

# A Grapple for Standing out Rather fitting in: Sri Lankan Claim to the Commission on the Limits of the Continental Shelf

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**Abstract**—Continental shelf is one of the maritime zones which consist of numerous rich mineral deposits, oil, gas and fisheries. The commercial value attached to this particular zone is gigantic. In consequence every state tries to extend their continental margin in order to exploit and grab as much as they can make out of it. A state is entitled to establish their outer edge of the continental margin by two ways. One is Article 76(4) of the Law of the Sea Convention (LOSC) 1982 which cannot be utilised to claimed more than 200nm and the second is by Statement of Understanding (SOU) contained in annex 2 to the Final Act of the 3<sup>rd</sup> UN Conference on Law of the Sea 1980 which entertain claims of the states having special geological and morphological characteristics. Sri Lankan continental margin also displays the requirements described in SOU therefore it submitted their claim based on the interpretation of SOU to avoid the inequality that would result if it go by Article 76(4). This paper will discuss the Sri Lankan claim to the Commission on the Limits of the Continental Shelf (CLCS) and the claims submitted by Kenya, Myanmar and Bangladesh. The aims of the study are to identify the existing legal framework regarding the claim, to examine why the negotiations were slow moving and to provide recommendations to develop our claim. Authors use secondary sources such as library resources and internet inclusive of books, Journal Articles, Cases and other related statutes as main sources of this research. The strengths and weaknesses of the claims made by the other countries to the CLCS are analysed for providing recommendations to the study. The comparative study will assist in uncovering what is unseen of our claim.

**Keywords:** Continental shelf claim, Sri Lanka, Strengths, Weaknesses

## I. INTRODUCTION

The ocean floor differs from country to country therefore each country has to measure the continental shelf for themselves. Sri Lanka is an island which is situated in the Southern part of the Bay of Bengal. Bengal Bay deep sea fan effect leads to wash the Sri Lankan continental shelf whereas fan creates huge sediments and those sediments are identified as rich mineral resources. These

sediments and the Bengal Fan is a special geographical character and it needs to be addressed separately with regard to establishing the outer edge of the continental margin. Article 76 of the LOSC is silent on the issue of applying special rules to establish the outer edge of the continental margin to the states having special geographical and morphological characteristics such as Sri Lanka. In consequence fitting into Article 76 is inequitable to Sri Lanka because if the country go by Article 76 substantial part of the continental shelf would not fall within the provisions of that Article. Since the shelf contain large deposits of gas hydrates that contain methane, concentrations of Lead, Zinc, Gold, Silver and fisheries like sedentary species it will be a huge economic disadvantage losing that extended area of the shelf.

Nevertheless the SOU is different from Article 76 and it contains a specific method in establishing the outer edge of the continental margin which recognise the inequity that would result to states with special geographical features. The Sri Lankan submission to CLCS in May 2009 is made in accordance with Paragraph 8 of the Article 76 of the LOSC and Article 3 of Annex 2 of the Convention. Since the SOU do not make any reference to the states which can made submissions to CLCS states like Kenya, Myanmar and Bangladesh have made their claims to extend their continental margin based on the SOU. Sri Lankan submission overlaps with India, Myanmar and Bangladesh to a greater extent. It is noted that Myanmar and Bangladesh have settled their dispute concerning delimitation of the maritime boundary in the Bay of Bengal, according to the judgment delivered on March 14, 2012 by the International Tribunal on the Law of the Sea. In the matter of the Bay of Bengal Maritime Boundary Arbitration between Bangladesh and the Republic of India, an award was made on July 2014 in favour of Bangladesh.

Accordingly, the maritime disputes of the three main countries in the Bay of Bengal have now been settled and international oil companies are showing a keen interest to carry out exploration and production operations in these countries leaving Sri Lanka out with serious delays in settling our maritime boundary in the east under Annex 11 of the final Act of UNCLOS.

For this reason it is worth studying the reasons for the delay by analysing the strengths and weaknesses of the Sri Lankan claim with special reference to the claims of Kenya, Myanmar and Bangladesh. In this paper section II explains the legal framework relating to the Sri Lankan continental shelf claim and in section III Kenyan, Myanmar and Bangladesh claims are analysed. Section IV examines the strengths which support the Sri Lankan claim and the weaknesses that beat down the claim. Section V presents the recommendations and section VI provides the conclusion.

## II. THE LEGAL FRAMEWORK RELATING TO THE SRI LANKAN CONTINENTAL SHELF CLAIM

Sri Lanka is a state in the southern part of the Bay of Bengal. Sri Lanka signed the United Nations Convention on the Law of the Sea on 10<sup>th</sup> December 1982 and ratified it on 19<sup>th</sup> July 1994. On 8 May 2009, the Democratic Socialist Republic of Sri Lanka submitted to the CLCS, in accordance with Article 76, paragraph 8, of the United Nations Convention on the Law of the Sea, information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. This submission relates to the delineation of the outer limit of the continental shelf of Sri Lanka by a specific method set forth in the SOU.

Sri Lanka's continental margin displays the special geological and morphological characteristics described in the SOU. The morphology of Sri Lanka's continental margin is characterised by a very narrow shelf, very steep slope and an extensive rise. Sri Lanka has established its outer limit of the continental shelf in accordance with the method specified in the SOU namely, by straight lines not exceeding 60 nautical miles in length connecting fixed points, defined by latitude at of which the thickness of sedimentary rock is not less than 1 kilometre. Sri Lanka requests the Commission to make its recommendations on matters related to the establishment of the outer limits of the continental shelf of Sri Lanka in accordance with the SOU and paragraph 1(a) of Article 3 of Annex II to the Convention.

Sri Lanka has no pending maritime boundary dispute with neighbouring states. Sri Lanka has not concluded any agreement on the delimitation of the continental shelf beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. The submission is made in accordance with Article 76(10) of the Convention, the recommendations of the Commission will be, without prejudice to the delimitation of maritime boundaries between states with opposite or adjacent coasts. Sri Lanka has held consultations with India concerning Sri Lanka's submission to the Commission. During these consultations, it was decided

that both sides would file their respective submissions before the Commission without prejudice to any future bilateral agreement.

## III. CLAIMS MADE BY OTHER COUNTRIES

Countries like Kenyan, Myanmar and Bangladesh have made their claims to the CLCS based on the special method identified in the SOU. The claims of these countries are analysed below.

### *A. Continental Shelf Submission of Republic of Kenya*

Kenya is a coastal state in East Africa. Kenya is a party to the Law of the Sea Convention which it signed on the day it was opened for signature on 10<sup>th</sup> December 1982 and later ratified it on 2<sup>nd</sup> March 1989. As provided for under the Article 76(1) of the Convention, Kenya has a continental shelf comprising the seabed and subsoil of the submarine areas that extends beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, up to the limits provided for in Article 76 of the Convention. The data submitted by Kenya in support of this Submission establish that the outer edge of the continental margin appurtenant to Kenya's land territory extends beyond 200 nautical miles measured from the territorial sea baseline.

Seeing that reference to the states in the southern part of the Bay of Bengal in the 5th paragraph of the SOU does not preclude the application of the general principles where any other state is able to demonstrate the existence of geological and geomorphological characteristics similar to those exhibited by a continental margin of a state in the southern part of the Bay of the Bengal. Application of the SOU cannot be limited to a geographical region is the basis of the Kenyan claim. For the purposes of establishing the outer edge of the continental margin, Kenya has applied the specific method contained in the SOU. In this regard, the Government of Kenya is firmly of the view that the application of the specific method set out in the SOU is consistent with the terms of the SOU having regard to the particular and special characteristics of the continental margin of Kenya and recognizing the inequity that would arise in the event that Kenya were to be required to apply the provisions of Article 76(4) under these circumstances. Therefore it is evident that Kenya invokes the specific method for the establishment of the outer edge of the continental margin set out in the SOU, together with Article 76(5) (6) (7) of the Convention in support of this Submission.

### *B. Continental Shelf Submission of Union of Myanmar*

Myanmar signed the Law of the Sea Convention when it opened for signature and ratified on 21 May 1996. It entered into force for Myanmar on 20 June 1996. The submissions is made by Myanmar to the CLCS pursuant to

Article 76(8) of the Convention in respect of the establishment of the outer limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea of Myanmar is measured. Myanmar is making its submission for extension of its continental shelf in the Bay of Bengal, off Rakhine, and referred to as Rakhine Continental Shelf, beyond 200 nautical miles. The outer limits of Rakhine Continental Shelf as herein submitted to the Commission are based on the provisions of Article 76 and of Annex II of the Final Act of the Third United Nations Conference on the Law of the Sea.

The natural prolongation from land mass of Myanmar through the outer edge of the Rakhine continental margin has three aspects. They are morphologic, geologic and tectonic aspects. Morphologically, the land mass of Myanmar progressing westward can be described in terms of the shelf, the slope and the rise. Beyond the rise lies the deep ocean floor of the Bay of Bengal. Geologically, the Rakhine continental margin is the westward advancing accretionary complex of the Burma plate. Regarding both geological and tectonic aspects, the land territory of Myanmar embraces two major tectonic domains and the "Burma plate" is the western domain of the two. The Burma plate and the accretionary complex along its western margin are comprised dominantly of marine sedimentary rocks. The abyssal plain in the northern Bay of Bengal is underlain by the Bengal Submarine Fan System. As a consequence, the accretionary complex is built up with the sediment scraped off from the subducting Indian plate beneath the Burma plate.

Utilising the provisions contained in paragraphs 4 to 10 of Article 76 it is demonstrated that Myanmar is entitled to extend its continental shelf limits beyond 200 nautical miles due to the morphological and geological as well as tectonic significance of the Rakhine continental margin. Therefore, both one per cent sediment thickness formula and provision of Annex II of UNCLOS are used to delineate the outer limit of the extended Rakhine continental shelf. This submission is not subject to any dispute between Myanmar and other States.

### *C. Continental Shelf Submission of People's Republic of Bangladesh*

Submission by the People's Republic of Bangladesh to the CLCS is made pursuant to paragraph 8 of Article 76 of the 1982 United Nations Convention on the Law of the Sea. Bangladesh is a Contracting Party to the Convention, having signed it on 10 December 1982 and later ratified it on 27 July 2001. As provided for under paragraph 1 of Article 76, Bangladesh has a continental shelf comprising the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural

prolongation of its land territory to the outer edge of the continental margin. This submission is made by Bangladesh in support of the establishment of the outer limits of the continental shelf where it extends beyond 200 nautical miles from the territorial sea baselines. India lodged a submission to the Commission on 11 May 2009. Bangladesh formally objected to the Indian submission. With regard to Myanmar, Myanmar lodged a submission to the Commission on 16 December 2008. Bangladesh formally objected to the Myanmar submission. Bangladesh disputes the claim by Myanmar to areas of outer continental shelf noting that the areas claimed form part of the natural prolongation of Bangladesh.

A number of large river systems, including the Ganges, Jamuna, Meghna, Godavari, Mahanadi, Krishna and Kaveri all flow into the Bay of Bengal. The accumulation of sediments discharged by these river systems and their ancestors over millions of years, has resulted in the development within the Bay of Bengal of a prominent submarine feature known as the Bengal Fan. The geology of the region is special when comparing to other states. The accumulation of sediments discharged by river systems has resulted in the development within the Bay of Bengal of a prominent submarine feature is the base of the continental shelf submission of Bangladesh.

### IV. RECOMMENDATIONS

It is to be noted that each of these claims overlaps and the countries should be equipped well in order to defend their respective claims. Recently Bangladesh objected to Sri Lanka continental shelf claim stating that Sri Lanka has claimed an outer continental shelf entitlement beyond the constraints line established by Article 76(5) of the Convention. According to the UN laws, a country can have the continental shelf rights up to 350 nm or 100 nm from the 2,500 metres depth, which one is higher. But Sri Lanka from its baseline claimed about 1,000 nautical miles, which is India and Bangladesh's continental shelf territory. Likewise there are disputes among states in the process of extending their outer limits of the continental margin. The importance of the negotiation process is highly important in respect of maintaining good diplomatic relationships among states.

There is a provision under clause 4 of Annex 1 of the Rules of Procedure of the Commission on the Limits of the Continental Shelf (CLCS) for joint submissions from adjacent coastal states by joint surveys and bilateral discussions. Sri Lanka should initiate such action with India in the continental boundary delimitation in the southern Bay of Bengal. An example of such bilateral and multilateral cooperation is indicated in the recent joint submissions made to CLCS by France, Ireland, Spain and the United Kingdom covering the Celtic Sea and the Bay of Biscay. Also make a joint submission to the UNCLCS with India will pave the way for an early resolution of our

dispute on the continental shelf boundary. Also to expedite the delimitation of our continental shelf boundary following these observations are strongly recommended. Firstly identify the negotiating team from Sri Lanka consisting of the representatives from the Foreign Ministry, Attorney General's Department, National Hydrographic Office and Oceanography Division of NARA. Then identify a senior consultant who had negotiated Annex 11 of the final Act of UNCLOS to lead the Sri Lanka team for bilateral negotiations. Then it leads to fasten the negotiations between the states regarding the delimitation of the outer limits of the continental shelf in Sri Lanka. This study has identified the importance of the expertise knowledge in the field of the Law of the Sea. Most of the individuals who has the responsibility towards the Sri Lankan claim are not experts in the area of Law of the Sea. As a result the quality of the negotiation process will be reduced because of the lack of the knowledge in the area and the technical points that the international community stress will not be taken into account since the lack of knowledge. It is to be highly noted that this claim is heard before the international tribunal therefore convince them will be our sole responsibility by adopting the measures which are suitable for our country as soon as possible.

#### V. CONCLUSION

Sri Lanka is a country situated in the southern part of the Bay of Bengal. Due to deep sea fan effect in the Bay of Bengal huge sediments have been created and Sri Lankan ocean floor reflected special geographic characteristics. Statement of Understanding is an exception to Article 76, allows for a specific method for Sri Lanka to be used for the purpose of measuring the continental shelf. It is based on equity. Exception permits Sri Lanka to avoid the consequences of the formula then proposed for defining the continental margin, which was based on the thickness of sediments. The consequences of accepting the above mentioned formula would have meant that Sri Lanka would have lost over 60 percent of the continental margin. This is entirely inequitable since the continental shelf is prosperous with rich mineral deposits and other resources, Sri Lanka will be losing an unbelievable amount of financial benefit.

The Sri Lankan continental shelf claim has its own ups and downs. Apart from the claim itself the local officials who are responsible for the implementation of the claim has been slow in their way for make this claim a successes. The best example is that the other countries which have relied on the SOU have finished their claims and the outer limits of the continental shelf has been determined in those countries. But Sri Lanka is still in their way of achieving that dream. This study assist to identify the pros of the other claims based on their claims on SOU and those aspects will be taken in the process of providing recommendations to this study in order to

develop the Sri Lankan claim and those recommendations will finally assist to improve the quality of the Sri Lankan claim and the procedure of negotiation with the CLCS. All of the study recommendations will pave their way towards achieving on big dream that is to witness the triumph of the Sri Lankan claim.

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