

# Refuting the Assumption and Inferences in Paragraph 76 of Judgment of 13 July 2023 Concerning the Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)

Yixin Huang

Wuhan University China Institute of Boundary and Ocean Studies, China

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**Abstract:** On July 13, 2023, the International Court of Justice (hereinafter the “ICJ”) rendered its judgment in the case concerning the question of the delimitation of the continental shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia). Paragraph 76 of the judgment states that there is a cognitive assumption that the extended continental shelf would only extend into maritime areas that would otherwise be located in the Area, among States when negotiating Article 76 of the United Nations Convention on the Law of the Sea (hereinafter referred to as the “Convention”). Based on the assumption, Article 82 (1) of the Convention would not serve the purpose in the situation where the extended continental shelf of one State extended within 200 nautical miles from the baselines of another State. However, research shows that ICJ’s argument about the “assumption” is not perfect and that the legislative purpose of Article 82 (1) of the Convention would be better achieved in the situation where the extended continental shelf of one State extended within 200 nautical miles from the baselines of another State.

**Keywords:** *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast; Delimitation of the Continental Shelf Beyond 200 Nautical Miles; The Continental Shelf Beyond 200 Nautical Miles; The Principle of the Common Heritage of Mankind; Articles 82 and 76 of the United Nations Convention on the Law of the Sea.*

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## 1. Introduction

In 2013, Nicaragua filed a request with the International Court of Justice concerning the delimitation of the boundary between its 200 nautical mile outer continental shelf and the continental shelf of Colombia. In 2022, The Court issued an order requiring the parties to argue at the hearing the following two questions of clear law: (1) Under customary international law, can a State extend its claim to a continental shelf beyond 200 nautical miles to within 200 nautical miles of another State? (2) What are the criteria in customary international law for determining the outer limits of the continental shelf beyond 200 nautical miles? Relatedly, do paragraphs 2 to 6 of article 76 of the Convention reflect customary international law? In 2023, the Court delivered its judgment in the case of Nicaragua v. Colombia on the Delimitation of the Continental Shelf beyond 200 Nautical Miles, in which it determined that, in terms of the relationship between the regime of the continental shelf and that of the EEZ, the existence of a “assumption” on the part of the States that negotiated the Convention, and the identification of customary international law “under customary international law, a State cannot extend its claim to a continental shelf beyond 200 nautical miles to within 200 nautical miles of another State”, and the Court ultimately failed to uphold Nicaragua's delimitation claim.

The case caused a furor, with most scholars focusing on the identification of customary international law. The case was clearly criticized by Judges Tomka, Robinson and Skotnikov,

and by Judge Xue, who stated that the Court could not find that there was a broad and consistent pattern of delimitation of the outer limits of the continental shelf based solely on the submissions made by States Parties to the Commission on the Limits of the Continental Shelf (hereinafter referred to as the “CLCS”). The Court cannot conclude that there is widespread and consistent State practice, and hence *opinio juris*, merely on the basis of proposals submitted by States Parties to the Commission on the Limits of the Continental Shelf. Scholars such as Ori Pomson and Hilde Woker have pointed out that States Parties may have refrained from claiming in their proposals an extension of the continental shelf to within 200 nautical miles of another State because of non-legal obligations, such as avoiding “non-consideration” of the proposal due to objections by other States.

This paper will focus on the question of the reasonableness of the “assumption” and its corollaries, which is part of the Court’s jurisprudence in reaching its negative conclusion. In the present case, Colombia is not a party to the Convention, so the Court focused on the identification of the customary law rule in question one. However, in paragraph 76 of the judgment, the Court discussed the effect of the relevant provisions of the Convention on question one. Relying on Article 76 of the Convention, the Court found that the negotiating States had assumed that “the extended continental shelf can extend only to those maritime areas which are or will be located in the Area”, and reasoned that when the continental shelf extends 200 nautical miles from one State to 200 nautical miles from another State, Article 82(1) of the

Convention would not be applicable. Article 82(1) will not fulfill its purpose.

The Court seems to be suggesting that a negative answer to question one can also be inferred from the relevant provisions of the Convention in the context of the object and purpose of the treaty. However, if this “assumption” referred to by the Court were to stand, it would inevitably lead to the logical paradox that the extent of the Area precedes the existence of the Extended Continental Shelf, which is clearly contrary to reality. This is clearly contrary to the actual situation. Moreover, article 82 (1) of the Convention still fulfills its purpose when the continental shelf of a foreign State extends to within 200 nautical miles of another State. Therefore, the obvious ambiguity of the “assumption” and its reasoning do not allow the relevant provisions of the Convention to provide a solid and strong support for the negative answer to question 1.

## **2. “Assumption” and the Logic of the Court’s Reasoning**

In conjunction with articles 76 and 82(1) of the Convention, the Court provided an in-depth analysis of question 1 in paragraph 76 of its judgment. The Court observes that, when negotiating the text of the Convention, there was a “assumption” among the negotiating States as to the extent of the extended continental shelf. This “assumption”, which further defined the extent of the outer continental shelf, provided the basis for the negative answer to question 1 and constitutes the core element of the argumentation in this paragraph.

### **2.1. The Key Role of the “Assumption”**

In the discussion in paragraph 76 of the Judgment, the “assumptions” put forward by the Court play a crucial role.

On the one hand, the Court emphasizes that the subjects of the existence of the “assumption” are the negotiating States of the Convention. The reasoning of the Court in attempting to prove the existence of a consensus or “original intention” of the negotiating States of the Convention regarding the outer continental shelf regime by means of the “assumption” is in line with the provisions of the Vienna Convention on the Law of Treaties concerning the interpretation of a treaty, namely, that a treaty is interpreted by searching for the common intention of the parties. The “assumption” thus provides a solid jurisprudential basis for the Court to interpret that the outer continental shelf may not extend within 200 nautical miles of another State.

On the other hand, the “assumption” is a key part of the reasoning in paragraph 76 of the judgment. Based on the “assumption”, the Court further concluded that “if the outer continental shelf of a State extends beyond 200 nautical miles to within 200 nautical miles of another State, article 82 of the Convention would not serve its purpose”. However, if the “assumption” is flawed, the subsequent inferences and conclusions will undoubtedly be meaningless. Therefore, the Court, in formulating the “assumption”, must ensure that it is well-founded and reasonable in order to avoid jeopardizing the authority and persuasiveness of the entire judgment.

### **2.2. The Underlying Logic of the Court's Reasoning on “Assumption”**

First, the Court emphasized the causal relationship between the establishment of the outer limits of the continental shelf

beyond 200 nautical miles and the prevention of excessive infringement of the Area. During the negotiation of the Convention, the international community had recognized the Area as the “common heritage of mankind”. The Court further noted that the substantive and procedural requirements for the outer limits of the continental shelf beyond 200 nautical miles were in fact a compromise reached by the negotiating States during the Third United Nations Conference on the Law of the Sea. It was the need to avoid undue encroachment on the Area that led to the establishment of the regime of the outer limits of the continental shelf.

The Court then suggested, in the context of article 76 of the Convention, that there was a “assumption” on the part of States when negotiating. Specifically, the Court cited the text of article 76 of the Convention, in particular paragraphs 4 to 9, as an example of a provision that could indicate that States participating in the negotiations “assumed” that the extended continental shelf would extend only to those maritime areas that were or would be located in the Area. Of these, paragraphs 4 to 7 of article 76 of the Convention deal mainly with the substantive provisions on the outer limits of the continental shelf, while paragraphs 8 and 9 deal mainly with the procedural provisions on the outer limits of the continental shelf. In particular, the Court emphasized that the primary role of the CLCS “consists in ensuring that the continental shelf of a coastal State does not extend beyond the limits set out in paragraphs 4, 5 and 6 of Article 76, thereby preventing the continental shelf from encroaching upon the ‘Area and its resources’, which is described as the ‘common heritage of mankind.”

Thus, the Court's finding of a “assumption” on the part of the negotiating States was based primarily on the fact that article 76, paragraphs 4 to 7, of the Convention takes into account the purpose for which the regime of the outer limits of the continental shelf was established, namely, to avoid undue encroachment on the Area.

## **3. Flaws in the Argumentation on the “Assumption”**

“The existence of a “assumption”, which is a key part of the Court’s reasoning, has not been adequately argued. More importantly, the Court seems to have emphasized the value of the Area too much, to a certain extent ignoring the importance of other key provisions of Article 76 of the Convention, and upsetting the delicate balance established by the Convention between the rights of the continental shelf and the interests of the Area. (i) Failure to adequately demonstrate the existence of a continental shelf

### **3.1. Failure to Sufficiently Substantiate the Existence of a “Assumption”**

The negotiating States had in mind the prevention of excessive encroachment on the interests of the Area when they set up the provisions of Article 76 of the Convention concerning the outer limits of the continental shelf. However, on the basis of the Court's citation of article 76, paragraphs 4 to 9, of the Convention, it does not directly follow that the extended continental shelf “only” extends into or will lie in the maritime areas of the Area. The Court did not clearly articulate the logical connection between the provisions or the line of reasoning. The Court held that the extended continental shelf could extend “only” into or would be located in the maritime areas of the Area simply because the outer

limits of the continental shelf took into account the interests of the Area. “Only” is exclusive, and the Court's argumentation that the scope of the extended continental shelf is directly narrowed down to the maritime areas that are or will be located in the Area lacks coherence and rigor.

### **3.2. “Assumption” of Omission of Article 76, Paragraph 1, of the Convention**

In its judgment, the Court referred to Article 76 of the Convention, but only emphasized (in particular) paragraphs 4 to 9 of Article 76 of the Convention, thereby ignoring the significance of paragraph 1 of Article 76 of the Convention. Article 76, paragraph 1, of the Convention clearly states that “the continental shelf of a coastal State comprises the entire natural prolongation of its land territory beyond the territorial sea”. This paragraph affirms that “natural prolongation” is an essential feature of the continental shelf and that the principle of “natural prolongation” is the source of the right to a continental shelf regime beyond 200 nautical miles.

As noted at the beginning of paragraph 76 of the judgment, the outer limits of the continental shelf were the result of a “compromise” among groups of States at the Third United Nations Conference on the Law of the Sea. This regime was designed not only in the interest of avoiding undue encroachment into the Area, but also as a reaffirmation of the principle of “natural prolongation” in article 76, paragraph 1, of the Convention. If the regime of the outer limits of the continental shelf is only intended to avoid undue encroachment into the Area, it would be more conducive to the protection of the interests of the Area if the outer limits of the continental shelf were established directly at 200 nautical miles from the baselines of a State's territorial sea.

In other words, the “assumption” ignores the value of natural prolongation established in article 76 (1) of the Convention and unilaterally emphasizes the interests of the Area, thus breaking the balance between the Convention's regime for the Area and the outer limits of the continental shelf. It breaks the balance between the Convention's regimes for the Area and the outer continental shelf, and falls into the misperception that the regime for the Area takes precedence over the regime for the outer continental shelf.

## **4. Flawed Reasoning on the Inference**

Within the framework of article 82 (1) of the Convention, the Court has drawn an important inference on the basis of the “assumption” that when the continental shelf extends beyond 200 nautical miles of one State to within 200 nautical miles of another State, such a situation does not appear to be in conformity with the purpose of the Convention as set out in article 82 (1). However, not only did the Court fail to indicate the content of the purpose of article 82 (1) of the Convention, but there was a tendency to interpret the purpose of article 82 (1) of the Convention in a one-sided manner. Therefore, this Part first analyzes the purpose of Article 82(1) of the Convention, points out the bias of the Court's understanding, and then applies the *reductio ad absurdum* method to analyze whether the purpose of Article 82(1) of the Convention can still be effectively realized when the continental shelf extends beyond 200 nautical miles of one State to within 200 nautical miles of another State.

### **4.1. The Court's One-sided Understanding of the Purpose of Article 82(1) of the Convention**

#### **(1) Purpose of Article 82(1) of the Convention**

The international community has generally referred to Article 82 of the Convention as a whole as a revenue-sharing regime, with paragraph 1 being the core of the revenue-sharing regime, i.e., the obligation of the coastal State to contribute to the exploitation of non-living resources on the continental shelf beyond 200 nautical miles, either in fee or in kind.

Since the Court has not clearly stated what the purpose of Article 82(1) of the Convention is, this article will first explore the purpose of the provision and review the background of its establishment.

The 1958 Convention on the Continental Shelf, by introducing the criterion of “recoverable capacity” into the definition of the continental shelf, separated the statutory and geographical criteria of the continental shelf to a certain extent and provided for the exclusive right of the coastal State to explore and exploit the resources of the continental shelf, which might lead to the unlimited extension of the continental shelf of the coastal State. 1970 The United Nations General Assembly adopted the Convention on the Law of Treaties between States under their Jurisdiction (CLCS). The General Assembly adopted the Declaration of Principles Relating to the Seabed and Ocean Floor and Subsoil Thereof Beyond the Limits of National Jurisdiction (hereinafter referred to as the “1970 Declaration of Principles”), declaring that the seabed and subsoil of the seas in the Area are the common heritage of mankind and that the Area is not subject to the jurisdiction of any State. “Exploration and exploitation of the Area should be carried out for the benefit of mankind as a whole, taking into account the interests of developing States.

Many States are of the view that the extension of the jurisdiction of coastal States in their exclusive economic zones and outer continental shelves at the expense of the Area and the common heritage of mankind conflicts with the 1970 Declaration of Principles. Therefore, the harmonization of the contradictions between the rights of States with wide continental shelves to explore and exploit the continental shelf and the common heritage of mankind became an important theme of the Third United Nations Conference on the Law of the Sea, which was extensively discussed in the Second Committee. Some States were of the view that the extension of the continental shelf beyond 200 nautical miles reduced the scope of the Area. Two opposing groups of States broadly emerged from the negotiating sessions, namely, the group of wide-shelf States wishing to extend their continental shelves on the basis of the principle of natural prolongation, and the group of States wishing to limit the continental shelf beyond 200 nautical miles on the basis of the preservation of the common heritage of mankind, which tends to be the developing countries.

On this basis, article 82 (1) of the Convention reflects the need for compromise among States parties. The purpose of article 82 (1) of the Convention is to “reconcile” the tension between States with extensive continental shelves and States wishing to limit their continental shelves to 200 nautical miles, by recognizing the interests of the wide-shelf States and at the same time “returning” the benefits to the wide-shelf States through the imposition of an obligation to pay a fee or in kind to the wide-shelf States. The interests of developing countries

have been taken care of by “returning” the benefits to all mankind through the imposition of the obligation to pay fees or in-kind contributions to the countries with wide continental shelves.

(2) The Court’s one-sided understanding of the purpose of Article 82(1) of the Convention

1) The Court’s understanding of Article 82(1) of the Convention

The Court notes that Article 82(1) of the Convention cannot fulfill its purpose in the circumstances of the present case. The representative of Colombia also questioned “the logic of the Convention requiring a State to pay to the International Seabed Authority (hereinafter referred to as ‘ISA’) the proceeds in kind or in fees in the case of exploitation of the minerals of another State?” The arguments of the Court and those of the Colombian delegate are logically premised on the primacy of the interests of the Area over the sovereign rights of the outer continental shelf.

The Court unilaterally understood the purpose of article 82 (1) of the Convention to be “compensation” for the exploitation of the interests of the Area by the wide shelf States. The reason why the wide shelf States are required to make payments or contributions in kind is that the continental shelf beyond 200 nautical miles was originally part of the Area. This led the Court to conclude that “Article 82(1) of the Convention does not serve its purpose in cases where 200 nautical miles of one State extends to 200 nautical miles of another State”. The Court was clearly more inclined to emphasize the protection of the interests of the Area at the expense of upholding the sovereign rights of the coastal State over the continental shelf. The Court seems to have fallen into a “doctrine of original sin of the outer continental shelf”, a priori prioritizing the interests of the Area over the sovereign rights of the outer continental shelf in the weighing of the two interests.

2) The Court’s Misunderstanding of Article 82(1) of the Convention

The Court erred in its understanding of the purpose of Article 82(1) of the Convention. If Article 82(1) of the Convention is understood to mean “compensation”, it would naturally follow that the extent of the Area precedes the existence of the 200-nautical-mile outer continental shelf and that the extent of the 200-nautical-mile outer continental shelf is determined by the extent of the Area.

This conclusion is obviously not in line with the facts. The continental shelf regime has a long history, and coastal States have been claiming the right to the continental shelf since the Truman Declaration of 1945, and article 1 of the Convention on the Continental Shelf of 1958 establishes the criteria of the bathymetry of the outer limits of the continental shelf for the two continental shelves, as well as the criterion of mineability. It can be said that at this time, the international community had already explored and partially agreed on the scope of the extended continental shelf regime, and in 1970, when the United Nations General Assembly adopted the Declaration of Principles Governing the Seabed and Ocean Floor and the Subsoil Thereof Beyond the Limits of National Jurisdiction, the concept of the Area and its related concepts entered into the broad field of vision of the international community for the first time, and the Convention was ratified in 1982. Following the ratification of the Convention in 1982, States parties agreed on the specifics of the regime for the continental shelf beyond 200 nautical miles and the regime for the Area. In addition, there is no rule of international law

that can define the specific scope of the Area, which is the maritime area beyond national jurisdiction, and the Area can be further defined only after the maritime areas within national jurisdiction have been determined. The conclusion is that, contrary to the above facts, the extent of the continental shelf beyond 200 nautical miles is not determined by the extent of the Area.

#### 4.2. Article 82 (1) of the Convention Does not Exclude the Application of the Circumstances of the Case.

The Court found that, in the circumstances of the case, Article 82(1) of the Convention did not serve the purpose for which it was intended. The implication of that conclusion was that article 82 (1) of the Convention did not apply to the circumstances of the case. This conclusion is not justified:

On the one hand, article 82 (1) of the Convention makes it clear that the only limitation on the scope of application of the benefit-sharing regime is the exploitation of non-living resources beyond 200 nautical miles on the continental shelf. Where the continental shelf beyond 200 nautical miles of one State extends to within 200 nautical miles of another State, that portion of the continental shelf remains within the outer continental shelf of that State, and the Convention itself does not limit the situation at issue in this case.

On the other hand, the fact that ISA is the organization that manages the resources of the Area does not mean that article 82 of the Convention applies only to the exploitation of the outer 200 nautical miles of the continental shelf other than in the Area. It is noteworthy that at the third part of the Third United Nations Conference on the Law of the Sea, the representative of the United States had proposed a text in which “the annual fees should be paid to the [Authority] [international or regional development organizations in the United Nations plural] for equitable distribution in the interest of developing States”. In addition, after the representative of New Zealand made it clear that the proceeds would be paid into ISA, the United States delegation, in its subsequent proposal, continued to insist that “a United Nations-accredited international or regional development organization” (and not necessarily the ISA would receive and distribute the fees and in-kind contributions. It is clear from the text of the “ISA” or other organization that the negotiating States did not at that time tie article 82 of the Convention to the Area, and there is no good reason for the Court to exclude directly the application of article 82 of the Convention to the situation at issue in the present case.

#### 4.3. Article 82 (1) of the Convention Can Achieve its Purpose in the Circumstances of the Present Case

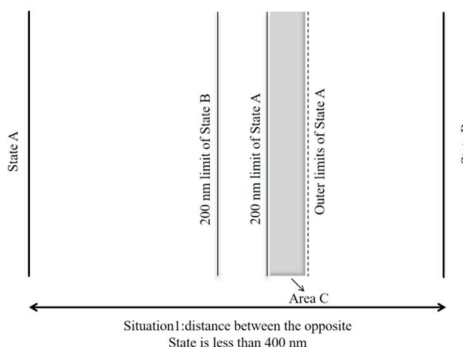
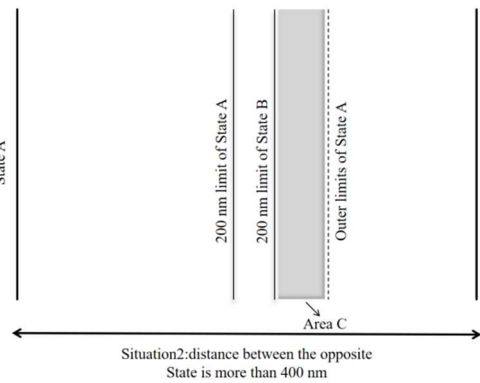


Figure 1. distance is less than 400 nm



**Figure 2.** distance is more than 400 nm

The Court has unilaterally interpreted Article 82(1) of the Convention as “compensation” for the exploitation of the Area by the coastal State of the continental shelf. However, even within the framework of the Court’s reasoning, the purpose of article 82 (1) can be achieved in the circumstances of the present case.

Logically, if State A’s 200-nautical-mile outer continental shelf cannot extend over State B’s 200-nautical-mile inner continental shelf, then the overlapping continental shelf originally claimed by the two States in Area C (See Situation 1 and 2) is exclusively the 200-nautical-mile inner continental shelf of State B. Since article 82(1) of the Convention applies only to the exploitation of non-living resources beyond 200 nautical miles of the coastal State, State B is not required to pay to ISA in kind or at cost the exploitation of the non-living resources of that continental shelf.

In contrast, if, in the context of the present case (See Situation 2), State A’s continental shelf beyond 200 nautical miles could extend to State B’s continental shelf within 200 nautical miles, then the two States would need to equitably delimit the continental shelf in Area C. The result of the delimitation is likely to be that a part of Zone C is to be divided into State A and become part of the 200 nautical mile outer continental shelf of State A, and State A should pay to ISA the in-kind benefits or proceeds from the exploitation of the non-living resources of that part of the continental shelf, which will be distributed to developing countries through the fair share criterion, which is, on the contrary, conducive to safeguarding the common interests of mankind as a whole, and is conducive to realizing the purpose of the payment system under Article 82(1) of the Convention. The purpose of the contribution regime under Article 82(1) of the Convention.

Under the norms of article 76 of the Convention concerning the outer limits of the continental shelf, the outer continental shelf of State A extending into Zone C is still part of the natural prolongation of its land territory, and there is an overlap of rights between the 200-nautical-mile outer continental shelf claimed by State A and the continental shelf claimed by State B, which requires an equitable delimitation of the areas of overlapping continental shelf in accordance with international law; State A has the right to explore and develop the mineral resources of the shelf belonging to State A in Zone C. There is no question of the so-called “other State’s minerals”. State A has the right to explore and exploit the mineral resources of the continental shelf belonging to State A in area C, and there is no question of the so-called “minerals of another State”. In other words, before the maritime delimitation of the area of overlapping rights is carried out, it cannot be determined a priori that the continental shelf rights of one State within 200 nautical miles take precedence over the continental shelf rights of another

State beyond 200 nautical miles, and that area C itself cannot be considered to be the continental shelf resources of State B.

It should be noted that Article 82(1) of the Convention is still considered to be “dormant”. ISA is not currently receiving benefits through the gain-sharing system for the time being. At the same time, Nicaragua, as a developing country, may be exempted from paying such fees or in kind under Article 82(4) of the Convention if it satisfies the requirement that it “is a pure importer of a mineral resource produced on its continental shelf”. Still, the Court cannot a priori deprive Nicaragua of the possibility of an overlap between its continental shelf beyond 200 nautical miles and Colombia’s continental shelf within 200 nautical miles.

## 5. Possible Consequences of Paragraph 76 of the 2023 Judgment

First, paragraph 76 of the judgment introduces a new limitation on the initial right of the coastal State to have a continental shelf beyond 200 nautical miles from the perspective of the law of treaties, namely the 200 nautical mile limit of other States.

The norms provided for the delineation of the outer limits of the continental shelf beyond 200 nautical miles of a coastal State, in accordance with paragraph 76 of the Convention and the CLCS Scientific and Technical Guidelines, can be broadly divided into three steps. First, a judgment is made as to whether a coastal State has an initial right to a continental shelf beyond 200 nautical miles or whether it meets the test of accessory rights; Second, the outer edge of the continental margin is delineated using the foot of the continental slope as the key point; and third, the outer limits of the continental shelf beyond 200 nautical miles are delineated on the basis of the formula line and the line of limitations. Therefore, the delineation of the outer limits of the continental shelf of a coastal State beyond 200 nautical miles is predicated on the assumption that the coastal State has initial rights to the continental shelf beyond 200 nautical miles.

Articles 76(1) and 76(3) of the Convention are themselves important in determining whether a coastal State has initial rights, both in terms of distance and topography, but paragraph 76 of the judgment provides some support for the conclusion in this case from the perspective of the Convention. The conclusion in the present case actually provides a new limitation to the determination of the initial rights of the coastal State to a continental shelf beyond 200 nautical miles, namely, in addition to the above-mentioned articles 76 (1) and 76 (3), it does not allow that the continental shelf beyond 200 nautical miles of one State cannot extend to within 200 nautical miles of another State. This in effect turns the unilateral activity of a State in determining the outer limits of its continental shelf beyond 200 nautical miles into a bilateral activity in which the maritime claims of other States must be taken into account, and artificially establishes a third “line of control” for a State’s claim to the outer limits of its continental shelf beyond 200 nautical miles.

Secondly, paragraph 76 of the Judgment actually supports the view that “the criterion of distance takes precedence over the criterion of natural prolongation”. Paragraph 75 of the Judgment distinguishes between the continental shelf within 200 nautical miles and the continental shelf beyond 200 nautical miles, and considers that the right of a State to a continental shelf within 200 nautical miles and beyond 200 nautical miles is based on different grounds: the right to a

continental shelf within 200 nautical miles is based on distance from the coast; the right to a continental shelf beyond 200 nautical miles is based on the natural prolongation of the State's territory, and the outer limit of the continental shelf beyond 200 nautical miles. The outer limits of the continental shelf beyond 200 nautical miles should be determined on the basis of scientific and technical criteria.

Paragraph 76 of the Court's Judgment justifies, from the point of view of the law of treaties, that "the continental shelf beyond 200 nautical miles of one State cannot extend to within 200 nautical miles of another State". In this sense, the Court's assertion implies that the source of the continental shelf within 200 nautical miles takes precedence over the source of the continental shelf beyond 200 nautical miles.

Thirdly, the discussion in paragraph 76 of the judgment will have an impact on China's maritime delimitation claims.

China's and Japan's continental shelf claims overlap in the waters of the East China Sea. In 2012, China submitted a submission to the CLCS for a continental shelf beyond 200 nautical miles in part of the East China Sea, in which China claimed that the continental shelf in the East China Sea is a natural extension of its land territory, and that the Okinawa Trough, an important geographic unit characterized by a marked separation, is the termination of China's continental shelf extension in the East China Sea. However, the widest part of the waters of the East China Sea is even less than 400 nautical miles, and Japan bases its continental shelf rights on the distance criterion of 200 nautical miles. According to paragraph 76 of the Judgment regarding the "assumption" that the extended continental shelf can only extend into or be located in the Area, if the distance between the baselines of the territorial sea of China and Japan does not exceed 200 nautical miles, the initial rights to the continental shelf beyond 200 nautical miles, as claimed by China, will be limited, even if China's initial rights to the continental shelf beyond 200 nautical miles are limited. The initial right of China to claim a continental shelf beyond 200 nautical miles will be limited, and even if the outer limit of the continental shelf claimed by China meets the scientific and technical criteria in accordance with article 76 of the Convention, it cannot be extended into the maritime areas within 200 nautical miles of the baselines of the territorial sea of Japan.

## 6. Conclusion

The Court's reasoning on whether the relevant provisions of Articles 76 and 82 of the Convention affect Question 1 is flawed. On the one hand, the Court failed to establish the existence of a presumption on the part of the negotiating States of the Convention that "the extended continental shelf extends only to, or will lie in, the maritime areas of the Area", a presumption which is inherently irrational; on the other hand, Article 82 of the Convention does not prohibit its application in the present case. On the other hand, the fact that Article 82 of the Convention does not prohibit the application of the circumstances of the present case, in which a State is required to pay to the ISA the costs and contributions in kind arising from the exploitation of the non-living resources of the outer continental shelf in cases where the outer continental shelf extends 200 nautical miles from one State to a distance of up to 200 nautical miles from another State, is, on the contrary, a more conducive way to take into account the

interests of developing States and of the common heritage of mankind, and to fulfill the purpose of the regime of contributions established by Article 82(1) of the Convention. This is, on the contrary, more conducive to taking into account the interests of developing countries and the common heritage of mankind and realizing the purpose of the regime of contributions under Article 82(1) of the Convention.

The contribution provision of Article 82(1) of the Convention has reconciled the contradiction between the sovereign rights of coastal States over the continental shelf beyond 200 nautical miles and the common heritage of mankind, and to a certain extent "reconciled" the contradiction between States with extensive continental shelves and States wishing to limit their continental shelves to 200 nautical miles, thus demonstrating that negotiating States are in harmony with each other, cooperate and actively promote the conclusion of the Convention. This reflects the attitude of the negotiating States to coordinate, cooperate and actively promote the conclusion of the Convention. However, in the course of its discussion, the Court was clearly biased in favor of restricting the sovereign rights of the coastal State over the continental shelf beyond 200 nautical miles, which is contrary to the attitude of mutual understanding among the States when agreeing on the provisions of the Convention.

At the same time, the judgment in this case may have an adverse impact on China's current practice of continental shelf delimitation in the East China Sea, and there is a need to continue to explore in depth the specific impact of the conclusions and "assumptions" of this case on the legal basis underpinning China's continental shelf delimitation claim, and to carry out a targeted study of and response to the situation in the area.

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