The outer limits of the continental shelf beyond 200 nautical miles under the framework of article 76 of the United Nations Convention on the Law of the Sea (LOSC)

Presentation to the *Seminar on the Establishment of the Outer Limits of the Continental Shelf beyond 200 Nautical Miles under UNCLOS - Its Implications for International Law* (Tokyo, Japan, 27 February 2008) organized by the Ocean Policy Research Foundation

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Introduction

Thank you, Mr. Chairman, professor Kuribayashi. It is a great honour for me to be here today and have the opportunity to speak to such a distinguished audience. I would like to sincerely thank the Ocean Policy Research Foundation for their invitation to participate in this seminar and the excellent support I have received in preparing for the seminar. My thanks also to the Nippon Foundation for hosting this event at its premises. I look forward to a day of stimulating discussions concerning the questions surrounding the implementation of article 76 of the United Nations Convention on the Law of the Sea.

I intend to discuss a number of questions concerning the interpretation of article 76 of the Convention. I will not look in detail at those provisions which, I suspect, will be discussed in the other presentations at the seminar, such as the practice and procedures of the Commission on the Limits of the Continental Shelf.

The establishment of the outer limits of the continental shelf beyond 200 nautical miles under article 76 is a complex process, which requires a coastal State to dedicate significant resources. This complexity is mostly explained by the context in which article 76 was negotiated. After the discussion of the origins of article 76 and an overview of its contents, I will comment on a number of provisions of article 76 to illustrate the questions concerning its application and interpretation. I will also say something about the relation of article 76 to article 82 of the Convention, which is concerned with payments and contributions of the coastal State with respect to the exploitation the continental shelf beyond 200 nautical miles. Professor Kanehara, our next speaker, will of course have more to say on article 82. In my conclusions, I will offer some thoughts on what the future may hold in store for article 76 of the Convention.

The Origins of Article 76

The United Nations Convention on the Law of the Sea is not the first convention to address the definition of the continental shelf and its legal regime. Both these issues were

[*] I would like to thank the participants to the seminar for their comments on my presentation, which greatly assisted me in finalizing the present version of the paper.

addressed in the 1958 Convention on the Continental Shelf, one of the four law of the sea conventions from 1958 which preceded the LOSC. The legal regime applicable to the continental shelf contained in the 1958 Convention found its way into the LOSC without any major amendments. However, major differences exist between the two Conventions in respect of the provisions on the entitlement to the continental shelf and the establishment of its outer limits. The Convention on the Continental Shelf left the question of the outer limits of the continental shelf practically undecided. Article 76 of the LOSC establishes substantive rules and procedural mechanisms to establish precisely defined outer limits, which will be, to use the language of the LOSC, "final and binding".

As I already mentioned, to appreciate why article 76 is such a complex provision some understanding of the context in which it was negotiated is indispensable. In 1973, the General Assembly of the United Nations convened the Third United Nations Conference on the Law of the Sea, which was charged to negotiate a new law of the sea convention. One of the tasks that confronted the Third Conference was the precise definition of the area of ocean floor beyond the limits of national jurisdiction, presently known as the Area. This became a matter of urgency at the end of the 1960s, at which time it was considered that mining of the mineral resources of the deep seabed might become commercially possible in the near future. Under the then existing legal regime, the benefits of that activity would mainly have accrued to the industrialized States. However, developing States were successful in gaining acceptance for the idea that the area of ocean floor beyond the limits of national jurisdiction and its resources were the common heritage of mankind. As a consequence of these developments it was considered necessary to clearly define the limits of this area to create certainty for mining operators that would be active in it. Without a clearly defined limit, conflict might arise with coastal States who might claim that a mining site was actually located inside their continental shelf and not in an area beyond national jurisdiction.

What the need to define the limits of the area beyond national jurisdiction really implied, as is apparent from the task entrusted to the Third Conference, was the precise definition of the limits of national, coastal State, jurisdiction. This approach is reflected in the LOSC, which defines the Area as "the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction". The Convention further specifies that those limits shall be established in accordance with Part VI of the Convention. In other words, by the coastal State in accordance with article 76.

The law as it existed at the beginning of the Third Conference did not provide a clear definition of the limits of national jurisdiction, but it did have a profound impact on the work of the Third Conference. If the outer limit of all coastal State maritime zones at that time had been based on distance from the coast, it would have stood to reason that the Third Conference would also have adopted the distance criterion to define the limit between the area beyond national jurisdiction and areas under national jurisdiction. Of course, this was not the case. The 1958 Convention on the Continental Shelf defines the continental shelf by reference to the 200-meter isobath and the so-called exploitability criterion. The exploitability criterion allowed coastal States to include areas seaward of

the 200-meter isobath in the continental shelf. It was uncertain which areas could be included in the continental shelf on the basis of this criterion.

The view that the exploitability criterion could have led to a division of all of the ocean floor does not seem credible. As article 1 of the 1958 Convention on the continental shelf indicates, the exploitability criterion is only applicable to the seabed and the subsoil of the submarine areas adjacent to the coast. A review of materials on article 1 makes it clear that these submarine areas extend beyond the geophysical continental shelf. The continental margin consists of the geophysical continental shelf, slope and rise.[1] It is doubtful that the definition of the continental shelf contained in article 1 of the 1958 Convention included all of the continental margin. This distinguishes that article from article 76(1) of the LOSC, which defines the continental shelf by reference to natural prolongation of the land territory to the outer edge of the continental margin.

During the Third Conference on the Law of the Sea a group of influential States argued that they had existing rights to the outer edge of the continental margin. This group of 13 States - known as the broad margin States or margineers - acted jointly at the conference to defend their interest in respect of the continental shelf beyond 200 nautical miles. It included among others Argentina, Australia, Brazil, Canada, India and the United Kingdom. As an example of the margineers basic position let me refer you to a statement of 8 May 1975 of the Canadian Secretary of State for External Affairs to the Third Conference. That statement referred to three sources to support the existence of this right:

- the Convention on the Continental Shelf recognized coastal State rights to the point of exploitability;
- the 1969 decision of the ICJ in the *North Sea Continental Shelf* cases, which repeatedly referred to the continental shelf as the submerged prolongation of the land territory of the coastal State; and
- a long standing State practice including the extensive issuance of oil and gas permits on the Canadian continental margin and similar action by other coastal States.

The position of the broad margin States at the Third Conference as reflected in this statement warrants a number of comments. As I mentioned before, the exploitability criterion is applicable to the seabed and the subsoil of the submarine areas adjacent to the coast. The exploitability criterion does not give a State rights beyond this area. As was noted earlier, it is highly unlikely that “submarine areas adjacent to the coast” include all of the continental margin. The judgment of the ICJ in the *North Sea Continental Shelf* cases neither seems to give support to the position of the broad margin States at the Third Conference. The Court only dealt with the seaward limit of the natural prolongation of the land territory in passing, and its judgment seems to equate the geophysical continental shelf - and not with the continental margin - with the legal continental shelf. Finally, State practice entailing a claim of sovereignty or sovereign rights in respect of areas beyond the legally defined outer limit of the continental shelf would have breached obligations under both the regimes of freedom of the high seas and the common heritage. The 1958 Convention on the High Seas, which reflected customary law on that point before the devel-

[1] See also slide 2 accompanying this presentation.

opment of the common heritage principle as applicable to the deep seabed, provides that "no State may validly purport to subject any part of [the high seas] to its sovereignty". In 1970, a similar provision was included in the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction adopted through General Assembly Resolution 2749. In is unlikely that the limited practice of States in respect of oil exploration had led to the existence of rights detracting from these general principles.

In sum, it is unlikely that before the negotiations on what was to become article 76 started the legal continental shelf extended to the outer edge of the continental margin, as was submitted by the group of broad margin States. At the same time, the legal continental shelf did extend well beyond the 200-nautical-mile limit in certain parts of the world. The 200-nautical-mile limit was advocated as the limit between areas under national jurisdiction and the international seabed area by other States at the Third Conference. Most of the Third Conference, the negotiations were concerned with finding a compromise to reconcile these positions. At the same time, this compromise was required to result in a formula that would both require and make it possible for States to define the outer limits of their continental shelf unequivocally.

Part of the outcome of the negotiations at the Third Conference is contained in article 76 of the Convention, which to a very considerable extent accommodates the views of the broad margin States. An important concession on the part of the broad margin States is contained in article 82 of the Convention, which provides that the coastal States shall make payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles to the international community.

Article 76 itself also does not completely accommodate the views of the broad margin States. The general definition of the continental shelf contained in article 76(1) refers to the natural prolongation of the land territory to the outer edge of the continental margin. However, the detailed provisions on the establishment of the outer limits of the continental shelf may in certain cases result in an outer limit considerably landward of the outer edge of the continental margin. The inclusion of the procedure involving the CLCS in article 76 is a concession by the broad margin States. This procedure sets the establishment of the outer limits of the continental shelf apart from the procedure for the establishment of the outer limits of other maritime zones. In the latter case other States can only object to the outer limits of maritime zones once they have been established by the coastal State. The procedure involving the CLCS introduces a number of checks and balances into the initial process of establishing the outer limits by the coastal State.

Article 76 - General overview[2]

Article 76 consists of 10 paragraphs, which address a number of distinct but interrelated issues. Before turning to questions in relation to specific provisions, some words about the content of article 76. The general definition of the legal continental shelf is contained in paragraph one. This definition offers two alternative outer limits: at 200 nautical miles

[2] See also slide 4 accompanying this presentation.

from the baselines or to the outer edge of the continental margin where it extends beyond that distance. The continental margin in turn is defined in article 76(3). It consists of the geophysical shelf, the slope and the rise. Article 76(2), directly following on the general definition of the continental shelf in paragraph 1, qualifies it. Paragraph 2 indicates that the continental shelf shall not extend beyond the outer limit lines specified in paragraphs 4 to 6 of article 76. This provision is relevant for the case in which a coastal State has not yet established the outer limits of the continental shelf in accordance with article 76, a matter to which I will return shortly.

Paragraphs 4 to 6 of article 76 provide specific formula to establish the outer edge of the continental margin where it extends beyond 200 nautical miles. Paragraph 4 contains two formula to define the outer edge of the continental margin. Both formula take as their starting point the foot of the continental slope, beyond which point the continental rise commences. From the foot of the slope outer limit points can be defined with reference to sediment thickness - also referred to as the Irish or Gardiner formula - or a distance of 60 nautical miles - the distance criterion is also known as the Hedberg formula. Paragraphs 5 and 6 contain two restraint formula. If points defined under paragraph 4 fall seaward of both restraint lines they cannot be employed. The two restraints are defined by distance from the baseline (350 nautical miles) and distance from the 2,500 meter isobath (100 nautical miles from that isobath). In the case of submarine ridges the latter restraint cannot be applied. Paragraph 7 lays down criteria for the coastal State to delineate the outer limit of its continental shelf. Fixed points selected by application of paragraphs 4 to 6 cannot be more than 60 nautical miles apart. Such points are to be defined by coordinates of latitude and longitude. The outer limit is formed by straight lines connecting those points.

Paragraph 8 of article 76 defines the role of the CLCS in the process of establishing the outer limits by the coastal State. As paragraph 8 indicates, the Commission can only issue recommendations. The significance of the Commission's recommendations is indicated by the provision that outer limits established by the coastal State on the basis of the recommendations of the Commission shall be "final and binding". No such provision is included in any of the other provisions of the Convention on outer limits of maritime zones. A further indication of the significance of the Commission's recommendations is provided by Annex II to the Convention, which sets out the terms of reference of the Commission. Article 8 of the Annex provides that in case of disagreement with the recommendation of the Commission the coastal State shall make a new or revised submissions. Thus, article 8 imposes a legal obligation on the coastal State to follow a specific course of action if it does not agree with recommendations.

Article 76(9) requires the coastal State to deposit relevant information on the outer limits of the continental shelf with the Secretary-General of the United Nations. Finally, paragraph 76(10) addresses the relationship between the establishment of outer limits of the continental shelf and its delimitation between neighboring States. The provisions of article 76 are without prejudice to such delimitation. In view of the many areas of overlapping continental shelf this provision will be relevant to a large number of submissions to the CLCS.

Entitlement and outer limits

Having set out the content of article 76 in general terms, I would like to address some specific questions. A first question concerns the relationship between continental shelf entitlement and the establishment of the shelf's outer limits. As was noted earlier, the establishment of the outer limits beyond 200 nautical miles is a complex process requiring considerable time. Does the absence of such outer limits have any consequences for the coastal State's entitlement to or the exercise of sovereign rights over continental shelf areas beyond the 200-nautical-mile limit?

Entitlement to the continental shelf, as to any other coastal State maritime zone, is based on the title of the coastal State over the land. In the case of the continental shelf, the basis of entitlement is distance from the coast or natural prolongation of the land territory to the outer edge of the continental margin. The entitlement of a State exists by the sole fact that this basis of entitlement is present and does not require the establishment of outer limit lines. This is confirmed by article 77(3) of the Convention, which provides that the rights of the coastal State over the continental shelf do not depend on occupation or proclamation.

The fact that article 76 contains both a general definition of the continental shelf and rules to define specific outer limits confirms that entitlement to the continental shelf is not dependent on the establishment of outer limits. At the same time, the establishment of the exact extent of the continental shelf of a coastal State does depend on the establishment of outer limit lines by the coastal State. The application of articles 76(4) to (7) may place a part of the continental margin beyond the outer limits of the continental shelf. This will for instance be the case if the continental margin extends beyond both restraints contained in article 76(5) - 350 nautical miles from the baselines or 100 nautical miles beyond the 2500 meters isobath.

The above raises a further question. Does the absence of outer limits of the continental shelf established in accordance with article 76 give the coastal State the right to exercise rights over parts of the continental margin that fall beyond potential outer limit lines under article 76? It is submitted that this is not the case. This follows from article 76(2), which provides that the continental shelf shall not extend beyond the limits provided for in paragraphs 4 to 6 of article 76. The absence of a reference to paragraphs 7 to 9 of article 76 indicates that paragraph 76(2) is also operative and binding on a coastal State before it has implemented paragraphs 7 to 9.

At the same time article 76(2) of itself does not provide certainty over the exact extent of the continental shelf. Only the coastal State is competent to finally establish the outer limits of its continental shelf in accordance with article 76. In some areas there may be a choice between different outer limit lines applying paragraphs 4 to 6. Only the coastal State is competent to make that choice. In conclusion, the absence of outer limit lines of the continental shelf beyond 200 nautical miles is bound to raise doubts over the exact extent of the continental shelf, with the attendant difficulties for the coastal State to exer-

cise its sovereign rights over such areas. This may concern considerable areas, as is witnessed by the December 2001 submission of the Russian Federation to the CLCS.[3] The outer limit line the Russian Federation submitted for the central Arctic Ocean assumes that the Lomonosov Ridge and Alpha-Mendeleyev Ridge are the natural prolongation of the land territory. If that is not the case the outer limit of continental shelf of the Russian Federation would be considerably landward of the limit contained in its 2001 submission. In 2002, the Commission recommended that the Russian Federation make a revised submission in respect of the outer limits of its continental shelf in the central Arctic Ocean based on the findings contained in the recommendations of the Commission. Following recommendations of the Commission the Russian Federation has gathered further data in the Arctic and it has indicated that this data proves that the ridges indeed are the natural prolongation of the land territory. The Russian Federation reportedly intends to make a new submission by 2010. Other Arctic coastal State are expected to make a submission after that date. The uncertainty about the extent of the continental shelf in the Arctic Ocean can thus be expected to continue to exist for a considerable time.

The time limit for making a submission

There is a time limit for making a first submission to the Commission. A coastal State is required to make a submission "as soon as possible but in any case within 10 years of the entry into force of this Convention for that State". This provision is contained in article 4 of Annex II to the Convention. For a majority of States parties the final date for making a submission actually is 12 May 2009. For States that became a party to the Convention after 13 May 1999, the time limit is after 12 May 2009.

Certain States may have problems with meeting the time limit they are facing. This especially concerns States that have to make their submission by 12 May 2009. It has been suggested that a relaxation of this time limit should be considered. In this connection reference has been made to the fact that the Meeting of States parties to the Convention decided in 2001 that, for a State for which the Convention entered into force before 13 May 1999, the date of commencement of the 10-year time period for making submissions to the Commission was 13 May 1999.

It is suggested that the 2001 decision does not provide a proper precedent for a further decision of the Meeting of States parties. When the Meeting took its decision in 2001 there existed specific reasons to justify selecting 13 May 1999 as the date of commencement for making submissions. Those reasons no longer exist at present. A new decision of the Meeting of States parties concerning the time limit for making submissions would create the impression that the Meeting has a discretionary power to amend the Convention, setting an undesirable precedent.

Alternatives to a blanket extension of the time limit for making submissions are available. First of all, most States parties have indicated that they do expect to be able to make a submission within the time limit applicable to them and they are working towards that goal. A blanket extension of the time limit for making submission might negatively im-

[3] See also slide 5 accompanying this presentation.

pact on that process. Instead of extending the time limit, it is suggested that it rather should be considered how individual States that do have a problem with meeting the time limit they face can be assisted in the effective implementation of article 76.

The term 'on the basis of'

Outer limit lines established by the coastal State on the basis of the recommendations of the CLCS are final and binding. This provision raises two questions. First, to what extent is the coastal State allowed to diverge from the recommendations of the CLCS? Secondly, do outer limits established on the basis of recommendations become final and binding on other States immediately?

The drafting history of the Convention sheds some light on the meaning of the term 'on the basis of'. During the Ninth Session of Third Conference, the words 'on the basis of' replaced the words 'taking into account'. This change was supported by geographically disadvantaged States, whereas a number of broad margin States opposed it or expressed their reservations. This circumstance indicates that the change was considered to limit the freedom of action of the coastal State. As has been observed by Oxman the term 'taking into account' left the coastal State a wide margin of appreciation and would have implied

> that the coastal state can establish final limits binding on the rest of the world simply by "taking into account", but possibly in significant respects rejecting the Commission's recommendations.

However, in itself, the change to the text of article 76(8) tells us little about the exact implications of the term 'on the basis of'.

A consideration of the possible content of recommendations of the CLCS can assist in establishing the implications of the term 'on the basis of'. Two cases would seem to be most relevant. First, the Commission may find that the information submitted by the coastal State is not sufficient to prove that the outer limit lines are in accordance with the relevant provisions of article 76. The CLCS has indicated that in such a case it will recommend the coastal State to provide it with additional information. If the coastal State would then still proceed to establish the outer limits of its continental shelf, this will not have been done on the basis of the recommendations of the CLCS.

Secondly, the CLCS could find that the information submitted by the coastal State according to the Commission should result in different outer limit lines than those contained in the submission. The Commission has indicated that:

> If the submission contains sufficient data and other material supporting outer limits of the continental shelf which would be different from those proposed in the submission, the recommendations shall contain the rationale on which the recommended outer limits are based.

Should the coastal State in this case adopt the outer limit lines contained in the recommendations to meet the 'on the basis' requirement? Arguably, a coastal State may establish other outer limit lines, as long as these are in accordance with the reasons indicated by the CLCS for recommending outer limit lines different from those included in the submission.

The Commission has not been given the power to indicate if a coastal State has acted on the basis of its recommendations. Other States can raise this matter with a coastal State.

The term 'final and binding'

Limits established on the basis of the recommendations of the CLCS become 'final and binding'. Before looking at the implications of this term, its scope of application should be clarified. It does not apply in a case in which an outer limit would be located in an area where there also exists a continental shelf claim of another State. The operation of article 76(10) of the Convention precludes such an effect. The Rules of Procedure of the Commission and the way the Commission has dealt with the submission of the Russian Federation suggest that the Commission will act reserved in respect of areas of overlapping entitlements. Coastal States will need to consider this issue carefully in preparing their submission to the Commission.

A key question in respect of the term 'final and binding' is at what point in time the outer limit lines become final and binding on other States. Only the coastal State is competent to establish the outer limits of its continental shelf. The coastal State is under an obligation to deposit charts and information describing the outer limits of its continental shelf with the Secretary-General of the United Nations. This deposit signifies the completion of the process of establishment of the outer limits of the outer continental shelf by the coastal State under article 76. This would seem to be the point in time at which outer limit lines will become final and binding on other States - and the coastal State, unless those other States challenge them within a reasonable period of time. Another State might argue that the outer limits of the continental shelf have not been established in accordance with the substantive requirements of article 76, or might hold that the coastal State has not acted on the basis of the recommendations of the Commission. A successfully challenged outer limit line is not final and binding in the sense of article 76(8).

Article 76(9) requires the coastal State to deposit information on the outer limits of the continental shelf with the Secretary-General of the United Nations. Unlike other paragraphs of article 76 reference is to 'the outer limits' without specifying that it applies only to the outer limits beyond 200 nautical miles. Does this mean that article 76(9) also applies to the outer limit at 200 nautical miles, and that this limit also becomes permanently established? Various arguments may be advanced to support either interpretation. Without going into a discussion of those arguments, let me just point to one major implication of this issue of interpretation. If article 76(9) also can be applied to the 200-nautical-mile limit it might protect especially small island developing States from one of the potential impacts of sea level rise, namely the loss of extensive areas of continental shelf.

Outer limits and delimitation between neighboring States

Article 76(10) of the Convention provides that the provisions of article 76 are without prejudice to the question of delimitation of the continental shelf. Inclusion of this clause is probably mostly explained by the fact that paragraphs 8 and 9 of article 76 indicate that outer limits of the continental shelf may become respectively 'final and binding' and

'permanent'. These provisions would seem to have the potential to create controversy in cases in which the outer limit of the continental shelf thus established extends into an area which is the subject of overlapping claims of two or more coastal States. It should be noted that most areas of continental shelf beyond 200 nautical miles involve more than one coastal State. This issue has been addressed by the CLCS in its Rules of Procedure. The essence of the procedure set up by the CLCS in Annex I to the Rules is that it will only consider submissions involving areas where more than one State has a continental shelf if all States concerned give their consent to such consideration. Thus, the Commission's Rules of Procedure might seem to introduce new factors that impact on the making of a submission by a coastal State and in certain circumstances would seem to give other States control over whether the submission is considered at all. However, the Rules of Procedure should not be viewed in isolation from the relevant provisions of the LOSC, especially article 76(10). In the light of these provisions, other States should in principle not object to the consideration of a submission by a coastal State, which raises issues of delimitation of the continental shelf. As is indicated by article 76(10) the consideration of a submission and subsequent recommendations will not prejudice their rights. In general, State practice confirms this conclusion. The need for the delimitation of maritime boundaries between States thus far has not led States to object to the consideration of a submission by the Commission.

The position of States that are not a party to the Convention

A final point I would like to consider is the position of States that are not a party to the Convention. The question has been raised whether those non-parties have the right to make a submission to the Commission. Rights under a treaty can be accorded to non-parties by the Parties to the treaty. Such a right has to be stated in a sufficiently clear manner and there has to be an intention on the part of the States that have drawn up the instrument concerned to accord a right, and an acceptance of the right by the third State. This most likely is not the case for the right to make a submission to the CLCS under the Convention. The language of article 4 of Annex II, which refers to the making of a submission, indicates that the time frame for the making of a submission is linked to the date of entry into force of the Convention for a State. This suggests that it was not intended to accord this right to States that are not parties to the Convention. The drafting history of the Convention provides support for this interpretation. The acceptance of the compromise concerning the extent of the continental shelf in article 76 was based on the inclusion in the Convention of article 82 on revenue sharing and payments in respect of the continental shelf beyond 200 nautical miles. Article 82 has not created an obligation for third States. It should not be presumed that it was intended to accord States not parties to the Convention certain rights without imposing at the same time the concomitant obligations.

But could a State that is not a party to the Convention apply the formula of article 76 as customary international law without going to the Commission? That would be, to say the least, an unfortunate result. The State would neither have to consider the opinion of the Commission nor make payments under article 82 of the Convention. But can the detailed provisions of article 76 be considered to be customary law? Probably not. So, is the general formula of article 76(1) referring to the 200-nautical-mile limit and the outer edge of

the continental margin customary law? It arguably is. However, as we saw before, under the Convention a State may not always be able to include all of the continental margin inside the limits of its continental shelf. Would a State under customary law be allowed to consider all those areas as part of its continental shelf? Difficult to tell. I would venture that customary law is highly uncertain on this point and much would depend on the position States would take in respect of specific claims. The fact that certain non-parties are already looking at areas beyond 200 nautical miles in their oil and gas practice indicates that this potentially disruptive issue is not something of the far future. It would of course be resolved through general adherence of States to the Convention.

Final remarks[4]

Let me give you some final thoughts. Article 76 did fulfill the mandate that had been given to the Third Conference, notwithstanding the complexity of the issue and the interests involved. Before the Third Conference started there was no certainty about the extent of the continental shelf. Article 76 provides a formula to arrive at precisely defined outer limits. However, it is no more than that. The exact extent of the continental shelf of a coastal State requires the application of this formula to the specific case.

What does the future hold in store for article 76? Coastal States are preparing submissions and nine submissions involving ten States have been lodged with the CLCS. No better proof of the impact of article 76 is possible. At the same time, the difficulties involved in implementing article 76 are widely recognized. For one thing, developing States are faced with significant expenditures for a task which requires a high level of expert knowledge. These matters have been brought to the attention of the international community and certain steps have been taken to address them, but they will require continued attention in the future. Another point of concern is that not all States with a continental shelf beyond 200 nautical miles are parties to the Convention

The implementation of article 76 also shows that both the interpretation of its provisions and their application to the specific case may raise controversy. In this sense, article 76 is in no way unique. The relevant question is whether such controversy may seriously threaten the effective implementation of article 76. Although it is too early to give a final answer to this question a number of observations are possible. First, if major controversy over the implementation of article 76 arises this probably will concern a limited number of instances. Large parts of the outer limit of the continental shelf probably will be established without leading to any observations of other States. Secondly, the Convention contains a number of mechanisms to address controversies that may arise in the implementation of article 76. The Rules of Procedure and Scientific and Technical Guidelines of the Commission contribute to identifying and addressing potentially controversial issues in relation to submissions. In addition, if certain conditions are met, the dispute settlement mechanisms contained in Part XV of the Convention are available to States parties to deal with disputes concerning the interpretation or application of article 76. Moreover, in most areas there is no pressing need to come to a final and binding outer limit of the continental shelf. This suggests that in controversial cases one approach may be to let the matter

[4] See also slide 6 accompanying this presentation.

rest after the initial submission to the CLCS has been made. Finally, article 76 does not exist as a separate regime, or as part of a convention only dealing with the continental shelf, but is part of a convention dealing with all major law of the sea issues. This factor should not be underestimated in assessing the stability of article 76. Broader interests of States in the LOSC may play a role in how States deal with issues concerning the extent of the continental shelf. In any case, there is no readily available alternative to article 76. Any formula that would seek to simplify the rules on the outer limits of the continental shelf contained in article 76 - for instance an outer limit based on distance applicable to all States - would imply a large overall shift in the limit between areas under national jurisdiction and the Area.

The CLCS is an essential element of the article 76 process. The CLCS has been a conduit for focusing the attention on controversial topics and coming up with possible solutions. The absence of such a third party element would have made the successful implementation of article 76 very unlikely. There would have been no comparable conduit to deal with controversial issues and there would not have been any effective check on coastal State unilateralism in the application of article 76.

Once article 76 will have been implemented by all the present States parties to the Convention, most of the outer limits of the continental shelf vis-à-vis the Area will be defined in precise terms. This involves a process that is at least as daunting as the negotiation of article 76 itself.

Thank you for you kind attention.