

Issues Arising from Extended Continental Shelf Claims in Maritime Areas less than 400 Miles in Width

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Definition of the Continental Shelf: 1958 Convention on the Continental Shelf

▶ Article 1

For the purpose of these articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

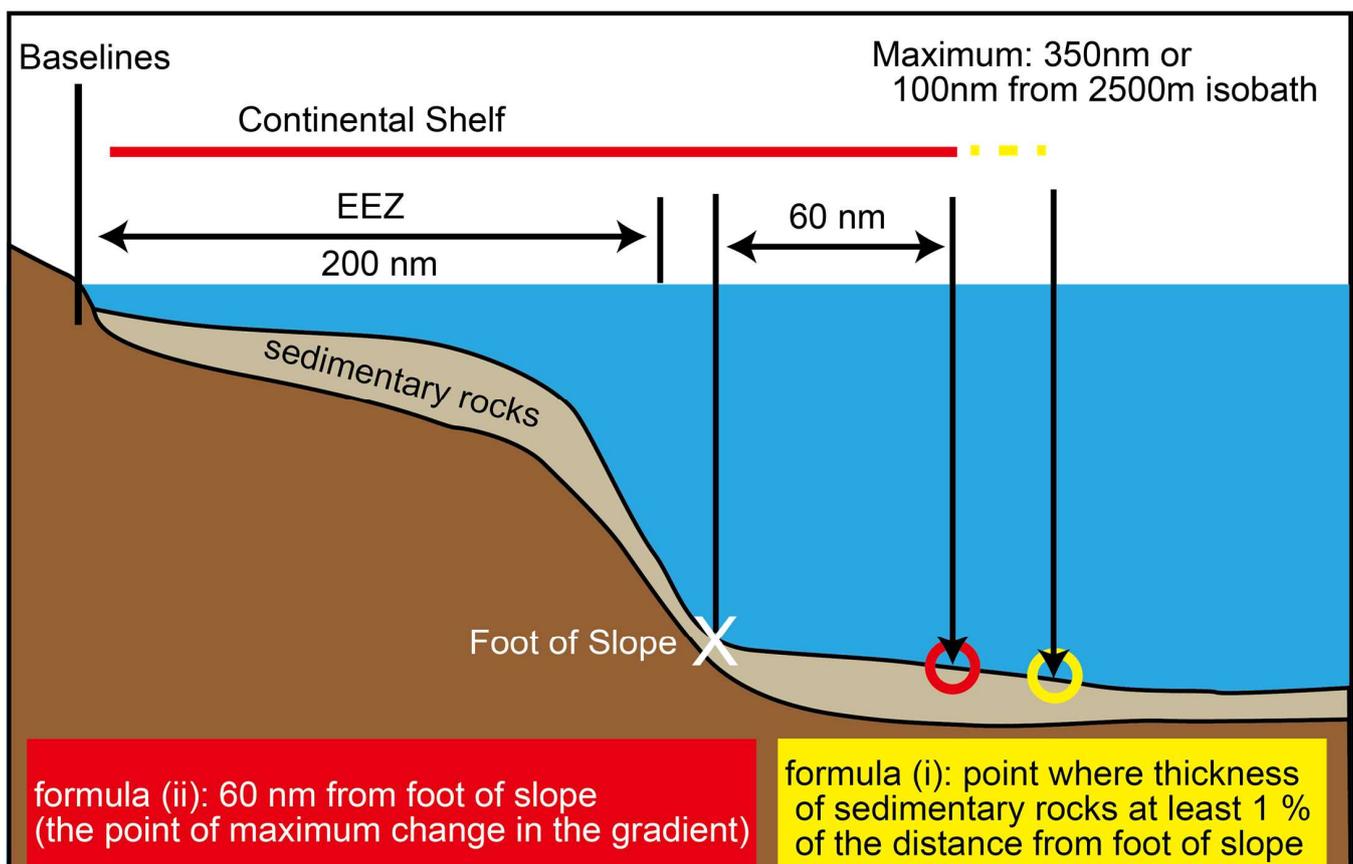
Definition of the Continental Shelf: 1982 United Nations Convention on the Law of the Sea

▶ Article 76(1)

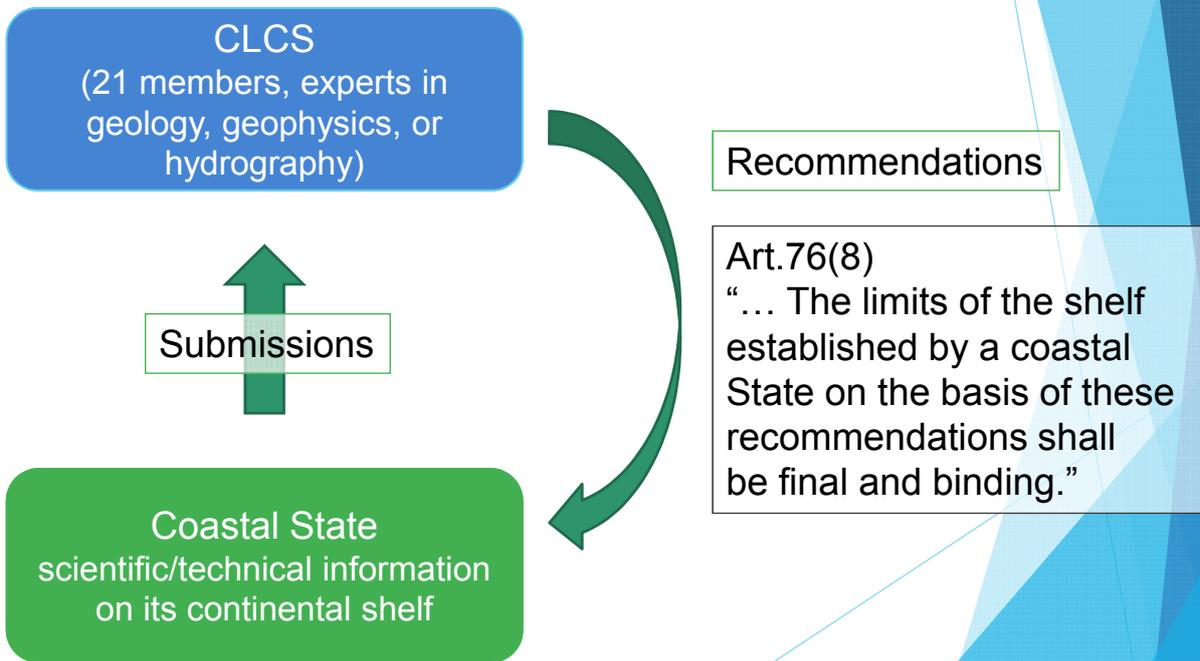
The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

- = 200nm of Continental Shelf
- + Extended Continental Shelf (depending on configuration of the seabed)

Definition of Continental Shelf under UNCLOS



Commission on the Limits of the Continental Shelf (CLCS)



Submissions and Recommendations at the CLCS

OCEANS & LAW OF THE SEA
UNITED NATIONS
DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA

Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982

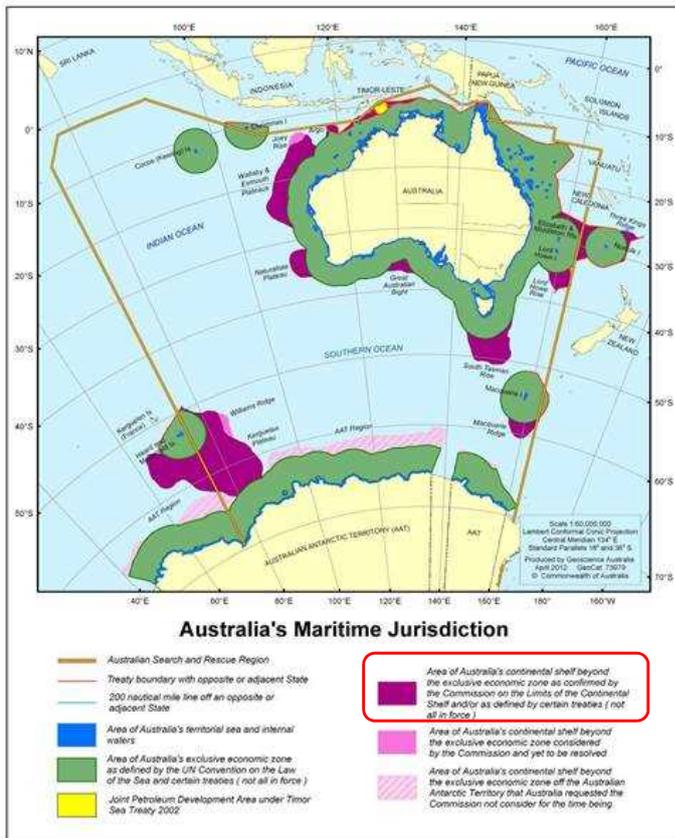
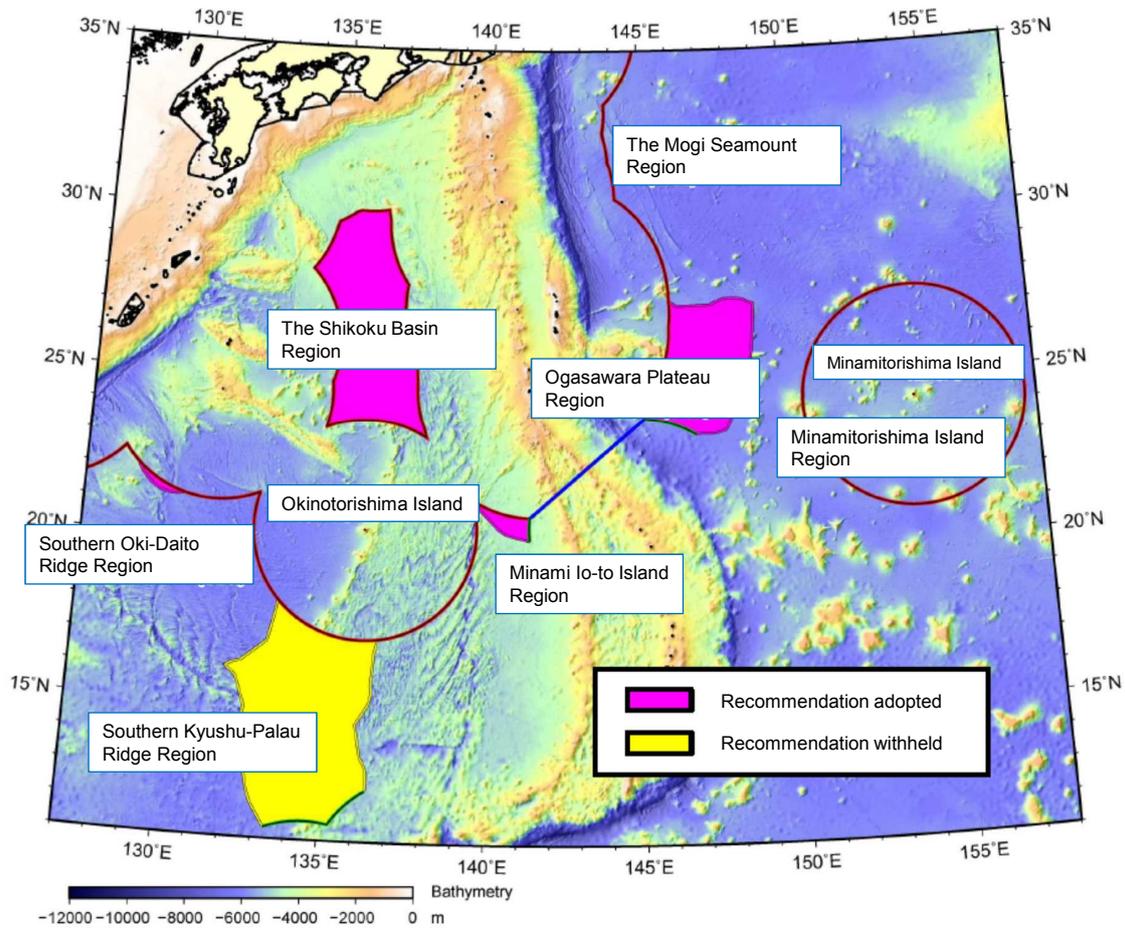
Updated on 17 December 2014

Please note that submissions are listed in the order received. Please also note that the designations employed in the submissions, including description of the areas, are as contained in the communications from submitting States or in the executive summaries. Their listing on this web site and the presentation of material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

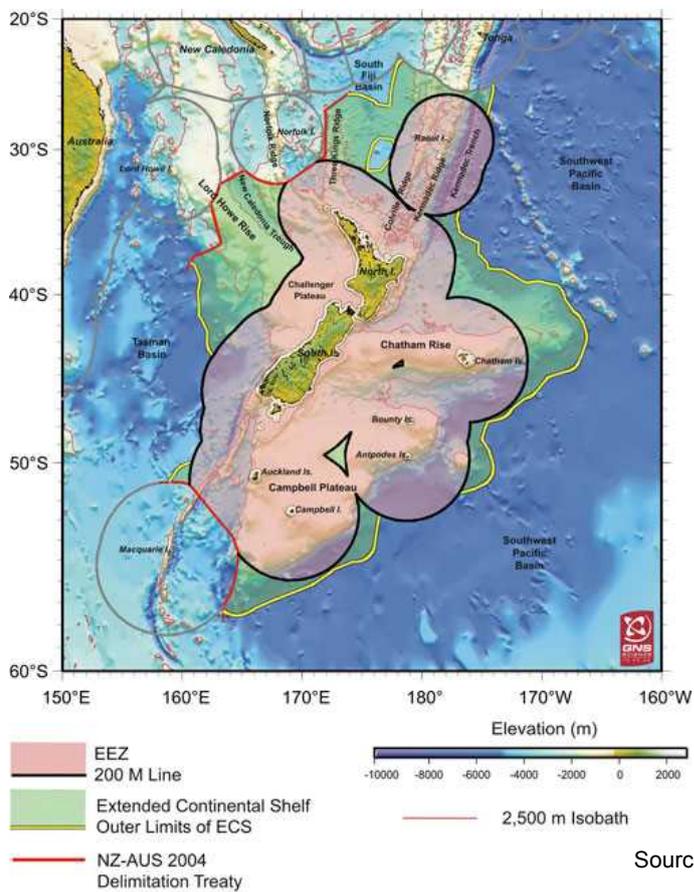
Submission by [State]	Date of submission	Presentation to the 'CLCS'	Subcommission established	Recommendations adopted (or) [For summaries of the Recommendations follow the link to the respective submission page]
1 Russian Federation	22 December 2001	See CLCS-32	See CLCS-32	27 June 2002 See CLCS-34
1a Russian Federation - partial revised Submission in respect of the Okhotsk Sea	28 February 2013	See CLCS-80	See CLCS-80	11 March 2014 See CLCS-83
2 Brazil	17 May 2004	See CLCS-42	See CLCS-42	4 April 2007 See CLCS-54
3 Jamaica	18 November 2004	See CLCS-44	See CLCS-44	16 April 2007 See CLCS-54
4 Iceland - Faroese Abyssal Plain	28 May 2005	See CLCS-48	See CLCS-48	5 April 2007 See CLCS-54
5 New Zealand	19 April 2006	See CLCS-52	See CLCS-52	22 August 2009 See CLCS-80
6 Joint Submission by France, Ireland, Spain and the United Kingdom of Great Britain and Northern Ireland - in the area of the Celtic Sea and the Bay of Biscay	19 May 2006	See CLCS-53	See CLCS-53	24 March 2009 See CLCS-82
7 Bulgaria - in the North East Atlantic and the Arctic	27 November 2006	See CLCS-54	See CLCS-54	27 March 2009 See CLCS-82
8 France - in respect of the areas of French Guiana and New Caledonia	22 May 2007	See CLCS-56	See CLCS-56	2 September 2009 See CLCS-84
9 Mexico - in respect of the western portion in the Gulf of Mexico	12 December 2007	See CLCS-58	See CLCS-58	17 March 2009 See CLCS-84
10 Barbados	6 May 2008	See CLCS-60	See CLCS-60	16 April 2010 See CLCS-86
10a Barbados - revised	26 July 2011	-	See CLCS-72	13 April 2012 See CLCS-74
11 United Kingdom of Great Britain and Northern Ireland - Ascension Island	9 May 2008	See CLCS-62	See CLCS-62	16 April 2010 See CLCS-86
12 Kazakhstan - North West of Dumaiya Island	18 June 2008	See CLCS-64	See CLCS-64	28 March 2011 See CLCS-88
13 Japan	12 November 2008	See CLCS-66	See CLCS-66	19 April 2012 See CLCS-74
14 Joint Submission by the Republic of Mauritius and the Republic of Seychelles - in the region of the Mascarene	7 December 2008	See CLCS-68	See CLCS-68	10 March 2011 See CLCS-86

- ▶ 77 Submissions
- ▶ 20 Recommendations
- ▶ Submission of Japan in 2008, Recommendation in 2012

Extended Continental Shelf of Japan



Source: Commonwealth of Australia (Geoscience Australia) 2012



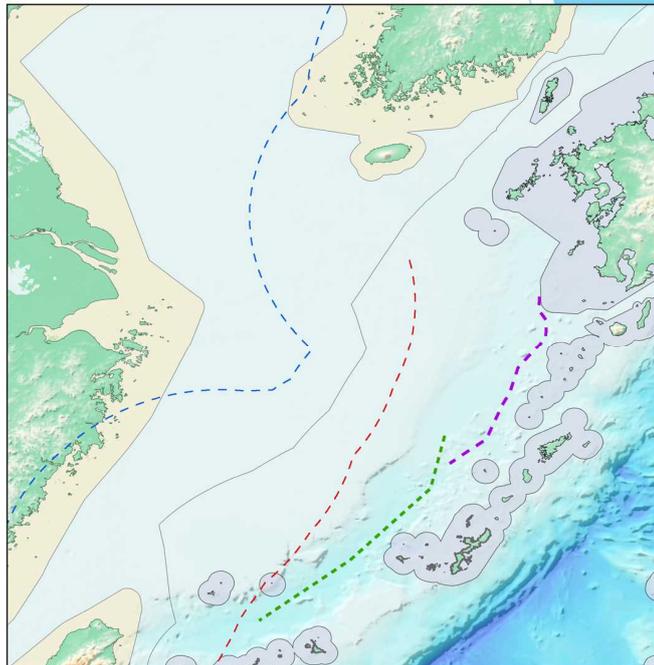
The outer limits of the New Zealand ECS north of New Zealand are subject to the delimitation of boundaries with Fiji, Tonga and France in respect of New Caledonia

Source: Land Information New Zealand

Q: Does the CLCS have the mandate to consider submissions in maritime areas less than 400 nautical miles ?

Submission to the CLCS by China in the East China Sea

- 200M from Japan
- 200M from China
- - - Submission to CLCS (2012)
- - - Preliminary Info to CLCS (2009)
- Territorial Sea (Japan)
- Territorial Sea
- Japan EEZ (Median Line)



Note Verbale by Japan to the CLCS(2012)

- ▶ The distance between the opposite coasts of Japan and the People's Republic of China in the area with regard to the submission is less than 400 nautical miles;
- ▶ The delimitation of the continental shelf in this area shall be effected by agreement between the States concerned in accordance with Article 83 of [UNCLOS]. It is, thus, indisputable that the People's Republic of China cannot unilaterally establish the outer limits of the continental shelf in this area;
- ▶ (that this position was registered with respect to the preliminary information submitted)
- ▶ Paragraph 5(a) of the Annex I of the Rules of Procedure of the [CLCS] provides that [...]. In the area, which is the subject of the submission, the delimitation of the continental shelf is yet to be determined. The Government of Japan does not give such prior consent to the consideration of the submission by the Commission.

Paragraph 5(a), Annex I, Rules of Procedure of the CLCS

“In cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by any of the States concerned in the dispute. However, the Commission may consider one or more submissions in the areas under dispute with prior consent given by all States that are parties to such a dispute.”

Decision Taken at the CLCS

“...the Commission took note of the notes verbales from China and Japan. It observed that the notes verbales from Japan invoked, inter alia, paragraph 5 (a) of annex I to the rules of procedure, relating to a dispute in the area of the submission. ... Taking into account the notes verbales and the presentation made by the delegation, the Commission decided to defer further consideration of the submission and the notes verbales until such time as the submission was next in line for consideration, as queued in the order in which it was received.” (CLCS/80, para.61)

Mandate of the CLCS under UNCLOS

Any area beyond 200nm from a coastal State?

- ▶ Art. 76(8)
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.

Reasons for the Existence of the CLCS: Art. 76 read in context

- ▶ The current definition of the continental shelf: compromise between the narrow-margin States and broad-margin States
- ▶ CLCS as a mechanism to oversee implementation of the complexly formulated compromise
- The essential concern was the limit between the coastal State's continental shelf and the Area
- No such issues arise in maritime areas less than 400nm because of distance-based entitlement

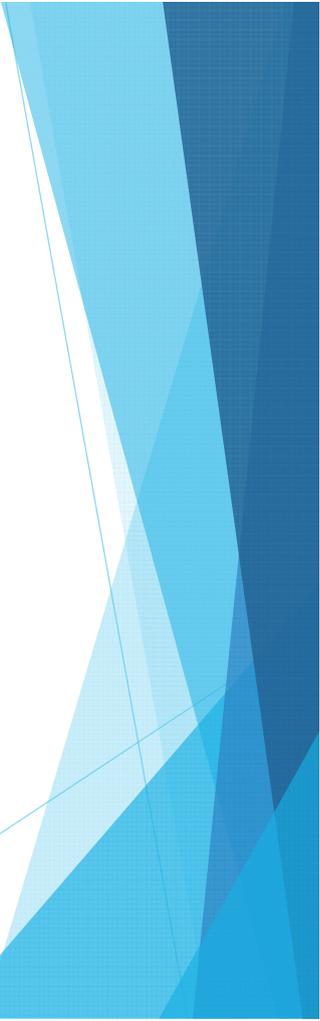
Delineation and Delimitation of the Continental Shelf

- ▶ **delineation** of the continental shelf: to establish the boundary line between the continental shelf and the Area (international seabed)
- ▶ **delimitation** of the continental shelf: to establish the maritime boundary between adjacent or opposite coastal States
- Article 76 and the role of the CLCS concern the **delineation** of the continental shelf
- CLCS as an mechanism to prevent encroachment on the Area (with respect to scientific/technical implementation of Art.76)

Q: Does the CLCS have the mandate to consider submissions in maritime areas less than 400 nautical miles ?

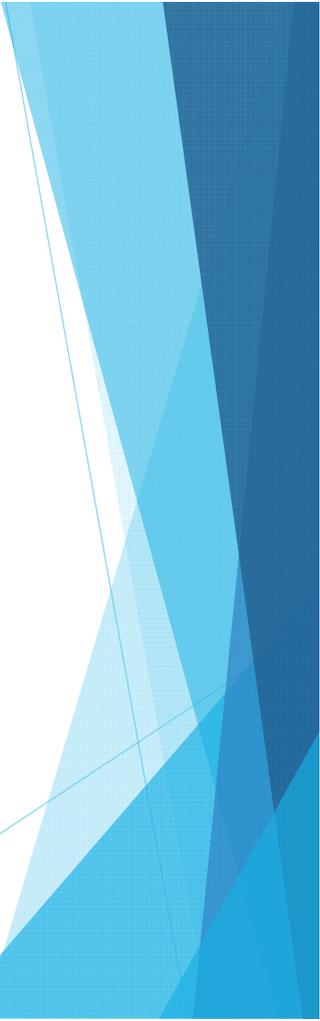
A: No.

because ... the CLCS is a body concerned with delineation of the continental shelf, and only issues of delimitation arise in maritime areas less than 400 nautical miles



Q: Would submissions in maritime areas less than 400 nautical miles serve any useful purpose ?

Using the CLCS to define the extent of coastal State's natural prolongation?

- ▶ *Bangladesh/Myanmar* case (ITLOS): the concept of “natural prolongation” and the “outer edge of the continental margin” are closely interrelated and refer to the same area.
 - A possibility for coastal States to define the extent of their “natural prolongation” by through consideration of their submissions at the CLCS?
- 

Role of natural prolongation in (single) maritime delimitation

- ▶ Libya/Malta case (ICJ):
the ICJ decided not to give any role to the concept of natural prolongation in delimiting maritime areas less than 400 nautical miles
- ▶ Three-step approach in jurisprudence:
 - provisional equidistance line
 - adjustment or shifting of the provisional equidistance line in order to achieve an equitable result
 - verification whether that line does not lead to an inequitable result
- ▶ Delimitation between distance-based continental shelves, not extended continental shelf within 400nm vs distance-based continental shelf

A role for natural prolongation in continental shelf delimitation?

- ▶ *Bangladesh/Myanmar case (ITLOS)*:
 - rejected Bangladesh's argument on natural prolongation
 - confirmed that there is in law only a single continental shelf rather than an inner and outer continental shelf
 - delimited the area based on similar principles as in cases involving the continental shelf within 200 nautical miles
- ▶ State practice on extended continental shelf delimitation agreements
 - equidistance-based delimitation

Q: Would submissions in maritime areas less than 400 nautical miles serve any useful purpose ?

A: there seems to be little practical value with respect to maritime delimitation in having them considered at the CLCS.

No good reason for the CLCS to carry out such tasks which are not envisaged under UNCLOS.

Conclusion

- The more plausible interpretation of UNCLOS is that there is no role for the CLCS under UNCLOS in maritime areas less than 400 nautical miles.
- The work of the CLCS has been an important contribution to the rule of law in the oceans, as part of a mechanism to ensure that coastal State's outer limits of its continental shelves conform to what is allowed under Article 76 of UNCLOS.
- This important mechanism for delineation of the coastal State's entitlements against the Area should not be misused for advancing claims concerning the maritime delimitation, which is essentially a legal-political process beyond the scope of the CLCS