

Issue of Jurisdictions of Blue Economy in India



BLUE ECONOMY FORUM

Introduction

The resources of the oceans include fish, and other living resources, minerals and other non-living resources of the submarine areas, seabed and subsoil, energy from water, currents and winds, marine organism and genetic resources. Resources include both within and beyond the national jurisdiction. The present concern is how these resources beyond national jurisdiction are to be explored and exploited, since resources within national territory are fully governed by domestic laws.¹

As is very well-known, the current legal framework is contained in the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (henceforth Convention). The most significant achievement of the Convention is that it brings precision to limits of national and international jurisdictions as well as clarity in terms of the exercise of sovereignty, sovereign rights and jurisdiction by states through spatial distribution of the oceans. The Convention is considered as the Constitution for the Oceans and governs all aspects of ocean space, including the delimitation and delineation of maritime boundaries, exploration and exploitation of living and non-living resources, protection and preservation of the marine environment, marine scientific research and the settlement of disputes. If any new instrument are to be developed, it has to be under the Convention, such as the current negotiations on an international legally binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

Some are even thinking in terms of a new international conference on the Law of the Sea and drafting of another legal instrument. The concept of Blue Economy in the context of United Nations 2030 sustainable development goals looks to oceans for economic benefits and alleviation of poverty. The basic implementing mechanisms are already contained in the present legal regime. In the overall existing package, India stands to gain and has opportunities to further consolidate its gains. Any deviation from the existing legal regime has to be viewed with caution, in the context of our specific interests and considering what has been gained under the Convention.

Spatial Distribution of Oceans: Sovereignty and Sovereign Rights

The Convention, together with two implementing agreements, namely, the 1994 Agreement Relating to the Implementation of Part XI and the 1995 Agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, provide a comprehensive legal framework for nearly all the activities in the oceans and the seas.

The Convention establishes different maritime zones for coastal states with corresponding duties and obligations as well as provides for rights of other states in these zones. It should be noted that the rights of the coastal state ranges from the exercise of full sovereignty to exercise of sovereign rights or only jurisdiction. The maritime zones established under the

Mr. H.P. Rajan, Former Deputy Director, Division for Ocean Affairs and the Law of the Sea, and Secretary, Commission on the Limits of the Continental Shelf, United Nations, New York. Former elected Member of the Legal and Technical Commission. The views expressed in this paper are personal views.



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Convention are as follows. These maritime zones are to be measured from certain baselines determined in accordance with the provisions of the Convention.

Internal Waters: All waters on the landward side of the baselines, from which the breadth of the territorial sea is measured, form part of internal waters of the coastal states² except in the case of archipelagic waters. Coastal states enjoy full sovereignty over internal waters sea including all its resources, the airspace above it as well as to its seabed and subsoil. All laws of the coastal state apply in the internal waters.

Territorial Sea: The territorial sea is the belt of the sea adjacent to the land territory and its limit is measured from the baselines which the coastal state has established. Coastal states can establish the breadth of the territorial sea up to a limit not exceeding 12 nautical miles from the baselines³. Islands and rocks that belong to coastal state also generate territorial sea of their own. Coastal states enjoy full sovereignty over territorial sea including all its resources, the airspace above it as well as to its seabed and subsoil. All laws of the coastal state apply in the territorial sea as well.

Contiguous Zone: Coastal states can establish a contiguous zone not extending beyond 24 nautical miles from the baselines from which the territorial sea is measured. The rights over the contiguous zone extend to (a) prevention of infringement of customs, fiscal, immigration or sanitary laws and regulations within the territory or territorial sea and (b) for punishment of infringement of the above laws and regulations committed within the territory or territorial sea.⁴ The Convention also provides that removal of archaeological and historical objects from the seabed in the contiguous zone of a coastal state without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in Article 33.⁵

Archipelagic Waters: Archipelagic states are entitled to draw their baselines connecting the outermost points of their outermost islands through straight lines for measuring their maritime zones. Such baselines are termed as archipelagic baselines. The waters enclosed by such baselines are archipelagic waters. Archipelagic states are wholly constituted by one or more archipelagos⁶. An archipelago is defined as a group of islands, including parts of islands, interconnecting waters, and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which have been historically regarded as such⁷. Only archipelagic states, and not archipelagos belonging to continental states, are not entitled to the use of archipelagic baselines. India had argued for the application of the archipelagic baselines to its islands group during the deliberations of the provision, but failed to get support.

The archipelagic state enjoys full sovereignty over its archipelagic waters regardless of the depth or distance from the coast. The sovereignty extends to the air space over the archipelagic waters, as well as to their seabed and subsoil and to all resources therein. Beyond the archipelagic waters, the archipelagic state enjoys sovereignty, sovereign rights and jurisdiction over its territorial waters, contiguous zone and exclusive economic zone just as other coastal states enjoy in their similar respective maritime areas. The archipelagic state shall respect existing agreements with other states as well as recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring states in the archipelagic waters. In the context of maritime deliberations with Indonesia, it may be noted that Indonesia benefits through the application of archipelagic baselines.

Exclusive Economic Zone: Exclusive Economic Zone (EEZ) is a zone not extending beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.⁸ Coastal states enjoy sovereign rights for the purposes of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the superjacent waters, as well as of the seabed and subsoil. In addition, the coastal state has jurisdiction with regards to the establishment and use of artificial islands, installations and structures, marine scientific research, protection and preservation of the marine environment⁹. The specific objective of the zone is that the coastal state has sovereign rights over the waters, seabed and subsoil for the purpose of exploring and exploiting, conserving and managing natural resources (both living or non-living), and with regard to other economic activities such as production of energy from water, currents and winds.¹⁰ Other than for resources, the waters beyond territorial sea maintain the legal character of high seas. While the object and purpose of the exclusive economic zone is mainly for the exploitation and utilization of the fisheries resources, it does not include the sedentary species¹¹ in the zone. Sedentary species are the living organisms, which at the harvestable stage are immobile on or under the seabed or are unable to move except under constant physical contact with the seabed or the subsoil. Sedentary species are regarded as resources of the continental shelf¹². The sovereign rights over the resources of the seabed and subsoil of the exclusive economic zone (mineral and other non-living resources) are governed by the provisions relating to the continental shelf.¹³

In the exclusive economic zone, the coastal state has exclusive right to construct, regulate the construction, operation and use of artificial islands, installation of structures for economic purposes. The coastal state can establish a safety zone around artificial islands,

installations and structures where necessary, the breadth of such safety zones shall not exceed a distance of 500 metres around the artificial islands, installations or structures¹⁴. The Convention also envisages specific obligations in the utilization of fishery resources. The objective of sustainable development and a balanced ecological approach to fisheries management is inherent in these obligations. It is important that coastal states take necessary legislative and administrative actions for effective implementation of these obligations.

Continental Shelf: The continental shelf of a coastal state comprises 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, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend to that distance¹⁵. The continental margin comprises the submerged prolongation of the landmass of the coastal state. It consists of the seabed and subsoil of the shelf, the slope and the rise, but does not include the deep ocean floor with its oceanic ridges or the subsoil thereof¹⁶. Where the continental margin extends beyond 200 nautical miles, the Convention prescribes certain criteria¹⁷ for the establishment of the outer limits and requires submission of data and information to the Commission on the Limits of the Continental Shelf¹⁸ (CLCS) (henceforth Commission) for consideration. The Commission is not a UN body. The limits of the continental shelf established by a coastal state on the basis of the recommendation of CLCS are final and binding on all states. All islands generate continental shelf of their own, and coastal states can use their islands to delineate their continental shelf. Rocks that cannot sustain human habitation or economic life of their own cannot generate continental shelf or exclusive economic zone¹⁹. The coastal state exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources. The rights of the coastal states in respect of the continental shelf are exclusive; if the coastal state does not explore the continental shelf or exploit its natural resources, no one else may undertake these activities without the express consent of the coastal state.

India's Submission to CLCS

On 11 May 2009, India made a partial submission to the Commission covering the Eastern offshore region of mainland India in the Bay of Bengal and the Western offshore region of India in the Arabian Sea. The Submission states that "although the present submission is being made pursuant to Article 76, paragraph 8 of the Convention, as a coastal state in the southern Bay of Bengal and in pursuance of the provisions of Paragraph 4 of the Statement of Understanding, India

reserves the right to make a second partial 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 the provisions regarding the ten-year period"²⁰. This was reiterated in India's formal presentation of the submission to the Commission on 16 August 2010.²¹ Since, under the Rules of Procedures of the Commission, the opportunities for meeting with the Commission are very limited, the opening presentation assumes immense importance as it lays the very foundation of the submission itself and the Commission takes it very seriously. In the deliberations of the sub-commission also, reference is often made to the opening statement made by the head of the delegation.

Policy Issues Relating to India's Submission

In view of the time elapsed between the first formal presentation by India and the time when the submission is taken up for consideration, it would be desirable to make a new presentation including new and additional information with regard to the submission. There are precedents in this regard. The need for a new presentation also becomes relevant in the context of the new composition of the Commission. While it is uncertain when the Commission will take up India's submission for consideration, it is reasonable to assume much of the software used in the preparation of the submission nearly ten years ago as well as the software available in the secretariat facilities at the United Nations have undergone upgrades. Some of the software may even have become outdated. This aspect needs to be reviewed. India's supporting scientific data and information as well as other details submitted to the Commission is voluminous with documentation over 1200 kgs in weight. These data and other details are considered confidential and are kept under safe custody in the UN. When the Commission takes up India's submission for consideration, it may seek clarification regarding how the fixed points were determined as well as the methodology used in the determination of the fixed points and the outer limits.

The present Commission was elected in June 2017 and will hold office for the next five years. For the first time since the Commission was established in 1997, India is unrepresented in this body as India did not nominate a candidate for election in June 2017. It is important to note that in accordance with its own rules of procedure, all deliberations of the Commission and sub-commissions on all submissions are held in private and remain confidential²². Any records of the Commission and the sub-commission deliberations on all submissions shall contain only the title or nature of the subjects or matters discussed and results of

any vote taken. They shall not contain any details of the discussions or the views expressed, provided, however, that any member is entitled to require that a statement made by him be inserted in the records. No documentation or records of the interactions between the sub-commission and the delegations of the coastal states are kept by the secretariat²³. However, all members of the Commission may freely discuss between them any matters related to any submission, notwithstanding the fact that it is the prerogative and responsibility of the sub-commission, through private deliberations, to carry out the examination of a submission and to prepare the final recommendations for consideration by the Commission²⁴. It is therefore certainly advantageous to have the presence of a coastal state's elected members in the Commission.

It is also important to note that participation of representatives of the submitting state in the deliberations of the Commission is limited to (i) the meeting at which the coastal state representatives make a presentation to the Commission concerning the submission; (ii) the meetings at which the sub-commission invites the representatives of the coastal state for consultation; and (iii) the meetings at which the representatives of the coastal state wish to provide additional clarification to the sub-commission on any matter relating to the submission. In this context, the presence of a coastal state's elected member in the Commission is advantageous to the state concerned. The next election for 21 members of the Commission (individual experts in the field of Geology, Geophysics or Hydrography only) nominated by states parties to the Convention will take place in June 2022.

Statement of Understanding in Annex II of the Final Act and India's Second Submission to CLCS

The Statement of Understanding concerning a specific method to be used in establishing the outer edge of the continental margin was adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea (Conference) and incorporated as Annex II to the Final Act of the Conference. The statement of understanding does not form part of the "integral whole" of the Convention. The statement of understanding is linked to the provisions of the Convention through Annex II, Article 3, Paragraph 1 (a). The Statement of Understanding owes its origin to the Sri Lankan initiative at the Conference. Sri Lanka pointed that inequities result in areas where the shelf is narrow and is covered by thick sediments if the Irish formula for determination of the outer limit that was gaining momentum for acceptance was applied.²⁵

The Statement of Understanding first considers the special characteristics of a state's continental margin

where the average distance at which the 200- metres isobath occurs is not more than 20 nautical miles from the coast and a greater proportion of the sedimentary rock of the continental margin lies beneath the rise. It then takes into account the inequity that would result to that state from the application of Article 76, in that the mathematical average thickness of the sedimentary rock along a line established at the maximum distance permitted in accordance with paragraph 4(a) (i) and (ii) of Article 76 as representing the entire outer edge of the continental margin would not be less than 3.5 km, and that more than half of the margin would be excluded. The Statement provides that the aforementioned state may, notwithstanding Article 76, establish the outer edge of its continental margin by straight baselines not exceeding 60 nautical miles in length connecting fixed points, defined by latitude and longitude, at each of which the thickness of the sedimentary rock is not less than 1 km. Should a state establish the outer edge of its continental margin in the aforementioned methodology, the Statement of Understanding goes on to provide that a neighbouring state may apply the same methodology on a common geological feature, where its outer edge would lie on such a feature on a line established at the maximum distance permissible in accordance with paragraph 4(a) (i) and (ii) of Article 76, along which the mathematical average thickness of sedimentary rock is not less than 3.5 km.

The Bengal Fan is considered the world's longest elongated submarine fan area, covering over 3 million square kilometres of seafloor in the Bay of Bengal²⁶. The fan spans an area that is 2800-3000 km in length and 830-1430 km in width²⁷. The Bay of Bengal is bordered by India, Bangladesh, Myanmar and Sri Lanka and the island chain of Andaman and Nicobar as well as Sumatra. At the northern end of the Bay, the sediment thickness is estimated to be over 16 km.²⁸ The statement is silent on the states concerned, but some interpret it to apply only to Sri Lanka and neighbouring India, restricted to the area in the southern Bay of Bengal²⁹.

On 08 May 2009 Sri Lanka made its submission in accordance with the Statement of Understanding in respect of the area of the Bengal Fan. India's submission in respect of Southern Bay of Bengal by applying the Statement of Understanding is pending. It is important that the submission concerning the southern part of Bay of Bengal be submitted at the earliest especially in view of the fact that the Kenyan (Kenya also seeks to apply the Statement of Understanding) and the Sri Lankan submissions are already under consideration by the Commission. Although the conclusions in respect of a particular submission by the Commission do not constitute a precedent, its findings may nevertheless have an influence on any new sub-commission (or the next new Commission). With a view to avoid any possible adverse effect, it may be advantageous for

India to make its submission concerning the areas in the Southern Bay of Bengal without delay, and provide a strong presentation to the Commission to demonstrate India's understanding and application of the Statement of Understanding contained in Annex II of the Final Act. Indeed, such a presentation could influence the members of the Commission in applying or refrain from applying, the complex Statement of Understanding in respect of other submissions.

Use of Islands and Rocks for Delineation Purposes

In accordance with the provisions of the Convention, while all islands generate territorial sea, contiguous zone, exclusive economic zone and continental shelf, rocks that cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf. They can however, have territorial sea. The term rock is not defined in the Convention. All rocks can have territorial sea of their own. In the modern era it is inconceivable that a feature above water cannot be subjected to human habitation or lead to generating economic life of its own, given the vital interest of the state that has sovereignty over such a feature³⁰. State practice shows that uninhabited features have been used for delineation of continental shelf. Some examples are: Australia in respect of Heard and McDonald Islands; Brazil in respect of Saint Peter and Saint Paul features; France in respect of Kerguelen, Clipperton Island; Japan in respect of Okino-tori-Shima and Minami-tori-Shima; United Kingdom in respect of Ascension Island, Hatton Rockall area, Ireland in respect of Hatton Rockall area; United States in respect of Howland and Baker Islands.

India may wish to review features in the Andaman and Nicobar region and identify rocks, low-tide elevations and their locations. The farthest of islands in a group does not necessarily generate the largest of the continental shelf. It is also not necessary that the continental shelf is generated uniformly on all sides of an island. It is therefore important to identify specific islands that generate the maximum continental shelf and delineate accordingly while delimitation for exclusive economic zone can be carried out separately around each island. India may wish to take the stand that Article 121(3) dealing with rocks was intended only for features in remote areas which is of no direct significance or impact on the concerned state's strategic interest as well as reject any attempts to prescribe qualifications for the term of rock to generate exclusive economic zone and continental shelf. The South China Sea Arbitral award and the observations contained therein are not binding on India; nor are the recommendations of CLCS concerning any other submission binding.

The High Seas

The high seas are the water column beyond the exclusive economic zone. The high seas are open to all states. No state can claim sovereignty over any part of the high seas and are not subject to jurisdiction of any state. The high seas are reserved for peaceful purposes. All states enjoy the freedom of the high seas and certain rights³¹, and in the context of Blue Economy, notably, the freedom of fishing, the freedom of scientific research, and the freedom to construct artificial islands and other installations. The exploration and exploitation of mineral resources of the seabed and ocean floor in the high seas is to be undertaken in accordance with the legal regime established under the Convention and the 1994 Agreement relating to the Implementation of Part XI of the Convention as well as the rules and regulations established by the International Seabed Authority.

International Seabed Area

The seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction, that is, beyond the outer limits of the continental shelves of states, constitute the international area or the "Area"³². The Area and its resources are the common heritage of mankind³³. This means that, unlike other resources of the high seas, the resources of the Area are not free for all states to exploit, but they are vested in mankind. The Convention has established the International Seabed Authority through which state parties shall organize and control activities in the Area, particularly with a view to administering the resources in the Area³⁴. The term "resources" of the Area refers to all solid, liquid or gaseous mineral resources *in situ*. Resources when recovered from the Area are referred to as minerals. Three categories of deposits have been identified so far. These are the polymetallic manganese oxide nodules, (PMN), polymetallic sulphides (PMS), and Cobalt-rich ferro manganese crusts (CoFeMn). The Authority has adopted Regulations for Prospecting and Exploration of PMN, PMS and CoFeMn.³⁵ These Regulations contain detailed procedures for award of contract, including the standard form of contracts, requirements of financial and technical capabilities, obligations concerning training, relinquishment, environmental impact assessment, measures for the protection of the marine environment, as well as several other related matters. The International Seabed Authority is required to adopt appropriate rules, regulations and procedures for *inter alia* the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment³⁶ and some of these elements are also included in the Regulations.

The commercial arm of the Authority, The Enterprise, is yet to be established. Under the existing legal framework, only states and state-sponsored entities can enter into contracts. The system for exploration envisaged is the parallel or dual system, whereby an applicant for a contract submits two areas of equal estimated commercial value, one of which is awarded as a contract area to the applicant and the other is reserved by the Authority for exploitation by its own commercial arm, namely, the Enterprise³⁷ in the future. In view of the characteristics and distribution of polymetallic sulphides and cobalt-rich ferromanganese crusts, the submission may be made in the form of blocks which need not be contiguous, but has to be within certain specifications of total area and length of its size etc.

Registered Pioneer Investors

At the time of adoption of the Convention in 1982, four states and four entities were recognized as “pioneer investor” in view of their long standing financial commitments, and other activities relating to identification, discovery and evaluation of polymetallic nodules leading to the determination of technical and economic feasibility of exploitation. It was stipulated that the concerned state or entity should have expended at least US\$ 30 million prior to 1st January 1983 of which no less than 10 per cent of the amount should have been spent for location, survey, and evaluation of the nodules. In respect of a developing state or an entity sponsored by a developing state, the cut-off date was extended to 1st January 1985. France, India, Japan and the former Soviet Union were expressly recognized as pioneer investors.³⁸ China, Republic of Korea and Interocean Metals (sponsored by the former Soviet Union and a group of East European countries) were also subsequently registered as pioneer investors. India was the first country to be registered as Pioneer Investor in respect of polymetallic nodules, and the only country so registered in the Central Indian Ocean area.

Upon the entry into force of the Convention and establishment of the International Seabed Authority, these 7 Registered Pioneer Investors (RPIs) were the first to enter into contracts for exploration of polymetallic nodules. The contract for exploration is initially for a period of 15 years and extendable for a further five year period on the expectation that the contractor is ready to proceed to the exploitation stage. India’s initial contract for 15 years for exploration of polymetallic nodules was extended in 2017 for another 5 year period. India is thus expected to enter into a contract for exploitation in the year 2022. The other six RPIs had requested extension in the year 2016 and accordingly their contracts for exploration are extended until 2021 and are expected to enter into a contract for exploitation in the year 2021. The Authority is currently working on the draft

regulations for exploitation. This draft requires careful examination from the point that India’s rights are safeguarded.

The Authority has so far entered into 29 contracts for exploration. Out of those, 17 contracts are for exploration for polymetallic nodules: 16 of them in the Clarion-Clipperton Fracture Zone, and 1 (India) in the Central Indian Ocean Basin. There are 7 contracts for exploration for polymetallic sulphides with one in the South West Indian Ridge, three in the Central Indian Ridge (India, Germany and Republic of Korea) and three in the Mid-Atlantic Ridge and 5 contracts for exploration for cobalt-rich crusts in the Western Pacific Ocean.

Marine Biodiversity

Marine organisms are associated with marine mineral deposits in all regions of the ocean. In activities relating to marine minerals, such as prospecting, exploration and exploitation, the protection and preservation of the marine environment needs to address the protection of marine organisms and the conservation of biological diversity³⁹. With respect to marine organisms and the related issue of biological diversity, the provisions of the Convention on Biological Diversity⁴⁰ (CBD) need to be taken into account. The objectives of the CBD are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. CBD makes two important distinctions: on the one hand, between “components of biological diversity” and “activities and processes” and, on the other, between areas within and those beyond the limits of national jurisdiction. In areas within national jurisdiction, the provisions of the CBD apply to components of biological diversity and to activities and processes that may have adverse impacts on biological diversity. The CBD is considered as a key document that underscores the importance of sustainable development. At the 10th Conference of Parties to CBD, held in October 2010, the Nagoya Protocol was adopted.

In areas beyond the limits of national jurisdiction, the provisions of the CBD apply only to activities and processes carried out under a Party’s jurisdiction or control which may have adverse impact on biological diversity. CBD however, does not provide for any direct obligation with regard to the conservation and sustainable use of specific components of biological diversity in areas beyond the limits of national jurisdiction. The General Assembly of the United Nations began addressing this issue as early as 2004, and in June 2015 decided to develop an international legally binding instrument on conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction, *under* (emphasis added) the United Nations Convention on the Law

of the Sea⁴¹. In accordance with that resolution a preparatory committee was established and based on its recommendations the General Assembly⁴² decided to convene an Intergovernmental Conference, under the auspices of the United Nations, with a view to developing the instrument as soon as possible. The Conference held a three-day organizational meeting in New York, from 16 to 18 April 2018. The Conference will meet for four sessions, with the first session to be convened from 4 to 17 September 2018. The second and third sessions will take place in 2019, and the fourth session in the first half of 2020.

Marine biodiversity involves several cross-cutting issues. These include an acceptable definition of marine genetic resources, concern regarding new definitions; usefulness of drawing on definitions contained in existing instruments; the rights of coastal states over their continental shelf that are inherent rights and cannot be altered; and distinction between fish used for its genetic properties and fish used as a commodity when developing a definition. It leads to some questions particularly whether common heritage of mankind and the freedom of the high seas are mutually exclusive or would they apply concurrently in an international instrument? The entire question surrounds on benefit sharing and the aspects to be included in the benefit sharing regime? This is not an exhaustive list of issues. Above all there will be intense debate on issues concerning ecology and sustainable development.

Conclusions

India has complete sovereignty over its internal waters and territorial sea that extends to 12 nautical miles. Foreign ships have a right of innocent passage. Beyond 12 nautical miles and up to 24 nautical miles India has a contiguous zone where it exercises limited sovereignty for customs, fiscal, quarantine and sanitary matters. Domestic laws apply in this zone. Resources beyond the territorial sea fall under the regime of exclusive economic zone. The exclusive economic zone extends to 200 nautical miles from the baselines where the coastal state has exclusive sovereign rights over all the resources, including production of energy. Navigational rights are in the high seas but the coastal state can regulate passage in the interests of exploration, exploitation, preservation and conservation of the resources as well as protection and preservation of the marine environment. The continental shelf is the natural prolongation of the land under the sea and extends up to 200 nautical miles and beyond if certain conditions are fulfilled. The outer limit of the continental shelf could extend to either 350 nautical miles or 2500 metres isobath plus 100 nautical miles, depending on scientific factors.

Coastal states have inherent and exclusive sovereign rights over the mineral and non-living resources of the continental shelf as well as sedentary

organisms. Beyond 200 nautical miles is the high seas and the seabed and subsoil beyond the outer limits of the continental shelf is the International seabed area, or "Area". Resources in the Area are administered by the International Seabed Authority through contracts. The rights of a state are therefore contractual rights. Given the complexity of the regime, it may be necessary to establish an appropriate institutional framework for the implementation of activities concerning Blue Economy. India may wish to consider establishment of a full-fledged Ministry of Marine Affairs considering the wide range of issues and prospects involved in Blue Economy. This may also provide a mechanism for co-ordination with other ministries and departments that deal with ocean affairs. Some years ago a Ministry of Ocean Development existed for a short period which was then reconstituted under a larger Ministry of Earth Sciences. India (Ministry of External Affairs) may also wish to consider the advantage of having a PR on ocean affairs based either in Jamaica or in New York in view of the wide range of issues involved where India has vital interests. Japan even went on to place an Adviser in their Permanent Mission to the United Nations in New York throughout the duration of the consideration of their submission by the Commission. This also provided an effective interaction with the secretariat and for all follow-up actions especially since the participation of representatives of the submitting state in the deliberations of the Commission is limited. India may also wish to consider such an option. Several countries have established Permanent Missions to the International Seabed Authority in Kingston, Jamaica.

Additional financial resources will also be required. In particular, while traditional areas of international economic cooperation such as fisheries, ship building, port facilities and oil exploration may still rank foremost, new areas of deep seabed mining, gas hydrates, and sophisticated environmental clean-up strategies are opening up. It is time to explore partnership and collaborative ventures with some of these industries, especially with regard to lifting, transportation, extractive metallurgy, environmental impact assessment, and restoration techniques.

Possible business opportunities are in the area of transportation of materials recovered from deep-seabed, port facilities and storage facilities. From India's perspective, it is worthwhile to explore with South Africa, Mauritius and Seychelles, the various logistics arrangements that may be required. In the context of India's new initiatives and outreach to the Pacific community, it may be noted that Cook Islands, Nauru, Kiribati and Tonga have already entered into exploration contracts with the International Seabed Authority for polymetallic nodules.

Joint venture opportunities in the development of the reserved areas with the Enterprise (commercial

arm of the Authority, soon to be established), is another distinct possibility, as the Enterprise when established will be without capital and technical know-how and the only manner it can begin its function in an effective and competitive way is through joint venture operations.

Endnotes

- ¹ See Mohanty, Dash, Gupta and Gaur (2015) for different facets of blue economy including economic, social, environmental and legal dimensions.
- ² Art.8 (1) of the Convention.
- ³ Art. 3 of the Convention.
- ⁴ Article 33 of the Convention.
- ⁵ Article 303 of the Convention.
- ⁶ Article 46(a) of the Convention.
- ⁷ Article 46(b) of the Convention.
- ⁸ Article 57 of the Convention.
- ⁹ Article 56 of the Convention.
- ¹⁰ Legal clarity over access to marine resources within and beyond EEZs is vital for evolving a comprehensive estimation of blue economy of a country. Mohanty, Dash and Gupta (2017) highlight the difficulties faced by coastal nations in attempting a scientific measurement of blue economy.
- ¹¹ These are considered resources of the continental shelf.
- ¹² Art. 77(4) of the Convention.
- ¹³ Art. 77(2) of the Convention.
- ¹⁴ Art.60 of the Convention.
- ¹⁵ Art. 76(1) of the Convention.
- ¹⁶ Art. 76(3) of the Convention
- ¹⁷ See Art. 76(4) and Art. 75 of the Convention.
- ¹⁸ The Commission on the Limits of the Continental Shelf is a body of 21 experts in the field of geology, geophysics or hydrography nominated by States Parties to the Convention and elected at the Meeting of States Parties. See Annex II, Convention.
- ¹⁹ See Art,121(3) of the Convention
- ²⁰ See paragraph 6 of the Executive Summary of India, http://www.un.org/depts/los/clcs_new/commission_submissions.htm
- ²¹ CLCS/68, para32-34
- ²² Annex II, para. 4(1) , Rules of Procedure, note 52.
- ²³ See Part II, page 18.
- ²⁴ Annex III, para 5 (2)(d), Rules of Procedure, note 52.
- ²⁵ The details regarding the history of the Statement of Understanding and the manner in which it was adopted as an annex to the Final Act can be provided separately, if required.
- ²⁶ See George Taft and Bilal Haq, Deep Sea Fan issues, in *The Continental Shelf Limits, The Scientific and Legal Interface*, Peter J. Cook and Chris M. Carlton ed; (Oxford University Press, 2000), p. 308
- ²⁷ Ibid;
- ²⁸ Curray, J.R and D.J.Moore, cited ibid;
- ²⁹ See Note 30 above.
- ³⁰ A detailed examination of the provisions concerning islands and rocks can be provided separately, if required.
- ³¹ See Art.87 of the Convention.
- ³² Art. 1(1) of the Convention.
- ³³ 136 of the Convention.
- ³⁴ See Art. 156, 157 of the Convention.
- ³⁵ For PMN Regulations see ISBA/6/A/18 read with ISBA/19/A/9; for PMS see ISBA/16/A/12/Rev; for Cobalt rich Ferromanganese crusts see ISBA/18/A/11.
- ³⁶ Article 145(b) of the Convention. This provision however, is inadequate to deal with genetic resources and marine biological biodiversity.
- ³⁷ Art. 170 and Annex IV of the Convention.
- ³⁸ Resolution II of the Final Act of the Convention.
- ³⁹ Marine Mineral Resources: Scientific Advances and Economic Prospects, a joint publication by the Division for Ocean Affairs and the Law of the Sea, United Nations and the International Seabed Authority,(2004), p.10.
- ⁴⁰ Convention on Biological Diversity was opened for signature at the Earth Summit in Rio de Janeiro on 5 June 1992 and entered into force on 29 December 1993.
- ⁴¹ See UNGA A/RES/69/292.
- ⁴² UNGA 72/249 of 24 December 2017.



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Core IV-B, Fourth Floor, India Habitat Centre
Lodhi Road, New Delhi-110 003 India., Ph. 91-11-24682177-80
Fax: 91-11-24682173-74, Email: dgoffice@ris.org.in
Website: <http://www.ris.org.in>

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