

Disagreements between the CLCS and Submitting Coastal States

Dr. Hilde Woker | Resilience of the UNCLOS: 40 Years

Copenhagen,
10 March 2023

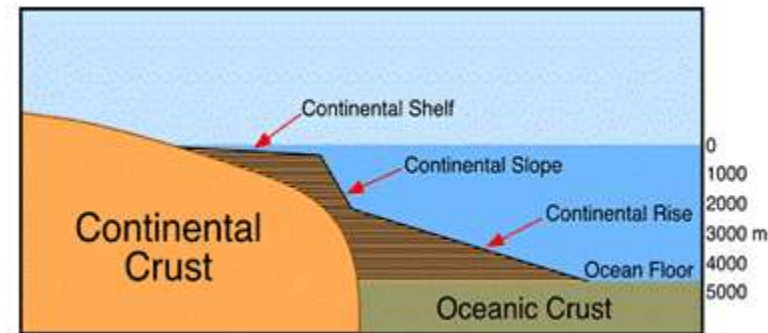
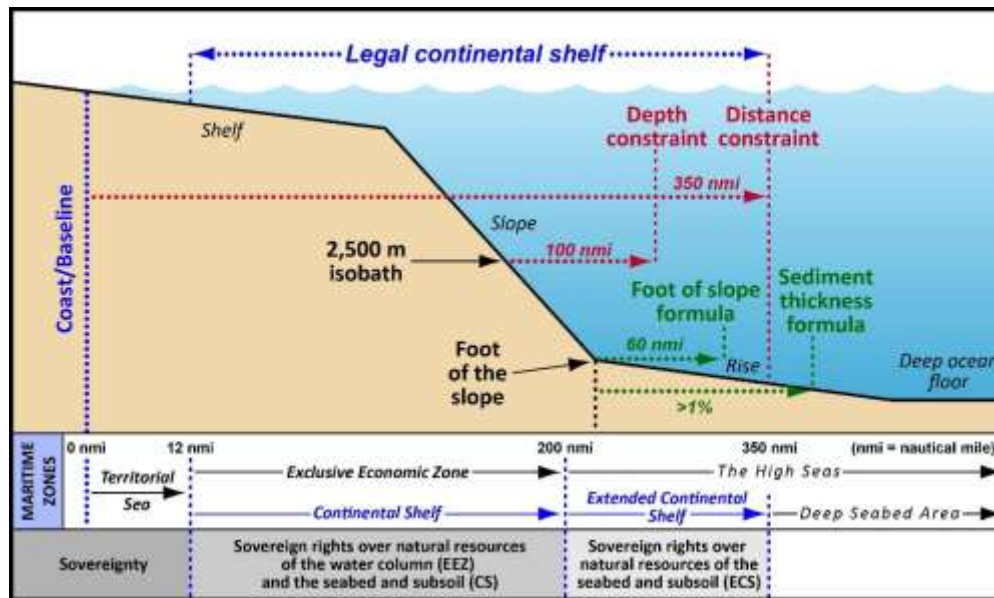


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Overview

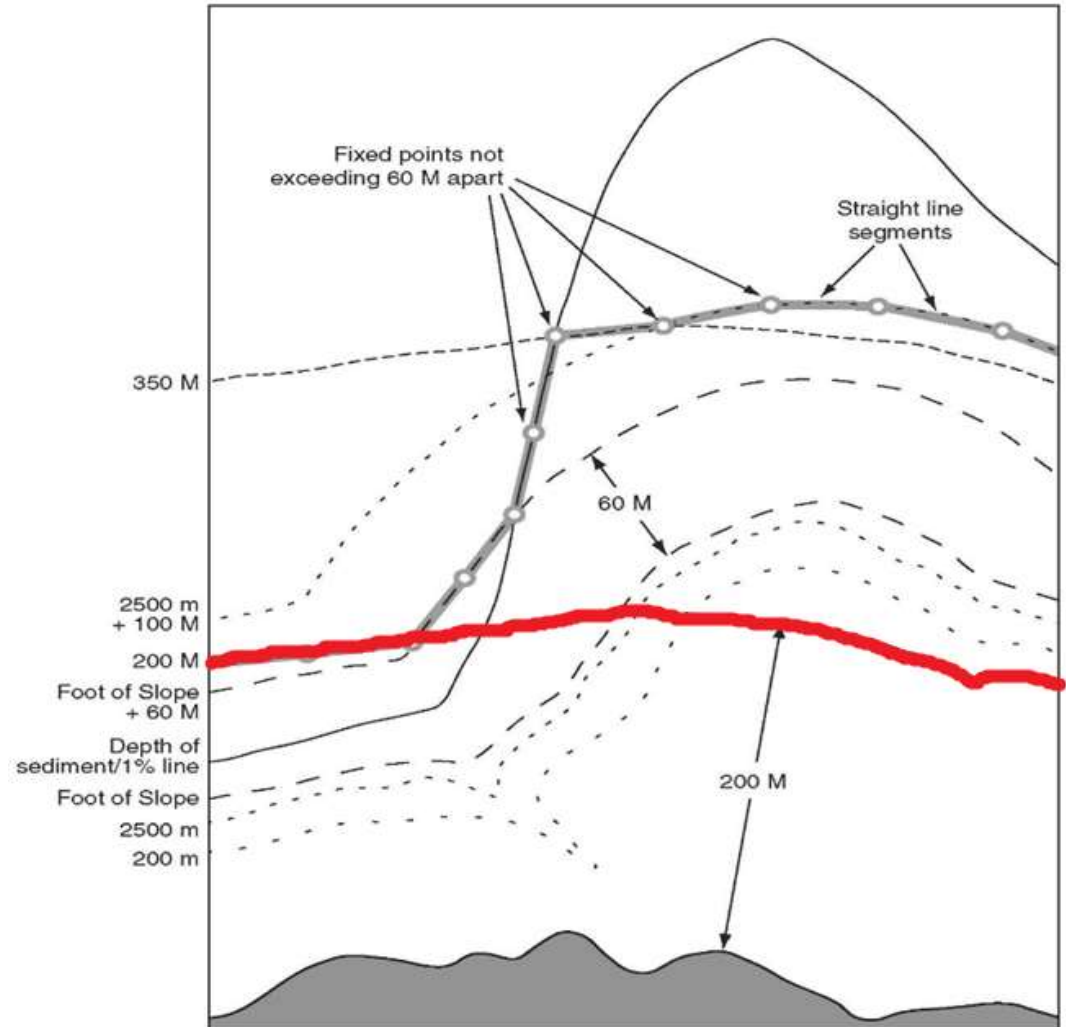
- I. The concept of the continental shelf (a quick recap)
- II. The Commission on the Limits of the Continental Shelf (CLCS)
- III. (Potential) issues of disagreement
- IV. Examples of disagreements between the CLCS and submitting coastal states
- V. Options/solutions?
- VI. Concluding remarks

I. The concept of the continental shelf



I. The concept of the continental shelf

- Either a **200 nautical mile** limit (the 'legal' continental shelf limit)

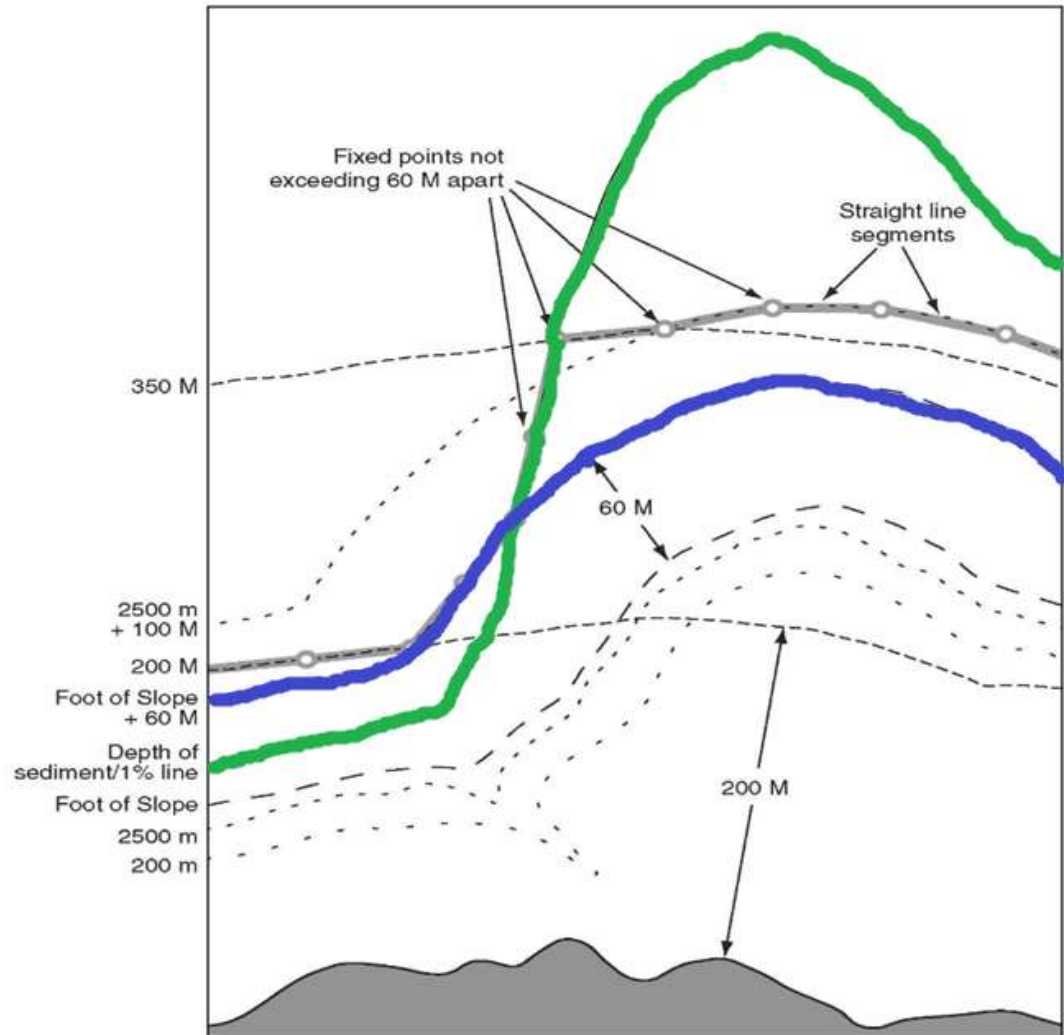


I. The concept of the continental shelf

- Or a ‘scientific’ way of delineation
 - 2 formulae for establishing outer edge of continental margin
 - **Thickness of sedimentary rocks** 1% of the shortest distance from such point to the foot of the slope
 - Fixed points not more than **60 nautical miles from the foot of the slope**
 - 2 constraint lines
 - **350 nautical miles** from the baselines
 - **100 nautical miles from 2500 metre isobath**
- foot of the slope: “In absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.”

I. The concept of the continental shelf

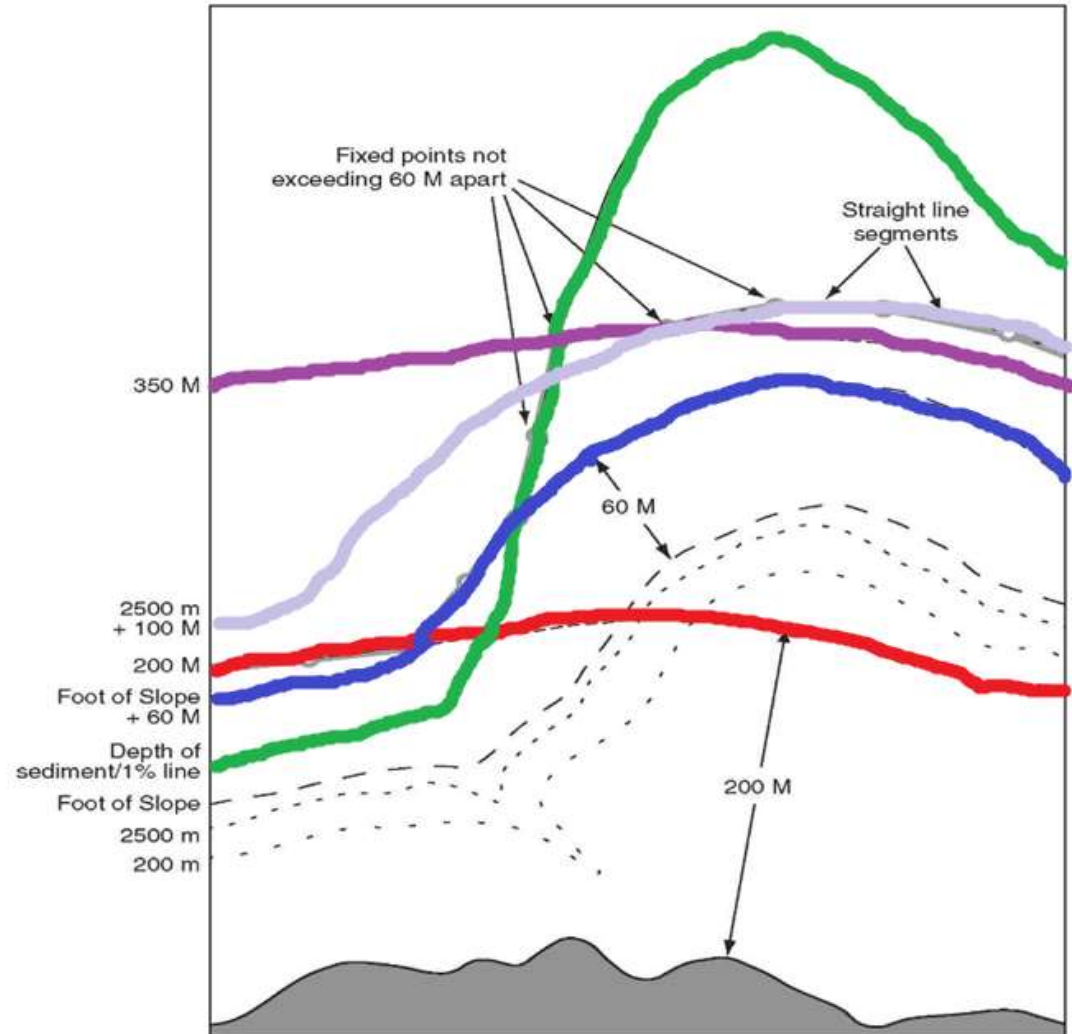
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I. The concept of the continental shelf

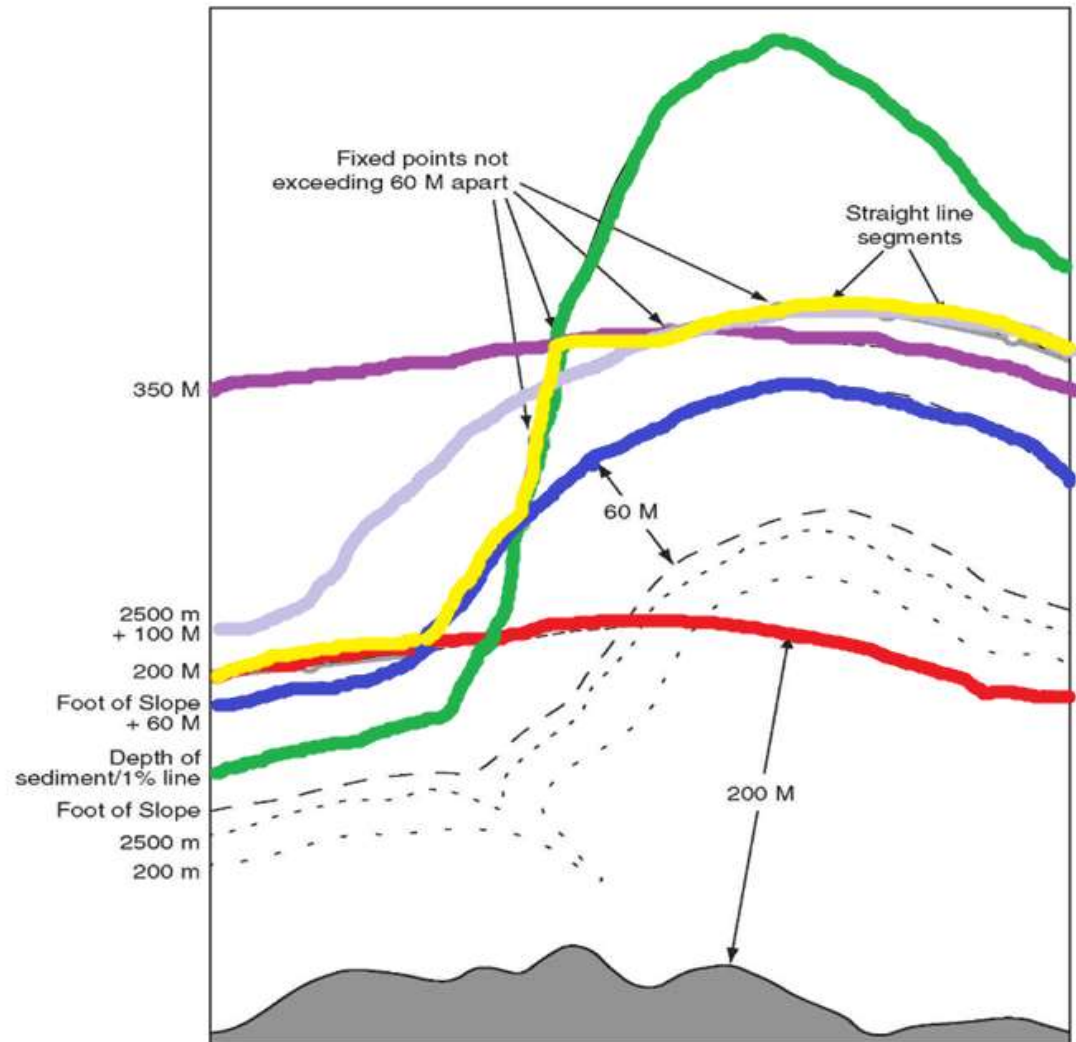
2 constraint lines:

- 350 nautical miles
- 100 nm from 2500m isobath



I. The concept of the continental shelf

- Use all the formulae and constraint lines to your advantage
- Straight lines not exceeding 60 nautical miles in length



I. The concept of the continental shelf

Article 76

Definition of the continental shelf

8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

II. The Commission on the Limits of the Continental shelf (CLCS)

- UNCLOS, Article 76 & Annex II
- Rules of Procedure of the CLCS
- Scientific and Technical Guidelines of the CLCS



COMMISSION ON THE LIMITS
OF THE CONTINENTAL SHELF

- 21 members, experts ‘in the field of geology, geophysics or hydrography’
- Functions: to consider data submitted by coastal state, and to provide scientific and technical advice if requested during preparation of data
- Sub-commissions composed of 7 members, which then submit recommendations to CLCS

Article 8

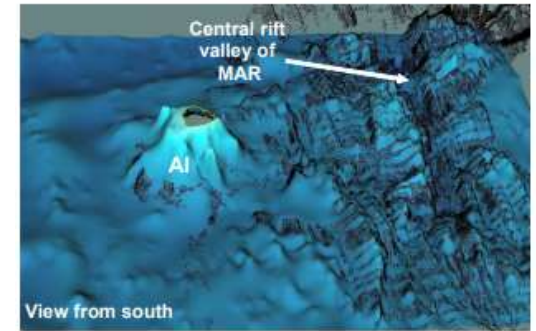
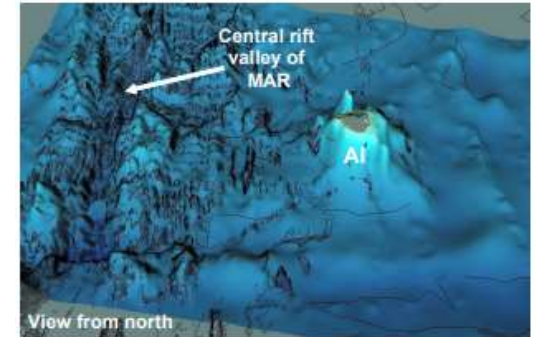
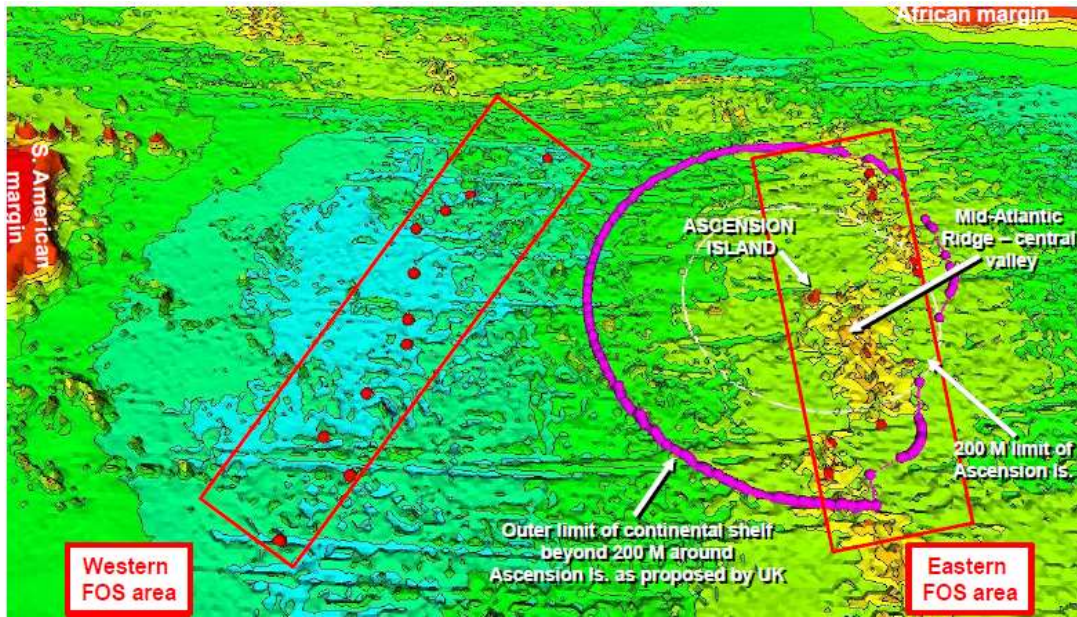
In the case of disagreement by the coastal State with the recommendations of the Commission, the coastal State shall, within a reasonable time, make a revised or new submission to the Commission.

III. (Potential) issues of disagreement

Issues	Examples CLCS Recommendations
Test of appurtenance	11 United Kingdom; 13 Japan
The meaning of natural and submerged prolongation	11 United Kingdom
Identification of the foot of the continental slope	1b Russia; 7 Norway; 11 United Kingdom; 13 Japan; 14 Mauritius and Seychelles; 23 Cook Islands; 25 Argentina; 26 Ghana
Classification of seafloor highs	1 Russia; 2 Brazil; 3 Australia; 7 Norway; 17 France; 23 Cook Islands; 27 Iceland
The meaning and relevance of the deep ocean floor	11 United Kingdom; 13 Japan
Priority of morphology over geology	11 United Kingdom; 23 Cook Islands
Identification of the 2500-metre isobath	7 Norway; 23 Cook Islands
The use of the distance constraint from continental shelf areas that do not satisfy the test of appurtenance	8 France; 23 Cook Islands; 32 FSM, Papua New Guinea and Solomon Islands
'Bridging lines'	3 Australia; 31 South Africa; 32 FSM, Papua New Guinea and Solomon Islands; 40 France
The status of islands/rocks	(13 Japan)
Use/applicability of Statement of Understanding on the Bay of Bengal?	
Access to CLCS by non-parties (e.g. USA); Article 76 CIL?	

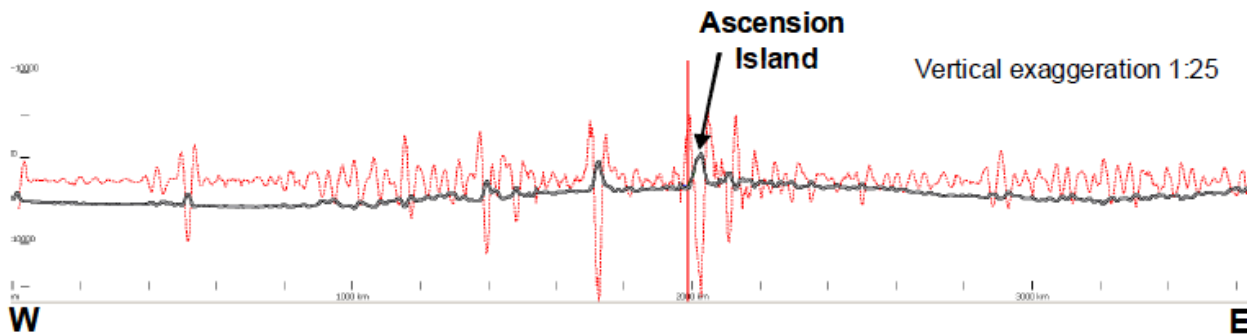
IV. Examples of disagreements between the CLCS and submitting coastal states

Ascension Island (11 United Kingdom)



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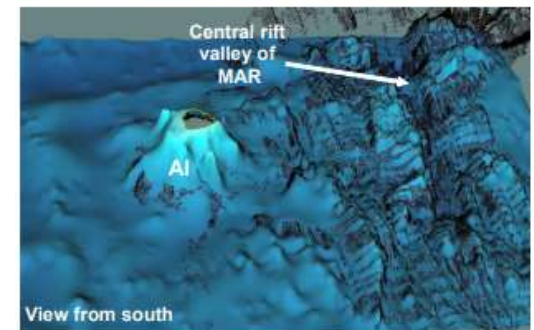
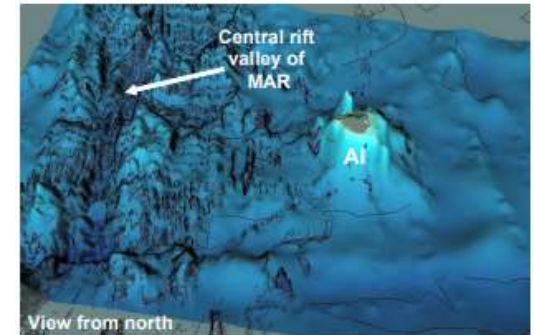
IV. Examples of disagreements between the CLCS and submitting coastal states

Ascension Island (11 United Kingdom)

- Test of appurtenance not satisfied

Points of disagreement:

- The meaning of ‘deep ocean floor’ (Art 76(3))
- The meaning of ‘natural prolongation’ (Art 76(1))
- Use of morphology over geology



- Bay of Bengal case (2012): ‘natural prolongation’ defined by reference to the outer edge of the continental margin

IV. Examples of disagreements between the CLCS and submitting coastal states

Oki-no-Tori Shima Island (13 Japan)

- Not dealt with by CLCS because of 'dispute'



Minami-Tori Shima Island Region

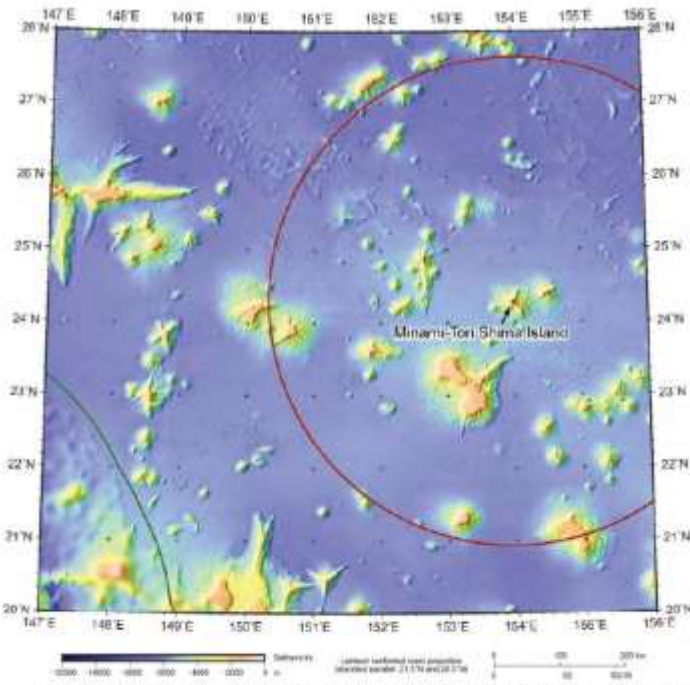


Figure 8. Overview bathymetric map of the Minami-Tori Shima Island Region. (Fig. 2.1, of MTS-MB-DOC-01).

Mogi Seamount Region

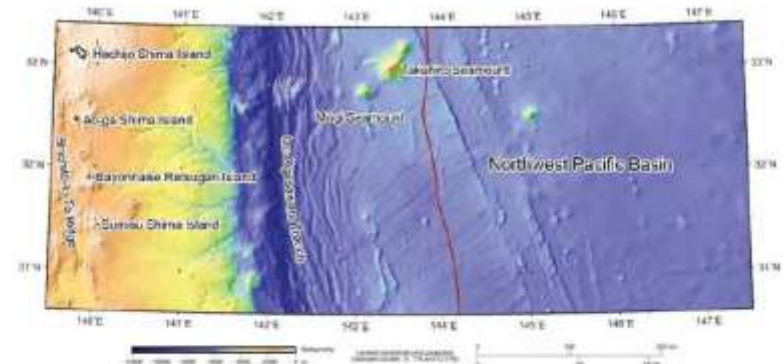
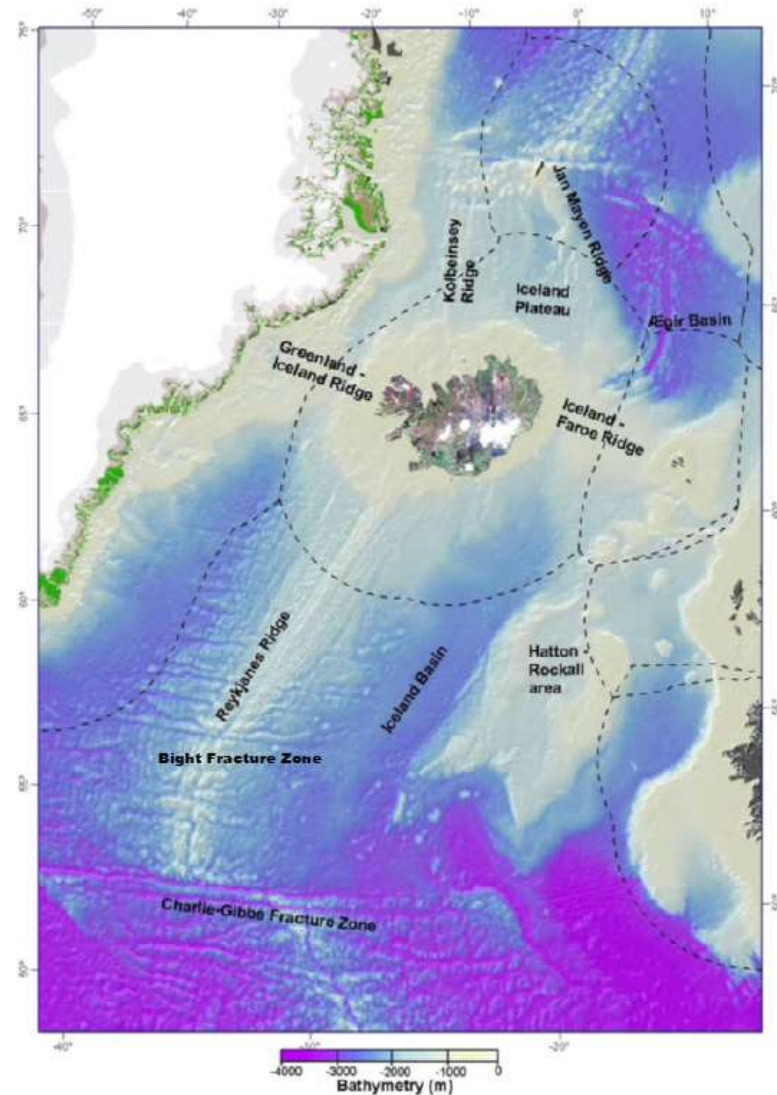


Figure 9. Overview map of the Mogi Seamount Region. (Fig. 2.1, of MGS-MB-DOC-01).

IV. Examples of disagreements between the CLCS and submitting coastal states

Reykjanes Ridge (27 Iceland)

- Iceland (2009): Reykjanes Ridge as a submarine elevation because ‘directly connected to landmass, morphologically, tectonically and with respect to geological history and crustal characteristics.’ → use of both constraint lines
- Subcommittee (2014): Reykjanes Ridge as a submarine elevation → use of both constraint lines
- Full CLCS (2016): Some members did not accept this. ‘The Commission could not arrive at the conclusion that the depth constraint line was applicable.’ → Submarine ridge, and only 350nm constraint line applicable
- Iceland (2016): ‘no rationale provided’, ‘only meaningful way forward’ is to ‘continue working on the basis of’ the Subcommittee’s recommendations.’



V. Options/solutions?

- Resolution of disagreements in the interactive process during consideration by CLCS
- Resubmission
 - UNCLOS, Annex II, Article 8
 - New arguments of scientific or legal character?
 - Problems: additional expenses, delay in consideration of other submissions, potentiality of never ending disagreement ('ping-pong'), uncertainty about legal status of continental shelf in the presence of recommendations but absence of established outer limits
- CLCS to seek (legal) advice
 - Advisory opinion?
 - Seek legal advice from DOALOS

V. Options/solutions?

- Nullifying CLCS' recommendations → *ultra vires* or other procedural errors
- Subsequent agreement regarding interpretation (VCLT Art. 31(3)(a))?
- Establishing outer limits not “on the basis of” the CLCS recommendations
 - Or in the case of Iceland: establishing outer limits ‘on the basis of’ Subcommission’s recommendations rather than full CLCS’ recommendations
 - Opposable to third states? ‘Final and binding’
 - Dispute settlement procedures? If absent → acquiescence?
 - Drafting history → ‘in accordance with’ / ‘take decisions’
 - What does this mean for entitlement?

VI. Concluding remarks

- Until previously, majority of CLCS recommendations uncontroversial; increase in new or revised submissions to the CLCS?
- United Kingdom: note verbale, then silence?
- Iceland: revised submission, with new data and analysis
- What do Ascension Island and Iceland have in common?
 - Islands on mid-ocean ridges; no typical shelf-slope-rise structure
 - Not foreseen by UNCLOS
- Resilience of UNCLOS?
 - Contributions of CLCS to development of continental shelf regime → ‘disturbing propensity to legislate’ (Serdy, 2011)
 - Many more recommendations to go; potential disagreements ahead?
 - Consistency of CLCS with past practice and S&T Guidelines?
 - Time will tell

Tak!

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