



Symposium on Problems of the Outer Continental Shelf

International Tribunal for the Law of the Sea (ITLOS), Hamburg

25 September 2005

The International Foundation for the Law of the Sea (IFLOS) in co-operation with Bucerius Law School Hamburg, the Law of the Sea and Maritime Law Institute of the University of Hamburg and the Federal Maritime and Hydrographic Agency Hamburg/Rostock convened a symposium on *Problems of the Outer Continental Shelf* on the premises of the International Tribunal for the Law of the Sea (ITLOS) in Hamburg on 25 September 2005. It was generously sponsored by the Edmund-Siemers-Foundation and the Zeit-Foundation Ebelin and Gerd Bucerius. The symposium addressed implementation problems of Article 76 of the UN Convention on the Law of the Sea (UNCLOS), the role of the Commission on the Limits of the Continental Shelf (CLCS), revenue sharing as promoted by Article 82 UNCLOS and the settlement of disputes relating to the delineation of the outer continental shelf. The symposium, chaired by *Doris König*, Bucerius Law School Hamburg, and *Rainer Lagoni*, University of Hamburg, attracted 120 scientists and practitioners from more than 40 countries.

The distinguished audience was welcomed by Judge *Dolliver Nelson*, President of ITLOS, who reminded the participants of the fact that although Article 76 introduces a definition of the continental shelf, there are still a couple of problems unsolved that should be a subject of scientific discussion.

The first presentation by *Alex Oude Elferink*, Netherlands Institute for the Law of the Sea, Faculty of Law, Utrecht University, dealt with the legal problems of Article 76 UNCLOS. This provision establishes substantive rules and procedural mechanisms that aim to guarantee stable continental shelf limits, which will not be subject to further changes in the future. The States' entitlement to the continental shelf is based on the well-known observation by the International Court of Justice (ICJ) in the North Sea Continental Shelf cases of 1969 that the continental shelf constitutes a natural prolongation of its land territory. According to Article 76 UNCLOS, there are two alternative definitions of the outer limits of the continental shelf: at



200 nautical miles from the baseline or to the outer edge of the continental margin where it extends beyond that distance. *Oude Elferink* then addressed the question whether the absence of outer limits, defined according to Article 76 (8), has any consequences for the exercise of sovereign rights over continental shelf areas beyond the 200 nautical mile limit. He concluded that this was not the case but that it leaves open the question over the exact extents of the continental shelf which may give rise to future disputes. *Oude Elferink* also discussed the question when and under which circumstances the establishment of outer limits becomes final and binding as stipulated in Article 76 (8) UNCLOS. In his opinion this would not be the case unless the outer limits set by the coastal State remains unchallenged.

The technical problems of Article 76 UNCLOS experienced by coastal States when considering and preparing claims to an extended continental shelf were covered by *Chris Carleton*, Head of the Law of the Sea Division, UK Hydrographic Office. The main challenge for the candidate States is to gather the large amount of data required to satisfy the provisions of Article 76 UNCLOS (2500 meter isobath or outer limit points defined by sediment thickness). Developing States, in particular, are unlikely to raise sufficient funds and expertise for this project. Furthermore, some provisions contained in Article 76 are difficult to apply even if the relevant data have been gathered. *Carleton* took the terms "Foot of the Slope" and "Submarine Ridges" as examples.

Lindsay Parson, National Oceanographic Centre, UK, and *Ron Macnab* (Geological Survey Canada, retired) focused on the Commission on the Limits of the Continental Shelf. *Parson* described the practice and the procedures of the CLCS. It has been established in 1997 and aims to facilitate the implementation of Article 76 UNCLOS. The legal framework concerning the CLCS is laid down in Annex II to the convention. If States want to establish outer limits of their continental shelf they have to submit the relevant data to the Commission. In return the CLCS supports the States by offering technical assistance, training and funds. *Parson's* main concern was the reluctance of States to submit data. Coastal States face a deadline in 2009, and only 4 out of some 40 States have already made their submissions. He estimates that most of the States will miss the deadline or will submit their claim shortly before it. In both cases delays in establishing the outer limits and in securing territorial sovereignty will be the probable consequence. Another concern were the next elections of Commissioners in 2007.



Many of them might be excluded from re-election by the statute of the CLCS and will have to step down before completing their cases.

Macnab then gave an overview on the already completed submissions by Russia (2001), Brazil (2004), Australia (2004) and Ireland (2005) of which only Russia's claim has been subject to a full review by the CLCS. All submissions have been criticised by other States. It has been brought forward that the proposed limits prejudice border disputes or do not represent a natural prolongation or that they are not sufficiently documented by data. Furthermore *Macnab* criticised the CLCS' policy concerning confidentiality.

In the afternoon *Michael Lodge*, consultant to the International Seabed Authority, talked about the role of the International Seabed Authority in the system of revenue sharing in accordance with Article 82 UNCLOS. This article provides that payments or contributions in kind are to be made by coastal States in respect of the exploitation of the nonliving resources of the continental shelf beyond 200 nautical miles. Those payments are to be distributed by the International Seabed Authority to developing States, particularly the least developed and the land-locked States among them. Although representing a straightforward idea the wording of Article 82 UNCLOS lacks precision and leaves many questions open. It is not clear what should be understood by "contributions in kind" or what is meant by "equitable sharing criteria". According to *Lodge*, these legal and practical problems have to be solved before the first contributions are to be made.

George Mingay, Solicitor at Kendall Freeman's Public International Law Group, commented on Article 82 UNCLOS from the mining industry's perspective. He focused on the question whether the provision will encourage or discourage investments in the exploitation of the continental shelf area beyond 200 nautical miles. This largely depends on whether the compromise found in Article 82 UNCLOS is reasonable from the perspective of potential investors. *Mingay* doubts whether the mining industry can recover their research costs in the revenue-free period of 5 years as stipulated in Article 82 UNCLOS. This, in his view, may delay exploitation but as further technological development will reduce research costs he is optimistic that future exploitation will occur.

The next presentation by Judge *Vicente Marotta-Rangel* turned the audience's attention to the role of international courts and arbitral tribunals in the settlement of disputes relating to



the delineation of the outer continental shelf. He focused on disputes between coastal States and the Commission on the Limits of the Continental Shelf arising from the latter's recommendations, and his main concern was whether the Commission can be party before an international tribunal. According to Article 20 of the Statute of ITLOS, the tribunal shall be open to entities other than States Parties in any case provided for in Part XI of the convention. This is not the case with the Commission. *Marotta-Rangel* doubts whether there is any forum for this kind of dispute. In any case the decisions of the CLCS on delineation disputes will not be binding on any international court or arbitral tribunal in delineation disputes.

Finally Judge *Tullio Treves* and Judge *Dolliver Nelson* presented their conclusions and thanked all speakers for their comments as well as the audience for the lively discussions.

The after-dinner-speech was held by Judge *Rüdiger Wolfrum* and dealt with solidarity as a principle of international law. This principle is not solely underlying Chapter XI of UNCLOS but can be found in other fields of international law as well. Principles like sustainable development or the duty to settle international disputes by peaceful means as laid down in the UN-Charter have the same reasoning. Even Chapter VII measures and collective self-defence can be characterised as an expression of solidarity. In concluding Judge *Wolfrum* warned the audience to accept humanitarian interventions outside the UN system as being an expression of solidarity. In this case the principle is too susceptible for abuse.

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