

# ENTITLEMENT, EVIDENCE, EXPERTISE AND EXPENSE THE QUANDARY FACING DEVELOPING COASTAL STATES WISHING TO IMPLEMENT UNCLOS ART.76

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## Abstract

The present stringent requirements for scientific evidence to substantiate entitlement to an Extended Continental Shelf (ECS) place developing states at a severe disadvantage. Many lack both the means and expertise to collect, interpret and present the necessary data sets unaided. The Convention's legal jargon lends itself to ambiguous constructs which may require recourse to expensive legal consultancy.

The pertinent formulae in UNCLOS art.76 para 4 (a) (i) and (ii) derive from a generalized concept of the continental margins prevalent in the 1970's. Although published in 1999 the text of the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf (CLCS/11) is necessarily constrained by the original thinking enshrined in art. 76. The constitution of CLCS and the long tenure of many of its members, some now in their third five year term, militate against flexibility and innovation in the interpretation and application of the Guidelines; as does the fact that evidence for 10 submissions already presented by coastal states is based on strict compliance with the Guidelines.<BR>

The CLCS as presently constituted is unlikely to be able to deal with all outstanding ECS entitlement submissions in timely fashion. Strict adherence to the May 2009 deadline is therefore both unreasonable and unrealistic.<BR>

The concept of the "common heritage" and the thrust of UNCLOS Part XI seek to conserve the interests of all developing states, including landlocked states. It would be inconsistent with this intention if these states were unable to establish their full entitlement to seabed resources for want of the ability to meet a set of criteria which it was beyond their capacity to satisfy.<BR>

This presentation will demonstrate the difficulties faced by smaller and more disadvantaged coastal states in acquiring and analyzing the data sets for ECS delineation and will question whether this distorts priorities for other more pressing societal concerns or relevant marine scientific endeavours. Costs involved in mobilizing hydrographic and seismic operations (to far distant remote locations often not in areas of interest to scientific institutions) will be appraised in the context of prevailing economic conditions. <BR>

**We review legal**, scientific and technical capabilities and discuss the national research facilities needed to undertake the delineation task. The extent and adequacy of external affordable advice and assistance that smaller states could call upon is assessed. Article 76 has spawned an industry seeking to market individual and institutional expertise. The question is asked whether and how those commercial resources might be focused to best effect. <BR>

States Parties, through the ISA, might consider a long-term funding mechanism to enable developing states to delineate their ECS. Repayment to be from revenues derived from subsequent exploitation activity. SPLOS should rescind the final submission date and authorise a review of CLCS/11.