

CHAPTER FOUR

THE OUTER LIMITS OF THE CONTINENTAL SHELF IN THE POLAR REGIONS

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INTRODUCTION

If the continental margin of a coastal state extends beyond 200 nautical miles,¹ the coastal state is required to establish the outer limits of the continental shelf in accordance with article 76(4) to (9) of the LOS Convention.² These complex formulae in the first place require a coastal state to gather data concerning the geology and geomorphology of the continental margin. The coastal state needs such data to make a submission to the Commission on the Limits of the Continental Shelf (CLCS). After consideration of the submission, the Commission is to issue recommendations to the coastal state. Article 76(8) of the Convention provides that outer limits established on the basis of the recommendations of the Commission shall be final and binding. The implementation of article 76 is one of the major current efforts in maritime boundary making. The CLCS started its work in 1997 and it is expected that the Commission will still take a couple of decades to deal with all submissions that will be made to it. Both polar regions have extensive areas of continental shelf beyond 200 nautical miles.

The present chapter first provides a brief overview of the obligations of states in relation to the definition of the continental shelf under article 76.³ Next, it looks at how the CLCS and the Meeting of States Parties to the Convention (SPLOS)

¹ All references to beyond 200 nautical miles or the 200-nautical-mile limit are to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

² United Nations Convention on the Law of the Sea; 1833 UNTS 396.

³ The present chapter is in part based on A.G. Oude Elferink "The continental shelf in the polar regions: Cold war or black-letter law?" (2009) XL *Netherlands Yearbook of International Law*, 121–181. I have not maintained the structure of that significantly longer article because it does not fit the common format of the present project. I would like to thank Bart Post for his assistance in researching developments in respect of the implementation of article 76 in the polar regions after the completion of this article.

have given further content to the rules contained in the LOS Convention. After that, the chapter focuses on the polar regions. First of all, regional aspects of the implementation of article 76 are considered. After that, the chapter looks at the cooperation between the states concerned in such issues as the gathering of data and the delimitation of bilateral boundaries. A final section before the conclusions discusses a number of issues that have come up in the consideration of the submissions of Australia, Norway and the Russian Federation by the CLCS.⁴

Due to constraints of space, the present chapter only provides some background information on article 76 of the LOS Convention, the CLCS and the particularities of the legal regime of Antarctica. Additional background information is to be found in the article I published in 2010 and the extensive literature on these topics. The latter topic is also discussed in chapter 2 of the present volume.

This chapter adopts the following definition of the polar regions. In the case of Antarctica, the focus is on the continental shelf of the Antarctic continent and that of a number of subantarctic islands. The latter islands are not covered by the Antarctic Treaty, but their continental shelf extends into its area of application. As far as the Arctic is concerned, the chapter looks at the continental shelf of the five Arctic Ocean coastal states (Canada, Denmark/Greenland, Norway, the Russian Federation and the United States) and the Norwegian Sea, which involves Denmark/Greenland, Iceland and Norway. Other areas of continental shelf of all these states are located well south of the Arctic circle.⁵

THE LOS CONVENTION

The extent of the continental shelf is defined in the LOS Convention, the 1958 Convention on the Continental Shelf⁶ and customary international law. Most states are at present Parties to the LOS Convention. This concerns all states with a territorial claim in Antarctica and all coastal states in the Arctic, with the exception of the United States. The basic obligations of States Parties to the LOS Convention in relation to the definition of the continental shelf are clear. They are required to make a submission to the CLCS on the outer limits of their continental shelf within 10 years of becoming a Party to the LOS Convention.⁷ The Commission is to issue recommendations on these outer limits and if the

⁴ Information on submissions and reactions of other states on submissions and documents of the CLCS are available at the Commission's website <www.un.org/Depts/los/clcs_new/clcs_home.htm>.

⁵ Maps depicting outer limits as submitted to the CLCS and contained in the recommendations of the CLCS are available on the website mentioned in the previous footnote. For an overview of the situation in the polar regions in 2009 see the figures in Oude Elferink, note 3 at 180–181.

⁶ 499 UNTS 311.

⁷ LOS Convention, art. 76(8) and Annex II, art. 4.

coastal state agrees to them it shall establish final and binding outer limits on their basis.⁸ The United States is in a different position. Not being a Party to the LOS Convention, it does not have the right to make a submission to the CLCS.⁹ The substantive rules applicable to the determination of the outer limit the continental shelf of the United States may be those contained in the LOS Convention. The United States is a party to the Convention on the Continental Shelf, but it is likely that the provisions on the outer limit of the shelf contained in its article 1 have been modified by customary international law. The United States has taken the position that it “has exercised and shall continue to exercise jurisdiction over its continental shelf in accordance with and to the full extent permitted by international law as reflected in Article 76, paragraphs (1), (2) and (3)” of the LOS Convention.¹⁰ The reference to article 76(2), which refers to paragraphs 4 to 6 of article 76, implies that the United States accepts all the substantive provisions of article 76 as customary international law. The United States is probably right in this respect. These provisions are widely accepted by the international community at large, no state seems to have persistently objected to them and there does not seem to be another rule that might reflect customary international law on this matter. This state of affairs implies that the United States could establish the outer limits of its continental shelf without going through the process involving the CLCS. This might seem to be an advantage. However, these outer limits may not necessarily attract the same amount of international recognition as they would if based on recommendations of the CLCS.

Apart from the United States, for which the clock is not yet running, the 10-year deadline for making the initial submission to the CLCS has not yet expired for Canada and Denmark/Greenland. Canada has until November 2013 to do so and Denmark until November 2014. All other coastal states in the Arctic and the Antarctic claimant states and states with subantarctic islands with a continental shelf extending into the Antarctic Treaty Area have taken action to comply with their obligation to submit information to the CLCS.¹¹ This compliance is in no way extraordinary. All States Parties to the LOS Convention have done so.

The CLCS has issued recommendations that allow the establishment of final and binding limits in accordance with article 76(8) to one Arctic coastal state,

⁸ Ibid., art. 76(8).

⁹ See e.g. Committee on legal issues of the outer continental shelf, “Second Report” in *Report of the Seventy-Second Conference; Toronto 2006* (International Law Association: London, 2006), 215–249 at 239–240.

¹⁰ United States Policy Governing the Continental Shelf of the United States of America. The policy statement was attached to a Memorandum from Assistant Secretary John D. Negroponte to Deputy Legal Adviser Elizabeth Verville of 17 November 1987 (State Department File No. 0140-0428); reproduced in J.A. Roach and R.W. Smith *Excessive Maritime Claims* (U.S. Naval War College International Law Studies; Vol. 66, 1994) 125.

¹¹ See below for further details.

Norway, and Australia in relation to among others its subantarctic islands of Heard and MacDonald. The article 76-process is much less advanced for other parts of the outer limits of the continental shelf in the polar regions, just as in other regions. The absence of final and binding limits might raise the question of what legal regime applies to the continental shelf beyond 200 nautical miles in the meantime. Is a coastal state entitled to exercise rights over this part of the continental shelf before final and binding limits have been established? I have dealt with this question elsewhere and concluded that in the absence of final and binding limits coastal states are entitled to determine the extent of their continental shelf in accordance with the substantive provisions of article 76 of the LOS Convention and to exercise their rights as coastal states in this area.¹² On the other hand, other states are not obliged to accept the outer limits a coastal state has defined unilaterally if they consider that they are not in accordance with the substantive provisions of article 76 and also need not accept the exercise of jurisdiction by the coastal state in an area they consider to be beyond the outer limits resulting from the application of article 76.¹³ In the light of the views of the Arctic Ocean coastal states on the extent of their continental shelf this finding implies that most of the seabed and subsoil of the Arctic Ocean and adjacent seas beyond 200 nautical miles is at present subject to the regime of the continental shelf. In the Antarctic there remain much larger areas of seabed beyond the outer limits of the continental shelf. In view of the regime established by the Antarctic Treaty System (ATS), this finding does not have the same practical relevance for the Southern Ocean.

THE ROLE OF THE CLCS

Since it started its work in 1997, the CLCS has developed an extensive practice in respect of the handling of submissions of coastal states. One significant aspect concerns the approach of the CLCS to land and maritime disputes in relation to submissions. Annex I to the Rules of Procedure of the Commission¹⁴ creates various options to deal with submissions involving such disputes. For instance, a coastal state can for the time being not make a submission for a part of its outer limit beyond 200 nautical miles notwithstanding the 10-year time limit of the

¹² See A.G. Oude Elferink "The Regime for Marine Scientific Research in the Arctic: Implications of the Absence of Outer Limits of the Continental Shelf beyond 200 Nautical Miles" in: S. Wasum-Rainer, I. Winkelmann and K. Tiroch (eds.) *Arctic Science, International Law and Climate Change; Legal Aspects of Marine Science in the Arctic Ocean* (Springer Verlag, 2012), 189–208 at 192–201 and 204. See also below text at footnote 36.

¹³ *Ibid.*, 204–205.

¹⁴ *Rules of Procedure of the Commission on the Limits of the Continental Shelf* (CLCS/40/Rev.1 of 17 April 2008).

Convention, two or more coastal states can make a joint submission, or a submission can for the time being not be considered by the Commission, implying that it will not issue recommendations.

The procedure for dealing with land and maritime disputes that has been set up by the Commission has played a role in a large majority of submissions that have been made to date. In most cases this concerns questions related to the delimitation of continental shelf boundaries between neighboring states. In those instances, the general practice of the coastal state and other states concerned has been to point out the delimitation issues and accept that recommendations of the Commission on outer limits will be without prejudice to the delimitation of the continental shelf between neighboring states. Such non-prejudice is also guaranteed by article 76(10) of the Convention. This approach has also been followed by a number of states in relation to submissions in the polar regions.¹⁵ In the case of other land and maritime disputes, other states in a number of cases have not given their consent to the consideration of a submission by the CLCS. This procedure has also been used by the Antarctic claimant states and other interested states to resolve a possible conflict concerning the compatibility of the obligations of states under the Antarctic Treaty¹⁶ and the LOS Convention.

Thus far, the Commission has received 65 submissions and issued recommendations on 18 submissions. It will take the CLCS a considerable time to deal with the remainder of these submissions. In all, it may take the Commission a couple of decades to deal with all submissions that will be lodged to it. Submissions are handled in accordance with the date of lodgment. Three of the five coastal states in the Arctic, Canada and Denmark and the United States, if it becomes a party, will consequently have to join at the end of the existing queue. The Russian Federation is to make a new or revised submission to the Commission as a result of the Commission's recommendations to it. The Rules of Procedure of the Commission do not indicate how the Commission will queue new or revised submissions resulting from recommendations to the coastal state to do so. The provision on the queuing of submissions contained in Rule 51 suggests that they would be queued after the last submission in the line. However, the Commission has decided that revised submissions would be considered on a priority basis, notwithstanding the queue.¹⁷ It is not clear whether the CLCS will apply this same approach to new submissions. This issue might be circumvented by referring to a new submission as a revised submission. However, if the CLCS would like to make a distinction in respect of the queuing of new and revised submissions, it would be competent to make the determination which of the two it has before it itself.

¹⁵ See further below.

¹⁶ 402 UNTS 71.

¹⁷ CLCS/68 of 17 September 2010, para. 57.

As far as the Antarctic region is concerned, the workload of the Commission does not pose an issue. The Commission has already issued recommendations in relation to Australia's subantarctic islands and the claimant states and other interested states have accepted that for the time being the outer limit of the continental shelf of the Antarctic continental and adjacent islands will not be considered by the CLCS. The same applies to the subantarctic islands that are in dispute between Argentina and the United Kingdom.

THE SPLOS

The SPLOS is charged with electing the members to the CLCS. The Convention does not accord it a role in relation to the implementation of article 76, but from time to time issues concerning the CLCS have been brought up at the SPLOS. For instance, during the 22nd SPLOS “[s]ome delegations noted that the mandate of the Commission was limited to applying article 76 and annex II of the Convention. The mandate did not extend to matters of interpretation of the provisions contained therein.”¹⁸ It was also pointed out that the Commission should inform the SPLOS about the issues that it was facing in considering submissions in order to allow the SPLOS to determine whether these concerned issues of a technical or legal nature.¹⁹ The Chairperson of the CLCS at the meeting rejected this suggestion, observing that it was within the competence of the Commission to interpret article 76 and Annex II for the fulfillment of its mandate.²⁰ Whether the SPLOS would be able to play a more active role in this respect in any case is doubtful, in view of the resistance among the States Parties against attributing the SPLOS a role in respect of substantive issues.²¹

The SPLOS has played an active role in dealing with the extension of the time limit for making submissions. Originally, the time limit for many states was 16 November 2004. This posed a problem for in particular developing states. The time limit was extended to 13 May 2009 by a decision of the SPLOS in 2001.²²

¹⁸ SPLOS/251 of 11 July 2011, para. 72.

¹⁹ Ibid.

²⁰ Ibid., para. 79; see also CLCS/72 of 16 September 2011, paras. 37–40 and CLCS/74 of 30 April 2012, para. 52.

²¹ See further T. Treves, “The General Assembly and the Meeting of States Parties in the Implementation of the LOS Convention”, in A.G. Oude Elferink (ed.) *Stability and Change in the Law of the Sea: The Role of the LOS Convention* (Martinus Nijhoff Publishers, Leiden: 2005) 55–74, especially at 61–65 and 68–73; A.G. Oude Elferink, “Reviewing the Implementation of the LOS Convention: the Role of the United Nations General Assembly and the Meeting of States Parties”, in A.G. Oude Elferink and D.R. Rothwell (eds.), *Oceans Management in the 21st Century: Institutional Frameworks and Responses* (Martinus Nijhoff Publishers, Leiden: 2004) 295–312 at 306–310.

²² SPLOS/72 of 29 May 2001.

Before this decision was taken, Antarctic claimant states had also entertained whether to use the SPLOS or other options under the LOS Convention to shelve the implementation of article 76 in relation to the continental shelf for Antarctica. After the 2001 decision of SPLOS, the consultations between the claimant states were continued and now became focused on attaining the coordination of their positions in approaching the Commission. A decision of the SPLOS dealing specifically with Antarctica for a number of reasons was not opportune. In the first place this would lead to the treatment of a question with implications for the legal regime of Antarctica outside the ATS, which is considered to be undesirable by the states participating therein. Secondly, as was observed above certain states oppose attempts to accord the SPLOS a role in respect of substantive questions in respect of the Convention.

The workload of the Commission and the backlog in the consideration of submissions has also been on the agenda of the SPLOS. In 2010, the Meeting adopted a decision in which it requested the Commission to consider a number of measures to address this matter,²³ and it is kept under review by the meeting.²⁴

REGIONAL ASPECTS CONCERNING THE IMPLEMENTATION OF ARTICLE 76

The Arctic

The five coastal states of the Arctic Ocean addressed the implementation of article 76 in the Ilulissat Declaration that was adopted on 28 May 2008.²⁵ The Declaration can be seen as a response to media coverage of the surveying expeditions to gather the data that is needed in connection with the implementation of article 76. Media oftentimes suggest that there is a unregulated race for the resources of the Arctic Ocean. The Ilulissat Declaration emphasizes the importance of international cooperation and the role of coastal states in that cooperation. The Declaration also stresses the significance of international law:

Notably, the law of the sea provides for important rights and obligations concerning the delineation of the outer limits of the continental shelf [...]. We remain committed to this legal framework and to the orderly settlement of any possible overlapping claims.

The Ilulissat Declaration confirms that the coastal states of the Arctic Ocean consider that the law of the sea is applicable to the area without exception.²⁶ At the

²³ See SPLOS/216 of 23 June 2010, para. 1.

²⁴ See e.g. SPLOS/251 of 11 July 2012, paras. 69–71.

²⁵ Available at <arctic-council.org/filearchive/Ilulissat-declaration.pdf>.

²⁶ See also T. Winkler "Danish Interests in the Arctic" in M.H. Nordquist, J.N. Moore and T.H. Heidar (eds.) *Changes in the Arctic Environment and the Law of the Sea* (Martinus Nijhoff Publishers, Leiden: 2010), 477–486 at 482.

time the Ilulissat Declaration was adopted there was some discussion whether it should not also involve the other three states of the Arctic Council—Finland, Iceland and Sweden.²⁷ The Arctic Council might have constituted an appropriate forum to deal with some of the issues addressed by the Declaration. As the media coverage of continental shelf claims was one of the main reasons leading up to the Declaration, such involvement was less obvious. Finland and Sweden do not have a continental shelf beyond 200 nautical miles and Iceland's continental shelf in the Arctic is located in the Norwegian Sea, not the Arctic Ocean. That area was not drawing any media attention and Iceland had already reached an agreement with Norway and Denmark/The Faroe Islands how to deal with their overlapping claims in 2006.²⁸

Representatives of the five Arctic Ocean coastal states have been meeting on an annual basis in the last couple of years.²⁹ In 2007, scientists from Canada, Denmark and the Russian Federation met to discuss scientific and technical issues in relation to the continental shelf beyond 200 nautical miles in the Arctic Ocean. Subsequently, the meetings have been expanded to include scientists of Norway and the United States and representatives of the ministries of foreign affairs of the 5 states. Apart from discussing research findings the meetings have also been used to discuss common concerns. This also has included discussion by the international legal experts of issues relevant to the preparation of submissions. A further meeting to be hosted by the United States was planned for November 2012.³⁰ The meetings do not seem to have gone beyond the exchange of information.³¹

Apart from the Ilulissat Declaration and these annual meetings, the implementation of article 76 has mostly led to cooperation between coastal states on a bilateral basis. On the one hand, this concerns cooperation in respect of data gathering. On the other hand, coastal states have coordinated their positions in respect of areas of overlapping continental shelf to ensure that the existence of pending bilateral delimitations would not become an obstacle to the consideration of submissions by the Commission.³²

²⁷ See T. Pedersen "Debates over the Role of the Arctic Council" (2012) 43 *Ocean Development & International Law* 146–156 at 150–151.

²⁸ On this latter point see further below.

²⁹ This account is based on the information contained in E. Riddell-Dixon "Meeting the Deadline: Canada's Arctic Submission to the Commission on the Limits of the Continental Shelf" 2011 (42) *Ocean Development and International Law* 368–382 at 374.

³⁰ Foreign Affairs and International Trade Canada "International Collaboration" (available at <www.international.gc.ca/continental/collaboration.aspx?view=d>).

³¹ This conclusion is also based on interviews with persons who have been directly involved in this process.

³² On both these issues see further below.

Antarctica

Regional cooperation has played a much more significant role in relation to the continental shelf of the Antarctic continent and adjacent islands. States with a territorial claim in Antarctica were faced with the question how they might at the same time meet their obligations under article 76 of LOS Convention and article IV of the Antarctic Treaty. Article 76 provides for a procedure which results in final and binding outer limits of the continental shelf and the implementation of article 76 might be considered as being contrary to article IV(2), which provides that states shall make no new claims or enlarge existing claims to territorial sovereignty in Antarctica. A failure to make a submission to the CLCS would be contrary to the obligations of coastal states under the LOS Convention.

As far as can be ascertained, the implementation of article 76 in Antarctica was first discussed by the claimant states in Lima, where they attended the 23rd meeting of the Consultative Parties to the Antarctic Treaty (ATCM) in May and June 1999.³³ These consultations throughout their duration in large part remained limited to the claimant states. The only other states which from time to time were involved and probably also exerted a certain influence were the United States and the Russian Federation. The claimant states did consider a number of solutions which would have required the involvement of a larger number of states. Initially, a number of options were considered, including a resolution of the ATCM or a solution in the framework of the LOS Convention. Eventually, it was agreed to make use of the procedures that had been adopted by the CLCS to deal with submissions involving land and maritime disputes.³⁴ At the end of 2004 the claimant states reached a compromise for a common approach, which envisaged two possibilities. A state could either submit information to the CLCS or refrain from doing so. In both cases the submitting state would employ common elements, which had been agreed upon in the consultations between the claimant states. If a state would opt to submit information, it would at the same time request the Commission not to take any action in respect of the submission concerning Antarctica.

All Antarctic claimant states have by now submitted information to implement article 76 in respect of their Antarctic territories on the basis of the agreed common approach. Argentina, Australia and Norway have submitted information, while requesting the Commission to not consider their submission for the moment. France, New Zealand and the United Kingdom have indicated, while

³³ This section is in part based on information from persons who have been directly involved in these discussions. For an analysis of this issue see also M.T. Infante Caffi "Evolving Scenarios: Antarctica and the Continental Shelf" in R. Casado Raigón and G. Cataldi *L'évolution et l'état actuel du droit international de la mer: Mélanges de droit de la mer offerts à Daniel Vignes* (Bruylant, Brussels: 2009) 461–479.

³⁴ On these procedures see above.

making a submission for other territories, that for the moment they are refraining from making a submission concerning their continental shelf in Antarctica. Chile has not yet made a submission to the Commission, but has used the opportunity to submit preliminary information.³⁵ Chile's preliminary information, making reference to the common elements agreed upon between the claimant states, indicates that Chile will inform the Commission which option—making a submission or refraining from doing so—it will choose for the Chilean Antarctic Territory in the future.

In communicating information to the CLCS, all of the Antarctic claimant states have used similar wording. They recall the principles and objectives shared by the Antarctic Treaty and the LOS Convention and the importance of the ATS and the Convention working in harmony. Reference is also made to the circumstances of the area south of 60° S, the special legal and political status of Antarctica under the Antarctic Treaty and that appurtenant to Antarctica there are areas of continental shelf whose extent still remains to be determined.

A number of states have reacted to the communications of the Antarctic claimant states to the CLCS. These other states welcome the approach that the claimant states have taken in respect of the implementation of article 76. There are also differences between the notes. The differences between these reactions contribute to the impression that there was less coordination between them than between the claimant states. As a result of the approach to the implementation of article 76 by the Antarctic claimant states there for the time being will be no further action of the CLCS.

After the Commission issued its recommendations on Australia's submission in 2008, Australia in 2012 issued a proclamation on the outer limits of its continental shelf.³⁶ In that connection it was observed that the proclamation did not define the outer limits of the Australian Antarctic Territory in the light of Australia's request to the CLCS not to consider the data in respect of that limit.³⁷ The Explanatory Memorandum to the proclamation specifies that this does not affect the legal status of this continental shelf. Australia has rights over this continental shelf as a matter of international law and Australian law irrespective of the proclamation of its outer limits.³⁸

Apart from the common approach to the implementation of article 76 by the claimant states, there also has been cooperation between claimant states in respect of their individual submissions. Certain claimant states have coordinated their positions in respect of areas of overlapping continental shelf to ensure that

³⁵ This procedure is set out in SPLOS/183 of 20 June 2008.

³⁶ Seas and Submerged Lands (Limits of Continental Shelf) Proclamation 2012.

³⁷ Explanatory Statement; Seas and Submerged Lands (Limits of Continental Shelf) Proclamation 2012.

³⁸ *Ibid.*

the submission of information would be without prejudice to the delimitation of boundaries between the states concerned.³⁹

COOPERATION IN RELATION TO THE PREPARATION OF SUBMISSIONS

The Arctic

A number of Arctic coastal states have collaborated in the gathering of data in connection with the preparation of their submissions. This in particular concerns Canada and Denmark and Canada and the United States.⁴⁰ Denmark has also embarked on technical cooperation with Canada and the Russian Federation on data collection⁴¹ and has also been collaborating with researchers from Sweden.⁴² Russian scientists have collaborated with American colleagues during at least one expedition to gather data in 2011.⁴³ A number of reasons may explain this cooperation. Weather and ice-conditions in the Arctic make data gathering much more difficult and costly than in other regions, making cooperation an attractive option. Secondly, the same geophysical features may be relevant for defining the outer limit of the continental shelf of two states. For instance, in the Arctic Ocean for Canada and Denmark this definition depends most of all on the question whether the Alpha-Mendeleyev Ridge and the Lomonosov Ridge are a natural prolongation of their land territory and whether these ridges are submarine ridges or natural components of the continental margin. In the former case the continental shelf would stop at 350 nautical miles in the latter case it could extend beyond that distance.⁴⁴ An equidistance line between Canada and Denmark runs along the Lomonosov Ridge, while the Alpha-Mendeleyev Ridge lies north of Ellesmere. Both states collaborate in the gathering of information in this area.⁴⁵ In the joint Lomonosov Ridge—Test of Appurtenance (LORITA) project both states not only collaborated in the gathering of data, but also in the

³⁹ On both these issues see further below.

⁴⁰ See e.g. Riddell-Dixon, note 29 at 371–374.

⁴¹ Winkler, note 26 at 484. This article also provides a good overview of the Danish continental shelf project generally.

⁴² See e.g. C. Marcussen *LOMROG III 2012, 4. Feltrapport* (available at <a76.dk/greenland/north/gr_n_expeditions/lomrog_2012/4_feltrapport.html>).

⁴³ See *Obnavlennaia zaiavka Rossii v Komissiiu OON po granitsam kontinental'nogo shel'fa v Arktike* (Renewed submission of Russian to the Commission of the UN on limits of the continental shelf in the Arctic (available at <www.ocean.ru/content/view/1606/41/>).

⁴⁴ LOS Convention, art. 76(6).

⁴⁵ See for instance “Danish-Canadian Bathymetric and Gravimetric Survey of the Arctic Ocean” of 17 March 2009 (available at <a76.dk/cgi-bin/nyheder-m-m.cgi?id=1237357596%7Ccgifunction=form>).

interpretation of that data. It is considered that this collaboration will reinforce the case of both states.⁴⁶ This also points to a further consideration for cooperation. Agreement in the scientific community on the interpretation of data may reinforce the position of a state in arguing its case before the CLCS.

Canada and Denmark through a joint task force have also been exploring the issue of coordinating their submissions to the CLCS.⁴⁷ According to Riddell-Dixon Canada and Denmark could either consider to prepare a joint submission for the area to the north of Greenland and Ellesmere, insert a common chapter in their individual submissions or prepare entirely separate submissions.⁴⁸ In view of the fact that the continental shelf of Canada and Denmark in part is defined by the same geophysical features they obviously have an interest in assuring that they will be submitting consistent information to the CLCS.

Riddell-Dixon has also suggested that a joint submission by Canada and the United States might be a possibility.⁴⁹ This option might in any case be problematic if the United States would not be a party to the LOS Convention at the time a joint submission would be lodged. The Commission has indicated that in the case of a joint submission “each coastal State has to establish its own set of criteria for the feet of the continental slope, applied formulas, constraints and respective outer limits”.⁵⁰ In other words, the Commission does not accept an argument that states making a joint submission may so to speak borrow each other’s article 76 points and present one undifferentiated outer limit. In that case it might be argued that it might be sufficient that only one state is a Party to the Convention. In view of the Commission’s approach to joint submissions, the United States will have to make its own case. As a non-Party to the Convention it is excluded from making a submission.

Antarctica

There seems to have been limited cooperation in respect of data gathering between Antarctic claimant states.⁵¹ There may be a couple of factors explain-

⁴⁶ See further E. Riddell-Dixon, “Canada and Arctic Politics: The Continental Shelf Extension”, 39 (2008) *Ocean Development and International Law* 343–359 at 350; Foreign Affairs and International Trade Canada, “International Collaboration; Collaboration with Denmark” (available at <www.international.gc.ca/continental/collaboration.aspx>).

⁴⁷ See Inspector General Office, Evaluation Division Foreign Affairs and International Trade Canada *Canada’s Extended Continental Shelf Program (Second Formative Evaluation) Final Report* (October 2011) (available at <www.international.gc.ca/about-a_propos/assets/pdfs/evaluation/cecsp_ppcec11_en.pdf>) 23–24).

⁴⁸ Riddell-Dixon, note 29 at 375.

⁴⁹ *Ibid.*

⁵⁰ CLCS/56 of 4 October 2007, para. 28.

⁵¹ But see chapter 2 of this volume on the United Kingdom reportedly proposing a joint submission with Argentina in relation to territories in dispute between the two parties.

ing why there has been more cooperation in the Arctic in this respect. One may be logistical. Although climate conditions in Antarctica are harsh, ice conditions make it comparably much easier to carry out surveys than in the Arctic, where survey operations may be made difficult or impossible because of pack ice. Another reason may be the extent of overlapping areas of continental shelf. These are much more extensive in the Arctic than in Antarctica.

APPROACHES TO OVERLAPPING ENTITLEMENTS

The continental shelf of most states overlaps with that of neighboring states and coastal states have been required to address this issue in making their submissions to the CLCS. States have adopted a number of different approaches in this respect. In some instances, a boundary agreement had already been concluded before states made a submission to the CLCS. For instance, the Russian Federation and the United States delimited their continental shelf boundary beyond 200 nautical miles through an agreement from 1990. The Russian Federation has applied this boundary in defining the outer limits of its continental shelf in its 2001 submission in the Bering Sea and the Arctic Ocean. Denmark/The Faroe Islands, Iceland and Norway agreed on a delimitation of the continental shelf beyond 200 nautical miles in the southern part of the Norwegian Sea in 2006.⁵² This is one of the few examples of the conclusion of a delimitation agreement in connection with the preparation of submissions to the CLCS. The Agreed minutes divide the area by provisional lines, and provide that the area will be divided differently if the consideration of the submission of one or more of the parties by the CLCS indicates that it does not have a sufficiently large entitlement to justify the share of the continental shelf it has been attributed under the Minutes. Denmark/The Faroe Islands, Iceland and Norway have made separate submissions for the area of overlapping continental shelf entitlements in the Norwegian Sea. There does not seem to have been much, if any, cooperation in preparing the submissions. One likely explanation is that Norway was well ahead of the two other states in making its submission, namely in 2006, while the other two states did so in 2009.

In the absence of agreement on the delimitation of the continental shelf states, in making a submission, in general define the outer limits of their continental shelf

⁵² Agreed minutes on the delimitation of the continental shelf beyond 200 nautical miles between the Faroe Islands, Iceland and Norway in the southern part of the Banana Hole of the North East Atlantic of 20 September 2006 (available at <www.regjeringen.no/en/dep/ud/documents/Laws-and-rules/retningslinjer/2006/Agreed-Minutes.html?id=446839>). For an analysis of the Agreed minutes see R.E. Fife "Denmark/The Faroes-Iceland-Norway; Report Number 9–26" in D.A. Colson and R.W. Smith (eds.) *Inter-national Maritime Boundaries* Vol. VI (Martinus Nijhoff Publishers, Leiden: 2011) 4532–4545.

in accordance with their own view on the location of a boundary with neighboring states or extend it beyond that line. The Russian Federation in making its submission in 2001 applied sector lines to define a provisional outer limit in relation to Canada, Denmark and Norway. It is likely that the Russian Federation had consulted with all of its neighbors beforehand.⁵³ Norway and the Russian Federation prior to the submission by the Russian Federation⁵⁴ agreed that in their submission they would employ the line which they consider should be the bilateral boundary as the outer limit of the continental shelf. Both states in reaction to the executive summary of the submission of the other state to the Commission indicated that they accepted that the Commission would consider the submission and that the actions of the Commission shall be without prejudice to the delimitation of the continental shelf between Norway and the Russian Federation. Norway and the Russian Federation concluded an agreement on the delimitation of their continental shelf in 2010, after the Commission had issued recommendations to Norway's submission on the area concerned. Canada and Denmark in reacting to the Russian submission referred to the lack of specific data that would allow a qualified assessment of the submission and indicated that the absence of comments did not imply agreement to or acquiescence in the submission.⁵⁵ The Notes indicate that it is considered that any recommendations by the CLCS are without prejudice to the delimitation of the continental shelf of the Russian Federation with, respectively, Canada and Denmark. This approach allows the CLCS to issue recommendations without prejudice to the delimitation of boundaries between neighboring states.

A similar approach to dealing with neighboring states has been adopted by Australia and Norway for their submissions in relation to their Antarctic territories. An exception in this regard is the continental shelf of Argentina. Norway in its submission does not take into account the potential continental shelf of Argentina and Argentina in the executive summary of its submission does not refer explicitly to boundaries with neighbouring states. Both the western and eastern limit of the Argentine Antarctic territory is located in an area that is also claimed by another state (respectively Chile and the United Kingdom). In both cases Argentina employs the meridian which defines the extent of its Antarctic territory as the lateral limit of the 200-nautical-mile zone of Argentina.⁵⁶ The

⁵³ See *Pravitel'stvo Rossiiskoi Federatsii; Raspriazhenie* (Government of the Russian Federation; Decree) of 24 March 2000 No. 441-r, para. 3.

⁵⁴ Note verbale of 20 March 2002 of the Permanent Mission of Norway to the United Nations to the Secretary-General of the United Nations; see also *Pravitel'stvo Rossiiskoi Federatsii*, note 53, para. 3.

⁵⁵ Note Verbale No. 0145 of 18 January 2002 of the Permanent Mission of Canada to the United Nations to the Secretary-General of the United Nations; Note Verbale File no. 119.N.8 of 4 February 2002 of the Permanent Mission of Denmark to the United Nations to the Secretary-General of the United Nations.

⁵⁶ See for instance, *Outer limits of the Continental Shelf; Argentine Submission, Executive Summary*, Figure 6.

outer limit of the continental shelf beyond 200 nautical miles in the area of the eastern limit of the Argentine sector stops at the seaward extension of this eastern limit. The outer limit line subsequently follows the lateral limit up to its intersection with the 200-nautical-mile limit of Argentina. This part of the line is identified as “international limit”.⁵⁷

CONSIDERATION OF SUBMISSIONS BY THE CLCS

The CLCS has thus far issued recommendations on three submissions in relation to the Arctic and Antarctica: that of the Russian Federation in relation to among others the Arctic Ocean and the Barents Sea, that of Norway in relation to the Norwegian Sea, the Barents Sea and the Arctic Ocean, and that of Australia in relation to among others its subantarctic islands of Heard and MacDonal.

The Russian Federation

In 2002, the Commission recommended the Russian Federation to make a revised submission for the Arctic Ocean based on the findings contained in the recommendations.⁵⁸ It seems likely that the Commission in particular took issue with the role of the Alpha-Mendeleyev Ridge and the Lomonosov Ridge in establishing the outer limits of the continental shelf of the Russian Federation. The submitted outer limit of the continental shelf along the ridges extended beyond 350 nautical miles. In other words, the Russian Federation considered that they were not submarine ridges in the sense of article 76(6) of the Convention, in which case the outer limit of the continental shelf shall not exceed 350 nautical miles. The Commission may have concluded either that the submission pointed to the fact that the Alpha-Mendeleyev Ridge and the Lomonosov Ridge are submarine ridges in the sense of article 76(6) or that these ridges did not form a natural prolongation of the land territory of the Russian Federation. In the latter case they cannot contribute at all to the definition of the outer limit of the continental shelf.⁵⁹ When the Russian Federation had made its submission to the CLCS, the United States had also commented on this aspect of the submission. Referring to scientific literature, the United States argued that the Alpha-Mendeleyev Ridge⁶⁰ and the Lomonosov Ridge did not constitute a natural prolongation of the land

⁵⁷ *Ibid.*, p. 201.

⁵⁸ See *Oceans and Law of the Sea; Report of the Secretary-General; Addendum (A/57/57/Add.1 of 8 October 2002)*, para. 41.

⁵⁹ Both these views have been submitted in commentaries on the Russian submission and the Commission’s recommendations on it (see further Oude Elferink, note 3 at 151–152).

⁶⁰ Letter of the Permanent Representative of the United States to the Under-Secretary for Legal Affairs, United Nations, 28 February 2002, Annex. The Alpha-Mendeleyev Ridge is also referred to as two separate ridges.

territory but are separate features of the ocean floor. The United States proposed a further consideration and a broad debate before any recommendation would be made by the Commission.⁶¹ Interestingly, the United States subsequently has come around to a different view. As has been observed by Margaret Hayes:

Our own study of the area, together with the submissions of countries and the Commission's recommendations on proposed limits, are contributing to an evolving understanding of the law and science involved in delimiting the extended continental shelf.⁶²

It is not known to what extent the comments of the United States on the Russian Federation's submission played a role in its consideration by the CLCS. In the case of the subsequent submission by Brazil, the Commission explicitly instructed the subcommission dealing with the submission not to take the observations of the United States into account.⁶³ This makes it likely that the United States' commentary also did not have any (formal) role in the consideration of the submission of the Russian Federation.⁶⁴

A recent Russian publication has been quite critical about the Commission's 2002 recommendations, referring to them as being distinctly negative in character, tendentious and taking a hard position trying to narrow the Russian continental shelf as much as possible.⁶⁵ This criticism seems somewhat curious as this same publication details that the knowledge about the geology of the Arctic has developed markedly in recent years and that this can be used to reinforce the submission of the Russian Federation and could also be used by Canada and Denmark to support their cases.⁶⁶

⁶¹ Ibid.

⁶² Margaret F. Hayes "US Continental Shelf Policy" in M.H. Nordquist, J.N. Moore and T.H. Heidar (eds.) *Changes in the Arctic Environment and the Law of the Sea* (Martinus Nijhoff Publishers, Leiden: 2010), 469–476 at 475.

⁶³ CLCS/42 of 14 September 2004, para. 17.

⁶⁴ Interestingly, one Russian publication has observed that the Commission's 2002 recommendations in respect of the Mendeleev Ridge were "in full agreement with the note of the USA to the Commission" (N.P. Laverov et al. "Bazovaia model' tektonicheskogo razvitiia Arktiki kak osnova dlia podgotovki obnovlennoi zaiavki Rossii v Komissiiu OON na ustanovlenie vneshnei granitsy kontinental'nogo shel'fa (Basic model of the tectonic development of the Arctic as basis for the preparation of a renewed submission of Russia to the Commission of the UN for the determination of the outer limits of the continental shelf) 2012 No. 2 (6) *Arktika* 4–19 at 6. Another shorter article in English on this same topic is N. Laverov and L. Lobkovsky "Geodynamic model of the Arctic evolution and substantiation of submission to the UN Commission concerning the establishment of the outer limits of the [sic] Russia's continental shelf in the Arctic" (2012 No. 2) *The Arctic Herald* 28–33.

⁶⁵ Laverov et al., note 64 at 6.

⁶⁶ Ibid., 17.

Following the Commission's recommendations, further research by the Russian Federation has been aimed at gathering additional geological and geomorphological data.⁶⁷ This further data has been used by Russian scientists for developing a new model of the tectonic development of the Arctic. On the basis of this model it is considered possible to substantiate that the Alpha-Mendeleyev Ridge and the Lomonosov Ridge are part of the continental margin of the Eurasian and North American continents.⁶⁸ This would allow the Russian Federation to submit the same outer limits extending to the area of the geographical North Pole as it did in 2002.⁶⁹ The new model of the Arctic has been presented to representatives of the Russian, American, Canadian, and Danish agencies working on the submissions to the CLCS in 2010 and to two international conferences in 2011 and 2012.⁷⁰ During a session of a joint coordination council of the Federal Agency on Mineral Resources and the Russian Academy of Sciences in March 2012 the model was accepted as a basis for an updated version of a Russian submission.⁷¹ According to a number of sources, the Russian Federation is expected to make a renewed submission to the Commission by 2014.⁷²

Norway

Norway made a submission in relation to the Norwegian Sea, Barents Sea and Arctic Ocean in 2006. One of the issues in relation to the Norwegian submission is the status of the Svalbard Archipelago. Norway has sovereignty over the archipelago. This has been recognized through the Spitsbergen Treaty.⁷³ Apart from recognizing the sovereignty of Norway over the archipelago, the Treaty accords equal rights to the nationals of the other Parties in respect of particular economic activities. These provisions of the Treaty are applicable to the territory of Svalbard, including the territorial waters (article 3). Subsequently, the question has arisen if the Treaty has any implications for the maritime zones beyond the territorial sea, such as the continental shelf. Norway has taken the position that the Treaty is not applicable to the continental shelf and fishery zone of Svalbard, but this view is not generally accepted. Other states in general do seem to accept that the Treaty does not impose any restrictions on Norway as far as the

⁶⁷ See R. Macnab, "Submarine Elevations and Ridges: Wild Cards in the Poker Game of UNCLOS Article 76", 39 (2008) *Ocean Development and International Law* 223–234 at 226; ITAR-TASS "Russia to make to UN its stake to fix Arctic shelf limits" of 6 August 2007 reporting on remarks by a representative of the Ministry of Natural Resources of the Russian Federation; Laverov et al., note 64.

⁶⁸ See Obnavlennaia zaiavka, note 44; Laverov et al., note 64 at 4–19 in particular at 17.

⁶⁹ Laverov et al., note 64 at 17.

⁷⁰ Obnavlennaia zaiavka, note 44.

⁷¹ Laverov and Lobkovsky, note 64 at 33.

⁷² See Obnavlennaia zaiavka, note 44; Laverov et al., note 64 at 4.

⁷³ Treaty concerning the Archipelago of Spitsbergen of 9 February 1920 (2 LNTS 7).

determination of the extent of maritime zones is concerned.⁷⁴ In the executive summary of its submission Norway did not include any reference to the Spitsbergen Treaty. This implied that Norway took the view that the implementation of article 76 did not raise any questions in respect of the Treaty.⁷⁵

The Russian Federation and Spain in a reaction to the submission of Norway mentioned the issue of the status of Svalbard.⁷⁶ The Russian Federation also indicated that its reaction was without prejudice to its position in respect of the Spitsbergen Treaty and accordingly to the regime of the maritime zones around Svalbard. Spain indicated that it did not intend to pronounce itself on the competence of Norway to establish new maritime zones from Svalbard, but wished to reiterate that the Treaty's provisions concerning equal access were also applicable to the continental shelf. In a reaction to the Spanish note verbale Norway indicated that the issues raised by Spain did not affect in any manner the interpretation or application of the rules contained in article 76 of and Annex II to the LOS Convention.⁷⁷

The Commission adopted recommendations in respect of the submission of Norway on 27 March 2009. A general observation by the Commission on its recommendations to Norway is pertinent to the Spitsbergen Treaty:

The Recommendations of the Commission only deal with issues related to article 76 and Annex II to the Convention and are without prejudice to matters relating to delimitation between States, or application of other parts of the Convention or any other treaties.⁷⁸

The recommendations of the CLCS on a number of points diverge to some extent from Norway's submission. For instance, the subcommission dealing with the Norwegian submission had indicated that the data provided by Norway in the Arctic Ocean in one case did not sufficiently prove the location of the foot

⁷⁴ For an exhaustive discussion of these questions see G. Ulfstein, *The Svalbard Treaty; From Terra Nullius to Norwegian Sovereignty* (Scandinavian University Press, Oslo: 1995). For a more recent discussion see D.H. Anderson, "The status under international law of the maritime areas around Svalbard", 40 (2009) *Ocean Development and International Law* 373–384.

⁷⁵ See also Rules of Procedure, note 14 at Annex I, para. 2.

⁷⁶ Note No. 82/n Note Verbale of 21 February 2007 of the Permanent Mission of the Russian Federation to the United Nations to the Secretary-General of the United Nations; Note Verbale of 3 March 2007 of the Permanent Mission of Spain to the United Nations to the Secretary-General of the United Nations.

⁷⁷ Note Verbale of 28 March 2007 of the Permanent Mission of Norway to the United Nations to the Secretary-General of the United Nations.

⁷⁸ Summary of the recommendations of the Commission on the Limits of the Continental Shelf with regard to the submission made by Norway in respect of areas in the Arctic Ocean, the Barents Sea and the Norwegian Sea on 27 November 2006 (adopted by the Commission on 27 March 2009 with amendments), section III, para. 8.

of the continental slope and recommended Norway to employ a more landward point. Norway subsequently submitted additional information, which resulted in a more seaward foot of slope point. This new point also led to a more seaward location of the outer limit of the continental shelf.⁷⁹ The summary of the recommendations of the Commission indicates that the Commission will in principle work towards recommendations through a dialogue with the submitting state. Norway has amended or supplemented the original submission on more than one occasion or proposed different points.⁸⁰ Norway has indicated that it will comply with the recommendations of the Commission. The Norwegian Minister of Foreign Affairs has declared that “[t]he recommendations provide a basis on which Norway can establish the limits of its continental shelf in the High North”.⁸¹

Subantarctic Islands

The submissions of coastal states to the Commission indicate that in three cases the outer limits of the continental shelf of subantarctic islands in part extend into the Antarctic Treaty area.⁸² This concerns the submission of Australia in respect of Heard Island and the McDonald Islands on the one hand and Macquarie Island on the other,⁸³ and of the United Kingdom in respect of South Georgia and the South Sandwich Islands. The submission of information in respect of that part of the outer limits of the continental shelf of these islands is in accordance with the general approach in respect of these islands under the ATS. It can furthermore be noted that no state, as far as is known, has made observations in respect of this aspect of these submissions of Australia and the United Kingdom.⁸⁴ The consideration of these submissions by the Commission nonetheless raises questions concerning the interaction with the ATS.

In the case of Australia, the outer limit of the continental shelf of Heard Island and the McDonald Islands extends to the 200-nautical-mile limit of the Antarctic

⁷⁹ *Ibid.*, 11–16.

⁸⁰ In the case of the Norwegian Sea this has led to a landward shift of the outer limit which was initially submitted (see *ibid.*, paras. 79–80).

⁸¹ Extent of Norway’s continental shelf in the High North clarified (Press release 15.04.2009 No. 025/09 of the Ministry of Foreign Affairs of Norway) (available at www.regjeringen.no/en/dep/ud/press/News/2009/shelf_clarified.html?id=554718).

⁸² On this issue see also A.D. Hemmings and T. Stephens “Reconciling Regional and Global Dispensations: the Implications of Sub-Antarctic Extended Continental Shelf Penetration of the Antarctic Treaty Area” 6 (2008) *The New Zealand yearbook of international law* 273–291.

⁸³ Macquarie Island is not further considered here as its continental shelf does not overlap with the continental shelf of territory south of 60° S.

⁸⁴ None of the notes of states lodged with the Secretary-General in reaction to the publication of the executive summary of these submissions raises this issue.

continent.⁸⁵ The United Kingdom has taken the same approach in its submission in respect of South Georgia and the South Sandwich Islands. The continental shelf beyond 200 nautical miles of all of these islands also overlaps with the continental shelf beyond 200 nautical miles of Antarctica. In the case of Australia this is indicated by a comparison of the outer limit of the continental shelf of Heard Island and the McDonald Islands and the outer limit of the continental shelf of the Australian Antarctic Territory contained in Australia's submission.⁸⁶ In the case of the United Kingdom this appears from a comparison of the submission of the United Kingdom to that of Argentina. The continental shelf beyond 200 nautical miles of the Argentine Antarctic territory overlaps with that of the islands. These overlaps raise the question how the establishment of the outer limits of these subantarctic islands in accordance with article 76 relates to the obligations of states under the Antarctic Treaty.

In its recommendations to Australia, the Commission in respect of the continental shelf of Heard Island and the McDonald Islands for the area south of 60° S accepted the fixed outer limit points submitted by Australia, except for the two points (732a and 960a), which are located on the 200-nautical-mile limit of the Australian Antarctic Territory. The Commission's explanation for not accepting these two points is that its recommendations "are without prejudice to matters related to other treaties".⁸⁷ The Commission recommended Australia to proceed to establish the outer limits in accordance with its recommendations.

The Commission's approach to fixed points 732a and 960a might seem to be somewhat puzzling. These points do not extend the outer limit of the continental shelf into the 200-nautical-mile zone of the Antarctic continent and, as such, they would not affect that maritime zone. What is more, as was observed above, fixed points 732a and 960a are not the only points which overlap with the maritime zones of Antarctica. Fixed points 665 to 732 of the outer limit of the continental

⁸⁵ As is suggested by the numbering of the fixed outer limit points of the continental shelf of Heard Island and the McDonald Islands contained in Australia's submission, Australia has also determined the outer limit of the continental shelf of the islands within 200 nautical miles of Antarctica. Points with numbers between 732a and 960a—the numbers of the fixed points, which are located on the 200-nautical-mile limit of Antarctica—are not included in the submission. The summary of the recommendations of the Commission to Australia confirms that these points had indeed been established by Australia (Summary of the Recommendations of the Commission on the Limits of the Continental Shelf (CLCS) with regard to the submission made by Australia on 15 November 2004; Recommendations adopted by the Commission on 9 April 2008, 12, Figure C.2).

⁸⁶ See also A. Serdy, "Towards Certainty of Seabed Jurisdiction beyond 200 Nautical Miles from the Territorial Sea Baseline: Australia's Submission to the Commission on the Limits of the Continental Shelf", 36 (2005) *Ocean Development and International Law* 201–217 at 210.

⁸⁷ Summary of the Recommendations, note 85 at para. 53.

shelf of Heard Island and the McDonald Islands are within the outer limit of the continental shelf beyond 200 nautical miles of the continental shelf of the Australian Antarctic Territory submitted by Australia.⁸⁸ This raises the question why the Commission has made this distinction between points 732a and 960a and points 665 to 732. If defining points on the 200-nautical-mile limit was considered to be prejudicial to other treaties, this must *a fortiori* be the case for points lying inside the continental shelf of Antarctica.

Australia has defined the outer limits of the continental shelf of Heard and MacDonal Island in 2012. Interestingly, this includes points 732a and 960a and other points on the 200-nautical-mile limit on which the Commission did not issue recommendations.⁸⁹ Consequently, this part of the outer limits of the continental shelf has not been established on the basis of the recommendations of the Commission. As article 76(8) of the LOS Convention indicates outer limits established on the basis of the recommendations shall be final and binding. The Australian approach could be explained by a number of reasons. It could be argued that there is no need to receive recommendations on points that are located at the 200-nautical-mile limit. Moreover, if it is considered that the continental shelf beyond 200 nautical miles of a territory stops where it meets the 200-nautical-mile limit of another territory, it is appropriate to not fix that limit permanently, but allow it to shift if the 200-nautical-mile limit changes due to shifts in the baselines.

Another question is whether the establishment of the outer limits of the continental shelf of Heard Island and the McDonald Islands by Australia, to the extent that it overlaps with the continental shelf of Antarctica, would be incompatible with the obligations of Australia under the ATS. This matter is not explicitly addressed in the Antarctic Treaty. It could be argued that the establishment of such outer limits would be contrary to the object and purpose of the Antarctic Treaty, which, as is indicated by the preamble, is *inter alia* intended to maintain the *status quo* in the Antarctic Treaty area and maintain it for mankind. However, this view does not find support in later practice in respect of subantarctic islands in the framework of the ATS. In connection with the adoption of Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA)⁹⁰ it was explicitly acknowledged that it did not apply to the continental shelf of the subantarctic islands.⁹¹ However, the interpretative statement does not address the delimitation between those shelf areas and that of the Antarctic continent. In defining the outer limits of the continental shelf of Heard Islands and the

⁸⁸ See also Serdy, note 86 at 210.

⁸⁹ Points 732a and 960a of contained in the Australian submission correspond to points HMI-CS-905 and HMI-CS-627 contained in Schedule 3 of the Proclamation.

⁹⁰ (1988) 27 ILM 868.

⁹¹ A similar approach has been adopted in relation to the 200-nautical-mile zones of sub-antarctic islands that overlap with the area of application of CCAMLR.

MacDonald Islands Australia effectively has limited the potential continental shelf of the Antarctic continent. It could be argued that this affects the *status quo* established by the Antarctic Treaty.⁹²

The preceding remarks also apply to the continental shelf of South Georgia and the South Sandwich Islands. In view of the territorial dispute between the United Kingdom and Argentina it is unlikely that the Commission in this case in the foreseeable future will adopt recommendations which will allow the United Kingdom to establish permanent limits for this area. Argentina has indicated that in view of the dispute it considers that the Commission should not consider the submission and that it would object to the Commission making recommendations.⁹³

CONCLUSIONS

The central research question of the project is concerned with determining the interactions between global and regional regimes in the field of the law of the sea and to also take into consideration how overarching global institutional frameworks created by the LOS Convention apply. For the current chapter, the global regime is provided by article 76 of the LOS Convention and two of the Convention's institutions, the CLCS and to a lesser extent the SPLOS, are playing a role in the implementation of article 76. There can be no doubt that article 76 provides the framework for determining the extent of continental shelf entitlements of coastal states. This not only applies to the States Parties to the LOS Convention, but also for the United States, the only state in the Arctic that is not a Party to the Convention. Not being a Party to the Convention, the United States is not entitled to make a submission to the CLCS, even if it were to do this jointly with a State Party to the Convention.

The CLCS has a central role to play in the implementation of article 76. In the case of Antarctica, the Rules of Procedure of the Commission have shaped the approach of the Antarctic claimant states in working out a solution that prevents the implementation of article 76 being perceived to upset the agreement to disagree over the status of the Antarctic territory contained in the Antarctic Treaty. This solution has been worked out between the claimant states with involvement of the Russian Federation and the United States. Other interested states have played a much more limited role in working out this solution. This is not really surprising. The implementation of article 76 first of all concerns coastal states. Third states generally have a limited role to play in this process. If a claimant state would have wanted to pursue a submission to the CLCS, other interested states could have used the Commission's procedures to block its consideration.

⁹² Cf. Hemmings and Stephens, note 82 at 289–290.

⁹³ Letter of 20 August 2009 of the Permanent Representative of Argentina to the United Nations to the Secretary-General of the United Nations.

The CLCS in a number of cases has refrained from considering a submission in a case in which a third state indicated that a sovereignty dispute existed.

Third states have a significant role to play if a submission is concerned with areas of overlapping entitlements as this will eventually require agreement on a bilateral boundary. The LOS Convention deals with that matter in article 76(10) and article 9 of its Annex II and the Commission has addressed it in its Rules of Procedure. These mechanisms have provided a satisfactory basis for states to address this matter in making submissions to the CLCS.

The solution that has been adopted by the Antarctic claimant states has at least for the time being prevented a conflict over the implementation of article 76. Submissions that have been made in relation to Antarctic territories will not be considered and other claimant states have been able to postpone their submission for an indefinite period of time. The discussion concerning the continental shelf of Australia's subantarctic islands of Heard and MacDonal suggests that Australia's approach might raise some questions concerning the relationship between the implementation of article 76 and the ATS and the relation between Australia's definition of the outer limits and the recommendations of the CLCS.

The role of the SPLOS in relation to article 76 has been limited. The Meeting has taken decisions on the time limit for making submissions to the Commission and considered options to deal with the backlog in the work of the Commission. There is general agreement that the Meeting is competent to deal with such procedural aspects of the work of the CLCS. It is unlikely that the Meeting would get involved in the consideration of substantive issues related to the implementation of article 76. Although some states have suggested this from time to time, there is significant opposition to such a role for the SPLOS. The CLCS has taken the position that it has the competence to deal with matters of interpretation in relation to article 76.

In the Arctic, the implementation of article 76 has led to some action at the regional level by the five coastal states of the central Arctic Ocean. Most significant is the Ilulissat Declaration of 2008, which confirmed that the law of the sea provides the legal framework for determining the outer limits of the continental shelf. The five Arctic Ocean coastal states have also consulted with each other on a regular basis concerning matters of common concern in relation to the continental shelf beyond 200 nautical miles. The implementation of article 76 in the Norwegian Sea has remained distinct from that in the Arctic Ocean. The three coastal states had already worked out an arrangement on the delimitation of their overlapping entitlements before 2008 and each has made a submission for the area concerned. This has not involved cooperation with the other states concerned.

The implementation of article 76 is far from complete in the Arctic Ocean. Only Norway has received recommendations of the Commission that allow it to establish final and binding limits. The Russian Federation is still to make a new submission after the CLCS advised it to make a new submission in 2002. The

other states have not yet made a submission and once they have done so they will have to wait a considerable time before the Commission will be able deal with them. One of the main issues that remains to be decided is the classification of the Lomonosov and Alpha-Mendeleyev Ridges. Reports indicate that the three coastal states concerned—Canada, Denmark/Greenland and the Russian Federation—consider that the available data shows that the ridges are part of their continental shelf in their entirety. The consideration of the Commission of a number of submissions, including the 2001 submission of the Russian Federation, indicates that it need not always agree with the views of the coastal state. The preparation of these submissions also highlights the importance of science for article 76 and that developing scientific understanding may significantly impact on its implementation.