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THE SPANISH SUBMISSION FOR EXTENSION OF THE CANARY ISLANDS CONTINENTAL SHELF: SPAIN AND MOROCCO FACE EACH OTHER IN A NEW RING

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I. INTRODUCTION — II. THE SUBMISSIONS TO THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF IN A NUTSHELL — III. SUBMISSION IN RESPECT OF THE AREA TO THE WEST OF THE CANARY ISLANDS — IV. MOROCCAN PRELIMINARY INFORMATION WITH REGARD TO ITS CONTINENTAL SHELF IN THE ATLANTIC OCEAN — V. A NEW GEOPOLITICAL CONTEXT WITH REGARD TO WESTERN SAHARA — VI. CONCLUSIONS

ABSTRACT: In 2014, Spain made a submission to the Commission on the Limits of the Continental Shelf (CLCS or Commission) for the area to the west of the Canary Islands. The submission anticipated potential overlaps with neighbouring territories, namely, Portugal and Western Sahara. Pending consideration by the CLCS, Madrid shifted its policy towards the dispute in Western Sahara in 2022. The historic stance change may strip away the rules of the game for the extension, subject always to check and balances beyond its technical nature.

KEYWORDS: extension of the continental shelf; UNCLOS; CLCS; Canary Islands; Morocco; Western Sahara.

LA PRESENTACIÓN ESPAÑOLA DE AMPLIACIÓN DE PLATAFORMA CONTINENTAL EN LAS ISLAS CANARIAS: ESPAÑA Y MARRUECOS SE VEN LAS CARAS EN UN NUEVO RING

RESUMEN: En 2014, España realizó una presentación a la Comisión de Límites de la Plataforma

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Continental (CLPC) para la zona al oeste de las Islas Canarias. La propuesta preveía posibles superposiciones con territorios vecinos, a saber, Portugal y el Sáhara Occidental. A la espera de que la CLPC examine la pretensión española, en 2022 Madrid modificó su política sobre la controversia del Sáhara Occidental. El cambio de postura histórica puede dismantelar las reglas del juego para la ampliación, sujeta siempre a controles y contrapesos más allá de su naturaleza técnica.

PALABRAS CLAVE: ampliación de la plataforma continental; CNUDM; CLPC; Islas Canarias; Marruecos; Sáhara Occidental.

LA DEMANDE D'EXTENSION ESPAGNOLE DU PLATEAU CONTINENTAL AUX ILES CANARIES: L'ESPAGNE ET LE MAROC S'AFFRONTENT SUR UN NOUVEAU RING

RÉSUMÉ: En 2014, l'Espagne a soumis une demande d'extension à la Commission des Limites du Plateau Continental (CLPC) pour la zone située à l'ouest des îles Canaries. Cette demande prévoyait des chevauchements potentiels avec les territoires voisins, à savoir, le Portugal et le Sahara occidental. En attendant l'examen de la demande par la CLPC, Madrid a modifié sa politique à l'égard du différend au Sahara Occidental en 2022. Ce changement de position historique pourrait démanteler les règles du jeu pour l'extension, sous réserve toujours de contrôles et d'équilibres au-delà de sa nature technique.

MOT CLES: extension du plateau continental; CNUDM; CLPC; îles Canaries; Maroc; Sahara occidental.

I. INTRODUCTION

On 17 December 2014, Spain made a submission to the Commission on the Limits of the Continental Shelf (CLCS or Commission) in respect of the area to the west of the Canary Islands². The submission is limited to the western area of the islands of La Palma and El Hierro and would entail an extension of 296,500 km²³. The subsequent delimitation would not be free of obstacles. To the north, the overlap with Portugal seems to have a relatively easy solution through the application of the equidistance method⁴. However,

² Executive Summary, Partial Submission of Data and Information on the Limits of the Continental Shelf of Spain to the of the Canary Islands, pursuant to Part VI and Annex II of United Nations Convention on the Law of the Sea.

³ Spanish Oceanographic Institute, Technical-Scientific Report of Oceanographic Cruise DRAGO 0511', Extension of the Continental Shelf of Spain in Respect of the Area to the West of the Canary Islands, 2011.

⁴ Much has been said about the Portuguese-Spanish delimitation and the issue of Savage Islands. See SERENO ROSADO, A., "El nuevo mapa marítimo de Portugal y el caso de las Islas Salvajes", *Revista Española de Estudios Internacionales*, Vol. 28, 2014, pp. 1-29; NEVES COELHO, P., "A delimitação dos espaços marítimos de Portugal após a aprovação da extensão da platafor-

the extension to the south might be challenged by the unsuccessful process of decolonization of Western Sahara⁵ and the absence of interlocutor for the purpose of reaching a delimitation agreement.

As a scientific and technical body, the CLCS is mandated to examine the coastal States' submissions according to geological and geomorphological criteria. In the case of Western Sahara, there is a mix of actors and titles on the field which may confuse the CLCS and paralyse the potential extensions in the area. The CLCS cannot take sides and must abstain where there is a dispute regarding the sovereignty of a certain territory⁶.

It is now ten years since the procedure was launched. However, there has been no progress as the Spanish submission occupies number 77 in the queue and the CLCS is in number 52. This means that the CLCS will first issue over 20 recommendations before turning to the Canary Islands' submission. As the number of revised submissions is not restricted, States placed in the queue earlier than Spain can significantly delay the moment when the CLCS can start considering the Canary Islands' case. Given these challenges, it is unlikely that Spain will receive recommendations within the next five years.

Despite the lack of progress in scientific terms, there has been a major change in the geopolitical panorama: the turnover in the Spanish Government in its position on Western Sahara.

II. THE SUBMISSIONS TO THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF IN A NUTSHELL

According to Article 76 of the United Nations Convention on the Law

ma continental" in GARCÍA PÉREZ, R., NEVES COELHO, P., FERREIRA RODRIGUES, T. (coords.) *A extensão das plataformas continentais: Portugal e Espanha, perspectivas e realidades*, Fronteira do Caos, Lisboa, 2017, pp. 85-105; JIMÉNEZ GARCÍA-CARRIAZO, A., "La plataforma continental de las Islas Canarias ampliación y cuestiones afines", *Revista Española de Derecho Internacional*, Vol. 74, No. 2, 2018, pp. 239-263; FERNÁNDEZ CALVO, C., "La ampliación de la plataforma continental española", *Revista del Instituto Español de Estudios Estratégicos*, Vol. 22, 2023, pp. 283-319.

⁵ Western Sahara is a non-self-governing territory under the supervision of the United Nations Special Committee on Decolonization. See United Nations General Assembly Resolution 1514 (XV), 1541 (XV), 2.072 (XX) and 2625 (XXV), among others.

⁶ Rules of Procedure of the Commission on the Limits of the Continental Shelf, CLCS/40, Annex I.

of the Sea (UNCLOS)⁷, coastal States can extend their continental shelf following a procedure before the CLCS.

The procedure to extend the continental shelf beyond 200 M is undertaken, on the coastal State's initiative, in order to legitimize the drawing of the outer limit of the continental shelf. To this end, the coastal State applies Article 76 of UNCLOS and the Scientific and Technical Guidelines of the CLCS (S&TG)⁸, which contain a complex combination of four rules, two formulae and two constraints, based on concepts of geodesy, geology, geophysics and hydrography to delineate the outer limit⁹.

The drawing of the outer limit of the continental shelf follows a four-stage procedure. Firstly, the coastal State locates the foot of the continental slope that, in the absence of evidence to the contrary, shall be understood as the point of maximum change in the gradient at its base¹⁰. Once the foot of the slope is located, the formulae lines are drawn. The outer envelope determines the outer edge of the continental shelf.

The formulae are known by the names of the geologists who proposed them: the "Gardiner formula"¹¹ results in a line formed by fixed points located where the thickness of the sediments is at least 1% of the shortest distance from such point to the foot of the slope; and the "Hedberg formula"¹² generates a line drawn in relation to fixed points not more than 60 M from the foot of the continental slope¹³.

Subsequently, the proposal is subject to the test of appurtenance, by means of which the coastal State must demonstrate that its continental shelf extends beyond 200 M from the baselines from which the breadth of the

⁷ United Nations Convention on the Law of the Sea (adopted on 10 December 1982, entered into force on 16 November 1994) 1833 UNTS 397.

⁸ CLCS, Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf adopted by the Commission on 13 May 1999 at its fifth session, CLCS/11.

⁹ CLCS, S&TG para. 2(3)(1).

¹⁰ UNCLOS, Article 76(4)(b).

¹¹ GARDINER, P., "Reasons and Methods for Fixing the Outer Limit of the Legal Continental Shelf beyond 200 Nautical Miles", *Revue Iranienne des Relations Internationales*, 1978, pp. 11-12.

¹² HEDBERG, H., "Ocean Floor Boundaries: the Base of Slope Boundary Zone Formula", *Science*, Vol. 204, 1979, p. 135.

¹³ UNCLOS, Article 76(4)(a)(i) and (ii).

territorial sea is measured¹⁴. Afterwards, the lines of constraint apply, which prevent the continental shelf from exceeding 350 M from baselines or 100 M from the 2,500-metre isobath¹⁵. Finally, the outer limits of the extended continental shelf are drawn, taking into account both the result of the formulae lines and the lines of constraints¹⁶.

The results of the analysis of the CLCS are embodied in recommendations that serve as a basis for the subsequent drawing of the outer limit of the continental shelf by the coastal State¹⁷. The limits thus drawn become final and binding once the Secretary-General of the United Nations has given them due publicity¹⁸.

Prior to launching the procedure, the State concerned shall try to optimize its claim, designing a strategy and anticipating possible difficulties. To do so, in addition to collecting technical and scientific supportive data, it must take into account the cost, deadline, availability of resources and, most especially, the neighbouring States' positions¹⁹.

Regarding the period of submission, Article 4 of Annex II of UNCLOS states that the coastal State must submit its limits to the CLCS within ten years of the entry into force of the Convention for that State. However, at the 11th Meeting of States Parties, it was noted that it was only after the adoption by the Commission of its S&TG on 13 May 1999 that States had before them the basic documents concerning submissions. On those grounds, it was decided that for those parties that had ratified the Convention before the date when the S&TG were released, the ten-year period would commence as of 13 May 1999²⁰.

¹⁴ CLCS S&TG, para. 2(2).

¹⁵ UNCLOS, Article 76(5).

¹⁶ CLCS, Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf, CLCS/11, para. 2(3).

¹⁷ UNCLOS, Article 76(8).

¹⁸ UNCLOS, Article 76(9).

¹⁹ JIMÉNEZ GARCÍA-CARRIAZO, A., *La ampliación de la plataforma continental más allá de las doscientas millas marinas – Especial referencia a España*, Dykinson, Madrid, 2018, p. 120.

²⁰ Decision regarding the date of commencement of the ten-year period for making submissions to the Commission on the Limits of the Continental Shelf set out in article 4 of Annex II to the United Nations Convention on the Law of the Sea, SPLOS/72, 29 May 2001. See SUAREZ, S., *The Outer Limits of the Continental Shelf: Legal Aspects of their Establishment*,

Considering that some coastal States, in particular developing countries, continued to face challenges in collecting and submitting information, in the 18th Meeting of States Parties it was agreed that the ten-year period may be satisfied by submitting preliminary information indicative of the outer limits of the continental shelf beyond 200 M²¹.

With respect to other States' positions, one cannot ignore that the extension of the continental shelf may be a possible source of friction in the relationship between countries, sometimes adding fuel to previous disputes and tensions that the CLCS cannot prejudge.

Disputes are a very sensitive issue in any field, and the establishment of the outer limits of the continental shelf is no exception²². UNCLOS provisions on this topic are very succinct. Article 76(10) sets forth those actions of the CLCS "are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts". In its Rules of Procedure, the Commission went a little further and specified that it would not deal with cases of unresolved land or maritime disputes.

In this regard, in case of dispute, the Commission shall be informed of such disputes by the submitting coastal States and be assured that the submission will not prejudice matters relating to the delimitation of boundaries between States. Alternatively, a submission may be made by a coastal State only for a portion of its continental shelf in order not to prejudice questions relating to the delimitation of boundaries between States in any other portion for which a submission may be made later²³.

In principle, in cases where a land or maritime dispute exists, the CLCS will not consider and qualify the submission. However, the prior consent given by all States that are involved in the dispute may allow the CLCS to

Springer, New York, 2008, p. 182.

²¹ Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfil the requirements of article 4 of annex II to the United Nations Convention on the Law of the Sea, as well as the decision contained in SPLOS/72, paragraph (a), 20 June 2008, SPLOS/183.

²² ARMAS PFIRTER, F., "Submissions on the Outer Limit of the Continental Shelf" in VIDAS, D. (ed.), *Law, Technology and Science for Oceans in Globalisation*, Brill - Nijhoff, Boston, Leiden, 2010, p. 479.

²³ Rules of Procedure of the Commission on the Limits of the Continental Shelf, CLCS/40, Rule 46 and Annex I, Article 1(2) and (3).

consider the submission²⁴.

III. SUBMISSION IN RESPECT OF THE AREA TO THE WEST OF THE CANARY ISLANDS

On 17 December 2014, Spain registered a submission in respect of the area to the west of the Canary Islands, which was presented orally before the plenary of the CLPC on 26 August 2015²⁵. Previously, on 11 May 2009, the Spanish Delegation had submitted preliminary information indicative of the outer limits of the continental shelf. With this preliminary submission, Spain complied with the decision of the SPLOS/183, regarding the suspension of the ten-year time limit for submission²⁶ and committed to making the final submission within a period of five years²⁷.

The submission was prepared with the data obtained in the six campaigns carried out between 2010 and 2014 on board the oceanographic vessels *Hespérides*, *Sarmiento de Gamboa* and *Miguel Oliver* and the performance of 68,338 kilometers of bathymetry with echo sounders. The special oceanic relief adjacent to the Canary archipelago justified this deployment of means that sought to prove the geological and geomorphological continuity. The objective was to demonstrate that the multiple seamounts of the seabed adjacent to the

²⁴ Ibidem, Article 1(5).

²⁵ Doc. UN CLCS/90, Progress of work in the Commission on the Limits of the Continental Shelf, 1 October 2015. This is the third submission following the joint submission with France, Ireland and the United Kingdom of Great Britain and Northern Ireland in the area of the Celtic Sea and the Bay of Biscay (FISU) in 2006 and the partial submission in respect of the area of Galicia in 2009.

²⁶ SPLOS/183.

²⁷ Preliminary Information and Description of the Status of Preparation, Pursuant to Decision SPLOS/183, of the Partial Submission Relating to the Outer Limits of the Continental Shelf of Spain in Respect of the Area to the West of the Canary Islands, p. 47: “Spain intends to register the partial Submission of the Spanish Continental Shelf beyond 200 Min the area to the west of the Canary Islands, in accordance with Article 76 and Annex II of the United Nations Convention on the Law the Sea, within a period of 5 years. Within this period, the multibeam bathymetric survey contemplated in the ‘Cartographic Plan of the Spanish EEZ’ for the location of the points at the foot of the slope is intended to be completed, and a geophysics campaign will be developed for the location of the points of 1% of sediments”.

western islands are a natural extension of the Canary Islands, and geologically they do not belong to the African continent.

Spain delineated the outer limits of its continental shelf by straight lines not exceeding 60 M that connect 448 fixed points defined by latitude and longitude coordinates, pursuant to Article 76(7) of UNCLOS. The first fixed point (FP-1) is located at the 200 M equidistance point between Spain and Portugal calculated from Roque de Santo Domingo (island of La Palma) and Ponta do Pargo (island of Madeira). The fixed points FP-2 to FP-448 are the result of applying the distance formula²⁸ or the 1% sediment thickness formula²⁹ as provided for in Article 76(4) of UNCLOS³⁰.

The 350 M constraint line is applied to FP-132 to FP-208, FP-209 to FP-222, FP-223 to FP-261, FP-264 to FP-386³¹. Since these seamounts of magmatic origin (Bimbache, The Paps, Echo, Hijas, Drago, Tropic, Ico, Malpaso, Pelican, and Tortuga)³² are considered submarine ridges, the only accepted criterion for determining a fixed point is that of distance³³. To the West of the El Hierro Island, the constraint line was applied from the baselines determined by the Royal Decree 2510/1977 of 5 August. To the West of the Island of La Palma, the baseline applied was the low-tide line as no straight baseline had been declared³⁴.

²⁸ The fixed points FP-2 to FP-98, FP-99 to FP-123, FP-124 to FP-131 and FP-388 to FP-448 are the result of applying the Hedberg formula from the foot of the continental slope, in accordance with Article 76(4)(a) (ii) of the Convention.

²⁹ The fixed points FP-262, FP-263 and FP-387 are the result of applying the Gardiner formula to the foot of the continental slope, in accordance with Article 76(4)(a) (i) of the Convention.

³⁰ Executive Summary, Partial Submission of Data and Information on the Limits of the Continental Shelf of Spain to the West of the Canary Islands, Pursuant to Part VI and Annex II of United Nations Convention on the Law of the Sea, pp. 13-14.

³¹ *Ibidem*, p. 14.

³² These seamounts are part of a long chain comprising more than 100 underwater features and extending some 1,350 kilometres. Known as the “Abuelas” (grandmothers), these seamounts are under Spanish jurisdiction, except for the seamount Tropic, which lies in the area of extension beyond 200 M.

³³ UNCLOS, Article 76(6).

³⁴ Executive Summary, Partial Submission of Data and Information on the Limits of the Continental Shelf of Spain to the West of the Canary Islands, Pursuant to Part VI and Annex II of United Nations Convention on the Law of the Sea, p. 14. See SOMOZA, L. ET. AL.,

In this regard, the Law No. 44/2010 on the waters of the Canary Islands³⁵ establishes a confusing perimeter of the archipelago's waters, which provoked protest from Morocco³⁶. Madrid responded to this objection by recalling that the baselines used in the submission are those defined by Royal Decree 2510/1977, thus complying with the rules of international law in force³⁷.

Why was this Spanish law, which is contrary to international law, enacted? One might think that it was passed to be used in vain in its disputes with Morocco and Portugal.

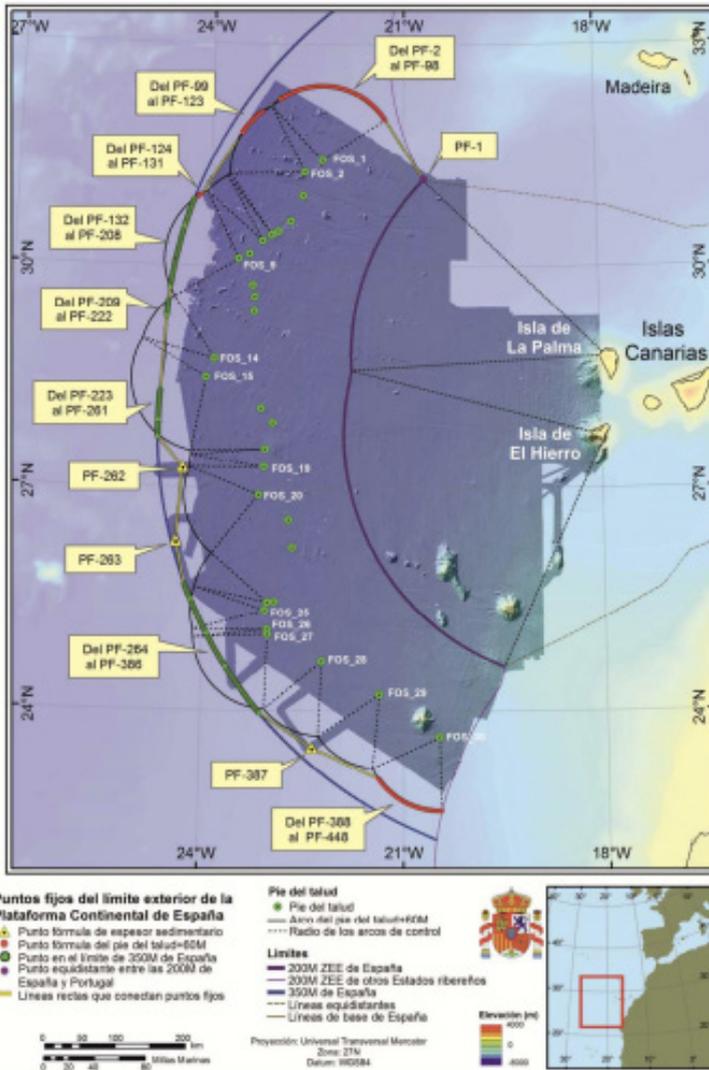
³⁴“Mapping giant mass transport deposits (MTDs) for delineating the extended Continental Shelf of Spain to the West of Canary Islands according UNCLOS Art. 76”, *Geophysical Research Abstracts*, Vol. 19, 2017.

³⁵ Law No. 44/2010 on the waters of the Canary Islands (BOE no. 318, 31 December 2010).

³⁶ Permanent Mission of the Kingdom of Morocco to the United Nations, Note Verbale NV/ATL/N°/114/2015, 10 April 2015.

³⁷ Permanent Mission of the Kingdom of Spain to the United Nations, Note Verbale No. 076 MP/bcm, 22 April 2015.

Figure 1. Overview of the outer limits of the continental shelf of Spain beyond 200 M in the area to the West of the Canary Islands



Source: Executive Summary, Partial Submission of Data and Information on the Limits of the Continental Shelf of Spain to the West of the Canary Islands, pursuant to Part VI and Annex II of United Nations Convention on the Law of the Sea.

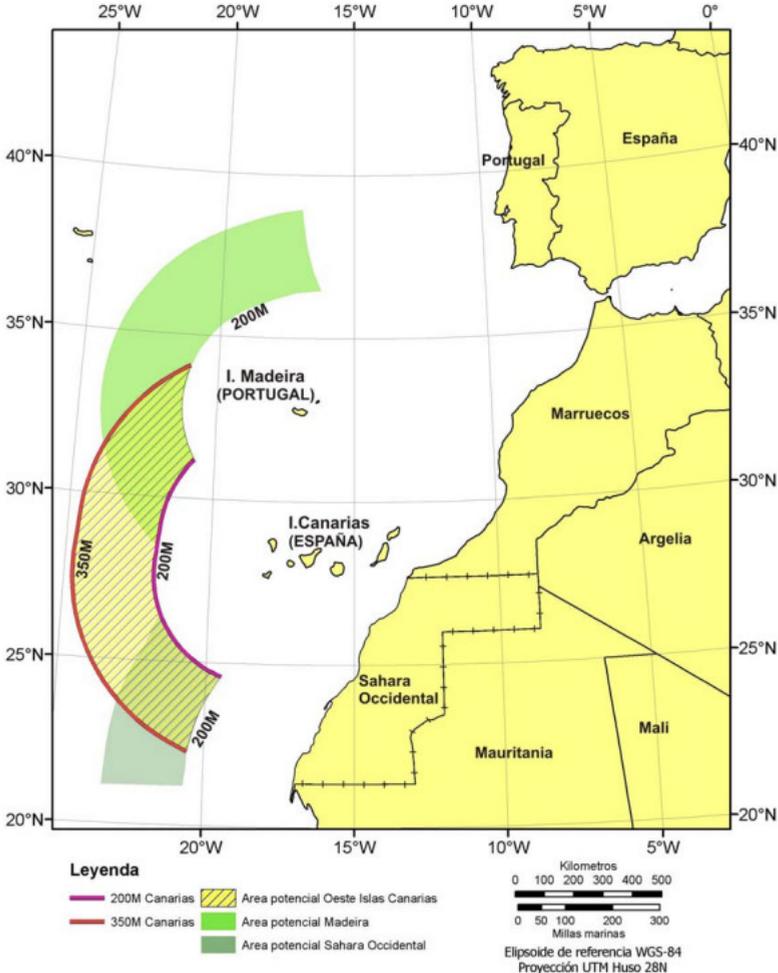
Pursuant to Annex I, paragraph 5(a) of the Rules of Procedure of the Commission, Spain informed the CLCS that the area of the continental shelf to which the partial submission refers is not the subject of any dispute with any other coastal State, notwithstanding the fact that some of its parts were the subject of overlapping claims. Likewise, Spain reported that the partial submission does not prejudice the determination of the outer limits of the continental shelf resulting from Portugal's submission, nor the rights of third parties which may be claimed in the future³⁸.

By the expression "rights of third parties" Spain was referring to Western Sahara, which was not expressly mentioned given the delicate legal circumstances. However, explicit reference was made to the Sahrawi continental margin in the preliminary information transmitted in 2009: "In the southern polygon, the possible extension of the Spanish Continental Shelf could overlap with an eventual extension beyond 200 M of the continental shelf of the Sahrawi continental margin"³⁹.

³⁸ Ibidem.

³⁹ Preliminary Information and Description of the Status of Preparation, Pursuant to Decision SPLOS/183, of the Partial Submission Relating to the Outer Limits of the Continental Shelf of Spain in Respect of the Area to the West of the Canary Islands, p. 26. Morocco protested the preliminary submission and announced it would convey its position on that matter in due course. Permanent Mission of the Kingdom of Morocco to the United Nations, Note Verbale No/NV/187/09, 16 May 2009.

Figure 2. Overlaps between areas of potential extension of the continental shelf beyond 200 M of third parties



Source: Preliminary Information and Description of the Status of Preparation, pursuant to decision SPLOS/183, of the Partial Submission relating to the outer limits of the continental shelf of Spain in respect of the area to the west of the Canary Islands.

The States affected by the extension of the Canary Islands' continental

shelf have made statements following the Spanish submission. Portugal is favorable as long as it does not prejudice the outer limits of its continental shelf⁴⁰:

[T]he Portuguese Government does not object to the Commission considering the submission made by the Kingdom of Spain concerning the outer limits of the continental shelf to the West of the Canary Islands and making recommendations on that basis, to the extent that such recommendations are without prejudice to the establishment of the outer limits of the continental shelf pursuant to the submission made by Portugal on 11 May 2009, or to the delimitation of the continental shelf between Portugal and Spain.

Meanwhile, Morocco, although it does not object the consideration by the CLCS, has raised some reservations to the Spanish submission⁴¹. The Alawite Kingdom recalls that the delimitation of the maritime zones between Spain and Morocco has not yet been carried out and reaffirms its commitment to the principle of equity in the delimitation of both the continental shelf and the exclusive economic zone.

In a subsequent Note Verbale, Rabat refers to reservations with regard to those areas of the continental shelf on which no maritime boundary delimitation agreement has as yet been drawn up between the Kingdom of Morocco and its neighbouring States with adjacent or opposite coasts. It requests the Secretary-General to invite the CLCS to take this situation duly into account in considering the submissions for extension of the continental shelves of Spain, Portugal, Mauritania and Cabo Verde with a view to preserving all the rights of Morocco over its extended continental shelf⁴².

During the oral presentation on 26 August 2015, Spain affirmed its willingness to negotiate an equitable solution, based on international law, with both Portugal and the entity in sovereign control of the coast and territory

⁴⁰ Permanent Mission of Portugal to the United Nations, Note Verbale ONU/2015/59, 1 April 2015.

⁴¹ Permanent Mission of the Kingdom of Morocco to the United Nations, Note Verbale NV/ATL/N°/114/2015, 10 April 2015.

⁴² Permanent Mission of the Kingdom of Morocco to the United Nations, Note Verbale NV/ATL/No/325/2015, 29 July 2015, Briefing paper on the Atlantic continental shelf of the Kingdom of Morocco beyond 200 nautical miles (200 M).

of Western Sahara once the decolonization process was deemed to have been concluded⁴³.

IV. MOROCCAN PRELIMINARY INFORMATION WITH REGARD TO ITS CONTINENTAL SHELF IN THE ATLANTIC OCEAN

On 3 August 2015, Morocco submitted preliminary information regarding the outer limits of its continental shelf and announced a full submission by 31 May 2017 (the 10th anniversary of Morocco's ratification of UNCLOS). On 20 June 2017, Morocco requested the Secretary-General to consider the preliminary information report already submitted as the requirement to comply with the decision SPLOS/183 and reserved its right to subsequently submit the full submission⁴⁴.

It seems that Lindsay Parson, a British marine geologist who chaired the Legal and Technical Commission of the International Seabed Authority, had provided advice to Morocco in the preparation of the submission⁴⁵. However, as of 26 July 2024, the submission has not been completed.

In its preliminary analysis, Morocco has identified two areas of continental margin where the continental shelf extends beyond 200 M: i) In the northern section, the Horseshoe seamount is connected via the Coral Patch ridge and the Gulf of Cadiz accretionary prism to form a continuous natural submerged prolongation, extending due west from the Moroccan continental mass. From there, Morocco established its continental shelf beyond 200 M, between the 200 M constraint lines of continental Portugal and the Madeira Island group; ii) To the south, the continental margin extends to a breadth of

⁴³ Doc. UN CLCS/90, Progress of work in the Commission on the Limits of the Continental Shelf, 1 October 2015, p. 16.

⁴⁴ Permanent Mission of the Kingdom of Morocco to the United Nations, Note Verbale NV/ATL/N 385/2017, 20 June 2017.

⁴⁵ GARCÍA PÉREZ, R., "Canarias y la previsible ampliación de su plataforma continental: el difícil equilibrio entre España, Marruecos y Sáhara Occidental", *Revista de Estudios Internacionales Mediterráneos*, Vol. 26, 2019, p. 128; "Le royaume aurait choisi Lindsay Parson pour le conseiller sur le dossier de la délimitation des frontières maritimes du Sahara", *H24info*, 20 July 2017, www.h24info.ma/actu/voici-lexpert-engage-maroc-delimiter-eaux-territoriales-sahara/, accessed 26 July 2024.

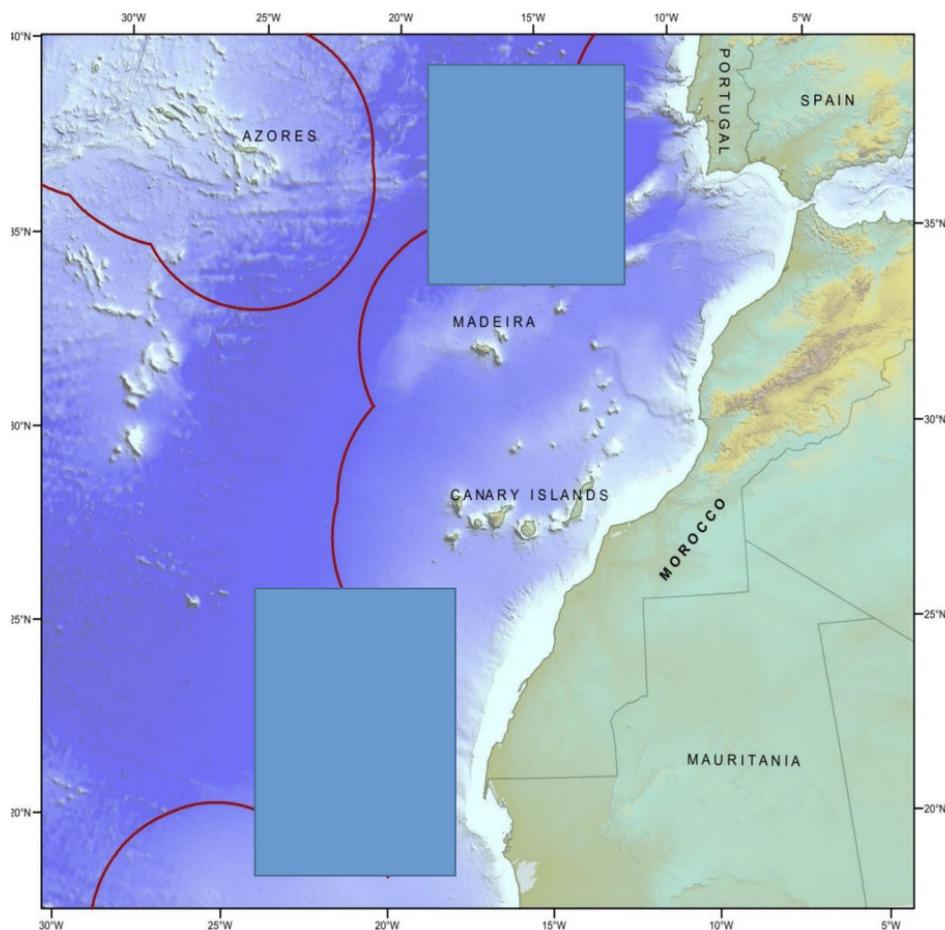
more than 300 M between the 200 M constraint lines at the Canary Islands and Cabo Verde, respectively.

A map showing the Moroccan claims is not attached. However, the description suggests that it demands the extension of the Western Sahara's continental shelf. This idea is confirmed by information circulated by the National Office of Hydrocarbons and Mines, a public entity with industrial and commercial character created in 2003 which is entrusted with the technical preparation of the file and contributes to the preparation of the legal argument⁴⁶. The Office highlights that the extension of the continental shelf implies an extension of the jurisdiction of the State and strengthens its role and its position in regional and international relations⁴⁷.

⁴⁶ NATIONAL OFFICE OF HYDROCARBONS AND MINES, "Aperçu sur le rôle et les missions de l'ONHYM et état des lieux de l'exploration pétrolière en offshore au Maroc", p. 17.

⁴⁷ Ibidem.

Figure 3. Project of the extension of the Moroccan continental shelf in the Atlantic



Source: National Office of Hydrocarbons and Mines, “Aperçu sur le rôle et les missions de l’ONHYM et état des lieux de l’exploration pétrolière en offshore au Maroc”.

In 1981, Morocco proclaimed its EEZ⁴⁸. It is striking, however, that the

⁴⁸ Act No. 1-81 of 18 December 1980, promulgated by Dahir No. 1-81-179 of 8 April 1981, establishing a 200-nautical-mile Exclusive Economic Zone off the Moroccan costas.

Decree no 1-20-03⁴⁹ modified the law proclaiming the EEZ and with a confusing wording⁵⁰ refers to the outer limits of the continental shelf:

Les points fixes qui définissent la ligne marquant, sur les fonds marins, *la limite extérieure du plateau continental*, tracée conformément aux dispositions de la Convention des Nations Unies sur le droit de la mer précitée, *sont situés à une distance n'excédant pas 350 milles marins* des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale (emphasis added)⁵¹.

The Parliament of Morocco passed two laws concerning the delimitation of maritime zones. The law No 37.17 alters the previous legislation on the territorial waters, updating existing baselines with more recently surveyed data⁵²; the law No 38.17 alters previous legislation concerning the exclusive economic zone and the continental shelf⁵³. Both of them include the waters of Western Sahara.

These pieces of legislation, which advance a result which has not been validated by the CLCS yet, have no effect in terms of international law because it is not backed by the Division for ocean affairs and the law of the sea (DOALOS) and has not been circulated in the Law of the Sea Bulletin⁵⁴, but it is a message about Morocco's intention to reinforce control over waters it claims as its own.

⁴⁹ Dahir No. 1-20-03 du 11 rejev 1441 (6 Mars 2020) portant promulgation de la loi n° 38-17 modifiant et complétant la loi No. 1-81 instituant une zone économique exclusive de 200 milles marins au large des côtes marocaines (Bulletin officiel n. 6.870, 2 April 2020).

⁵⁰ AZNAR GÓMEZ, M.J., "Consecuencias territoriales marítimas de la (presunta) cesión en el Sáhara", *Revista Española de Derecho Internacional*, Vol. 74, No. 2, 2022, p. 474.

⁵¹ Article 12 Act No. 1-81 according to the wording of Dahir No. 1-20-03.

⁵² Loi No. 37.17 modifiant et complétant le dahir portant loi n° 1.73.211 du 2 mars 1973 fixant la limite des eaux territoriales.

⁵³ Loi No. 38.17 modifiant et complétant la loi n° 1.81 instituant une zone économique exclusive de 200 miles marins.

⁵⁴ DOALOS' website provides comprehensive information on the deposits with the Secretary-General of charts or the lists of geographical coordinates of points, specifying the geodetic datum, in relation to straight baselines and archipelagic baselines as well as the outer limits of the territorial sea, the exclusive economic zone and the continental shelf. DOALOS, "Maritime Space: Maritime Zones and Maritime Delimitation: Morocco", <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/MAR.htm>, accessed 26 July 2024.

According to a Moroccan author, Loukili (to whom we will refer later in this paper), the new Moroccan legislation “reinforces the normative arsenal relating to the Kingdom’s control over its maritime spaces”⁵⁵. Dahir no. 1-20-03 provides for express provisions dedicated to the extended continental shelf, “in order to give it a clear definition and its own legal status, in accordance with the Montego Bay Convention”.

V. A NEW GEOPOLITICAL CONTEXT WITH REGARD TO WESTERN SAHARA

In 1975, Spain transferred the administration of the former province of Spanish Sahara to Morocco and Mauritania. The events took a very different turn for each actor involved in the process: Spanish troops left the territory on 26 February 1976; in the meantime, the Sahrawi rebel group Polisario Front proclaimed the Sahrawi Arab Democratic Republic (SADR), which led to an armed conflict with Morocco and Mauritania that lasted until 1991. Western Sahara remains under de facto Moroccan rule today.

In December 2020, outgoing US President Donald Trump issued a presidential proclamation in which he recognized Morocco’s sovereignty over Western Sahara. Announced through Twitter, Trump did not hide the terms of his transaction: Morocco obtained recognition of its de facto control over Western Sahara in exchange for announcing the establishment of full diplomatic relations with Israel⁵⁶.

On 14 March 2022, the President of the Government of Spain, Pedro Sánchez, sent a letter to the Moroccan King, Mohamed VI, in which he highlighted that: “Spain considers the Moroccan proposal for autonomy presented in 2007 as the most serious, credible and realistic for the resolution of this dispute”. This letter was released through the Royal House of Morocco⁵⁷.

⁵⁵ LOUKILI, M., “Working towards achieving Moroccan maritime sovereignty”, *Marine & Oceans. Le Maroc et la Mer*, 2021, pp. 46-47.

⁵⁶ AMIRAH FERNÁNDEZ, H., WERENFELS, I., “Western Sahara: Can a Trump Tweet Lead to Unlocking the Stalemate?”, *Real Instituto Elcano*, 7 April 2021, <https://www.realinstitutoelcano.org/en/analyses/western-sahara-can-a-trump-tweet-lead-to-unlocking-the-stalemate/>, accessed 26 July 2024.

⁵⁷ Communiqué du Cabinet Royal, “L’Espagne considère l’initiative marocaine d’autonomie comme la base la plus sérieuse, réaliste et crédible pour la résolution du Sahara Marocain”, 18

Madrid changed of policy meant a shift from the position of neutrality Spain had maintained for 46 years regarding Western Sahara to support the autonomy proposal presented by Morocco in 2007⁵⁸.

Would Spanish shift in foreign policy, recognising Morocco's position on Western Sahara, lower Moroccan ambitions over the continental shelf? It is highly unlikely. However, Morocco is not yet entitled to request the extension of the continental shelf for the Western Sahara, and if so, there is little chance that the CLCS would consider it⁵⁹.

There is no doubt that Morocco will try its best. (Presumably) towards this end, the Moroccan government pushed the candidature of Professor Miloud Loukili for a seat at the CLCS.

According to Article 2 of Annex II of UNCLOS, “[t]he Commission shall consist of 21 members who shall be experts in the field of geology, geophysics or hydrography”. Loukili is a jurist with over “40 years of national and international experience in maritime studies and international law research, with a special focus on issues related to maritime delimitation”⁶⁰, but with no formal background in the fields required to sit on the Commission⁶¹.

March 2022, <https://maroc.ma/fr/activites-royales/communique-du-cabinet-royal-lespagne-considere-linitiative-marocaine-dautonomie>, accessed 26 July 2024; “La carta de Pedro Sánchez a Mohamed VI: “Debemos construir una nueva relación que evite futuras crisis””, *El País*, 23 March 2022, <https://elpais.com/espana/2022-03-23/la-carta-de-pedro-sanchez-a-mohamed-vi-debemos-construir-una-nueva-relacion-que-evite-futuras-crisis.html>, accessed 26 July 2024.

⁵⁸ See SOROETA LICERAS, J., “Is autonomy the solution to the Western Sahara conflict?”, *Spanish Yearbook of International Law*, Vol. 26, 2022, pp. 251-261; DEL VALLE GÁLVEZ, A., “Ceuta, Melilla Gibraltar y el Sáhara Occidental. Estrategias españolas y europeas para las ciudades de frontera exterior en África, y los peñones de Vélez y Alhucemas”, *Peace & Security – Paix et Sécurité Internationales*, No. 10, 2022, pp. 9-13.

⁵⁹ As has occurred in the case of the Falkland Islands, South Georgia, and South Sandwich Islands. See JIMÉNEZ GARCÍA-CARRIAZO, A., “La Ampliación de la Plataforma continental en el Atlántico Sur: El Enfrentamiento Marítimo entre Argentina y Reino Unido”, *Revista de Estudios Jurídicos*, Vol. 17, 2017, p. 14.

⁶⁰ Statements of qualifications of candidates nominated by States parties for election to the Commission on the Limits of the Continental Shelf, SPLOS/32/10, 28 March 2022. The CV is available at: <https://documents.un.org/doc/undoc/gen/n22/302/02/pdf/n2230202.pdf?token=rxkva79g8WORYEpVEQ&fe=true>, accessed 26 July 2024.

⁶¹ WESTERN SAHARA RESOURCE WATCH, “Morocco proposes jurist for non-jurist UN body”, 5 May 2022, <https://wsrw.org/en/news/morocco-proposes-jurist-for-non-jurist-un-body>,

Despite the lack of specific qualification, Morocco secured the appointment of Moroccan Commissioner Loukili. He was elected as a member of the Commission by the thirty-second Meeting of States Parties (SPLOS) for a term of five years, from 16 June 2023 to 15 June 2028. However, he only attended two sessions in 2023. He did not attend the first session in 2024⁶² and resigned on 28 June 2024 due to personal reasons⁶³. There is now a vacancy for a candidate from the Group of African States⁶⁴, which is likely to be filled by Moroccan new candidate until the end of the term.

Apart from the political concern, the Spanish potential area of extension has also raised a new economic interest. In 2017, British scientists found an underwater deposit of tellurium in the seamount Tropic, which lies in the area of the extension requested by Spain. The discovery of this highly sought mineral, which is largely used commercially in semiconductors, was made by a scientific expedition led by the National Oceanography Centre of the United Kingdom, accompanied by members of the Geological and Mining Institute of Spain, the United Kingdom Geological Survey, the University of Southampton and the University of Sao Paulo⁶⁵.

With the mount Tropic gaining importance, the Moroccan laws and the decree of 2020 led to diplomatic tensions due to the government of Morocco attempts to lay claim to the seabed in that area. Moreover, Morocco has acquired the vessel *Al Hassan Al-Marrakechi*, equipped with the latest technologies and advanced equipment to conduct research at depths of up to 1,000 meters. It was built in Japan in partnership with various Japanese agencies and

accessed 26 July 2024.

⁶² CLCS, “Progress of work in the Commission on the Limits of the Continental Shelf”, 21 March 2024, CLCS/60/2, p. 2.

⁶³ UNITED NATIONS, “Commission on the Limits of the Continental Shelf to Hold Sixty-First Session at Headquarters, 8 July to 23 August”, Meetings Coverage and Press Releases, 5 July 2024, <https://press.un.org/en/2024/sea2197.doc.htm>, accessed 26 July 2024.

⁶⁴ UNITED NATIONS, A seat for members from the Group of Eastern European States remains vacant, Letter 18 July 2024, MSP/34RES/BY-ELECT/CLCS.

⁶⁵ “Renewables’ deep-sea mining conundrum”, *BBC*, 11 April 2017, <https://www.bbc.com/news/science-environment-39347620>, accessed 26 July 2024. See MEDIALDEA, T., ET AL., “Evidence of a modern deep water magmatic hydrothermal system in the Canary Basin (eastern central Atlantic Ocean)”, *Geochemistry, Geophysics, Geosystems*, Vol. 18, No. 8, 2017, pp. 3138-3164.

manufacturers⁶⁶. It seems Rabat is not the only interested party.

In recent times, Portugal has undertaken marine scientific research in the area. According to Spanish media, the ship tracking system was deactivated when the crew of the Portuguese ship was on the Tropic seamount⁶⁷. Either because Madrid has authorized the anchoring or because the ship has not carried out its activities within the Spanish EEZ/continental shelf, what appears certain is that the CLCS will face a tough task when considering the Spanish submission in respect of the area to the west of the Canary Islands.

VI. CONCLUSIONS

The importance of extending the continental shelf for the Canary Islands is undeniable. Not only it would occupy a more privileged position at the intersection between Europe, Africa, and America but it would also have access to mineral resources⁶⁸ in a time of an increasing depletion of surface resources.

Ten years on a waiting list may mean that by the time a claim is under consideration, the reality is very different. This seems to be the case for the continental shelf of the Canary Islands: Pedro Sánchez has succumbed to the pressure from Morocco and the inconsistencies and weaknesses of the Spanish position are being exploited by Rabat⁶⁹.

⁶⁶ JIMÉNEZ, J.L., “Japón paga el buque oceanográfico de Marruecos para trazar la frontera con Canarias”, *VozPopuli*, 28 August 2024, <https://www.vozpopuli.com/espana/japon-paga-buque-oceanografico-marruecos.html>, accessed 18 September 2024.

⁶⁷ JIMÉNEZ, J.L., “Portugal se suma a la pugna entre España y Marruecos por el macroyacimiento canario de telurio”, *VozPopuli*, 23 June 2024, <https://www.vozpopuli.com/espana/portugal-suma-pugna-espana-marruecos-macroyacimiento-canario-telurio.html>, accessed 26 July 2024.

⁶⁸ Ferromanganese crusts have been found, demonstrating the presence of rare and strategic minerals formed by the peculiar conditions of oxygen, depth and volcanic activity. MARINO, E., ET. AL., “Strategic and rare elements in Cretaceous-Cenozoic cobalt-rich ferromanganese crusts from seamounts in the Canary Island Seamount Province (northeastern tropical Atlantic)”, *Ore Geology Reviews*, Vol. 8, 2017, pp. 41-61.

⁶⁹ HERNÁNDEZ, S., LAS HERAS, P., “Spain and the Maghreb: the stealth crisis”, *Global Affairs*, 25 October 2022, <https://en.unav.edu/web/global-affairs/espana-y-el-magreb-la-crisis-sigilosa>, accessed 26 July 2024.

When analysing the diplomatic tensions between Spain and Morocco regarding the extension of their continental shelves and the current position of the Spanish government with regard to Western Sahara, one can anticipate that the extension procedure before the CLCS will be an uphill battle.

Beyond criticizing how Loukili managed to become a member of the CLCS, one may wonder what his role would have been in relation to the Spanish submission. It is true that, due to the conflict of interest, he could not have been part of the Subcommittee that preliminarily examines the submission⁷⁰. However, he would have been entitled to speak and vote in the plenary. Perhaps it is adventurous to point to obstruction, but surely the presence of a Moroccan jurist would have hindered a task which is complex *per se*.

For these reasons, it is time for Spain to take a more active role in its interactions with the CLCS. The election of commissioners is a strategic decision within SPLOS. Spain has to play its cards wisely and try to get a Spanish commissioner for the next period in order to redress the balance within the plenary (and the talk in the corridors).

Only time will tell how successful Spain is in defending its rights to extend the continental shelf to the west of the Canary Islands. The struggle is twofold: on the one hand, the confrontation with the CLCS, which has to be convinced not only of the robustness of the technical aspects submitted by Spain but also of the capacity of the States involved in the area to reach an agreement. On the other hand, the subsequent negotiation of a delimitation agreement with the polite neighbour and the noisy one. ‘Fasten your seatbelts, it’s going to be a bumpy night!’

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⁷⁰ Rules of Procedure of the Commission on the Limits of the Continental Shelf, CLCS/40, Rule 42.

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