



Vrije Universiteit Brussel

The Interaction Between the Commission on the Limits of the Continental Shelf (CLCS) and Dispute Settlement Bodies in the Delineation and Delimitation of the Extended Continental Shelf: New Tendencies

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5th International Workshop

The South China Sea:

Cooperation for Regional Security and Development

11-12 November 2013

- Outline

1. Explanation of title
2. ITLOS first maritime delimitation case
3. Broader context
4. Conclusions

1. Explanation of title

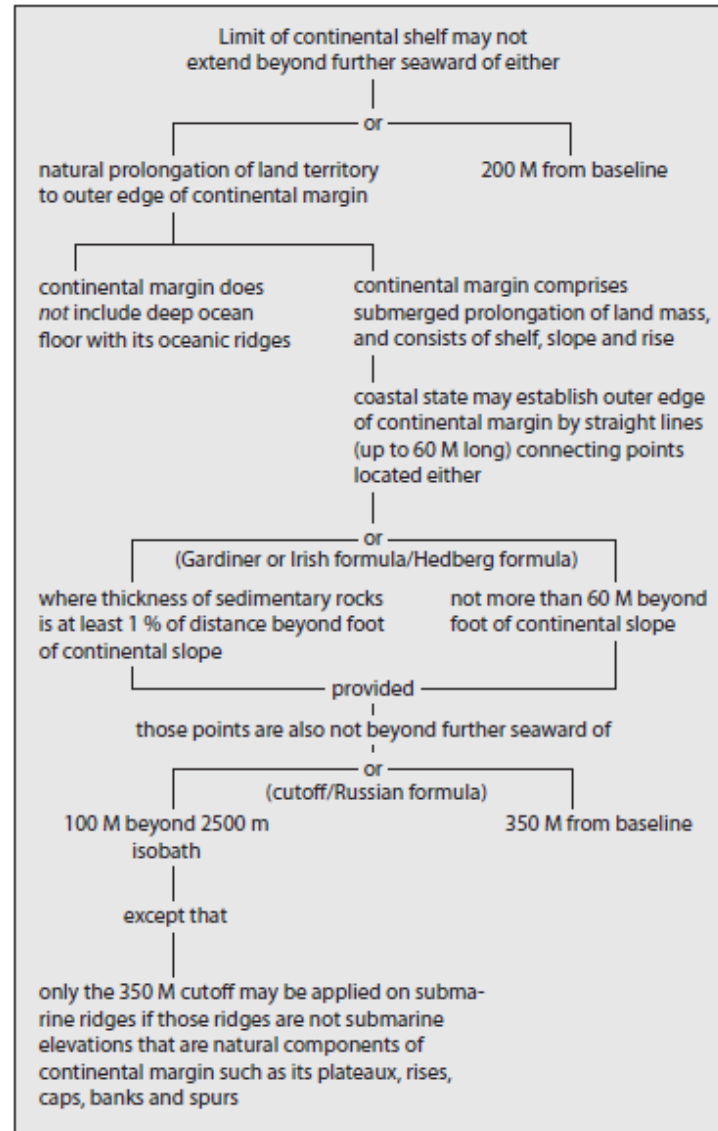
- Codification of Law of the Sea is major success of UN
 - Not once, but twice
 - 1958-1982
 - Two notions to clarify
 - Delineation (Art. 76)
 - Delimitation (Arts. 74 and 83)

1. Explanation of title

- Developments between 1958-1982
 - From **plain uncertainty** to **complicated certainty** or *vice versa*

1958		1982		
Delineation	200 meters or exploitability	Optional Protocol	Art. 76	CLCS

1. Explanation of title

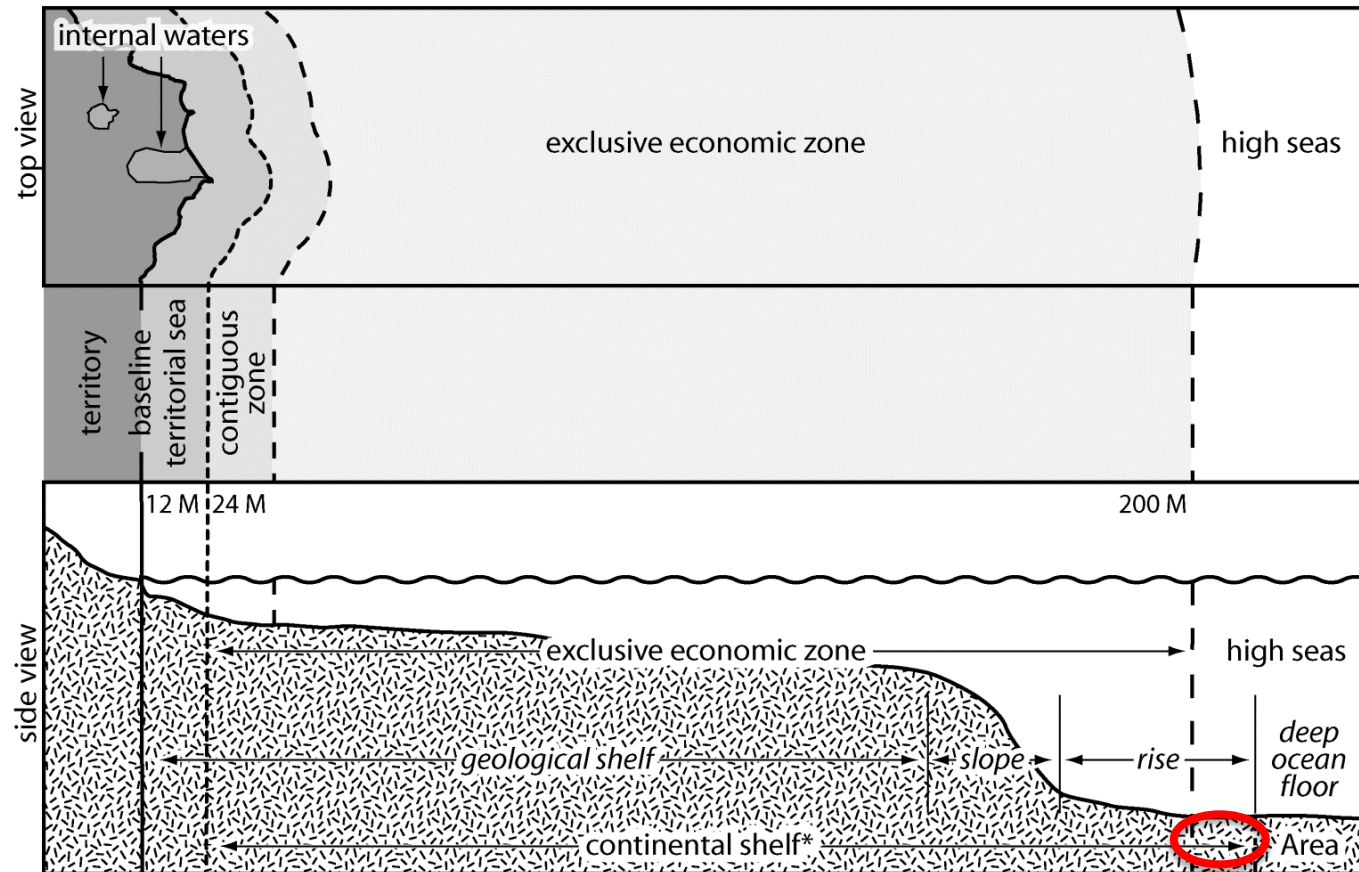


1. Explanation of title

- Developments between 1958-1982
 - From **plain uncertainty** to **complicated certainty** or *vice versa*

	1958		1982	
Delineation	200 meters or exploitability	Optional Protocol	Art. 76	CLCS
Delimitation	Agreement Median line Unless special circumstances	Optional Protocol	Equitable solution	Part XV (ITLOS, ICJ, Annex VII and VIII arbitration)

1. Explanation of title



* The legal continental shelf extends at least to 200 M. In certain circumstances it may extend beyond 200 M.

1. Explanation of title

– Inspiration

- Conference in the region

- Kuala Lumpur, Malaysia, on 10–11 May 2010

- “The Outer Limits of the Continental Shelf and Considerations of Submissions”

MARTINUS
NIJHOFF
PUBLISHERS

*The International Journal of
Marine and Coastal Law 25 (2010) 543–567*

THE INTERNATIONAL JOURNAL OF
MARINE
AND COASTAL
LAW
brillnl/estv

The International Seabed Authority and the Common Heritage of Mankind: The Need for States to Establish the Outer Limits of their Continental Shelf

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Abstract

The principle of the common heritage of mankind was introduced in international law to internationalize certain common spaces beyond national jurisdiction. It has found a certain application in outer space as well as in the Antarctic, but it is with respect to the oceans that it has so far found its fullest exposition. Since the principle is very much tied to the Area in the United Nations Convention on the Law of the Sea, *i.e.*, the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction, it can be said to have triggered that convention, but at the same time was also almost responsible for its demise. As a consequence, its content has changed over the years. The present article intends to have a closer look at how this principle at present relates to the obligation of broad-margin states to establish the outer limit of their continental shelf.

Keywords

law of the sea; the Area; common heritage of mankind; delineation of maritime zones

2. ITLOS first maritime delimitation case

- Mostly incidental procedures
 - Prompt release of vessels and crew
 - Provisional measures



2. ITLOS first maritime delimitation case

- Bangladesh/Myanmar (ITLOS, Judgment of 14 March 2012)
 - Based on: E. Franckx and M. Benatar, "Navigating Between Consolidation and Innovation: Bangladesh/Myanmar (International Tribunal for the Law of the Sea, Judgment of 14 March 2012)", (2013) 27 Ocean Yearbook 435-458.
- Partly consolidation (delimitation up to 200 nm)
- Partly novel (delimitation of extended CS beyond 200 nm)

2. ITLOS first maritime delimitation case



2. ITLOS first maritime delimitation case

- Jurisdiction
 - Myanmar objected
 - » Interests of the international community relating to the Area
 - » ITLOS needed to wait for the CLCS recommendations
 - Counterargument Bangladesh
 - » Rights of third parties can always been safeguarded by ITLOS
 - » Circular argument: wait for CLCS, but because of dispute the latter is prevented from making recommendations
 - Tribunal
 - » Inner and outer continental shelf both form one single concept
 - » Object and purpose of 1982 Convention require solution to impasse

2. ITLOS first maritime delimitation case

- Entitlement
 - Myanmar objected
 - » No entitlement without delineation based on CLCS recommendations
 - Tribunal
 - » Absence of outer limit does not prevent ITLOS from determining existence of entitlements
 - Bangladesh
 - » Ganges-Brahmaputra river system leads to fact that Bay of Bengal is natural prolongation of Bangladesh only (geology)
 - Myanmar
 - » Is totally irrelevant: Only Art. 76(4) needs to be applied (geomorphology)
 - Tribunal
 - » Natural prolongation adds no new criterion

3. Context and importance

– Context

- Mixed signals by ICJ and arbitral tribunals
 - *Saint Pierre and Miquelon* case (10 June 1992)
 - » “[i]t is not possible for a tribunal to reach a decision by assuming hypothetically the eventuality that such rights [pursuant to Article 76(4), 1982 Convention] will in fact exist”
 - » “is not competent to carry out a delimitation which affects the rights of a Party which is not before it”, namely the international community
 - *Barbados/Trinidad and Tobago* case (11 April 2006)
 - » “the delimitation of a maritime boundary in relation to that part of the continental shelf extending beyond 200 nm” fell under its jurisdiction, yet, it did not make any pronouncement on this zone, because a single maritime boundary in excess of 200 nm was lacking

3. Context and importance

- *Guyana/Suriname* (17 September 2007)
 - » the arbitrators once more refrained from effectuating delimitation beyond 200 nm, however the reason given was that the Parties had not “invite[d]” them to do so
- *Nicaragua v. Honduras* (ICJ, 8 October 2007)
 - » “any claim of continental shelf rights beyond 200 miles must be in accordance with Article 76 of UNCLOS and reviewed by the Commission on the Limits of the Continental Shelf established thereunder”

4. Conclusions

– Importance of Bangladesh/Myanmar?

- Teleological interpretation
 - ITLOS did not want to “ope[n] a jurisdictional black hole into which all disputes concerning maritime boundaries in the outer continental shelf would forever disappear.”
- Precedential value?
 - Courts and tribunals can sidestep impasse because of CLCS
 - BUT: was tied to the specific circumstances in the Bay of Bengal
 - » Well-documented existence of prolonged CS with overlapping entitlements based on uncontested scientific evidence
 - » Attitude of the parties (both in agreement)
 - *Nicaragua v. Colombia* (ICJ, 19 November 2012):
 - » Columbia not a party to the 1982 Convention
 - » Nicaragua had only submitted preliminary info to CLCS
- ICJ refers back to ITLOS and distinguishes

The End