Chapter Fifteen

Legal Problems Relating to Differences Arising between Recommendations of the CLCS and the Submission of a Particular State

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I. Introduction

The establishment of the outer limits of the continental shelf is the act of a coastal State but the breadth of the continental shelf is determined by the United Nations Convention on the Law of the Sea¹ (hereafter the “Convention”).² This arises pursuant to Part VI of the Convention, which provides that coastal States have sovereign rights to the continental shelf to the outer edge of the continental margin, or to a distance of 200 nautical miles (hereafter ‘M’) from the baselines from which the breadth of the territorial sea is measured (hereafter ‘baselines’) where the outer edge of the continental margin does not extend up to that distance. Those coastal States that intend to establish the outer limits of the continental shelf shall, pursuant to Article 76 of the Convention, submit relevant information on the outer limits to the Commission on the Limits of the Continental Shelf (hereafter the “Commission”). The Commission is a treaty body composed of experts in the fields of geology, geophysics or hydrography. The experts serve in their personal capacities and their expenses are defrayed by the nominating State. The Commission is mandated “to make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf.”³ Although it is a technical

* The present views are strictly personal to the author.

³ Excerpt from Article 76(8) of the Convention.
treaty-created body, it has been argued, “one of the cardinal functions of the Commission must necessarily be to interpret or apply the relevant provisions of the Convention – an essentially legal task.”

The above is susceptible to raising some legal problems. Pursuant to Article 76(8) of the Convention the establishment of the outer limits of the continental shelf that is done on the basis of the recommendations of the Commission is “final and binding.” While submission of data to the Commission is mandatory for those coastal States which intend to establish the outer limits of the continental shelf, there is no primary obligation incumbent on coastal States to establish their outer limits on the basis of the recommendations of the Commission although, pursuant to Article 7 of Annex II to the Convention, coastal States shall establish the outer limits in conformity with Article 76(8) of the Convention. This implies that a discontented submitting coastal State “is not denied the right to reject the Commission’s approach” and may establish its outer limits otherwise than on the basis of the recommendations of the Commission. Given the role of the Commission, and the final and binding characteristics which, in principle, are conferred to outer limits that are based on its recommendations, a presumption of validity may be assumed to accompany the recommendations of the Commission. Despite the fact that coastal States may disregard the recommendations of the Commission, outer limits established otherwise than on basis of the recommendations of the Commission, may, in principle, not be opposable to other States.

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5 Excerpt from Article 76(8). See McDorman who infers that the “final and binding” wording does not “remove from other states their capacity to reject (protest and thus not accept) a state’s continental shelf outer limit […] States are not deprived of their legal right to disagree with another’s state’s established outer limit even if that outer limit delineation can be said to be on the basis of Commission recommendation:” Ted L. McDorman, ‘The Role of the Commission on the Limits of the Continental Shelf: A Technical Body in a Political World’, (2002) 17 The International Journal of Marine and Coastal Law, p. 315.


8 It is, however, argued that this function of the Commission does not curtail the competence of States Parties to interpret the Convention. See, e.g., the International Law Association, Toronto (2006), Legal Issues of the Outer Continental Shelf, Conclusion No. 1, p. 11, accessible at <http://www ila-hq-org/en committees/index cfm /cid/33>, 1 June 2010.