

Submarine Elevations and Submarine Ridges under Article 76

ABLOS Monaco

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Introduction

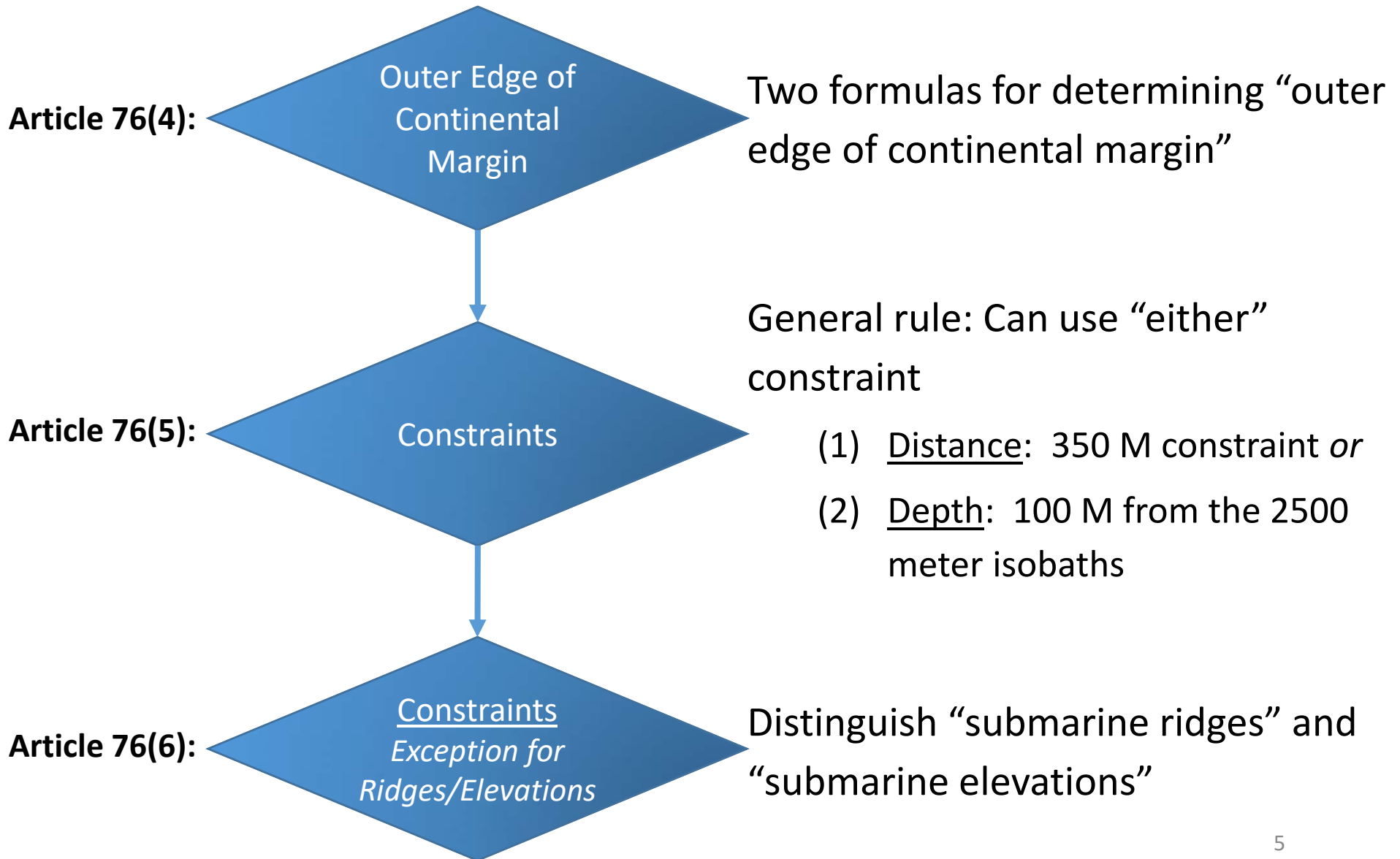
- Seafloor highs are probably the most difficult features to deal with in Article 76
- Submarine elevations and submarine ridges have been known for a long time, but for many their origin, formation and precise extent was unclear in the late 1970s, when Article 76 was developed (new knowledge)
- Ridges are mentioned twice in Article 76, in both cases limiting their potential contribution to ECS:
 - Oceanic ridges are beyond the continental margin (para. 3)
 - Submarine ridges and continental shelf (para. 6, application of constraints)

Treaty Interpretation

- Vienna Convention on the Law of Treaties (VCLT)
- General rule of interpretation (Art. 31)
 - a treaty is to be interpreted “in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”
 - any “special meaning” for a treaty provision is to be given “if it is established that the parties so intended.”
- Supplementary means of interpretation (Art. 32)
 - Use of “preparatory work of the treaty,” including its negotiating history



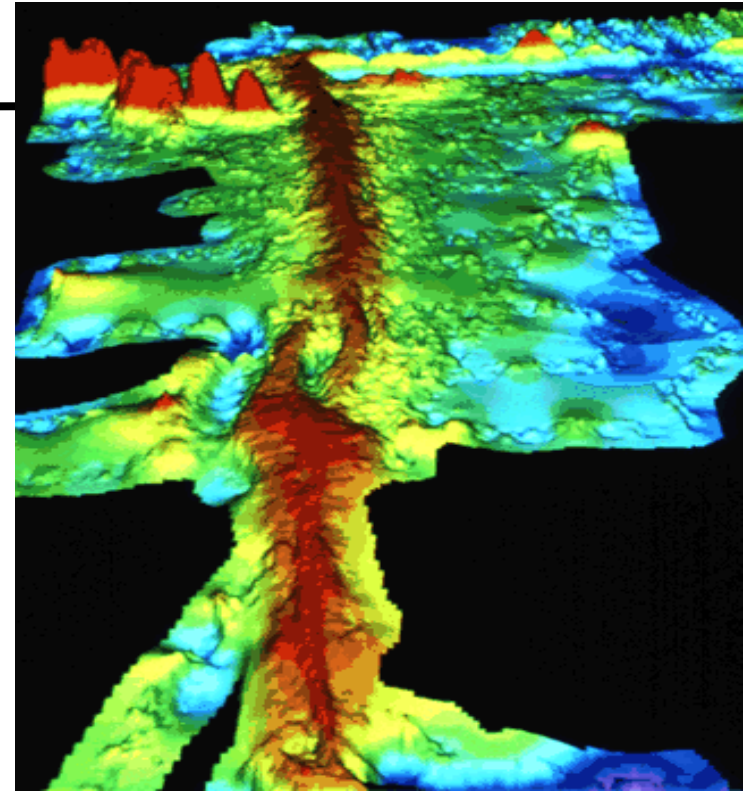
Article 76 – context



Article 76(6) – the text

Sentence 1. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Sentence 2. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

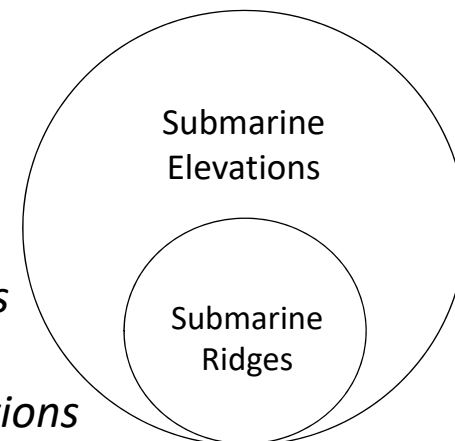


Submarine Ridge

Key questions for legal interpretation:

- *What are the ordinary meanings?*
- *What is the context?*
- *What does the negotiating history tell us?*

*Submarine Ridges
are a subset of
Submarine Elevations*



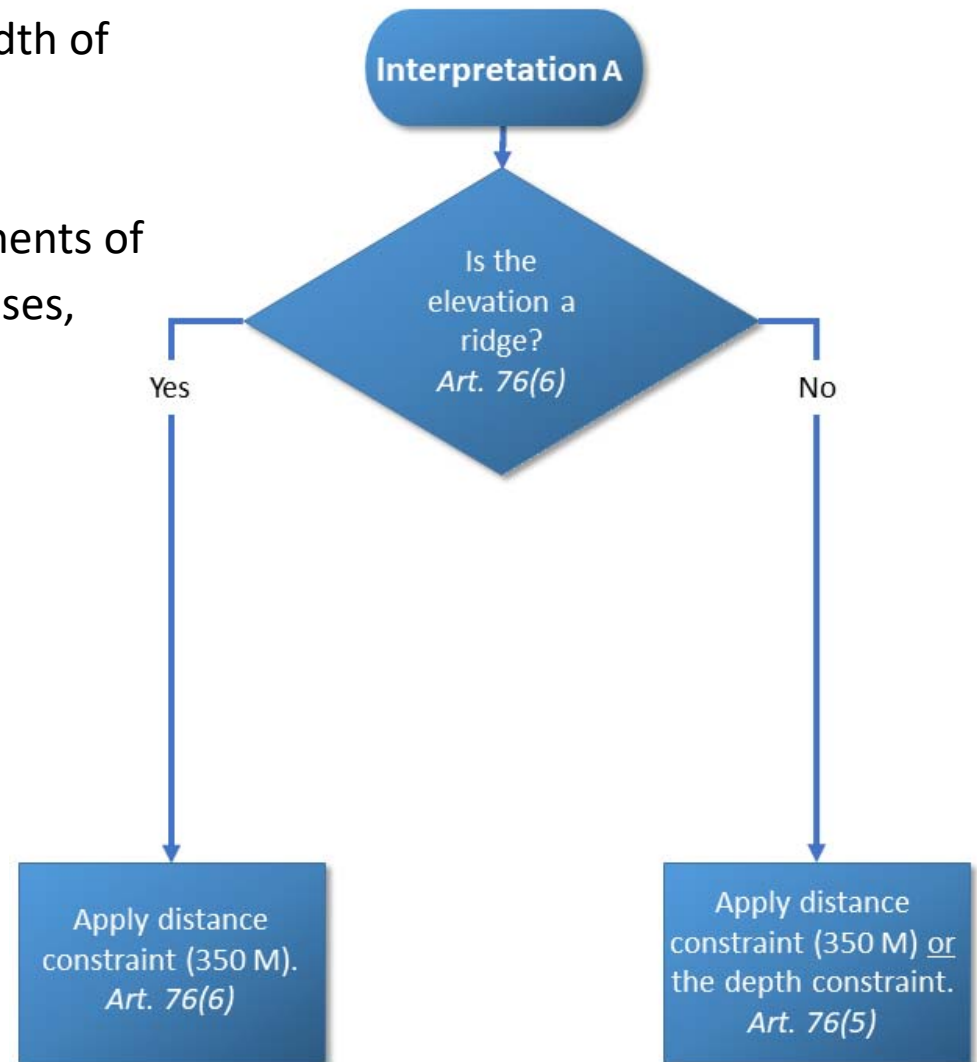
Article 76(6) – Interpretation A

Sentence 1. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Sentence 2. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

Interpretation A

- **Sentence 2 clarifies sentence 1**
- Ensures that Article 76(6) is **only** applied to “submarine ridges”
- The key is to determine whether a feature is a “submarine ridge”, i.e., a long, narrow, steep-sided submarine elevation.



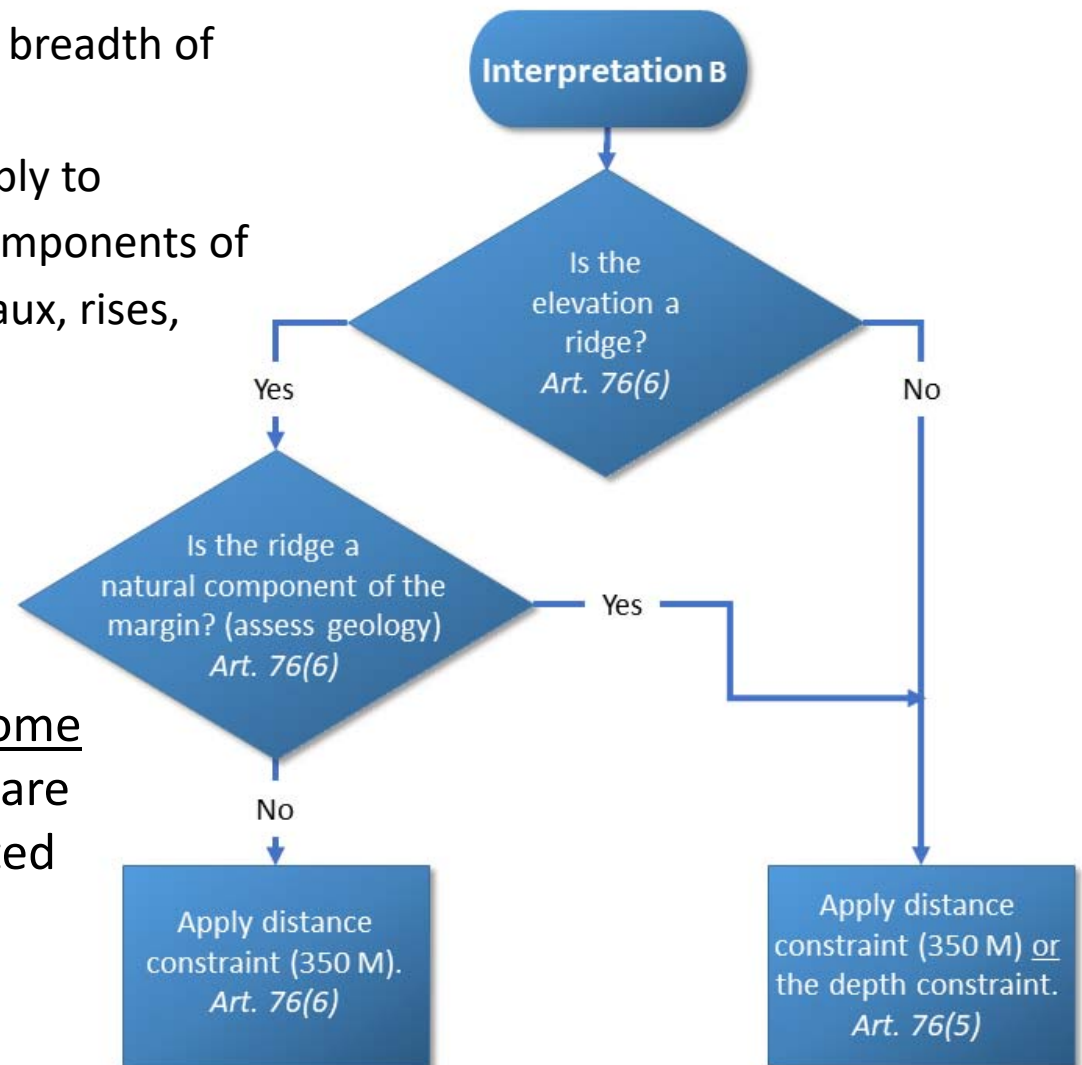
Article 76(6) – Interpretation B

Sentence 1. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Sentence 2. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

Interpretation B

- Sentence 2 is an exception to sentence 1 (exception to an exception).
- Effect of Sentence 1 is reduced; some submarine ridges (i.e., those that are natural components) are not limited to 350 M.
- Here “natural component” has a geologic meaning.



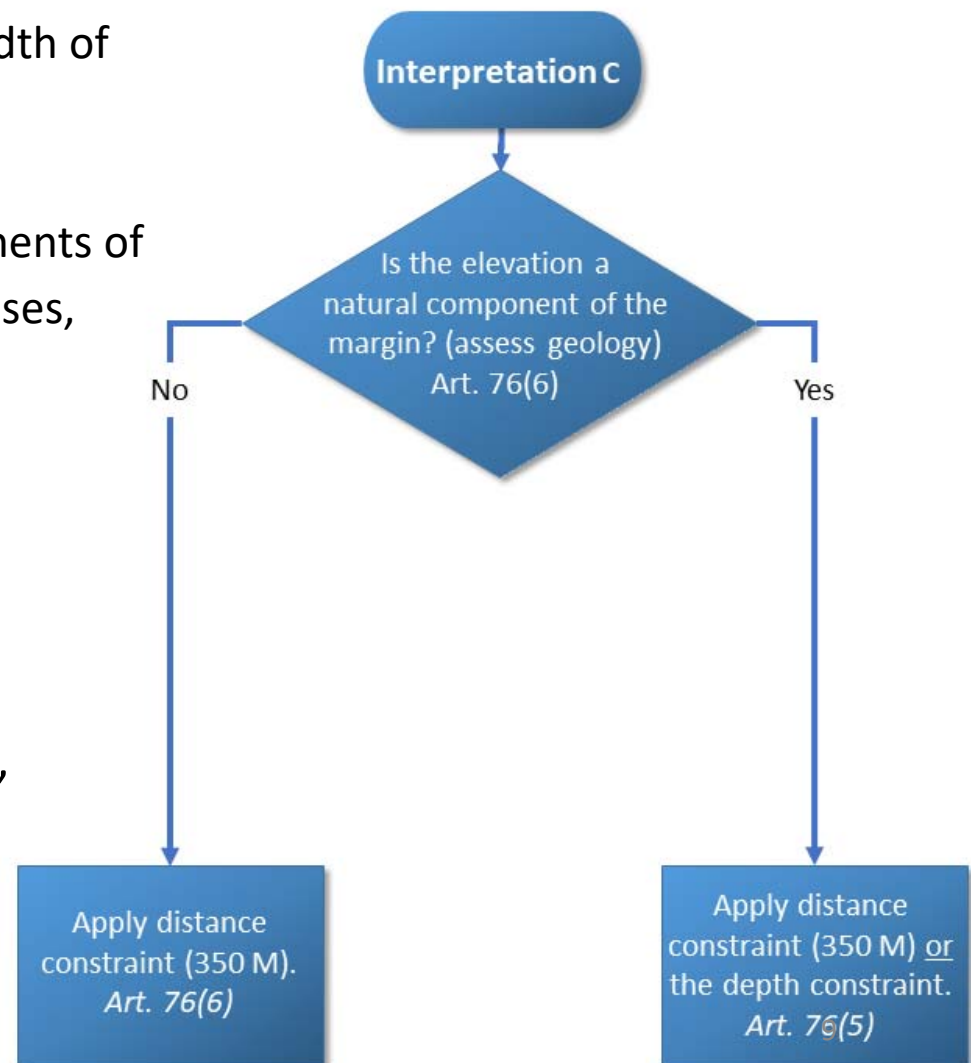
Article 76(6) – Interpretation C

Sentence 1. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Sentence 2. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

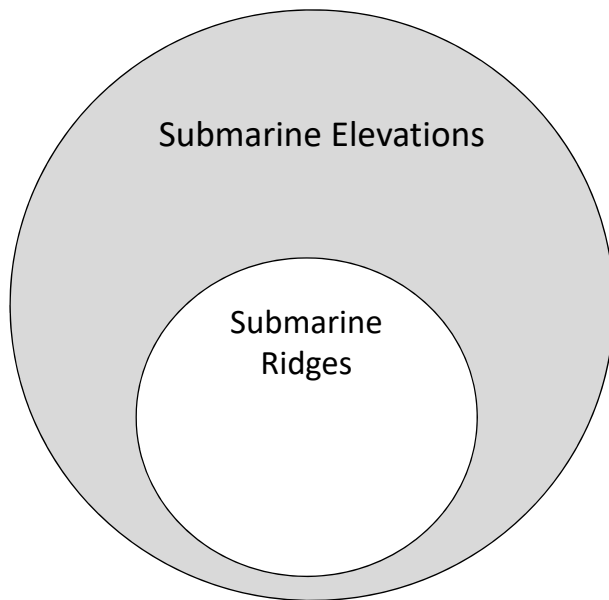
Interpretation C

- Common practice of CLCS (and coastal States)
- **No role for “submarine ridges”**
- Test is whether a feature is a “natural component of the continental margin,” in the geologic sense.

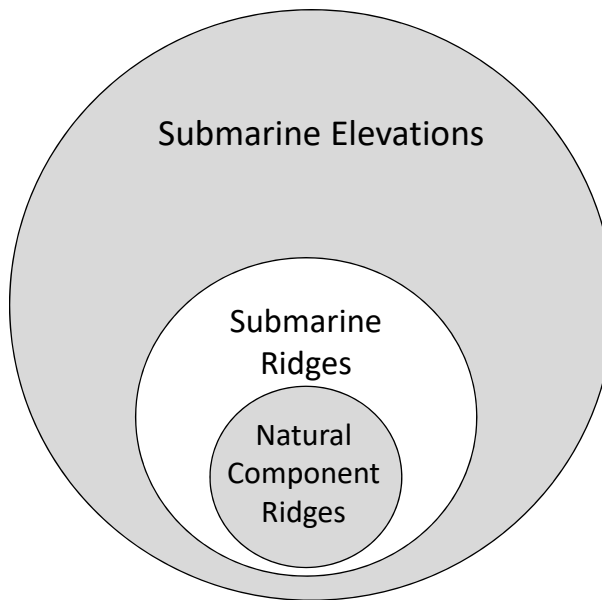


When can the Depth Constraint be used?

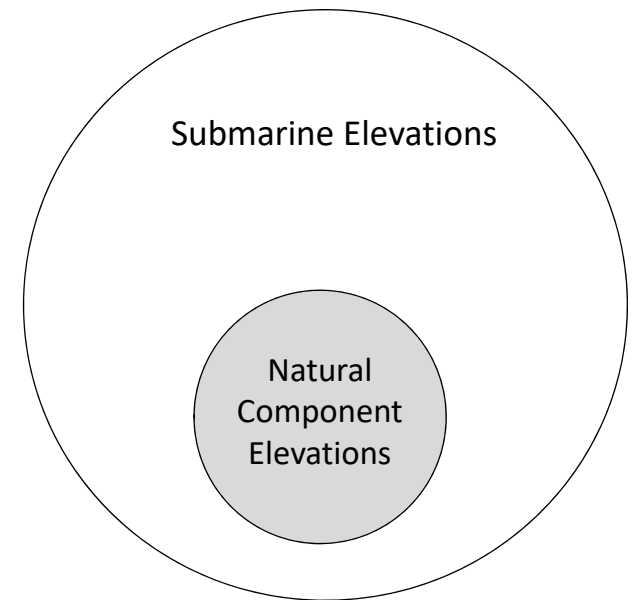
Interpretation A



Interpretation B



Interpretation C



May apply distance or depth constraint



May only apply distance constraint (350 M)

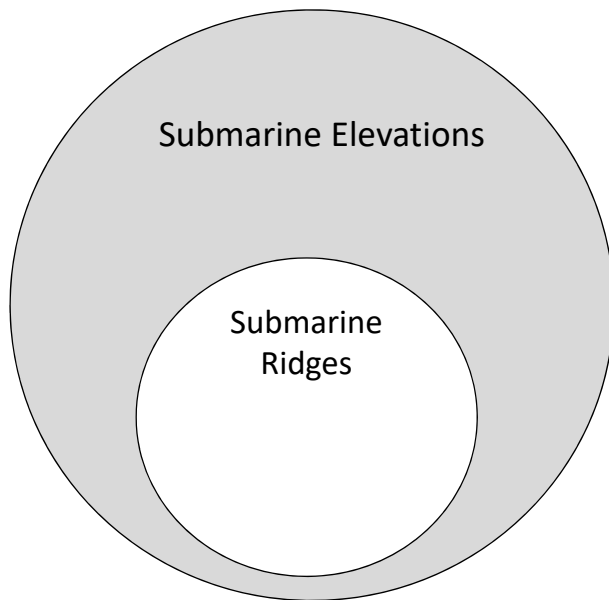
Interpretation A: Any non-submarine ridge

Interpretation B: Any non-submarine ridge OR any natural component

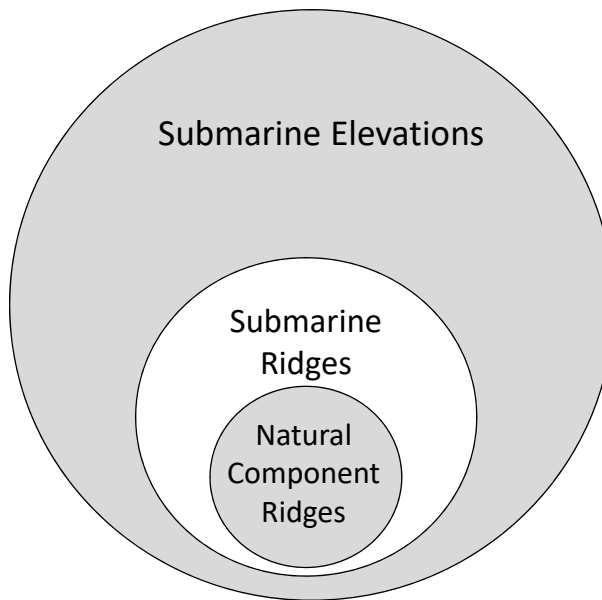
Interpretation C: Any natural component

Conclusions - Legal

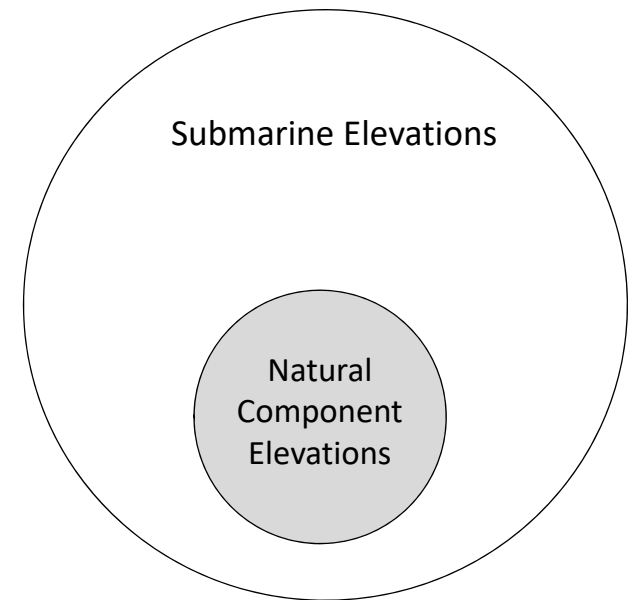
Interpretation A



Interpretation B



Interpretation C



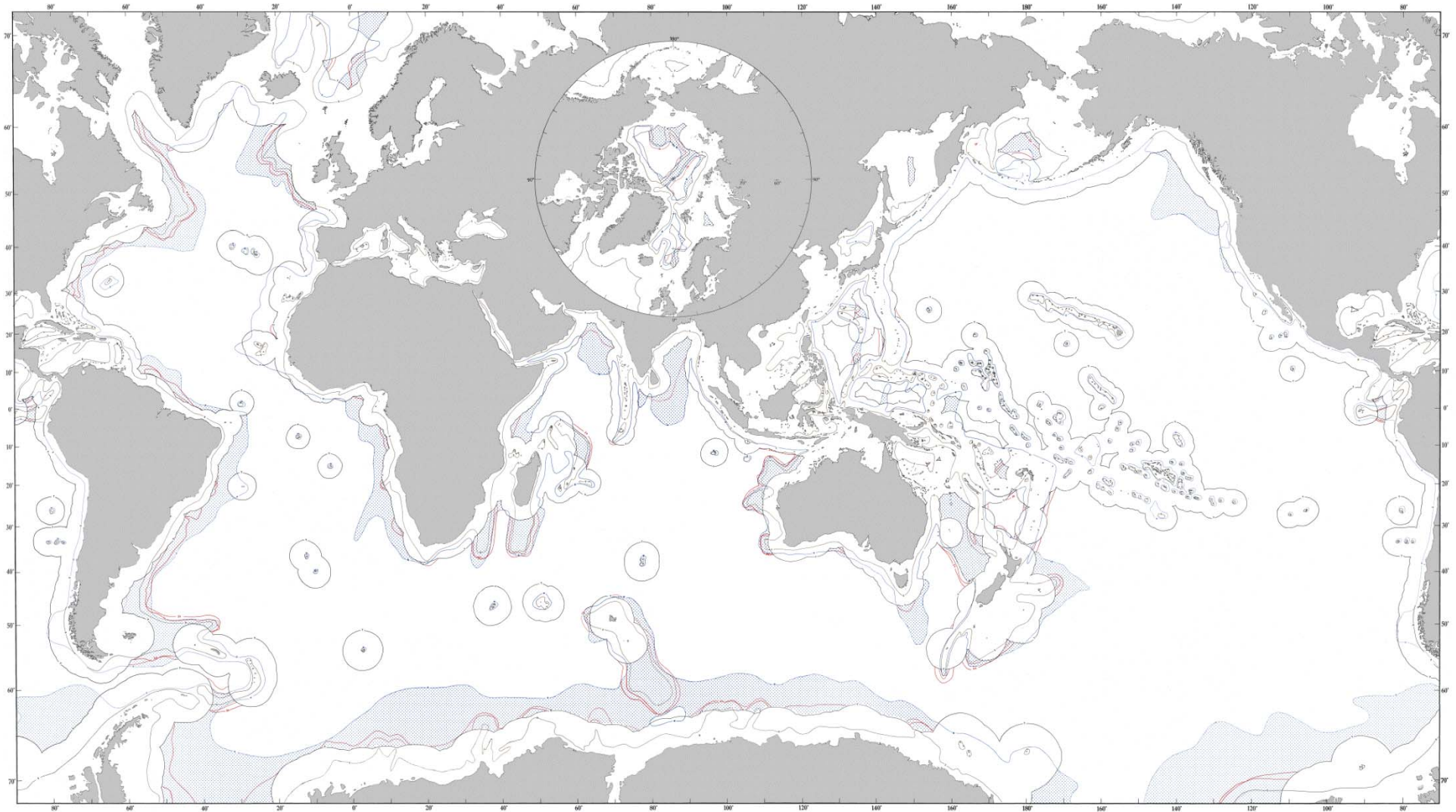
May apply distance or depth constraint



May only apply distance constraint (350 M)

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- Article 76(6) is not clearly drafted and may be subject to different legal interpretations
 - Three interpretations considered: **A, B, C**
 - **A:** Legally acceptable, but unfavorable to coastal States
 - **B:** Legally acceptable, and favorable to coastal States
 - **C:** Legally questionable, and limiting for coastal States

State of Knowledge in 1978



A/CONF.62/C.2/L.98 and Add.1, 18 April 1978

Commission Practice

The overwhelming CLCS practice has been to restrict application of the depth constraint to natural components of the margin (Interpretation C).

The following text is found in almost all Recommendations :

*“ [...] the provision that the outer limits of the continental shelf may not exceed 100 M distance from the 2500 m isobath [...] may be applied for **those parts** of the continental margin that **are classified as natural components of that margin.**”*

Examples:

Australia, New Zealand, Barbados, France (Antilles, Kerguelen, New Caledonia), Iceland, Japan, Seychelles/Mauritius, Norway (Atlantic, Arctic, Bouvet), South Africa, Ghana, Indonesia, etc.

Commission Practice

However, in a few cases the Commission does not invoke Article 76(6) at all in its Recommendations.

The following text is found in a few Recommendations:

*“The fixed points comprising the line of the outer limits of the continental shelf on the seabed either shall not exceed 350 M from the baselines (the distance constraint), or, **shall not exceed 100 M from the 2,500 metre isobath** (the depth constraint).”*

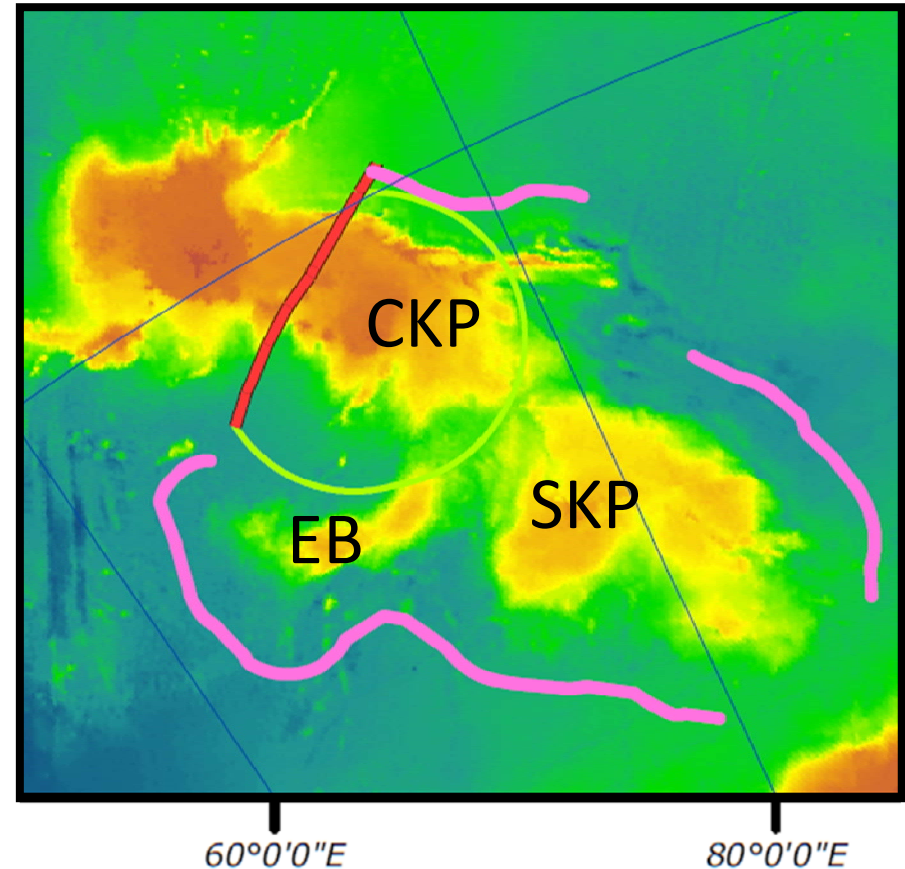
Examples:

Argentina – Depth constraint used, no mention of natural component
Russia (Okhotsk) , Uruguay, Brazil (Rev1) – Depth constraint not used

Example: Australia, Kerguelen Plateau

“Consideration and Classification of Submarine highs”

“Consequently, the CKP, SKP and EB are natural components of the continental margin of the Heard and MacDonald Island being subject to the application of the depth criterion constraint [...]”



Modified after Summary of Recommendations for Australia

Interpretation C, classification as natural components of features that are clearly not submarine ridges, but without negative consequence for coastal State

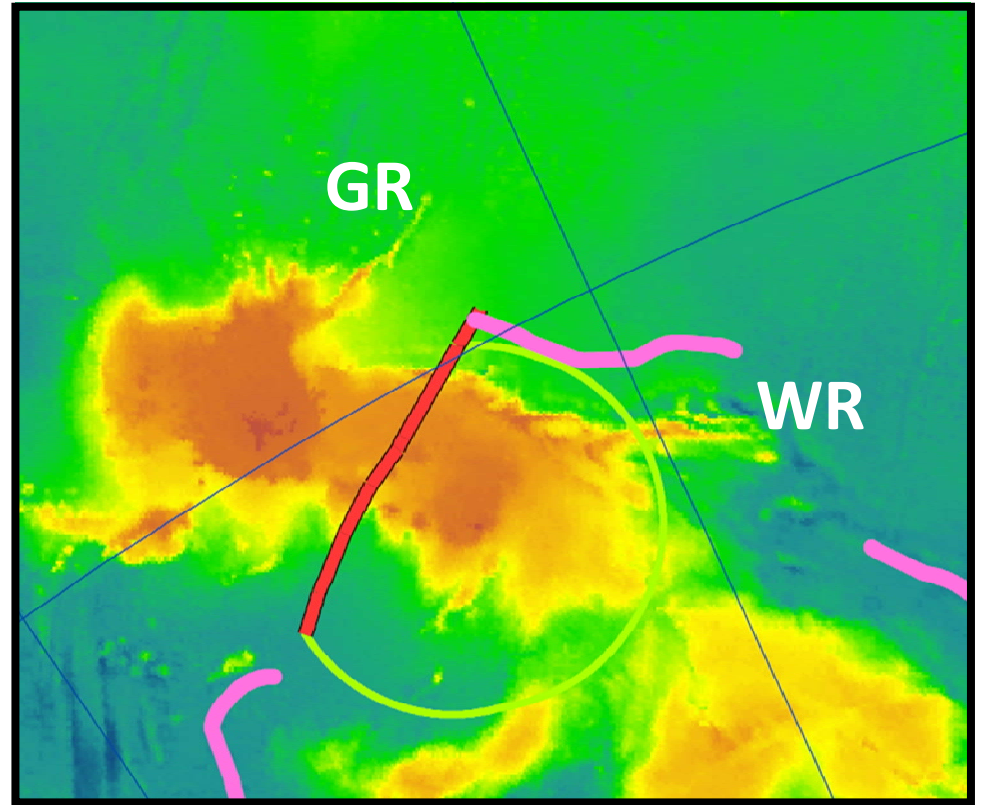
Example: Australia and France

Australia: Williams Ridge (WR)

“[...] on the WR is not justified since the nature of that submarine high with regard to article 76, paragraph 6, is not considered proven”

France: Gallieni Ridge (GR)

“Therefore, the Commission does not consider it proven, based on the data provided, that the Gallieni Ridge should be regarded as a submarine elevation that is a natural component of the continental margin in the sense of article 76, paragraph 6

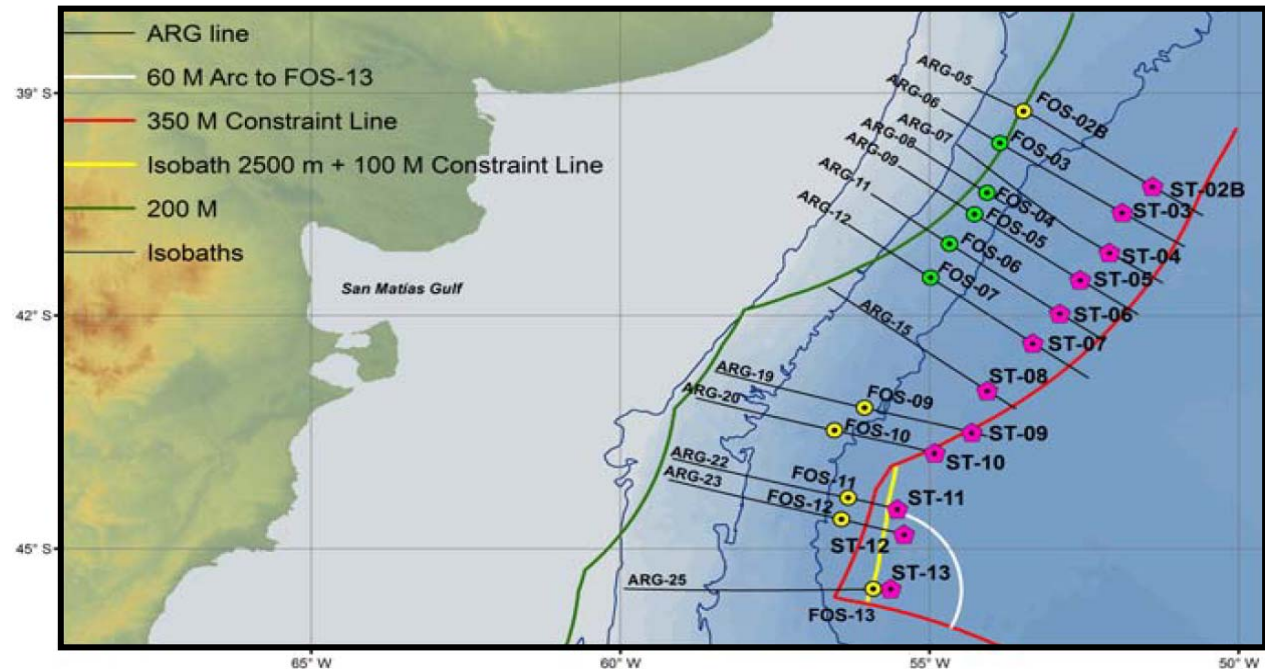


Modified after Summary of Recommendations for Australia

Interpretation C, but since the relevant seafloor highs are submarine ridges, no difference with preferred interpretation B

Example: Argentina

- Depth constraint extends beyond distance constraint
- There is no identifiable seafloor elevation or ridge on this passive volcanic continental margin
- No mention of need for natural component in Summary of Recommendations



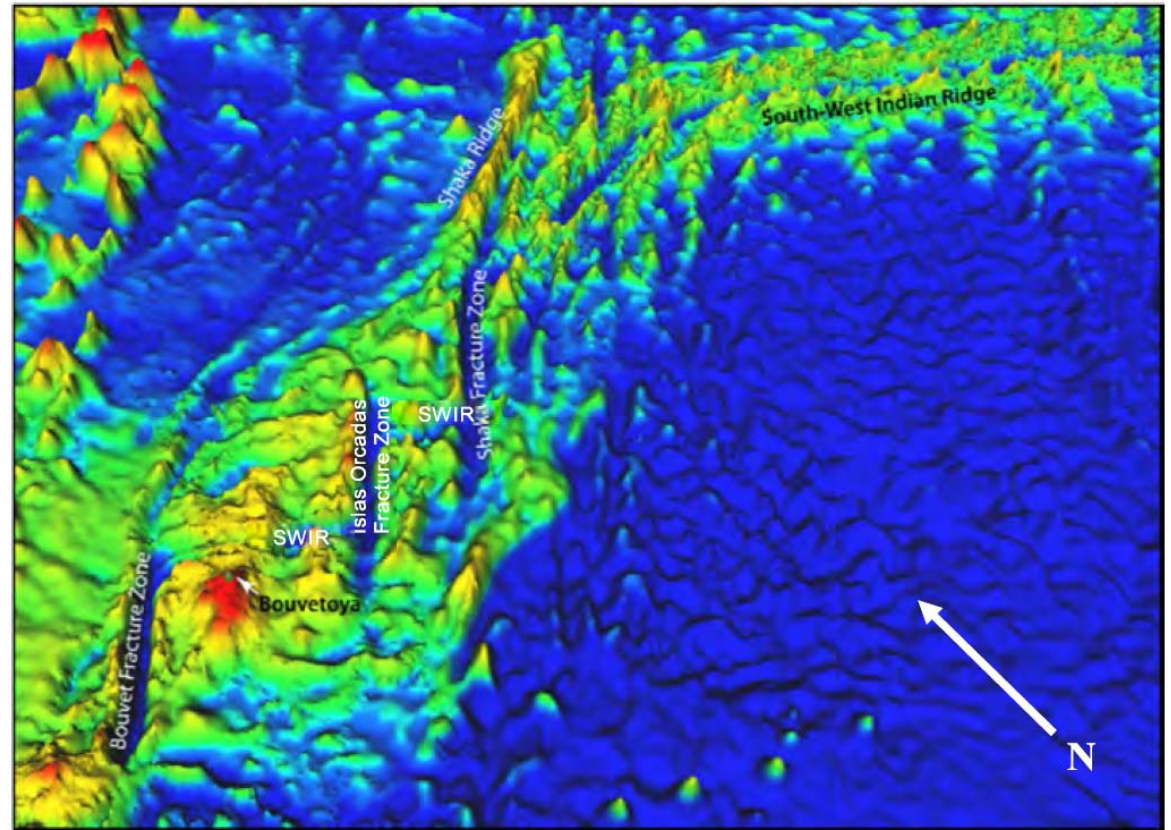
After Summary of Recommendations for Argentina

Interpretation of Article 76(6) NOT required

Example: Norway Bouvetøya

*“In the view of the Commission, the application of the depth constraint involves the examination of whether **the relevant seafloor high**, the Shaka Ridge, may be considered a natural component of the continental margin.”*

“As a result of the geochemical nature of the samples from Shaka Ridge falling within the trace element envelope of those from the Bouvetøya Pedestal, the majority of the Subcommission agreed that the Shaka Ridge is a submarine elevation in the sense of paragraph 6 of article 76 of the Convention.”



Summary of Recommendations for Norway (Bouvetøya)

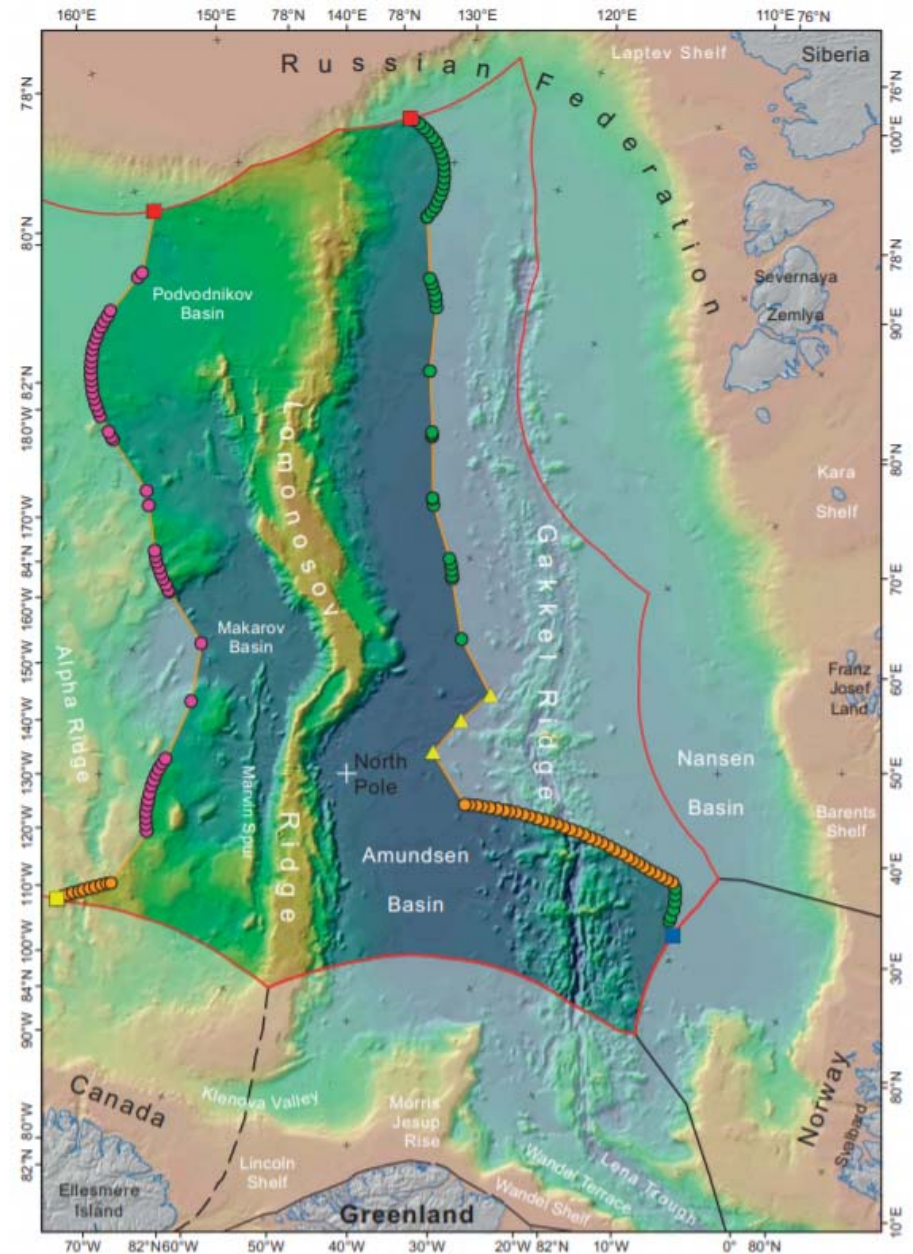
Interpretation C, but since the relevant seafloor high is a submarine ridge, no difference with preferred interpretation B

Executive Summary Denmark/Greenland Arctic

“The Lomonosov Ridge as both morphologically and geologically an integral part of the Northern Continental Margin of Greenland.”

“[...] Gakkel Ridge [...] morphologically continuous with the landmass of Greenland.”

Interpretation B, both features are ridges but in this submission, Lomonosov Ridge is considered a natural component, whereas Gakkel Ridge is not (limited to 350 M)



Conclusion

- Paragraph 6 of Article 76 is complex and presents a significant interpretive challenge for members of the Commission and also coastal States. Identifying legally acceptable interpretations of paragraph 6 requires a careful reading of its provisions and the use of the customary rules of treaty interpretation.
- We conclude that **the preferred and legally correct** interpretation of paragraph 6 of Article 76 is that its restriction regarding constraints is limited to *submarine ridges that are not natural components* (interpretation B).
- If the Commission continues its practice that *any submarine elevation* must be proven to be *a natural component* (Interpretation C), it runs the risk of adopting recommendations that are legally unsound and lack credibility among coastal States.
- If the Commission were to employ Interpretation B instead of C, it would constitute a relatively minor course correction with potentially significant and favorable implications for its future body of work.

Thank you!

