

**AFRICA AND THE EXTENDED CONTINENTAL SHELF  
UNDER THE LAW OF THE SEA CONVENTION (LOSC) 1982**

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**ABSTRACT**

*African broad shelf States, like other broad shelf States in other parts of the world, are required under Article 76 of the LOSC to make submissions in respect of their continental shelf beyond 200 nautical miles to the Commission on Limits of Continental Shelf (CLCS) within a particular time period. For a number of such States the compliance with this obligation is a burden. This article seeks to explore the difficulties faced by African broad shelf States in complying with their obligation under Article 76 and possible assistance available to these States to enable them comply with this obligation.*

**INTRODUCTION**

The Law of the Sea Convention (LOSC), the “Constitution for the Oceans”<sup>1</sup> was adopted in 1982, after almost 9 years of extensive negotiations at the third United Nations Conference on the Law of the Sea (UNCLOS III), and entered into force on 14 November 1994.<sup>2</sup> This widely ratified and rather comprehensive treaty imposes certain obligations upon its States Parties.<sup>3</sup> For some developing States the compliance with some of these obligations has become somewhat of a burden. One of such obligations is the requirement under article 76 of the LOSC that broad shelf coastal States, including those from Africa, should make submissions in respect of their continental shelf beyond 200 nautical miles to a body of the United Nations established under the LOSC, the Commission on Limits of

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<sup>1</sup> Statement of Ambassador Tommy T.B. Koh, President of the Conference, at its final session in Montego Bay, Jamaica, 11 December 1982, Law of the Sea: Official Text of the United Nations Convention on the Law of the Sea, (1983) xxxiii.

<sup>2</sup> 21 I.L.M.1245 (1982).

<sup>3</sup> As at 31 April 2012, 161 States and the European Union have ratified the LOSC which has 320 Articles and 9 Annexes.

Continental Shelf (CLCS),<sup>4</sup> within a particular time period. Apart from the need to achieve a stable legal regime in the extended Continental Shelf (CS) especially with regard to prospective mining in this part of the sea,<sup>5</sup> the submission to the CLCS is necessary to demarcate between the seabed within national jurisdiction and the deep seabed area beyond national jurisdiction (the Area), which along with the resources therein, are the Common Heritage of Mankind (CHM).<sup>6</sup> This article seeks to explore the difficulties faced by African broad shelf States in complying with their obligation under Article 76 of the LOSC and possible assistance available to these States to enable them comply with this obligation. The article starts off by exploring why the determination of the extended CS is important in defining the Area. It then examines the provisions of Article 76 of the LOSC. Thereafter, it explores the role of the Organisation of African Unity (OAU) and its successor, the African Union (AU), in relation to the extended CS and why African States are interested in fulfilling their Article 76 obligation. Further, it looks at the situation in respect of the submissions by African States to the CLCS and the impact of the 2008 decision by the Meeting of States Parties of the Law of the Sea Convention (SPLOS) with the regard to submissions by developing States, including those from Africa. In addition, the article will explore possible assistance that may be available to African States that seek to make their submissions to the CLCS. It then ends with some conclusions.

## THE AREA

The Area is ‘the sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction.’<sup>7</sup> It commences beyond the continental shelf and consists of the generally flat areas of the deep ocean floor, mountain ranges, ridges and deep trenches that usually start at the 3000 to 5000 metre depth.<sup>8</sup> This can be

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<sup>4</sup> See Art.76 (8) and Annex II of Law of the Sea Convention (LOSC) 1982. Ever since the first submission by the Russian Federation in respect of its continental shelf beyond 200 nautical miles, other broad shelf States either have made submissions or are preparing to make submissions in line with their obligations under Article 76 of LOSC 1982. For submissions so far made see [http://www.un.org/depts/los/clcs\\_new/clcs\\_home.htm](http://www.un.org/depts/los/clcs_new/clcs_home.htm) (accessed on 5 May 2012) All url sites in this article were visited on 5 May 2012 except where otherwise stated.

<sup>5</sup> This part of the sea is also designated as outer continental shelf by some of the literature, however for the purposes of this article it shall be described as the extended Continental Shelf.

<sup>6</sup> Art.136 of LOSC states: ‘The Area and its resources are the common heritage of mankind.’

<sup>7</sup> See Art.1 (1) of LOSC 82. For further general reading on the Area, see Roderick Ogley, *Internationalizing the Seabed*, (1984) 4-30; Said Mahmoudi, *The Law of Deep Sea-Bed Mining – A Study of the Progressive Development of International Law Concerning Management of the Polymetallic Nodules of the Deep sea-bed*, (1987) 26-36.

<sup>8</sup> Ogley, *Ibid.* at 4-5 and Mahmoudi, *Ibid.* at 27.

distinguished from the seabed and subsoil within national jurisdiction, consisting of the territorial sea, exclusive economic zone (EEZ) and continental shelf.<sup>9</sup>

The definition of the Area in itself incorporates the idea of the outer limit of the continental shelf since its exact scope can only be determined if the outer limit of the continental shelves of coastal states are identified.<sup>10</sup> For the regime applicable to the Area to be meaningful, there needs to be clear indications of where the continental shelves of States, including that of States having continental shelves extending beyond 200 nautical miles, ends and where the Area commences.<sup>11</sup> According to Judge Shigeru Oda in the Case concerning the Continental Shelf (Libya/Malta), "...the concept of natural prolongation for the continental shelf was suggested with a view to defining the International Sea-bed [A]rea."<sup>12</sup>

### **ARTICLE 76 OF THE LAW OF THE SEA CONVENTION (LOSC) 1982**

The LOSC states that the continental shelf of a coastal State is the seabed and subsoil that extends beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of its continental margin or in cases of States that do not have a broad shelf to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.<sup>13</sup> This provision acknowledges the natural configuration of the continental shelf of broad shelf States may go beyond 200 nautical miles. It must, however, be pointed out that such extended continental shelf (CS) is limited to a maximum of 350 nautical miles from the baselines or 100 nautical miles from the 2,500 metre isobath.<sup>14</sup> Two

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<sup>9</sup> See Arts 2(1) and (2) (territorial sea); 55, 56(1) and 57(EEZ); and 76(1) (continental shelf) of LOSC 82.

<sup>10</sup> See Arts. 1(1) and 134(3) and (4) of the LOSC. See Edwin Egede, 'The Outer Limits of the Continental Shelf: African States and the 1982 Law of the Sea Convention' (2004) 35 *Ocean Development and International Law* 157-178. Also on outer limits of the continental shelf, see generally Edward Duncan Brown, *Sea-Bed Energy and Minerals: The International Legal Regime*, Vol.1 (The Continental Shelf) (1992) 18-45.

<sup>11</sup> For a historical perspective on the issue of the extended continental shelf, see Ogleby, above n 7, 98-133. Also see Judge Shigeru Oda's dissenting opinions in Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) ICJ. Rep.1982, 18 at 212-213, Para.101 who pointed out that the continental shelf is divided into two areas- that within 200 nautical miles and that beyond 200 nautical miles, and that for the latter some of the profits are dedicated to the international community.

<sup>12</sup> ICJ Rep.1985, 13 at 154, para.55.

<sup>13</sup> Art 76(1). For an extensive exploration of the Article 76 provision see the International Law Association Committee on Legal Issues of the Outer Continental Shelf Reports: New Delhi Conference (2002), Berlin Conference (2004) and Toronto Conference (2006).

<sup>14</sup> Art. 76(5) and (6). However, the 350 nautical miles limit does not apply to submarine elevations that are natural components of the Continental Margin such as plateaux, rises, caps, banks and spurs.

technical and rather complicated methods are provided for establishing the outer limits of such extended CS known as the Irish formula or 1% sediment thickness option and the Hedberg formula or FOS + 60 nautical miles.<sup>15</sup> These formulas may be used simultaneously by a State in respect of different portions of its extended CS in order to enhance its claim. The final outer limit of the extended CS beyond 200 nautical miles from the baseline is to be measured by straight lines not exceeding sixty nautical miles in length connecting all the fixed points.<sup>16</sup>

In addition, the LOSC provides for a technical body, the CLCS, to consider submissions by coastal State with extended CS and make recommendations with respect to such submissions.<sup>17</sup> The outer limits established by the coastal State on the basis of such recommendations shall be final and binding.<sup>18</sup> Thereafter, the chart and other relevant information permanently describing the outer limits are deposited with the Secretary-General of the United Nations, who is required to give such due publicity.<sup>19</sup>

Although a number of Africa coastal States have the potential to be broad shelf States, the exact number of such States is not clear.<sup>20</sup> The onus therefore lies upon each potential African States claimants to demonstrate the extent to which its continental margin extends beyond the 200 nautical miles limit by making submissions to the CLCS as required by the LOSC.<sup>21</sup>

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<sup>15</sup> Art.76 (4) (a) (i) and (ii) respectively.

<sup>16</sup> Art.76(7)

<sup>17</sup> The CLCS is a technical body set up under Annex II of LOSC. See Ted L. McDorman, 'The Role of the Commission on the Limits of the Continental Shelf: A Technical Body in a Political World', (2002) 17 International Journal of Marine and Coastal Law, 301-324

<sup>18</sup> Art.76(8)

<sup>19</sup> Art.76(9)

<sup>20</sup> Some African States that have been identified as potentially having an extended CS (with the area listed in Sq. km) are: Angola (251,305), Congo (Republic of)(14,652), Equatorial Guinea(15,566), Gabon(136,752), Gambia(10,662), Ghana(25,943)Guinea(27,897), Guinea Bissau(38,359), Kenya(20,782), Madagascar(2,087,434), Mauritania(53,312), Mauritius(321,039), Morocco(824,562), Mozambique(123,258), Namibia(1,111,735), Nigeria(103,772), Senegal(106,650), Seychelles(321,039), Sierra Leone(51,030), Somalia(242,679), South Africa(184,863), Tanzania(55,681), Togo(15,566) and Democratic Republic of Congo(formerly Zaire)(13,431). See B.J. Murton, L.M. Parson, J.H. Hunter and P.R. Miles, 'Evaluation of the Non-living Resources of the Continental Shelf Beyond the 200 mile limit of the World's Margins' in International Seabed Authority (ed.), Minerals other than Polymetallic Nodules of the International Seabed Area, Proceedings of the International Seabed Authority's Workshop, Kingston, Jamaica, June 26 -30, 2000 (2004) 667 at 736.

<sup>21</sup> See Egede, 'The Outer Limits of the Continental Shelf: African States and the 1982 Law of the Sea Convention,' above n 10, 159-160.

## **AFRICAN STATES AND EXTENDED CONTINENTAL SHELF: FROM ORGANIZATION OF AFRICAN UNITY TO AFRICAN UNION**

The Oceans and Seas is of strategic importance to Africa, a Continent, located in the midst of the Mediterranean Sea in the north, the Atlantic Ocean in the west, the Red Sea in the northeast and the Indian Ocean in the southeast.<sup>22</sup> According to Erastus Mwencha, the Deputy Chairperson of the African Union Commission (AUC): ‘Africa is a BIG island and needs to have a better situational awareness of all activities in its adjoining oceans and seas.’<sup>23</sup> From the time of the Organization of Africa Union (OAU), Africa had always engaged with law of the sea issues. For instance, during the UNCLOS III, the OAU put together a reasonably comprehensive paper, the Declaration of the Organization of African Unity on the Issues of the Law of the Sea,<sup>24</sup> to serve as a framework to guide the negotiations of African States during this ground breaking Conference. The Declaration dealt with diverse issues on the law of the sea, including offshore maritime boundaries. The initial general position of African States, as expressed in the Declaration, was that a new concept the exclusive economic zone (EEZ) which would not exceed 200 nautical miles from the baseline establishing the territorial sea should subsume the continental shelf concept.<sup>25</sup> However, during the course of the Conference they eventually conceded to both the EEZ and continental shelf existing side by side, leading to both concepts overlapping when the continental shelf falls with 200 nautical miles, with the opportunity for broad shelf States to extend the continental shelf beyond 200 nautical miles subject to a maximum limit of 350 nautical miles when certain conditions are satisfied. The concession was on the understanding that such broad shelf States would make contributions or payments from mineral resource production in the extended continental shelf to an International Organization established to organize and control activities in the Area, on behalf of the international community.<sup>26</sup> This was eventually incorporated into the LOSC, along with provisions dealing with the extended CS.<sup>27</sup>

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<sup>22</sup> Edwin Egede, *Africa and the Deep Seabed Regime: Politics and International Law of the Common Heritage of Mankind*, (2011) xx-xxi.

<sup>23</sup> Africa Maritime Safety and Security Conference, 13 October, 2010, Stuttgart, Germany, [http://www.au.int/pages/sites/default/files/Keynote%20Address%20of%20H.E.%20the%20DCP-1\\_0.pdf](http://www.au.int/pages/sites/default/files/Keynote%20Address%20of%20H.E.%20the%20DCP-1_0.pdf)

<sup>24</sup> Doc A/CONF.62/33 of 19 July 1974, UNCLOS III, Official Records, Vol.3, pp.63-65

<sup>25</sup> Ibid, paras 6-10. See Nasila Rembe, *Africa and the International Law of the Sea*, (1980)105-111 and generally Tayo Akintoba, *African States and Contemporary International Law: A Case Study of the 1982 Law of the Sea Convention and the Exclusive Economic Zone*, (1996).

<sup>26</sup> Art.82 of LOSC deals with contributions or payments to the International Seabed Authority in respect of production in the extended Continental Shelf at varying rates from the 6<sup>th</sup> year of production to the 12<sup>th</sup> year. See Egede, *Africa and the Deep Seabed Regime: Politics and International Law of the Common Heritage of Mankind*, above n 22, 44-47. For a more detailed

The African Union (AU),<sup>28</sup> the successor to the now defunct OAU<sup>29</sup> is also engaging with issues related to the sea.<sup>30</sup> In early 2008, the AU through its Assembly, at its 10<sup>th</sup> Ordinary Session, adopted a decision in respect of the extended CS of African coastal States.<sup>31</sup> This decision was made with the consciousness of: ‘the major geopolitical and strategic stakes linked to the African continental shelf and of its abundant mineral and biological resources, which constitute an important source of foreign currency earnings for the economic development of the continent.’<sup>32</sup>

The interest of broad shelf African States in the possibility of extending their continental shelf was largely motivated by economic and territorial considerations based on the perception that there are immense mineral resources which could

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exploration of Article 82 see the International Law Association Committee on Legal Issues of the Outer Continental Shelf Report: Rio De Janeiro(2008)

<sup>27</sup> See Part V, Arts.55-75(EEZ) and Part VI, Arts. 76-85(Continental Shelf) of LOSC. Specifically Art.76 and Annex II of the LOSC deals with the extended Continental Shelf (See text in section III above).

<sup>28</sup> The African Union Constitutive Act came into force on 26 May 2001, <http://www.au.int/en/treaties> (accessed 7 May 2012) The Constitutive Act has been ratified by all 53 member states of the O.A.U, including Saharawi Arab Democratic Republic (Morocco is not a member of the AU), of these 38 AU Member States are coastal States with varying coastlines: Algeria (998); Angola (1600); Benin (121); Cameroon (402); Cape Verde (965); Comoros (340); Democratic Republic of Congo (37); Republic of Congo (169); Cote d’Ivoire (515); Djibouti (314); Egypt (2450); Equatorial Guinea (296); Eritrea (2,234 total- mainland on Red Sea, 1151 and Islands on Red Sea, 1083); Gabon (885); Gambia (80); Ghana (539); Guinea (320);Guinea-Bissau (350);Kenya (536);Liberia (579);Libya (1770);Madagascar (4828);Mauritania (754);Mauritius (177); Mozambique (2470);Namibia (1572);Nigeria (853);Sao Tome & Principe (209); Senegal (531); Seychelles (491); Sierra Leone (402); Somalia (3025); South Africa (2798); Sudan (853); Tanzania (1424); Togo (56); Tunisia (1148) and Western Sahara (1110). All the lengths are calculated in Kilometres (Km). Figures from C.I.A – The World Fact book. See <https://www.cia.gov/library/publications/the-world-factbook/>(accessed 7 May 2012)

<sup>29</sup> The OAU was established on 25 May 1963. For OAU Charter see 2 ILM (1963) 766. Also See Teslim Olawale Elias, ‘The Charter of the Organisation of African Unity’ (1965) 59 American Journal of International Law, 243-267.

<sup>30</sup>Recently, the AU has begun work on a 2050 Integrated Maritime Strategy (2050 AIM Strategy). The idea of the 2050 AIM strategy is for the AU to develop and implement an integrated and coherent strategy in respect of Africa’s oceans, seas, coastal regions and maritime sectors. See <http://www.au.int/pages/maritime>

<sup>31</sup> Decision on Extension of the African Continental Shelf and Climate Change, Doc.EX.CL/391 (XII), Decisions and Declarations of the 10<sup>th</sup> Ordinary Session of the Assembly of the AU, 31 January-2 February 2008, [http://www.africa-union.org/root/au/Conferences/2008/january/summit/docs/decisions/Assembly\\_Decisions\\_171-191.pdf](http://www.africa-union.org/root/au/Conferences/2008/january/summit/docs/decisions/Assembly_Decisions_171-191.pdf)

<sup>32</sup> Ibid, Para.3.

potentially be exploited in this part of the sea and also the view that a claim of an extended CS would amount to an extension of their territory.

### *RESOURCES OF THE OUTER CONTINENTAL SHELF*

It is believed that the continental shelf beyond 200 nautical miles has valuable natural resources located therein.<sup>33</sup> Earney conjectures that four main classes of non-living resources are likely to be discovered in the extended CS: hydrocarbons; construction aggregates and sand; minerals in placer deposits such as diamonds, gold, and ilmenite; and industrial chemicals such as sulphur and phosphate.<sup>34</sup> In addition, there is the possibility of generating a lot of money from marine biodiversity within the extended CS, which have vast potential markets in such industries as the pharmaceutical, waste treatment, food processing, oil-well services and paper processing industries.<sup>35</sup> So far, there has been no actual exploitation of the extended CS by broad shelf States, nonetheless, with rapidly improving technology for offshore mining of natural resources, the possibility of exploitation of the extended CS in the near future is imminent. Recently, at a seminar jointly organised by the International Seabed Authority and the Royal Institute of International Affairs (Chatham House) it was speculated that the first commercial production of resources from the outer continental shelf would occur by 2015.<sup>36</sup>

It is therefore not surprising that African coastal with the potential to extend their continental shelves have shown a keen interest in this part of the ocean space because of the possibility of generating considerable revenue from it. For instance, the Namibian government indicated that its interest in claiming a continental shelf beyond 200 nautical miles is premised on the potential of it containing heavy mineral sands, diamonds, phosphates, manganese nodules, hydrocarbons, gas hydrates and gas seeps. According to the Namibian Minister of Land, Resettlement and Rehabilitation, a move by Namibia to extend its continental shelf up to 350 nautical miles, 'will benefit the country's economy now and in the future.'<sup>37</sup> In

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<sup>33</sup> See Victor Prescott, 'Resources of the Continental Margin and International Law,' in Peter Cook and Chris Carleton (eds), *Continental Shelf Limits: the scientific and legal interface*, (2000) 75-77

<sup>34</sup> F.C.E. Earney, *Marine Mineral Resources* (1990) referred to in Prescott, *Ibid.* at 66-71.

<sup>35</sup> It has been estimated that the marine biotechnology-related products would be worth up to US\$100 billion in sales. See Joanna Mossop, 'Protecting Marine Biodiversity on the Continental Shelf Beyond 200 Nautical Miles' (2007) 38 *Ocean Development & International Law*, 283 at 285 who cited Salvatore Arico and Charlotte Salpin, *Bioprospecting of Genetic Resources in the Deep Seabed: Scientific, Legal and Policy Aspects*, UNU-IAS Report (2005) 17

<sup>36</sup> Paras. 71 and 72 of ISBA/16/A/2 of 8 March 2010.

<sup>37</sup> See Media Release from the Namibian Cabinet Chambers titled 'Cabinet approves N\$2million for Delineation of Continental Shelf.' This Media Release was in respect of the decision of the Cabinet at its 28<sup>th</sup> meeting held on 5 November 2002. <http://www.namibian.com.na/2002/November/national/029725C34A.html> See also Leon E.

addition, the President of Nigeria charged one of the bodies involved in Nigerian extended CS project, the National Boundary Commission (NBC), to work vigorously on the extension of the nation's continental shelf because the successful conclusion of the exercise would boost Nigeria's revenue base.<sup>38</sup> Further, the economic potential of the sea has been alluded to by various AU officials. For instance, Ambassador John K. Shinkaiye, the Chief of Staff African Union Commission, in his closing remarks at the 2010 Africa Maritime Safety and Security Conference urged that Africa should 'look to our maritime domain as a vast and virtually unexplored area with enormous potentials to play a key role in helping the continent realize its true development capacity.'<sup>39</sup> While Mwencha, the Deputy Chairperson of the AUC, in his address to an expert workshop in 2011 to review and finalize the draft 2050 African Integrated Maritime Strategy, pointed out that Africa needs to 'take full advantage of the potential for wealth creation from a sustainable governance of all Africa's oceans and seas.'<sup>40</sup>

### *EXTENDED TERRITORY*

Further, the interest of African coastal States is based on the view that a claim of an extended CS would amount to an expansion of their territory. For instance, in a media report on the submission of Kenya to the CLCS, it was said that: 'Kenya is poised to acquire an additional 103,000 square kilometres of the Indian Ocean following an application to the United Nations, in what is being dubbed "the second and last scramble for the world."<sup>41</sup> In addition, Ian McLachlan, the project leader of South Africa's extended CS claim, is reported to have pointed out that though mining in this part of the continental shelf is not likely in the near future, South Africa is still putting itself out on this project because of the 'potential to gain new territory equal to about 30% of [their] land area without going to war.'<sup>42</sup>

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Moller, "The Outstanding Namibian Maritime Boundaries with Angola and South Africa", (2003) 18 (2) *The International Journal of Marine and Coastal Law*, 241, 248.

<sup>38</sup> See Lucky Nwankere, "... Calls for extension of continental shelf", *Nigerian Daily Sun Newspaper*, 8 October 2008, <http://www.sunnewsonline.com/webpages/news/national/2008/oct/08/national-08-10-2008-002.htm>

<sup>39</sup> <http://www.au.int/pages/maritime/events/2010-africa-maritime-safety-and-security-towards-economic-prosperity-conference>

<sup>40</sup> Workshop to Review and Finalize the Draft Integrated Maritime Strategy(2050 AIM Strategy), Addis Ababa, 20-21 December 2011, <http://www.au.int/en/sites/default/files/Opening%20Remarks%20of%20H.E.%20Mr.%20Erastus%20Mwencha,%20Deputy%20Chairperson%20of%20the%20African%20Commission.pdf>

<sup>41</sup> Julius Bosire, 'The extended continental shelf has potential deposits of petroleum, gas, iron-manganese, sulphides and placer deposits,' 11 May 2009, <http://www.theestafrican.co.ke/>

<sup>42</sup> Irma Venter, 'Australia will be first to excel at mining the Ocean floor – Canadian Prof', *Mining Weekly Online*, 14 March 2008, [http://www.miningweekly.com/article.php?a\\_id=129192](http://www.miningweekly.com/article.php?a_id=129192)



Further, a former President of Nigeria stated that the extension of Nigerian continental shelf would ‘increase the frontiers of [Nigerian] national sovereignty.’<sup>43</sup>

Although the extended CS would amount to ‘new territory’, it must be pointed out that a coastal State has rather limited rights over the continental shelf. The coastal State exercises exclusive sovereign rights over the continental shelf only for the limited purpose of exploring and exploiting its natural resources.<sup>44</sup> Such right does not affect the legal status of the sub adjacent waters and the airspace above the waters and the freedom of navigation and other rights and freedoms of other States.<sup>45</sup> The regime of the continental shelf is merely a functional one that seeks to reconcile the competing interests of the Coastal States’ ‘sovereign rights’ to resource exploration and exploitation with the rights of other States to exercise the freedoms of the High Seas.<sup>46</sup>

## **SUBMISSION BY AFRICAN STATES TO THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF (CLCS)**

### ***DEADLINE FOR SUBMISSION***

States Parties to the LOSC with the potential to extend their continental shelves beyond 200 nautical miles, including African States, were initially required by LOSC to make submissions in respect of their extended CS within 10 years of the entry into force of the Convention for that particular State.<sup>47</sup> However, at the Eleventh Meeting of the States Parties to the Law of the Sea Convention (SPLOS) in 2001, a decision was taken that the commencement period for calculating the 10-year period for states that became parties to the Convention before 13 May 1999 (when the Commission adopted its Scientific and Technical guidelines) would be 13 May 1999.<sup>48</sup> All broad-shelf African states that became states parties to LOSC before 13 May 1999 were therefore required to make submissions within 10 years from that date, a deadline of 13 May 2009. On the other hand, those that

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<sup>43</sup> See [www.nigeriafirst.org/article\\_8434.shtml](http://www.nigeriafirst.org/article_8434.shtml). An advisor to certain developing States preparing their submissions is quoted to have said: “This will probably be the last big shift in ownership of territory in the history of the Earth. Many countries don’t realize how serious it is.” Paul Kelly, “The Convention on the Law of the Sea: Why the critics are wrong”, [http://www.jointoceancommission.org/news-room/in-the-news/2008-04-01\\_The\\_Convention\\_on\\_the\\_Law\\_of\\_the\\_Sea\\_Why\\_the\\_Critics\\_are\\_Wrong@World\\_Oil.pdf](http://www.jointoceancommission.org/news-room/in-the-news/2008-04-01_The_Convention_on_the_Law_of_the_Sea_Why_the_Critics_are_Wrong@World_Oil.pdf)

<sup>44</sup> Art.77 of LOSC

<sup>45</sup> Art.78 of LOSC

<sup>46</sup> Friedrich Kratochwil, ‘Of Systems, Boundaries, and Territoriality: An Inquiry into the Formation of the State System’ (1986) 39(1) World Politics, 27, 48-50

<sup>47</sup> Art. 4 of Annex II of the LOSC. The Convention came into force on November 16, 1994.

<sup>48</sup> See Para. 81 of the Report of the Eleventh Meeting of the States Parties to the Law of the Sea Convention (SPLOS), SPLOS/73 of 14 June 2001.

became parties to the Convention after this date were required to make submissions within 10 years from the date they become parties to the treaty.

A number of African broad shelf States became parties to the LOSC before 13 May 1999, but some were unable to meet the deadline of May 2009 due to the complexities and technicalities involved in the preparation of submissions, as well as the cost implications.<sup>49</sup> Although, Kenya was eventually able to meet the deadline for submission to the CLCS, its delegation to the SPLOS had captured the concerns of a number of African States as follows:

...the complexity of the issues to be investigated and costs involved in compiling, a credible submission are enormous. Implementation of article 76 of the Convention requires collection, assembly, and analysis of a body of relevant hydrographic, geological and geophysical data in accordance with the provisions outlined in the Scientific and Technical Guidelines. The complexity, scale and the cost involved in such programme, though varying from State to State according to the different geographical and geophysical circumstances require enormous amounts of resources.<sup>50</sup>

The 2008 AU decision on the extended CS had requested broad shelf African States to speed up the process of preparing and submitting their claims for the extension of the limits of their continental shelf with a view to meeting the deadline at that time of 12 May 2009.<sup>51</sup> Although the decision urged broad shelf

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<sup>49</sup> Chris Carleton, 'Article 76 of the UN Convention on the Law of the Sea – Implementation Problems from the Technical Perspective', (2006) 21(3) *The International Journal of Marine and Coastal Law*, 287, 288 and 306. Mauritius and Seychelles, indicated that they faced significant challenges “posed by geographical isolation, technical capacity and financial resources” (See Para.1.11 of Executive Summary) and Ghana pointed out that their submission was prepared “notwithstanding significant challenges posed by technical capacity and financial resources.”(See Para. 1.6 of the Executive Summary) [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_musc.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_musc.htm).

<sup>50</sup> Statement by the Kenya Delegation to the Eighteenth Meeting of States Parties to the 1982 United Nations Convention on the Law of the Sea(UNCLOS): 13<sup>th</sup> -20<sup>th</sup> June 2008, New York, <http://www.kenyaun.org/documents/18THMTGUNCLOS.pdf> . See also UNGA, 62<sup>nd</sup> Session, A/62/PV.64 of 10 December 2007, 26, where the Kenyan representative at the 62<sup>nd</sup> Session of the United Nations General Assembly said that: “The implementation of article 76 of the [LOSC] continues to pose serious financial and technical challenges to coastal developing States.”

<sup>51</sup> Para. 4, Decision on Extension of the African Continental Shelf and Climate Change, Doc.EX.CL/391 (XII), Decisions and Declarations of the 10<sup>th</sup> Ordinary Session of the Assembly of the AU, 31 January-2 February 2008. This decision appears to assume that all African States necessarily have the same deadline. This is not the case. For instance, Madagascar, an acknowledged broad shelf State member of the AU, became a party to the LOSC on 22 August 2001 and therefore has a deadline to submit to the CLCS by August 2011. Nonetheless, it must be

African States to seek to meet the 10-year deadline, it recognised the constraints faced by a number of such States. It therefore encouraged all member States to adopt a common position and submit to the United Nations General Assembly a recommendation for the postponement of the deadline by an additional period of ten years.<sup>52</sup> It is interesting to note that the AU limited itself to encouraging its members to lobby the General Assembly of the United Nations and not the SPLOS. Although, the General Assembly undoubtedly plays a key role in the implementation of the LOSC, the SPLOS by its 2001 decision fixing the commencement period for calculating the deadline at 13 May 1999 would perhaps have been the more appropriate body for the AU to call its members to lobby for a further extension.<sup>53</sup>

### *RECENT DEVELOPMENTS ON DEADLINE FOR SUBMISSION*

Interestingly, the SPLOS, in response to the concerns of developing States with regard to their ability to meet the May 2009 deadline decided that a coastal States may satisfy the time period by submitting to the Secretary-General preliminary information indicative of the extended continental shelf, along with a description of the status of preparation and the intended date of making the actual submission.<sup>54</sup> This decision however, made it clear that pending the receipt of the actual submission the CLCS shall not consider such preliminary information.<sup>55</sup> This appears to be an attempt to reach a compromise between States clamouring for a further extension of the deadline and those that insisted that no further

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pointed out that a number of African broad shelf States' deadline was May 2009. See Table in Annex to this article.

<sup>52</sup> Paras. 5 and 6

<sup>53</sup> See Tullio Treves, 'The General Assembly and the Meeting of States Parties in the Implementation of the LOS Convention' in Alex G. Oude Elferink, (ed.), *Stability and Change in the Law of the Sea: The Role of the LOS Convention*, (2005), 55-74. Earlier, the Commonwealth, which in 2004 and 2005 had expressed concerns about the ability of some of its members to meet the ten-year deadline due to the complexities and expenses involved in preparing the submissions, was more extensive in its choice of the forum for its members to lobby.<sup>53</sup> It, amongst other things, recommended that all member States lobby both the General Assembly and SPLOS for an extension of the impending 2009 deadline. See Para.4 of Meeting of Law Ministers of Small Commonwealth Jurisdictions, Marlborough House, London, 21-22 October 2004 – Final Communiqué

[http://www.thecommonwealth.org/document/34293/35232/141082/meeting\\_of\\_ministers\\_of\\_small\\_commonwealth\\_jur.htm](http://www.thecommonwealth.org/document/34293/35232/141082/meeting_of_ministers_of_small_commonwealth_jur.htm) and Para.45 of Meeting of Commonwealth Law Ministers, Accra, Ghana, 17-20 October 2005 – Communiqué, [http://www.thecommonwealth.org/shared-asp-files/uploadedfiles/2A07BB49-003F-4916-8B21-C368B0DE486C\\_FINAL-LMM-COMUNIQUE.pdf](http://www.thecommonwealth.org/shared-asp-files/uploadedfiles/2A07BB49-003F-4916-8B21-C368B0DE486C_FINAL-LMM-COMUNIQUE.pdf)

<sup>54</sup> Para 1(a) of SPLOS/183 of 24 June 2008

<sup>55</sup> Para 1(b), Ibid

extension be granted.<sup>56</sup> In addition, the decision appears to be a rather pragmatic way to address two thorny issues arising with regard to submissions to the CLCS. On the one hand, it seeks to address the issue of the difficulties faced by some developing States in meeting the May 2009 deadline. Therefore it merely requires these States to submit whatever information they are able to obtain before the deadline and thereby in principle meet the ten-year deadline. On the other hand, by exempting the CLCS from considering the information until the actual submission of all the data in line with Article 76 and Annex II has been made, it has the practical effect of reducing the number of submissions the CLCS would consider and in effect reduce its workload.<sup>57</sup> It is suggested that while submitting the preliminary information ensured a formal compliance with the ten-year deadline, in reality it does not deal with the real constraint that a number of African and other developing States face with meeting the deadline, namely the lack of technical capacity and the required finance to fund the preparation of the actual submission.<sup>58</sup>

#### *AFRICAN STATES: HOW FAR WITH SUBMISSIONS TO CLCS?*

So far only a handful of African States have been able to meet the May 2009 deadline, namely, Cote d'Ivoire, Ghana, Kenya, Namibia, Nigeria & Mauritius and Seychelles (joint submission in respect of the Mascarene Plateau; Mauritius in respect of Rodrigues Island and Seychelles in respect of the Northern Plateau Region) and South Africa (in respect of the mainland of its territory). Further, Madagascar, which became a party to the LOSC on 22 August 2001, was able to make its submission on 29 April 2011, a few months before the end of its ten-year deadline. Gabon, Mozambique and Tanzania, taking advantage of the 2008 SPLOS decision (SPLOS/183), initially submitted their preliminary information but have since been able to make their actual submissions. On the other hand, a number of African States unable to meet the deadline have had to submit preliminary information and are yet to make their actual submissions.<sup>59</sup> An interesting point to consider is whether there is any deadline for the submission of actual submission after the initial submission of the preliminary information. If one is to take a cue

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<sup>56</sup> Para 73, SPLOS/148

<sup>57</sup> The Chairman of the CLCS has estimated that if the Commission continued with its present working arrangements the projected time for the completion of the consideration of submissions could be 2035. Para 59 of SPLOS/164 of 16 July 2007

<sup>58</sup> This is not a uniquely African problem. See the position of the small island pacific island State of Nauru, which recently notified the United Nations Secretary-General of 'its present inability owed to its current lack of the required capacity and resources to fulfil the legal requirements under article 76 of the Convention.' Para.8 of SPLOS/INF/22 of 22 May 2009.

<sup>59</sup> See Table in Annex to this article on the status of African coastal broad shelf States' submission to CLCS.

from the situation of partial submissions made within the ten-year deadline,<sup>60</sup> where there is no suggestion of a deadline for any subsequent submission by the submitting State, it may perhaps be safe to arrive at the conclusion that there is no deadline for the actual submission made after the preliminary information.<sup>61</sup> However, it must be pointed out that the actual submission should in good faith be made within a reasonable time. For this to be feasible there is a need to sustain the assistance provided to African broad shelf States that have submitted their preliminary information, a number of which are amongst the least developed States (LDCs),<sup>62</sup> so they can make their actual submissions and thereby comply with Article 76.

### **AFRICAN STATES: POSSIBLE ASSISTANCE WITH SUBMISSIONS**

The AU decision on the extended CS called on specialised agencies of the UN system to provide African broad-shelf States all the assistance required to prepare their submissions.<sup>63</sup> It must be noted, however, that beyond the UN System there

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<sup>60</sup> See Art.76 (10) and Art.9 of Annex II of LOSC and Rule 46(1) and Annex I, Para 3, of the Rules of Procedure of the Commission on the Limits of the CS, CLCS/40 of 2 July 2004. The submission of Ireland on 25 May 2005, New Zealand on 19 April 2006, joint submission of France, Ireland, Spain and the United Kingdom on 19 May 2006; Norway on 27 November 2007 and Indonesia on 16 June 2008 are partial submissions. See [http://www.un.org/Depts/los/clcs\\_new/clcs\\_home.htm](http://www.un.org/Depts/los/clcs_new/clcs_home.htm) On the Irish submission, which was the first partial submission, see generally Clive R Symmons, 'The Irish Partial Submission to the Commission on the Limits of the Continental Shelf in 2005: A Precedent for Future Submissions in the Light of the 'Disputed Areas' Procedure of the Commission?' (2006) 37(3-4) *Ocean Development and International Law*, 299

<sup>61</sup> See Edwin Egede, 'Submission of Brazil and Article 76 of the Law of the Sea Convention (LOSC) 1982,' (2006) 21(1) *The International Journal of Marine and Coastal Law*, 33, 38 in respect of partial submissions. For e.g. Mozambique in its Preliminary Information dated 11 May 2009 stated that 'The government of Mozambique is committed to deliver its full submission within 1 year from now, unless otherwise specified in light of other circumstances' and not too long after on 7 July 2010 made the actual submission. Tanzania which submitted its preliminary information on 7 May 2009 stated that its actual submission would be two years after this date. It made its actual submission on 18 January 2012. Other African States that have submitted preliminary information have given an idea of when they anticipate they would make their actual submission. For e.g. Angola anticipates it would make its actual submission by the end of 2013; Cape Verde by the end of December 2014, 'unless otherwise specified in the light of unforeseen circumstances'; Gambia states that 'A full submission is planned to take place within 10 years, unless otherwise specified in light of unforeseen circumstances'; Mauritius anticipates it would make actual submission in respect of Chagos Archipelago by 2012; Seychelles expects to complete submission by 2011; Sierra Leone anticipates it would submit by the end of 2010; Somalia states that 'A full submission should, in their view, take place within 10 years, unless otherwise specified in light of other circumstances'. See [http://www.un.org/Depts/los/clcs\\_new/clcs\\_home.htm](http://www.un.org/Depts/los/clcs_new/clcs_home.htm)

<sup>62</sup> See Table in the Annex to this article.

<sup>63</sup> Para.8

are other avenues for African broad shelf States to obtain assistance. This section will examine some of such technical and financial opportunities that are available.

### *TECHNICAL ASSISTANCE*

#### **COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF (CLCS)**

Under Annex II of the LOSC, the CLCS as one of its functions, if so requested by a coastal State preparing for submission, may provide through its members scientific and technical advice to such coastal State.<sup>64</sup> This advice may be provided by a maximum of three CLCS members, including the member who is a national of the Applicant State.<sup>65</sup> The CLCS has a Standing Committee to deal with such requests.<sup>66</sup> Although, so far there has been no official formal request for advice by any broad-shelf States,<sup>67</sup> there is evidence that some African broad-shelf States outside the standing Committee have sought and obtained pertinent scientific and technical advice from members of the CLCS, both past and present. For instance, in their recent joint submission Mauritius and Seychelles indicated that they obtained advice from three present members and two previous members.<sup>68</sup> Also Nigeria received advice from two current CLCS members and one previous member.<sup>69</sup> It must be noted that recently the current CLCS members have been

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<sup>64</sup> Art.3 (1) (b) of Annex II of LOSC. See also Rule 55(1) of the Rules of Procedure, CLCS/40/Rev.1 of 17 April 2008.

<sup>65</sup> Rule 55(3) of the Rules of Procedure. The current members of the CLCS for 2007-2012 are: Albuquerque, Alexandre Tagore Medeiros de(Brazil); Astiz, Osvaldo Pedro(Argentina); Awosika, Lawrence Folajimi(Nigeria); Brekke, Harald(Norway); Carrera Hurtado, Galo(Mexico); Charles, Francis L.(Trinidad and Tobago); Croker, Peter F.(Ireland); Fagoonee, Indulall(Mauritius); German, Mihai Silviu(Romania); Jaafar, Abu Bakar(Malaysia); Jaoshvili, George(Georgia); Kalngui, Emmanuel(Cameroon); Kazmin, Yuri Borisovitch(Russian Federation); Lu, Wenzheng(China); Oduro, Isaac Owusu(Ghana); Park, Yong-Ahn(Republic of Korea); Pimentel, Fernando Manuel Maia(Portugal); Rajan, Sivaramakrishnan(India); Rosette, Michael Anselme Marc(Seychelles); Symonds, Philip Alexander(Australia) and Tetsuro Urabe(Japan), [http://www.un.org/Depts/los/clcs\\_new/members\\_expertise.htm](http://www.un.org/Depts/los/clcs_new/members_expertise.htm)

<sup>66</sup> See [http://www.un.org/Depts/los/clcs\\_new/commission\\_advice.htm](http://www.un.org/Depts/los/clcs_new/commission_advice.htm)

<sup>67</sup> See Para 33-34 of Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission, CLCS/72 of 16 September 2011

<sup>68</sup> See Executive Summary of Mauritius and Seychelles [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_musc.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_musc.htm) It stated that they obtained advice from the following current members of the CLCS: Mr Michael Rosette(Seychelles); Mr Harald Brekke(Norway) and Dr Galo Carrera(Mexico), as well as the following past members: Dr Andre Chan Chim Yuk(Mauritius) and Dr Karl Hinz(Germany)

<sup>69</sup> See Executive Summary of Nigeria [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/submission\\_nga\\_38\\_2009.htm](http://www.un.org/depts/los/clcs_new/submissions_files/submission_nga_38_2009.htm) It stated that advice was obtained from the following current members of the CLCS: Mr Lawrence Awosika (Nigeria); Mr Galo Carrera (Mexico) as well as Dr Karl Hinz, a former member.

requested to provide information to the Committee as to which States they have provided such advice to.<sup>70</sup>

It is really not clear why the current members of the CLCS do not actually refer these States to the standing Committee for advice. However, it would seem that individual members of the CLCS are allowed to provide advice in what appears to be their personal capacity. It is suggested that the AU may wish to consider co-opting all African CLCS members into some sort of AU standing Committee to provide expert advice to all African broad-shelf States that may so request. There is no doubt benefit in obtaining such advice from CLCS members with immense experience acquired from the consideration of previous submissions.<sup>71</sup>

#### **DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA (DOALOS)**

The Division for Ocean Affairs and the Law of the Sea (DOALOS) has been very active in delivering training courses at regional/sub-regional level to assist developing States in the preparation of submissions to CLCS.<sup>72</sup> For instance, in 2005, the DOALOS held training in Ghana for African States with a potential for an extended CS. Fifty-four technical and administrative staff from sixteen African States attended the training that was done in collaboration with the government of Ghana as well as the Commonwealth Secretariat and supported by the AU and ECOWAS.<sup>73</sup> Also in 2007, another training course was held in South Africa in collaboration with the South African government, in co-operation with UNEP/Grid-Arendal and the Federal Institute for Geosciences and Natural Resources of Germany. Forty-three technical and administrative staff from nine African States attended the latter training.<sup>74</sup>

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<sup>70</sup> Para 34 of CLCS/72 of 16 September 2011

<sup>71</sup> For Curricula Vitae of CLCS members see [http://www.un.org/Depts/los/clcs\\_new/members\\_expertise.htm](http://www.un.org/Depts/los/clcs_new/members_expertise.htm) and SPLOS/151 of 19 March 2007. See Ron Macnab and Lindsay Parson, 'Continental Shelf Submissions: The Record to Date,' (2006) 21(3) *International Journal of Marine and Coastal Law*, 309, 319-321

<sup>72</sup> These training courses are further to various General Assembly Resolutions encouraging capacity building for developing States, including African States, to enable them, amongst other things, to make submissions in respect of their extended CS. See General Assembly Resolutions 59/24 of 4 February 2005(Paras. 8 to 12) and 60/30 of 8 March 2006(Paras. 9 to 19).

<sup>73</sup> This training took place from 5 to 9 December 2005 and was attended by participants from Angola, Benin, Cape Verde, Cote d'Ivoire, the Democratic Republic of Congo, Gabon, the Gambia, Guinea, Guinea-Bissau, Mauritania, Namibia, Nigeria, Sao Tome and Principe, Senegal, Sierra Leone and Togo. Paras 48 and 49 of Report of the Secretary-General, *Oceans and Law of the Sea*, to the 61<sup>st</sup> Session of the General Assembly, A/61/63 of 9 March 2006.

<sup>74</sup> This training took place from 13 to 17 August 2007 and was attended by participants from Angola, Comoros, Madagascar, Mauritius, Mozambique, Namibia, Seychelles, South Africa and the United Republic of Tanzania. Para.270 of Report of the Secretary-General, *Oceans and Law of the*

The DOALOS has also provided on its website a very useful directory on various sources for training, advice, expertise and technological services in respect of the extended CS, which will be helpful for developing States, including African States.<sup>75</sup> This website will need to be up dated regularly to provide current and up to date information and given wider publicity, especially to developing States.

#### **UNITED NATIONS ENVIRONMENTAL PROGRAMME (UNEP) SHELF PROGRAMME**

The UNEP through its Global Resource Information Database (GRID) network in Arendal, Norway, established the UNEP Shelf Programme to assist broad-shelf developing States and Small Island Developing States (SIDS) to comply with their obligations under Article 76 of LOSC.<sup>76</sup> It provides for these States a free of charge one stop data shop, which provides services such as the storing, handling and facilitating geo-scientific marine research data to support Article 76 submissions and the assistance in interpreting and processing such data.<sup>77</sup> It also provides access to relevant workshops and training for the project team of such States dealing with the preparation of the submissions to the CLCS. The Programme has worked with the extended CS Project teams of a number of African States, including Kenya, Madagascar, Mauritius, Mozambique, Seychelles and Tanzania.<sup>78</sup> It is hoped that more African States would take advantage of this opportunity of assistance.

#### **UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANISATION (UNESCO), INTERGOVERNMENTAL OCEANOGRAPHIC COMMISSION (IOC)**

The IOC is presently working together with UNEP/Grid-Arendal and the New Partnership for Africa's Development (NEPAD) to assist broad-shelf African States to prepare their submissions.<sup>79</sup> In 2008, these three agencies prepared a

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Sea, to the 62nd Session of the General Assembly (Addendum), A/62/66/Add.1 of 31 August 2007.

<sup>75</sup> See Lists of websites for accessing data and information that may be relevant to the Preparation of Submissions, [http://www.un.org/Depts/los/clcs\\_new/sites\\_on\\_data\\_info.htm](http://www.un.org/Depts/los/clcs_new/sites_on_data_info.htm), it was last updated on 22 June 2009.

<sup>76</sup> The UNEP Programme was established in 2004 based on Para. 39 of the General Assembly Resolution 57/141 of 21 February 2003.

<sup>77</sup> See UNEP Shelf Programme website, <http://www.continentalshef.org/>

<sup>78</sup> Grid-Arendal 2005 Annual Report, at 10

<sup>79</sup> The IOC was established in 1960 as a body with functional autonomy within the United Nations Educational, Scientific and Cultural Organisation (UNESCO), amongst other things, to promote international co-operation and co-ordinate programmes in capacity building. See Arts. 1 and 2 of the Statutes of IOC, <http://unesdoc.unesco.org/images/0012/001243/124367m.pdf>



draft document mapping out strategy on capacity-development for delineation of the extended CS of African Coastal States.<sup>80</sup> The strategy, amongst other things, outlines responsibilities and activities both for collaborating UN agencies, such as UNESCO/IOC and UNEP-GRID, and for the African States that would increase efficiency and effectiveness in efforts to ensure early submissions by these States. It also identifies ways to assist these States in preparing the desktop study, a crucial preliminary part of the preparation process for submission. In addition, it advocates a rather interesting co-operative strategy of providing a networking platform for African experts and authorities involved in the claims preparation process so they can exchange necessary information to enable them defend their interests, both national and regional, in a co-ordinated manner. Further, the document points out that this networking platform could also include the possibilities of African States hiring consultancy firms together for the desktop studies and co-operatively hiring of vessel for data collection, which will enable them negotiate more favourable costs and conditions. It also mentions the possibility of regional pooling of national expertise.<sup>81</sup>

It is not clear why the draft strategy document was not prepared much earlier than 2008 since the deadline for a number of African broad shelf States was May 2009. This is more so, since the IOC had as far back as 2001 instructed its Executive Secretary to assist Africa States in developing their capacity with regard to the implementation of Article 76.<sup>82</sup> Nonetheless, the draft Strategy document is a good initiative. With the 2008 SPLOS decision which gives a respite it is hoped that the Strategy document would be effectively implemented to enable broad shelf African States that have submitted preliminary information to make actual submissions sooner rather than later.

#### COMMONWEALTH

The Commonwealth through its Special Advisory Services Division also provides legal advice and technical assistance to its broad-shelf developing member States to enable them make submissions to the CLCS. A number of broad-shelf African

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<sup>80</sup> Intergovernmental Oceanographic Commission (of UNESCO), Draft Strategy on Capacity-Development for Delineation of the Outer Limits of the Continental Shelves of African Coastal State, IOC/INF-1251 of 20 June 2008.

<sup>81</sup> *Ibid.* at 5.

<sup>82</sup> Twenty-first Session of the Assembly, Paris 3-13 July 2001. See also Twenty-second Session, Paris 24 June -2 July 2004 and Twenty-fourth Session, Paris 19-28 June 2007. See [http://www.ioc-unesco.org/index.php?option=com\\_oe&task=viewDoclistRecord&doclistID=42](http://www.ioc-unesco.org/index.php?option=com_oe&task=viewDoclistRecord&doclistID=42)

States have received legal advice and technical assistance from the Commonwealth, such as, such as Kenya, Mozambique, Mauritius and Seychelles.<sup>83</sup>

#### **BILATERAL HELP FROM FRIENDLY STATES**

Various United Nations General Assembly resolutions encourage member States to provide bilateral assistance to developing States, including coastal African States, which have difficulties in making submissions to the CLCS.<sup>84</sup> There is example of such bilateral assistance in Africa in the case of Namibia, which had experts from the Brazilian Navy to help in its preparations.<sup>85</sup> Further, Norway has provided assistance to Sierra Leone, Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania and Senegal in the collection of additional bathymetric and seismic data in relation to their extended CS.<sup>86</sup> Perhaps more Africa States would need to explore this possibility of obtaining assistance from other more technologically able friendly States both without and within Africa.

#### **FINANCE**

The process of preparing the claims for the extended CS is no doubt an expensive process. For instance, the South African government is reported to have approved in 2005 an initial sum of R23 –million (about 3,041,591.70 USD), from its Central Energy Fund to finance the project.<sup>87</sup> This expenditure is not affordable by all broad-shelf African States.

#### **TRUST FUND**

The United Nations General Assembly, recognising the financial constraint in relation to developing States, established a Trust Fund for facilitating the

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<sup>83</sup> <http://www.thecommonwealth.org/news/166918/250707solomonislands.htm> and [http://www.thecommonwealth.org/news/181475/110708continental\\_shelf.htm](http://www.thecommonwealth.org/news/181475/110708continental_shelf.htm)

<sup>84</sup>For e.g. Para. 22 of General Assembly Resolution 58/240 of 23 December 2003.

<sup>85</sup> See “Progress Report on the Delineation of Namibia’s Continental Shelf Project and request for Approval to enter into Discussions and an Agreement on Phase Three of the Project with the Brazilian Navy,” Namibian Cabinet Briefing of 16 May 2007, <http://www.theshebeen.org/press-releases/4931-namibia-cabinet-briefing-16-may-2007-a.html> (accessed on 27 January 2009)

<sup>86</sup> See Press Release of 20 September 2011 titled “Norway strengthens agreement with African countries,” Norway Ministry of Foreign Affairs, [http://www.regjeringen.no/en/dep/ud/press/news/2011/priv\\_shelves.html?id=654988](http://www.regjeringen.no/en/dep/ud/press/news/2011/priv_shelves.html?id=654988)

<sup>87</sup> <http://www.southafrica.info/about/geography/maritime-claims-200605.htm> The executive arm of the Nigerian government, on its part, has proposed to the Federal legislative arm in its 2008 budget the sum of 100,000,000 Naira (about 863,733 USD) as the amount to be expended on phase III of its Extended Continental Shelf Project. <http://www.fmf.gov.ng/Budget2008Infor/PRESIDENCY.pdf>

preparation of submissions to the CLCS by developing States, especially the least developed countries (LDCs) and Small Island developing states (SIDs).<sup>88</sup> The Trust Fund which is administered by DOALOS provides funding upon request for training of manpower; desktop studies or other initial assessment of the nature of CS and its limits; working out plans for acquisition of necessary additional data and mapping projects and preparation of final submission documents, as well as advisory/consultancy assistance in respect of the above. Each request for financial assistance through the Fund is considered by the DOALOS acting through an independent panel of experts.<sup>89</sup> Initially, the financial assistance was provided by way of reimbursements to the applicant government for expenditure incurred; however, more recently, while reimbursement remains an option, the Fund is able to provide assistance by way of an outright grant.<sup>90</sup> Some broad shelf African States have at one time or the other received financial assistance from the Trust Fund to attend training courses.<sup>91</sup>

### FINANCIAL ASSISTANCE FROM FRIENDLY STATES

Again, based on various UN General Assembly resolutions that encourage bilateral assistance to developing States, including coastal African States,<sup>92</sup> States struggling financially may seek financial assistance from friendly States. The South African government is reported to have expressed its willingness to help poorer African States to process their claims; this presumably would include financial assistance.<sup>93</sup> It certainly would be helpful for richer States, including African States, to provide

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<sup>88</sup> See SPLOS/59 of 9 February 2009 recommending the setting up of a Trust Fund and also the General Assembly Resolution 55/7 of 30 October 2000, as amended by Resolution 58/240 of 23 December 2003, establishing the Fund. Under the UN office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States list, thirty-four African States are listed as Least Developed Countries (LDCs), six of which are also listed as Small Island Developing States (SIDs). The African LDCs are as follows: Angola, Benin, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea Bissau, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Somalia, Sudan, Togo, Uganda, United Republic of Tanzania and Zambia. Those that also listed as SIDs are Cape Verde, Comoros, Guinea-Bissau, Mauritius, Sao Tome and Principe and Seychelles. See <http://www.un.org/special-rep/ohrls/ldc/list.htm>

<sup>89</sup> For details of the Terms of reference, guidelines and rules of the Trust Fund see Annex II of Resolution 55/7 as amended by Resolution 58/240 and Note Verbale from DOALOS dated 12 November 2007, [http://www.un.org/Depts/los/clcs\\_new/trustfund76noteverbale2007.pdf](http://www.un.org/Depts/los/clcs_new/trustfund76noteverbale2007.pdf)

<sup>90</sup> See Ibid, DOALOS Note Verbale.

<sup>91</sup> Paras. 270 and 271 of A/62/66/Add.1 of 31 August 2007

<sup>92</sup> For e.g. Para. 22 of GA Resolutions 58/240 of 23 December 2003.

<sup>93</sup> <http://www.southafrica.info/about/geography/maritime-claims-200605>

financial assistance, in the spirit of African solidarity, to the poorer ones to enable them process their claims to the extended CS.<sup>94</sup>

## CONCLUSION

There are a number of African coastal States with the potential to claim an extended CS; however, some of these States are struggling to meet their obligation of making submissions to the CLCS under Article 76 of LOSC due to a lack of technical expertise and finance. While a handful of African States have been able to make actual submissions, a number of these States have only been able to make preliminary information available to the Secretary-General as required by SPLOS/183. Although, there already exist avenues for assistance for these African States to help them comply with their Article 76 obligation there is still room for more to be done. Such assistance provided to African broad shelf States should not be seen as one offered for them to solve '*their problem*,' but rather should be made available to deal with the '*common problem*' of the need to clearly delineate the Area,<sup>95</sup> the common heritage of mankind, a maritime space that the international community as a whole has a common interest in.<sup>96</sup>

In addition, it is suggested that there is a need for the AU to go beyond just appealing for assistance from only international agencies, but also to look inwards. It needs to take more positive steps to encourage African States that have made actual submissions to be their '*brother's keepers*' by providing assistance to other African States struggling to do so. Further, there is a need for the AU to be more proactive in promoting capacity building in African States, not only in respect of the extended CS submissions, but in relation to Ocean affairs generally. Currently the AU is putting together a 2050 African Integrated Maritime Strategy to articulate a long-term vision to address, amongst other things Africa's maritime challenges and opportunities.<sup>97</sup> The jury is still out on whether this will make a difference in capacity building in Africa in relation to ocean affairs or whether it is merely another white elephant project?

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<sup>94</sup> This is already the case in respect of States outside Africa. For instance, Norway has provided financial assistance to several African States, for e.g. Gambia, Sao Tome and Principe and Somalia.

<sup>95</sup> See above n.7 and write up above on the Area

<sup>96</sup> See Art.136 of the LOSC

<sup>97</sup> See <http://au.int/pages/sites/default/files/Press%20Release%20N%200064,%202011.pdf>

**ANNEX I**

**Country Information – Africa<sup>98</sup>**

Country	Party to LOSC	Legislation on baselines/ Type	Deposit under Art.16 (2) Y/N.	Legislative Claims of outer limits of C.S.	Claims of EEZ.	Submission to CLCS/Date
1.Algeria	Y – 11 June 1996	Straight baselines(d) (Arts 1-2 of Decree No.84-181 of 4 August 1984)	N	N/A	N/A	N
2. Angola	Y – 5 Decem ber 1990	Low-water line and straight baselines (Arts.2-3 of Law No. 21/92 of 28 August 1992)	N	N/A	Art. 7 of Decree-Law No. 47,771 of 27 June 1967	P.I
3. Republic of Benin	Y – 16 Octobe r 1997	Low-water mark and with respect to estuaries from the first obstacle to maritime navigation as defined by maritime regulations in force. (Art.1 of Decree No. 76-92,1976)	N	200 N.M. (Decree No. 76-92 of April 1976)	Decree No. 76-92	P.I
4.Cameroon	Y – 19 Novem ber 1985	Low-water mark and for gulfs, bays and roadsteads decrees to be made fixing the lines. (Art.1 of Decree No.71/DF/416 of 26 August 1971 and Art.5 of Act No. 74/16 of 5 December 1974)	N	CM/200(Legi slation N/A) <sup>99</sup>	N/A	P.I
5.Cape Verde	Y – 10 August 1987	Straight baselines(d) (Art.24 of Law No.60/IV/92 of	N	200 N.M. (Art.17 of Law No.60/IV/92	Art.12 of Law No. 60/IV/92 of 21 December	P.I

<sup>98</sup>The information above is as at 31 April 2012. This is an updated revised version of a similar table in Egede, *Africa and the Deep Seabed Regime: Politics and International Law of the Common Heritage of Mankind*, above n 2 2, 36-42.

<sup>99</sup> See Antunes, N.S.M., ‘The Pending Maritime Delimitation in Cameroon v. Nigeria Case: A Piece in the Jigsaw Puzzle of the Gulf of Guinea,’ (2000) 15 *International Journal of Marine and Coastal Law*, 163,171.

		21 December 1992)		of 21 December 1992)	1992	
6. Comoros	Y – 21 June 1994	Low-water mark and straight baselines(d) (Art.3 of Law No.82-005 of 6 May 1982 and Arts.2-3 of Ordinance No. 049/77 of 20 December 1997)	N	N/A	Art. 6 of Law No. 82-005 of 6 May 1982	P.I
7. Congo	Y – 9 July 2008	Low-water line (Art.2 of Ordinance No.049/77 of 20 December, amending Article 2 of Ordinance 26/71 of 18 October 1971)	N	N/A	Art. 2 of Act proclaiming an EEZ of 4 November 1992	P.I
8.Cote D'Ivoire	Y – 26 March 1984	Lowest water mark and straight baselines (Art.1 of Law No.77-926 of 17 November 1977)	N	200 N.M.(Legislation N/A) <sup>100</sup>	Art.2 of Law No. 77-926 of 17 November 1977	Y – S (8 May 2009)
9.Democratic Republic of Congo	Y – 17 February 1989	Low water line and straight baselines(Art.2 of Law No.09/002 of 7 May 2009)	N	350 N.M from Baselines/10 0N.M from 2,500 metre isobath (Art.8 of Law No.09/002)	Art.7 of Law No.09/002 and Act proclaiming an EEZ along the Atlantic Coast, 1992	P.I
10. Djibouti	Y- 8 October 1991	Low-water mark and straight baselines(d) (Art. 4 of Law No.52/AN/78 1978 and Arts. 1 and 2 of Decree No. 85-048 PR/PM of 5 May 1985)	N	N/A	Art. 12 of Law No. 52/AN/78	N
11. Egypt	Y – 26 August	Low water line and straight baselines(d)	N	200 metres or depth of	Declaration accompanying	N

<sup>100</sup> See Nationmaster.com2003,<http://www.nationmaster.com/country/IV/Geography> (accessed on 27 January 2009)

	1983	(Art.6 of Decree concerning Territorial Waters of Egypt 15 January 1951, as amended by Presidential Decree of 17 February 1958 and Arts. 1-3 of Decree of President No.27(1990))		exploitability. (Presidential Decision No.1051 of 1958 concerning the Continental Shelf)	g Law of the Sea Convention ratification	
12.Equatorial Guinea	Y – 21 July 1997	Low water line and straight baselines(d) (Art.3 of Act No.15/1984 of 12 November 1984 and Art.1 of Act No.1/1999 of 6 March 1999)	Y	N/A	Art. 10 of Act No. 15/1984 of 12 November 1984.	P.I
13. Eritrea	N	Extremity of sea-board at maximum annual high tide of Eritrea's continental coast(Maritime Proclamation No.137 of 1953 and Proclamation 7-Transitional Maritime Code of Eritrea, 15 September 1991	N	N/A	N/A	N
14.Gabon	Y – 11 March 1998	Low-water line and straight baselines(d) (Art.2 of Act No.9/84 of 1984 and Arts 1-5 of Decree 002066/PR/MHC UCDM of 4 December 1992)	Y	N/A	Art.2 of Act No. 9/84	Y- 10 April 2012
15. Gambia	Y – 22 May 1984	Low-water mark (S.2 of Territorial Sea and Contiguous Zone Act, 1968 as amended in 1969)	N	Non-Specific. (Continental Shelf Act No. 25 of June 1965 as amended by Continental Shelf Act(Revised) of July 1966	N/A	P.I
16. Ghana	Y – 7 June	Low-water line (S.1 of Maritime	N	200 N.M. (S.6(1) of	S. 5 of the Maritime	Y-S(28 April 2009)

	1983	Zones(Delimitation )Law 1986)		Maritime Zones(Delimitation) Law 1986)	Zones (Delimitation ) Law, 1986.	
17. Guinea	Y – 6 September 1985	Low-water line (Arts.1 and 4 of Decree No.336/PRG of 30 July 1980)	N	N/A	Arts. 2-4 of Decree No. 336/PRG of 30 July 1980	P.I
18. Guinea-Bissau	Y – 25 August 1986	Straight baselines (Art.1 of Acts No.2/85 and Art.2 of Act No.3/85 both of 17 May,1985)	N	N/A	Art. 3 of Act No. 3/85 of 17 May 1985	P.I
19. Kenya	Y – 2 March 1989	Low water lines/straight baselines and low tide elevations (S.2 of the Territorial Waters Act of 16 May 1972 as revised in 1977/S.1 of Presidential Proclamation of 28 February 1979 and S.3 of the Maritime Zones Act 1989)	Y	200 metres or depth of exploitability( Legislation N/A) <sup>101</sup>	Presidential Proclamation of 9 June 2005 and S.4 of the Maritime Zones Act 1989)	Y – S (6 May 2009)
20. Liberia	Y – 25 September 2008	Low water line(S.3 of the Act to Establish and Delimit the Territorial Sea and Contiguous Zone 1968)	N	200 metres or depth of exploitability. (Act to Establish Continental Shelf 1969)	N/A	N
21. Libya	N	Straight Baselines(General People’s Committee Decision No.104 of AD 2005)	N	N/A	General People’s Committee Decision N.260 of AD 2009	N
22. Madagascar	Y – 22 August 2001	Low-water mark and straight baselines (Arts.2 –3 of Decree No.63-131 of 27 February 1963 and Art.8 of Ordinance No.85-013 of 16 September 1985 as	Y	200 N.M. or by delimitation agreement or 100 N.M. from the 2,500-metre isobath. (Art.7 of Ordinance	Art.5 of Ordinance No. 85-013 of 16 September 1985 as amended and ratified by Law No. 85-013 of 11	Y – 29 April 2011

<sup>101</sup> See Nationmaster.com2003, *Ibid*.



		amended and ratified by Law No.85-013 of 11 December 1985)		No.85-013 of 16 September 1985 as amended and ratified by Law No.85-013 of 11 December 1985)	December 1985)	
23. Mauritania	Y- 17 July 1996	Low-water line and straight baseline (Art.1 of Ordinance 88-120 of 31 August 1988)	N	C.M./200. (Art.4 of Ordinance 88-120 of 31 August 1988)	Art.7 of Ordinance 88-120 of 31 August 1988	P.I
25.Mauritius	Y – 4 November 1994	Straight baseline (Maritime Zones Act 2005)	Y	C.M./200. (Maritime Zones Act 2005)	Maritime Zones (Exclusive Economic Zones) Regulations 1984 and Maritime Zones Act 2005.	Y S(Joint Submission with Seychelles in respect of Mascarene Plateau on 1 December 2008 and sole submission in respect of Rodrigues Island on 6 May 2009) P.I
26. Morocco	Y – 31 May 2007	Low-water line/straight baselines (Art.1 of Act No.1.73.211 of 2 March 1973 and Arts.1-2 of Decree No.2.75.311 of 11 Rajab 1395(21 July,1975)	N	200metres or depth of exploitability. (Law No. 1.58.277 of July 1958)	Act No. 1-81 of 18 December 1980 promulgated by Dahir No. 1-81-179 of 8 April 1981.	N
27. Mozambique	Y – 13 March 1997	Low-water line/straight baselines (Art.1 of Decree No.47,771 of 27 June 1967 and Art. 1 of Decree Law No. 31/76 of 19 August 1976)	N	CM/200 (Law No. 4/96 of April 1996)	Art.2 of Decree Law No. 31/76 of 19 August 1976 and Law No. 4/96	Y – S(7 July 2010)
28.Namibia	Y – 18	Low-water line and	N	As defined in	Art.4 of Act	Y – S(12 May

	April 1983	any other rules recognised by LOSC 82 or any other convention binding on Namibia or any other international rules. (S.2 of Territorial Sea and EEZ Act No.3 1990 as amended in 1991)		LOSC 82 or subsequent international convention binding on Namibia. (S.6(1) of the Territorial Sea and Exclusive Economic Zone Act No.3 of 30 June 1990)	No.3 of 30 June 1990	2009)
29. Nigeria	Y – 14 August 1986	Low-water mark (S.1(1) of the Territorial Waters Act 1967 as amended in 1971 and 1998)	N	200 metres or depth of exploitability. (S.14 (1) of the Petroleum Act, Cap.350 Laws of the Federation of Nigeria 1990)	EEZ Act No. 28 of 5 October 1978.	Y –S(7 May 2009)
30. Sao Tome and Principe	Y – 3 November 1987	Straight baselines/archipelagic baselines (Art.2 of Law No.1/98 of 1998)	Y	N/A	Arts. 4-6 of Law No. 1/98 of 1998	P.I
31. Senegal	Y – 25 October 1984	Low-water line/straight baselines (Art.1 of Act No.85-14 of 25 February 1985 and Arts.1-2 of Decree No.90-670 of 18 June 1990)	N	C.M./200. (Art.6 of Act No.85-14 of 25 February 1985)	Law 87-27 of August 1987.	P.I
32. Seychelles	Y – 16 September 1991	Low-water line/straight baselines (S.2 of Maritime Zones Act No.15 1977; S.2,3 and 5 of Maritime Zones Act No.2 1999 as amended by Act No.5 of 2009; Maritime Zones(Baselines) Order 2008 and Maritime Zones(Baselines) (Amendment)	Y	C.M./200/ (S.11 of Maritime Zones Act No.2 of 1999 as amended by Act No.5 of 2009)	SS. 9-14 of Act No. 2 of 1999 as amended by Act No.5 of 2009	Y – S (Joint Submission with Seychelles in respect of Mascarene Plateau on 1 December 2008 and sole submission in respect of Northern Plateau Region) on 7

		Regulations 2009)				May 2009)
						P.I
33. Sierra Leone	Y – 12 December 1994	Low-water line (S.2 of the Maritime Zones (Establishment) Decree 1996)	N	200 N.M. (S.11 of the Maritime Zones (Establishment) Decree 1996	SS. 8-10 of Maritime Zones Decree 1996	P.I
34.Somalia	Y – 24 July 1989	Low-water line and straight baseline (Art.2 of Law No.37 of 10 September 1972)	N	N/A	N/A	P.I
35.South Africa	Y – 23 December 1997	Low-water line and straight baseline(d) (S.2 of the Maritime Zones Act No.15 of 1994)	N	As defined in Art.76 of LOSC 1982. (S.8 of Maritime Zones Act, No.15 of 1994)	Art.7 of Act No.15 of 1994.	Y- S (Sole Submission in respect of South African mainland territory on 5 May 2009 and joint submission with France in respect of the Crozet Archipelago and the Prince Edward Islands on 6 May 2009)
36. Sudan	Y – 23 January 1985	Lowest water line and straight baselines (S.5-6 of Territorial Waters and Continental Shelf Act 1970)	N	200 metres or depth of exploitability. (S.2(k) of Territorial Waters and Continental Shelf Act,1970)	N/A	N
37. Tanzania	Y – 30 September 1985	Low-water line (S.5 of the Territorial Sea and EEZ Act 1989)	N	N/A	SS.7-9 of the Territorial Sea and EEZ Act 1989.	Y – S (18 January 2012)
38. Togo	Y – 16 April 1985	Low-water line(Art.1 of Ordinance No.24 Delimiting the Territorial Waters and creating a protected	N	N/A	Ordinance No. 24 of August 1977.	P.I

		Economic Maritime Zone of 16 August 1977)				
39. Tunisia	Y – 24 April 1985	Low-water mark and straight baseline (Art.1 of Act No.73-49 of 2 August 1973)	Y	N/A	Act No.50/2005 Concerning the EEZ off the Tunisian Coasts	

**KEY** - Y-Yes; N-No; N/A-Not available; N.M.-Nautical Miles; S – Submission to CLCS;P.I – Preliminary Information indicative of the outer limits of the CS beyond 200 N.M, SPLOS/183