

The “Intertwined” Relationship and Deadlock Between Delimitation of the Continental Shelf Beyond 200 nm and the Delineation of Its Outer Limits

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Abstract

This article examines the legal relationship and practical challenges between “delimitation” and “delineation” within the framework of the United Nations Convention on the law of the sea. Through an analysis of rulings by the ITLOS and the contrasting stance adopted by the ICJ, it points out that international judicial bodies have yet to clarify the relationship between the two. Although Articles 76(10) and 83(1) of the UNCLOS treat the two as independent processes in form, in practice they are deeply intertwined due to overlapping entitlements, geographical foundations, and procedural interactions. To break the deadlock—where coastal States are trapped in a cycle of being unable to achieve successful delimitation without first delineating outer limits, a situation exacerbated by Paragraph 5(a) of Annex I to the Rules of Procedure of the Commission on the Limits of the Continental Shelf—this article assesses the interim solution proposed by scholars, and ultimately proposes a fundamental solution: reforming Paragraph 5(a) by recommending that the CLCS be empowered to conduct preliminary technical considerations of all submissions.

Keywords: delimitation, delineation, the Commission on the Limits of the Continental Shelf (CLCS), United Nations Convention on the Law of the Sea (UNCLOS), Paragraph 5(a) of Annex I to the Rules of Procedure of CLCS

1. Introduction

Since International Tribunal for the Law of the Sea (ITLOS) affirmed its jurisdiction over delimitation of the continental shelf beyond 200 nautical miles (nm) in the *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar Case)*, the relationship between “delimitation of outer continental shelf” and “delineation” has drawn increasing

attention. Yet the Tribunal did not fully settle the matter. While it agreed to exercise jurisdiction, it did so under strict conditions, without clearly defining the relationship or sequence between the two processes. Rather, it issued a situation-specific ruling, which has since drawn criticism.

Why does the relationship between “delimitation” and “delineation” matter?

Because clarifying it is key to resolving the current impasse—where delimitation and the delineation often work at cross purposes. Under Paragraph 5(a) of Annex I to the Rules of Procedure of the Commission on the Limits of the Continental Shelf,¹ CLCS may not consider or qualify a submission in cases where a land or maritime dispute exists.² This means that if any of the States concerned in the dispute objects, the coastal state's submission is stalled, leaving it unable to obtain final and binding outer limits. If the delineation is a prerequisite for delimitation, the coastal state cannot proceed with maritime boundary delimitation. If it is not, the state could theoretically delimit without going through the CLCS. The underlying concern is: if other states concerned can freely block the CLCS process, can they also arbitrarily prevent delimitation of the continental shelf?

In practice, however, even when an international court or tribunal delimits the continental shelf first, the deadlock may remain. For instance, Myanmar made its submission to the CLCS in 2008. Afterwards, Bangladesh objected in 2009. In 2012, ITLOS rendered its judgment, resolving the delimitation dispute between the two countries. Yet that same year, Bangladesh still refused to consent to CLCS consideration of Myanmar's submission, arguing that the judgment had not fully settled the outer limits.³ However, the reason the judgment only determined one segment and the direction of the boundary line was precisely that, without the recommendations from the CLCS on the outer limits of the continental shelf, the Tribunal could not determine the other endpoint of the boundary line. This perfectly illustrates the Catch-22.

2. Answers in the Cases

In the *Bangladesh/Myanmar Case*, the Tribunal concluded that exercising jurisdiction to delimit the continental shelf beyond 200 nm first would

not prejudice the subsequent delineation of outer limits by the CLCS, reasoning as follows:

First, there is a clear distinction between the delimitation of the continental shelf under article 83 and the delineation of its outer limits under article 76.⁴ The absence of established outer limits of a maritime zone does not preclude delimitation of that zone.⁵ And the exercise by international courts and tribunals of their jurisdiction regarding the delimitation of maritime boundaries is without prejudice to the exercise by the CLCS of its functions on matters related to the delineation.⁶

Second, there is nothing in United Nations Convention on the Law of the Sea (UNCLOS) or in the Rules of Procedure or in its practice to indicate that delimitation of the continental shelf constitutes an impediment to the performance by the CLCS of its functions.⁷

Third, a number of States have resolved their maritime boundaries through negotiation or agreements either before or during the CLCS's consideration of their submissions, and such practice has not precluded the CLCS's examination or issuing recommendations.⁸

Fourth, if a court or tribunal were to decline jurisdiction over delimitation, while the disputing States simultaneously withhold consent for CLCS consideration of a submission, the dispute could be prolonged indefinitely, leaving the Parties in a position where they may be unable to benefit fully from their rights over the continental shelf.⁹

Similarly, in *Matter of the Bay of Bengal Maritime Boundary Arbitration (Bangladesh/India Case)*, the arbitral tribunal emphasized that "if the Tribunal were to decline to delimit the continental shelf beyond 200 nm, the outer limits of the continental shelf of each of the Parties would remain unresolved."¹⁰

Although ITLOS prioritized delimitation over the delineation on outer limits in the

¹ In the following text, Paragraph 5(a) of Annex I to the Rules of Procedure of the Commission on the Limits of the Continental Shelf is abbreviated as Paragraph 5(a); the Rules of Procedure of the Commission on the Limits of the Continental Shelf is abbreviated as the Rules of Procedure; the Commission on the Limits of the Continental Shelf is abbreviated as CLCS.

² Article 5 paragraph a of Annex I, the Rules of Procedure of the Commission on the Limits of the Continental Shelf.

³ Note Verbale from the Permanent Mission of Bangladesh to the United Nations, No. PMBNY/67/UNCLOS/2012, 30 September 2012, https://www.un.org/depts/los/clcs_new/submissions_files/mmr08/2012_09_30_BGD_NV_UN.pdf.

⁴ Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012, at 99, para. 376.

⁵ Ibid, 98, para. 370.

⁶ Ibid, 100, para. 379.

⁷ Ibid, 99, para. 377.

⁸ Ibid, 100, 102, para. 380, 393.

⁹ Ibid, 102, para. 392.

¹⁰ In the *Matter of the Bay of Bengal Maritime Boundary Arbitration (Bangladesh/India)*, Award, 7 July 2014, at 22, para. 82.

Bangladesh/Myanmar Case, the two cases regarding Bay of Bengal did not offer a definitive or universal solution. The ITLOS Tribunal also acknowledged that where significant uncertainty exists regarding the outer edge of the continental margin, it would hesitate to proceed with delimitation.¹

The approach of the International Court of Justice (ICJ), however, marks a reversal from the reasoning adopted in the two cases regarding Bay of Bengal. In *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaraguan Coast Case)*, the ICJ interpreted its 2012 judgment regarding *Territorial and Maritime Dispute (Nicaragua v. Colombia)* as premising the delimitation of the continental shelf beyond 200 nautical miles on Nicaragua's submission of data on its outer continental shelf limits to the Commission.² Judge Xue Hanqin, in her separate opinion on *Nicaraguan Coast Case*, also stated: "In such a technically complicated case, it is a necessity for the parties to obtain the recommendations of the CLCS before proceeding to delimitation."³ Clearly, in their view, delimitation of the outer continental shelf should be premised on the delineation of its outer limits, since the CLCS, as the authoritative scientific and technical body, can provide geographical and legal basis for judicial organs through its consideration and recommendations.

3. "Delimitation" and "Delineation" in UNCLOS

According to Article 76(10) of UNCLOS, the delineation of the outer limits of the continental shelf "is without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts." Under Article 83(1), delimitation of the continental shelf between States with opposite or adjacent coasts "shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the ICJ, in order to

achieve an equitable solution." Based on these two provisions, "delimitation" and "delineation" are two independent processes.

However, such a straightforward conclusion overlooks the evolving and complex interplay between the two processes. According to the *travaux préparatoires*, the United States first proposed the establishment of the Commission during the Third United Nations Conference on the Law of the Sea. In the U.S. proposal, the Commission was envisaged as an institution that would review and finally decide on the outer limits, exercising a function similar to that of a court rendering a judgment.⁴ However, as the drafting progressed, the powers granted to the Commission were gradually scaled back. The final text of the UNCLOS only requires the coastal State to establish the outer limits "on the basis of" the recommendations of the CLCS, without even stipulating that the coastal State must "take them into account." In essence, the CLCS's role shifted from that of a decision-maker to one that confers legitimacy upon the limits set by the coastal State.⁵

The consequence is that under the original U.S. proposal, the Commission's decision would have been as binding as a ruling by an international judicial body, thus necessitating the sequence of first delineating before proceeding to delimitation, so as to avoid conflicting outcomes. In reality, however, under the UNCLOS, although the CLCS's recommendations are authoritative and effective, the coastal State may deviate from them to some extent. The recommendations simply cannot be equated with a judicial decision. Moreover, since the UNCLOS treats "delimitation" and "delineation" as two independent processes, and the provisions regarding the CLCS's mandate contain no implication of a required sequence, it might seem logical to assume that the two processes would not interfere with each other regardless of their order. Yet one must ask: if the geographical factors, procedural steps, and legal effects of both "delimitation" and "delineation" remain unchanged, can merely altering the

¹ Bangladesh/Myanmar, supra note 4, at 115, para. 443.

² See *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, 17 March 2016, at 132, para.85.

³ *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Judgment, Separate opinion of Judge Xue, I.C.J. Reports 2023, 17 March 2016, at 509, para.51.

⁴ See Myron H. Nordquist, et al. (2013). *United Nations Convention on the Law of the Sea, 1982: a commentary*, Vol. II. Martinus Nijhoff Publishers, p. 849.

⁵ See McDorman, Ted L. (2002). The role of the Commission on the Limits of the Continental Shelf: a technical body in a political world. *The International Journal of Marine and Coastal Law*, 17(3), 319.

CLCS's role justify claiming that switching the order of the two processes will have no adverse consequences? As noted by Meeting of States Parties to the UNCLOS, coastal states with opposite or adjacent coasts find it difficult to delimit the outer continental shelf before making outer limits final and binding based on the CLCS's recommendations.¹

4. Intertwined Twins—Where Is the Point of Convergence?

Kunoy argues that “delimitation” and “delineation” are intertwined, and that the latter must precede the former. And failure to follow this fixed sequence would, due to their intertwined nature, affect or interfere with the work of the CLCS.² In fact, Kunoy is correct in identifying the intertwined relationship, but he does not delve into the specific elements that connect them.

Only by identifying the precise point where the two processes converge can we analyze—from geographical or legal perspectives—whether a specific sequence should be followed to ensure that one does not prejudice the other. In *Bangladesh/Myanmar Case*, the Tribunal identified this point and drew a series of conclusions: overlapping entitlements are a prerequisite for delimitation, and entitlement should be determined with reference to the outer edge of the continental margin.³ In the technical-legal process of “delineation,” the CLCS is tasked with determining that outer edge of the continental margin. As Judge Ndiaye pointed out in his separate opinion in *Bangladesh/Myanmar Case*, the failure to accurately determine the entitlements to the continental shelf was the greatest shortcoming of that case.⁴ “Delimitation” could proceed before “delineation” only if the overlapping entitlements could be precisely determined, not

merely deemed “likely” to overlap. Only by employing technical means to present objective geographical data and ascertain the outer edge of the continental margin of both parties can overlapping entitlements be confirmed. Relying solely on a finding of “potential” overlap carries a high risk of error and is not an appropriate method for resolving disputes concerning the limits of national jurisdiction.

Since the delineation is a unilateral act, it must undergo the procedure under Article 76(8) of the UNCLOS to gain acceptance and recognition by the international community—this is the very purpose for which the CLCS was established. However, the UNCLOS's scaling back and compromise regarding the CLCS's powers means that the fundamental technical step of determining the outer edge of the continental margin lacks authoritative resolution. Moreover, coastal States may potentially exaggerate data favorable to them. Materials such as submissions that have not been considered by the CLCS, documents submitted by States in litigation (and even documents agreed by parties, since there may be areas undisputed between them but where a third State has an interest or claim) are generally insufficient to conclusively determine overlapping entitlements to the outer continental shelf.

5. How to Break the Deadlock?

How can the impasse—the failure of “delimitation” and “delineation” to interact constructively—be broken? Recent scholarly views have shed light on this legal issue by refocusing on the fundamental geographical factors that must be considered. Ki Beom Lee, for instance, argues that the sequence should depend on the geographical configuration between the States involved. Between States with opposite coasts where the distance between their coasts is less than 400 nm, delineating the outer limits should take priority, since confirming the natural prolongation of the continental shelf is a “relevant circumstance” that must be considered in delimitation. Where the distance exceeds 400 nm, it is first necessary to determine the relationship between the outer edge of the continental margin and the 200 nm lines of both States to establish whether delimitation is even necessary. Conversely, between States with adjacent coasts, delimitation should come first. This is because the boundary must be established to determine whether both States actually possess a continental shelf

¹ See Issues with respect to article 4 of Annex II to the United Nations Convention on the Law of the Sea Background paper prepared by the Secretariat (SPLOS/64), SPLOS, 1 May 2001, <https://docs.un.org/en/SPLOS/64>, para.46.

² See Kunoy, Bjørn. (2010). The Admissibility of a Plea to an International Adjudicative Forum to Delimit the Outer Continental Shelf Prior to the Adoption of Final Recommendations by the Commission on the Limits of the Continental Shelf. *The International Journal of Marine and Coastal Law*, 25(2), 262, 270.

³ *Bangladesh/Myanmar*, supra note 4, at 105, 114, para. 397, 437.

⁴ See Delimitation of the maritime boundary in the Bay of Bengal (*Bangladesh/Myanmar*), Separate Opinion of Judge Tafsir M. Ndiaye, ITLOS Reports 2012, p. 174, para. 85.

extending beyond 200 nm.¹

Building on the premise that the relationship between “delimitation” and “delineation” depends on the determination of overlapping entitlements to the outer continental shelf, Ki Beom Lee’s perspective offers a geographically-informed approach to understanding the interaction between the two processes. This view accounts for the distinct geographical contexts of States with opposite or adjacent coasts. It notably argues that in the case of adjacent coasts, delimitation should take precedence because the two States may share a single continental shelf. While the outer edge of the continental margin might be determinable, without prior delimitation, it remains unclear whether entitlements overlap or if a State even possesses entitlement to a continental shelf beyond 200 nautical miles. In such scenarios, establishing the outer limits first could allow a party to leverage geographical data to its advantage, potentially prejudicing the subsequent delimitation. For opposite coasts, as mentioned earlier, establishing outer limits first is not mandatory, but it represents the most convincing and expedient approach.

However, this solution is palliative, addressing the symptoms rather than the root cause. While it acknowledges that delimitation should sometimes precede the delineation—aligning with ITLOS’s approach of exercising jurisdiction beyond 200 nm only under specific conditions—it fails to resolve the fundamental impediments to the interaction between “delimitation” and “delineation.”

The key to breaking this deadlock lies in removing the obstructive clause—Paragraph 5(a)—which impedes the CLCS’s consideration of submissions.² This clause indirectly grants any of the States concerned in the dispute what amounts to an arbitrary veto power over a submission, requiring no evidence or justification. Some scholars have called for a

complete deletion of this clause,³ while others, along with some states, advocate for its technical modification, such as granting the CLCS the authority to identify the existence of a dispute or to conduct preliminary technical assessments⁴.

In the author’s view, the most targeted solution is to empower the CLCS to provide preliminary technical assessments on all submissions, irrespective of disputed areas. Firstly, this solution avoids contravening Article 76(10) and Article 9 of Annex II to the UNCLOS, as they prohibit the CLCS to process submissions where sovereignty or delimitation disputes exist. Secondly, this solution aligns with the object and purpose of establishing the CLCS by enhancing its technical role without exceeding its scientific mandate. Last but not least, this solution would effectively address the problem faced by international judicial bodies, which often lack the necessary scientific data to delimit the continental shelf, thereby resolving the dysfunctional interaction between “delimitation” and “delineation.”

References

- De Herdt, Sandrine W. (2020). The relationship between the delimitation of the continental shelf beyond 200 nm and the delineation of its outer limits. *Ocean Development & International Law*, 51(3), 11.
- Elferink, Alex G. Oude. (2017). Paragraph 5 (a) of Annex I to the Rules of Procedure of the Commission on the Limits of the Continental Shelf: Solution to a Problem or Problem without a Solution?, in Myron H. Nordquist, et al., eds., *Legal Order in the World’s Oceans: UN Convention on the Law of the Sea*, Vol. 21, Brill, p. 317.
- Kunoy, Bjørn. (2010). The Admissibility of a Plea to an International Adjudicative Forum to Delimit the Outer Continental Shelf Prior to the Adoption of Final Recommendations by the Commission on the Limits of the

¹ Lee, Ki Beom. (2014). Should the Invocation of Paragraph 5 (a) of Annex I to the CLCS Rules of Procedure Result in an Automatic Deferral of the Consideration of a Submission? *Chinese Journal of International Law*, 13(3), 614-615.

² See De Herdt, Sandrine W. (2020). The relationship between the delimitation of the continental shelf beyond 200 nm and the delineation of its outer limits. *Ocean Development & International Law*, 51(3), 11.

³ See Elferink, Alex G. Oude. (2017). Paragraph 5 (a) of Annex I to the Rules of Procedure of the Commission on the Limits of the Continental Shelf: Solution to a Problem or Problem without a Solution?, in Myron H. Nordquist, et al., eds., *Legal Order in the World’s Oceans: UN Convention on the Law of the Sea*, Vol. 21, Brill, p. 317.

⁴ See TRAN, Huu Duy Minh. (2023). The Approach of the Commission on the Limits of the Continental Shelf to Submissions Involving Unresolved Disputes: Should It Be Modified? *Asian Journal of International Law*, 13(1), 140-143; See Report of the twenty-ninth Meeting of States Parties (SPLOS/29/9), SPLOS, 8 July 2019, <https://docs.un.org/en/splos/29/9>, para.70.

Continental Shelf. *The International Journal of Marine and Coastal Law*, 25(2), 262, 270.

Lee, Ki Beom. (2014). Should the Invocation of Paragraph 5 (a) of Annex I to the CLCS Rules of Procedure Result in an Automatic Deferral of the Consideration of a Submission? *Chinese Journal of International Law*, 13(3), 614-615.

McDorman, Ted L. (2002). The role of the Commission on the Limits of the Continental Shelf: a technical body in a political world. *The International Journal of Marine and Coastal Law*, 17(3), 319.

Myron H. Nordquist, et al. (2013). *United Nations Convention on the Law of the Sea, 1982: a commentary*, Vol. II. Martinus Nijhoff Publishers, p. 849.

TRAN, Huu Duy Minh. (2023). The Approach of the Commission on the Limits of the Continental Shelf to Submissions Involving Unresolved Disputes: Should It Be Modified? *Asian Journal of International Law*, 13(1), 140-143.