

**The Right of Coastal States under the
Continental Shelf Regime beyond 200 Nautical
Miles**

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SEMINAR ON THE OUTER CONTINENTAL SHELF
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Introduction

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**Recent Focus on the Outer Continental Shelf
Regime**

- The CLCS procedure is undergoing for rendering the recommendations concerning the outer limits of the continental shelf
- Possible future questions to be raised between coastal states and the CLCS, between coastal states and other parties to the UNCLOS

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**1. The Regime of the Outer Continental Shelf under
Article 76 of the UNCLOS**

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**The Legal Regime on the Continental Shelf
Established by the Convention on the
Continental Shelf (CCS)**

**The Outer Continental Shelf Regime beyond 200
Nautical Miles under Article 76 of the UNCLOS**

**Establishment of the Outer Limit of the Outer
Continental Shelf under Article 76 of the
UNCLOS**

**The Function and Power of the Commission on the
Limits of the Continental Shelf (CLCS)**

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**2. The Basis of the Coastal State's Sovereign Right over the
Outer Continental Shelf—A General Survey—**

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**1. The Entitlement of a Coastal State to the Outer
Continental Shelf**

**Arguments in the Drafting Process of Article 76 of
the UNCLOS**

- Fundamental Character of the Coastal State's Title?

**2. The Coastal State's Right over the Continental
Shelf on the Basis of Customary International
Law**

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2. The Basis of the Coastal State's Sovereign Right over the Outer Continental Shelf—A General Survey—

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North Sea Continental Shelf Case (ICJ), 1969

Para 63

“...these three Articles (Articles 1 to 3, Author's note) being the ones which, it is clear, were then regarded as reflecting, or as crystallizing, received or at least emergent rules of customary international law relative to the continental shelf, amongst them the question of the seaward extent of the shelf; the juridical character of the coastal State's entitlement: the nature of the rights exercisable...”

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2. The Basis of the Coastal State's Sovereign Right over the Outer Continental Shelf—A General Survey—

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• Para 19

“...what the Court entertains no doubt is the most fundamental of all the rules of law relating to the continental shelf ...namely that the rights of the coastal State in respect of the area of continental shelf that constitute a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources.”

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2. The Basis of the Coastal State's Sovereign Right over the Outer Continental Shelf—A General Survey—

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- “Natural Prolongation” and “Continental Shelf” as Legal Terms, not Physical (Geographical, Geological) Terms
← “Land Dominates the Seas”

Inherency of the Coastal State's Title to the Outer Continental Shelf?

⇔ The **Sui Generis** Nature of the Outer Continental Shelf Regime

The Sovereign Right of a Coastal State over the Outer Continental Shelf Solely Based upon Article 76 of the UNCLOS

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3. Practical Issues to Be Raised before and after the Recommendation Given by the CLCS

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- Interpretative Issues concerning Article 76, particularly Its Paragraph 82

Article 76, Paragraph 8 reads:

Information on the limits of the continental shelf beyond 200 nautical miles from baseline...shall be submitted by the coastal state to the [CLCS]. The [CLCS] 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 recommendation shall be final and binding.

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3. Practical Issues to Be Raised before and after the Recommendation Given by the CLCS

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- Possible Situations that Enables “Unilateral” Establishment by a Coastal State of the Limit of the Outer Continental Shelf

- (1) Coastal states may not be satisfied with the recommendation given by the CLCS, and this situation could not be resolved by repeated process of re-submission by the coastal state to the CLCS
- (2) The establishment of the outer continental shelf limit is tied up with boundary delimitation disputes and/or territorial disputes

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3. Practical Issues to Be Raised before and after the Recommendation Given by the CLCS

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- Possible Situations that Enables “Unilateral” Establishment by a Coastal State of the Limit of the Outer Continental Shelf (continued)

- (3) A transitional state waiting for the recommendation by the CLCS
- (4) Simple neglect by a coastal state of the CLCS Procedure

Argument Based upon Article 77, Paragraph 3 of the UNCLOS and Its Inappropriateness

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3. Practical Issues to Be Raised before and after the Recommendation Given by the CLCS

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- The Meaning of “Final and Binding” under Article 76, Paragraph 8 of the UNCLOS
+ Article 76, Paragraph 9

For whom is the outer limit established “on the basis of” the recommendation by the CLCS binding?

- The Coastal State
- The Other States that Are Parties to the UNCLOS?

Ref. Russian submission and other countries’ objection to it

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3. Practical Issues to Be Raised before and after the Recommendation Given by the CLCS

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- Possible Disputes Relating to the Outer Limit Established on the Basis of the Recommendation by the CLCS
Which state can dispute the outer limit of the continental shelf established by a coastal state?

St. Pierre and Miquelon Award, 1992, paras. 78-79

“Any Decision by this Court recognizing or rejecting any rights of the Parties over the continental shelf beyond 200 nautical miles, would constitute a pronouncement involving a delimitation, not ‘between the Parties’ but between each one of them and the international community, represented by organs entrusted with the administration and protection of the international seabed Area...that has been declared to be the common heritage of mankind.”

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