



## Presentation Abstract

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### **Observations on the Article 76 process to date: Coastal states submissions and the work outstanding for the Commission on the Limits of the Continental Shelf**

After almost exactly eleven years since the first submission under UNCLOS by Russia in respect of its continental shelf beyond 200 nautical miles, only 18 of the 61 cases on the CLCS's books have been fully worked through to the recommendation stage. Even with new 'revved-up' working practices under which the latest and subsequent Commissions will be toiling, it's difficult to imagine how the next eleven years are going to see all the coastal states who have (or will have) deposited submissions in accordance with UNCLOS, establishing their rights under Part VI of the 1982 Convention.

Part of the problem is that the due process which the Commission developed for dealing with submissions, and to some extent the restrictions laid out in the Convention itself, are not helpful. On the one hand, the Commission's consistent reluctance to embrace either external experts as additional resource, (allowed under its own Rules of Procedure), or competent international scientific organisations, (allowed under Annex II of the Convention), seems inexplicably counter-productive. On the other hand, Annex II unhelpfully sets the Commission numbers to 21, which at the time of drafting of the Convention may have seemed reasonable, given that the advice from experts then was that the number of likely submissions was to be a manageable 33. As we all know now, we can expect the Commission ultimately to be dealing with around 100, of which nearly half are in a bulge resulting from the May 2009 deadline. The outcome is understandably deeply frustrating for submitting States, and it seems we just can't fix this. We can't draft in more Commissioners, and equally we can't prevail upon the existing ones to work full-time - even if the nominating state would pay them (and few would, we can safely assume). So the status quo will probably prevail for some time - leaving many States, having invested great deals of money and time in delivering on their responsibilities, let down by the process.

We should take stock of the science embedded within this smorgasbord of submissions, in search of more positive reflections on the work in progress. In truth, however, the Article 76 technical exercise is not entirely cerebral. It is as much ensuring that the right data of the right quality are analysed in a way which the Commission can endorse. There is little room for scientific interpretation. Indeed, we can't tell what science is involved in a particular claim, as these are rarely, if ever, public documents. Furthermore, States having neighbours with potentially overlapping shelf areas, routinely - but probably unnecessarily - guard this information jealously. Few clues are discernible from the published Executive Summaries. In fact, it is curious that one of the ways that coastal states now learn how to prepare the strongest case, (or at least one that will be acceptable by the Commission) is not by consulting the Commission's cook-book on Article 76 implementation (otherwise known as the Scientific and Technical Guidelines) but to deconstruct and examine forensically the recommendations prepared by the Commission for each submission as they 'finish' work on them. These reports variously bless, tinker with, or reject States claims, but being stripped-down versions, only offer fragmentary glimpses of what the Commission will pass and what it won't. This detective work facing a submitting State, and the expense involved in second guessing what to leave in and what to leave out, is timewasting at best and somewhat obstructive at worst. So the science of submissions, even in a general sense, remains very much in the closet, rather than out in the open.

More worrying still, is that these observations hardly provide encouragement to the States responsible for the additional forty-odd 'preliminary information' documents - those enjoying extra time thanks to SPLOS 183 - to finish the job. Most are due for conversion to their final form before 2019, but in reality there is now no longer any real deadline. The current Article 76 ambience also doesn't augur well for bringing the few remaining non-ratifying States with potential outer shelf areas to delineate into the fold. It seems that the final links in the slowly emerging outer limit to national maritime jurisdiction may never be forged, and one of the attainable goals of the 1982 Convention missed.

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