CHAPTER FOUR

THE OUTER LIMITS OF THE CONTINENTAL SHELF IN THE POLAR REGIONS

Alex G. Oude Elferink

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.
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

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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.