

**INTRODUCTORY NOTE ON ISSUES CONCERNING
RIGHTS/OBLIGATIONS AND DEADLINES UNDER PART VI OF UNCLOS IN
RELATION TO THE EXTENDED CONTINENTAL SHELF**

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1. In October 2004 Commonwealth Law Ministers of Small Jurisdictions issued a Communiqué concerning the implementation of Article 76 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Ministers recommended that: “The Commonwealth Secretariat should prepare a summary of the rights and obligations in respect of an extended continental shelf under UNCLOS.” The Special Advisory Services Division (SASD) of the Commonwealth Secretariat subsequently decided to expand the focus of this report to include a legal opinion on the situation post-2009 for countries that failed to meet the deadline imposed under UNCLOS for submission to the Commission on the Limits of the Continental Shelf (Commission) or (CLCS) established pursuant to Annex II of UNCLOS.

2. In accordance with these decisions I have been asked to prepare:

- (a) a short report (no more than 5 pages), on the rights and obligations in respect of the extended continental shelf under UNCLOS;
- (b) a short discussion paper on the likely post-2009 situation for those countries who will have failed to meet the UN deadline for the submission of extended continental shelf claims to the CLCS.

3. This Introductory Note addresses both issues and is divided into two parts. Part I reports on the rights and obligations of states in respect of the extended continental shelf under UNCLOS; Part II discusses the legal situation for those states that might fail to meet the UNCLOS deadline for submission of information on the limits of the continental shelf beyond 200 nautical miles from baselines.

**I. The Rights and Obligations of States in respect of the Extended Continental Shelf under
UNCLOS**

3. UNCLOS was adopted on 10 December 1982 and entered into force on 16 November 1984. The Rights and Obligations of States in respect of the Extended Continental Shelf under 1994. One hundred and forty seven (147) states and the European Community are parties. Part VI of UNCLOS (Articles 76 to 85) addresses the continental shelf.

4. Article 76(1) provides:

“The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the

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continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.”

Under Article 76(1) there is therefore a distinction between the legal definition of the continental shelf and its geographical definition. Article 76(2) and 76(4) to (6) establish the substantive rules governing the geographical location of the outer limits of the extended continental shelf. Articles 76(7) to (9) set out the steps that are to be taken by a coastal state in delineating and establishing an extended continental shelf. In sum, the rules provide that areas of the sea-bed that lie beyond the continental margin are included in the continental shelf so long as they are within 200 miles of the coast. Where the continental margin (which is defined in Article 76(3) as the shelf, slope and rise and excluding the deep oceanic floor with its ocean ridges) extends beyond 200 miles, specific rules provide for the calculation for the purposes of UNCLOS of the outer limit of the continental shelf.

5. Where the continental shelf extends beyond 200 nautical miles from baselines, a coastal state may delineate and establish the outer limits of its continental shelf up to the outer seaward limit permitted by Article 76(4) to (6) of UNCLOS, which is either

- up to 350 miles from the baselines, or
- within 100 miles of the 2,500 metre isobath.

Within those outer limits, Article 76(4)(a) provides that the outer edge of the delimited shelf must be a line that is either

- where “the thickness of sedimentary rocks [forming the sea bed] is at least 1 per cent of the shortest distance from such point to the foot of the continental slope”; or
- of “fixed points not more than 60 nautical miles from the foot of the continental slope.”

For the purposes of this paper the area of continental shelf beyond the 200 mile limit and up to the outer limit is referred to as “the extended continental shelf”.

6. What are the rights and obligations of the coastal state in its extended continental shelf? The rights of the coastal state are addressed by Article 77 of UNCLOS. On its face this provision draws no distinction between the rights of a coastal state in the continental shelf up to 200 miles and the rights over an extended continental shelf that lies beyond 200 miles. Article 77(1) provides that

“The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.”

Article 77(4) defines the natural resources in question as “the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species”. It is clear therefore that the non-living resources include oil and gas.

7. As mentioned, in general the rights of a coastal in the extended continental shelf are the same as in the area up to 200 miles, although there are certain differences, not least because in the extended continental shelf certain obligations are imposed (see below).² Rights in the extended continental shelf are exclusive: if the coastal state does not explore the extended continental shelf or exploit its natural resources no one else may do so without the express consent of the coastal state (Article 77(3)). Article 81 emphasises that

² Since the living organisms which may be exploited are limited to sedentary species, and since the waters superjacent to the extended continental shelf will be high seas and subject to fisheries freedoms, issues may arise as to whether a particular species is a sedentary species (subject to the exclusive rights of the coastal state) or non-sedentary species (and subject to high seas fishing freedoms).

“The coastal State shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes.”

This applies to all parts of the continental shelf, including the area beyond 200 miles.

8. Within the extended continental shelf the coastal state also has the exclusive right to construct and to authorise and regulate the construction, operation and use of artificial islands and certain installations and structures (Article 80). The exclusive rights of the coastal state in the extended continental shelf are without prejudice to the rights of all states to lay submarine cables and pipelines on the extended continental shelf, subject to certain conditions defined by UNCLOS (Article 79). One material difference between the continental shelf and the extended continental shelf concerns the status of superadjacent waters: in the former they will form part of the exclusive economic zone (if it has been established under Part V of UNCLOS) over which the coastal state exercises sovereign rights, including in respect of fisheries, whereas the waters lying above the extended continental shelf are part of the high seas and therefore subject to the regime of high seas freedoms, including fisheries.

9. As regards obligations within the extended continental shelf, it is clear the exercise of sovereign rights is not dependent upon occupation, whether effective or notional: see Article 77(3). Article 77(3) also makes it clear that “express proclamation” is not required for a coastal state to exercise rights over the continental shelf. This does not mean, however, that a coastal State is free from procedural requirements in relation to any extended continental shelf over which it may wish to exercise sovereign rights.

10. Article 76(7) requires a coastal state to delineate the outer limits of its continental shelf in accordance with certain principles:

“The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.”

11. The obligation to delineate in accordance with these principles applies to any extended continental shelf. Where a coastal state has delineated an extended continental shelf it is required to provide information to the CLCS. Article 76(8) states:

“Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. 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.”

Article 76(8) (together with Article 4 of Annex II of UNCLOS, on which see further below) makes clear that a coastal state is required by UNCLOS to provide “information” on the outer limits of an extended continental shelf, and that it will be bound as a matter of international law by any recommendations which might be made by the CLCS. Relatedly, a coastal state is required to deposit with the Secretary-General of the United Nations charts and relevant information (including geodetic data) that permanently describes the outer limit of its continental shelf (Article 76(9)). This applies also to the extended continental shelf.

12. The relationship between the exercise of rights in an extended continental shelf and the fulfilment of informational and procedural requirements under Article 76(8) and (9) remains an open question that lies beyond the scope of this paper.³ What is clear – as developed below – is that under UNCLOS the limits of an extended coastal shelf - and rights exercised within such limits – will only be “final and binding” if they are established on the basis of a recommendation of the Commission.

13. A coastal state will also have other obligations in respect of the extended continental shelf that do not arise in relation to the continental shelf in the area up to 200 miles. Article 82(1) provides that

“The coastal State shall make payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.”

Oil and gas exploitation in the extended continental shelf will be subject to this obligation. Payments or contributions will be made to the Authority, which shall distribute them to the States Parties in accordance with defined criteria (Article 82(4)). In accordance with Article 82(2) payments or contributions are to be made annually in respect of all production at a site. However, such payments or contributions are only to be made after the first five years of production at a site, beginning in the sixth year at a rate of 1 per cent of the value or volume of production at the site and rising by 1 per cent for each subsequent year until, the twelfth year. Thereafter the payment or contribution will remain at the rate of 7 per cent. A developing state that is a net importer of a mineral resource produced from its continental shelf will be exempt from such payments or contributions (Article 82(3)).

14. Finally, it must be stressed that the rights which a coastal state may exercise in an extended continental shelf are without prejudice to any issues of delimitation of the continental shelf as between states with opposite or adjacent coasts (Article 76(10)). Such delimitation will be subject to the principles concerning delimitation outlined in Article 83 of UNCLOS. They will also need to take into account any recommendations that may have been made by the CLCS.

II. The Likely Post-2009 Situation for Countries that will have failed to meet the UNCLOS Deadline for Submission of Information on the Limits of the Continental Shelf beyond 200 nautical miles from Baselines

15. As indicated above (at paragraph 11), Article 76(8) requires a coastal state to provide information to the CLCS on the limits of an extended continental shelf. Annex II of UNCLOS provides further guidance to the parties and to the CLCS. Article 4 of Annex II elaborates on that requirement:

³ One view is that failure to meet the procedural requirements incurs “no sanction” and does not affect a state’s exercise of rights in an extended shelf, other than its facing “a degree of uncertainty”: Tomas H. Heidar, “Legal Aspects of Continental Shelf Limits” in M. Nordquist et al (eds), *Legal and Scientific Aspects of Continental Shelf Limits* (2004), 19 at 30-31. Other commentators acknowledge the procedural requirements without addressing whether non-compliance with a deadline will have any consequences: see Ted L. McDorman, “The Entry into Force of the 1982 LOS Convention and the Article 76 Outer Continental Shelf Regime”, 10 *Int’l Journal of Marine & Coastal Law* 165 (1995), 176 and “The Role of the Commission on the Limits of the Continental Shelf: A Technical Body in a Political World”, 17 *Int’l Journal of Marine & Coastal Law* 301 (2002), 302; Barry Hart Dubner “Recent Developments in the International Law of the Sea”, 36 *International Lawyer* 721 (2002) at 730. The view has also been expressed that the negotiators of UNCLOS did not turn their minds to the consequences (if any) of non-compliance with a deadline: Myron H. Nordquist (editor-in-chief), *United Nations Convention on the Law of the Sea, 1982: A Commentary*, Vol. 2 (1993), 1000-1018.

“Where a coastal State intends to establish, in accordance with article 76, the outer limits of its continental shelf beyond 200 nautical miles, it shall submit particulars of such limits to the Commission along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of this Convention for that State. The coastal State shall at the same time give the names of any Commission members who have provided it with scientific and technical advice.”

16. Article 76(8) and Article 4 of Annex 2 provide that the information to be submitted is subject to a deadline of ten years from the entry into force of the Convention for the state in question. For those states that were parties to the Convention when it entered into force on 16 November 1994 the ten-year deadline would have expired on 15 November 2004. However, in May 2001 the Meeting of States Parties to UNCLOS adopted Decision SPLOS/72 (Decision 72).⁴ By this Decision the States Parties decided:

“(a) In the case of a State Party for which the Convention entered into force before 13 May 1999, it is understood that the ten-year time period referred to in article 4 of Annex II to the Convention shall be taken to have commenced on 13 May 1999;

(b) The general issue of the ability of States, particularly developing States, to fulfil the requirements of Article 4 of Annex II to the Convention be kept under review.”

The preamble to the Decision identifies the reasons for that Decision, including: (1) delays in the election of the members of the Commission; (2) delays in the adoption by the Commission of its Scientific and Technical Guidelines; and (3) “the problems encountered by States Parties, in particular developing countries, including small island developing States, in complying with the time limit set out in Article 4 of Annex II to UNCLOS”. The Decision followed requests for extensions premised *inter alia* on the disadvantages arising for states as a result of delays as well as difficulties faced by developing states.⁵

17. For the purposes of the situation that may arise post-2009, Decision 72 is significant for at least two reasons:

First, it recognises the right of the States Parties to amend a timetable adopted in the Convention by means of a Decision adopted at the Meeting of the States Parties;
Second, it expressly recognises the problems that developing States – and in particular small island developing States – have in fulfilling the requirements of Article 4 of Annex II.

18. Decision 72 extends to 12 May 2009 the deadline by which states that became parties to UNCLOS before 13 May 1999 are to submit the information to the Commission in accordance with Article 76(8) and Article 4 of Annex II. What might be the consequences for these states of failing to meet that deadline? The same question may also be asked in relation to those states which became parties to UNCLOS after 13 May 1999 and which miss their ten-year deadline. Whilst the principles would appear to be analogous, for the purposes of this discussion paper the focus will be on the states falling within the scope of operative paragraph (a) of Decision 72.

⁴ Decision regarding the date of commencement of the ten-year period for making submissions to the CLCS set out in article 4 of Annex II to the United Nations Convention on the Law of the Sea (29 May 2001), SPLOS/72.

⁵ See: Position Paper on the time frame for submissions to the Commission on the Limits of the Continental Shelf, Submitted by Australia, Fiji, Marshall Islands, Micronesia (Federated States of), Nauru, New Zealand, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu (10 May 2001), SPLOS/67; Notes Verbales from the Government of Seychelles regarding the extension of the time period for submission to the Commission on the Limits of the Continental Shelf; Note by the Secretariat (10 May 2001), SPLOS/66.

19. The question posed is of course connected to the broader issue identified at paragraph 12 above: what is the relationship between a coastal state's right to exercise sovereign rights in an extended continental shelf and the timely submission of information to the Commission in accordance with Article 76(8)?

20. UNCLOS does not address that issue, and it has not been subjected to an authoritative determination. It is an issue that turns on the proper interpretation of UNCLOS and issues of general international law, neither of which may (at this time) point to a definitive view on the consequences, if any, that arise where a coastal state has delineated an extended continental shelf but then failed to provide on a timely basis the requisite information to the Commission, or where a coastal state has not made a delineation within the time limit. The language of Article 76(8) and Article 4 of Annex II suggests that a coastal state's ability to rely upon the established outer limits of a continental shelf beyond 200 miles (and then to exercise sovereign rights over that extended continental shelf) could be dependent upon its having submitted the requisite information to the Commission within the agreed deadline. This is consistent with the approach taken in a background paper prepared by the Secretariat to the Meeting of the States Parties on Article 4 of Annex II, that notes the "compelling reasons" for the coastal states to make submissions to the Commission "in the manner laid down in the Convention":

"By establishing the Commission, the Convention accorded to the coastal State a special procedure for establishing the outer limits of the submarine continuation of the continent where its land territory is located, by means that would be legally accepted and respected by all States Parties to the Convention. There is no other legal means to establish that aim."⁶

21. The Secretariat's Background Paper (which is not binding in any way but which may provide authoritative guidance to the extent that it meets with the approval of the States Parties) adds:

"The Convention does not state that the coastal State loses its right to the continental shelf beyond 200 nautical miles if it does not make a timely submission to the Commission. The Convention offers a means to do two things not provided for by customary law. First, it accords a coastal State a "legal" continental shelf up to 200 nautical miles without asking for any evidence that the shelf exists on geological or geomorphologic grounds — the evidence required for the sea floor to be identified as a submerged continuation of the land territory of a particular State. Second, the Convention permits a coastal State to establish the outer limit of its continental shelf even beyond 200 nautical miles, but in this case upon provision of certain scientific data, with these data to be submitted to the Commission within a 10-year time limit specified in the Convention. The extended legal continental shelf, with an additional 60 to 100 nautical miles past the edge of the continental margin, and with boundaries marked as "final and binding" — two benefits extended by the Convention — are the major impetus for States to submit the particulars of the outer limit line of the continental shelf to the Commission."⁷

22. Against this background (but without prejudice to the answer to the general issue identified above) this paper assumes that the safest course would be for a coastal state to proceed on the basis that the effective exercise of sovereign rights in any extended continental shelf is dependent upon its having: (1) delineated the outer limits of an extended continental shelf; and (2) submitted the information required under Article 76(8) to the Commission within the deadline.

⁶ Issues with respect to article 4 of Annex II to UNCLOS, Background Paper prepared by the Secretariat, SPLOS/64, 1 May 2001, para. 43.

⁷ *Ibid.*, para. 45. The background Paper notes at footnote 15 that "It is only beyond 200 nautical miles that the coastal State has the obligation to prove that its submarine land territory extends beyond 200 nautical miles."

The Consequences of Fulfilling Article 76 Requirements

23. Article 76 provides clear advantages to a coastal state that submits information under Article 76(8) and then obtains a recommendation of the Commission recognising the outer limits of an extended continental shelf. The limits of an extended continental shelf which are consistent with such a recommendation will be “final and binding”. In these circumstances the coastal state will be able to rely on such outer limits against all other Parties to UNCLOS, and within those limits will be able to exercise the rights identified above (at paragraphs 6- 8). The coastal state thereby benefits from a high degree of legal certainty that would not otherwise exist. Such legal certainty will in turn give rise to conditions under which costly and long-term investments are more likely to be made within the extended continental shelf. The possibility cannot be excluded that the outer limits of an extended continental shelf may also be opposable against non-Parties to UNCLOS.⁸

24. A coastal state that does not obtain a recommendation from the Commission will not be able to establish limits to an extended continental shelf that are “final and binding”. This will undermine the ability of the coastal state to rely on its limits against third states, and will also lessen the legal certainty that may be required to attract investments that are inevitably costly. There are therefore considerable advantages associated with following the procedure envisaged by Article 76(8), and doing so within the requisite time limits.

25. At present, in order to benefit from those advantages a state which became a party to UNCLOS prior to 13 May 1999 must submit information on the limits of its extended continental shelf before 13 May 2009. What are the different scenarios for a coastal state that has failed to meet the revised deadline for the submission of extended continental shelf claims to the Commission? At least four scenarios may be envisaged (and no doubt others can be conceived of).

26. *Scenario One:* recognising that it will not meet the deadline the coastal state abstains from delineating the outer limits of its extended continental shelf. In such circumstances the coastal state would deprive itself of the ability to exercise any rights in an extended continental shelf. It is difficult to see why a coastal state would adopt such an approach: as described below, there is no reason to suppose that a state that misses the deadline will necessarily have lost forever the ability to exercise rights over an extended continental shelf.

27. *Scenario Two:* the coastal state delineates the outer limits of its continental shelf but fails to submit any information to the Commission within the Article 76(8) deadline. In such circumstances the coastal state might seek to exercise sovereign right in its extended continental shelf. As described above, however, it would have no legal certainty in the exercise of its rights, with respect to other State Parties or non-Parties, and could not regard its limits as “final and binding”. It may also face objections from other states concerning its purported exercise of sovereign rights over an extended continental shelf established without being based on a Commission recommendation.

28. *Scenario Three:* the coastal state delineates the outer limits of its continental shelf and makes only a partial submission of information to the Commission prior to the deadline of 13 May 2009. For example, it might submit “particulars of ... limits” of its extended continental shelf but fail to provide some or all of the supporting scientific and technical data that the Commission might consider to be necessary for the purposes of adopting a recommendation. In such circumstances the question arises whether the Commission would decline to enter into any consideration of the information submitted or whether it might be willing to accept additional information after 13 May 2009. This is discussed further below.

⁸ This raises questions of general international law which go beyond the scope of this paper: see, for example: Ted L. McDorman, “The Entry into Force of the 1982 LOS Convention and the Article 76 Outer Continental Shelf Regime”, 10 *Int'l Journal of Marine & Coastal Law* 165 (1995), 179 ff.

29. *Scenario Four*: the coastal state delineates the outer limits of its continental shelf and submits all information (particulars of limits, supporting scientific and technical data) to the Commission but only after the deadline of 13 May 2009 has passed. In such circumstances the question arises whether the Commission or the States Parties might be willing to extend the deadline, either upon receipt of the information or in advance of its late submission.

30. The safest route will be for a coastal state to submit all the information before the deadline of 13 May 2009. That is the only situation in which the coastal state can be reasonably certain that it will be able to establish “final and binding” limits of an extended continental shelf on the basis of a Commission recommendation. Beyond that, two possibilities exist: a further extension of the May 2009 deadline, and the submission of partial information within the deadline to be followed by additional information after the deadline.

Further Extension of the May 2009 Deadline

31. There appears to be no legal impediment to a Decision by the States Parties further extending the deadline beyond 13 May 2009 (since the deadline is established by UNCLOS and has been extended by action of the States Parties it would not appear to be open to the Commission itself to extend the deadline, although it could be authorised to do so by the States Parties on a “case-by-case” basis or more generally). Having extended the deadline on one occasion a precedent has been set and there would appear to be no reason in principle why the States Parties might not adopt a further Decision to extend the deadline. Operative paragraph (b) of Decision 72 indicates that the Meeting of the Parties is conscious of the “general issue of the ability of States, particularly developing States, to fulfil the requirements of Article 4 of Annex II” and intends to keep the issue “under review”. This suggests that the Meeting of the Parties would be willing to consider a further request by Parties to extend the deadline, particularly if good reasons could be shown by one or more States that have not been able to meet the deadline. There can be no guarantees, however, that an extension would be forthcoming.

32. Further, the possibility cannot be excluded that the Commission may be willing to consider a submission that has been made after the 13 May 2009 deadline has passed. Article 4 of Annex II (as amended by Decision 72) imposes an obligation on the coastal state to submit information “as soon as possible but in any case within 10 years of [13 May 2009]”. Article 4 is silent as to right of the Commission to consider information submitted after the deadline. The States Parties could adopt a Decision authorising the Commission to consider late submissions, under appropriate conditions. The Commission has not been established for a finite period, and its activities will extend over a lengthy period: as new states join UNCLOS each will have its own ten year deadline after becoming a Party to make submissions to the Commission.

Partial Submissions

33. A further possibility is that a coastal state might be able to “stop the clock” by making a partial submission within the deadline, comprising information that represents the best available at the time (and within the resources available to the state) and which will be supplemented as further information becomes available.

34. There appears to be no provision of UNCLOS or the Commission’s Rules of Procedure that would expressly prohibit this approach. It is contemplated that the Commission may request such further information in the course of considering a submission.⁹

⁹ Para 10(1), Annexe III, Rules of Procedure of the Commission on the Limits of the Continental Shelf (2 July 2004), CLCS/40 (“CLCS Rules of Procedure”), provides that “[a]t any stage ... should the sub-commission arrive at the conclusion that there is a need for additional data, information or clarifications, its Chairperson shall request the coastal State to provide such data or information or to make clarifications”.

35. The completeness or adequacy of information that has been submitted will turn on the facts of each case. Two examples illustrate possible situations. A coastal state might submit complete and timely information and data regarding only a limited area (for example, a delineation may be made identifying points A, B, C and D but supporting data would only be presented as to the scientific basis for line B-C). There is already provision for the submitting coastal state to provide further information at a later date in respect of certain areas in the case of a submission involving a disputed delimitation.¹⁰ However, the fact that this scenario is expressly contemplated could exclude other scenarios for no rules have been provided.

36. Alternatively, a coastal state might present incomplete data in relation to all parts of a delineated extended continental shelf. The Commission is empowered to request supplementary information from States Parties.¹¹ However, where Parties seek to alter their submissions significantly, two issues may arise. First, there is no obligation for the Commission to accept unsolicited further information. Second, there may be an issue of notice to other States Parties. In 2001 the Secretariat stated that “the Commission should have the option of not accepting for consideration a submission that appears to be so bereft of data and material relevant to the outer limits that it cannot proceed with a genuine evaluation of the outer limit line.” States Parties may thus risk the rejection of submissions found to be too incomplete to be useful (presumably by reference to the Commission’s guidelines¹²).

37. In April 2005, at its last Session, the Commission posed the following question to its Legal Counsel:

“Is it permissible, under the United Nations Convention on the Law of the Sea and the rules of procedure of the Commission, for a coastal State, which has made a submission to the Commission in accordance with article 76 of the Convention, to provide to the Commission in the course of the examination by it of the submission, additional material and information relating to the limits of its continental shelf or substantial part thereof, which constitute a significant departure from the original limits and formulae lines that were given due publicity by the Secretary-General of the United Nations in accordance with rule 50 of the rules of procedure of the Commission?”¹³

38. That question has not yet been answered. It appears to be premised on considerations of fairness to other States Parties if a submission was allowed to be so altered by supplementary information that other Parties were effectively denied the opportunity to comment upon the proposal actually and finally considered by the Commission. A state seeking to revise its submission to the Commission could perhaps obviate this concern by requesting of its own initiative that the Depository, the Secretary-General, circulate a summary of the proposed changes to States Parties.

III. Conclusion

39. Under Part VI of UNCLOS a State Party has valuable rights of exploration and exploitation of the natural resources of its extended continental shelf. The exercise of those rights imposes certain obligations that do not arise in relation to the continental shelf up to 200 miles. As noted at paragraph 30 above, it is only by making a submission to the Commission before the 13 May 2009 deadline that a State Party for which the Convention entered into force before 13 May 1999 can be

¹⁰ Para 3, Annexe I, CLCS Rules of Procedure.

¹¹ Para 10, Annexe III, CLCS Rules of Procedure.

¹² Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf (13 May 1999), CLCS/11.

¹³ Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission - Fifteenth session (3 May 2005), CLCS 44, 3 at para [13].

reasonably certain that it will be able to establish “final and binding” limits of an extended continental shelf, on the basis of a Commission recommendation. The possibility exists (and may indeed already have been envisaged) for the States Parties to further extend the May 2009 deadline, although whether (and under what conditions) they might do so raises no legal considerations that cannot be predicted. Similarly, the Commission could conceivably be authorised to consider out-of-time submissions on a case-by-case basis. Finally, the Commission may be able to receive partial submissions before the deadline and then seek additional information after the deadline. Given the legal uncertainties that arise if the deadline is missed, the safest route will be for a State Party falling within paragraph (a) of Decision 72 to make every effort to submit information that is as complete as possible before the deadline of 13 May 2009.