



PUBLICATIONS ON OCEAN DEVELOPMENT

THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

Law and Legitimacy

Øystein Jensen

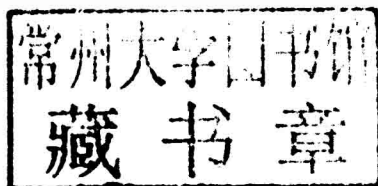
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The Commission on the Limits of the Continental Shelf

Law and Legitimacy

by

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Polhøgda, January 2014

Øystein Jensen

List of Acronyms and Short Forms

Aarhus Convention	Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters
AB	Appellate Body (of the World Trade Organization)
ACHPR	African Commission on Human and Peoples' Rights
African Charter	African Charter on Human and Peoples' Rights
ATS	Australian Treaty Series
BCBS	Basel Committee on Banking Supervision
CAC	Codex Alimentarius Commission
CBD	Convention on Biological Diversity
CCJE	Consultative Council of European Judges
CLCS	Commission on the Limits of the Continental Shelf
DOALOS	Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations
DRC	Democratic Republic of the Congo
DSR	Dispute Settlement Reports
EC	European Communities
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EPC	European Patent Convention
EPO	European Patent Office
GATT	General Agreement on Tariffs and Trade
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
I.C.J. Reports	Reports of Judgments, Advisory Opinions and Orders of the International Court of Justice
ICNT	Informal composite negotiating text
ICRW	International Convention for the Regulation of Whaling
ILA	International Law Association
ILC	International Law Commission
ILM	International Legal Materials
IMF	International Monetary Fund
IMFAT	International Monetary Fund Administrative Tribunal
IMO	International Maritime Organization
IO	International Organization

IPEA	International Preliminary Examination Authority
IPER	International Preliminary Examination Report
ISA	International Seabed Authority
ISNT	Informal single negotiating text
ITLOS	International Tribunal for the Law of the Sea
IWC	International Whaling Commission
LOS	United Nations Convention on the Law of the Sea
Convention	
NGO	Non-governmental Organization
OAS	Organization of American States
OLA	United Nations Office of Legal Affairs
OLC	United Nations Office of the Legal Counsel
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
PCIJ	Permanent Court of International Justice
P.C.I.J.	Reports of the Permanent Court of International Justice
Reports	
PCT	Patent Cooperation Treaty
RSNT	Revised single negotiating text
SBSTTA	Subsidiary Body on Scientific, Technical and Technological Advice
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
Agreement	
STECF	Scientific, Technical and Economic Committee for Fisheries
TBT	Agreement on Technical Barriers to Trade
Agreement	
UNCLOS I	First United Nations Conference on the Law of the Sea
UNCLOS II	Second United Nations Conference on the Law of the Sea
UNCLOS III	Third United Nations Conference on the Law of the Sea
UNEP	United Nations Environment Program
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	General Assembly of the United Nations
UNRIAA	United Nations Reports of International Arbitral Awards
UNSC	United Nations Security Council
UN Sea-Bed Committee	Committee on the Peaceful Uses of the Seabed and Ocean Floor beyond the Limits of National Jurisdiction
UNSG	Secretary-General of the United Nations
UNTS	United Nations Treaty Series
Vienna Convention	Vienna Convention on the Law of Treaties
Convention	
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

List of Figures and Table

FIGURE	CAPTION	
2.1	Extension of the legal continental shelf under the LOS Convention	39
3.1	Application of Article 76, paragraph 7, of the LOS Convention	78
3.2	Linking the 200 nautical mile limit and the outer limit in the Naturaliste Plateau Region	79
3.3	Article 76, paragraph 7, of the LOS Convention applied to embayments	82
3.4	Alternative median lines delimiting the continental shelf beyond 200 nautical miles	145

TABLE	CAPTION	
4.1	Members of the Commission by geographical region	182

Conventions and Other International Instruments

African Charter on Human and Peoples' Rights, Banjul, 27 June 1981; entered into force 21 October 1986. Published in *UNTS*, Vol. 1520, p. 217.

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland Concerning the Delimitation of Areas of the Continental Shelf between the Two Countries. Adopted 7 November 1988; entered into force 11 January 1990. In *Law of the Sea Bulletin*, No. 13, p. 48.

Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, Washington, D.C., 1 June 1990; not yet in force. In *ILM*, Vol. 29, p. 942.

Agreement on Agriculture. Adopted 15 April 1994; entered into force 1 January 1995. Published in *UNTS*, Vol. 1867, p. 410.

Agreement on Maritime Delimitation between the Government of Australia and the Government of the French Republic, Melbourne, 4 January 1982; entered into force 10 January 1983. Published in *ATS*, 1983, No. 3.

Agreement on Technical Barriers to Trade. Adopted 15 April 1994; entered into force 1 January 1995. Published in *UNTS*, Vol. 1868, p. 120.

Agreement on the Application of Sanitary and Phytosanitary Measures. Adopted 15 April 1994; entered into force 1 January 1995. Published in *UNTS*, Vol. 1867, p. 493.

Agreement relating to the implementation of Part XI of the Convention, New York, 28 July 1994; entered into force 16 November 1994. Published in *UNTS*, Vol. 1836, p. 3.

American Convention on Human Rights, San José, 21 November 1969; entered into force 18 July 1978. Published in *UNTS*, Vol. 1144, p. 123.

Consolidated version of the Treaty on the Functioning of the European Union. Adopted 13 December 2007; entered into force 1 December 2009. In *Official Journal of the European Union*, Vol. 51, 2008, p. 47.

Constitution of the International Labour Organisation, Paris, 1 April 1919; entered into force on 28 June 1919. Published in *UNTS*, Vol. 15, p. 35.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984; entered into force 26 June 1987. Published in *UNTS*, Vol. 1465, p. 85.

Convention Concerning the Protection of the World Cultural and Natural Heritage, Paris, 23 November 1972; entered into force 17 December 1975. Published in *UNTS*, Vol. 1037, p. 151.

Convention for the Protection and Preservation of the Marine Environment and the North East Atlantic, Paris, 22 September 1992; entered into force 25 March 1998. Reprinted in *ILM*, Vol. 32, p. 1068.

Convention for the Protection of Human Rights and Fundamental Freedoms (as amended), Rome, 4 November 1950; entered into force 3 September 1953. Published in *UNTS*, Vol. 213, p. 222.

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, 25 June 1998; entered into force 30 October 2001. Published in *UNTS*, Vol. 2161, p. 447.

Convention on Biological Diversity, Rio de Janeiro, 5 June 1992; entered into force 29 December 1993. Published in *UNTS*, Vol. 1760, p. 79.

Convention on International Trade of Endangered Species, Washington, D.C., 3 March 1973; entered into force 1 July 1975. Published in *UNTS*, Vol. 993, p. 243.

Convention on the Continental Shelf, Geneva, 29 April 1958; entered into force 10 June 1964. Published in *UNTS*, Vol. 499, p. 311.

Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979; entered into force 3 September 1981. Published in *UNTS*, Vol. 1249, p. 13.

Convention on the Grant of European Patents, Munich, 5 October 1973; entered into force on 7 October 1977. Published in *UNTS*, Vol. 1065, p. 199.

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, London, 29 December 1972; entered into force 30 August 1975. Published in *UNTS*, Vol. 1046, p. 120.

Convention on the Privileges and Immunities of the United Nations, New York, 13 February 1946; entered into force 17 September 1946. Published in *UNTS*, Vol. 1, p. 15 and Vol. 90, p. 327 (corrigendum to Vol. 1).

Convention on the Rights of the Child, New York, 20 November 1989; entered into force 2 September 1990. Published in *UNTS*, Vol. 1577, p. 3.

Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Washington, D.C., 18 March 1965; entered into force 14 October 1966. Published in *UNTS*, Vol. 575, p. 159.

International Convention for the Prevention of Pollution from Ships, London, 2 November 1973, as amended by the Protocol, London, 1 June 1978; entered into force 2 October 1983. Published in *UNTS*, Vol. 61, p. 1340.

International Convention for the Regulation of Whaling, Washington, D.C., 2 December 1946; entered into force 10 November 1948. Published in *UNTS*, Vol. 161, p. 72.

International Convention for the Safety of Life at Sea, London, 1 November 1974; entered into force 25 May 1980. Published in *UNTS*, Vol. 2, p. 1184.

International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966; entered into force 4 January 1969. Published in *UNTS*, Vol. 660, p. 195.

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, New York, 19 December 1990; entered into force 1 July 2003. Published in *UNTS*, Vol. 2220, p. 3.

International Covenant on Civil and Political Rights, New York, 16 December 1966; entered into force 23 March 1976. Published in *UNTS*, Vol. 99, p. 171 and Vol. 1057, p. 407.

General Agreement on Tariffs and Trade, Geneva, 30 October 1947; entered into force 1 January 1948. Published in *UNTS*, Vol. 55, p. 194.

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 18 December 2002; entered into force 22 June 2006. Published in *UNTS*, Vol. 2375, p. 237.

Optional Protocol to the Convention on the Elimination of Discrimination against Women, New York, 6 October 1999; entered into force 22 December 2000. Published in *UNTS*, Vol. 2131, p. 83.

Optional Protocol to the Convention on the Rights of Persons with Disabilities, New York, 13 December 2006; entered into force 3 May 2008. In UN Doc. A/61/611.

Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, New York, 19 December 2011; not yet in force. In UN Doc. A/RES/66/138.

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, New York, 10 December 2008; entered into force 5 May 2013. In UN Doc. A/63/435.

Patent Cooperation Treaty, Washington, D.C., 19 June 1970; entered into force 24 January 1978. Published in *UNTS*, Vol. 1160, p. 231.

Regulations under the Patent Cooperation Treaty (as amended). Adopted 19 June 1970.

Rio Declaration on Environment and Development, Rio de Janeiro, 14 June 1992. Reprinted in *ILM*, Vol. 31, p. 876.

Rome Statute of the International Criminal Court, Rome, 17 July 1998; entered into force 1 July 2002. Published in *UNTS*, Vol. 2187, p. 3.

Rules of Procedure of the Human Rights Committee. Adopted 11 January 2012. In UN Doc. CCPR/C/3/Rev.10.

Rules of Procedure of the Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage. In Doc. WHC.2-2011/5.

Rules of the International Tribunal for the Law of the Sea, as amended. Reprinted in *International Tribunal for the Law of the Sea: Basic Texts* (Martinus Nijhoff Publishers/Brill Publishers, 2004).

Senate Treaty Document 103–139, U.S. Senate, 103D Congress, 2d Session (Washington, D.C.: U.S. Government Printing Office, 1994).

Statute of the Inter-American Court on Human Rights, La Paz, 1 October 1979; entered into force 1 November 1979. Published in *OAS Official Records* (OEA/Ser.P/IX.0.2/80), Vol. 1, p. 88.

Statute of the International Court of Justice; Integral Annex to the *Charter of the United Nations*, San Francisco, 26 June 1945; entered into force 24 October 1945. Published in *UNTS*, Vol. 1 (XVI).

Treaty between the Government of Australia and the Government of New Zealand establishing certain Exclusive Economic Zone and Continental Shelf Boundaries, Adelaide, 25 July 2004; entered into force 25 January 2006. Published in *ATS*, 2006, p. 4.

Treaty Between the Government of the United States of America and the Government of the United Mexican States on the Delimitation of the Continental Shelf in the Western Gulf of Mexico Beyond 200 Nautical Miles, Washington, 9 June 2000; entered into force 17 January 2001. In *Senate Treaty Document 106–39, U.S. Senate, 106th Congress, 2d Session* (Washington, D.C.: U.S. Government Printing Office, 2000).

Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean, Murmansk, 15 September 2010; entered into force 7 July 2011. Reprinted in Henriksen, Tore, and Geir Ulfstein, 'Maritime Delimitation in the Arctic: The Barents Sea Treaty', in *Ocean Development & International Law*, Vol. 42, 2011, pp. 1–21.

Treaty between the Republic of Trinidad and Tobago and the Republic of Venezuela on the Delimitation of Marine and Submarine Areas. Adopted 18 April 1990; entered into force 23 July 1991. Published in *UNTS*, Vol. 1654, p. 300.

Treaty concerning the Cession of the Russian Possessions in North America by his Majesty the Emperor of all the Russias to the United States of America, Washington, 30 March 1867; entered into force 20 June 1867. Reprinted in Kemp, Roger L. (ed.), *Documents of American Democracy: A Collection of Essential Works* (McFarland, 2010), pp. 200ff.

Understanding on Rules and Procedures Governing the Settlement of Disputes.
Published in *UNTS*, Vol. 1869, p. 401.

United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982; entered into force 16 November 1994. Reprinted in *ILM*, Vol. 21, p. 1245.

United Nations Framework Convention on Climate Change, New York, 9 May 1992; entered into force 21 March 1994. Published in *UNTS*, Vol. 1771, p. 107.

Vienna Convention on the Law of Treaties, Vienna, 23 May 1969; entered into force 27 January 1980. Published in *UNTS*, Vol. 1155, p. 331.

Contents

Acknowledgements	vii
List of Acronyms and Short Forms	ix
List of Figures and Table	xi
Conventions and Other International Instruments	xii

1 Introduction

1.1 The Commission on the Limits of the Continental Shelf	1
1.2 Outline	6

2 The Outer Limits of the Continental Shelf in International Law

2.1 Introduction	8
2.2 The Early History of the Legal Regime of the Continental Shelf	8
2.3 Continental Shelf Claims and the Development of International Law	11
2.4 Limits to Coastal State Claims over the Continental Shelf	18
2.5 Assessment	41

3 Legal Aspects of the Commission's Decision-Making

3.1 Introduction	45
3.2 Outline	46
3.3 Legal Aspects of the Commission's Procedural Decision-Making	47
3.4 Legal Aspects of the Commission's Substantive Decision-Making	71
3.5 Legal Effects of the Commission's Recommendations	92
3.6 Assessment	145

4 Legitimacy of the Commission and Its Decision-Making

4.1 Introduction	153
4.2 Outline	155
4.3 Legitimacy	155
4.4 Membership and Composition	164
4.5 Independence and Impartiality	184
4.6 Procedures	209
4.7 Assessment	273

5 The Future of the Commission

5.1 Article 76 of the LOS Convention: An Opportunity Lost? 278

5.2 Obstacles to Reform 279

5.3 Dislocation of Decision-Making 281

Bibliography 285

Table of Cases 309

Index 313

Introduction

1.1 The Commission on the Limits of the Continental Shelf

The rules of international law concerning the continental shelf that today apply to the vast majority of the world's states are found in the 1982 United Nations Convention on the Law of the Sea (the LOS Convention).¹ This Convention builds on several decades of economic, political and legal developments, of which the final stage—its implementation—is currently ongoing.

Article 76 is among the key provisions of the LOS Convention. Marked by its exceptional complexity, it defines the continental shelf by criteria that differ considerably from those under Article 1 of the 1958 Convention on the Continental Shelf.² Notably, Article 76 brings a new *identification* of the outer limits of the continental shelf by reference to geographical and, especially, geological features. The provision establishes the right of coastal states to determine the outer limits of the continental shelf by means of two criteria: based on a distance of 200 nautical miles from the territorial sea baselines, or based on natural prolongation to the end of the continental margin. These two criteria differ in nature. Whereas 200 nautical miles is a distance limit that need not necessarily correspond to that part of the continental shelf which is a natural prolongation of the continent under the sea, the outer edge of the continental margin denotes a geo-morphological feature determinable in terms of geology and susceptible to the natural prolongation test.³

For cases where a coastal state intends to claim a continental shelf extending *beyond* 200 nautical miles from the baselines from which the breadth

- 1 United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982; entered into force 16 November 1994. Reprinted in *ILM*, Vol. 21, p. 1245. In accordance with Article 308, the LOS Convention entered into force 12 months after the date of deposit of the 60th instrument of ratification or accession. The LOS Convention comprises 320 Articles and nine Annexes, governing all aspects of ocean space, such as delimitation of maritime zones, environmental control, marine scientific research, economic and commercial activities, transfer of technology and the settlement of disputes relating to maritime areas and resources. As at 1 January 2014, there were 166 parties to the LOS Convention.
- 2 Convention on the Continental Shelf, Geneva, 29 April 1958; entered into force 10 June 1964. Published in *UNTS*, Vol. 499, p. 311.
- 3 Mahmoudi, Said, *The Law of Deep Seabed Mining* (Almqvist & Wiksell International, 1987), p. 73.