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DELIMITATION OF MARITIME BOUNDARIES IN THE ARCTIC AND POTENTIAL FOR AMENDMENTS TO UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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ABSTRACT

The paper aims to investigate the performance of United Nations Convention on the Law of the Sea within the Arctic theatre for the purposes of delimitation of maritime boundaries. Central role of Article 76 of the Convention in setting the criterium for extended maritime claims beyond the 200 NM of Exclusive Economic Zone is examined in light of "Russia's Partially Revised Submission to the Commission on the Limits of the Continental Shelf Executive Summary" to determine that Article 76 is hindered from the foreseen and anticipated optimal practical application. Three main categories of obstruction are identified. Firstly- the intermixture of scientific and legal vocabulary within the article and vaguety of scientific terms utilized; secondly- the precise mandate of CLCS and its perceivable acting in *ultra vires*; thirdly- the role and value of the preamble in interpretation of the provisions of the Convention. The challenges are present in the Arctic theatre and elsewhere in the world. The paper finalizes by proposing six amendments to increase transparency, accountability, clarity and consistency of Article 76.

Keywords: UNCLOS, Article 76, Continental Shelf, Arctic, CLCS

INTRODUCTION

The Arctic Circle sits on top of the Northern Hemisphere, beginning from latitude of 66°33′48.0″ N, covering a vast area of 20,000,000 km^2 and encompassing sovereign territories of 8 States, these being United States of America, the Kingdom of Denmark, Dominion of Canada, the Russian Federation, the Kingdom of Norway, the Kingdom of Sweden, Republic of Finland and Republic of Iceland. From spectrum of international law, given the relatively small amount of actors in the vast Arctic geo-political theatre, one would presume absence of quarrels both legal as well as political. However, as the region is estimated to hold 90 billion barrels of oil, accounting for 13% of worlds undiscovered reserves with some estimates reaching extremes of 50% of the worlds untapped oil reserves[1], 44 billion barrels of natural gas liquids and 47 trillion cubic meters of natural gas, accounting for staggering 30% natural gas reserves[2], it becomes clear how the potential for gracious economic return inspires States to pay close attention to what would otherwise be a deprived and isolated location. The economic potential however is buried deep within the surface of the ice that currently covers the Arctic sea. Nevertheless, as the arctic ice continues to retreat in exponential quantity over the past decade, it avails oceans to which States' increasing interest of distributing entitlements and delimiting maritime borders becomes a topical subject to. As Paul Arthur Burkman, Head of the Arctic Ocean Geopolitics Programme at the Scott Polar Research Institute at the University of Cambridge prescribes "The Arctic could slide into a new era featuring jurisdictional conflicts, increasingly severe clashes over the extraction of natural resources, and the emergence of a new "great game" among the global powers"[3].

[1] Weiss, E. B. (1989). Global warming: Legal Implications for the Arctic. *Georgetown International Law Review,* 2, 89.
[2] Gautier, D. L., Bird, K. J., Charpentier, R. R., Grantz, A., Houseknecht, D. W., Klett, T. R., Moore, T. E., Pitman, J. K., Schenk, C. J., Schuenemeyer, J. H., SØrensen, K., Tennyson, M. E., Valin, Z. C., Wandrey, C. J. (2009). Assessment of Undiscovered Oil and Gas in the Arctic. *Science,* 324(5931), 29 May 2009, 1775-1779.
[3] Berkman, P. A., Young, O. R. (2009). Governance and Environmental Change in the Arctic Ocean. *Science,* 324(5925), 17 April 2009, 339-340.

Delimitation of maritime boundaries is not a feature of the modernity of international law and relations, *au contraire* it is an antique process of international law. Romans, whilst recognising the sea as the common heritage of mankind (*res communis omnis*), established and enforced Roman jurisdiction unto all seas. The Holy Roman Emperor title included being ruler of the seas[4]. Furthermore in 1493, Pope Alexander VI divided the oceans and hence the world by a vertical line running through Cape Verde between Portugal and Spain. Continuingly during the formative years of the League of Nations, in 1924, law of the sea was amongst topics chosen by an expert committee along with nationality of ships and responsibilities of States as ripe and of privileged importance to be codified and ratified by the League in 1930 at Hague during the first conference for codification of international law[5]. In 1945 what became known in literature concerning the law of the sea as the Truman Declaration, officially Proclamation 2667 ushered in a bold era of law of the sea with the statement:

"Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as **appertaining to the United States, subject to its jurisdiction and control**."[6]

Prior to this declaration, maritime claims extending further than 3 Nautical Miles (NM) were effectively unconventional and essentially non-existent with only Norway and Sweden claiming 4 NM and Russia maintaining 12 NM of territorial sea since 1912[7]. Narrow claims of jurisdiction to the sea were historically arrived at via early 18th century's Dutch jurist Cornelius van Bynkershoek's book *De Demino Maris* which sought to disprove Portugal's, Spain's and Britain's self-proclaimed right to the Oceans. Bynkershoek postulated that a coastal State may exercise its sovereignty in the sea to the extent from the shore, where it was able to enforce his jurisdiction with off-shore artillery. Principle derived from the writing – '*terrae dominum finiri uni finitur armorum vis*' (Power over the land ends wherever the force of arms ends) that were adapted as customary[8].

The extensive history of delimitation of maritime borders however does not entail absence of disputes and ambiguity on basis of millenniums of prior experience. In the arctic region this

[4] Lindpere, H. (2003). *Kaasaegne rahvusvaheline mereõigus*. Tallinn, Estonia: Ilo Print. 18.
[5] *Ibid.*, 21.
[6] Proclamation 2667: Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, President of the United States of the America, City of Washington, Oct. 1, 1945.
[7] Morin, M. D. (1980). Jurisdiction beyond 200 Miles: A Persistent Problem. *California Western International Law Journal*, 10, 515-516.
[8] Lindpere, *supra nota,* 4, 20.

becomes evidently clear as to this date, no official maritime delimitation beyond the default Exclusive Economic Zone (EEZ) of 200 Nautical Miles have been recognised. This raises the question on the conspicuous capabilities of United Nations Convention on the Law of the Sea (UNCLOS) in delimiting maritime jurisdictions and ambiguities that whilst achieving consensus, may have sacrificed competence and adeptness in its return. For as early as 1983, during the negotiation process of the Third United Nations Conference on the Law of the Sea that sought to finalize and gain ratification for the Law of the Sea, law of the sea jurists hypothesized extravagantly that the Arctic will witness an imminent and volatile "creeping jurisdiction"[9]. The incoherence between ascertain predictions of the like and empirical contemporary motions in law of the sea conceives the research problem- what is the source of perceivable inefficiency of application of United Nations Convention on the Law of the Sea within the Arctic for the purposes of creating jurisdictional claims?

To approach the problem, the paper aims to examine the elements of United Nations Convention on the Law of the Sea central to delimiting maritime boundaries of States' jurisdiction within the Arctic theatre. The research task is to assess whether amendments to the established UNCLOS provisions and elements are necessary to achieve compatibility and efficiency in obtaining this objective. Chapter of Empirical Background seeks to unfold the provisions of UNCLOS concerned with delimitation of the continental shelf as the central provision in extending maritime claims of States within the Arctic theatre. Stemming from UNCLOS, the rights conferred to a State with obtainment of continental shelf are inspected as the reason for States' interest to endeavour to obtain greatest lengths of it as permitted by UNCLOS. Additionally, the system of adaption, analysis and acceptance of a submission to delimit maritime boundaries is audited. including the relevant institutions, legislation, commissions, communications and the flow of information and role of both State Parties and others. Finally, Empirical Background discloses the structure and the required substance of the State's submission, indulging in intricacies of Article 76 as the basis of continental shelf claims. UNCLOS in the Arctic observes the empirical motions of submissions and what they entail in form and structure. Through this reading, points of contrast are elucidated in-between the interconnected postulations of UNCLOS in its aims, the submitting State in the interpretation for purposes of crafting the submissions and Commission on the Limits of the Continental Shelf in its judgement and recommendations. Within chapter of Analysis the intrusions to operation of UNCLOS Article 76 are dissected. It is argued that diction of Article 76 in intermixture of scientific and legal vocabulary and the lack of preciseness in describing

[9] Theutenberg, B. J. (1983).The Arctic Law of the Sea. *Nordisk Tidsskrift for International Ret*, 52, p. 8

submarine structures is detrimental to application of Article 76 in a coherent manner. Furthermore, it is postulated that the mandate of the Commission on the Limits of the Continental Shelf (CLCS), interpreted on the basis of the role of the preamble is as well fundamental in impeding effortless exercising of Article 76. The paper finalizes in Discussion by reflecting the formulation of the findings as applicable in the Arctic. Conclusively, Discussion offers proposals for amendments to Article 76 to improve its efficiency and coherent application.

1. NORMATIVE BACKGROUND

Within the arctic theatre, delimitation of maritime borders is nearly exclusively concerned with the provisions of the UNCLOS dealing with the delimitation of the continental shelf. This due to the matter of fact that State's rights in the continental State are comparatively akin to State's right rights in the Exclusive Economic Zone. As per Article 57 of UNCLOS, The EEZ spans 200 NM from the baseline where the breadth of the territorial sea is measured. Within this 200 NM, coastal State has sovereign rights for the purpose of commercial activities to explore and exploit any and all living and non-living resources in the seabed and the subsoil thereof as well as the superjacent waters, in a manner compatible with other relevant provisions of the Convention[10]. Furthermore, the coastal State in accordance with Article 60, has the exclusive privilege to construct, authorize and regulate the construction of any structures or installations such as artificial islands. Listed sovereign rights are enforceable to assure compliance with them and the Convention by measures provided for in Article 73, including boarding, inspection, arrest and judicial proceedings. Coastal State's right over continental shelf as compared to its rights in the EEZ differ marginally. Within Article 77 sovereign rights for exploring and exploitation are reserved, however the right to do the same in superjacent waters is absent as per article 78. Article 80 on artificial islands, installations and structures on the continental shelf mirrors *mutatis mutandis* Article 60 on the same subject matter in the EEZ. The continental shelf can be seen as an EEZ that extends beyond 200 NM solely on the ocean floor[11], broadened EEZ and the economic interests therein is the central reason to pursue extended claims over 200 NM.

Determination of the continental margin of a State is a multi-levelled intricate process laid out in detail within the respective provisions of UNCLOS. State begins by submitting their claim as obligated by UNCLOS Article 76 (6) to be received by the United Nations Secretary-General.

[10] See UNCLOS Article 56 (1-2)
[11] Ranganathan, S. (2019). Ocean Floor Grab: International Law and the Making of an Extractive Imaginary. *European Journal of International Law*, 30(2), 596.

Secretary-General then as per UNCLOS Article 76 (9) and Rule 50 of the Rules of Procedure of the Commission on the Limits of the Continental Shelf[12] (RPCLCS) issues an *acta verbal* to all members of the UN and States Parties listed in UNCLOS Article 305 (1), and forwards the submission to the Commission on the Limits of the Continental Shelf. CLCS is a special commission established by UNCLOS Annex 2 Article 1 for the purpose of as described in UNCLOS Article 3 (1 (a)) – to consider the information and data submitted to it by a coastal State concerning the outer limit of the continental shelf where it continues beyond 200 NM and UNCLOS article 3 (1(b)) – to provide to the coastal State any necessary advice in compiling necessary data to justify the outer limits of the continental shelf (OLCS). Followingly, all member States and States Parties then have the possibility to submit to the Secretary General communications to express their respective observations and criticism. The submission is then adapted into the next upcoming session of the CLCS, the summary of discussed topics, adapted decisions, establishment of sub-commissions, members therein as well as recommendations adapted in respect to States' submission to the continental shelf are then published in the Statement by the Chairman of the CLCS on the Progress of Work in the Commission.

1.1 Article 76

The submission itself indulges in further intricacies concerning the specific grounds and criterium upon which continental shelf claims are made. The basis of continental shelf claims are introduced in Part VI on UNCLOS, Article 76 on the definition of the continental shelf[13]. Article 76 paragraph 1 prescribes two elementary methods by which the continental shelf of a coastal State can be delimited; firstly- by way of directly drafting points of the outer limit of the continental shelf no further than the limit of 200 NM from the baseline from which the breadth of the territorial sea is measured, secondly- by way of identifying outer edge of the continental margin, which is the submerged prolongation of the land mass of the coastal State, consisting of the seabed and the

[12] Rules of Procedure of the Commission on the Limits of the Continental Shelf. Commission on the Limits of the Continental Shelf twenty-first session. New York. 18 April 2008
[13] See Appendix 1. United Nations Convention on the Law of the Sea Article 76

subsoil of the geophysical shelf, the slope and rise. Given the submitting coastal State's opting for the latter, Article 76 paragraph 4 prescribes further formulas to define the outer edge of the continental margin where the continental shelf extends beyond 200 NM. According to Art.76 (4(a(i))) the continental margin can be drawn stemming from points at the ocean floor where the thickness of the layer of sedimentary rocks is at least 1% the distance of that point to the foot of the slope. Alternatively, as per Art.76 (4(a(ii))) a simpler method of delimiting the outer edge of the continental margin by way of measuring 60 NM from the foot of the slope may be utilized. It is of utmost importance to note that both measurements may be used simultaneously, and the final outer edge of the continental shelf delimited by line that has been reached designed through the synthesis of the two formulas. However, the aforementioned methods are subject to restraints. Article 76 (5) provides that the fixed points of delimitation comprising the line of the outer limit of continental shelf on the basis of either methods cannot exceed the maximum distance of 350 NM from the baseline from which the breadth of the territorial sea is measured, or cannot exceed 100 NM from the beginning of the 2,500 meters depth isobath, which is a geophysical seafloor plateau of 2,500 meter depth. Notwithstanding these restraints, as per Article 76 (6), Article's 76 (5) 350 NM restraint, whilst applying to the seafloor high of a submarine ridge, the limit does not apply to submarine elevations that are natural components of the continental margin and thus not subject to the restrictive measure.

2. UNCLOS IN THE ARCTIC

To date 4 States have submitted maritime claims in the arctic through the UNCLOS framework. Denmark has lodged two partial submissions, on 26th November 2013 in respect to the North-Eastern Continental Shelf of Greenland; and on 15th December 2014 together with the Government of Greenland in respect of the Northern Continental Shelf of Greenland. Canada as well has made two submissions, on 6th December 2013 a partial submission in respect to the areas of the continental shelf in the Atlantic Ocean, and on 23rd May 2019 another partial submission concerning the Arctic Ocean, which is as well the latest submission made by a State to the Arctic. Norway has made a single partial submission on 27th November 2006 with respect to three separate areas in the North East Atlantic and the Arctic: the 'Loop Hole' in the Barents Sea, the Western Nansen Basin in the Arctic Ocean, and the 'Banana Hole' in the Norwegian Sea. Russia was the first nation to lodge a claim with the CLCS, on 20th December with respect to its continental shelf beyond 200 NM, meaning in the Arctic and North Pacific. Russia made additional claims in a partially revised submission as a continuum to the initial submission on 3rd of August 2015, concentrating specifically on the Arctic. United States of America while pertaining to a continental shelf, has not for it cannot make submission to the CLCS, as it has neither signed nor ratified the UNCLOS.

To examine the structure and disposition of the submissions, Russia's partially revised submission- "Partial Revised Submission of the Russian Federation to the Commission on the Limits of the Continental Shelf in Respect of the Continental Shelf of the Russian Federation in the Arctic Ocean Executive Summary" of 3rd of August 2015 offers the most optimal insight into the structure and serving of the claim to the CLCS with concern to delimitation of maritime borders in the Arctic. The submission enables to highlight some focal points of contrast and complications with applying the UNCLOS when delimiting maritime borders as the submission has incorporated the recommendations issued by CLCS, its interpretation of UNCLOS as a rebuttal to Russia's initial submission.

The submission commences with the introduction. All submission begin with complimentary statements, but more importantly, with the date of the ratification of UNCLOS in the State presenting the submission. The ratification date is of importance as Annex II Article 4 requires States to make a submission within a time period of 10 years with concern to the outer edge of the continental margin. Furthermore, the introduction summarizes the recommendations of the CLCS in Russia's initial submission, providing a synopsis which highlights where there exists a discord as it comes to the interpretation of UNCLOS Article 76 between CLCS and Russia. Specifically that "The Commission recommends that according to the materials provided in the submission the Lomonosov Ridge cannot be considered a submarine elevation under the Convention."[14] and "… according to the current state of scientific knowledge, the Alpha-Mendeleev Ridge Complex cannot be considered a submarine elevation under the Convention."[15].

First chapter of the executive summary titled "Extended Continental Shelf of the Russian Federation in the Arctic Ocean" provides the underlying purpose and anima of the submission, additionally the chapter addresses some previously existent concerns expressed by other States and the main technical measurement methods utilized. Purpose of the submission is to establish the outer limits of the Russian continental shelf in the arctic with the belief and support of its view of the Convention of the continental shelf, the seabed and subsoil thereof as the "…natural prolongation of the Russian land territory "[16]. The claim is predicated on scientific evidence that the areas of the arctic are of continental origin and in their morphology belong to the class of submarine terrain structure of submarine elevation, that is a natural component of the continental margin, effects of which on the outer limits of the continental shelf of Russia is further elaborated in the second chapter. The chapter familiarly to the style of all other submissions since its first submissions, divides the Arctic arena into seven sections, naming and orienting them by names of their geographic denominates. These being the Lomonosov Ridge, Mendeleev-Alpha Rise, Chukchi Plateau, Podvodnikov and Chukchi basins[17]; all of which encompass Russia's continental margin. Unbefittingly to the substance of the rest of the chapter, USA's notification to the submission of 2001, which firstly questions where the baseline from which all maritime border measurements begin from and secondly advises CLCS to make a statement that it does not

[14] Russian Federation. (2015). *Partial Revised Submission of the Russian Federation to the Commission on the Limits of the Continental Shelf in Respect of the Continental Shelf of the Russian Federation in the Arctic Ocean: Executive Summary* . Depository of the Secretary-General of the United Nations. Retrieved from https://www.un.org/Depts/los/clcs_new/commission_submissions.htm. 5.
[15] *Ibid.,*
[16] *Ibid.,*
[17] See Appendix 2. The International Bathymetric Map of the Arctic Ocean

recognise any baselines is addressed through reference to the scientific studies which established the baseline.

Second chapter on "The Applicable Provision of Article 76 of the Convention" provides the submitting States, Russia's interpretation of the provision of UNCLOS, in which the claim and the submission are grounded. Russia's approach towards Article 76 subsists of establishing the basis of the right to the continental shelf in paragraph 1, establishing the constituent elements of the continental margin of the seabed, subsoil of the shelf, the slope and rise in paragraph 3. Foot of the shelf is established by morphological, bathymetric and seismic data in accordance with the possibilities to this end settled in paragraph 4. Paragraph 5 is employed to effectuate the limitations foreseen by the paragraph. Paragraph 6 is applied to inappropriate the 350 NM restraint of paragraph 5. Finally, paragraph 7 is simply applied to arrive at an outer limit of the continental shelf delimitation, that consists of straight lines no more than 60 NM in length. It is important to denote that emphasis is placed on Article 76 (6). The motion is strategical, in that the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf have pertained that the categorisation of ocean floor structures as submarine elevations or submarine ridges will not be based on the standard historic geographic denominates used in maps and relevant literature, but rather on grounds of scientific evidence[18]. Thus the 350 NM limitation on submarine ridges does not apply to submarine elevations, which the Russian claim considers the Arctic submarine structures within its claim to be.

Third chapter on "Commission Members who Provided Advice in the Preparation of the Partial Revised Submission" lists members of the CLCS who assisted in preparation of the submission, as required by Annex II Article 4. Fourth chapter on "Governmental Institutions Responsible for Preparation of the Partial Revised Submission of the Russian Federation for Establishment of the OLCS in the Arctic Ocean" names the institutions that authored the submissions. Fifth chapter on "Maritime Delimitation and Other Issues" indulges in intricacies of delimiting the maritime border between the submitting State and State's with opposite or adjacent coasts. As obligated by Annex 1 paragraph 2 of the Rules of Procedure of the Commission, submitting State must provide information to the Commission on unresolved maritime disputes which are located in an area where the claim is made, for the purposes of UNCLOS Annex II Article 9, Rule 46 of RPCLCS, Annex 1 (2(a)) of RPCLCS and particularly Article 76 paragraph 10 which states that "The

[18] Scientific and Technical Guidelines of the Commission on
the Limits of the Continental Shelf. Commission on the Limits of the Continental Shelf. 1999. Submission Guidelines. 7.1.8.

provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.". The effect of this provision is of scope which narrows CLCS's mandate and capability to analyse and recommend in a manner that is "final and binding"[19] delimitation of the continental shelf within the claim. For the purposes of the Russian partially revised 4 areas are mentioned. With Norway, Russia has a dispute with concern to overlapping claims in the Central Barents Sea as well as the Arctic Ocean. In accordance to Annex I Rule 5 (a) of the RPCLCS, Norway consented to CLCS making a consideration to delimitations within this area. CLCS with its diminished capabilities subsequently communicated that the delimitation line will represent wester-most limit of the Russian OLCS, and eastern most limit of the Norwegian OLCS; but the eventual delimitation line will be bilaterally decided and effectual once maps and coordinates of the resulting treaty are deposited to the UN Secretary General and the Commission. With USA, Russia has an existing agreement, signed in June 1, 1990, that delimits territorial sea, EEZ and the continental shelf in Chukchi and Bering seas as well as the arctic. With Denmark, Russia has significant overlapping claims in the polar arctic, north of Greenland and in parts of the Lomonosov Ridge. In accordance with RPCLCS Annex 1 (5(a)), agreement was reached that one party will notify the commission of its consent for the consideration of the disputed area, insofar as it does not prejudice matters relating to the bilateral delimitation of the area included in the other State's claim. With Canada, a concise and analogues solution to Denmark was reached.

Sixth chapter on "Geology of the Central Arctic Submarine Elevations Complex of the in Light of New Data" seeks to elucidate reasons for previous disagreement with CLCS and prove eligibility of the methods of measurement, and their evidentiality which stands in support for Russia's claim. As previously aforementioned, Commissions first recommendations touched in substance centrally the Lomonosov Ridge and the Mendeleev-Alpha Rise. Upon consideration of the acoustic basement nature and composition of the Earth's crust, the proposition that these structures are submarine elevations of continental origin was not supported by the Commission. However, it must be denoted, that the recommendations conceded, that multiple interpretations and hypotheses exist. The far-reaching conclusion reached by the Commission resulted from the state of scientific knowledge, knowledge which was based on excavations executed before 1990 solely at Lomonosov Ridge, Mendeleev and Alpha rises, Podvodnikov and Makarov basins were not

[19] See UNCLOS Article 76 (8)

covered, long outdated, not to mention deficiency for the purposes of any final finding resolve over delimitation questions.

3. ANALYSIS

Perforation of Russia's partially revised submission unclutters the focal points of concern in application of the UNCLOS and Article 76 within the Arctic theatre, drawing them out in defined form and thus making them accessible for examination. Three overarching categories of controversy are availed. Firstly, that the relative vagueness of terms utilized in Article 76 hinders its performance when applied in processes of both the State making a submission, and CLCS in its examination of the submission. Secondly, the mandate of CLCS has proven in practice to be insufficient to obtain the objectives UNCLOS has delegated to it, in a counterbalancing motion CLCS has to the same extent acted perceivably in *ultra vires*. Third complication emanates from the difficulties from the previous two categories and ultimately is the paramount source of the predicament in applying UNCLOS and article 76 in envisioned optimal form. UNCLOS asserts emphatically in its preamble that the abundant resources of the oceans are to be the common heritage of mankind, exploration and exploitation of which subsequently ought be for the betterment of mankind as a whole; yet the application of UNCLOS and Article 76 in practice function as an impetus that is antagonistic towards this defined aim. This disparity elucidates the internal dis-coherence of the Treaty that is the likely primary reason for inhibited effectiveness of UNCLOS in delimiting maritime borders both in the Arctic and elsewhere.

3.1. Parlance of Article 76

Article 76 is conceivably the most complicated article within UNCLOS, subject to harshly varying interpretations depending on the point of view adapted as the article was conceived in bitter accord and conciliation through wording that witnesses an unorthodox interchangeable mixture of scientific and legal vocabulary. The complicated wording has been utilized by Russia in its revised

claim as the submission makes a case for obtainment of 1.2 million square kilometres of territory, that covers nearly 50% of the Arctic Ocean, including the North Pole[20]. A motion that some authors perceive as a desperate hedging of bets on the resources lying therein, given Russia's failure to diversify its economy[21]. Yet opinions differ in stark contrast as Article 76 (5-6) in initial reading does not appear *prima facie* as directly enforcing a 350 NM absolute limit, due to overwhelming majority of literature on subject matter of Article 76 recognising 350 NM as an absolute limit to the continental shelf claim; however contemporary literature on Russia's revised submission acknowledges that Russia **is** operating within applicable international law, dispensing with the view of its yearnful claim over the Arctic as "expression of a fading superpower's expansionist foreign policy." [22]. The complications of interpretation over the exact implications of Article 76 for the purposes of delimiting the continental shelf are inherently within the intermixture of scientific and legal vocabulary. Continental Shelf is primarily a legal term, continental margin primarily a scientific term. Continental shelf can either denote the seabed and the subsoil of the submarine areas extending through the natural prolongation of its land territory, or the distance of 200 NM from the baseline from which the breadth of territorial sea is measured, if the continental shelf does not extend to that distance. Continental margin is the submerged prolongation of the landmass, the seabed and the subsoil of the submarine elevations which constitute at most fundamental level, the perceivable 'shelf' itself, with the addition of the slope, rise and foot of the edge of the shelf. When Article 76 (2) speaks of distance limitations to the continental shelf claim in Article 76 (4-5), the discrimination has to be made in interpreting Article 76 (4-5) through Article 76(6) which postulates that Article 76 (4-5) applies to submarine ridges, but does not apply to submarine elevations. Submarine elevations are natural components of the continental margin, regardless of their origin as oceanic or continental; as long as there exists a morphological or historic connection to coastal State's landmass. Submarine ridges however are integrally continental, yet not part of the continental margin. Thus, in this stage of the induction of Article 76, all tenability of a discretely defined outer limits of the continental shelf is forfeited as Article 76 (6) advances, that submarine elevations are not subject to restraints within Article 76 (5). The continental shelf may be limited, but the continental margin is what is indisputably, solely relevant in creation of the maritime delimitation line of coastal States jurisdiction. Whence provable through bathymetric, geological, seismic and tectonic data that a submarine elevation is indeed a

[20] Norchi, C. H. (2017). The Arctic in the Public Order of the World Community. *Ocean & Coastal Law Journal,* 22 (1), 10.
[21] *Ibid*., 9-10.
[22] Jensen, Ø. (2016). Russia's Revised Arctic Seabed Submission. *Ocean Development & International Law,* 47(1), 85.

submarine elevation in form that includes but is not limited to plateaux, rises, caps, banks and spurs[23], and not a submarine ridge which is as well by virtue of the definition of the encompassing categorical term- submarine elevations, but distinctive from other submarine elevations based on the data gathered from aforementioned methods, it appears that there is no designated outer limit to the continental shelf which a State may claim. To abbreviate- submarine ridges are all submarine elevations, but not all submarine elevations are part of the continental margin.

To furthermore complicate the matter, the Commission must account for the matter of fact that indulging further into the definition of a submarine ridge and submarine elevation and implications of for the purposes of delimiting the continental shelf resultingly means recognition that submarine ridges themselves as well are of ample forms and structures. Jurists have observed that in making the distinction, the Commission has not singled out any case of clear "submarine ridge" for the purposes of Article 76 (6)[24]. A submarine or oceanic seafloor structure that is denominated as a submarine ridge in one submission, may be a submarine elevation in another submission. Any criterium of CLCS established for any submission must make the distinction based on the general morphological state of the adjacent ocean floor[25]. With the divergence of the submarine and ocean floor in the Arctic and elsewhere, every judgement is tailored to the scales of the local submarine morphology and as UNCLOS Article 76 lacks an enforced maximum extent of delimitation, there is virtually no ascertained ruler to judge claims as sustained on a coherent, universal criterium.

The lack of clarity in article 76 in exemplified by an international maritime dispute between Republic of the Union of Myanmar and People's Republic of Bangladesh that eventually was directed to International Tribunal for the Law of the Sea (ITLOS) for adjudication. ITLOS is a special tribunal, established by UNCLOS as one of the choices to a State Party for the purposes of settlement of disputes concerning interpretation or application of UNCLOS, as it has been entitled by Article 287 and Annex VI Article 21. The dispute concerned delimitation of maritime boundaries between Bangladesh and Myanmar in the Bay of Bengal. Bangladesh argued that the root of entitlement in continental shelf lies within natural prolongation of the landmass as per Article 76 (1) which was confirmed by its geological and morphological data submitted[26]. Myanmar concurred with the scientific evidence, so to say, description of the bay[27], however

[23] See UNCLOS Article 76 (6)
[24] Brekke, H., Symonds, P. (2011). Submarine Ridges and Elevations of Article 76 in Light of Published Summaries of Recommendations of the Commission on the Limits of the Continental Shelf. *Ocean Development & International Law,* 42(2), 303.
[25] *Ibid*., 304.
[26] International Tribunal for the Law of the Sea. No.16. 14 March, 2012. 426.
[27] *Ibid*., 412.

dismissed it as natural prolongation which the continental shelf consists of, it considered a legal term, carrying no scientific connotation and thus no importance in actual delimitation of the continental shelf; to the contrary it held Article 76 (4) as the key provision, holding capacity to delimit the continental shelf[28]. Through the process of the court case, ITLOS did not overturn either of the propositions, referring to the synthesis of the two and settling with an equidistant median delimitation line. Whilst Bangladesh asserted in process, that Myanmar at best enjoys a continuity between its landmass, and the outer continental shelf, while itself has a geomorphological continuity with the entire Bay of Bengal, any equidistant line ought take full account of its "most natural prolongation"[29]. The Tribunal perceivably took the path of least resistance which was not challenged by either party to the dispute, yet the case nevertheless outlines the stark contrast between the legal and scientific vocabulary involved in Article 76 and the adversities involved in its application. The Tribunal's relative bypassing of the source of the issue does not do justice to betterment of the integrity of the Convention and further destabilizes the eligibility of Article 76. If natural prolongation no longer serves as a legal defence to State's continental shelf claims as some authors morbidly summarize of the Bangladesh v Myanmar case[30], more capacity is bestowed to the continental margin, which due to its hectic nature holds its considerable threat towards the original intent of Article 76 to establish a discrete limitation to maritime claims.

Further concern over inability and diminished confidence in Article 76 is in the valid possibility that it may discredit UNCLOS as a whole. If the resource demanding and time-consuming process of making a submission to delimit the continental shelf within framework established by Article 76 does not justify itself via insinuating a likelihood of an unfair or unfavourable result, then a State may avert from it. Alternatively relying on its *de facto* presence, in synthesis with *ab initio* assumption, that a State has every valid reason to hold and enforce its jurisdiction over the seas adjacent to its landmass, to cultivate the eligibility of the imposition of its jurisdiction in perspective of the international community, and engrain an imposition of jurisdiction onto the seabed and the water as customary law. An evermore prospectus hazard within the Arctic theatre, given USA's deterrence from signing or ratifying UNCLOS[31]. Literature on the topic has already acknowledged motions on the international stage to this end. Whilst Article 76 paragraph 8

[28] *Ibid*., 427.
[29] *Ibid*., 457.
[30] Kim, H. J. (2014). Natural Prolongation: A Living Myth in the Regime of the Continental Shelf?. *Ocean Development & International Law*, 45(4), 381.
[31] Dodds, K. (2010). Flag planting and Finger Pointing: The Law of the Sea, the Arctic and the Political Geographies of the Outer Continental Shelf. *Political Geography*, 29 (1), 70-71.

wording suggest compulsory nature of making a submission, if State's continental margin extends beyond 200 NM, sizable troupe of States have sided with the conclusion, that the interest of State to delimit its maritime boundary is ostensible to the extent, that submission is not necessary [32].

The intentions behind specifying in UNCLOS the distinction behind submarine elevations and submarine ridges remains ambiguous. Cognizable is an interpretation, that submarine ridges are comparatively far more longer than submarine elevations. When UNCLOS was drafted, the distinctions utility could have been endorsed so to avoid creation of obscurely large outer limits of the continental shelf. Legislators could have tried to somewhat exhibit fidelity towards the preamble, and maintain, that area beyond national jurisdictional is as large as possible, for the purposes of being the common heritage of mankind.

3.2. Mandate of the Commission on the Limits of the Continental Shelf

UNCLOS delegates to CLCS two elementary responsibilities, firstly to examine State's submission to the outer limit of the continental shelf where it extends beyond 200 NM, secondly to provide scientific and technical advice in configuration of the data to support the claim. As per Annex II Article 2 (1), CLCS is composed of 21 rotating members whom are professional in fields of geology, geophysics and hydrography. In prescription of recommendation to the State's submission during the process of the execution of the Commissions first duty, in accordance with Article 76 (8)- "The limits of the shelf established by a coastal State on the basis of these recommendations shall be **final and binding**.", in practice a third responsibility is entrusted, to be the final word of UNCLOS, upon which the outer limit of the continental shelf is established as final and binding. However, none of the members of the Commission are jurists. This can visibly pose an obstruction to the perception of legitimacy of the process of delimiting maritime boundaries, as the Commission naturally due to the professional background of its constituents emphasizes strictly scientific interpretation of Article 76 in its judgement. What becomes law is created from an unmandated source, without States' input nor affirmation, un-challengeable and unforeseen by UNCLOS[33]. In CLCS's recommendations to the 2004 submission of Australia, this

[32] Serdy, A. (2008). Is There a 400-mile rule in UNCLOS Article 76(8). *International & Comparative Law Quarterly*, 57(4), 945-946.
[33] Yu, J., Ji-Liu, W. (2011). The Outer Continental Shelf of Coastal States and the Common Heritage of Mankind. *Ocean Development & International Law*, 42(4), 325.

was the case as Australia's continental margin was in general outline drafted by CLCS on bases of Art.76 (5) 2,500 isobaths locations, as perhaps the most scientifically discrete measure provided in the article. The process of determining whether a seafloor high as a submarine structure belonged to the continental margin was virtually dispensed with to the detriment of Australia's possible maritime territorial gains within the leverage of Article.76 (6)[34]. This has caught the attention of authors who came critically commentated on this motion of CLCS- "In conclusion the approach embraced by the Commission, despite being an interpretation of a treaty provision, can hardly be held to conform to customary treaty interpretation rules."[35]. As one of many examples, CLCS can and has acted at cases in *Ultra Vires*, standing above State Parties in its application of article 76. Further literature upon the topic especially with concern to extended maritime claims on the account of existence of a seafloor high as a submarine elevation or submarine ridge has indirectly acknowledged a certain *Ultra Vires* nature to CLCS's judgement of States' submissions as well. A State may have appropriately described its perception of the area under the submission; however, the eventual delimitation line comes to be as a synthesis of CLCS formulated line, and the lowest common agreement in categorisation of seafloor highs in CLCS and submitting State's opinion. This was precisely the case in Russia's first submission with concern to amongst other areas, the Lomonosov and Alpha-Mendeleev Ridges, which seem to qualify as submarine elevations, part of Russia's continental margin, yet denominated completely otherwise by the Commission[36]. The weight of the scale is perceivably unproportionally favourable to CLCS.

The matter of acting *ultra vires* is not mitigated by the lack of transparency within the process of the communication between CLCS and the State making the submission, further proving to be a diminishing effect to otherwise honoured and necessary work of the commission. UNCLOS currently does not foresee under provisions of confidentiality in RPCLCS Annex II, any third party involvement in the process of States' submissions to the CLCS, and CLCS's recommendations. The process engages only two parties- the submitting State and CLCS, with no provision for disclosing to the affected and otherwise interested third parties the scientific rationale that underlies a given State's proposed shelf limit and CLCS recommendations thereto, the natural agglutination of criteriums for categorization of seafloor highs as submarine elevations or ridges for the purposes of determining the continental margin is prevented. Nor is there a mechanism

[34] Kunoy, B., Heinsen, M. V., Mørk, F. (2010).Appraisal of Applicable Depth Constraint for the Purpose of Establishing the Outer Limits of the Continental Shelf. *Ocean Development & International Law*, 41(4), 366.
[35] *Ibid*., 366
[36] Macnab, R. (2008). Submarine Elevations and Ridges: Wild Cards in the Poker Game of UNCLOS Article 76. *Ocean Development & International Law*, 39(2), 226.

foreseen by UNCLOS that permits other States to lodge formal objections to outer limit determinations that might affect their legitimate interests. Evidently, the given structure of the process and the secrecy involved is an imperil to the complacent acknowledgement of any delimitation border reached.

However, as per Article.76 (10), CLCS has simultaneously its capabilities severely limited by the no prejudice clause, in that it can only make comments in areas included in the submission, where a maritime dispute is not present between submitting State and an adjacent or opposite coastal State. The lack of an impartial commission involved in the process of delimiting maritime borders holds its hazard. States may selectively follow UNCLOS where it is in their interests. This expands possibilities to for example strong-arming parties to negotiations and resulting creation of borders, that customarily can create such precedents which counter intentions of UNCLOS. Within the Arctic, this is already the case manifold regions such as in Barents sea, within the area called the "Loop-Hole", and the entirety of Russian and USA's maritime border, running as a straight line parallelly to the 170"W longitude line, ignoring all submarine structures. Literature upon the topic lends support to this concern as well:

"Even with universal acceptance of the LOS Convention it is unlikely that most marine boundary issues in the polar regions would be neatly resolved by provisions in the Convention. Indeed, in some instances the only way to achieve the intent of the LOS Convention will be through bilateral or multilateral negotiation."[37]

3.3. Role of the Preamble

As the two previous two sub-chapters exhibit, UNCLOS is inhibited in its application due to absence of clear diction resulting from inter-mixture of scientific and legal vocabulary, made more hectic by CLCS's vehement attempt to allocate cohesion into UNCLOS and especially Article 76, through the practice of its mandate. CLCS acts in accordance with the objectives of the preamble, guiding its actions and decisions, bending the malleable criterium of establishing the continental margin in Article 76 in a manner, that would honour the preamble, which is not necessarily the

[37] Shusterich, K. M. (1984). International Jurisdictional Issues in the Arctic Ocean. *Ocean Development & International Law*, 14(1), 260.

method, which benefits States making a submission. Thus, CLCS is perceivably acting outside its mandate due to its pro-preamble interpretation of Article 76 that can be antagonistic towards the wishes and intentions of submitting State Parties, whose agreement and signature to UNCLOS gives CLCS the legal grounds to operate. The source of the impasse is visibly the role of the preamble, the weight of importance granted to it fundamentally judges the actions of CLCS in its tempering with the true meaning of Article 76 as withstood or condemnable.

The weight and value of the preamble has been an ever-present and persisting menace of a concern for law of the sea and UNCLOS, a complication, which continues to linger indefinitely. Though considerable attention has been leant over 12 years of inconsecutive international conferences on the law of the sea, to attempt to clarify the preambles position and influence, especially with concern to delimitation of continental margin which starkly tests the integrity and worth of the preamble; the inherent trouble of discretely denoting the role of the preamble has been forsaken of any perceivably practical solutions. UNCLOS preamble stipulates the light with which to view the provisions of the Convention:

"*Desiring* by this Convention to develop the principles embodied in resolution 2749 (XXV) of 17 December 1970 in which the General Assembly of the United Nations solemnly declared inter alia that the area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole…"[38].

Yet at no moment in development of the methodology of delimiting the continental margin, and resultingly the delimitation of the area which is to be the 'the common heritage of mankind', has the preamble been honoured, by virtue of discrepancy and consistency of canon of delimiting the continental margin. The aforementioned Truman Proclamation 2667 based the delimiting of their continental margin on three criteriums of exploitability, adjacency to the coast and an isobath of 200-meters or more. Upon this criterium, various coastal States of the world engaged in so called new oceanic "land grab"[39], some with highly detailed justifications upon that criterium, others with animosity and little reference to any uniform unit of measurement[40]. The first United Nations Conference on the Law of the Sea in 1958, that spawned amongst three other treaties, the Convention on the Continental Shelf, virtually mirrored in Article 1 the criterium which was

[38] See UNCLOS Preamble
[39] Morin, *supra nota*, 7, 516.
[40] *Ibid.*,

established by the Truman Proclamation[41]. None of the three criteriums however could be subject to synthesis of definitive or precise delimitation methodology, consecutively to the detriment of the delimitation of the common heritage of mankind. The inherent cluster and misfunctioning of the ambiguous criterium eventually disclosed itself in the North Sea Continental Shelf Cases of 1969. A conglomerate of proceedings between Federal Republic of Germany, Kingdom of Denmark and the Kingdom of the Netherlands to delimit the continental shelf in the North Sea. International Court of Justice, rather than delivering much desiderated clarification upon the issue of delimitation, instead introduced another benchmark, the concept of natural prolongation. That States' right to the maritime delimitation border in relation to the continental shelf stems from continuity of the sovereignty of the State's land domain into and under the sea[42], and this right exists *ipso facto* and *ab initio*. Natural prolongation was opted for by the court over adjacency of the ocean and the seafloor which at *prima facie* appears as a denominate to maritime claims which is somewhat more inclined towards rationality, on the basis of argument that the continental shelf is an extension of something already owned, although covered by water, whilst mere adjacency does not suffice to grant title[43]. The delimitation of the maritime boundaries from the formulated platonic perspective irreparably obscured the process of delimitation, and prospects of conciseness as by the turn of the decade maritime delimitation was to be based on four separate standards: the 200 meters or more isobath provision, the adjacency test, exploitability test and the concept of natural prolongation. Alleviating legal treatment and cohesion was neither provided by the second United Nations Convention on the Law of the Sea.

Thus, during the assemblage of the third UN Conference on the Law of the Sea, the urgency to provide a definition to the common heritage of mankind, and a coherent methodology for delimitation of the continental shelf was dire. The conference unfolded in a heated antagonism of the so called "margineers" against mainly landlocked States and States with narrow continental shelves[44]. Lead by the world's industrialized nations and accounting for nearly 73% of the participants, the margineers persisted in unwillingness to accept any provision which would diminish their rights beyond 200 NM, that by itself already, was a concession on side of the anti-margineers[45]. To have a single flatline of 200 NM or any other measurement reached, at the time

[41] Convention on the Continental Shelf. Third United Nations Conference on the Law of the Sea. Geneva. 29 April 1958.
[42] International Court of Justice. No.51-52. 20 February 1969. Hague. 19.
[43] *Ibid*., 42-32.
[44] Boczek, B. A. (1986). The Arctic Ocean and the New Law of the Sea. *German Yearbook of International Law,* 29, 177.
[45] Morin, *supra nota*, 7, 514.

of the third conference, taking into account the interests of States involved as well as the already virtually customary 200NM delimitation line[46], any other single delimitation line was for margineers, not an option[47]. Representative of Argentina went as far as to declare that her delegation will not negotiate on its territorial integrity, and its continental shelf **is** its territory[48]. The anti-margineers naturally expressed their concern towards the lack of a single certain delimitation line, and any method which could expand States' jurisdiction beyond 200 NM. The substance of the concern intuitively was the foresight that large jurisdictional claims that could be presumed to appear if no definitive flat line was applied, on the expense of the common heritage of mankind, and the common heritage fund embodied in UN General Assembly Resolution 2749[49].

In 1978 the Irish delegation proposed what it hoped to be an acceptable solution to limiting jurisdictional claims. Titled after its authors as the Irish Proposal, the solution contemplated tying the continental margin with sedimentary rock, where the thickness of the sedimentary rock is at least one of a hundredth the measurement of that point to the foot of the continental slope, therein lies the outer most limit of the continental margin. Furthermore, the proposal as well foresaw some maximum limits, however, truly only some, which by themselves had no absolute status, thus "By tying boundary lines to the thickness of sedimentary rocks the Conference has fallen prey to the same culprit that plagued the 1958 Convention - lack of certainty."[50]. Irish Proposal did eventually incrementally change the face of Article 76 as the tool of delimiting the continental margin[51] and based on the circumstances, that it was indisputable, that 200 NM minimum was *de facto* part of customary international law and margineers will with or without a Convention, enforce it, anti-margineers accepted. A proffer for appeasement in form of Article 82 to achieve ratification of the Convention however was included to counterbalance Article 76. The article dictates that a State extracting non-living resources beyond the 200 NM ought make payments through International Seabed Authority to the States Parties on an equitable sharing basis. Yet, this motion falls far from what could be considered as a genuine solution to the objectives in the preamble, emulating rather a feeble attempt to exchange financial gain over internal coherence of the Convention[52].

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[46] Sohn, L. B., Noyes, J. E., Franckx, E., Juras, K. G. (2014). *Cases and Materials of the Law of the Sea*. (2). Leiden, Netherlands: Koninklijke Brill. 35

[47] Elferink, A. G. O. (2006). Article 76 of the LOSC on the Definition of the Continental Shelf: Questions Concerning its Interpretation From a Legal Perspective. *International Journal of Marine and Coastal Law,* 21(3), 274-275.

[48] Morin, *supra nota*, 7, 524.

[49] Elferink, *supra nota*, 45, 271.

[50] Morin, *supra nota*, 7, 530.

[51] Elferink, *supra nota*, 45, 274.

[52] Harrison, R. J. (2017). Article 82 of UNCLOS: The day of reckoning approaches. *The Journal of World Energy Law & Business,* 10(6), 490.

Conclusively, the preamble was praised, caressed with diplomatic gestures, yet whence its prescription was to be actualized, common heritage of mankind was shy of allies. The preamble received lip-service, but even developing nations, especially African[53] did little to allocate means to the provisions within which preambles aims are truly obtained. It is difficult to thus consider the preamble to the States Parties as a genuine guideline by which to interpret Article 76, but rather merely an aperitif.

[53] Morin, *supra nota*, 7, 527

4. DISCUSSION

Problematic aspects of UNCLOS are present universally in the Arctic and all other seas and oceans. They hamper delimitation of maritime boundaries beyond 200 NM and leave questionable room to judge lawfulness of actions of CLCS. However, there is potential to ameliorate Article 76 to optimize its performance to delimit the continental margin.

4.1. Reflection of the Hinderances in the Arctic

The aforementioned matters of contention with Article 76 have been the burden which has evidently contravened with suave application of UNCLOS in the arctic for the purposes of delimitation of the continental shelf, and with it, the maritime delimitation of boundaries. Within the core of the hindered process is the matter of fact that CLCS's and submitting States' conceptions of submarine elevations and submarine ridges can and more often than not do diverge. For the purposes of the analysis conducted in this paper, in the Russian original and partially revised submissions, the Lomonosov Ridge, the Alpha-Mendeleev Ridge system and Gakkel Ridge could all be considered submarine elevations or submarine ridges and the distinction hereby is of severe magnitude. The submitting State must prove geological affinity as well as morphological relationship to the landmass proper for the purposes of the importance it holds in correlation with Article 76 (6) and the outer most limit of the continental margin in Article 76 (5). CLCS catalogue of recommendations, though short but voluminous of technical details, lends little support on how to achieve this certainty, compelling the Russian submission to extend to extract data, stretching back 150 million years to hypothesize Geological model of formation of the Arctic Basin[54] in support of their claim. Hereby, the issue of lack of transparency is as well brought out

[54] Russian Federation, *supra nota*, 13, 19.

as to the original submission, communication by Canada acknowledged precisely this shortcoming. Canadian representative voiced the distress that without further provision of data to the basis of the Russian claim, Canada is incapable of commenting whether they agree or dissent with the claim[55].

Furthermore, though not a State Party to the Convention, the honour of the preamble has received protection by USA in its defiance of the categorization of the Arctic ridges as submarine elevations. In accordance with its postulations, the preamble would envision the Arctic as largely international waters, independent from jurisdictional impositions. In rebuttal to Russia's first submission, USA sternly argued that Alpha-Mendeleev Ridge is not part of any State's continental shelf by virtue of magmatic and bathymetric standards, relating to the test of appurtenance[56], that would qualify the ridge as a submarine elevation[57]. Though USA's approach has been said to disqualify multiple submarine structures of volcanic origins, such as the Faroe-Icelandic Ridge and nor the Ægir Ridge [58]. What the value of the preamble is determines how UNCLOS is applied in the Arctic and elsewhere.

4.2. Proposals for Amendments

The problems present in application of Article 76, as proven, are manifest as complex in an intertwined multi-dimensional manner. Transcending mere matters of diction, scope of application, formalities and mandate of structures established by UNCLOS. However, withstanding from extreme cynical judgements of impotence, UNCLOS is not desolate of potential to be modified to obtain optimised traction for the purposes of delimiting maritime boundaries in the Arctic and elsewhere. Some propositions to motions of amendments work in coherence with other propositions, some disqualify the necessity to other amendments. Categorically, six perceivably plausible remedies may be due: to change the term 'continental shelf' to 'continental margin', to establish a 200 NM flatline, install transparency to the submission process, alter the

[55] CLCS.01.2001.LOS/CAN. 26 February 2002
[56] See Scientific and Technical Guidelines of the Commission on
the Limits of the Continental Shelf. Commission on the Limits of the Continental Shelf, 2.2.6.
[57] Kunoy, B. (2017) Assertions of Entitlement to the Outer Continental Shelf in the Central Arctic Ocean. *International and Comparative Law Quarterly*, 66(2), 384-385.
[58] *Ibid*., 386.

rights that exist for a State in the continental shelf, end the CLCS no prejudice clause or most cardinally, retract Article 76 altogether.

A fundamental aspect of the flexibility of Article 76, as a disservice to necessary clarity is the intermixture of legal and scientific vocabulary. Though it does not constitute a fundamentally fatal obstacle to the application of Article 76 for the purposes of delimiting maritime boundaries, the utilization of the phrase 'continental shelf' is futile in itself. 'Continental shelf' plays no position in the actual process of procuring measurements in delimiting maritime jurisdictional boundaries, nor does it denote any relevant sub-marine structure. As purely a legal term, it is of such abstract nature and ethereal, that it bares no effect on the subject. Upon rational of improving the clarity of the Article, 'continental shelf' could be replaced by 'continental margin' that is actual and measurable.

To change what rights exist for a State in the continental shelf could prove to be another remedy to hasten the functioning of Article 76 and creation of new maritime boundaries. As the integral force which animates States to act in the Arctic to claim ocean territory under their jurisdiction is the inherent nature of the continental shelf as essentially an EEZ, which continues on the seafloor. Were the rights to exploration and exploitation to be limited in quality or quantity, the reasoning for extravagant territorial additions, on the account of the obligations they inherently dispense upon the State simultaneously, would not be justifiable from perspective of cost-benefit analysis. Hence leading to more prudent and conserved maritime claims and general mitigation of risk of conflict[59].

To repeal the no-prejudice clause that significantly limits capabilities of CLCS to provide scientifically and legally coherent opinions would assist bestowing legitimacy to Article 76 and the maritime boundaries it produces. Whence UNCLOS and Article 76 pertain to a coherent and fair delimitation of maritime boundaries, to exclude certain areas from CLCS considerations functions directly in opposition towards the said aim.

As Article 76 currently stands, its application from theory to practice is grotesque to the extent that it has made a lie of the reason for its application. To reconsider the possibility of establishing a 200 NM flatline for jurisdictional claims which existed as an option during the time of the third law of the sea conference, and which resulted in Article 76 as it stand today, has the capability to

[59] Theutenberg, B. J. (1984). The Evolution of the Law of the Sea: A Study of Resources and Strategy with Special Regard to the Polar Areas. Dublin, Ireland: Tycooly International Publishing Ltd. 89.

be the urgent and vital source of stability, accountability and assurance of equal application of delimiting methodology. The amendment is evermore so necessary, if the preamble is acknowledged to bear authentic weight for the purposes of interpreting at moments of doubt or vaguety, the intentions and prescriptions of UNCLOS. As an unlikely, yet an efficient solution additionally would be an extreme motion to repeal Article 76 altogether. The virtue of such a wide-scaled 'slash-and-burn' technique is the liberty it resultingly could provide to CLCS to formulate their own criteriums for delimitation of the continental shelf, that would be more in sync with the scientific actuality of submarine structures. CLCS currently is undoubtedly disturbed by fluctuations of legal and political sentiments that distort the delimitation process.

Going forward transparency is a necessity for CLCS's recommendations to gain acceptance of States Parties. Confidentiality has no redeeming qualities. The State's submission, subsequent CLCS consideration of the merits of the submission and the recommendation upon which the eventual maritime boundary is based upon is assuredly subject to distrust and hesitation, given that no third parties, with or without genuine interest are involved or provided information on the reasoning or substance of CLCS's opinion in any case. Neither does there currently exists a system by which a dissatisfied State could stand an appeal against an outer limit determination. To bring about an equilibrium of transparency, notable literature upon the topic foresees three possibilities. Primarily to publicly disclose the reasoning, technical and scientific information of proposed outer limits of the continental shelf, as has become already customary. Secondarily, making parties with interested to the submission aware of the deliberations of the CLCS. Thirdly accommodating a simple procedure through which any State whom feels its rights affected or in any other way infringed could request an audit of the grounds for the proposed continental shelf outer limits[60].

[60] Macnab, R.(2004). The Case for Transparency in the Delimitation of the Outer Continental Shelf in Accordance with UNCLOS Article 76. *Ocean Development & International Law,* 35(1), 14-16.

CONCLUSION

This paper aimed to investigate the application of United Nations Convention on the Law of the Sea for the purposes of delimitation of maritime boundaries in the Arctic theatre and inspect the reasons as to its perceivably inhibited performance on the account of lack of maritime territorial additions beyond the given standard 200 NM EEZ. The paper summarized the multi-phased procedure of the application, structure and process of a maritime territorial claim for the purposes of comprehending the systematics of the Convention. The dissection was necessitated by the objective to observe the legal space of operation and identify the potential points of friction currently obscuring the mode of performance of the Convention priorly anticipated. It was distinguished that the central provision within UNCLOS is Article 76 of the definition of the continental shelf, on the basis and criterium of which States Parties submit claims to the Commission on the Limits of the Continental Shelf. The application of Article 76 for the purposes of creation of the outer limit of the continental margin as the furthest length of maritime territory claimable was observed selectively in the "Partial Revised Submission of the Russian Federation to the Commission on the Limits of the Continental Shelf in Respect of the Continental Shelf of the Russian Federation in the Arctic Ocean Executive Summary". Russia's partially revised submission is preferable to other submission made within the Arctic theatre as it currently is the only submissions which has been sophisticated and rendered on the feedback of the recommendations provided by the CLCS on Russia's initial submission, thus granting an unique perspective with regards to outlining points of contrast in State Parties and CLCS's interpretation of the Convention.

Examination of the submission, reading of the UNCLOS and elucidating literature upon the Convention and Article 76 conceded three fundamental weaknesses. Firstly, that the relative vagueness of terms utilized in Article 76 hinders its performance when applied in processes of both the State making a submission, and CLCS in its examination of the submission. Secondly, the mandate of CLCS has proven in practice to be insufficient to obtain the objectives UNCLOS

has delegated to it, in a counterbalancing motion CLCS has to the same extent acted perceivably in *ultra vires*. Third complication arises from the difficulties from the previous two categories and ultimately is the paramount source of the predicament in applying UNCLOS and article 76 in envisioned optimal form. UNCLOS asserts emphatically in its preamble that the abundant resources of the oceans are to be the common heritage of mankind, exploration and exploitation of which subsequently ought be for the betterment of mankind as a whole; yet the application of UNCLOS and Article 76 in practice function as an impetus that is antagonistic towards this defined aim. Given political will to orientate Article 76 towards the aims described in the preamble, six amendment proposals are plausible: to change the term 'continental shelf' to 'continental margin', to establish a 200 NM flatline, install transparency to the submission process, alter the rights that exist for a State in the continental shelf, end the CLCS no prejudice clause or most cardinally, retract Article 76 altogether.

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APPENDICES

Appendix 1. United Nations Convention on the Law of the Sea Article 76

PART VI

CONTINENTAL SHELF

Article 76

Definition of the continental shelf

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.

3. The 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.

4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:
    i. a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or
    ii. a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

   (b) In the 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.

5. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the

breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

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.

9. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.

10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

Appendix 2. The International Bathymetric Chart of the Arctic Ocean

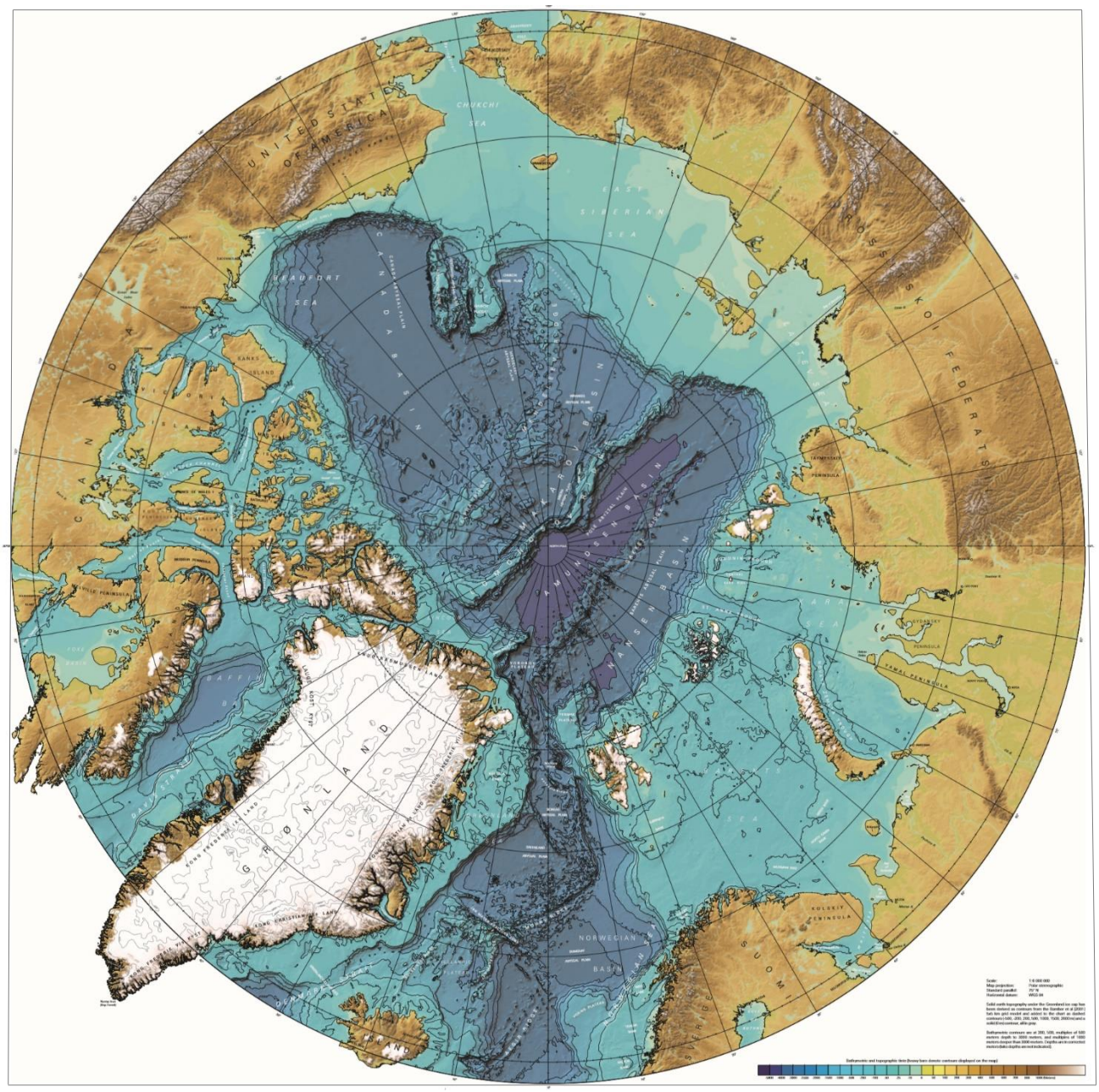

Figure 1. Topographic map of the Arctic region

Source: The International Bathymetric Chart of the Arctic Ocean 1: 6,000,000. (2004). Topographic map in assisting visualisation of the Arctic seafloor. Retrieved from https://www.ngdc.noaa.gov/mgg/bathymetry/arctic/images/ibcaoposter.pdf

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