

Oceans and the law of the sea

Report of the Secretary-General*

III. Maritime space

Continental shelf beyond 200 nautical miles and work of the Commission on the Limits of the Continental Shelf

22. Since its establishment in June 1997, the Commission has held 11 sessions at United Nations Headquarters in New York. The tenth session, which took place from 25 March to 12 April 2002, was the last of the first five-year term of the Commission. The eleventh session, inaugurating the newly elected membership of the Commission, was held from 24 to 28 June 2002. The session was opened by the representative of the Secretary-General of the United Nations, Ralph Zacklin, Assistant Secretary-General in charge of the Office of Legal Affairs, who then presided over the election of the new chairman. Following consultations, Peter F. Croker was elected as Chairman by acclamation. The Commission also elected three Vice-Chairmen, Osvaldo Pedro Astiz, Lawrence Folajimi Awosika and Mladen Juračić; and as Rapporteur, Yong-Ahn Park. All officers were elected to a term of two and a half years.⁴

23. In accordance with rule 10 of its Rules of Procedure, each member of the Commission present at the eleventh session made a solemn declaration in regard to the performance of his duties in the Commission at a ceremony convened for the occasion.

24. In addition to the election of its officers, the Commission renewed the composition of two of its standing subsidiary bodies, the Standing Committee on provision of scientific and technical advice to coastal States and the Committee on confidentiality. Upon nomination by the regional groups, the Commission elected the members of those bodies, who met and elected their officers. Philip Alexander Symonds was elected Chairman of the former Committee, and A. Bakar Jaafar as the Chairman of the latter.⁵

25. The Commission also elected the Chairmen of its two standing open-ended bodies, the Editorial Committee and the Training Committee. Harald Brekke was elected as Chairman of the Editorial Committee, and Indurlall Fagoonee was elected Chairman of the Training Committee.

26. At its eleventh session, the Commission decided not to hold the session which had originally been scheduled to be convened from 26 to 30 August 2002. Two sessions would be held in 2003, the twelfth session from 28 April to 2 May, followed by two weeks of meetings of a subcommission, in the event that a submission were to be received by the Commission. The thirteenth session was scheduled to be held from 25 to 29 August 2003.⁶

27. *Consideration of the submission made by the Russian Federation.* Although the Commission had usually held its sessions for either one or two weeks, the tenth session was of three weeks' duration in order to allow sufficient time to review the submission of the Russian Federation, which had been received by the Secretary-General on 20 December 2001.

28. The Commission had begun its tenth session formally only after the required quorum had been achieved. Mr. Yong-Ahn Park, Vice-Chairman, replaced the Chairman of the Commission, Mr. Yuri Kazmin during the consideration of the Russian submission. The

Deputy Minister of Natural Resources of the Russian Federation, Ivan Gloumov, accompanied by other experts, had been invited to make a presentation⁷ of the submission to the Commission, followed by a question-and answer period.

29. Mr. Gloumov was also requested to present the position of his Government regarding communications in respect of the Russian submission addressed to the Secretary-General by Canada, Denmark, Japan, Norway and the United States of America, which had been circulated by the Secretariat to States Members of the United Nations as well as to all members of the Commission.⁸ He was of the view that the communications did not constitute obstacles to the consideration of the submission by the Commission.

Establishment and work of the Subcommission

30. In accordance with article 5 of annex II to the Convention, following informal consultations, a subcommission was elected to examine the Russian submission and formulate the recommendations. The Subcommission was composed of seven members, appointed in a balanced manner and taking into account specific scientific elements of the Russian Federation's submission. The composition of the Subcommission was as follows: Alexandre Tagore Medeiros de Albuquerque (Brazil), Lawrence Folajimi Awosika (Nigeria), Galo Carrera Hurtado (Mexico), Peter F. Croker (Ireland), Karl H. F. Hinz (Germany), Iain C. Lamont (New Zealand) and Yong-Ahn Park (Republic of Korea). The Subcommission elected Mr. Carrera as its Chairman, Mr. Hinz Vice-Chairman and Mr. Croker as Rapporteur.

31. Taking into account the complexity and volume of the data involved, the Subcommission considered that it was not in a position to complete the preparation of the recommendations by the end of the tenth session. The Subcommission then commenced the detailed examination of the submission and continued its work through the end of the tenth session. It met twice daily and convened 20 meetings, including 6 meetings devoted to consultations in the form of questions and answers between its members and the experts of the delegation of the Russian Federation. It requested additional information from the Russian Federation on certain elements of its submission.

32. The Subcommission reconvened from 10 to 14 June 2002, before the expiration of the term of office of the current membership of the Commission on 15 June 2002. It continued the examination of the data and other materials contained in the submission, including the additional information received on 15 May 2002. On 14 June, the Subcommission completed the recommendations and forwarded them to the eleventh session of the Commission, which was scheduled to be held from 24 to 28 June following the election of the new membership of the Commission by the Meeting of States Parties.⁹

33. The Commission at its eleventh session continued the consideration of the Russian submission. Regarding the issue of whether the representatives of the Russian Federation had a right to be present during the deliberations,¹⁰ one member of the Commission expressed the view that, pursuant to rule 51 of the Rules of Procedure of the Commission (CLCS/3/Rev.3), article 5 of annex II to the Convention and paragraph 16 of section VII of the Modus Operandi of the Commission (CLCS/L.3), the representatives of the coastal State were entitled to participate in the proceedings, without the right to vote, since the discussion of the recommendations was part of the relevant proceedings referred to in article 5. He also pointed out that, should the Rules be interpreted as preventing the participation of that State's representatives during the Commission's discussion of the

recommendations of the Subcommittee, the provisions of the Convention should prevail over the Rules of Procedure of the Commission.

34. An opposing view was expressed that, since the Rules of Procedure constituted a further development of the provision of article 5 of annex II and had been widely distributed, made available to all States and had met with no objections, the Commission should continue to be guided in its work by those Rules. It was emphasized that rule 51 of the Rules of Procedure provided for the participation of the coastal State in the proceedings deemed relevant by the Commission. In addition, the representatives of the coastal State had already been invited by the Commission on two separate occasions during the tenth session to make a presentation on the submission, and furthermore, the Subcommittee had held six meetings of consultations in the form of questions and answers between the members of the Subcommittee and the representatives of the coastal State.

35. Moreover, in accordance with rule 4 of annex II to the Rules of Procedure, as amended by the Commission at its ninth session in May 2001, the deliberations of the Commission and subcommittee on all submissions made in accordance with article 76, paragraph 8, of the Convention shall take place in private and remain confidential. Therefore, it was stated, at the current, final stage, the Commission should consider and adopt the recommendations at a private meeting.

36. In view of the clear impossibility of achieving a consensus on the issue, the Chairman put to the vote the following question: Do you agree that the Commission may discuss the recommendations of the subcommittee and Commission in a closed meeting, and consider those proceedings as not relevant for the purposes of inviting the coastal State pursuant to article 5 of annex II to the Convention and rule 51 of the Rules of Procedure of the Commission? The vote was conducted by secret ballot, and, out of 18 members present and voting, the question was answered positively by 15 votes against 3 negative responses.

37. The Commission continued its deliberations on the recommendations in closed meetings, at which the Chairman of the Subcommittee, Mr. Carrera, made a presentation on its work and on its recommendations. The Commission made several amendments and adopted the recommendations by consensus. In conformity with the provisions of the Convention, the recommendations of the Commission were submitted in writing to the coastal State that had made the submission, the Russian Federation, and to the Secretary-General of the United Nations.

Recommendations of the Commission in regard to the submission made by the Russian Federation

38. The recommendations contain the results of the examination of the data and information submitted by the Russian Federation, with particular reference to the question of the entitlement of the Russian Federation to the continental shelf beyond 200 nautical miles, as well as whether the formulae and the constraints had been applied as required by article 76 of the Convention. The Commission presented its recommendations to the Russian Federation regarding the four areas relating to the continental shelf extending beyond 200 nautical miles contained in the submission: the Barents Sea, the Bering Sea, the Sea of Okhotsk and the Central Arctic Ocean.

39. In the case of the Barents and Bering seas, the Commission recommended to the Russian Federation, upon entry into force of the maritime boundary delimitation agreements with Norway in the Barents Sea, and with the United States of America in the Bering Sea, to transmit to the Commission the charts and coordinates of the delimitation lines as they would represent the outer limits of the continental shelf of the Russian Federation extending beyond 200 nautical miles in the Barents Sea and the Bering Sea respectively.

40. Regarding the Sea of Okhotsk, the Commission recommended to the Russian Federation to make a well-documented partial submission for its extended continental shelf in the northern part of that sea. The Commission stated that this partial submission shall not prejudice questions relating to the delimitation of boundaries between States in the south for which a submission might subsequently be made, notwithstanding the provisions regarding the 10-year time limit established by article 4 of annex II to the Convention. In order to make this partial submission, the Commission also recommended to the Russian Federation to make its best efforts to effect an agreement with Japan in accordance with paragraph 4 of annex I to the Rules of Procedure of the Commission.

41. As regards the Central Arctic Ocean, the Commission recommended that the Russian Federation make a revised submission in respect of its extended continental shelf in that area based on the findings contained in the recommendations.

42. *Twelfth Meeting of States Parties to UNCLOS (16-26 April 2002) and issues relating to the Commission.* Upon the invitation of the President of the twelfth Meeting, the Chairman of the Commission, Yuri Kazmin, informed the Meeting on the work of the Commission. He also referred to the remarks made by the President of the eleventh Meeting regarding the advisability of granting observer status to the Commission (SPLOS/73, para. 60), a status that had already been granted to the Tribunal and the Authority. A number of delegations at that Meeting had expressed their belief that granting observer status to the Commission would be beneficial for the work of the Commission as well as that of the Meeting of States Parties. The members of the Commission consequently had requested the Chairman to address a letter to the President of the twelfth Meeting, conveying the view of the Commission that it would welcome its granting of observer status at the Meeting (CLCS/29, para. 22). The twelfth Meeting had this letter before it (SPLOS/76).

43. After consideration of the issue, the Meeting adopted a decision granting observer status to the Commission (SPLOS/86). A new paragraph 3 bis of rule 18 regarding the observer status of the Commission was added to the Rules of Procedure for Meetings of States Parties.