Delimitation of the Continental Shelf and Determination of the Outer Limits of the Continental Shelf beyond 200 Nautical Miles in Areas of Overlapping Claims: The Nordic Model

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1 Introduction: The Legal Framework

Many provisions of the United Nations Convention on the Law of the Sea (Convention) and related instruments are applicable to the case of overlapping claims by two or more coastal States to a continental shelf beyond 200 nautical miles (M).

According to article 83 of the Convention, the delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV of the Convention on settlement of disputes. Pending agreement, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, are not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation. Article 83 is identical to article 74, which deals with the delimitation of the Exclusive Economic Zone, and it applies to the entire continental shelf, both within and beyond 200 M.

Article 76, which is one of the most complex provisions of the Convention, sets out the definition of the continental shelf and includes different formulae and maximum limits. Paragraph 8 of article 76 provides that the coastal State shall submit information on the limits of the continental shelf beyond 200 M from the baselines from which the breadth of the territorial sea is measured to

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the Commission on the Limits of the Continental Shelf (CLCS, Commission), which is composed of scientific experts and set up under Annex II to the Convention. The Commission 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 recommendations shall be final and binding.

The role of the Commission is limited to cases where coastal States claim a continental shelf beyond 200 M. However, in the case of disputed areas, including overlapping claims by two or more coastal States to a continental shelf beyond 200 M, the role of the CLCS is very limited. The Convention recognizes that delimitation of the continental shelf is a matter for States which must not be prejudiced. According to paragraph 10 of article 76, the provisions of that article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts. Similarly, article 9 of Annex II to the Convention provides that the actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts.

Rule 46 of the Rules of Procedure of the Commission and its Annex I, which deal with submissions in case of a dispute between States with opposite or adjacent coasts or in other cases of unresolved land or maritime disputes, are in full accordance with the Convention. Rule 46 provides, inter alia, that the actions of the Commission shall not prejudice matters relating to the delimitation of boundaries between States. According to paragraph 1 of Annex I to the Rules of Procedure, the Commission recognizes that the competence with respect to matters regarding disputes which may arise in connection with the establishment of the outer limits of the continental shelf rests with States.

According to paragraph 5(a) of Annex I to the Rules of Procedure, in cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by any of the States concerned in the dispute. However, the Commission may consider one or more submissions in the areas under dispute with prior consent given by all States that are parties to such a dispute. In that case, according to paragraph 5(b), the submissions made before the Commission and the recommendations approved by the Commission thereon shall not prejudice the position of States which are parties to a land or maritime dispute.

Pursuant to paragraph 3 of Annex I to the Rules of Procedure, a submission may be made by a coastal State for a portion of its continental shelf in order not to prejudice questions relating to the delimitation of boundaries between States in any other portion or portions of the continental shelf for which a