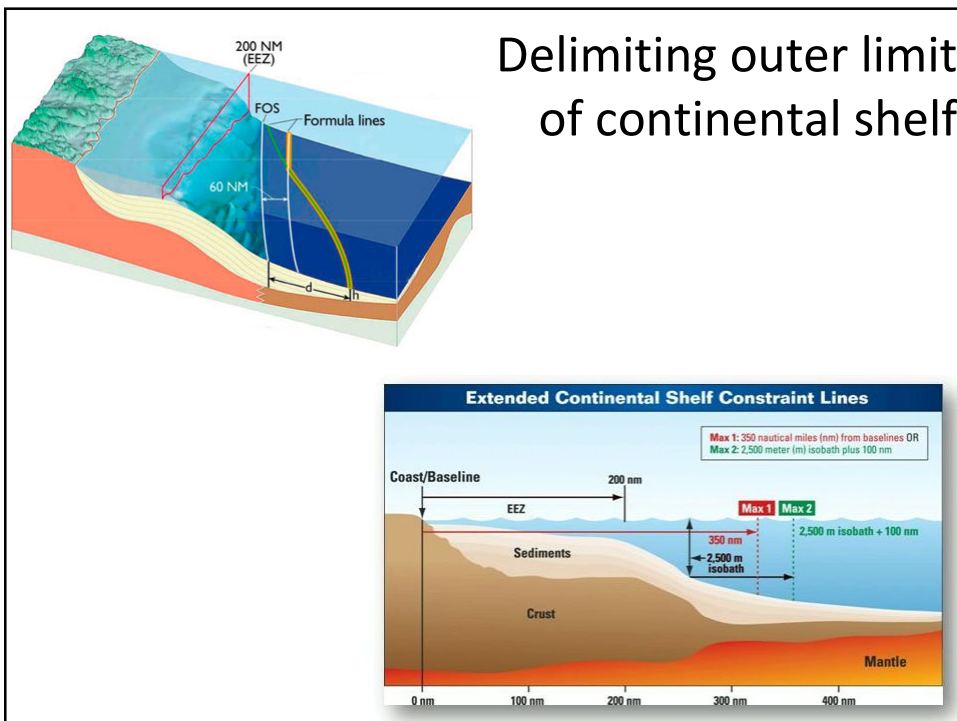


The Exercise of Coastal State Rights on the Outer Continental Shelf pending establishment of its Outer Limit

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Procedure for establishing outer limit

- Coastal State submission to the Commission on the Continental Shelf (CLCS)
- Recommendation from CLCS
- Outer limit established on basis of CLCS recommendation is 'final and binding'

Coastal State rights on outer continental shelf (OCS)

- exploration and exploitation of mineral resources
- exploration and exploitation of sedentary species
- authorisation of scientific research in areas of exploitation and 'detailed exploratory operations'
- regulating erection and operation of artificial islands, installations and structures
- regulating laying of cables and pipelines by other States
- establishment of marine protected areas

Submissions

- 61 submissions so far
- 40+ more likely
- 18 recommendations (ca. 4 p.a. on average) so far
- So many States that have made a submission are likely to have to wait several years for a recommendation

The slow pace of recommendations raises the question:

May a coastal State exercise its rights on the outer continental shelf before its outer limit has been established in accordance with UNCLOS procedure?

A coastal State's rights on its continental shelf exist ipso facto and ab initio, so are not dependent on CLCS recommendation

But

If a coastal State exercises its OCS rights, it risks infringing other States' rights if the area where the rights are exercised turns out eventually not to be part of its OCS but part of the Area

Likelihood of risk varies, depending on the right concerned

Exploitation of mineral resources

- ❖ If area of exploitation is OCS, exploitation on basis of continental shelf rights (Art. 77)
- ❖ If area of exploitation is not OCS but part of Area, exploitation would breach Art. 137

How should a coastal State proceed?

- In *Bangladesh/Myanmar* ITLOS found there was no 'significant uncertainty' that each State had an OCS, even though no CLCS recommendation. This suggests that if there is no 'significant uncertainty' that the area concerned is OCS, a coastal State may exploit mineral resources.

- If there is 'significant uncertainty', coastal State should not exploit, otherwise breach of Art. 137
- However, seismic testing for hydrocarbons and prospecting for polymetallic nodules/sulphides/crusts would probably not breach Art. 137
- Analogies with exploitation in undelimited areas of overlapping continental shelves. *Guyana/Suriname* and *Aegean Sea* cases: actions that do not cause a physical change to marine environment, OK
- Possibility of provisional measures by ISA/another State against coastal State (Art 187, Annex VI Art 25) and vice versa (Art 290)

Sedentary species

- If no doubt area is OCS, coastal State may exploit sedentary species
- If there is doubt, coastal State may still exploit – but under high seas freedom of fishing. However, it could not regulate exploitation by other States because that would interfere with their high seas freedom of fishing



Marine protected areas (MPAs) on OCS

If there is no doubt that the area concerned is OCS, a coastal State could establish MPA within which it could:

- prohibit exploration and exploitation of mineral resources and sedentary species and the erection of artificial islands, installations and structures
- regulate laying of cables and pipelines

However, it could not regulate the conduct of marine scientific research as the MPA was not intended to be used for resource exploitation for the foreseeable future.

MPAs on OCS (cont)

Could a coastal State regulate:

- ☐bioprospecting ? Yes, if bioprospecting aimed at sedentary species
- ☐bottom trawling? Probably if it affected sedentary species, which might include cold-water coral reefs



Portuguese MPAs

