



**Theme 1**

**Coastal and Ocean Governance**

**WORKSHOP 3:  
CONTINENTAL SHELF:  
POST-MAY 2009 PERSPECTIVES**

**23 November 2009**



**Partnerships in Environmental Management  
for the Seas of East Asia**

**Chair: Mr. Galo Carrera**  
Commission on the Limits of the  
Continental Shelf

**Co-Chair: Ms. Valentina Germani**  
United Nations Office of Legal Affairs/Division  
for Ocean Affairs and the Laws of the Sea  
(DOALOS)

**Prof. Raphael P.M. Lotilla**  
Executive Director  
PEMSEA Resource Facility  
PEMSEA

**The East Asian Seas Congress 2009**

**“Partnerships at Work: Local Implementation  
and Good Practices”**

**Manila, Philippines**

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**Workshop 3: Continental Shelf: Post-May 2009 Perspectives**

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**Convening Agency:**  
PEMSEA

**Chair:**  
Dr. Galo Carrera, Commission on the Limits of the Continental Shelf

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## **INTRODUCTION**

This workshop on the national submissions of continental shelf extensions is one of the most important features of the East Asian Seas Congress. In many instances in the past, disputes over land territory pose threats to peace and stability. Quieting of opposing claims and settlement of maritime boundaries will promote regional peace and stability, which is a prerequisite to cooperation in the region to achieve any objective.

The United Nations Convention on the Law of the Sea (UNCLOS), which entered into force in 1994, established a new order in the regime of seas. Article 76 of the Convention requires coastal states to establish the outer limits of their continental margin where the margin extends beyond 200 nautical miles from its baselines from which the breadth of the territorial sea is measured. The UN's Commission on the Limits of the Continental Shelf (Commission) is mandated to investigate the impact of Article 76 and to facilitate its implementation. So far, the Commission has received 51 submissions and 44 preliminary information notes.

The workshop looks at the impacts of national submissions from the perspectives of the academe and ocean policy experts. Discussion on issues of maritime boundaries is a necessary academic exercise because undeniably, these may impact peace and stability, and future cooperation in the Seas of East Asia. Mr. Galo Carrera, a member of the

Commission, chairs the workshop with Ms. Valentina Germani from the UN DOALOS, as co-chair.

## **SESSION 1. COUNTRY SUBMISSIONS ON THE CONTINENTAL SHELF LIMITS AND PROSPECTS FOR COOPERATIVE ARRANGEMENTS IN THE EAST ASIAN SEAS**

### **Japan's Submission to the CLCS**

Mr. Masahiro Akiyama of OPRF presented the status of Japan's submission to the CLCS. Japan, an ocean state with a total land area of 380,000 km<sup>2</sup>, has the world's 6th longest coastline of about 35,000 km and the 6th largest combined territorial sea and EEZ area of 4,470,000 km<sup>2</sup>. In 1996, Japan ratified the UNCLOS and was subject to the May 2009 deadline for submissions of the limits of its continental shelf. After conducting survey and analysis, Japan submitted its extended continental shelf limits to the Commission in November 2008.

Japan's submission identified seven (7) regions of its continental shelf, which covers around 740,000 km<sup>2</sup>. Its claim is based on its exercise of sovereignty over Okinotori Shima. The submission has potential overlap on relevant maritime delimitations with the United States of America and the Republic of Palau. *Note Verbales* have been exchanged between the Peoples' Republic of China and the Republic of Korea and Japan.

Two important points were raised in the ensuing discussion. First, there is a need for Japan to support its stand that Okinotori Shima has vegetation before it carried out reclamation. Otherwise, it was raised that as a submerged rock, Okinotori Shima may not be used as basis to generate entitlement to continental shelf. The second point is that, considering the potential overlaps with U.S. and Palau, Japan is currently discussing with their governments for possible cooperation.

### **Continental Shelf Claims in the South China Sea: A Critique**

Jay L. Batongbacal of the University of the Philippines - Asian Center presented the overlapping claims in the South China Sea. He showed graphically the extent of Philippine claims that have possible overlaps with the claims of other countries in the South China Sea.

In May 2009, Vietnam and Malaysia filed with the Commission their respective submissions of their extended continental shelf in the South China Sea. The submissions prompted responses from PR China and the Philippines, which were duly rejoined. The submissions for extended continental shelf in the South China Sea, as expected, have introduced some complications to the South China Sea issues among the littoral ASEAN States and China.

In his presentation, Mr. Batongbacal examined the sequence of events and official statements made by the relevant countries and offered some commentaries and critique of their wider implications, especially as they relate to the resolution of the long-standing issues in the South China Sea. In sum, he noted that though technically plausible, the Philippine submission for South China Sea is presently hindered by internal political issues particularly about PD 1596, lack of political will, and lack of understanding and/or

misconceptions about UNCLOS, international law, and municipal law. He stressed that the non-settlement of the North Borneo issue poses a serious obstacle between the Philippines and Malaysia.

The Vietnamese/Malaysian Joint Submission is less provocative and more open to international cooperation; it regards islands in the South China Sea as not projecting their own EEZ/CS. The technical exercise of delineation at least clarifies some aspects of jurisdictional issues, assuming there is no change in status of South China Sea islands in the future. The submissions may be a missed opportunity for greater cooperation among SEA neighbors because of the Philippines' adverse stance vis-à-vis Vietnam and Malaysia. China's "historic war claim" forges deadlock between Extended Continental Shelf claims.

### **Coastal States in the South China Sea and the Submission of the Outer Limits of the Continental Shelves**

Dr. Nguyen Hong Thao of the National University of Hanoi provided a background of the Extended Continental Shelf Submission of Vietnam. He stated that under the Rules of Procedure on the submission of the outer limits of continental shelf, coastal states may make final (full), partial or joint Submission of the outer limits of their continental shelves to the United Nations. With the preliminary information on the outer limits of their continental shelves, coastal states are asked to indicate if there are objections or disputes in the area of submission.

Dr. Thao outlined the procedures for the determination of the outer limits of continental shelf of coastal states. Quoting Article 76, paragraph 8 of the 1982 UNCLOS, Dr. Thao said that coastal states may conduct scientific surveys and collect data, which may be the basis of their Submission. The Commission will consider the scientific merits of the Submission and make its recommendations. The coastal states and the Commission would then cooperate to incorporate the recommendations into the Submission. Finally, the data and maps of the agreed outer limits of the continental shelves will have to be deposited by the coastal states to the Secretary General of the United Nations for registration.

Dr. Thao traced in the maps the extent of the Submissions of the Outer Limits of Continental Shelves by various coastal States in the South China Sea. Brunei, Indonesia, Philippines, Vietnam, and the joint Submission of Vietnam, Malaysia and China are among the submissions relating to the South China Sea. Dr. Thao clarified, though, that the Commission has no competence to resolve the disputed areas. He recommended that concerned states should follow the UNCLOS. Specifically, he encouraged parties to have serious discussions about the island status in Art. 121 (3) of UNCLOS and the outer limit of the Extended Continental Shelf beyond 200 nautical miles as well as clarify their claim limits in accordance with the UNCLOS's scientific and neutral criteria. Dr. Thao stressed the importance of partnership — talking and listening to partners — and working together on the basis of respect for equal and mutual interests, and for peace and security in the region.

## SESSION 2

Session 2 pertains to cooperative arrangements and collaboration of states particularly with opposing claims. Dr. Galo Carrera made a presentation on Annex I of the Rules of Procedures of the Commission. Participating in the discussion are experts and representatives of the academe, namely, Prof. Merlin Magallona of the University of the Philippines, Dr. Hasjim Djalal of the Indonesia International Studies Institute, Dr. Kuenchen Fu, of the Shanghai Jiao Tong University Law School, Prof. Robert Beckman from the University of Singapore, and Dr. Kwon Suk Jae of the Korea Ocean Research and Development Institute.

### **Annex I of the Rules of Procedure of Commission on the Limits of the Continental Shelf (Commission) and Its Implementation by States**

Dr. Galo Carrera stated at the first instance that his presentation is based on his personal views and do not necessarily reflect the views of the Commission. Dr. Carrera traced the development of the Rules of Procedure of the Commission until its adoption on 17 April 2008. The focus of his presentation is Annex 1 of the Rules of Procedures relating to dispute resolution between states with opposing or adjacent claims and other cases of unresolved land or maritime disputes. Dr. Carrera stressed, however, that under UNCLOS, the actions of the Commission do not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts.

Annex I finds support from Rule 46 of the Rules of Procedure of the Commission. Coastal States are directed to submit disputes in accordance with Annex I. Dr. Carrera said that Annex I recognizes that states have the competence with respect to disputes that may arise in connection with the establishment of the outer limits of their continental shelf. Coastal states may submit a portion of its continental shelf or a joint or separate submission. In making the submissions, states should inform the Commission of the actual or potential disputes or make an assurance that the submission will not prejudice matters relating to the delimitation of boundaries between States. If a dispute exists, the Commission will not consider and qualify a submission made by any State that is relevant to the dispute. However, the Commission may consider one or more submissions in the areas under dispute provided; prior consent is given by all States that are parties to such dispute.

Dr. Carrera reported that the Commission received a total of 48 submissions, of which 28 are partial Submissions while five are joint Submissions. Annex 1 contemplates only undelimited cases where there is a land and/or maritime dispute. Article 76 applies when there are no disputes. However, requests for postponement of consideration of Submission as well as disagreement concerning interpretation of one or more provisions in the Convention are outside the scope of Annex I.

Because of the numerous *Notes Verbale* received, the Commission has decided to defer further consideration of the Submissions and the *Notes Verbale*. States may wish to take advantage of available means, including practical arrangements as contained in Annex I to its Rules of Procedures and take account of developments throughout the intervening period. Dr. Carrera reiterated that resolution of territorial disputes rests on States alone. He enjoined States to tone down their *Notes Verbale* by stating specific objections. States should be open to opportunities for discussion in order to resolve disputes.

## **Discussions**

The discussants, Prof. Robert Beckman, Dr. Hasjim Djalal, Dr. Kuen-chen Fu, Dr. Kwon Suk Jae, and Prof. Merlin Magallona, gave their comments after the presentation of Mr. Galo-Carrera. They all agree that maritime boundary issues are critical in the South China Sea and in achieving peace and stability in the Seas of East Asia region. Likewise, they conceded that the resolution of boundary disputes is really within the competence of the States and not the Commission. Prof. Magallona, however, said that the findings and recommendations of the Commission may serve as basis for resolving disputes. The submission of continental shelf extension presents an opportunity for countries to sit down and resolve their boundary disputes in a spirit of cooperation and regionalization.

## **MAJOR CONCLUSIONS AND RECOMMENDATIONS**

The submissions of continental shelf extensions that involve issues of maritime boundaries and overlapping claims will impact on the Seas of East Asia region. States are encouraged to find beneficial arrangements and greater cooperation for sustainable development of their shared marine areas.

- Peace and stability are prerequisites to any objectives of cooperation.
- Only the states can resolve their boundary disputes.
- Submissions brought to the front controversies in the Seas of East Asia region, particularly, the South China Sea.
- Resulting boundary disputes should be used as opportunity for renewed dialogue between neighboring states.
- Technical work on submissions may assist in clarifying various state positions that can be opportunity for step forward in the political process.
- Explore possibilities for joint cooperation zones for undisputed islands through inclusive dialogue.
- Promote continued dialogues and discussion and minimize the tone of discussion among states.