



**Brunei Darussalam's Preliminary Submission
concerning the Outer Limits of its Continental Shelf**

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1. Introduction

(a) Relevant Provisions of UNCLOS

1. Brunei Darussalam ('Brunei') is a State party to the 1982 United Nations Convention on the Law of the Sea ('UNCLOS'), which it signed on 5 December 1984 and ratified on 5 November 1996.

2. Article 77, paragraphs 1 – 3, of UNCLOS provide that:

"1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation."

3. Article 76, paragraph 1, of UNCLOS establishes the right of coastal States to determine the outer limits of the continental shelf. This provision states that:

"The continental shelf of a coastal State comprises the sea-bed 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 up to that distance."

Article 76, paragraph 8, of UNCLOS further states that:

"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 shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographic representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established on the basis of these recommendations shall be final and binding."

4. Under Annex II, Article 4, of UNCLOS, if a coastal State intends to make a submission to the Commission on the Limits of the Continental Shelf (the 'Commission') pursuant to Article 76, paragraph 8, it must do so within 10 years of entry into force of UNCLOS for that State.

5. However, by a Decision dated 29 May 2001 (SPLOS/72) taken during the eleventh meeting of UNCLOS States Parties, it was decided as follows (at paragraph (a)):

"In the case of a State Party for which the Convention entered into force before 13 May 1999, it is understood that the ten-year time period referred to in article 4 of Annex II to the Convention shall be taken to have commenced on 13 May 1999."

6. By a subsequent Decision dated 20 June 2008 (SPLOS/183) taken during the eighteenth meeting of UNCLOS States Parties, it was further decided as follows (at paragraph 1):

"(a) It is understood that the time period referred to in article 4 of annex II to the Convention and the decision contained in SPLOS/72, paragraph (a), may be satisfied by submitting to the Secretary-General preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles and a description of the status of preparation and intended date of making a submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf;

(b) Pending the receipt of the submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission, preliminary information submitted in accordance with subparagraph (a) above shall not be considered by the Commission;

(c) Preliminary information submitted by a coastal state in accordance with subparagraph (a) is without prejudice to the submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission, and the consideration of the submission by the Commission;

(d) The Secretary-General shall inform the Commission and notify member States of the receipt of preliminary information in accordance with subparagraph (a), and make such information publicly available, including on the website of the Commission;"

7. In accordance with Article 76 of UNCLOS, and Decisions SPLOS/72 and SPLOS/183 taken during meetings of UNCLOS States Parties, Brunei hereby provides to the Secretary-General preliminary information indicative of the outer limits of Brunei's continental shelf beyond 200 nautical miles and a description of the status of preparation and intended date of Brunei making a full submission to the Commission under Article 76, paragraph 8, of UNCLOS. Pursuant to paragraph 1(c) of Decision SPLOS/183, all information provided to the Secretary-General in this preliminary submission (the 'Preliminary Submission') is without prejudice to any submission made by Brunei to the Commission in accordance with Article 76 of UNCLOS, or to its rights to its continental shelf.

8. In accordance with paragraph 1(a) of Decision SPLOS/183, this Preliminary Submission satisfies the time-limit referred to in Article 4 of Annex II to UNCLOS and in Decision SPLOS/72.

(b) The Relevant Area

9. Brunei is located in Southeast Asia on the north-western coast of the island of Borneo, bordered to the south, east and west by the Malaysian state of Sarawak. Brunei's north-facing coastline extends for approximately 160km along the South China Sea, including Brunei Bay. Brunei's baselines conform to UNCLOS Part II, Section 2.

10. The maritime boundaries between Brunei and Malaysia out to 200 nautical miles have been delimited by two series of agreements.

- First, the territorial sea and continental shelf between Brunei and Malaysia were delimited as far as the 100 fathom isobath by two 1958 British Orders in Council.¹
- Second, the territorial sea, the Exclusive Economic Zone and the continental shelf out to a distance of 200 nautical miles were delimited by an Exchange of Letters dated 16 March 2009.

¹ The North Borneo (Definition of Boundaries) Order in Council, 1958, Statutory Instruments 1958 No. 1517; and, the Sarawak (Definition of Boundaries) Order in Council, 1958, Statutory Instruments 1958 No. 1518.

11. On the basis of technical studies carried out to date, Brunei's continental shelf as defined in accordance with Article 76 of UNCLOS extends beyond 200 nautical miles from the baselines from which the breadth of Brunei's territorial sea is measured. Brunei's entitlement to such extended continental shelf rights is the subject of the information provided in this Preliminary Submission to the Secretary-General and will similarly be the subject of Brunei's full submission to the Commission to be submitted at a later date.

12. Brunei notes that there may exist areas of potential overlapping entitlements in respect of its continental shelf beyond 200 nautical miles. This Preliminary Submission is made without prejudice to any future delimitation of boundaries with other States.

(c) Preliminary Information Indicative of the Outer Limits of Brunei's Continental Shelf

13. The preparation of detailed studies of Brunei's continental shelf is the responsibility of the Technical Working Committee of the Brunei Outer Continental Shelf Project, which has also engaged outside technical assistance.

14. As described below, Brunei has made a preliminary identification and selection of the relevant methodologies and formulae by which the outer limits of its continental shelf may be delineated. This has been undertaken on the basis of the Scientific and Technical Guidelines of the Commission (CLCS/11, the 'Guidelines').

15. Brunei has researched and analysed significant amounts of data relating to its continental shelf. This includes extensive morphological, geological, geophysical and tectonic data.

16. On the basis of the selected methodologies/formulae and the data analysed, Brunei has made significant progress towards preparation of a full submission to the Commission in accordance with Article 76, paragraph 8, of UNCLOS. However, this process has yet to be completed.

2. Formulae Lines Employed by Brunei To Establish the Outer Edge of Its Continental Margin

17. Article 76, paragraph 4, of UNCLOS provides that:

"(a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

(i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or

(ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base."

18. Consistent with Article 76, paragraph 4, Brunei will establish the outer edge of the continental margin in the following manner, taking account also of the Guidelines:

- First, in accordance with Article 76, paragraph 4(b), the foot of the continental slope will be identified via the method of establishing the point of maximum change in gradient at the base of the relevant continental slope.
- Second, the edge of the continental margin will then be established in accordance with the formula prescribed at Article 76, paragraph 4(a)(ii), i.e. a line delineated by fixed points not more than 60 nautical miles from the foot of the continental slope. Brunei notes that this formula is commonly referred to as the "Hedberg Formula".

3. The Test of Appurtenance

19. With respect to the requirements of Article 76, paragraph 4(a), of UNCLOS, Brunei notes that the Guidelines describe the process by means of which this provision is examined as the "Test of Appurtenance" (CLCS/11, paragraph 2.2.2). The Guidelines further explain that:

"The test of appurtenance is designed to determine the legal entitlement of a coastal State to delineate the outer limits of the continental shelf 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 up to that distance." (CLCS/11, paragraph 2.2.2)

20. Brunei's full submission to the Commission in accordance with Article 76 of UNCLOS will show that there is a continuous natural prolongation from the territory of Brunei extending across the areas known as the Northwest Borneo Shelf, the Northwest Borneo Trough and the Dangerous Grounds to the edge of the deep ocean floor of the South China Sea Basin. This will be evidenced by onshore and offshore morphology, and geological and geophysical data (including rock samples, seismic data, and gravity and magnetic data), supported by regional tectonic interpretations.

21. In satisfaction of the test of appurtenance, Brunei's full submission to the Commission will show that the edge of the continental margin, lying at the transition between the Dangerous Grounds and the deep ocean floor of the South China Sea, is situated beyond 200 nautical miles from the baselines from which Brunei's territorial sea is measured.

22. Brunei will thereby demonstrate that it is entitled to delineate the outer limits of its continental shelf consistent with the set of rules provided in Article 76, paragraphs 4 to 10, of UNCLOS.

4. Constraint Lines

23. According to Article 76, paragraph 5, of UNCLOS, the fixed points determined with reference to the foot of the continental slope may not lie beyond the outer envelope of two specified constraint lines:

"The fixed points comprising the line of the outer limits of the continental shelf on the sea-bed, drawn in accordance with paragraph 4(a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres."

24. Brunei's extended continental shelf lies within the 350 nautical mile constraint line.

5. Full Submission

25. Brunei will make a full submission with respect to the outer limits of its continental shelf having regard to, first, the outer edge of the relevant continental margin established on the basis of a Hedberg Formula line, second, the test of appurtenance and, third, the 350 nautical mile constraint line.

26. It will be necessary to agree upon the delimitation of Brunei's extended continental shelf and the continental shelves of neighbouring States, in accordance with international law. Brunei understands that all submissions made to the Commission are made without prejudice to questions of delimitation.

27. Brunei expects that it will be in a position to make a full submission to the Commission concerning the outer limits of its continental shelf within 12 months.