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Disputes concerning the delineation of the continental shelf beyond 200 nm

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Scope of the presentation

- Delimitation or delineation?
- Operationalizing the saving clauses of the LOSC
- The application of RoP Rule 46 in practice
- Future challenges for the Commission in relation to disputed submissions

The saving clauses of the LOSC

- “The provisions of this article are **without prejudice** to the question of **delimitation** of the continental shelf (...)” (LOSC art. 76(10))
- “The actions of the Commission shall **not prejudice** matters relating to **delimitation** of boundaries between States (...)” (LOSC, Annex II, art. 9)

Operationalizing the saving clauses in the CLCS' Rules of Procedure

- “In case there is a dispute in the **delimitation of the continental shelf** (...) or in other cases of **unresolved land or maritime disputes**, submissions may be made and shall be considered in accordance with Annex I to these Rules” (RoP Rule 46)
- “(...) the **competence** with respect to matters regarding disputes which arise in connection with the establishment of the outer limits of the continental shelf **rests with States**” (RoP Annex I, para. 1)
- “In cases where a **land or maritime dispute** exists, the Commission shall **not consider and qualify a submission** made by any of the States concerned in the dispute” (RoP Annex I, para. 5(a))

The application of Rule 46 in practice – expanding the scope of relevant disputes

Type of dispute (*A submission may be subject to reaction from other States with reference to several reasons/ categories of disputes)	Submissions subject to reactions	Submissions where the work of the CLCS is or have been blocked due to a dispute with reference to RoP Annex I Para 5(a)
Unresolved delimitation	54	17
Disputed title to territory	8	5
Other treaty obligations	15	4
Interpretation or application of the LOSC	8	3
Encroachment of the Area	1	1

OCS submission by Japan to the CLCS

- **China:** Oki-no-Tori Shima is a rock which cannot generate a continental shelf, and therefore it was not within the mandate of the CLCS to make recommendations on this portion of the continental shelf. Establishing a continental shelf based on Oki-no-Tori Shima would seriously encroach upon the Area as the common heritage of mankind.
 - **Japan:** Interpretation of art. 121 is outside the mandate of the CLCS, and therefore it should not take into account the position expressed by China.
 - **CLCS** has no role in interpretation of 121. Sub-commission shall continue consideration of full submission, but the CLCS will not take any action on the part of the recommendations relating to disputed area.
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- ❖ What was the CLCS basis for deciding that a dispute concerning the interpretation of art. 121 was not at the same time a “land or maritime dispute”?
 - ❖ When the CLCS decided that this was not a dispute within the scope of Rule 46, how could it at the same time decide to “not take any action”?

Future challenges for the CLCS

- The role of the CLCS in relation to disputes
- Future challenges for the CLCS:
 - Deciding on the extent of the CLCS' competence in defining what constitutes "dispute"
 - Defining the scope of disputes admissible under Rule 46
 - Establish a uniform procedure for how to deal with disputes in relation to a submission – outside the scope of Rule 46