UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS) AND MARITIME JURISDICTION OF SRI LANKA

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ABSTRACT

During the seventeenth century the national jurisdiction over the oceans was limited only to a narrow belt of sea surrounding the nation’s coastline and the rest was identified as open sea belonging to no country. However, the United States in 1945 unilaterally extended jurisdiction over the continental shelf which was known to contain oil, gas and other minerals. Claims to areas covering the continental shelf of maritime states were accelerated in 1960’s when oil exploration extended to the bed rock of continental margins. In pursuance of Ambassador Arvid Pardo historical statement, which warned the nations of the world to the emerging conflicts that would devastate the oceans at the General Assembly in 1967, the United Nations Conference on the Law of the Sea deliberated for 9 years from 1973 an effective international regime over seabed and the sea floor beyond a clearly defined national jurisdiction which culminated with the adoption of the United Nations Convention on the Law of the Sea (UNCLOS) in 1982. UNCLOS entered into force on 16 November 1994 after receiving 60 ratifications or accessions. The important features of UNCLOS are navigational rights, territorial limits, economic jurisdiction and legal status of resources of the seabed beyond national jurisdiction, passage of ships through narrow straits, conservation and management of living marine resources including fisheries, protection of marine environment, a marine research regime and binding procedure for settlement of disputes between States. Accordingly, most of the States who are a party to UNCLOS amended the existing legislation or brought new legislation in conformity with the above features so as to ascertain their rights and obligations under this international regime.

Sri Lanka ratified the UNCLOS on 9 May 1994 and asserted its rights and obligations under UNCLOS. The maritime zones of Sri Lanka had been identified earlier and an Exclusive Economic Zone (EEZ) of 200 nautical miles comprising about 7.5 times the land area was demarcated. The continental shelf boundary between Sri Lanka and India was settled bilaterally in 1974 and 1976 with the boundary between India, Sri Lanka and Maldives as point T in the south west off shore region. The Delimitation of the Continental Shelf of Sri Lanka, especially in the east and south east off shore areas was initiated in 1999 with the launching of the DECOM Project and culminated in 2009 with the submission of technical data to the United Nations Commission for Limits on the Continental Shelf (UNCLCS). The area claimed is over 20 times the land area under Annex 11 of the Final Act of UNCLOS which was to apply to States in the southern Part of the Bay of Bengal, namely Sri Lanka and India. However, other States such as Bangladesh, Myanmar, Maldives and Kenya are claiming the application of this special method irrespective of the geographical criteria. Sri Lanka’s claim will not be considered by UNCLCS until there is a settlement of the above claims as well as India submitting the second partial claim under Annex 11 at a later date. It is strongly suggested that Sri Lanka should initiate bi lateral negotiations and settle the claim on its extended continental shelf provided in the Rules of Procedure of UNCLOS as the Government has expended over Rupees 1.5 billion without any tangible results and will have to wait for another 20 years for a ruling from UNCLOS.

Key Words: UNCLOS, exclusive economic zone, maritime zones, Sri Lanka, India
A HISTORICAL PERSPECTIVE

The oceans have long been subject to freedom-of-seas – a principle put forth in the seventeenth century essentially limiting national rights and jurisdiction over oceans to a narrow belt of seas surrounding a nation’s coastline. The rest of the seas were identified to be free to all and belonging to no country. This situation prevailed into the twentieth century. However, by mid-century there was an attempt to extend national claims over offshore resources. There was great concern over rapidly depleting fish stocks by long distance fishing fleets and over the threat of pollution of waters from transport ships and oil tankers carrying noxious cargo that used sea routes across the globe. Further the maritime powers were competing with each other to gain supremacy of the seas including the seabed.

In 1945, President Harry S. Truman responding mainly to domestic oil interests, unilaterally extended United States jurisdiction over all natural resources on the nations continental shelf- oil, gas, minerals etc. This was the major challenge to the freedom-of-the-seas doctrine and other nations soon followed. In October 1946, Argentina claimed the shelf and the Epi-continental Sea above it. Chile and Peru in 1947 and Ecuador in 1950 asserted sovereign rights over a 200 mile zone so as to limit access of distant water fishing fleets and to control depletion of fish stocks in their adjacent seas. Since after the Second World War, Egypt, Ethiopia, Saudi Arabia, Libya, Venezuela and Eastern European countries claimed a 12 mile territorial sea thus clearly departing from the traditional three-mile limit.

Later, the archipelagic nation of Indonesia asserted its dominion over the water that separated its 13,000 islands and The Philippines did likewise. Canada extended its jurisdiction to 100 miles from its shoreline in order to protect Arctic waters from pollution. From diamonds to gravel, metals to fish the resources of the sea are vast and the reality of their exploitation grew day by day as technology advanced. In late 1960s oil exploration was moving further from land deeper to the bed rock of continental margins.

Tin had been mined in the shallow waters of Thailand and Indonesia, South Africa was to tap the Namibian coast for diamonds. Potato shaped nodules formed almost a century earlier and lying on the sea bed some 5 kilometres below, attracted increased interest because of the metal content. Offshore oil was an attraction in the North Sea and Britain, Denmark and Germany were in conflict as to how to demarcate their continental shelf with its rich oil reserves. Accordingly, the oceans were generating a multitude of claims, counter claims and sovereignty disputes and the hope was for a more stable order aimed at better management of ocean resources and generating harmony and goodwill among states that would not have conflicts.

THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA (UNCLOS)

On 1st November 1967, Malta’s Ambassador to the United Nations, Arvid Pardo warned the nations of the world to an emerging conflict that would devastate the oceans, the lifeline of man’s very survival. In a speech to the United Nations General Assembly, he spoke of super power rivalry that was spreading to the oceans, of pollution poisoning the seas, of the conflicting legal claims and the implication of stable order and the rich potential of the seabed. Pardo ended with a call for “an effective international regime over the seabed and the sea floor beyond a clearly defined national jurisdiction.” “It is only alternative by wish we can hope to avoid the escalating tension that will be inevitable if the present situation allowed to continue” he said.

The above statement recognized the need to revise the freedom-of-seas doctrine in view of the rapid technological changes to exploit the riches of the oceans. Accordingly, this set in motion a process that spanned 15 years that culminated the establishment of United Nations Seabed Committee, the signing of a treaty
banning nuclear weapons on the seabed, the adoption of the declaration by the General Assembly that all resources of the seabed beyond the limits of national jurisdiction are the common heritage of mankind and the convening of the Stockholm Conference on Human Environment. Although stated as an attempt to regulate the seabed, it turned into a global diplomatic effort to regulate and frame rules for all ocean areas, all uses of the seas and all its resources.

The Conference was convened in New York in 1973 and ended nine years later with the adoption in 1982 of a constitution for the sea – the United Nations Convention on the Law of the Sea. The important features of treaty (UNCLOS) include navigational rights, territorial limits, economic jurisdiction, and legal status of the resources of the seabed beyond national jurisdiction, passage of ships through narrow straits, conservation and management of living marine resources, protection of marine environment, a marine research regime and a binding procedure for settlement of disputes between States. The Convention retains for naval and merchant ships the right of “innocent passage” through the territorial sea of a coastal state. In addition to their right to enforce any law within their territorial sea, coastal States are empowered to implement certain rights in an area beyond territorial sea, extending for 24 nautical miles from their shores, for the purpose of preventing certain violations and enforcing police powers. The area known as the “contiguous zone” may be used by a coastguard or the navy to pursue and if necessary arrest or detain suspected drug smugglers, illegal immigrants and customs or tax evaders violating the laws of the coastal state within its territory or the territorial state.

The Convention also contains a new feature in international law, which is the regime for archipelagic states (States such as Philippines and Indonesia which are made up of a group of closely separated islands). For these states, the territorial sea is a 12 mile zone extending from a line drawn joining the outermost points of the outermost islands of the group that are in close proximity to each other. The waters between the islands are declared as archipelagic waters, where ships of states enjoy the right of innocent passage. Further in such waters states may establish sea lanes and air routes where all ships and aircraft enjoy the right of expeditious and unobstructed passage.

**Navigation**

The negotiators of UNCLOS considered much difficulty related to navigational rights. A 12 mile territorial sea would place under national jurisdiction of riparian states strategic passages such as the Strait of Gibraltar (8 miles wide and its only open access to the Mediterranean) and the Strait of Malacca (20 miles wide and the only sea route between Pacific and Indian Oceans) the Strait of Hormus (21 miles wide and the only passage to oil producing areas of Gulf States) and Bab el Mandeb (14 miles wide connecting the Indian Ocean to the Red Sea).

At the United Nations Conference on the Law of the Sea, United States and the former Soviet Union insisted on free passage through straits giving the same legal status as the international waters of the high seas. The coastal state concerned that the passage of foreign warships too close to their shores pose a threat to their national security and possibly involve them in conflicts among outside powers, rejected this demand. The compromise that emerged in UNCLOS is a new concept that considers the legally accepted provision of innocent passage through territorial seas and the freedom of navigation on the high seas. This new concept called “transit passage” required concessions from both sides; the regime of transit passage gives the naval powers the right to unimpeded navigation and over flight that they had insisted. Ships and vessels in transit passage, however, must observe international regulations on navigational safety, civilian air traffic control, and probation of vessel sourced pollution and conditions that ships and aircraft proceed
without delay and without stopping except in distress situations and that they refrain from any use of force against the coastal state. In all matters other than such transit navigation, straits to be considered part of the territorial sea of the coastal state.

**Exclusive Economic Zone**

The Exclusive Economic Zone is one of the most revolutionary features of UNCLOS and had a profound impact on the management and conservation of the resources of the oceans and recognizes the right of coastal States to jurisdiction over resources of some 38 million square nautical miles of ocean space (Figure 1). The coastal state has the right to exploit, develop, manage and conserve all resources – fish or oil, gas or gravel, poly metallic nodules or sulphur – to be found in the waters, on the ocean floor and the subsoil of an area extending 200 miles from its shore. The EEZs contain about 87 per cent of all known and estimated hydrocarbon reserves and fall under a national jurisdiction. All known potential offshore mineral resources, excluding poly-metallic nodules and metallic crusts of the deep ocean floor are beyond national limits and fall outside the EEZs.

The Third UNCLOS was launched shortly after the October 1973 Arab--Israeli war. The subsequent oil embargo and skyrocketing of prices only helped to strengthen control of offshore oil reserves. Significant amounts of oil were coming from offshore facilities – 376 million of 483 million tons produced in the Middle East in 1973; 431 million barrels in Nigeria, 141 million barrels in Malaysia, 246 million barrels in Indonesia with barely 2 per cent of the continental shelf explored. Today, the benefits of the EEZs are clearly evident and 80 coastal states have economic jurisdiction up to the 200 mile limit. Many other marine resources also fall within costal state control and provide a long needed opportunity for rational, well managed exploitation under an assured authority. Figure 1 on known offshore oil reserves now range from 240 to 300 billion tons. Production from these reserves amounted to only 25 per cent of total world production in 1996. Experts estimate that of the 150 countries with offshore jurisdiction, over 100, many of them developing countries, have medium to excellent prospects of finding and developing new oil and natural gas fields.

It is evident that archipelagic States and large nations endowed with long coastlines that naturally acquire the greatest areas of the EEZ.

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Figure 1: Maritime zones and their relationship to subsea topography (Source: Australian Geological Survey)
regime and among the major beneficiaries of the EEZs are the United States, France, Indonesia, Australia and the Russian Federation.

**Continental Shelf**

The potential of the continental shelf for oil and gas, minerals, diamonds and gold, sand and gravel there was a scramble by nations to assert shelf rights but two difficulties emerged. States with a naturally wide shelf had a basis for such claims, but those with a geological disadvantage have no shelf at all. There was no agreed method on how to define shelf’s outer limits, and there was a danger of the claims to continental shelves being overestimated- so much so eventually dividing the entire ocean floor among such shelves. Although many States had started claiming wide continental shelf jurisdiction since the Truman Proclamation of 19,485, these States did not use the term “continental shelf” and this expression became a more convenient term to define a diversity of titles and claims to the seabed and subsoil adjacent to territorial seas of States. In the mid1950s, the International Law Commission made a number attempts to define the “continental shelf” and coastal state jurisdiction over the resources.

In 1958, the First United Nations Conference on the Law of the Sea accepted a definition adopted by the International Law Commission which defined the continental shelf to include “the sea bed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 m, and beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.” At the commencement of the Third United Nations Conference on the Law of the Sea, there was strong consensus in favour of extending coastal –state control over ocean resources to 320 kilometres from shore so that its outer limits coincides with that of the EEZ. However, the Conference had to tackle the demand of states with a geographical shelf extending beyond 320 kilometres for wider economic jurisdiction.

The Convention resolves conflicting claims, interpretation and measuring techniques by setting the 200 mile EEZ limit as the boundary of the continental shelf for seabed and subsoil exploitation satisfying the geologically disadvantaged. It satisfied those nations with a broader shelf – about 30 States including Argentina, Australia, Canada, India, Madagascar, Mexico, Sri Lanka and France with respect to its overseas possessions- by giving them the possibility of establishing a boundary going out to 350 miles from the shores or, further depending on certain geological criteria. Thus the continental shelf of a coastal state comprises the sea bed and subsoil that extend beyond the limits of its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or a distance of 200 miles from the baselines from which the territorial sea is measured where the outer edge of the continental shelf does not extend up to that distance.

In cases where the continental margin extends further than 200 miles, nations may claim jurisdiction up to 350 miles from the 2500 metre depth, depending on certain criteria such as thickness of sedimentary deposits. These rights do not affect the legal status of the waters or that of the air space above the continental shelf. A specific method to be used in establishing the outer edge of the continental margin was adopted as Annex 11 of the Resolution IV of the Final Act of the Conference. This method was applicable to the states of the southern Bay of Bengal namely India and Sri Lanka (see the section on Maritime Jurisdiction of Sri Lanka).

To counterbalance continental shelf extensions, coastal States must also contribute to a system of sharing revenue derived from exploitation of mineral resources beyond 200 miles. These payments or contributions – form which developing countries are net importers of the mineral in question are exempt- are to be equitably distributed among States parties to the Convention through the International Seabed Authority. To control the claims extending beyond 200 miles, the United Nations
Commission on the Limits of the Continental Shelf (UNCLCS) was established to consider the data submitted by coastal states and make recommendations which will be binding on the respective coastal States. (See Figure 2 Floor Sheet for submission to UNCLCS)

**Deep Seabed Mining**

Mining will take place at a depth of more than 15000 feet of open ocean, thousands of miles from land. Mining ships are expected to remain on station for years at a time, and to transfer the seabed minerals they bring to bulk transport vessels. On 13 March 1874, somewhere between Hawaii and Tahiti, the crew of the British research vessel HMS Challenger, on the first great oceanographic expedition of modern times hauled from a depth of 5,000 m a trawl containing the first known deposits of manganese nodules. Analyses of the samples in 1891 showed the Pacific Ocean nodules to contain important metals, particularly nickel, copper and cobalt. Subsequent sampling demonstrated the nodules were abundant.

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**Figure 2:** Schematic flow chart illustrating the entire procedure for a coastal State to establish the outer limits of its continental shelf under article 76 of the Convention modified from United Nations (1993)
Between 1958 and 1968 a number of companies began prospecting the fields containing the nodules for economic potential. By 1974, 100 years after the first samples were taken from the sea bottom it was proved that a vast area of the sea floor between Mexico and Hawaii and a few degrees north of the equator – the Clarion Clipperton zone contain nodules over an area of more than 1.35 million square miles. In 1970, the United Nations General Assembly declared the reserves of the seabed beyond the limits of national jurisdiction to be “the common heritage of mankind”. For 12 years up to 1982 in the Conference, diplomats from all parts of the world could not identify common ground for conserving the common heritage and generating profits from it.

**The Exploitation Regime**

The developed countries were of the view that the seabed resources should be exploited by consortia of mining companies and an international authority should grant licenses to these companies. The developing countries objected to this proposal and were of the view that the resource belonged to the whole mankind and suggested that the international community should establish a public enterprise to mine the international seabed area. This complex arrangement simplified by Part X1 of UNCLOS is administered by the Seabed Authority headquartered in Kingston, Jamaica. The authority is divided into three principal organs an assembly, made up of all members of the authority with power to set general policy, a council with powers to make executive decisions, made up of 36 members elected from the members of the Authority and a secretariat headed by the secretary-general. A number of mining systems were tried but the shuttle system involves sending down remotely operated vehicle with television “eyes” and powerful lights to crawl over the ocean floor gobble up the crushed nodules and resurface with its catch. However the current focus is on hydraulic suction and dredge method but there are a number of technological problems to be solved before it will be ready for commercial application.

The Preparatory Commission of the International Seabed Authority was established prior to the entry into force of UNCLOS and registered seven pioneer investors, China, France, India, Japan, Republic of Korea and the Russian Federation as well as a consortium known as the Inter-oceanmetal Joint Organization (IMO). With the UNCLOS in force and the International Seabed Authority functioning, these pioneer investors will become contractors along the terms contained in UNCLOS and the Agreement, as well as regulations established by the International Seabed Authority. However, United States was not in agreement with the above arrangements and the Secretary General of the United Nations urged member states ensure wider participation in deep seabed mining. Accordingly General Assembly Resolution 48/263 and Annex containing Agreement related to the Implementation of Part X1 Of UNCLOS of 10 December 1982b were adopted at the 101 St. Plenary meeting on 28 July 1994 to the satisfaction of developed States who had reservations earlier.

**Protection of the Environment**

There are six main sources of ocean pollution addressed in UNCLOS: land- based and coastal activities: continental- shelf drilling: potential seabed mining and ocean dumping: vessel source pollution: and pollution from or through the atmosphere. Coastal States are empowered to enforce their national standards and anti- pollution measures within their territorial sea. Every coastal State is granted jurisdiction over the protection and preservation of the marine environment of its EEZ and allows coastal States to adopt laws and regulations in accordance with UNCLOS or in conformity with “greatly accepted international rules and standards” adopted by the International Maritime Organization (IMO).
**Marine Scientific Research**

The final provisions of UNCLOS represent a concession on the part of developed states. Coastal states jurisdiction within its territorial sea remains absolute. Within the EEZ and in cases involving research on the continental shelf, the coastal state must give its prior consent. However such consent for research is to be granted in “normal circumstances” and “shall not be delayed or denied unreasonably”, except under specific circumstances identified in the UNCLOS. In case the consent of the coastal state is requested and such State does not reply within six months of the date of request, the coastal State is deemed to have implicitly given its consent.

**Settlement of Disputes**

During the drafting of UNCLOS, some countries were opposed in principle to binding settlement to be decided by third party judges or arbitrators, insisting that issues could be settled between states by direct negotiations. However, some states quoting the past records of failed negotiations and long standing disputes often leading to use of force, argued that peaceful settlement could be achieved only by prior agreements of States to accept decisions by judicial bodies. If direct talks between the parties in dispute fail, UNCLOS gives them a choice of four procedures namely (a) submission to the International Tribunal for the Law of the Sea; (b) adjudication by the International Court of Justice; (c) submission to binding international procedures and (d) submission to special arbitration tribunals with expertise in specific types of disputes. All of these procedures involve binding third party settlement.

Disputes over seabed activities will be arbitrated by 11-member Seabed Disputes Chamber within the International Tribunal for the Law of the Sea. The Chamber has jurisdiction over all such conflicts, involving States, International Seabed Authority or companies or individuals having seabed mining contracts.

**The Future**

UNCLOS entered into force on 16 November 1994 after receiving 60 ratifications or accessions from member States of the United Nations thus asserting their rights and obligations. The United Nations plays a major role in monitoring, collection of information and reporting on State practice in the implementation of the new legal regime. It also plays an important role in reporting on activities of States and relevant international organizations in marine affairs. Further many important duties fall within the Secretary General of the United Nations. These include deposition of charts and coordinates showing the maritime limits of coastal States and servicing the Commission on the Limits of the Continental Shelf. The Secretary General is also called upon to convene meetings of States Parties to elect members of the International Tribunal for the Law of the Sea and to adopt its budget. Meetings of State parties may also be called for a review conference dealing with provisions on deep seabed mining and for amending UNCLOS. The United Nations continue to strengthen the cooperation among organizations within the United Nations system involved in marine affairs. Such cooperation would benefit States, avoiding duplication and overlapping efforts that helps to coordinate multidisciplinary activities related to the management of marine affairs.

**MARITIME JURIDICTIONS IN SRI LANKA**

**Maritime Zones of Sri Lanka**

The Island of Sri Lanka has a land area of 65,525 km$^2$ and the internal waters comprise 1,570 km$^2$ (Figure 3). The historic waters between India and Sri Lanka cover an area of 12,060 km$^2$. The territorial sea established under Article 3 of UNCLOS is 12 nautical miles measured from base lines and covers an area of 18,060 km$^2$ and Sri Lanka has the sovereign rights to air space, seabed and subsoil, with right of innocent passage by foreign ships subject to the laws of the country.
Under Article 33 of the UNCLOS the contiguous zone extends up to 24 nautical miles covering an area of 19,620 km² and include jurisdiction to prevent violation of Sri Lanka’s customs, fiscal, immigration, environmental laws and regulations. The Exclusive Economic Zone (EEZ) which is 320 km from baselines covers an area of 437,400 km². The maritime jurisdictions of Sri Lanka covering the above demarcations are 488,710 km² which is about 7.5 times the land area.

The above claims by Sri Lanka are made under Maritime Zones Law No 22 of 1976 and Presidential Proclamation of January 1977 implementing the law. However, the charts and lists indicating where appropriate lists of geographical coordinates of points specifying the geodetic datum for each maritime zones except the historic waters have not been given wide publicity especially the EEZ and such charts and lists have not been deposited with the Secretary General of the United Nations as required under Article 75 of UNCLOS.

The width of the continental shelf is 11 nautical miles where the world average is 40 m and the shelf break is 70 m as compared to the world average of 132 m with a gradient of the continental slope 45 degrees as compared to average gradient in the world of 4.28 degrees. The above figures clearly indicate that Sri Lanka has a narrow continental margin with steep slopes (Figure 4).

Figure 3: Sri Lanka-India maritime boundary and maritime zones of Sri Lanka

Figure 4: Morphology of Sri Lanka’s continental margin is characterized by a very narrow shelf, a very steep slope, and extensive rise and region showing the key features of the Bay of Bengal and Bengal Fan
Continental Shelf Boundary—India/Sri Lanka

An Agreement on the boundary in historic waters and related matters between Sri Lanka and India was signed on 26th June 1974. Further on 23rd March 1976 an Agreement between Sri Lanka and India on the maritime boundary between the two countries in the Gulf of Mannar and the Bay of Bengal and related matters was also signed. The boundary between the two countries in the Gulf of Mannar has 13 points with respective latitude and longitude listed under Article 1 and the boundary between Sri Lanka and India has 6 positions defined by latitude and longitude and contained in Article 11.

In July 1976, a tripartite agreement between Sri Lanka, India and Maldives concerning the determination of the tri junction point between the three countries in the Gulf of Mannar was signed and Article 1 defines this point as Point T: 04 degrees, 47.04” N (latitude) and 77 degrees 01.40 E (longitude). On 22nd November 1976, Sri Lanka and India signed a supplementary agreement on the extension of the maritime boundary in the Gulf of Mannar from point 13 m to point T the tri junction point between Sri Lanka India and Maldives. A Proclamation defining the maritime Zones of Sri Lanka was declared by the President on 15 January 1977. It is obvious there was no maritime jurisdiction in Sri Lanka until 1977 although India, Sri Lanka and Maldives had agreed on the boundaries between 1974 and 1976. Attention is drawn to Article V1 between Sri Lanka and India on the maritime boundary between the two countries in the Gulf of Mannar and the Bay of Bengal which state as follows: “If any single geological petroleum or natural gas structure of field, or any single geological structure or field of any mineral deposit, including sand or gravel, extends across the boundary referred to in Articles 1 and 11 and the part of such structure or field is situated on one side of the boundary is exploited, in whole or in part, from the other side of the boundary, the two countries shall seek to reach agreement as to the manner in which the structure or field shall be most effectively exploited and the manner in which the proceeds deriving there from shall be apportioned” (Jayasinghe, 2003). Of the eight blocks demarcated for oil exploration under the licensing rounds by the Government of Sri Lanka in the Gulf of Mannar the western boundary of Blocks 1 to 5 comprising a total of 21,482 km² is the Indo Sri Lanka maritime boundary and Article V1 will apply if commercially exploitable oil or gas deposits are discovered. This will also apply to Block 2, where Cairn Sri Lanka has struck gas hydrates in two of the holes drilled so far.

DELIMITATION OF THE CONTINENTAL MARGIN (DECOM) PROJECT AND SRI LANKA CASE FOR CONTINENTAL MARGIN

The Project for Delimitation of the Continental shelf (DECOM) as provided in Article 76 paragraph 8 of UNCLOS initiated as far back as 1999 was completed in 2009. It took nearly 10 years to complete this project with an expenditure of over Rs. 1.5 billion without any tangible results and another Rs. 200 million was allocated from the Budget in 2013 for this purpose to set up a Secretariat to claim the continental margin which is about 20 times the land area.

Sri Lanka is in accordance with the Statement of Understanding (hereinafter referred to as “Understanding”) adopted by the Conference on 29th August 1980 contained in Annex 11 of the Final Act. The Statement of Understanding (SOU) concerning a specific method to be used in establishing The outer edge of the continental margin as contained in Annex 11 states “notwithstanding provisions of Article 76, establish the outer edge of its continental margin by straight lines not exceeding 60 nautical miles in length connecting fixed points defined by latitude and longitude, at each of which the thickness of sedimentary rock is not less than 1 kilometre.” Further the Statement continues to state that “this method may also be utilized by a neighbouring State for delineating
its outer edge of its continental margin on a common geological feature.” The Conference requests the Commission on the Limits of the Continental Shelf set up pursuant to Annex 11 of UNCLOS to be governed by the terms of the Statement when making its recommendations on matters related to its establishment of the outer edge of the continental margin of these States in the southern part of the Bay of Bengal.”

Sri Lanka signed UNCLOS in December 1982 and ratification was on 19th July 1994 in New York.

Accordingly, this Statement refers only to India and Sri Lanka as these States satisfy the above criteria. The submission was made in respect to a part of an area of 3,000,000 km² of a submarine fan of sediments in the Bay of Bengal (Figure 5). This unique feature spans an area of 3000 km in length and 830 - 1430 km in width. Bay of Bengal is bordered by Sri Lanka, India, Bangladesh, Myanmar, Andaman-Nicobar Islands and Sumatra. The question arises whether the Statement of Understanding would support the establishment of the outer limit of the continental shelf of Sri Lanka beyond its right to a 320 km EEZ. According to Article 76 “the continental shelf of a coastal State beyond 320 km EEZ must be comprised of the submerged prolongation of the landmass of the coastal State (Article 76.1 and 76.3) and the Statement of Understanding does not eliminate the

Figure 5: Map of the region showing approximate extent of Bengal Fan and outer limits of the continental shelf beyond 200 nautical miles submitted by Sri Lanka to the UNCLCOS
requirement of natural prolongation” (Tuff and Haq, 2000). A judgment delivered on 14 March 2012 by the international Tribunal for the Law of the Sea (ITLOS) related to a dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal clearly eliminates the “natural prolongation” as an issue in delimitation of the continental margin. Paragraph 460 of the above judgment reads the tribunal (ITLOS) is of the view that “the most natural prolongation” argument made by Bangladesh has no relevance to the present case. The tribunal has already determined the natural prolongation is not an independent basis for entitlement and should be interpreted in the context of the subsequent provisions of Article 76 of the UNCLOS in particular paragraph 4 thereof. The tribunal has determined that both parties have entitlement to a continental shelf beyond 320 km in accordance with Article 76 and has decided that those entitlements overlap. The tribunal therefore cannot accept the argument of Bangladesh, were the tribunal decides that Myanmar is entitled to a continental shelf beyond 320 km; Bangladesh would be entitled to a greater portion of the disputed area because it has “the most natural prolongation”. The question of “natural prolongation” could be negated by Sri Lanka quoting the above precedence in its claim on the margin by presenting technical data under the SOU of the Final Act Annex 11 of UNCLOS.

**India’s Claim on the Continental Shelf beyond the 200 m EEZ**

India made a partial submission to the UNCLCS on 11th May 2009 by invoking article 76 paragraphs 8 of UNCLOS covering both the western and eastern off shore regions IND-ES 1 (Figure 6). Sri Lanka should be concerned on the eastern off shore region which consists of the Bay of Bengal Sector (BOB) and the Western Andaman Sector (WAN). Claims are based on Article 76 (5) of UNCLOS and the fixed points of the continental shelf drawn in accordance with paragraph 4 (a) (i) and (ii) have not exceeded 350 M from baselines. Submission

![Figure 6: Overview of the offshore regions of India, referred to, in the Submission](image-url)
cover maps, IND ES2 (Figure 7) and IND ES 3 (Figure 8) and IND ES 4 (Figure 9).

The outer limits of the extended continental shelf in the BOB sector defined by straight lines not exceeding 60 m in length connecting 452 fixed points. These points are grouped as follows:

- 10 points which are located on the potential maritime boundary between India and Myanmar
- 433 points which are located on the constraint line 350 m from the territorial sea baseline of Mainland India (Article 76 paragraph 5)
- 7 points which are located on the potential maritime boundary between Sri Lanka and India

IND ES 2 shows the outer limits of the extended continental shelf in the BOB sector (Figure 8). The outer limits of the continental shelf in the WAN Sector are defined by straight lines not exceeding 60 m connecting 66 fixed points these points are grouped as follows:

- 36 points which are located on the constraint line 350 m from the territorial sea baseline of Mainland India ((Article 76 Paragraph 5 )
- 27 points which are located on the formula line at each of which the thickness of sedimentary rock is at least 1 per cent of the shortest distance from such point to the foot of the continental slope (Article 76, paragraph 4 (a) (i)
- 2 points which are located from the territorial sea baseline of Andaman
- 1 point which is located on the 200 m from the territorial sea baseline of Mainland India

IND ES 3 shows the outer limits of the extended continental shelf in this sector (Figure 8). The extended continental shelf of the WAN sector partially overlaps with the extended continental shelf of Mainland India in the Bay of Bengal encircling the entire BOB (See IND-ES 4–
Figure 9). Point BCS 452 is on the extended maritime boundary with Sri Lanka and India in the Palk Strait and 7 fixed points east of this location will be the “potential” maritime boundary with Sri Lanka in the BOB and needs bilateral negotiations although India has stated that “the potential maritime boundaries of India with Myanmar and Sri Lanka in the bay of Bengal and with Oman and Pakistan in the Arabian Sea have been constructed as median lines every point of which the breadth of the territorial waters of India and such State are measured.” Further such a determination will possibly result in the overlap of the EEZs of India and Sri Lanka.

It must be stressed that the above submission made by India to the UNCLOS is pursuant to article 76 paragraph 8 of UNCLOS. India as a coastal State in the southern part of the Bay of Bengal and in pursuance of the provisions of paragraph 4 of the Statement of Understanding, reserves the right to make a separate second submission of information and data to support the outer limits of the continental shelf in accordance with the provisions of the statement at a later date notwithstanding of the provisions regarding the 10 year period. Accordingly Sri Lanka will have to wait till the second partial submission to UNCLOS for any determination.

ISSUES RELATED TO DELIMITATION OF THE CONTINENTAL MARGINS OF MALDIVES, SRI LANKA, INDIA, AND MYANMAR-ANNEX11 OF UNCLOS 111 FINAL ACT

The application of Annex 11 containing the Statement of Understanding (SU) referred to above on application of a specific method was raised first by Myanmar in its submission to UNCLOS and was protested by India in a Note Verbale (NV) of 26 March 2009 interpreting the application of this SU is applicable to only Sri Lanka and India. Although SU contained in Annex11 on the southern Bay of Bengal agreed as applicable only to Sri Lanka and India, it was included upon initiative of Sri Lanka’s Ambassador Hiran Jayewardene Secretary
General of the Indian Ocean Marine Affairs Cooperation (IOMAC) was to avoid reopening debate for a general application (Gulf of Alaska) in UNCLOS.

However Myanmar’s contention supported by Kenya’s NV of 23 July 2009 stating that UNCLOS111 Final Act Annex11 and “is applied to a coastal State upon valid demonstration by that State of the special conditions and the inequity that would otherwise arise for it rather than its geographical location”. Bangladesh’s NV of 23 July 2009 reserved its right to submit comments on Myanmar’s contentions regarding the application of Annex11 of the Final Act of UNCLOS 111. NV of Sri Lanka on 22 July 2009 on Myanmar’s submission of 2008 stressed that “Sri Lanka is the principal State under the SU Annex 11 (Para 5) for the purpose of UNCLCS and recommendations is limited to the southern Bay of Bengal”. Bangladesh following Myanmar’s 2008 submission also reserved its right to submit its comments on India’s contentions on the applicability of SU of Annex 11 of UNCLOS 111 Final Act reservation was also made by Maldives in the NV of 4 August on Sri Lanka’s submission. Further, Maldives in July 2010 submitted its claim on the Limits of the Continental Shelf of the Continental Shelf to the UNCLCS in terms of article 76 paragraph 8 on UNCLOS 111 and indicated that there is an overlap in the northern boundary with Sri Lanka’s EEZ (Figures10). From the above submissions by Sri Lanka, India, Myanmar, Bangladesh and Maldives it is clear that there are conflicts related to applicability of SU contained in Annex 11 of the Final Act as well as overlaps of maritime boundaries by application of article 76 and appropriate paragraphs contained therein (Kwiatkowska, 2012).

Figure 9: Map showing the composite outer limits of the extended continental shelf in the Eastern offshore region of Sri Lanka
Figure 10: The outer limit of the continental shelf of the Republic of Maldives showing the outer limit (provisions of Article 76 invoked) and area of continental shelf extending beyond 200 m from the territorial sea baseline.
POTENTIAL FOR OIL AND GAS IN THE BENGAL SEA FAN

It is evident that the littoral States bordering the Bay of Bengal with the underlain Bengal Sea Fan - the largest sedimentary deposit in the world- has significant deposits of oil and especially gas that can be commercially exploitable. Accordingly, Bangladesh, India, Myanmar, Sri Lanka and Maldives are clamouring to get the maximum maritime space especially by the application of SU Annex 11 of the Final Act of UNCLOS 111 as well as Article of UNCLOS.

SUGGESTED APPROACH BY SRI LANKA TO DETERMINE THE CONTINENTAL SHELF LIMITS

It has been reported that Sri Lanka’s case for the determination of its Continental Shelf has been scheduled to be taken up by the UNCLCS in the year 2024 about 11 years from now. However, this will get further prolonged as Sri Lanka has to await the second partial submission by India in terms of SU of Annex 11 of the Final Act of UNCLOS.

It is also evident that the claim already submitted by Sri Lanka to UNCLCS has included an area in the Andaman Sea within India’s maritime jurisdiction known to contain significant deposits of frozen methane gas as gas hydrates and will involve tough negotiations with India. Further, the area claimed by Sri Lanka under SU of Annex 11 of the Final Act of UNCLOS will overlap with the second partial submission of India to be submitted to UNCLCS under the same conditions at a later date without any time limit as well as the extended continental shelf in the Bay of Bengal of India under Article 76 of UNCLOS already submitted to UNCLCS. Another significant drawback that Sri Lanka has is that the area claimed was not explored at all for the past 10 years. However, India’s Deep Sea Drilling Programme (DSDP) in the northern Indian Ocean covers the entire Bengal Sea Fan with the 85 degree ridge. The prominent Aphanasey Nikitin Sea Mount claimed by Sri Lanka was investigated by India and contains nickel and platinum minerals.

Sri Lanka was bogged down on its claim of the extended continental shelf for the past 12 years without initiating deep sea drilling and other surveys under the various international programmes so as to compile an inventory of non-living resources. The only course of action Sri Lanka could take is to initiate bi-lateral negotiations with India as provided in Annex 1 of the Rules of Procedure of the Commission on the Limits of the Continental Shelf (UNCLCS) and also if applicable Article 83 of UNCLOS 111.

If Sri Lanka decides to present its case for arbitration at the International Tribunal for the Law of the Sea (ITLOS) or any other Tribunal in its dispute concerning delimitation of the maritime boundary with India in the area of the Bay of Bengal underlying the Bengal Sea Fan, it will take over 25 years as India has still to submit the second partial submission to UNCLCS in terms of the SU contained in ANNEX 11 of UNCLOS 111.

However, the Earth System Organization of the Ministry of Earth Sciences, India in 2012 under Delimitation of the Outer Limits of the Extended Continental Shelf had stated that "A second partial submission for another part of the extended shelf under the provisions of the Statement of Understanding has also been finalized and provided to the Ministry of External Affairs (MFA) for filing before the UNCLCS. With the anticipated addition of approximately 1.2 million square kilometers of extended continental shelf from the two submissions to the 2 million square Kilometers of EEZ India's sea bed -sub seabed area would become almost equal to the land area of 3.3 million square kilometers"

However, the MFA in India in its negotiating strategy has still not filed its claim under the SOU with the UNCLCS and Sri Lanka's MFA.
should initiate action without delay to commence bi-lateral negotiations.

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REFERENCES


