
The Legal Status of the Outer Continental Shelf without a Recommendation from the CLCS

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The Outer Limits of the CS

- According to Art. 76(1) of UNCLOS, the continental shelf extends to the **outer edge of the continental margin, or to a distance of 200 M**
- Art. 76 provides a detailed criteria on the outer edge of the continental margin beyond 200M
- Art. 76(8) provides that the Commission on the Limits of the Continental Shelf (CLCS) will consider information on the limits of the CS beyond 200M, and the **limits of the CS established by a coastal State on the basis of a recommendation by the CLCS shall be “final and binding”**

Questions

- The process at the CLCS takes time, and it may be years before the outer limits of the CS is “final and binding” in accordance with Art. 76(8)
- What is the legal status of the CS beyond 200M without a recommendation from the CLCS?
- May a coastal State exercise rights in the outer continental shelf before receiving a recommendation from the CLCS?
- May a State seek a contract with the International Seabed Authority (ISA) based on its view that a certain area falls within the Area?

Delineation v. Delimitation of the CS

- The questions relate to the delineation of the CS
 - **delineation**: to establish the outer limit of the continental shelf, which is the boundary between the continental shelf and the Area
- The questions only concern cases where a coastal State has a CS beyond 200M, **without any overlaps** with maritime areas of other States
- In cases of overlaps, the areas are to be delimited
 - **delimitation**: to establish the maritime boundary between adjacent or opposite coastal States

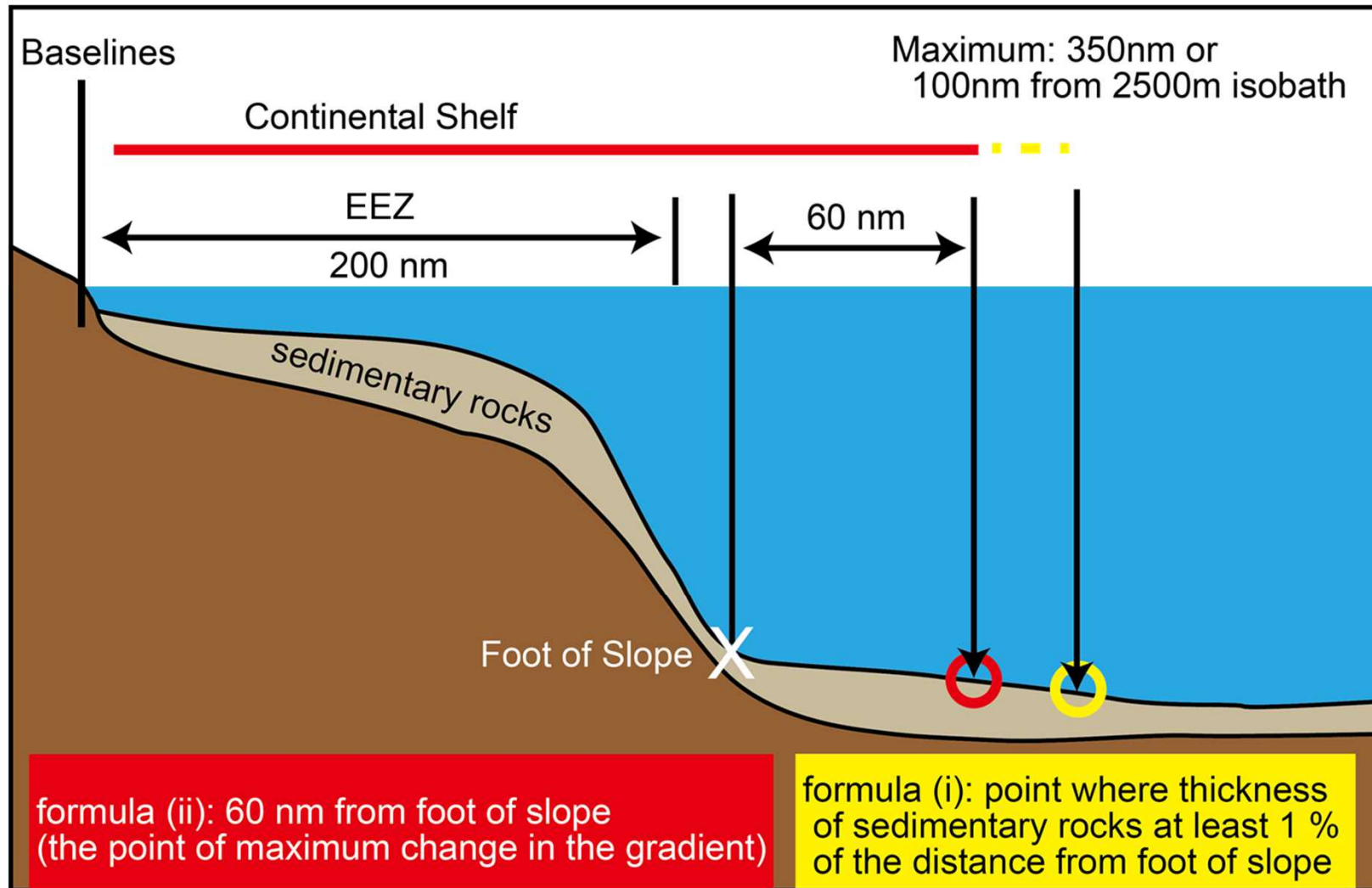
Outline of the Presentation

1. The provisions of UNCLOS concerning the delineation of the continental shelf
2. The role of the CLCS in relation to the rights of the coastal State to the continental shelf
3. The legal status of the outer continental shelf without a CLCS recommendation

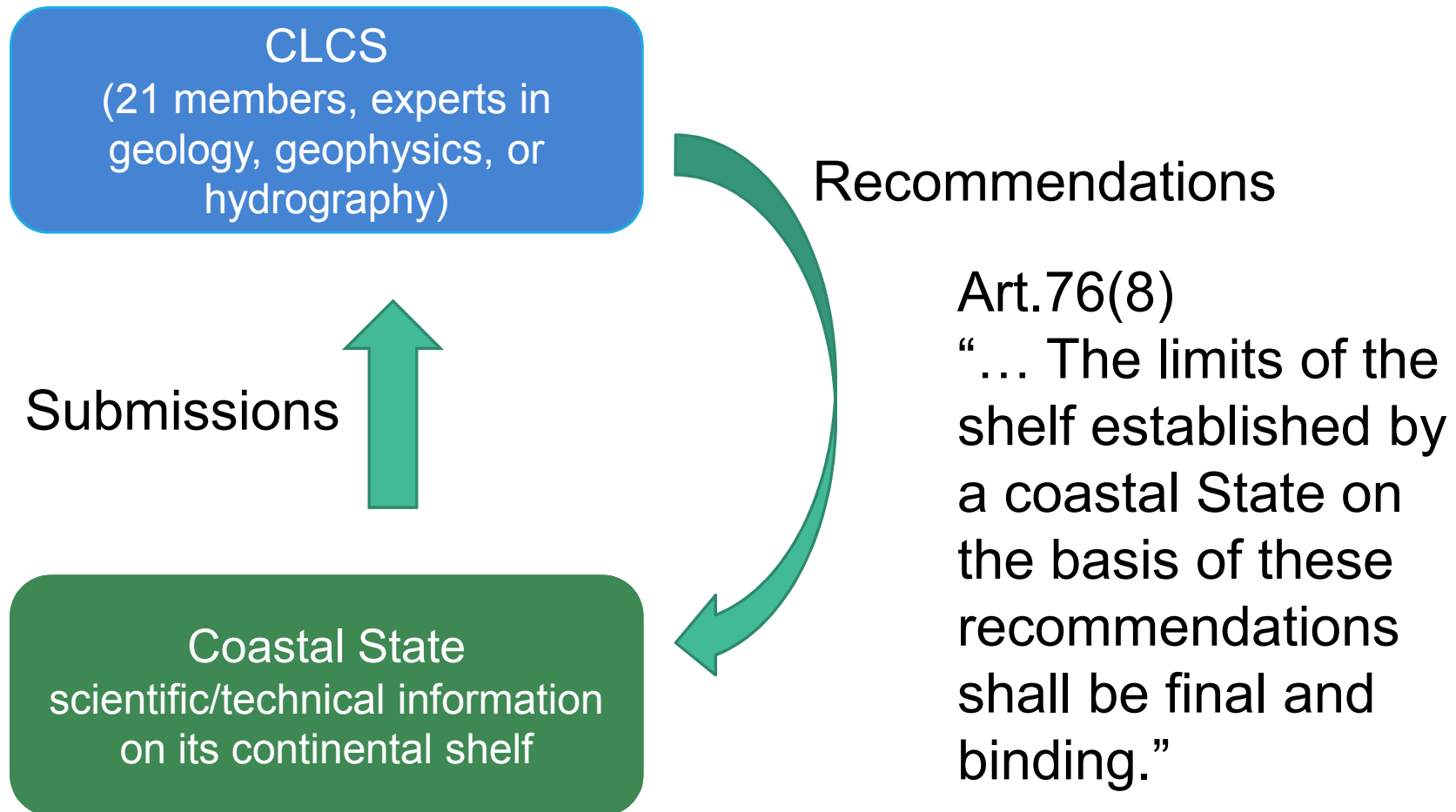
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Criteria under Art. 76



Procedure at the CLCS



Work at the CLCS

65.	Republic of Korea
66.	Nicaragua - in the southwestern part of the Caribbean Sea
67.	Federated States of Micronesia - in respect of the Eauripik Rise
68.	Denmark - in respect of the North-Eastern Continental Shelf of G
69.	Angola
70.	Canada - in respect of the Atlantic Ocean
71.	Bahamas
72.	France - in respect of Saint-Pierre-et-Miquelon
73.	Tonga - in the western part of the Lau-Colville Ridge
74.	Somalia
75.	Joint Submission by Cabo Verde, The Gambia, Guinea, Guinea- the Atlantic Ocean adjacent to the coast of West Africa
76.	Denmark - in respect of the Northern Continental Shelf of Greenl
77.	Spain - in respect of the area west of the Canary Islands

- 77 Submissions
- 22 Recommendations
- Japan
 - Submission in 2008
 - Recommendation in 2012
 - Established CS on 1 October 2014

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The Role of the CLCS in Delineation

- The CLCS only makes recommendations, but plays an important role in the process of establishing the outer limits that is opposable to other States

UNCLOS Article 76(8)

- “... The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.”

Bangladesh/Myanmar Case (ITLOS, 2012)

- Found that the opposability of the outer limits of the CS is dependent on fulfilling the requirements of Art. 76, and in particular the obligation to submit information to the CLCS

Bangladesh/Myanmar Case

Bangladesh/Myanmar Case, Judgment

407. It is clear from article 76, paragraph 8, of the Convention that the limits of the continental shelf beyond 200 nm can be established only by the coastal State. **Although this is a unilateral act, the opposability with regard to other States of the limits thus established depends upon satisfaction of the requirements specified in article 76,** in particular compliance by the coastal State with the obligation to submit to the Commission information on the limits of the continental shelf beyond 200 nm and issuance by the Commission of relevant recommendations in this regard ...

Bangladesh/Myanmar Case

“408. The foregoing does not imply that entitlement to the continental shelf depends on any procedural requirements. As stated in article 77, paragraph 3, of the Convention, “[t]he rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation”.”

- The coastal State can only make the outer limits of its continental shelf opposable to other States based on the recommendations of the CLCS
- However, this concerns the identification of the precise limits of the CS, and is **different from the question of whether or not the coastal State has a CS**

Rights to the CS as Inherent Rights

UNCLOS Article 77(3)

- “The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.”

North Sea Continental Shelf Cases (ICJ, 1969)

- Based the rights of coastal States to the CS on the concept of “natural prolongation”
- Rights over the continental shelf exist *ipso facto* (‘by itself’) and *ab initio* (‘from the beginning’), by virtue of its sovereignty over the land

North Sea Continental Shelf Cases

North Sea Continental Shelf Cases, Judgment, *I.C.J. Reports 1969*

19. ... the rights of the coastal State in respect of the area of continental shelf that constitutes a **natural prolongation of its land territory** into and under the sea **exist *ipso facto* and *ab initio***, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. **In short, there is here an inherent right. In order to exercise it, no special legal process has to be gone through**, nor have any special legal acts to be performed. ...

Legal Nature of CS beyond 200M

- The nature of the “outer continental shelf” beyond 200M is not different from the CS within 200M

Bangladesh/Myanmar Case (ITLOS, 2012)

- “... **there is in law only a single ‘continental shelf’** rather than an inner continental shelf and a separate extended or outer continental shelf” (para.362)
- “A coastal State’s entitlement to the continental shelf exists by the **sole fact that** the basis of entitlement, namely, **sovereignty over the land territory, is present. It does not require the establishment of outer limits.**” (para.409)

The CLCS and the Rights to CS

- The role and function of the CLCS is **not to establish or give rights to the CS** beyond 200M to coastal States.
- **Coastal States already have entitlement to their CS** (including beyond 200M) as natural prolongation of their territory
- However, **to establish the outer limits** of the CS beyond 200M vis-à-vis other States, **coastal States are required to establish the limits based on a recommendation from the CLCS**
- **What can States do with entitlement to the CS without a clear outer limits that is opposable against other States?**

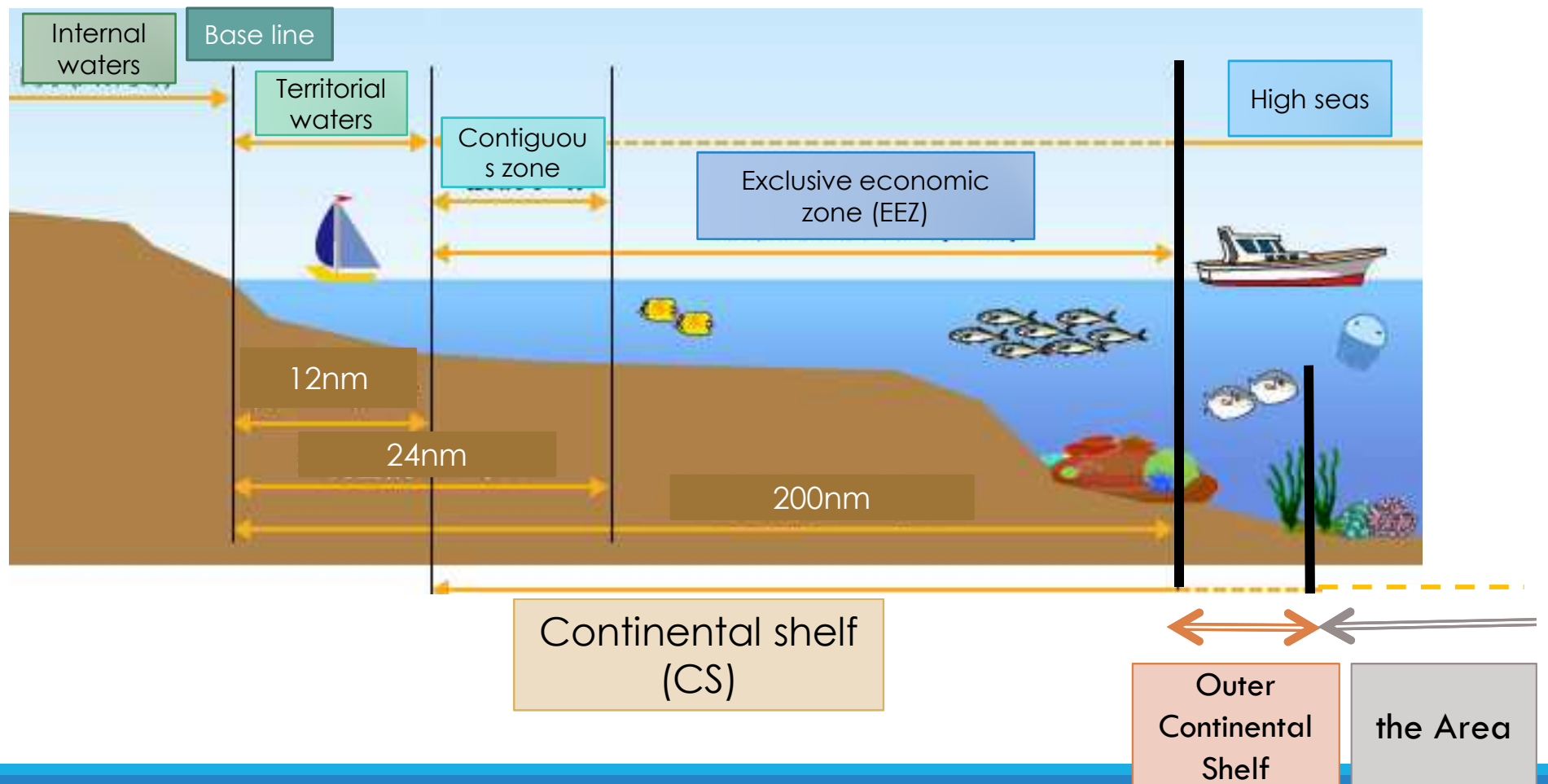
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UNCLOS Maritime Zones



The Rights of the Coastal State

- The Continental Shelf
 - The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources. (Art.77(1))
- The Area
 - “No State shall claim or exercise sovereignty or sovereign rights over the Area or its resources, nor shall any State or natural or juridical person appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights nor such appropriation shall be recognized.” (Art.137)

Entitlement without Definite Outer Limits

- Depending on the configuration of the seabed, it may be relatively clear that some parts of the area beyond 200M may satisfy the requirements under Art. 76.

Bangladesh/Myanmar Case (ITLOS, 2012)

- The court was faced with a question whether it could proceed with a delimitation of CS beyond 200M before a recommendation from the CLCS on the outer limits
- It proceeded with the delimitation, stating:
“... the Tribunal would have been hesitant to proceed with the delimitation of the area beyond 200 nm **had it concluded that there was significant uncertainty as to the existence of a continental margin** in the area in question” (para.443)

Areas without “Significant Uncertainty”

- The judgment of the Bangladesh/Myanmar Case show that there are areas where it may be regarded that there is **no “significant uncertainty”** as to the existence of a CS beyond 200M (although the Bay of Bengal was an unique case)
- An argument could be made that it is reasonable to allow the coastal State to exercise its sovereign rights (exploration/exploitation) to the CS before a recommendation from the CS, where there is no significant uncertainty that the maritime area is included in the natural prolongation of the coastal State
- However, the coastal State proceeds at its own risk and must make compensations if the area later turns out to be outside the outer limits of the CS

Areas with Plausible Claims

- For areas where there is some uncertainty but may plausibly be regarded as falling within the limits of the CS,
 - **a possible argument** that might be made is to draw on an analogy from the jurisprudence on the exercise of sovereign rights in an undelimited area
 - In the **Guyana/Suriname case**, the arbitral tribunal stated that “unilateral acts which do not cause a physical change to the marine environment” are permissible in undelimited areas, while “activities of the kind that lead to a permanent physical change” are not
- However, unilateral activities in such cases would seem to be more controversial than in areas without “significant uncertainty”

Can the ISA Allow Prospecting/Exploration?

- What if the ISA is submitted a notification of prospecting and an application for exploration from a State based on its view (before a recommendation is made) that a certain area belongs to the Area ?
- The Area is defined negatively under UNCLOS
 - "Area" means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (Art. 1(1)(1))
- For the ISA to form its own views on the extent of the Area would require an assessment in light of the criteria under Art. 76, which is mandated to the CLCS
- It is difficult to envisage areas subject to submissions where there is no “significant uncertainty” that it falls within the Area.

Can the ISA Allow Prospecting/Exploration?

- However, there may be some difficulties where such clear areas to avoid are not available:
 - where the coastal State is a non-party to UNCLOS or a recent party to UNCLOS
 - and has not made a submission to the CLCS, and has not publicized its views on the limits of its CS