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Установление Соединенными Штатами внешних пределов континентального шельфа в Арктике с позиции обычного права

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Аннотация:

Все арктические страны, за исключением США, присоединились к Конвенции ООН по морскому праву 1982 года и уже подали заявки в Комиссию по границам континентального шельфа для установления внешних границ континентального шельфа за пределами 200 морских миль. В связи с этим, открытым остается вопрос доступа США к процедуре подачи представлений в Комиссию по границам континентального шельфа. В статье анализируются положения статьи 76 Конвенции 1982 года, определяющие ныне действующий режим континентального шельфа, с целью определить какие из них относятся к обычному международному праву. Имея статус норм обычного права, эти положения будут применимы как к сторонам Конвенции, так и к странам к ней не присоединившимся, в том числе и к США. В статье кратко рассматриваются решения Международного суда, Международного трибунала по морскому праву, а также проводится обзор имеющейся государственной практики и официальных заявлений США в отношении режима континентального шельфа. В основу исследования легли нормы Конвенции ООН по морскому праву, судебная практика Международного суда и Международного трибунала по морскому праву, современные научные труды зарубежных исследователей в области международного морского права. В ходе исследования автор использует следующие общенаучные приемы: анализ, синтез, индукция, дедукция, сравнение, классификация, прогнозирование. Были также применены и такие методы, как исторический и формально-юридический. Автор приходит к выводу, что некоторые положения режима континентального шельфа Конвенции 1982 года отражают обычное международное право и применимы к США. Через действие обычного права США имеют право на континентальный шельф за пределами 200 морских миль в Арктике. В то же время нельзя с полной уверенностью утверждать, что положения, устанавливающие критерии и методы определения местоположения внешней границы континентальной окраины, отражают нормы международного обычного права.

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The Establishment of the Outer Limits of the Continental Shelf By the United States in the Arctic In Terms of Customary Law

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Abstract:

The United States remains the most conspicuous non-party to the United Nations Convention on the Law of the Sea (UNCLOS). The issue of US access to the CLCS procedure remains open because of the USA's non-party status. The Article analyzes the provisions of Article 76 of UNCLOS, which defines the current regime of the continental shelf, in order to determine which of the provisions relate to customary international law. If these provisions reflect international customary law these provisions will apply both to the parties of the Convention and to countries that have not adhered to it, including the United States. This Article also briefly considers the decisions of the International Court of Justice and the International Tribunal for the Law of the Sea. Review of current government practice and US official statements regarding the continental shelf regime are conducted. The research is based on the norms of the UN Convention on the Law of the Sea, the jurisprudence of the International Court of Justice and the International Tribunal for the Law of the Sea, modern scientific works of foreign researchers in the field of international maritime law. The author uses the following general scientific techniques: analysis, synthesis, induction, deduction, comparison, classification, forecasting. Historical and formal legal methods were also applied. The author comes to the conclusion that some provisions of the continental shelf regime of the UNCLOS reflect customary international law and are applicable to the United States. Through the operation of customary law, the United States has the right to a continental shelf beyond 200 nautical miles in the Arctic. At the same time, it cannot be said with full confidence that the provisions establishing criteria and methods for determining the location of the outer boundary of the continental margin reflect the norms of customary international law. The 1982 Convention does not provide for states that have not acceded to the Convention the rights or obligations to submit submissions to the CLCS.

Конвенция 1982 года не предусматривает для государств, не присоединившихся к Конвенции, прав или обязанностей подавать представления с Комиссию по границам континентального шельфа.

Ключевые слова:

США, Арктика, континентальный шельф за пределами 200 морских миль, обычное международное право, Конвенция ООН по морскому праву, Комиссия по границам континентального шельфа, представление

Keywords:

USA, Arctic, continental shelf beyond 200 nautical miles, customary international law, UNCLOS, CLCS, submission

Introduction

The United States is one of the few maritime powers that has not yet joined the European Union. The 1982 United Nations Convention on the Law of the Sea (UNCLOS), despite the active participation of the United States in the process of negotiating and codifying. Moreover, the ratification of this document was supported by almost every president's administration. Objections to joining the UNCLOS first arose during the Reagan administration and concerned the deep-sea regime established in Part XI Conventions. These concerns were subsequently addressed in the 1994 Agreement relating to the Implementation of Part XI of UNCLOS, and accession to the treaty has since received support from both the Democratic and Republican Parties in the United States. Currently, many political figures in the United States, including government representatives, Congress and the Armed Forces, support joining the UNCLOS, as it would give American interests at sea a stronger legal basis. In particular, the ratification of the UNCLOS will provide legal certainty in the field of rights to the continental shelf [1]. Experts often express an opinion that the United States, as a State that is not a party to the 1982 Convention, is not able to justify rights to the outer limits of the continental shelf beyond 200 nautical miles from the baselines. Many experts believe that only the universal regime of UNCLOS can properly protect U.S. interests in the Arctic Ocean. Therefore, many American legal experts agree that the United States ' accession to the UNCLOS is the best way to guarantee access to Arctic resources. [2, p. 154].

However, the opposition remains among some conservative senators who believe that certain provisions of the UNCLOS undermine American sovereignty. The U.S. Senate Foreign Relations Committee has recommended joining the treaty several times, but a small group of senators has repeatedly managed to prevent the necessary number of votes needed for the Senate to agree to ratification. For several decades now, US actions at sea have generally been based on customary international law and generally comply with the 1982 Convention [3, p. 4]. Most likely, this contributes to the senators ' belief that joining the UNLOC is not an urgent priority.

The United States has been collecting data on its continental shelf since 2001 to determine its outer limits. Expeditions show that the limits of the continental shelf beyond 200 nautical miles include an area of more than one million square kilometers [4]. The United States can lay claim to a vast swath of the sea floor containing vast resources. However, the non-adherence of the United States to the Convention raises the problem of uncertainty of the rights of the United States to these resources. In this regard, it is important to determine which of the rules of the UNCLOS are applicable to the United States as a state which is not a party to the Convention. To do this, it is necessary to analyze the components of the continental shelf regime of the UNCLOS in the light of state practice, in order to determine which rules are of a customary nature and are applicable both to parties to the Convention and to countries that have not acceded to it. We will focus first on the provisions of Article 76 of the 1982 Convention (paragraphs 1-10).

The analysis will answer the following questions:

• Is the United States entitled to a continental shelf beyond 200 nautical miles under

customary international law?

• Can the United States submit the information about the outer limits of its continental shelf to the Commission on the Limits of the Continental Shelf (CLCS)?

I. Provisions of Article 76 of the UNCLOS as customary law

1. Article 76 and the new regime of the continental shelf

The result of the negotiations in the adoption of the UNCLOS was the emergence of a new regime for the continental shelf and the establishment of a new definition of the continental shelf, as set out in Article 76 (1) of the Convention. The definition includes a combination of the geomorphological criterion (the continental shelf extends "to the outer edge of the continental margin") and the distance criterion (legal limits of the continental shelf of 200 nautical miles, regardless of the physical characteristics of the seabed). According to Article 76(3), "[t]he continental margin comprises the submerged prolongation of the land mass of the coastal state and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof".[1]

In general, the compromise reached between countries in the negotiations for the adoption of the 1982 Convention consists of three parts. The first part is a complex formula for determining the outer limit of the continental margin beyond 200 nautical miles, consisting of the technical criteria set out in paragraphs 4 to 6 of Article 76. Second, an independent body has been established (CLCS), to assist states in applying the formula of Article 76. The third element of the compromise relates to the obligations for deductions and contributions in connection with the development of the continental shelf beyond 200 nautical miles. These obligations are defined in Article 82. [5, p.324].

The inherent nature of rights to the continental shelf as a rule of customary law

In 1969, the International Court of Justice (the ICJ) issued a landmark decision in the "North Sea Continental Shelf Case", which had important implications for the regime of the continental shelf. The North Sea Decision did not address the issue of establishing the outer limits of the continental shelf, as it concerned the delimitation of the continental shelf between neighboring states. The Court had to determine the principles and rules of international law for delimitation of the continental shelf applicable between the parties to the case (Germany, Denmark and the Netherlands). Since only two of the three parties had ratified the 1958 Convention on the Continental Shelf (1958 Convention), the Court had to consider the customary legal status of certain provisions of that Convention. In its decision, the Court not only confirmed the customary nature of the basic regime of the continental shelf established in Articles 1-3 of the 1958 Convention, but also elaborated on the fundamental principles of the right to the continental shelf. The Court noted the following: "The rights of a coastal state with respect to an area of the continental shelf, which is a natural extension of its land territory in and under the sea, exist ipso facto and ab initio by virtue of its sovereignty over land".[2] The International Court of Justice has thus confirmed the provisions of Article 2, paragraph 3, of the 1958 Convention and Article 77(3) of UNCLOS. According to these provisions, the rights of a coastal state to the continental shelf do not depend on its effective or fictitious occupation of the shelf or on a direct declaration[3]. In other words, the rights of the coastal state are inalienable. This means that their implementation does not require passing any special legal procedures or making any special legal acts.[4] An important

1 The United Nations Convention on the Law of the Sea. Art. 76 (3).

2 ICJ. North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands). Judgment of 20 February 1969 // I.C.J. Reports. 1969. § 19.

3 U.N. Convention on the Law of the Sea. Art. 76 (3); The Convention on the Continental Shelf. Art. 2(3).

4 ICJ. North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Nether-

consequence of the inherent nature of continental shelf rights is that they exist wherever there is a basis of law and are not legally dependent on the establishment of external boundaries.[5] These features of the continental shelf regime are considered as a part of customary international law [6, p.164], and there has been no dispute about this. The distinction between the right to the continental shelf and the determination of its outer limits is implicitly recognized in the judgment of the ICJ in the Case between Tunisia and Libya (1982),[6] and is explicitly confirmed by the International Tribunal for the Law of the Sea (ITLOS) in the dispute between Bangladesh and Myanmar (2012).[7]

In its later decisions, the International Court of Justice has also not only recognized the definition of the continental shelf in Article 76 (1) as reflecting customary law, but has emphasized the rights of coastal states to the continental shelf beyond 200 nautical miles.[8] In the 2012 Judgment on Nicaragua v. Colombia case, Judge Mensah noted in a separate statement that "it can be plausibly argued that the right of a coastal state on the continental shelf beyond 200 nautical miles arises ipso facto and ab initio under customary international law, regardless of whether the state is a party to the Convention."[9] Thus, in the UNCLOS there is a category of provisions that, at the time of its adoption, were already recognized as norms of customary international law. The complex nature of the UNCLOS as a package deal cannot affect the customary legal status of such provisions. At the same time, another category of provisions in the UNCLOS are those that have not yet acquired customary law status at the time of the adoption of the UNCLOS. For example, the formula for determining the location of the outer limit of the continental margin beyond 200 nautical miles. However, these rules are not excluded from the process of transition to customary law. "[10]

Formula for determining the outer limits of the continental shelf as a rule of customary law

The definition of the continental shelf in Article 76 (1) appears to be fully recognized as reflecting customary law. As stated above, the ICJ has confirmed in its Judgements that, under the concept of natural prolongation states, regardless of their accession to the UNCLOS have the right to the continental shelf both within and beyond 200 nautical miles from the baselines. However, the ITLOS, in a recent decision, noted that natural prolongation can no longer be understood as a separate and independent legal basis of law. The continental shelf beyond 200 nautical miles should be defined by reference to the outer limit of the continental margin.[11] In this regard, the question of whether the provisions of paragraphs 4-7 of Article 76 of the UNCLOS establishing the formula for determining the outer limits of the continental shelf beyond 200 nautical miles relate to customary international law becomes of great importance.

There are grounds to argue that the criteria and methods available in Article 76 represent a practical application of the concept of natural prolongation. Although the definition of the continental shelf in Article 76 (1) is a conventional norm, it has been

lands). Judgment of 20 February 1969 // I.C.J. Reports. 1969. § 19.

5 ILA Committee on Legal Issues of the OCS. 2006. Conclusion No. 1.

6 ICJ. Continental shelf (Tunisia/Libian Arab Jamahiriya). Judgement of 14 April 1981 // I.C.J. Reports. 1981. § 47.

7 ITLOS. Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal. Judgement of 14 March 2012 // ITLOS Reports. 2012. § 408-409.

8 ICJ. Territorial and Maritime Dispute (Nicaragua v. Colombia). Judgment of 19 November 2012. // I.C.J. Reports. 2012. § 118.

9 ICJ. Territorial and Maritime Dispute (Nicaragua v. Colombia). Declaration of ad-hoc Judge Mensah. 2012. § 7.

10 ICJ. Delimitation of the Maritime Boundary in the Gulf of Maine Area. Judgment. // I.C.J. Reports 1984, P. 246.

11 ITLOS. Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal. Judgement of 14 March 2012 // ITLOS Reports. 2012. § 435, 437.

recognized as a part of customary law. Consequently, paragraphs 4 to 7 of Article 76 can be referred to as customary law due to their contextual relationship to Article 76 (1). According to the Vienna Convention on the Law of Treaties, a treaty must be interpreted in good faith in accordance with the usual meaning to be given to the terms of the treaty in their context, as well as in the light of the object and purpose of the treaty.[12]

The purpose of Article 76 is to define the continental shelf with reference to the exact location of the outer limits, if they are located beyond 200 nautical miles. The "[o]uter edge of the continental margin " as a legal term has no clear meaning in Article 76(1), if it is considered in isolation from the context in subsequent paragraphs. In particular, the continental margin should be located in accordance with paragraphs 4-6 of Article 76 and determined by the method described in paragraph 7. Paragraph 2 of Article 76, by providing that the continental shelf does not extend beyond the limits provided for in paragraphs 4 to 6, strengthens the link between these paragraphs and paragraph 1 of Article 76. Therefore, in order to interpret paragraph 1 of Article 76 in good faith as a rule of customary international law, it is necessary to refer to paragraphs 4 to 7 for a correct understanding of the term "outer edge of the continental margin". Thus, it is very reasonable to assume that if the external borders are defined in accordance with Article 76, paragraphs 4 to 7, they will also be in accordance with Article 76 (1) and, consequently, with customary international law.

In any event, there is no obstacle to a non-party state of the UNCLOS to voluntarily apply the formula of Article 76. The customary law recognizes the rights of coastal states to the continental shelf beyond 200 nautical miles as long as there is a basis for the rights. This position is supported in the International Law Association's[13] study and was also recognized by the Meeting of state-parties to the UNCLOS.[14] The relevant rules for determining the right to a continental shelf beyond 200 nautical miles are contained primarily in paragraphs 4–6 of Article 76 of the Convention. Referring to the same provisions, Elferink notes that they are "widely accepted by the international community as a whole. Nor did any State persistently object to them. According to the expert, there is no other rule that reflects customary international law on this issue" [7, p.63].

Status of the provisions on the CLCS procedure

A key feature of the continental shelf regime in the UNCLOS is not only that the outer limits can be clearly defined, but also that once established, they become permanent. According to Article 76, paragraph 8, of the UNCLOS state-parties submit information on the limits of the continental shelf beyond 200 nautical miles to the CLCS.[15] At the same time, the powers of CLCS are very limited. This body can only make recommendations on the location of external borders, but it have not the right to enforce its recommendations. Only the coastal state itself has the right to determine the outer limits of its continental shelf beyond 200 nautical miles. The CLCS consists of 21 specialists in the field of geology, geophysics or hydrography, which indicates that its work is primarily related to the evaluation of scientific and technical data and the provision of scientific and technical advice at the request of the coastal state.[16] The CLCS has no legal authority to impose certain restrictions on the coastal state [9, p. 508]. It is also important to note that the CLCS is incompetent to assess the compliance of the outer limits

12 The Vienna Convention on the Law of Treaties. Art. 31(1).

13 ILA Committee on Legal Issues of the OCS. 2006. Conclusion No. 1.

14 Doc. SPLOS/183, Decision regarding the workload of the Commission and the ability of States to fulfil the requirements of Article 4 of Annex II (20 June 2008); Doc. SPLOS/64, Issues with respect to Article 4 of Annex II to the United Nations Convention on the Law of the Sea (1 May 2001).

15 U.N. Convention on the Law of the Sea. Art. 76 (3).

16 Annex II of the United Nations Convention on the Law of the Sea. Art.3.

of the continental shelf established by the coastal state with the recommendations[17]. Although the Commission's own competence is quite limited, its recommendations may affect the legality of the external borders established by the coastal state. In this sense, we can say that the CLCS plays the role of a "legitimator" [8, p.319]. If the outer limits of the continental shelf have been established on the basis of the Commission's recommendations, Article 76 (8) provides that such limits are final and binding.

The requirements of Article 76 (8) serve as a kind of "procedural guarantee" to ensure that the coastal state establishes its external borders in accordance with Article 76 of the UNCLOS.[18] At the same time, the recommendations of the CLCS must also comply with Article 76.[19] Secondly, according to McDorman, the CLCS performs an "informational" function". The CLCS makes its recommendations available to the submitting state, the Secretary-General of the United Nations[20] and other states [10, p. 320]. Other states may use this information to assess whether the outer limits of the continental shelf are established on the basis of the Commission's recommendations (and therefore in accordance with Article 76). As a result, they can agree or protest. The outer limits of the continental shelf beyond 200 nautical miles may be successfully challenged if the coastal state has not acted on the basis of the Commission's recommendations or if the CLCS, in making its recommendations, has not acted within its competence.

Paragraphs 1 to 7 of Article 76 of the UNCLOS have become a reflection of customary law, the question arises of extending the status of customary international law to the Commission's institutional role in the process of establishing the outer limits of the continental shelf beyond 200 nautical miles (Article 76, paragraph 8, annex II to the UNCLOS). The institutional and procedural character of the rules governing the role of the CLCS does not allow them to become customary international law [10, p.363]. The most obvious example of state practice in applying these provisions is probably the large number of submissions that have been submitted to the CLCS by coastal states since 2001. However, since all of these submissions came from state parties to the UNCLOS, the customary law implications of this practice are limited. In order to draw a reasonable conclusion about the customary status of the provisions under consideration, a detailed analysis of the state practice of countries that are not parties to the UNCLOS is necessary.

Possible rights and obligations of the United States under the UNCLOS.

Official statements of the United States regarding the regime of the continental shelf.

The official U.S. policy on the continental shelf and Article 76 of the 1982 Convention is formulated in the 1987 statement of the Interagency Group on the Law of the Sea and Ocean Policy. The statement says that Article 76 reflects the correct definition of the continental shelf under international law, as well as that the United States exercises "jurisdiction over its continental shelf in accordance with international law, as reflected in paragraphs (1), (2) and (3) of Article 76." According to the statement, if in the future the United States decides to establish the outer limits of the continental shelf beyond 200 nautical miles, this "will be carried out in accordance with the points of (4), (5), (6) and (7)) of Article 76". [11, p.125]

Based on this policy statement, it can be assumed that the United States views the above-mentioned provisions of Article 76 as a reflection of customary law. At the same time, it should be noted that the application avoids reference to 76 (8) and the submission procedure to the CLCS, and does not indicate whether the United States considers

17 ILA Committee on Legal Issues of the OCS.2006. Conclusion No. 10.

18 ILA Committee on Legal Issues of the OCS (2006), Conclusion No. 10.

19 Annex II of the United Nations Convention on the Law of the Sea. Art.1(1)(a).

20 Annex II of the United Nations Convention on the Law of the Sea. Art.6(3).

itself bound by income-sharing obligations under Article 82 of the UNCLOS.

An example of US practice consistent with the above-mentioned provisions of the 1982 Convention is the exercise of jurisdiction by the United States over the continental shelf in the Gulf of Mexico located outside the 200-mile EEZ [12, p. 20]. This area of the Gulf of Mexico was restricted by a bilateral agreement between the United States and Mexico signed in 2000. The delimitation Treaty was based on an agreement between the two states that the seabed in the area meets the criteria of both the 1958 Convention and Article 76 of the 1982 Convention, and can be considered part of the "legal" continental shelf.[21] A study commissioned by the U.S. Government in this area of the Gulf of Mexico shows that the presumption of U.S. rights in this area is based on the sedimentary thickness criterion contained in Article 76(4)(i) of the UNCLOS.[13, p.50] The provisions of oil and gas production leases in this area provide for the possibility of fulfilling the obligations under Article 82 on revenue sharing, but at the same time it is indicated that they depend on the United States ' accession to the UNCLOS.[22]

Possibility of submission by non-party states to the UNCLOS

As stated above, in order to establish the limits of their continental shelf beyond 200 nautical miles, sate-parties to the UNCLOS have to submit information to the CLCS. However, how should a state that is not a party to the Convention act? Due to the fact that the institutional and procedural nature of the rules governing the role of the CLCS probably does not allow them to obtain the status of customary international law, it is generally accepted that states that are not parties to the UNCLOS are not required to provide any information to the CLCS [14, p.179]. However, it is not clear whether these states have the right to make such a submission voluntarily. The answer to this question is not simple, as in practice there have been no submissions from non-party states to the UNCLOS. At the Eighth Meeting of States Parties to the Convention, in 1998 sought clarification as to whether it should accept a submission from a non-party state to the UNCLOS. At that time, the prevailing view was that experts did not have the competence to give a legal opinion, and that the CLCS should seek the opinion of the UN Legal Adviser only if a real problem arose.[23] Thus, the question remains open at the moment. In order to understand it, it is necessary from a legal point of view to consider possible arguments as to whether the CLCS should accept and consider submissions from all coastal states or only from state parties to the UNCLOS. In this regard, it is important to interpret the provisions of the Vienna Convention on the Law of Treaties concerning the obligations of third states in international treaties (Articles 34, 35, 36). On the issue of the possibility of non-party state to submit an application to the CLCS, two opposing points of view can be distinguished.

According to the first point of view, negotiations were conducted on the UNCLOS as a package deal. It was assumed that states could not choose the provisions they liked and ignore what they did not like. [16] In particular, the provisions of Article 76 were agreed as part of a compromise that also includes obligations for deductions and contributions related to the development of the continental shelf in accordance with Article 82. States thus recognize concerns about the protection of the principle of the common heritage of mankind. Together, these Articles represent a compromise reached at the Third UN Conference on the Law of the Sea between states with a wide continental shelf and those states that wished to limit the limits of the continental shelf to 200 nautical

21 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. URL: https://www.congress.gov/treaty-document/106th-congress/39/document-text (дата обращения: 15.01.2021).

22 Western Planning Area, Oil & Gas Lease Sale 207 (20 August 2008) Final Notice of Sale, Stipulation No. 4, reproduced in International Seabed Authority (2009), Technical Study 4, pp. 7-8 (Box 1).

23 Report of the Eighth Meeting of States Parties. SPLOS/31 of 4 June 1998. 12. § 51-52.

miles. [17, p.932] Kvyatkovskaya notes that coastal states can exercise jurisdiction over the continental shelf beyond 200 nautical miles on the basis of customary international law. However, in her opinion, it does not mean that states that are not parties to the UNCLOS have obligations or the right to follow the procedural rules of the UNCLOS to establish the outer limits of the continental shelf. Article 76 (8) and Article 82 can be implemented only on the basis of convention law [18, p.158].

On the other hand, some researchers believe that the CLCS can and should consider materials received from non-party states [19, p.112]. One of the key mandates of the Third Conference on the Law of the Sea was to define limits for the international seabed area, with the aim of developing the principle of the common heritage of mankind. An Area is defined as "the sea and ocean floor and its subsoil beyond the limits of national jurisdiction".[24] To define Area, it is first necessary for coastal states to define the boundaries of their national jurisdiction [20, p.552]. In those parts of the world where coastal states have continental boundaries extending beyond 200 nautical miles, this means that the exact boundaries of the Area will not be known until the coastal state establishes the outer limits of its continental shelf beyond 200 nautical miles. Many experts suggest welcoming the participation of states that are not parties to the Convention in the procedure with the participation of the Commission, since this would contribute to the stability of borders and the implementation of the principle of cooperation with respect to common resources. Reasoning in the same spirit, Treves concludes that a submission to the Commission from non-party states would be in the interests of the international community, probably even more so than in the interests of the coastal states themselves (10, p.364).

A 2002 study prepared by the Coastal and Ocean Mapping Center and the Joint Hydrographic Center of the University of New Hampshire showed that the continental margins of the United States can extend beyond 200 nautical miles in many regions, including in the Atlantic Ocean; along most of the east coast of the United States; in the Gulf of Mexico; the Bering Sea; the Arctic Ocean, as well as in areas around Guam and Palmyra Atoll in the Pacific Ocean.[11, p.64] In other words, the definition of the boundaries of the continental shelf of the United States would contribute to the definition of the boundaries of the Area in several regions of the world. Given this fact, it is likely that the US submission to the Commission will be met positively.

Conclusion

As a State that is not a party to the UNCLOS, the United States is bound only by those provisions that reflect the norms of customary international law. The analysis showed that many aspects of the continental shelf regime provided for in the 1982 Convention are indeed applicable to the United States through the operation of customary international law. Such aspects include the definition of the so-called "legal" continental shelf in Article 76 (1). Under customary international law, the United States has the right to a continental shelf beyond 200 nautical miles if its continental margin extends beyond that distance. The rights of a coastal state to its continental shelf, including in areas beyond 200 nautical miles, exist where there is a basis for rights, and do not depend on the establishment of external borders. The US rights to the continental shelf beyond 200 nautical miles follow from the inherent nature of the rights to the continental shelf, since they do not depend on any direct statement or the performance of any special legal actions. In other words, the exercise by the United States of rights to its continental shelf beyond 200 nautical miles does not legally depend on the establishment of external limits, through the submission procedure to the CLCS or otherwise. Nevertheless, the establishment of external borders is necessary to determine the exact extent of the

24 U.N. Convention on the Law of the Sea. Art. 1 (1).

coastal state's rights to its continental shelf. In the expert environment, the opinion is expressed that the right of a coastal state to the continental shelf in the absence of established external borders "does not relieve the coastal state of the burden of demonstrating its right" to the area of the continental shelf beyond 200 nautical miles [19, p.258].

It is impossible to conclude with full confidence that paragraphs 4-7 of Article 76, which establish criteria and methods for determining the location of the outer boundary of the continental margin, reflect the norms of customary international law. At the same time, the United States, for its part, indicated that it would determine the boundaries of its continental shelf beyond 200 nautical miles in accordance with these provisions. In addition, the United States considers Article 76 (2) of the Convention as reflecting international law. Article 76 (2) refers to paragraphs 4-7 of the same Article. If the external boundaries are determined in accordance with paragraphs 4-7, it would be quite reasonable to believe that they will also comply with Article 76 (1), and, consequently, customary international law.

If the United States does not wish to provide information to the CLCS, as an alternative, they can try to unilaterally establish the outer limits of their continental shelf beyond 200 nautical miles, handing over maps and relevant information to the UN Secretary-General to ensure proper publicity. In this case, the consent of other states will probably depend in part on the public disclosure of all scientific data necessary to justify the established external limits. It should be noted that the US government is willing to share such information. All research data collected in connection with the US Extended Continental Shelf Project is already publicly available. At the same time, other states may register their protest against the external borders established in this way if they consider that the Convention as a package deal has been violated. If such borders receive the consent of other states, they may eventually become permanent. Moreover, according to paragraph 9 of Article 76, the coastal state shall deposit with the UN Secretary-General maps and relevant information, including geodetic data describing the outer boundary of its continental shelf. The Secretary-General shall publish them accordingly. This paragraph does not require that the external boundaries deposited with the Secretary-General be established on the basis of the recommendations of the CLCS.

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