

## MEXICO'S ATTEMPT TO EXTEND ITS CONTINENTAL SHELF BEYOND 200 NAUTICAL MILES SERVES AS A MODEL FOR THE INTERNATIONAL COMMUNITY

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**ABSTRACT.** *In June 2000, the United States and Mexico signed a treaty for the delimitation of the continental shelf in the western Gulf of Mexico beyond 200 nautical miles. When the treaty was signed, both countries realized that the interpretation and implementation of the treaty depended on the scientific and legal certainty of determinations regarding how far their respective submarine continental shelves extended. On 13 December 2007, Mexico submitted information to the Commission on the Limits of the Continental Shelf regarding the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured in relation to the Western Polygon in the Gulf of Mexico. Mexico sought an extension of its continental shelf in the Western Polygon based on international law, UNCLOS, and bilateral treaties with the United States, in accordance with Mexico's domestic legislation. Peaceful delimitation of maritime borders is essential to maintaining world order. Mexico is a country of peace, and has attempted to use international law as a tool to represent its interests. Mexico has meticulously adhered to a series of international precedents and treaties to support its claim. Moreover, Mexico has gathered significant scientific evidence to verify its sovereign authority over its maritime areas. In the author's opinion, the United States should recognize these claims and show the world that the U.S. stands for fairness, equity and the rule of law.*

**KEY WORDS:** *Law of the sea, maritime delimitation, extending the continental shelf, Mexico, Gulf of Mexico, sovereignty, maritime borders.*

**RESUMEN.** *En junio de 2000, los Estados Unidos y México firmaron un tratado para la delimitación de la plataforma continental en el oeste del Golfo de México más allá de 200 millas náuticas. Cuando se firmó el tratado, ambos países dieron cuenta de que el contenido jurídico y, sobre todo, la even-*

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*tual interpretación y la aplicación del tratado dependerán fundamentalmente de determinar con certeza científica y jurídica si sus respectivas plataformas continentales submarinas se extienden más allá de 200 millas náuticas. El 13 de diciembre de 2007, México presentó a la Comisión de Límites de la Plataforma Continental, datos sobre los límites de la plataforma continental más allá de 200 millas marinas contadas desde las líneas de base desde las cuales se mide la anchura del mar territorial en lo que respecta al polígono occidental en el Golfo de México. México buscó la extensión de su plataforma continental en el Polígono Occidental con base en el derecho internacional, la Convención y los tratados bilaterales con los Estados Unidos, y de acuerdo con la legislación interna de México. La delimitación pacífica de las fronteras marítimas es esencial para mantener el orden mundial. México es un país de paz, y ha tratado de utilizar el derecho internacional como una herramienta para que represente sus intereses. México meticulosamente se ha adherido a una serie de precedentes y los tratados internacionales para apoyar su reclamación. Por otra parte, México ha acumulado una enorme cantidad de evidencia científica que compruebe su autoridad soberana sobre sus zonas marítimas. Estados Unidos debe reconocer y reforzar estas afirmaciones al mundo, que el país es sinónimo de justicia, la equidad y el imperio de la ley.*

PALABRAS CLAVE: *Derecho marítimo, delimitación marítima, extensión de la plataforma continental, México, Golfo de México, soberanía, bordes marítimos.*

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## I. INTRODUCTION

Peaceful delimitation of maritime borders is essential to maintaining world order. On 13 December 2007, Mexico submitted to the Commission on the Limits of the Continental Shelf (hereinafter CLCS), in accordance with Article 76, paragraph 8, of the United Nations Convention on the Law of the Sea 1982 (hereinafter UNCLOS), information on the limits of the continental shelf beyond 200 nautical miles (nm) from the baselines from which the breadth of the territorial sea is measured in relation to the Western Polygon in the Gulf of Mexico.<sup>1</sup> In this document, Mexico identified two polygons located in the western and eastern parts of the Gulf of Mexico over which it could extend its national jurisdiction over the continental shelf beyond 200 nm.<sup>2</sup> This submission by Mexico concerns only the Western Polygon.<sup>3</sup>

The Western Polygon is located in the center of the western part of the Gulf of Mexico Basin with water depths ranging from 3000 to 3700 m. On its western edge, this basin is bounded by the Tamaulipas continental slope; on the south-east, by the Campeche Escarpment off the Yucatan Peninsula.<sup>4</sup> The Western Polygon is delineated at 200 nm by the outer limits of the exclusive economic zones of Mexico and the United States.<sup>5</sup> Mexico seeks the extension of its continental shelf in the Western Polygon based on International law, UNCLOS, and bilateral treaties with the United States, in accordance with Mexico's domestic legislation.

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<sup>1</sup> Executive Summary of the United Mexican States Submission on the Limits of the Continental Shelf through the Secretary-General of the United Nations December 2007 (Mar. 31, 2009), [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mex07/part\\_i\\_executive\\_summary.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mex07/part_i_executive_summary.pdf) [hereinafter Executive Summary].

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.*

<sup>4</sup> Recommendations of the Commission on the Limits of the Continental Shelf in Regard to the Submission Made by Mexico in Respect of the Western Polygon in the Gulf of Mexico on 13 December 2007 (Mar. 31, 2009), [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/mex07/mex\\_rec.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/mex07/mex_rec.pdf), 4 [hereinafter Recommendations of the CLCS].

<sup>5</sup> Executive Summary, *supra* note 2, at 3.

## II. EVOLUTION OF MEXICO'S DOMESTIC LAW REGARDING MARITIME BORDERS

Articles 27, 42, and 48 of the Political Constitution of 1917 of the United Mexican States define the components that make up Mexico's national territory.<sup>6</sup> Listed below are relevant provisions of these Articles:<sup>7</sup>

*Article 27.* Ownership of the lands and waters within the boundaries of the national territory is vested originally in the Nation, which has had, and has, the right to transmit title thereof to private persons, thereby constituting private property.

The Nation shall at all times have the right to impose on private property such limitations as the public interest may demand, as well as the right to regulate the utilization of natural resources which are susceptible of appropriation, in order to conserve them and to ensure a more equitable distribution of public wealth [...].

In the Nation is vested the direct ownership of all natural resources of the continental shelf and the submarine shelf of the islands; of all minerals or substances, which in veins, ledges, masses or ore pockets, form deposits of a nature distinct from the components of the earth itself, such as the minerals from which industrial metals and metalloids are extracted; deposits of precious stones, rock-salt and the deposits of salt formed by sea water; products derived from the decomposition of rocks, when subterranean works are required for their extraction; mineral or organic deposits of materials susceptible of utilization as fertilizers; solid mineral fuels; petroleum and all solid, liquid, and gaseous hydrocarbons; and the space above the national territory to the extent and within the terms fixed by international law.

In those cases to which the two preceding paragraphs refer, ownership by the Nation is inalienable and imprescriptible, and the exploitation, use, or appropriation of the resources concerned, by private persons or by companies organized according to Mexican laws, may not be undertaken except through concessions granted by the Federal Executive, in accordance with rules and conditions established by law. The legal rules relating to the elaboration or exploitation of the minerals and substances referred to in the fourth paragraph shall govern the execution and proofs of what is carried out or should be carried out after they go into effect, independently of when the concessions were granted, and noncompliance will be grounds for cancellation thereof. The Federal Government has the power to establish national reserves and to abolish them. The declarations pertaining thereto shall be made by the Executive in those cases and conditions prescribed by law. In the case of petroleum, and solid, liquid, or gaseous hydrocarbons no concessions or contracts will be granted nor may those that have been granted continue, and the Nation shall carry out

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<sup>6</sup> JORGE A. VARGAS, *MEXICO AND THE LAW OF THE SEA: CONTRIBUTIONS AND COMPROMISES* 4 (Martinus Nijhoff Publishers, 2011).

<sup>7</sup> Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, Diario Oficial de la Federación [D.O.] 5 de Febrero de 1917 (Mex.).

the exploitation of these products, in accordance with the provisions indicated in the respective regulatory law.

Given its sweeping characterization of public and private property, Article 27 is recognized as a major provision under Mexican law. In part, the Article states that the national territory belongs to Mexico as a nation and is under the control of the federal government for the benefit of society and the equitable distribution of public wealth.<sup>8</sup> These principles are applied not only to the land, but also to the territorial seas and therefore ultimately to the outer continental shelf.

*Article 42.* The national territory comprises:

- I. The integral parts of the Federation;
- II. The islands' including the reefs and keys in adjacent seas;
- III. The Guadalupe and Revillagigedo islands situated in the Pacific Ocean;
- IV. The continental shelf and submarine shelf of the islands' keys, and reefs;
- V. The waters of the territorial seas to the extent and under terms fixed by international law and domestic maritime law;
- VI. The air space situated above national territory to the extent of and pursuant to rules stipulated by International Law.

*Article 48.* The islands, keys, and reefs of the adjacent seas which belong to the national territory, the continental shelf, the submarine shelf of the islands, keys, and reefs, the inland marine waters, and the space above the national territory shall depend directly on the Federal government, with the exception of those islands over which the States have up to the present exercised jurisdiction.

Under these Articles, it would appear that Mexican law includes absolute control over the outer continental shelf (hereinafter OCS). This interpretation, however, runs counter to customary international law and the 1982 Law of the Sea Convention.<sup>9</sup> Mexico does not have ownership rights of the OCS; rather, Mexico simply has the right to explore and exploit resources located in the OCS.<sup>10</sup> Nevertheless, Mexican law has an advanced legal system regulating its maritime zones. The mere fact that Mexico has chosen to include this legal regime in its Constitution, demonstrates the importance of maritime law to the Mexican people. Moreover, Article 27, 42, and 48 mirror many of the most important principles set forth in UNCLOS.

### *Ratification of UNCLOS*

On 10 December 1982, the United Nations Convention on the Law of the Sea was signed by over 150 nations at Montego Bay, Jamaica. The treaty is comprised of 320 articles and 9 annexes that govern all aspects of ocean

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<sup>8</sup> Vargas, *supra* note 6, at 14.

<sup>9</sup> *Id.* at 38.

<sup>10</sup> *Id.* at 39.

space.<sup>11</sup> “Endowed with a long coastline bordering the Gulf of California, the Pacific Ocean, the Gulf of Mexico and the Caribbean Sea, with abundant living resources and a vast continental shelf rich in deposits of hydrocarbons and natural gas, as well as numerous islands, it was only logical for Mexico to take a salient part in the formulation of the 1982 United Nations Convention on the Law of the Sea.”<sup>12</sup> Mexico was the second country to ratify the 1982 United Nations Convention on the Law of the Sea.<sup>13</sup>

The ratification process in Mexico begins with Article 133. Article 133 of the Mexican Constitution states,

*Article 133.* This Constitution, the laws of the Congress of the Union that emanate therefrom, and *all treaties that have been made and shall be made in accordance therewith* by the President of the Republic, with the approval of the Senate, *shall be the supreme law of the whole Union.* The judges of each State shall conform to said Constitution, laws, and treaties, in spite of any contradictory provisions that may appear in the constitutions or laws of the States (emphasis added).

Accordingly, once the Mexican Senate ratified UNCLOS its provisions became the supreme law of the land in Mexico.

Mexico realized that certain rules in UNCLOS would produce a new legal regime more favorable towards developing countries, notably in the exclusive economic zone, providing the country with modern and effective legal tools to protect its marine resources.<sup>14</sup> Therefore, in order to further strengthen the provisions of UNCLOS and to synchronize domestic law with existing international law, the Mexican government enacted the Federal Oceans Act of 1986 (FOA). The FOA is a public order statute derived from Article 27 of the Mexican Constitution.<sup>15</sup> The FOA was designed to codify, update, and systemize Mexico’s numerous statutes regulating the marine environment, and to bring domestic law in compliance with UNCLOS.<sup>16</sup>

The FOA is categorized as a regulatory statute and consists of 65 articles. Article 3 of the FOA identifies six “Mexican marine zones:” 1) the Territorial Sea, 2) the Internal Marine Waters, 3) the Contiguous Zone, 4) the Exclusive Economic Zone, 5) the Continental Shelf and Insular Shelves, 6) any other zone permitted by international law.<sup>17</sup> Additionally, Article 8 of the FOA states

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<sup>11</sup> United Nations Convention on the Law of the Sea, Dec. 10, 1982, U.N. Doc. A/CONF.62/122 (1982), reprinted in 21 I.L.M. 1261 (1982), to enter into force Nov. 16, 1994 [hereinafter UNCLOS].

<sup>12</sup> Vargas, *supra* note 6, at 49.

<sup>13</sup> *Id.* at 53.

<sup>14</sup> *Id.* at 44, 50.

<sup>15</sup> *Id.* at 44.

<sup>16</sup> *Id.* at 61.

<sup>17</sup> Ley Federal del Mar [L.F.M.] [Federal Oceans Act], Diario Oficial de la Federación [D.O.], 8 de enero de 1986 (Mex.), translated in 25 I.L.M. 889, 900 (1986) [hereinafter FOA].

that, "The Federal Executive Power may negotiate with neighboring States for the delimitation of the dividing lines between Mexican marine zones and the corresponding adjacent zones under national marine jurisdiction of other states, in those cases where there is an overlap between said zones, in accordance with international law."<sup>18</sup> With the enactment of FOA, Mexico became the first country to fully adjust its domestic law with the international law framework presented in UNCLOS.<sup>19</sup>

### III. DEFINING THE CONTINENTAL SHELF

#### 1. *Scientific Definitions of the Continental Shelf (Establishing the Outer Edge of the Continental Margin)*

"The definition of the outer boundary of the continental shelf constitutes one of the most difficult technical problems associated with the law of the sea."<sup>20</sup> There are four steps to determining the maximum scientific limits to the continental shelf. First and foremost, the continental shelf must be found to be the natural prolongation of the land mass of the coastal State, unbroken from the shoreline to the outer edge of the continental margin.<sup>21</sup>

The second step in the process is identifying the foot of the slope. Since the foot of the slope is the reference baseline from which the breadth of the outer limit will be measured, determining the status of the foot of the slope off a coastal State is crucial to establishing the limits of the continental shelf.<sup>22</sup> Although there is some debate as to the proper method of identifying the foot of the slope; it is generally determined as the point of maximum change in the gradient at its base.<sup>23</sup>

The third step in the process is to establish the edge of the continental margin by applying either the Irish or Hedberg formula. The Irish formula entails drawing a line connecting points not more than 60M apart, where at each point the thickness of sediments is a least 1% of the shortest distance from such point to the foot of the slope.<sup>24</sup> For example, when applying the Irish formula at a distance of 100M from the foot of the slope, there must be a 1M thickness of sediment. The Hedberg formula is easier to ascertain than the Irish formula. It entails drawing a line connecting points not more than 60M apart, where the points are not more than 60M from the foot of

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<sup>18</sup> *Id.* Article 8.

<sup>19</sup> Vargas, *supra* note 6, at 60.

<sup>20</sup> *Id.* at 66.

<sup>21</sup> CENTER FOR OCEANS LAW AND POLICY, LEGAL AND SCIENTIFIC ASPECTS OF CONTINENTAL SHELF LIMITS 24 (Martinus Nijhoff Publishers, 2003).

<sup>22</sup> *Id.* at 91.

<sup>23</sup> *Id.* at 25.

<sup>24</sup> *Id.* at 26.

the slope.<sup>25</sup> A state may choose to use one formula or apply both formulas, in a manner that maximizes its entitlement.<sup>26</sup>

The fourth and final step in the process of determining the outer limits of the continental shelf involves the application of maximum constraint lines. The maximum constraint lines are defined by paragraph 5, of Article 76 of the UNCLOS which states that, “the fixed points comprising the line of the outer limits of the continental shelf on the seabed [...] 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 meter isobath, which is a line connecting the depth of 2,500 meters.”<sup>27</sup>

Ultimately, these four steps are combined to determine the maximum scientific outer limits of the continental shelf.

## 2. *UNCLOS and the Codification of the Continental Shelf*

The United States declared sovereignty over its Continental shelf on 28 September 1948, when President Harry S. Truman issued Presidential Proclamation number 2667 declaring that:<sup>28</sup>

[...] I, Harry S. Truman, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

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. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected

The Truman Proclamation set off the equivalent of a “land rush” over the continental shelves of maritime nations. In order to bring some order and stability to these and other maritime claims, many nations began working on the creation of a multilateral treaty governing maritime zones. This effort culminated in the creation of UNCLOS. Paragraphs 1 and 2 of Article 76 of UNCLOS define the portion of the continental shelf that may be claimed by a coastal state:<sup>29</sup>

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<sup>25</sup> *Id.* at 27.

<sup>26</sup> *Id.*

<sup>27</sup> UNCLOS, *supra* note 11, Article 76, para. 5.

<sup>28</sup> Proclamation No. 2667, 10 Fed. Reg. 12303 (Sept. 28, 1948).

<sup>29</sup> UNCLOS, *supra* note 11, Article 76, paras. 1-2.



*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.

The composition of the continental shelf is highly technical. Nevertheless, the nature of the continental shelf and its constituent parts are generally defined in paragraph 3 of Article 76 of UNCLOS.<sup>30</sup>

“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.”

Lastly, the outer limits of the continental shelf are prescribed by paragraphs 4 through 7 of Article 76 of UNCLOS.<sup>31</sup> These paragraphs codify the establishment of the foot of the slope, the Irish and Hedberg formulas, and the demarcation of the 350Nautical Miles and 2500M isobath constraints.

4. (a) [...], the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles [...], 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; [*Irish Formula*] 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. [*Hedberg Formula*] (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 meter isobath*, which is a line connecting the depth of 2,500 metres.

### 3. FOA on the Continental Shelf

With respect to other important UNCLOS principles, the FOA generally adheres to the definition of the continental shelf stipulated therein.

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<sup>30</sup> *Id.* Article 76, para. 3.

<sup>31</sup> *Id.* Article 76, paras. 4-7.

<p><i>FOA Article 62.</i> The continental shelf and the Mexican insular shelves comprise the bed and the subsoil of the submarine areas that extend beyond the territorial sea, and throughout the natural prolongation of the national territory out to the outer boundary of the continental margin, or up to a distance of 200 nautical miles measured from the baselines from which the territorial sea is measured, in those cases when the outer boundary of the continental shelf does not reach that distance, in accordance with what is prescribed by international law. The preceding definition also applies to the shelves of islands, cays and reefs that are part of the national territory.<sup>32</sup></p>	<p><i>UNCLOS Article 76.</i> 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.<sup>33</sup></p>
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#### 4. *Application of the Science, UNCLOS and FOA. Mexico's Determination of the Limits of Mexico's Continental Shelf*

Mexico collected and compiled geophysical data to determine sediment thickness in the Western Polygon located beyond 200 Nautical Miles to establish the position of the outermost fixed points at which the thickness of sedimentary rocks is a least 1% of the shortest distance from such point to the foot of the continental slope. On this basis, Mexico's continental shelf reaches the 350 Nautical Miles constraint line,<sup>34</sup> thereby justifying a continental shelf claim in the Western Polygon up to the 350 Nautical Miles constraint line in accordance with UNCLOS, FOA, and Customary International Law. As a result of conflicting claims made by the United States, however, Mexico must eventually negotiate the delimitation of this area with its northern neighbor.

### IV. DELIMITATION OF THE CONTINENTAL SHELF BETWEEN MEXICO AND THE UNITED STATES

#### 1. *General Principles of Maritime Delimitation under International Law and UNCLOS Jurisprudence*

It is generally accepted that maritime delimitation jurisprudence began with the *North Sea Cases* and has continued to evolve through a series of cases brought before the International Court of Justice.

<sup>32</sup> FOA, *supra* note 17, Article 62.

<sup>33</sup> UNCLOS, *supra* note 11, Article 76, para.1.

<sup>34</sup> Executive Summary, *supra* note 1, at 9-10.

In the *North Sea Cases*, the ICJ gave the following guidance for the delimitation of the continental shelf:<sup>35</sup>

(C) the principles and rules of international law applicable to the delimitation as between the Parties of the areas of the continental shelf [...] are as follows:

(1) delimitation is to be effected by agreement in accordance with equitable principles and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each Party those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other

(2) if, in the application of the preceding sub-paragraph, the delimitation leaves to the Parties areas that overlap, these are to be divided between them in agreed proportions or, failing agreement, equally, unless they decide on a régime of joint jurisdiction, user, or exploitation for the zones of overlap or any part of them;

(D) in the course of the negotiations, the factors to be taken into account are to include:

(1) the general configuration of the coasts of the Parties, as well as the presence of any special or unusual features;

(2) so far as known or readily ascertainable, the physical and geological structure, and natural resources, of the continental shelf areas involved

(3) the element of a reasonable degree of proportionality, which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas appertaining to the coastal State and the length of its Coast measured in the general direction of the coastline, account being taken for this purpose of the effects, actual or prospective, of any other continental shelf delimitations between adjacent States in the same region.

These principles serve as the basis of International Common Law regarding maritime delimitation. Notably, many of the principles in the *North Sea Cases* have been codified in UNCLOS. For example, Article 83 of UNCLOS outlines the procedures for delimiting the continental shelf between two states.<sup>36</sup>

*Article 83. Delimitation of the continental shelf between States with opposite or adjacent coasts*

1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

<sup>35</sup> The North Sea Continental Shelf Cases (F.R.G. v. Den.; F.R.G. v. Neth.), 1969 I.C.J. 3 para. 101 (Feb. 20).

<sup>36</sup> UNCLOS, *supra* note 11, Article 83.

The *Gulf of Maine Case*<sup>37</sup> offers a modern analysis of maritime delimitation. In *Gulf of Maine*, the ICJ began its opinion with a historical analysis of the boundary dispute between the parties. Next, the ICJ examined Article 15 of UNCLOS for guidance in determining how to fix the maritime boundary. The Court determined that “special circumstances” prevented the Court from using equidistance lines to establish the boundary. The Court reasoned that in single maritime boundary cases the most important criteria for delimitating the boundary line is the geography of the disputed area. After drawing a provisional line based on geography, the Court would then consider additional adjustment factors in order to achieve the most equitable solution. The Court stated that economic matters can be considered as special circumstances if the results of an equidistant line are shown to be “radically inequitable, that is to say, as likely to entail catastrophic repercussions for the livelihood and economic well-being of the countries concerned.”<sup>38</sup>

In the most recent maritime delimitation case decided by the ICJ, *Romania v. Ukraine*,<sup>39</sup> the Court reinforced the legal principles established in the *Gulf of Maine*. In *Romania v. Ukraine*, the ICJ was asked to draw a single maritime boundary between the continental shelves and the 200-mile Exclusive Economic Zones (EEZ) of Romania and the Ukraine. Romania and Ukraine are parties to the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Therefore, the Court used both UNCLOS and relevant recent decisions to render its opinion.

At the center of the dispute was what impact the Ukrainian island, known as Serpent’s Island, would have on the delimitation of the maritime boundary between Romania and Ukraine. Romania argued that Serpent’s Island was a rock and therefore incapable of generating a territorial sea (see UNCLOS Article 121(3)). Alternatively, Romania argued that even if Serpent’s Island met the definition of an island under UNCLOS, it should not affect the maritime boundary in excess of a small territorial sea. To the contrary, Ukraine argued that Serpent’s Island was an island under UNCLOS and as such should generate its own continental shelf (CS) and exclusive economic zone (EEZ). On the first point, the ICJ agreed with Ukraine that Serpent’s Island was an island under UNCLOS. However, the Court concluded that this entitled Serpent’s Island only to a territorial sea, and should not further affect the maritime boundary delimitation. Using language from *Libya v. Malta*, the Court stated that:<sup>40</sup>

To count Serpents’ Island as a relevant part of the coast would amount to grafting an extraneous element onto Ukraine’s coastline; the consequence would be a judicial refashioning of geography, which neither the law nor practice of

<sup>37</sup> *Gulf of Maine Case* (Can. v. U.S.), 1984 I.C.J. Rep. 1246 (Oct. 12).

<sup>38</sup> *Id.* para. 237.

<sup>39</sup> *Romania v. Ukraine* (Rom. v. Ukr.), 2009 I.C.J. Rep. 132 (Sept. 16).

<sup>40</sup> *Libya v. Malta* (*Libya v. Malta*), 1985 I.C.J. Rep. 13 (June 3).

maritime delimitation authorizes. The Court is thus of the view that Serpents' Island cannot be taken to form part of Ukraine's coastal configuration (cf. the islet of Filfla in the case concerning Continental Shelf).<sup>41</sup>

For this reason, the Court considers it inappropriate to select any base points on Serpents' Island for the construction of a provisional equidistance line between the coasts of Romania and Ukraine.<sup>42</sup>

After dispensing with the status of Serpent's Island, the Court continued with its delimitation analysis. Using the reasoning and language adopted from the *Gulf of Maine*, the Court stated that in order to consider economic matters as special circumstances, the results must be shown to be "radically inequitable, that is to say, as likely to entail catastrophic repercussions for the livelihood and economic well-being of the countries concerned."<sup>43</sup> However, in this case the Court found that no such radical inequality or catastrophic repercussion would result in the drawing of an equidistant line.

Lastly, as in *Libya v. Malta*, the Court considered whether relevant security considerations generated any special circumstances. The Court found that there were no special circumstances related to security. Ultimately, unlike *Libya v. Malta* and the *Gulf of Maine*, the Court found that no relevant circumstances existed to justify a departure from the equidistant line.

Taken together, recent cases decided by the ICJ suggest that —barring special circumstances (including economic matters)— an equidistant line should be used to delimitate maritime boundaries. In this case, Mexico would be justified in arguing that an equidistant line should not be used because special circumstances exist that allow economic matters to be considered in the delimitation of the Western Polygon.

The ICJ has repeatedly stated that economic matters can be considered as special circumstances if the results of an equidistant line are shown to be "radically inequitable, that is to say, as likely to entail catastrophic repercussions for the livelihood and economic well-being of the countries concerned."<sup>44</sup> Such may be the case if Mexico is denied full access to its continental shelf. Mexico is a relatively poor country with a per capita GDP of \$13,900.<sup>45</sup> To the contrary, the United States is one of the wealthiest countries in the world with a per capita GDP of \$47,200.<sup>46</sup> Additionally, Mexico has proven oil reserves of 10.42 billion bbl and proven natural gas reserves of 338.8 billion cubic meters.<sup>47</sup> Compared to the U.S., which has proven oil reserves of 20.68

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<sup>41</sup> *Id.* para. 13.

<sup>42</sup> *Romania v. Ukraine* (Rom. v. Ukr.), 2009 I.C.J. Rep. 132 (Sept. 16).

<sup>43</sup> *Gulf of Maine Case* (Can. v. U.S.), 1984 I.C.J. Rep. 1246, para. 198 (Oct. 12).

<sup>44</sup> *Id.* para. 237.

<sup>45</sup> CIA World Factbook estimated for 2010, <https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html> (last visited Nov. 11, 2011).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

billion bbl and proven natural gas reserves of 7.716 trillion cubic meters. There is great potential for oil and gas development in the Western Polygon. If the United States receives access to this area, an already rich country's energy companies become even richer. However, if Mexico receives full access to its continental shelf, thousands of Mexican citizens could be lifted out of poverty. Moreover, since the Mexican economy relies so heavily on energy exports, the loss of any portion of its continental shelf in the Western Polygon could be catastrophic to the future of the Mexican economy and thus to the livelihood of the Mexican people.

## 2. *Mexico's Negotiations and Delimitations with Neighboring States*

Mexico has a long history of negotiating agreements delimitating its maritime borders with neighboring states. Mexico's agreements with the United States, Cuba, and Honduras serve as a model for future negotiations and demonstrate its commitment to international law.

The negotiations between Mexico and the United States on the outer boundary of Mexico's exclusive economic zone began in April 1976.<sup>48</sup> Throughout the negotiations, both parties used highly technical scientific evidence and generally accepted concepts of international law in order to develop an agreement that was fair and equitable to both sides. These negotiations culminated in a formal treaty signed on May 4, 1978.

On July 26, 1976, Mexico and Cuba completed an agreement effected by an Exchange of Notes that divided the 200NM exclusive economic zones and the continental shelves of both countries.<sup>49</sup> The delimitation was conducted using the principle of equidistance.<sup>50</sup>

Mexico considers the Caribbean Sea to be its "Third Frontier."<sup>51</sup> Mexico shares a maritime border with Honduras in this resource rich area. Mexico began negotiating with Honduras in July, 2003.<sup>52</sup> The Treaty on Maritime Delimitations between Mexico and Honduras was finally signed on April 18, 2005.<sup>53</sup> This agreement included a provision acknowledging the possibility of transborder oil deposits, and declared that if such deposits exist, then the Parties shall exchange information about the deposits and may eventually enter into a formal agreement allowing for the efficient and equitable exploitation of these deposits.<sup>54</sup>

In each of these maritime delimitation agreements regarding Mexico's outer boundary of the exclusive economic zone, Mexico has acted in good

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<sup>48</sup> Vargas, *supra* note 6, at 227.

<sup>49</sup> *Id.* at 236.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 237.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 239.

faith based on the principle of equidistance (while considering special circumstances), thereby complying with international law and relevant provisions of the UNCLOS.<sup>55</sup>

V. COMMISSION'S RECOMMENDATIONS REGARDING THE LIMITS  
OF THE CONTINENTAL SHELF WITH RESPECT TO MEXICO'S SUBMISSION  
(ADOPTED 31 MARCH 2009)

1. *The Jurisdiction of CLCS*

The CLCS was established to promote the rights of coastal states and protect the rights of land locked states. Any encroachment made by coastal states upon internationally-recognized seabed areas translates —necessarily— into a loss to land-locked states. The CLCS's main function is to make an independent evaluation of submissions made by coastal states with respect of the outer limits of the continental shelf.<sup>56</sup> The commission must make recommendations to coastal states on matters related to the establishment of the outer limits of the continental shelf beyond 200 NM.<sup>57</sup>

The CLCS is comprised of an elected group of twenty-one specialists in the fields of geology, geophysics, and hydrography, chosen by the signatories to UNCLOS from among their nationals having due regard for the need to ensure equitable geographical representation.<sup>58</sup> Paragraphs 8 through 10 of Article 76 of UNCLOS establish the CLCS, and provide procedures for the submission of information on the determination of the outer limits of the continental shelf beyond 200 M.

The last sentence of paragraph 8, of Article 76, of UNCLOS has caused significant controversy in the international legal community.

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.*<sup>59</sup>

As noted, the CLCS is a body comprised of technical —not legal— experts. Yet according to UNCLOS, the recommendations of the CLCS “shall

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<sup>55</sup> *Id.* at 243.

<sup>56</sup> MARITIME DELIMITATION 22 (Martinus Nijhoff Publishers, 2006).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 24.

<sup>59</sup> UNCLOS, *supra* note 11, Article 76, para. 8.

be final and binding.”<sup>60</sup> Critics point out that this language seems to infer that the CLCS has quasi-judicial authority, even though CLCS’ members have no legal training. While proponents believe that the establishment of continental shelf limits is a fundamentally technical decision, CLCS is comprised of scientists, not lawyers. At this time, these arguments have still not been resolved, and will surely become a key issue before the ICJ in the near future.

Even if CLCS recommendations are binding on UNCLOS signatories, it is probably not binding on countries that have not recognized the treaty. Moreover, according to paragraph 10 of Article 76 of UNCLOS, even parties to the treaty are not bound by CLCS recommendations if the continental shelf between adjacent States overlaps.<sup>61</sup>

Ultimately, parties who are not signatories to UNCLOS may still have legitimate claims, regardless of the CLCS recommendations. Such is the case with the United States. Although the U.S. generally adheres to UNCLOS and recognizes much of the precedents established in International Common Law, it is not a signatory to UNCLOS and, as such, is technically not bound by the recommendations of the CLCS. Although CLCS recommendations bind UNCLOS signatories, and may in fact bind non-signatory nations under international common law, the U.S. may claim not to be bound by the CLCS recommendations.

## 2. *CLCS Application of UNCLOS and International Law to Mexico’s Submission*

In accordance with Article 76 of UNCLOS, the CLCS concluded that the outer edge of the continental margin, as established by the 1% sediment thickness formula lies beyond 200 NM, and therefore the test of appurtenance was satisfied by Mexico. In addition, the proposed outer limits of Mexico’s extended continental shelf beyond 200 NM consists of 1% sediment thickness at points up to 350 NM and does not exceed the constraints of 100 NM from the 2500 M isobath depth, and that the construction of the outer limits contains no straight line segments exceeding 60 M in length.<sup>62</sup> This would amount to a wholesale acceptance of Mexico’s arguments for extending its continental shelf up to 350 NM into the Western Polygon. Since this would extend Mexico’s continental shelf well into territory claimed by the United States, however, Mexico and the U.S. would need to enter a bilateral agreement based on international law that delimits their respective claims. If agreement between the two parties cannot be reached, however, the matter would be referred to the International Court of Justice.

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.* Article 76, para. 10.

<sup>62</sup> Recommendations of the CLCS, *supra* note 4.



## VI. CONCLUSION

*Why the U.S. Should Recognize Mexico's Claims as Adopted by the Commission on the Limits of the Continental Shelf*

Mexico's share of the giant oil deposits in the Gulf of Mexico is the third largest reserve in the world.<sup>63</sup> In June 2000, the United States and Mexico signed a treaty for the delimitation of the continental shelf in the western Gulf of Mexico beyond 200 nautical miles.<sup>64</sup> As a result of the Gulf of Mexico's geographical configuration, two small areas (known as the Western Polygon and the Eastern Polygon) exist in a central part of the Gulf where the EEZs of Mexico and the United States are not contiguous.<sup>65</sup> The total area of the Western polygon is approximately 5,092 square nautical miles.<sup>66</sup> The treaty boundary splits the Western Polygon continental shelf allocating 62% of the total area to Mexico and the remaining 38% to the United States.<sup>67</sup> The mineral resources in the Western Polygon are considered to be part of a transboundary reservoir.<sup>68</sup> Under International law, Mexico and the United States both share rights to this reservoir. Mexico is becoming increasingly concerned that the United States will begin exploiting not only the oil from the American side, but also the Mexican side, since this deposit is a single deposit shared by both countries.<sup>69</sup> When the treaty was signed in 2000, both Mexico and the United States realized that the legal content and, especially, the eventual interpretation and implementation of the treaty were going to depend critically on determining with scientific and legal certainty whether their respective submarine continental shelves extend beyond 200 nautical miles.<sup>70</sup>

Ultimately, the United States is under no affirmative obligation to recognize either the CLCS's recommendations or Mexico's claims. Notwithstanding the fact that Mexico has diligently adhered to international law in making their claim and is UNCLOS signatory (an agreement that has been accepted by a vast number of coastal states) the U.S. would be entitled to dispute Mexico's continental shelf extension. This said, it would nonetheless in the best interests of the United States to adhere to international law and recognize Mexico's claims.

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<sup>63</sup> Vargas, *supra* note 6, at 95.

<sup>64</sup> U.S. Treaty Doc. No. 106-39 (2000).

<sup>65</sup> Vargas, *supra* note 6, at 98.

<sup>66</sup> *Id.* at 100.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 99.

The peaceful delimitation of maritime borders is essential to maintaining world order. Mexico is a country of peace, and has attempted to use international law as a tool to represent its interests. If Mexico was forced to use armed force to represent its interests against the United States, it would of course lose. Instead, Mexico has meticulously adhered to a series of international precedents and treaties to support its claim. Moreover, Mexico has gathered a tremendous amount of scientific evidence that verifies its sovereign authority over its maritime areas. The United States should recognize these claims and reinforce to the world that the U.S. stands for fairness, equity and the rule of law.