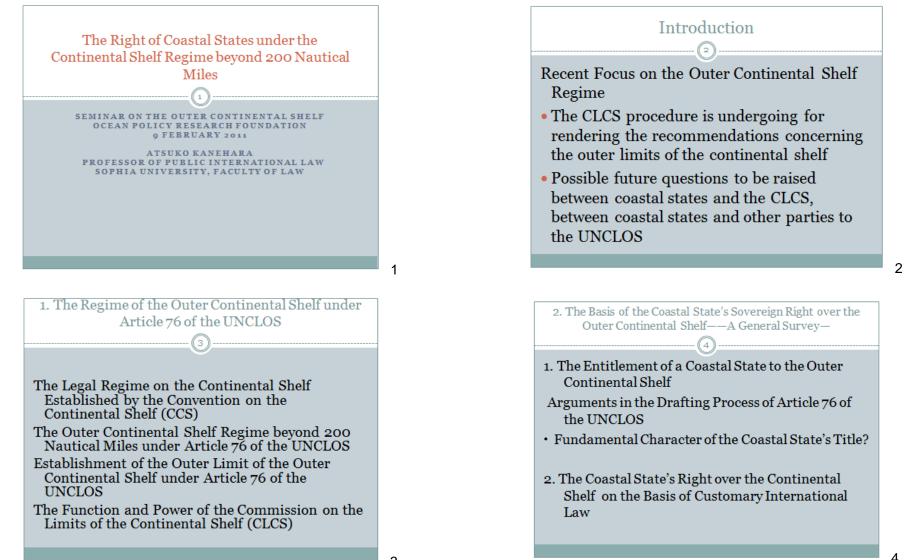


Seminar on Extension of the Continental Shelf and National Ocean Policy - lessons learnt from precedent cases of establishing the limits on the basis of recommendations - (Feb. 9, 2011)





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

## 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—

• "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

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

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

• 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

- 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

- 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 biding?
- The Coastal State

• The Other States that Are Parties to the UNCLOS? Ref. Russian submission and other countries' objection to it 3. Practical Issues to Be Raised before and after the Recommendation Given by the CLCS

- 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 Inapproprieteness

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

 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."