its jurisdiction to decide on the lateral delimitation of the continental shelf beyond 200 nm before its outer limits have been established.<sup>140</sup>

The Arbitral Tribunal emphasized that Article 76 of LOSC embodies only a single continental shelf and confirmed by Article 77(1)(2), likewise no distinction is made in article 83 between a continental shelf within and beyond 20m. This goes in line with the observation of the Tribunal in *Barbados/Trinidad and Tobago* that ‘there is in law only a single ‘continental shelf’ rather than an inner continental shelf and a separate extended or outer continental shelf’ (Award of 11 April 2006, RIAA, Vol. XXVII, p. 147, at pp. 208-209, paragraph 213.).<sup>141</sup>

Both parties in the present case put forward claims to a continental shelf beyond 200nm in the Bay of Bengal where they overlap and agree that they both have entitlements.<sup>142</sup> The Arbitral Tribunal restates the procedure a coastal state is follow in order to establish ‘final and binding limits’ according to Article 76(8) entrusted to the CLCS and notes that this process is different from the delimitation of a continental shelf under Article 83 entrusted on the dispute settlement procedures under Part XV of the Convention .<sup>143</sup>The Arbitral Tribunal states that the mandate of these bodies complement each other since on the one hand, the

---

<sup>137</sup> the Award of 11 April 2006 by the Arbitral Tribunal in the case between *Barbados and Trinidad and Tobago* (RIAA, Vol. XXVII, p. 147), the Judgment of 14 March 2012 of the International Tribunal for the Law of the Sea on the Dispute Concerning the Delimitation of the Maritime Boundary between *Bangladesh and Myanmar* in the Bay of Bengal (*Bangladesh/Myanmar*), and the Judgment of 19 November 2012 of the International Court of Justice in the Territorial and Maritime Dispute (*Nicaragua v. Colombia*) (Judgment, I.C.J. Reports 2012, para 624).

<sup>138</sup> Supra note 133., para 75.

<sup>139</sup> Ibid., para 76.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid., para 77.

<sup>142</sup> Ibid., para 78.

<sup>143</sup> Ibid., para 80. Same reasoning in the cases of (*Bangladesh/Myanmar*, Judgment of 14 March 2012, paragraph 376; Territorial and Maritime Dispute (*Nicaragua v. Colombia*), Judgment of 19 November 2012, Judgment, I.C.J. Reports 2012, p. 624 at p. 669, paragraph 129).

recommendations of the CLCS “shall not prejudice matters relating to delimitation of boundaries”, (Convention, Annex III, art. 9), and on the other hand, the decision of an international court or tribunal delimiting the lateral boundary of the continental shelf beyond 200 nm is without prejudice to the delineation of the outer limits of that shelf.<sup>144</sup>

In the present case, Bangladesh objects to India’s submission to the CLCS and though India does not object to Bangladesh’s submission, the CLCS decided to defer consideration of both claims.<sup>145</sup>

According to the Arbitral, the consequence of this reaction from the CLCS is that if it were to refrain from delimiting the continental shelf beyond 200nm, the outer limits of the continental shelf of each of the Parties would remain unresolved, unless the Parties were able to reach an agreement. Judging from the many previous rounds of unsuccessful negotiations between them, the Tribunal does not see that such an agreement is likely. Accordingly, far from enabling action by the CLCS. This will leave the parties in a position in which they would likely be unable to benefit fully from their rights over the continental shelf. The Tribunal does not consider that such an outcome would be consistent with the object and purpose of the Convention.<sup>146</sup>

The reasoning of the Arbitral Tribunal in this case goes follows the reasoning of ITLOS in the dispute between Bangladesh/Myanmar though they were not bound to follow the president laid in the dispute. Therefore, one could say that ITLOS thorough discussion of the relationship between courts and tribunals on the one hand, and the CLCS on the other has a great presidential value.

#### **4.6 Territorial and maritime dispute (*Nicaragua v. Colombia*)**

On November 19, 2012, the International Court of Justice (ICJ) rendered its judgment in the territorial and maritime dispute between Nicaragua and Colombia where the ICJ was requested to delimit the exclusive economic zone and the continental shelf between Nicaragua and Colombia in the Western Caribbean.<sup>147</sup>

---

<sup>144</sup> Ibid.

<sup>145</sup> Ibid., para 81.

<sup>146</sup> Ibid., para 82.

<sup>147</sup> The Territorial and Maritime Dispute (*Nicaragua v. Colombia*) (Judgment) [2012] I.C.J. Reports 624.

The question of the jurisdiction of the courts was already settled in 2007 where the courts ruled that it had jurisdiction under the Article XXXI of the Pact of Bogota to delimit the exclusive economic zone and continental shelf between the parties.<sup>148</sup> Nicaragua requested the courts in its final submission I (3), to define “a continental shelf boundary dividing by equal parts the overlapping entitlements to a continental shelf of both Parties” the overlapping entitlement is the continental shelf beyond 200nm.<sup>149</sup> However, Colombia asserts this claim to be new as it was neither implied in Nicaragua’s application nor in its memorial thus transforming the subject matter of the dispute rendering the claim inadmissible.<sup>150</sup>

The Court acknowledged that the claim is new<sup>151</sup> but held that, ‘the mere fact that a claim is new is not in itself decisive for the issue of admissibility’<sup>152</sup> rather ‘the decisive consideration is the nature of the connection between that claim and the one formulated in the Application instituting proceedings’<sup>153</sup> In the present dispute, the Court views that ‘the claim to an extended continental shelf falls within the dispute between the Parties relating to maritime delimitation and cannot be said to transform the subject-matter of that dispute’ and concludes that the claim is admissible.<sup>154</sup>

After concluding the admissibility of the claim, ICJ turns to treat the question whether it was its position to go ahead with the delimitation of the continental shelf as requested by Nicaragua.<sup>155</sup> Colombia argues that there are no areas of an extended continental shelf within the area claimed by Nicaragua. This claim has never been recognised by the CLCS and it characterise the “Preliminary Information” submitted by Nicaragua to the Commission as “woefully deficient” which does not fulfil the requirements for the Commission to make recommendations. Therefore, Nicaragua has not established any entitlement to an extended continental shelf.<sup>156</sup> If this be the case:

---

<sup>148</sup> The Territorial and Maritime Dispute (*Nicaragua v. Colombia*) (Preliminary objections) [2007 I.C.J. Reports 832, para 121.

<sup>149</sup> *Ibid.*, note 114, para 106.

<sup>150</sup> *Ibid.*, para 107.

<sup>151</sup> *Ibid.*, para 108.

<sup>152</sup> Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (*Nicaragua v. Honduras*, (Judgment), [ 2007 (II)] I.C.J. Reports, p. 695, para. 110,

<sup>153</sup> Ahmadou Sadio Diallo (*Republic of Guinea v. Democratic Republic of the Congo*), (Judgment), [2010 (II)], I.C.J. Reports, para. 41.

<sup>154</sup> *Supra* note 158, paras 111/112.

<sup>155</sup> *Ibid.*, para 113.

<sup>156</sup> *Ibid.*, para 112.

‘due to the geographic location of the parties to the dispute, a potential delimitation line in the course of what was claimed by Nicaragua, would not only constitute a delimitation line between the parties, but in practice constitute a seaward delineation line of Nicaragua’s continental shelf beyond 200nm’<sup>157</sup>

Accordingly, the Court in practice is being requested by Nicaragua to delineate the outer limits of its continental shelf before delimiting the alleged overlapping areas with Nicaragua.

Nicaragua relied on the judgment of 14 March 2012 rendered by ITLOS in the Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (*Bangladesh/Myanmar*), to support its argument that the ICJ had jurisdiction to decide the dispute. The Court begins by outlining several differences between *Bangladesh/Myanmar* and the case at hand.<sup>158</sup> Firstly, ITLOS was not requested to determine the outer limits of a continental shelf beyond 200 nautical miles in *Bangladesh/Myanmar* and its judgement did not either.<sup>159</sup>

The court also observed that the ‘Preliminary information’ which Nicaragua submitted to the court is same as those submitted to the CLCS which does not meet the requirement prescribed by article 76 of LOSC.<sup>160</sup> Article 76(8) of LOSC requires a coastal state to make submission to the CLCS on the outer limits of its continental shelf according to the modalities prescribed under article 76(4-6). While in the *Bangladesh/Myanmar* both parties were States parties to UNCLOS and had made full submissions to the CLCS in accordance with article 76(8) of LOSC and that:

‘the Tribunal’s ruling on the delimitation of the continental shelf in accordance with Article 83 of UNCLOS does not preclude any recommendation by the Commission as to the outer limits of the continental shelf in accordance with Article 76, paragraph 8, of the Convention.’<sup>161</sup>

The fact that Colombia is not a party to LOSC does not relieve Nicaragua who is a party to LOSC of its responsibility under article 76(8). Thus, the absence of the submission of a full submission by Nicaragua to the CLCS leaves the court to restate the *obiter dictum* from *Nicaragua v. Honduras*<sup>162</sup>

---

<sup>157</sup> Supra note 18. pp. 336-337.

<sup>158</sup> Ibid., para 125.

<sup>159</sup> Ibid.

<sup>160</sup> Ibid., para 127.

<sup>161</sup> Ibid., para 126.

<sup>162</sup> Nicaragua and Honduras in the Caribbean Sea (*Nicaragua v. Honduras*) [2007(II)], I.C.J. Reports, p. 759, para. 319.

‘any claim of continental shelf rights beyond 200 miles [by a State party to UNCLOS] must be in accordance with Article 76 of UNCLOS and reviewed by the Commission on the Limits of the Continental Shelf established thereunder’

As a result of the above reasons, The Court concluded it was not in the position to delimit the continental shelf between Nicaragua and Colombia beyond 200nm as requested by Nicaragua, even using the general formulation proposed by it.<sup>163</sup>

#### **4.7 Question of the delimitation of the continental shelf between Nicaragua and Colombia beyond 200nm from the Nicaraguan coast (*Nicaragua/Colombia*) preliminary objectives.**

Nicaragua made full submission of the outer limits of its continental shelf to the CLCS on the 24<sup>th</sup> of June 2013 and proceeded to institute proceeding against Colombia in dispute concerning the question of delimitation of the continental shelf between Nicaragua and Colombia beyond 200nm from the Nicaraguan coast requesting the courts to determine ‘the precise course of the boundary of the continental shelf between Nicaragua and Colombia in accordance with the principles and rules of international law.’<sup>164</sup>

Nicaragua maintained that ‘the subject-matter of its Application remains within the jurisdiction of the Court, as established in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*’<sup>165</sup> Colombia raised five preliminary objections to the jurisdiction of the Court on the admissibility of Nicaragua’s Application among which the fifth objection is of relevance to this thesis.<sup>166</sup>

According to Colombia’s fifth objection, Nicaragua’s First Request (regarding the delimitation of the continental shelf between the Parties in the area beyond 200 nautical miles from Nicaragua’s baselines) are inadmissible. The First Request is, in Colombia’s view, inadmissible because the Commission on the Limits of the Continental Shelf has not made recommendations to Nicaragua with respect to whether, and if so, how far, Nicaragua’s claimed outer continental shelf extends beyond 200 nautical miles.<sup>167</sup>

---

<sup>163</sup> *Nicaragua v. Colombia*, para 129.

<sup>164</sup> Continental Shelf (*Nicaragua v. Colombia*) (Application instituting proceedings) [2013] ICJ (16 September 2013), para 2.

<sup>165</sup> Continental Shelf (*Nicaragua v. Colombia*) (Preliminary objections) [2016] ICJ Rep.1,34 para 14.

<sup>166</sup> *Ibid.*, para 15.

<sup>167</sup> *Ibid.*

The Court already established in its 2012 judgment that Nicaragua was obligated to make full submissions to the CLCS of the continental shelf beyond 200nm which it claims as prescribed article 76(8) since it is a party to LOSC. This is a pre- requisite for the delimitation of the continental shelf beyond 200nm by the Court.<sup>168</sup> Since Nicaragua has fulfilled this pre- requisite as requested by the courts, the next issue to be determined by the Court is thus:

‘The Court must now determine whether a recommendation made by the CLCS, pursuant to Article 76, paragraph 8, of UNCLOS, is a pre- requisite in order for the Court to be able to entertain the Application filed by Nicaragua in 2013’.<sup>169</sup>

The court reasons that since the procedure before the CLCS is to delineate outer continental shelf, it is different from the delimitation of the continental shelf, which is governed by Article 83 of UNCLOS and effected by agreement between the States concerned, or by recourse to dispute resolution procedures.<sup>170</sup> The Court then considers that, since the delimitation of the continental shelf beyond 200 nautical miles can be undertaken not depending on the recommendation from the CLCS, the recommendations from the CLCS is not a pre- requisite that needs to be satisfied by a State party to UNCLOS before it can ask the Court to settle a dispute with another State over such a delimitation.<sup>171</sup>

A full submission made by a coastal state to the CLCS seems to be enough prove of entitlement to a continental shelf beyond 200nm to enable a Court or Tribunal to decide on the delimitation of an overlapping entitlement to a continental shelf area beyond 200nm. This trend was taken in the *Bay of Bengal cases*.

Though a full submission has been made by Nicaragua in this case, the ‘factual basis in the Bay of Bengal is very different from that in the *Continental shelf (Nicaragua/Colombia)*’.<sup>172</sup> There could still exist a degree of uncertainty on the actual outer limits of the parties. One problem the Court may face will be to delineate the outer limits of Colombia’s outer limits since it is not a party to the LOSC and has not made its own full submissions to the CLCS. So the Court might have to encroach in the functions of the CLCS before delimiting the overlapping area if the CLCS does not give its recommendations to Nicaragua (and it

---

<sup>168</sup> Ibid., para 105.

<sup>169</sup> Ibid., para 106.

<sup>170</sup> Ibid., para 112.

<sup>171</sup> Ibid., para 114.

<sup>172</sup> Supra note 9, pp.344.

establish final and binding limits on the basis of such recommendation) before the merit phase of the case.

#### **4.8 Maritime boundary delimitation between Kenya and Somalia (Somalia/Kenya).**

On 28 August 2014, Somalia filed in the Registry of the Court an Application instituting proceeding against Kenya concerning a dispute in relation to “the establishment of the single maritime boundary between Somalia and Kenya in the Indian Ocean delimiting the territorial sea, exclusive economic zone and continental shelf, including the continental shelf beyond 200 nautical miles.”<sup>173</sup> Kenya raised a preliminary objection to the court’s jurisdiction and admissibility<sup>174</sup> arguing that, the sixth paragraph of the Memorandum of Understanding (MOU)<sup>175</sup> disallow a delimitation absent the CLCS recommendations, which provides that:

‘[t]he delimitation of maritime boundaries in the areas under dispute . . . shall be agreed between the two coastal States . . . after the Commission has concluded its examination of the separate submissions made by each of the two coastal States and made its recommendations.’<sup>176</sup>

Kenya emphasizes that to undertake the delineation of the outer limits of the continental shelf beyond 200 nautical miles before the delimitation of the maritime boundary between the Parties is “logical” as delimitation first requires the determination of the seaward extent of the Parties’ entitlements and the relevant maritime zones.<sup>177</sup>

Somalia suggests that it would be ‘illogical’ to require continental shelf delimitation within 200 nautical miles to await delineation beyond 200 nautical miles because the former is not in any way dependent upon the latter.<sup>178</sup> It considers that the sixth paragraph of the MOU denotes ‘that the complete delimitation of the maritime boundaries between the two States shall be carried out by agreement after the CLCS has made its recommendations’ thus “the MOU in no way prevents the Parties from negotiating an agreement . . . however, it cannot be

---

<sup>173</sup> Somalia v. Kenya (Judgement on Preliminary objections) [2017] ICJ Reports. 1, para 1.

<sup>174</sup> Ibid., para 5.

<sup>175</sup> See <http://www.innercitypress.com/los2somalia.pdf> ‘Memorandum of Understanding between the Government of the Republic of Kenya and the Transitional Federal Government of the Somali Republic to Grant to Each Other No-Objection in Respect of Submissions on the Outer Limits of the Continental Shelf beyond 200 Nautical Miles to the Commission on the Limits of the Continental Shelf’ (Registered with the Secretariat of the United Nations on 11 June 2009. Registration number: I-46230. Entry into force: 07 April 2009).

<sup>176</sup> Ibid., para 52.

<sup>177</sup> Ibid., para 53.

<sup>178</sup> Ibid., para 59.



finalized (or ‘completed’) by fixing its terminus until the Commission’s recommendations have been received” and explained further that this does not mean the Parties cannot agree on the direction of the line of delimitation before the CLCS has made its position known, or that the Court must wait for the CLCS’s recommendations before proceeding to a delimitation.<sup>179</sup>

The ICJ observed that since Kenya’s objection is centred around paragraph 6 of the MOU, it will however be difficult to understand the paragraph without ‘a prior analysis of the text of the MOU as a whole, which provides the context in which any particular paragraph should be interpreted and gives insight into the object and purpose of the MOU.’<sup>180</sup> The ICJ indeed analyses the entire text<sup>181</sup> then turned to address:

‘[T]he question for the Court is whether the Parties, in that sixth paragraph, agreed on a method of settlement of their delimitation dispute other than by way of proceedings before the Court, and agreed to wait for the CLCS’s recommendations before any such settlement could be reached.’<sup>182</sup>

To answer the above question, the ICJ deemed it necessary to clarify the maritime zones to which paragraph six applies to,<sup>183</sup> and after its analyses concludes that the sixth paragraph relates only to delimitation of the continental shelf, “including the delimitation of the continental shelf beyond 200 nautical miles”, and not to delimitation of the territorial sea, nor to delimitation of the exclusive economic zone,<sup>184</sup> , ‘which suggests that it did not create a dispute settlement procedure for the determination of that boundary’.<sup>185</sup>

Since paragraph 6 contains the word ‘shall’, the Court resorted to the method of interpretation under customary international law as codified by Art. 31(3) (c) of the Vienna Convention on the Law of Treaties (VCLT), which permits it to consider ‘[a]ny relevant rules of international law applicable in the relations between the parties’. Kenya and Somalia are parties to the UNCLOS, the Court observed that there is a level of similarity between the language of paragraph 6 and Art. 83 of the UNCLOS In reading paragraph 6 of the MOU in light of Art. 83 of the UNCLOS, the Court reasoned that since the latter simply ‘requires that there be

---

<sup>179</sup> Ibid., para 61.

<sup>180</sup> Ibid., para 65.

<sup>181</sup> Ibid., paras 70-79.

<sup>182</sup> Ibid., para 80.

<sup>183</sup> Ibid., para 82.

<sup>184</sup> Ibid., para 86.

<sup>185</sup> Ibid., para 97.

negotiations conducted in good faith’ and ‘does not prescribe the method for the settlement of any dispute’, neither should the former.<sup>186</sup>

The ICJ importantly noted:

‘Thirdly, the MOU repeatedly makes clear that the process leading to the delineation of the outer limits of the continental shelf beyond 200 nautical miles is to be without prejudice to the delimitation of the maritime boundary between the Parties, implying — consistently with the jurisprudence of this Court — that delimitation could be undertaken independently of a recommendation of the CLCS.’<sup>187</sup>

Also, ICJ observed that the text of paragraph six goes in line with article 83(1) of LOSC and concludes that the intention of paragraph six viewed in light of the entire MOU could not have been to intended to establish a new method of dispute settlement and neither binds the Parties to wait for the outcome of the CLCS recommendations before attempting to reach agreement on their maritime boundary, nor does it impose an obligation on the Parties to settle their maritime boundary dispute through a particular method of settlement.<sup>188</sup>

The presence of MOU did not change the approach of previous judicial decision that delineation does not precede delimitation and that there is no temporal relationship between the two.

The interpretation of the MOU is in line with the functions of the Courts but Judge Bennouna strongly criticises the method used by the Court’s in comparing of paragraph 6 and Article 83 of the LOSC, observing that:

the Court ultimately gives a different meaning to the terms of the sixth paragraph, one which is at odds with their ordinary meaning. The Court considers that ‘the text of the sixth paragraph of the MOU reflects that of Article 83[...],’[...]. And thus, as if by magic, the obligation, agreed on in this paragraph, to negotiate and conclude a maritime delimitation agreement in the area in dispute once the CLCS has made it[s] recommendations, vanishes.<sup>189</sup>

Busch certainly shares the concern of Judge Bennouna concerning the Court’s method of interpretation of paragraph 6 of the MOU.<sup>190</sup> I share the same view being entirely convinced

---

<sup>186</sup> Ibid., para 89-91.

<sup>187</sup> Ibid., para 97.

<sup>188</sup> Ibid., para 98,

<sup>189</sup> Ibid., Dissenting Opinion Judge Bennouna, para 4.

<sup>190</sup> Supra note 9, pp. 348.

that paragraph six of the MOU constitutes an agreed method of dispute settlement between Kenya and Somalia.

Summarily, though the factual circumstances of the jurisprudence on continental shelf delimitation beyond 200nm are different, there have been a uniform interpretation of the relationship between article 76 and 83: between the functions of CLCS on the one hand, its recommendations and the functions of Courts and Tribunals on the other hand.

## **Chapter 5: Conclusion.**

### **5.1: Impact of the CLCS recommendations on the admissibility of delimitation disputes to third party adjudication.**

Court or tribunal faced with a dispute relating to a delimitation of a continental shelf beyond 200nm set out to determine whether it has the jurisdiction to decide the case or if there are circumstances prohibiting it from deciding on the case. The circumstances under consideration in this thesis stems from the requirement by the coastal state to make submissions to the CLCS according to article 76(8) of LOSC. The CLCS functions as aforementioned is to consider the data submitted to it and make recommendations thereof, the coastal state in turn have the sovereign right to establish outer limits of its continental shelf on the basis of the recommendations of the CLCS.

The *Bangladesh/Myanmar* concerning delimitation in the *Bay of Bengal* is considered a milestone in the delimitation jurisprudence, not only as the first delimitation dispute decided by the ITLOS, but also because the ITLOS was the first adjudicative body to undertake a thorough discussion of the relationship between courts and tribunals on the one hand, and the CLCS on the other.<sup>191</sup> The tribunal in this case observed that the determination of whether an international court or tribunal should exercise its jurisdiction depends on the substantive and procedural circumstances of each case.<sup>192</sup>

The circumstances considered by the tribunal in this case was the full submission both parties had submitted to the CLCS serving as evidence of their entitlement to a continental shelf beyond 200nm. The submission notably served as evidence but as the tribunal earlier mentioned that the circumstances of each case should be taken into consideration, it further noted that had it concluded that there was ‘significant uncertainty as to the existence of a continental margin in the area in question’<sup>193</sup>, it would have hesitated to delimit the continental shelf beyond 200nm even with the submissions made by the parties. Also, the parties to the dispute had withdrew their consent from the consideration of each other’s submission relying on Rule 5 of Annex I of the RoP. The party’s withdrawal also contributed

---

<sup>191</sup> R. Churchill, ‘The *Bangladesh/Myanmar* Case: Continuity and Novelty in the Law of Maritime Boundary Delimitation,’ (2012) 1 Cambridge Journal of International and Comparative Law 137, 152.

<sup>192</sup> *Bangladesh/Myanmar* para 384.

<sup>193</sup> *Ibid.*, para 443.

to the tribunal's decision to delimit the outer continental shelf since article 76 had been halted. It reasoned that if the maritime delimitation of this area is to be halted like the CLCS procedure, it will hinder the 'efficient operation' of the LOSC.<sup>194</sup>

Besides all these circumstances, the tribunal also noted that there is clear difference between delimitation of a continental shelf under article 83 and delineation of the outer limits of a continental shelf under article 76, it explained that the commission is assigned to make recommendations to coastal states relating to the establishment of the outer limits of its continental shelf without prejudice to the delimitation of maritime boundaries.<sup>195</sup> The same consideration was made in *Bangladesh/India*.

The ICJ in the case between *Nicaragua/Colombia* (2012) followed a similar circumstance consideration as it refused Nicaragua's request to delimit a continental shelf beyond 200nm in the absence of a full submission made to the CLCS to serve as evidence of entitlement to the claimed area. The courts held that Nicaragua had made only 'Preliminary Information' which in its opinion did not meet the requirement of the submissions prescribed by Article 76 thus the court did not delimit the outer continental shelf for this reason.

The courts in the case of Kenya and Somalia also followed a similar trend in the like the tribunal in the Bay of Bengal relating to the fact that Kenya's argued that a state must first delineate the outer continental shelf limit before delimitation<sup>196</sup> was rejected by the courts going in line with the approach taken by the tribunal in the Bay of Bengal. A similar approach too was followed by the tribunal in the case between *Ghana/Cote D'Ivoire*.

The approach followed by the courts and tribunals seems to show that there is no requirement that the coastal states should establish final and binding limits based on the CLCS recommendations before a court or tribunal decides to delimit an overlapping entitlement in the area. It seems enough to prove an entitlement by just making a submission to the CLCS except there are uncertainties in the submission. This makes sense since especially in situations where the parties block the CLCS' considerations of each other's continental shelf submissions. The dispute will be left in a deadlock situation if the Courts and Tribunals do not delimit the continental shelf between the parties to the dispute.

---

<sup>194</sup> Ibid., para 391.

<sup>195</sup> Ibid., para 376.

<sup>196</sup> Ibid. supra note 142.

## 5.2 Findings on the research questions.

One of the questions this thesis was set to answer was whether the judiciary is bound by “final and binding” limits established by the coastal State “on the basis of” CLCS recommendations. As aforementioned, *Ghana/Cote D’Ivoire* has so far been the only dispute on the delimitation of a continental shelf beyond 200nm where one of the parties to the dispute had established ‘final and binding limits’ on the basis of CLCS recommendations. The foregoing arguments presented by *Cote D’Ivoire* supporting its viewpoint that it is not bound by the ‘final and binding’ established by Ghana was supported by the courts in concluding that the fact that the CLCS has given recommendations and Ghana has established limits on the basis of these recommendation does not stop Côte d’Ivoire from claiming a continental shelf in this area. This view was supported by the ICJ in the *Nicaragua/Colombia* where it explained that, the outer limits of a continental shelf established on the basis of CLCS recommendations are ‘final and binding’ on the state parties to LOSC but however emphasized that the role of the CLCS relates to outer limits of the continental shelf and not to delimitation. Therefore, it the decision by the Courts to delimit the contested area suggest that the judiciary is not bound by the ‘final and binding’ limits established by a coastal state on the basis of CLCS recommendations.

Another issue set to find is whether the *Ghana/Côte d’Ivoire* delimitation is in accordance with previous judicial practice for delimitation of the continental shelf beyond 200 nm. Only one of the parties in this case had established ‘final and binding limits’ yet the Special Chamber still decided to delimit the contested area despite the fact that one of the parties had only submitted scientific and technical data to the CLCS. A full submission of scientific and technical data to the CLCS by arties to a dispute in previous judicial practices seemed to suffice as proof of entitlement to a continental shelf beyond 200nm. Though Ghana had established ‘final and binding’ limits, the delimitation of the contested area is in accordance with the previous judicial practice since *Ghana/Côte d’Ivoire’s* submission to the CLCS was proof of entitlement just like in the previous delimitation disputes.

Conclusively, the Courts and Tribunals in the above analyses have performed their delimitation functions without encroaching in delineation functions of the CLCS in deciding to delimit the continental shelf beyond 200nm.

# BIBLIOGRAPHY.

## Literature.

- Allott, P. (1983) Power Sharing in the Law of the Sea. *American Journal of International Law*, 77(1), 1-30. (doi:10.2307/2201196).
- Andree Kircher, 'The Outer Continental Shelf: Background and Current Development: Liber Amicorum Judge Thomas A. Mensah' in Tafsir Ndiaye & Rüdiger Wolfrum (eds.) *Law of the Sea, Environmental Law and Settlement of Disputes* (Martinus Nijhoff 2007) 593-612.
- B.M. Magnússon, *Dispute Settlement and the Establishment of the Continental Shelf Beyond Nautical Miles* (PhD thesis, University of Edinburgh, 2012), p. 19, available at [www.era.lib.ed.ac.uk/bitstream/handle/1842/7809/Magn%C3%BAsson2013.pdf?sequence=1&isAllowed=y](http://www.era.lib.ed.ac.uk/bitstream/handle/1842/7809/Magn%C3%BAsson2013.pdf?sequence=1&isAllowed=y).
- Busch, S. (2018). The Delimitation of the Continental Shelf beyond 200 nm. In A. Oude Elferink, T. Henriksen, & S. Busch (Eds.), *Maritime Boundary Delimitation: The Case Law: Is It Consistent and Predictable?* (pp. 319-350). Cambridge: Cambridge University Press. doi:10.1017/9781108344302.013.
- Churchill, R. (2012) 'The *Bangladesh/Myanmar* Case: Continuity and Novelty in the Law of Maritime Boundary Delimitation,' *Cambridge Journal of International and Comparative Law*, 1. 137-152.
- Churchill, R. & Lowe V, *The Law of the Sea*, (1999) (3rd edn, published by Manchester, Juris Publishing/Manchester University Press).
- Clingan T, 'Dispute Settlement among Non-Parties to the LOS Convention with Respect to the Outer Limits of the Continental Shelf' in T.A. Clingan (ed.) *The law of the sea – what lies ahead?* (The Law of the Sea Institute William S. Richardson School of Law University of Hawaii 1988) 495.
- John Noyes, 'Judicial and Arbitral Proceedings and the Outer Limits of the Continental Shelf' (2009) 42 *Vand. J. Transnat'l Law*.

- L.D.M. Nelson, (2009) 'The Settlement of Disputes Arising from Conflicting Outer Continental Shelf Claims' 24 IJMCL 409-422.
- Mcdorman, T. (2002). The Role of the Commission on the Limits of the Continental Shelf: A Technical Body in a Political World. *The International Journal of Marine and Coastal Law*, 17(3), 301-324.
- Nuno Marques Nantunes and Fernando Maia Pimentel, Reflecting on the Legal Technical Interface of Article 76 of LOSC: Tentative Thoughts on Practical Implementation, a paper presented at the ABLOS Conference entitled Addressing Difficult Issues in UNCLOS, 28–30 October 2003, Monaco, at 8 ([www.gmat.unsw.edu.au/ablos/ABLOS03Folder/PAPER3-1.PDF](http://www.gmat.unsw.edu.au/ablos/ABLOS03Folder/PAPER3-1.PDF) (last visited 30 June 2019)).
- Oude Elferink, A. (2006). Article 76 of the LOSC on the Definition of the Continental Shelf: Questions concerning its Interpretation from a Legal Perspective. *The International Journal of Marine and Coastal Law*, 21(3), 269-285.
- Oude Elferink, A. (2004) 'The Continental Shelf Beyond 200 Nautical Miles: The Relationship Between the CLCS and Third-Party Dispute Settlement' in Alex Oude Elferink & Donald Rothwell (eds.) *Ocean Management in the 21st Century: Institutional Frameworks and Responses* (Martinus Nijhoff) 119.
- Oude Elferink, A. (2009) 'Openness' and Article 76 of the Law of the Sea Convention: The Process Does Not Need to be Adjusted'. Pp. 36-50.
- Oude Elferink, A., & Symmons, C. (2011). Chapter twelve. causes, consequences, and solutions relating to the absence of final and binding outer limits of the continental shelf. In *Selected Contemporary Issues in the Law of the Sea* (Vol. 68, Publications on Ocean Development, pp. 251-272).
- Philippe Sands & Pierre Klein (2009), *Bowett's Law of International Institutions* (6th edn, Sweet and Maxwell).
- Robert Smith & George Taft, (2000) 'Legal Aspects of the Continental Shelf' in Peter Cook & Chris Carleton (eds.) *Continental Shelf Limits: The Scientific and Legal Interface* (Oxford University Press).



Rüdiger Wolfrum, 'The Role of International Dispute Settlement Institutions in the Delimitation of the Outer Continental Shelf' in Rainer Lagoni & Daniel Vignes (eds.) *Maritime Delimitation* (Koninklijke Brill N.V. 2006) ages 9-26.

Satya Nandan & Louis Sohn (eds.) *United Nations Convention on the Law of the Sea; A Commentary* vol. V (Martinus Nijhoff 1989).

Serdy, Andrew (2011) The Commission on the Limits of the Continental Shelf and its Disturbing Propensity to Legislate. *The International Journal of Marine and Coastal Law*, 26(3) pp. 355-383. (doi:10.1163/157180811X582175).

Suarez, S. (2013). The Commission on the Limits of the Continental Shelf and its Function to Provide Scientific and Technical Advice. *Chinese Journal of International Law*, 12(2), 339-362.

Tommy Koh, (1983) The Third United Nations Conference on the Law of the Sea: What was accomplished? 46 *Law & Contemp. Probs.* 5-9.

## **Conventions and others.**

Convention on the Continental Shelf, Geneva, 29 April 1958; entered into force on 10 June 1964. Published in UNTS, Vol. 499.

United Nations Convention on the Law of the Sea (adopted 10 December 1982; entered into force 16 November 1994) 1833 UNTS 396.

Vienna Convention on the Law of Treaties (adopted 23 May 1969; entered into force 27 January 1980) 1155 UNTS 311.

The ILA Committee (First Report) in *International Law Association Report of the Seventy First Conference* (Berlin 2004) (International Law Association 2004).

The ILA Committee on legal issues of the OCS (2006), Conclusion No. 11.

US Proclamation No. 2667 (1945), Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed of the Continental Shelf. Retrieved from <[www.gc.noaa.gov/documents/gcil\\_proc\\_2667.pdf](http://www.gc.noaa.gov/documents/gcil_proc_2667.pdf)>.

UNGA Resolution 2749 (XXV), Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (17 December 1970).

UNGA Resolution 2750 C (XXV), Reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interests of mankind, and convening of a conference on the law of the sea (17 December 1970).

Rules of Procedure of the Commission on the Limits of the Continental Shelf (17 April 2008), Doc. CLCS/40/Rev.1, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/309/23/PDF/N0830923.pdf?OpenElement>.  
Herein after referred to as the RoP.

CLCS/11 - Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf.

### **List of cases.**

Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras) [2007(II)], I.C.J. Reports.

Arbitration between Barbados and the Republic of Trinidad and Tobago (*Barbados v. Republic of Trinidad & Tobago*), (2006) (Arbitration Tribunal) 45 ILM 800.

*Newfoundland and Labrador/Nova Scotia* (Award of the Tribunal in the Second Phase) (2002) 128 I.L.R. 504.

Case Concerning the Continental Shelf (Tunisia v. Libyan Arab Jamahiriya) (Judgement) [1982] ICJ Rep. 48, (Tunisia/Libya Case).

Somalia v. Kenya (Judgement on Preliminary objections) [2017] ICJ Reports.

Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire) [2017], Judgment, ITLOS Reports.

The Territorial and Maritime Dispute (Nicaragua v. Colombia) (Judgment) [2012] I.C.J. Reports.

The Territorial and Maritime Dispute (Nicaragua v. Colombia) (Preliminary objections) [2007] I.C.J. Reports.

Continental Shelf (Nicaragua v. Colombia) (Application instituting proceedings) [2013] ICJ Reports.

Continental Shelf (Nicaragua v. Colombia) (Preliminary objections) [2016] ICJ Rep.

Bay of Bengal Maritime Boundary Arbitration (Bangladesh/India), Award (July 7, 2014).

Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar) (Judgment) [2012] ITLOS Rep.

North Sea Continental Shelf Cases (Federal Republic of Germany v. Netherlands & Denmark) (Judgement) [1969] ICJ Rep.