Arctic Review on Law and Politics
Vol. 13, 2022, pp. 393–406

Peer-reviewed article

Delimitation of the Continental Shelf in the Central Arctic Ocean: Is It Possible Nowadays?

Valentin A. Koshkin
Sun Yat-sen University, China

Abstract
Russia was the first Arctic coastal state to make an official submission to the Commission on the Limits of the Continental Shelf (CLCS) in 2001. The purpose of Russia's submission was the delineation of the outer limits of the continental shelf beyond 200 nautical miles in the Arctic Ocean in accordance with UNCLOS Article 76. The area claimed by Russia is a large portion of the seabed extending even to the exclusive economic zones of Denmark and Canada. However, Russia's actions regarding delineation in the Arctic Ocean have led to criticism from several Russian experts in the field of international law. This paper is a response to a series of articles by Ivan Zhudro and Alexander Vylegzhanin. It argues against their assertion that Russia and the other Arctic states could have established the outer limits of their continental shelf in the absence of CLCS recommendations through the delimitation procedure in accordance with UNCLOS Article 83. The article rejects the argument that during the delimitation the Arctic states could have used meridian lines (sectors) to exclude the existence of an international seabed area in the Central Arctic Ocean. The author challenges the position that the result of delineation under UNCLOS Article 76 would not be fair since the US has not ratified UNCLOS.

Keywords: *Arctic states, delineation, delimitation, Commission on the Limit of the Continental Shelf, entitlement, sector theory*

Responsible Editor: Margherita Paola Poto, UiT The Arctic University of Norway

Received: January 2022; Accepted: May 2022; Published: July 2022

Introduction

After the United Nations Convention on the Law of the Sea (UNCLOS) was ratified by Russia in April 1997, the Russian Government adopted a resolution that initiated the process of establishing the boundary between the Russian continental

Correspondence to: Valentin A. Koshkin, e-mail: koshkin24@mail.ru

© 2022 Valentin A. Koshkin. This is an Open Access article distributed under the terms of the Creative Commons CC-BY 4.0 License. eISSN 2387-4562. https://arcticreview.no.

Citation: Valentin A. Koshkin. "Delimitation of the Continental Shelf in the Central Arctic Ocean: Is It Possible Nowadays?" Arctic Review on Law and Politics, Vol. 13, 2022, pp. 393–406. http://dx.doi.org/10.23865/arctic.v13.3771

shelf and the international seabed area (the Area). On December 20, 2001, the Russian Federation made its first submission to the Commission on the Limit of the Continental Shelf (CLCS) to delineate the outer limits of the Russian continental shelf beyond 200 nautical miles (nm) from the baselines in the Arctic region in accordance with UNCLOS Article 76, paragraph 8. A year later, CLCS recommended Russia to submit additional information and make a revised submission regarding delineation of the extended continental shelf in the Arctic Ocean. In August 2015, Russia provided additional data and on February 9, 2016, it formally submitted a revised application to CLCS. This application contained comprehensive new proof of shelf claims to the Central Arctic Ocean seabed, including large areas of the continental shelf under the North Pole. Russia's claim included almost 1.2 million sq. km of Arctic continental shelf extending more than 350 nm from the shore.[1] On March 31, 2021, the Russian Government submitted two addenda to the 2015-revised submission to CLCS. Nowadays Russia's continental shelf claims include around 700,000 sq. km.[2]

Russia's claims encompass a large area of the seabed from the 200 nm limit to the exclusive economic zones (EEZ) of Denmark and Canada. Nevertheless, Russia's policy regarding the continental shelf beyond 200 nm in the Arctic Ocean triggered some criticism from reputable Russian scholars in the field of international law.[3] There have been several papers by Ivan Zhudro and Alexander Vylegzhanin, the two leading Russian researchers in the field of International law on the Arctic, criticizing Russia's approach to delimiting the outer limits of the continental shelf in the Arctic Ocean.

There are several reasons for the criticism. First, it is assumed that Russia and the other Arctic coastal states could have established the outer limits of their continental shelf using a delimitation agreement in accordance with UNCLOS Article 83 and following UNCLOS Article 76, without submitting claims to CLCS.[4] In other words, delimitation of the continental shelf between the Arctic states can supersede or replace delineation of the outer limits of the continental shelf.

Second, as a method of delimitation, the Arctic states could have used meridian-based sector lines, following legal custom to delimit maritime areas in the Arctic since the 19th century.[5] However, had Russia and the other Arctic states initially been guided by UNCLOS Article 83 and applied the sector principle as a delimitation method, it would have been possible to completely exclude the international seabed area within their Arctic sectors.[6] Also, adhering to the sector principle would make delineation of the Area in the Arctic Ocean dependable on the will of the Arctic coastal states.[7] Third, since the United States, as one of the Arctic coastal states, has not ratified UNCLOS, delineation of the outer limits of the continental shelf under Article 76 would not be fair.[8] Moreover, Article 76 does not reflect international customary law and its provisions do not apply to the US.[9]

In this article, we analyze the above criticism and demonstrate that the position of the Russian scholars has no legal basis. The first reason will be analyzed in greater

detail because it raises an important question of whether the Arctic states can delimit their continental shelf beyond 200 nm before CLCS make recommendations on the establishment of the outer limits of the continental shelf. This issue is of particular importance since delineation by CLCS is a time consuming and complex process.

Delineation should be first in the Arctic Ocean

As stated above, proponents of UNCLOS Article 83, including Vylegzhanin and Dudykina, emphasize the legitimacy of Arctic states delimiting the continental shelf beyond 200 nm without CLCS recommendations.[10] They refer to legal proceedings over the Bay of Bengal case, where the International Tribunal for the Law of the Sea (ITLOS) referred to UNCLOS Article 77(3), and stated that the rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or any express proclamation.[11] The Tribunal noted that "[a] coastal states 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."[12] In its North Sea judgement, the International Court of Justice (ICJ) noted that a coastal state's rights over the continental shelf "exist ipso facto and ab initio, "by virtue of its sovereignty over the land".[13] Based on these cases, Vylegzhanin and Dudykina conclude that the rights of the coastal state over the continental shelf do not depend on CLCS procedure.[14] Therefore, the submission to CLCS made by Russia under UNCLOS Article 76, and Russia's refusal to use sector theory as a delimitation method under UNCLOS Article 83 was criticized by these Russian scholars and gave rise to a misunderstanding among some Russian researchers.

Delimitation is legally possible before the delineation process is completed. The procedure for delimitation of the continental shelf is different from the procedure for delineation of outer limits. The delineation refers to defining the continental shelf boundaries of a state and an international seabed area, whereas delimitation refers to defining boundaries of the continental shelf between states with opposing or adjacent coasts. UNCLOS Article 76, paragraph 10 and UNCLOS Article 9 of Annex II describes the relationship between these two concepts. The provisions of Article 76 and the recommendations of CLCS are "without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts".[15] UNCLOS Article 76 emphasizes the role of CLCS in the delineation of the outer limits of the continental shelf. It does not contain any provisions on the delimitation of the continental shelf between adjacent or opposite states as in Article 83.[16] Maritime delimitation is a subject matter jurisdiction of the concerned neighboring countries and there are multiple examples of such agreements on delimitation beyond 200 nm, which were concluded before submitting a claim to CLCS or receiving recommendations from it.[17]

To achieve an equitable result, states might refer to the UNCLOS dispute settlement mechanism and submit a dispute on delimitation to the international dispute resolution institutions such as ICJ, ITLOS, or arbitration.[18] In the 2012 Bay of Bengal case (Bangladesh/Myanmar), ITLOS dealt with maritime boundary delimitation for the first time. This case confirms that delimitation of the continental shelf can be carried out independent of the recommendations of CLCS.[19] Both Bangladesh and Myanmar had submitted submissions to CLCS without having received any recommendations. Although the outer limits of the continental shelf of Bangladesh and Myanmar have not been established, the Tribunal still found that it had jurisdiction to delimit the continental shelf in its entirety.[20] In the Bangladesh/India case[21] and Ghana/Côte d'Ivoire case[22] the international dispute resolution institutions followed the same line and decided to exercise their jurisdiction over the dispute related to the continental shelf beyond 200 nm.

Zhudro and Vylegzhanin make ample reference to the above mentioned state practices and judicial cases. Nevertheless, that does not mean that the Arctic states can start the process of delimitation or refer the delimitation disagreement to the dispute settlement mechanism under UNCLOS Article 83 in the absence of CLCS recommendations. The argumentation of Zhudro and Vylegzhanin does not take into account all aspects of the relationship between the delineation and the delimitation of the continental shelf beyond 200 nm. The papers of these scholars are almost silent on the positions of ITLOS and ICJ regarding the entitlement of a state to a definite maritime area. They do not address the question of significant uncertainty as to the existence of a continental margin in each case. The position of most scientists differs from that of Zhudro and Vylegzhanin. Magnússon points out that the temporal relationship between delineation and delimitation is associated with entitlement.[23] Eiriksson emphasizes that a coastal state's inherent right to a continental shelf in the absence of established outer limits "does not remove from the coastal state the burden of demonstrating its entitlement" to a continental shelf area beyond 200 nm.[24]

An arbitral tribunal in Barbados v. Trinidad and Tobago stated that "the starting point of any delimitation is the entitlement of a State to a given maritime area".[25] Such entitlement in the case of the continental shelf was originally founded upon the concept of natural prolongation of the land territory into the sea.[26]

In the Bay of Bengal case, ITLOS stressed that the first step in any delimitation is to identify whether the parties have entitlements beyond 200 nm and whether these entitlements overlap.[27] As discussed above, Bangladesh and Myanmar had made a submission to CLCS, but neither state had received CLCS's recommendation on the outer limits of their continental shelf before the Case was decided. Nonetheless, ITLOS determined that it had jurisdiction to delimit the shelf beyond 200 nm.[28] The Tribunal considered the "[a] unique situation" of the Bay of Bengal[29] and noted that it would have been hesitant to proceed with the delimitation of the area beyond 200 nm. It concluded that there was significant uncertainty regarding the existence

of a continental margin in the area in question.[30] ITLOS pointed out that the determination of whether a court or tribunal should decide on its jurisdiction to delimit beyond 200 nm depends on the procedural and substantive circumstances of each case.[31] In this respect, ITLOS extended the line of the single maritime boundary beyond 200 nm until it reached the area where the rights of third states might be affected.[32] In other words, such a boundary could be extended to the international seabed area or to where the continental shelf of the third state is located.

In Nicaragua v. Colombia, only one party, Nicaragua, submitted preliminary information to CLCS. Colombia argued that Nicaragua took advantage of entitlement to the continental shelf beyond 200 nm[33] and stated that the information submitted by Nicaragua to CLCS was "woefully deficient".[34] The Court accepted Colombia's objections and decided that the preliminary information submitted by Nicaragua was insufficient to prove its entitlement to the continental shelf beyond 200 nm.[35] The ICJ noted that the preliminary information fell short of the requirements for information on the limits of the continental shelf beyond 200 nm which "shall be submitted by the coastal state to the Commission" under paragraph 8 of Article 76 of LOSC.[36] The ICJ did not receive sufficient evidence proving the entitlement of Nicaragua to the continental shelf beyond 200 nm. As a result, the ICJ refused to "address any other arguments developed by the Parties" regarding the continental shelf beyond 200 nm.

In the 2017 Ghana and Côte d'Ivoire case, the Special Chamber of ITLOS first identified whether the states had entitlements to the continental shelf beyond 200 nm, and then whether these entitlements overlapped.[37] In this case, both parties made submissions to CLCS, but only Ghana received CLCS recommendations prior to the case being decided. The CLCS recommendations confirmed the existence of the continental shelf beyond 200 nm.[38] Moreover, the parties did not reject the fact that each of them has an entitlement to the continental shelf beyond 200 nm.[39] Therefore, the Chamber decided to proceed with delimitation of the shelf beyond 200 nm and to extend the line of the single maritime boundary beyond 200 nm until it reached the outer limits of the continental shelf.[40]

There is no doubt that a state's rights over the continental shelf "exist ipso facto and ab initio, by its sovereignty over the land".[41] The Arctic states are indeed entitled to a continental shelf beyond 200 nm under customary international law, where a state's continental margin extends beyond this distance. At the same time, it is also true that establishment of the outer limits of the continental shelf is necessary to determine the exact extent of a coastal state's entitlement over its continental shelf. In the Bay of Bengal case, ITLOS clarified that entitlement to a continental shelf beyond 200 nm should be determined by reference to the outer edge of the continental margin (identified under UNCLOS Article 76(4)). To interpret otherwise, the entitlement is warranted neither by the text of Article 76 nor by its object and purpose.[42] The outer edge of the continental margin, as a legal term, is given no precise meaning in UNCLOS Article 76(1) outside the context provided by

the subsequent paragraphs. Specifically, the outer edge of the continental margin is established according to paragraphs 4 to 6 of Article 76 and delineated by the method presented in paragraph 7. The absence of outer limit lines beyond 200 nm presents uncertainty over the exact extent of legal entitlement, which can result in associated difficulties for a coastal state seeking to exercise continental shelf rights in areas near potential outer limits.[43]

The above referenced cases show that the certainty of entitlement and the lack of significant uncertainty as to the existence of the continental shelf beyond 200 nm can be regarded as the thresholds for delimitation of the continental shelf beyond 200 nm. These two thresholds matter not only for international dispute resolution institutions but also for coastal states negotiating delimitation boundaries and concluding the delimitation agreement themselves. Herdt has identified four main situations when it can be concluded that the certainty threshold is met: (1) when the parties to the dispute accept uncontested scientific materials; (2) when the parties do not reject the fact that each of them has an entitlement to the continental shelf beyond 200 nm; (3) when CLCS has issued recommendations confirming entitlement to the shelf beyond 200 nm for both parties or at least one of the parties; and (4) when the coastal state has submitted a complete submission to CLCS and not only preliminary information.[44]

The delimitation of the continental shelf beyond 200 nm in the Arctic region is different from the above referenced cases. For instance, in Nicaragua v. Colombia, Nicaragua's entitlement to the continental shelf beyond 200 nm and the existence of the shelf in this area were in dispute. Due to differences between the two parties regarding certainty of entitlement and the existence of a continental shelf beyond 200 nm, these two thresholds were not met. In the case of the Central Arctic Ocean, Russia, Denmark and Canada do not contest that each state is entitled to a continental shelf beyond 200 nm. Moreover, all three states have made submissions to CLCS. Nevertheless, there is still uncertainty regarding the extent of the entitlement to the continental shelf beyond 200 nm. The reason lies in differences between the states on the legal status of the Gakkel Ridge (also known as the Arctic Mid-Ocean Ridge) and the Alpha-Mendeleev Rise. The claims submitted over these two submarine features raise complex legal and technical issues. Both Denmark's 2014 submission and Russia's 2021 addenda to the 2015-revised submission include the Gakkel Ridge (except its central part). In the Danish submission, the Gakkel Ridge is regarded as an active, seafloor spreading ridge.[45] At the same time, Russia refers to this feature as a submarine ridge. Regarding the Alpha-Mendeleev Rise, Russia assumes that this submarine feature is a submarine elevation,[46] while Denmark assumes that it is a volcanic plateau.[47]

Article 76 provides a few ways to measure the extent of entitlement on the continental shelf depending on the type of submarine feature (oceanic ridges, submarine ridges, and submarine elevations). The controversies in scientific and technical data provided by each of the parties about the classification of Arctic ridges create

uncertainty about the exact extent of the entitlement of the Arctic states to the continental shelf beyond 200 nm. For instance, if CLCS concludes that the Gakkel Ridge is a submarine ridge, the entitlement of Arctic states according to paragraph 5 of UNCLOS Article 76 "shall not exceed 350 nm from the baselines from which the breadth of the territorial sea is measured". If the Gakkel Ridge is determined to be part of the deep ocean floor, none of the Arctic states will be able to include it as a part of their continental margin. If the Alpha-Mendeleev Rise is recognized by CLCS as a submarine elevation, then according to paragraph 6 of UNCLOS Article 76 the entitlement of Russia, Denmark and Canada to the continental shelf will not be subject to an overall limit of 350 nm, which is applied in the case of submarine ridges. That is why the Arctic states might be able to apply another constraint, which implies that the continental shelf is limited to 100 nm beyond the point at which the seabed lies at a depth of 2500 meters. Since the Arctic Ocean is the shallowest of the world's five major oceans, this constraint is the most seaward and, thus, to the Arctic states' advantage.

Delimitation in the Central Arctic Ocean is complicated by the fact that Russia, Denmark and Canada have opposite coasts. In the case of adjacent coasts, such as those of Bangladesh and Myanmar in the Bay of Bengal case, the direction of the seaward segment of a maritime boundary can be determined without specifying its precise terminus by indicating that the delimitation line continues until it reaches an area where the rights of third parties may be affected.[48] In the Arctic, this is problematic due to the hypothetical presence of the international seabed area, the exact borders of which are not known to the Arctic states in the absence of CLCS recommendations. As Antsygina points out, in the case of the Arctic states' opposite coasts, delimitation requires certainty on the outer limits of the continental shelf beyond 200 nm. The extent of the entitlements must be determined.[49] Xuexia Liao supposes that relationship between entitlement, delineation and delimitation between opposite coasts is inextricable because defining the entitlement is integral to both the delineation procedure and the delimitation process. As a result, the "delineation-delimitation" dichotomy should be more accurately presented as the "entitlement-delineation-delimitation" trilogy.[50]

Given the above, it could be inferred that the Arctic states most likely will not start the delimitation process until CLCS issues its recommendations, and the limits of the continental shelf are internationally recognized as "final and binding". In addition, the international dispute resolution institutions will be hesitant to proceed with delimitation in the Central Arctic Ocean. Maritime boundaries identified by the international dispute resolution institutions between two states with opposite coasts is subject to a higher risk of being inconsistent with the recommendations of CLCS. The competence of international dispute resolution institutions to delimit the continental shelf beyond 200 nm cannot be rightly established without fully appreciating the conceptual and factual role that the determination of entitlement plays in the interaction between delineation and delimitation.[51] The extent of

the entitlement of each party to the shelf beyond 200 nm may be important in an assessment of whether the "equitable solution" required by UNCLOS Article 83 is achieved.[52] Because the precise location of the outer limit of the continental shelf is unknown, it is likely that this will prevent a stable and definitive boundary from being established at the time of delimitation – which is the very purpose of maritime boundaries.[53] Moreover, delimiting the continental shelf beyond 200 nm between two opposite coasts without first ascertaining the accurate area of overlapping entitlements may also fail the objective of maritime delimitation to achieve an equitable solution.[54] Therefore, delimitation in the absence of CLCS recommendations may not be satisfactory.[55]

Sector theory as a way to delimit the Arctic

Zhudro supposes that if Russia and the other Arctic states had concluded delimitation agreements using sector theory, it would have been possible to "prevent formation of the international seabed area within the borders of the Arctic sector of Russia."[56] Sector theory implies that delimitation lines are established based on meridians (sector lines), with the tripoint at the polar apex. Vylegzhanin and Dudykina consider that since the 19th century it has been legal custom to use sector theory to delimit maritime areas in the Arctic. The presence or absence of the Area in the ocean depends only "on the will of the Arctic states" because through application of article 83 and sector theory it is possible to divide all of the Arctic continental shelf into five sectors between the five Arctic states.[57] It is frequently accepted that sector theory is a part of the unique legal process in the Arctic ocean that has developed over the centuries.[58] Therefore, sector lines could become the basis for delimitation of the Arctic shelf between the five Arctic states.[59]

To prove the customary status of sector theory in the Arctic Ocean, Russian scholars refer to the following international agreements: Anglo-Russian Convention of 1825, The Russo-American Treaty of 1824 and 1867, and the Russian-Swedish Convention of 1826.[60] These agreements establish sectoral boundaries between the States. However, these documents did not establish the boundaries of maritime areas and did not aim to extend the exclusive jurisdiction of the Arctic states over the maritime spaces beyond the three-mile limit of the territorial sea, which was typical for that time. These agreements clearly and unambiguously delimited only land spaces in the Arctic region.[61]

Russian doctrine states that some Arctic states have fixed sectors of their Arctic zones in legislation.[62] In particular, it was argued that Canada applies the sector principle in the North-West Territories Act, which extended Canadian jurisdiction not only to the Arctic lands but also to the waters.[63] It should be noted that sector theory originally was first propounded on February 20, 1907 by Canadian Senator P. Poirier, who allocated sectors to Canada and the other Arctic Ocean coastal states. He proposed that all the lands between the two lines up to the North Pole should

belong to the country whose territory abuts up there.[64] This means that all the land and islands in the north of Canada between 141° and 60° W. longitude are Canadian territory.

This very first statement about sector theory in history clearly and unambiguously established Canada's sovereignty only over land territories within the sector. Notably, the North-West Territories Act does *not* contain provisions indicating that Canada's jurisdiction extends to the waters (continental shelf, EEZ) or to its territorial sea.

Historically, none of the Arctic states has given any preference to sector theory. Each state adopted the provisions of UNCLOS regarding the delineation and delimitation of the continental shelf without exceptions. Thus, so-called sector theory cannot be grounds for refusing to comply with UNCLOS Article 76. Moreover, the idea of excluding the existence of the Area by the Arctic states is separate from reality and contradicts the provisions of UNCLOS Part XI and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea. UNCLOS declares the Area and its resources to be "the common heritage of mankind".[65] According to UNCLOS Article 137, "No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or natural or juridical person appropriate any part thereof."[66] Encroaching on the Area, obviously recognized by the USSR and Russia, means encroaching on the interests of the entire world community.

The US and UNCLOS Article 76

One of the arguments in favor of Russia's refusal to comply with Article 76 in the Arctic is that, in contrast to Article 83, the provisions of Article 76 do not reflect customary international law and do not apply to all the states, especially the United States (US) as a non-party to UNCLOS. The US, being outside UNCLOS administration, does not comply with its provisions on the outer limits of the continental shelf in favor of the international seabed area. In this respect, Vylegzhanin and Dudykina suggest that if one of the Arctic states does not comply with UNCLOS limitations, then the result of delineation of the continental shelf beyond 200 nm in the Arctic Ocean would not be fair. Moreover, the US is not bound to UNCLOS Article 82, which regulates revenue-sharing obligations. Therefore, it is frequently held that in the case of the Central Arctic Ocean "all the global mechanisms created by the UNCLOS do not function".[67]

Scholarly opinion has varied on whether the rules of UNCLOS Article 76 reflect customary international law. However, it cannot be determined with certainty that all the paragraphs of Article 76 do not reflect customary rules. To address the issue of whether the provisions of Article 76 belong to customary international law, and thus are applicable to all states, Magnússon[68] and Baumert[69] have already conducted detailed analyses. They examined the legal status of the delineation procedure under

UNCLOS, including whether it is open to participation by non-parties to UNCLOS. It is important to note that Baumert presented the state practice and *opinio juris* of more than 40 states related to the provisions of Article 76.[70] These two elements are required for the formation of customary law: state practice refers to what states do and may take a wide variety of forms; *opinio juris* is the subjective attitude of the state that accompanies state practice. It is difficult to identify whether the coastal state undertook actions solely according to treaty law or also out of a conviction that the treaty rule reflected customary international law. Baumert's analysis focuses primarily on non-parties to UNCLOS. However, the practice of current parties to UNCLOS is also considered relevant if it occurred during the period before the entry into force of UNCLOS for those states or when undertaken in relation to non-parties.[71]

There is sufficient evidence of state practice and *opinio juris* proving that paragraphs 1 to 7 of Article 76 are parts of customary international law.[72] Moreover, ICJ in the 2012 Nicaragua/Colombia case stated that the definition of the continental shelf in Article 76(1) reflects customary international law.[73] The US views most of the provisions of UNCLOS as part of customary international law, including paragraphs 1–7 of Article 76.[74] In an 1987 internal government memorandum published by the Department of State in 1993, the US expressly noted that paragraphs 1–7 of UNCLOS Article 76 reflect customary international law. Moreover, the US stated that it will use these rules when delineating its continental shelf.[75] The US has publicly taken substantive steps to implement paragraphs 1–7 of Article 76. For instance, the entitlement claim of the US in the Gulf of Mexico is completely in line with the above provisions.[76] The US has exercised sovereign rights over the continental shelf beyond 200 nm in this area without protest from other states.[77] Paragraph 8 of Article 76, which is a procedural norm preserving the role of CLCS, is generally not considered a part of customary international law.[78] Thus, in the case of non-accession of the US to UNCLOS, the entitlement claim over Alaska's continental shelf beyond 200 nm will most likely be in line with the requirements of UNCLOS Article 76. However, to minimize the possibility of negative reactions from other states and to maximize legal certainty and international recognition of the outer limits of the US continental shelf, it would benefit the US to ratify UNCLOS.

Conclusion

Some agreements on the delimitation of the continental shelf beyond 200 nm under UNCLOS Article 83 were signed without CLCS recommendations. However, the (non)reaction of states to delimitation in such situations indicates a relaxed attitude only when (a) the Area is not at stake, (b) the coastal state entitlement claim is fully in line with paragraphs 1–7 of UNCLOS Article 76, and (c) relevant boundary delimitation has only a bilateral aspect. The establishment of outer limits under Article 76 criteria is necessary to determine the exact extent of a coastal state's

entitlement over its continental shelf, however, coastal state rights over the continental shelf exist *ipso facto* and *ab initio* and do not depend on CLCS procedure. In the Arctic Ocean, there is still uncertainty regarding the extent of the entitlement of the Arctic states to the continental shelf beyond 200 nm. Contradictions between Russia, Denmark and Canada on the legal status of the Gakkel Ridge and the Alpha-Mendeleev Rise contributes to this uncertainty. The Arctic states made submissions to CLCS primarily to reach certainty regarding the exact extent of entitlement on the outer edge of the continental shelf. This is especially important due to the complexity regarding delimitation of Arctic states' opposite coasts and the presence of the Area in the center between them. A key feature of following CLCS procedure is not only that the outer limits of the continental shelf are precisely defined, but that once established they become "final and binding". More importantly, the political feature of the limits being permanent is no less important than the exact location of the outer limits.[79] Moreover, such an approach will allow the submitting states to objectively assess their chances and opportunities in delimitation of the area beyond 200 nm. They will be able to take a more well-documented position for subsequent negotiations on delimitation in the Central Arctic Ocean. Therefore, the Arctic states are not likely to start negotiations on the delimitation of the continental shelf beyond 200 nm until international recognition of the outer limits of the continental shelf is achieved.

Sector theory as a delimitation method is not a legal custom. It cannot in any way replace UNCLOS Article 76, and undoubtedly cannot be used as a mechanism for delimiting the entire continental shelf in the region without establishing the boundaries of the Area. Nevertheless, in the course of negotiations over delimitation, the Arctic states might choose to use meridians (sector lines) in certain areas of the continental shelf in the Central Arctic Ocean because the coastal states are free to use any delimitation method. There is no obligatory delimitation method.

The non-acceding of the US to UNCLOS does not disadvantage other Arctic states in terms of the delineation of the outer limit of the continental shelf. The continental shelf definition in paragraph 1 of UNCLOS Article 76 reflects customary law as do paragraphs 2 to 7. This means that these provisions are applied to the US as a non-party to UNCLOS. Moreover, the US views the above provisions as reflecting international customary law. The US has noted that it will use these rules when delineating its continental shelf.

NOTES

1. Partial Revised Submission of the Russian Federation to the Commission on the Limits of the Continental Shelf in Respect of the Continental Shelf in the Arctic Ocean: Executive Summary 2015, 20.
2. Martin Breum, "Russia extends its claim to the Arctic Ocean seabed," *Arctic Today*, https://www.arctictoday.com/russia-extends-its-claim-to-the-arctic-ocean-seabed/ (accessed January 27, 2022)

3. Alexander Vylegzhanin and Inna Dudykina, "UN Convention on the Law of the Sea and the Legal Regime of the Arctic shelf," *International and European Law* 1 (2017), 286; Ivan Zhudro, "Evolution of the international legal regime of the Arctic Ocean and Russia's national interests," *Moscow Journal of International Law* 2 (2016): 78; Ivan Zhudro, "On modernization of the international legal concept of substantiation of outer continental shelf limits of the Russian Federation in Arctic regions," *International Public and Private Law* 6 (2015): 14; Nikolayev A. and Peschurov I., "Legal possibilities of preventing Russia from losing a high-latitude section of the Arctic shelf," *Modern Productive Forces* 1 (2014): 65; Ivan Peschurov, "Legal Regime of the bottom of the Arctic Ocean according to Customary International Law," *Moscow Journal of International Law* 3 (2014): 170; Gennday Melkov, "To the Issue of Status of Okhotsk Sea and Pechora," *Moscow Journal of International Law* 4 (2014): 41–42.
4. Vylegzhanin, Dudykina, "UN Convention,": 295; Ivan Zhudro, "On modernization of the international legal concept,": 10; Zhudro, "On the applicability of the sector principle to the delimitation of the Arctic Ocean Seabed," *State and Law* 3 (2020): 157.
5. Ivan Zhudro, "The sectoral method as a way to fairly delineate the seabed of the Arctic Ocean," Law and Policy 6 (2015): 818.
6. Ivan Zhudro, *International legal justification of the boundaries of the Arctic shelf of the Russian Federation* (Moscow: Doctoral dissertation, 2021), 34.
7. Vylegzhanin, Dudykina, "UN Convention,": 285–286; Alexander Vylegzhanin and Inna Dudykina, "The Arctic shelf of Russia: issues of choosing an international legal position," in Scientific and practical conference and round table: The Arctic is a territory of sustainable development and cooperation (2017): 39–40; Zhudro, "On the applicability of the sector principle to the delimitation of the Arctic Ocean seabed,": 157.
8. Vylegzhanin, Dudykina, "UN Convention,": 286.
9. Zhudro, "On modernization of the international legal concept," 13.
10. Vylegzhanin, Dudykina, "UN Convention,": 296.
11. UNCLOS Article 77 paragraph 3.
12. Nicaragua/Colombia case, 39, para. 104.
13. North Sea Continental Shelf, para. 19.
14. Vylegzhanin, Dudykina, "UN Convention": 300.
15. UNCLOS Article 77 paragraph 10; Annex II to the UNCLOS Article 9.
16. Satya Nandan et al., *United Nations Convention on the Law of the Sea: a commentary*, vol. VI (The Hague: Martinus Nijhoff, 2002), 883.
17. For instance: 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) 13 LOSB 48; Treaty between the Government between 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 (adopted June 9, 2000; entered into force 17 January 2001) 2143 UNTS 417.
18. UNCLOS Article 83 paragraph 3.
19. Bangladesh/Myanmar case, 110–112, paras. 370–379.
20. Ibid., 96–97, paras. 360–363.
21. Ibid., 22, para. 82.
22. Ghana/Côte d'Ivoire, 138, para. 491.
23. Bjarni Már Magnússon, "Is there a Temporal Relationship between the Delineation and the Delimitation of the Continental Shelf beyond 200 Nautical Miles?" *The International Journal of Marine and Coastal Law* 28 (2013): 478.
24. Gudmundur Eiriksson, "The Case of Disagreement Between a Coastal State and the Commission on the Limits of the Continental Shelf," in *Legal and Scientific Aspects of Contintal Shelf Limits,* ed. John Moore and Tomas Heider (Martinus Nijhoff), 258.

25. Barbados/Trinidad & Tobago (n 4), 837, para. 224.
26. Malcolm Shaw, M. N. *International Law*, (Cambridge: Cambridge University Press, 2021), 508; North Sea Continental Shelf, ICJ Reports, 1969: 3, 22.
27. Bangladesh/Myanmar, 96–97, paras. 360–363.
28. Ibid., at 96–97, paras. 394.
29. Ibid., at 96–97, paras. 444.
30. Ibid., at 96–97, paras. 443.
31. Ibid., at 105, para. 397.
32. Nicaragua/Colombia case, 45, para. 125 (referring to Bay of Bengal Case (n 2), 134, para. 462.
33. Ibid., 39, para. 104.
34. Nicaragua/Colombia case, 44, para. 122.
35. Ibid., 47, para. 130.
36. Ibid., 46, para. 127.
37. Ghana/Côte d'Ivoire, 112, para. 397.
38. Ibid., 137, para. 489.
39. Ibid., 139, para. 498.
40. Ibid., 145, para. 527.
41. North Sea Continental Shelf cases, ICJ (1969), para. 19.
42. Bangladesh/Myanmar, 114, paras. 437.
43. ILA Committee on Legal Issues of the Outer Continental Shelf, Conference Report Toronto 2006.
44. Sandrine W. De Herdt, "The Relationship Between the Delimitation of the Continental Shelf Beyond 200 nm and the Delineation of Its Outer Limits," *Ocean Development & International Law* 51 (2020): 271.
45. Partial Submission of the Government of the Kingdom of Denmark together with the Government of Greenland to the Commission on the Limits of the Continental Shelf. Executive Summary, 14.
46. Partial Revised Submission of the Russian Federation to the Commission on the Limits of the Continental Shelf in the Respect of the Continental Shelf of the Russian Federation in the Arctic Ocean. Executive Summary, 6.
47. Partial Submission of the Government of the Kingdom of Denmark together with the Government of Greenland to the Commission on the Limits of the Continental Shelf. The Northern Continental Shelf of Greenland. Executive Summary, 14.
48. Bangladesh/Myanmar, 105, paras. 397.
49. Ekaterina Antsygina: "The delimitation of the extended continental shelves in the Central Arctic Ocean," (2021), https://www.eastwestcenter.org/node/39811 (accessed January 27, 2022).
50. Xuexia Liao, *The Continental shelf delimitation beyond 200 nautical miles. Towards A Common Approach to Maritime Boundary-Making*, (Cambridge: Cambridge University Press, 2001), 151.
51. Ibid., 151.
52. Alex G. Oude Elferink: *ITLOS's Approach to the Delimitation of the Continental Shelf Beyond 200 Nautical Miles in the Bangladesh/Myanmar Case: Theoretical and Practical Difficulties*, ed. R. Wolfrum, M. Seršić and T, Šošić, Contemporary Developments in International Law. Essays in Honour of Budislav Vukas. (Leiden/Boston: Brill Nijhoff, 2016): 249; 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, 100, Declaration Judge Gaja, 202.
53. Bangladesh/India, 63, para. 216; Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment of 15 June 1962, ICJ Reports 1962, 6, 34.
54. Liao, *The Continental shelf delimitation beyond 200 nautical miles. Towards A Common Approach to Maritime Boundary-Making*, 151.

55. Herdt, "The Relationship, "The Relationship Between the Delimitation of the Continental Shelf Beyond 200 nm and the Delineation of Its Outer Limits," 270.
56. Zhudro, *International legal justification of the boundaries of the Arctic shelf of the Russian Federation,* 34.
57. Vylegzhanin, Dudykina, "The Arctic shelf of Russia," 39.
58. Vylegzhanin, Dudykina, "UN Convention," 291; Zhudro, "Borders of the Russian Arctic sector: the question of applicability to the delimitation of the continental shelf in the Arctic," International Law and International Organizations 3 (2016): 341.
59. Vylegzhanin, Dudykina, "UN Convention," 291.
60. Zhudro, "The sectoral method as a way to fairly delineate the seabed of the Arctic Ocean," 818.
61. Artyom Gubanov, A. *Delimitation of the Arctic Continental Shelf: Emerging International Law issues and Prospects* (Moscow, Russia: Zertsalo-M, 2015), 90, 92.
62. Ivan Bunik, International legal grounds for Russia's regulation of navigation along the Northern Sea Route, PhD Dissertation, Moscow: Moscow Institute of International Relations, 2007, 33–38.
63. Alexander Vylegzhanin, *International Law* (Moscow: Юрайт Press, 2003), 186, 188; Irina Mikhina, International legal regime of the Arctic maritime spaces, PhD dissertation, Moscow: State Scientific Research, Planning and Surveying Institute of Maritime Transport (Soyuzmorniiproekt), 2007, 35–36; Ivan Bunik, International legal grounds for Russia's regulation of navigation along the Northern Sea Route, PhD Dissertation, Moscow: Moscow Institute of International Relations, 2007, 45.
64. Leonid Timcthenko, "The Russian Arctic Sectoral Concept: Past and Present", Arctic 50 (1), 50 Years of Northern Science (1997), 29.
65. UNCLOS Article 136.
66. Ibid., Article 137.
67. Vylegzhanin, Dudykina, "UN Convention,": 287.
68. Bjarni Már Magnússon, "Can the United States Establish the Outer Limits of Its Extended Continental Shelf Under International Law?" *Ocean Development and International Law* 48 (2017): 2.
69. Kevin A. Baumert, "The outer limits of the continental shelf under customary international law," *American Journal of International Law* 111(4) (2017): 827.
70. Ibid., 837.
71. Ibid., 838.
72. Ibid., 870; Magnusson, "Can the United States Establish?" 12.
73. Nicaragua v. Colombia, 666, para 118.
74. Magnússon, "Can the United States Establish?" 7.
75. Memorandum from Assistant Secretary John D. Negroponte to Deputy Legal Adviser Elizabeth Verville, 17 November 1987, State Departament File No. P89 0140–0428, in Cumulative Digest of United States Practice in International Law, 1981–1988 (1995), 1878.
76. Magnússon, "Can the United States Establish?" 8.
77. 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.
78. Baumert, "The outer limits," 861.
79. Ted McDorman, "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 (2002): 308.