Chapter Thirteen

Problems Arising from Submissions by States to the CLCS in Relation to Disputed Areas: A Selective Survey of State Practice to Date

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I. Introduction

In recent years, a number of States have made submissions to the Commission on the Limits of the Continental Shelf (‘CLCS’) where title to land areas (relevant to the submission) or jurisdiction over maritime areas is disputed by other States. Often, the disputing State or States consent – or at least do not object – to the submission being made. In these circumstances, the CLCS is undoubtedly able to consider such a submission and produce recommendations. However, a decision by a State that has a dispute with the submitting State over the area in question not to consent or to withhold its objections, presents the submitting State with an obstacle in terms of obtaining recommendations from the CLCS.

This chapter discusses a number of the issues arising from submissions to the CLCS concerning disputed areas: it has three parts. First, it provides a brief overview of the procedures of the CLCS, with special emphasis on submissions concerning disputed areas. Second, it discusses three recent submissions by States to the CLCS in relation to disputed areas. Third, it discusses a number of the issues that arise as a result of such submissions.

II. The Procedures of the CLCS

The procedures of the CLCS are well-known; they do not require detailed recapitulation in this chapter. However, a brief overview of those procedures, with special emphasis on submissions concerning disputed areas, is necessary

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and useful to contextualise the discussion below of three recent submissions by States to the CLCS in relation to such areas. The procedure for a submission by a State to the CLCS is set out in Rules 45–54 of the CLCS’s Rules of Procedure. Those Rules can be briefly summarised as follows.

Where a State asserts outer limits of its continental shelf beyond 200 nautical miles, it is obliged to submit particulars to the CLCS (Rule 45). That submission must comply with certain formalities, such as formatting and official language requirements (Rule 47). Upon receipt, the Secretary-General of the United Nations records the submission and acknowledges its receipt (Rules 48–49). The Secretary-General then notifies the CLCS (and the member States of the United Nations) of that receipt and publicises the Executive Summary of the submission (Rule 50). The CLCS receives the submission, considers it at its next ordinary meeting and, unless it decides otherwise, establishes a subcommission to consider the submission and prepare recommendations (Rule 51). The subcommission examines the submission, consults with the submitting State (if the State so wishes) and formulates and submits its recommendations (Rule 51(5), Rule 52 and section V of Annex III of the CLCS’s Rules of Procedure). The CLCS then considers and approves (or amends) the recommendations of the subcommission (Rule 53). Notably, the State may submit a revised or new submission if it disagrees with the recommendations of the CLCS (Rule 53(4)).

The procedure for a submission by a State in relation to a disputed area is amplified by Annex I of the CLCS’s Rules of Procedure. As Rule 46 states:

1. In case there is a dispute in the delimitation of the continental shelf between opposite or adjacent States 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.
2. The actions of the Commission shall not prejudice matters relating to the delimitation of boundaries between States.

While the mechanics of Rules 45–54 still apply, additional requirements are imposed upon the coastal State by Annex I. In summary, they are:

- first, the State must inform the CLCS that its submission concerns an area which is disputed by one or more third States (Article 2(a) of Annex I);
- second, the State must assure the CLCS that its submission will not prejudice matters relating to the delimitation of boundaries between States (Article 2(b) of Annex I); and,
- third, all States that are parties to the dispute over the area must give their consent to the consideration by the CLCS of the submission (Article 5 of Annex I).

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2 UN Doc. CLCS/40/Rev.1, dated 17 April 2008.