

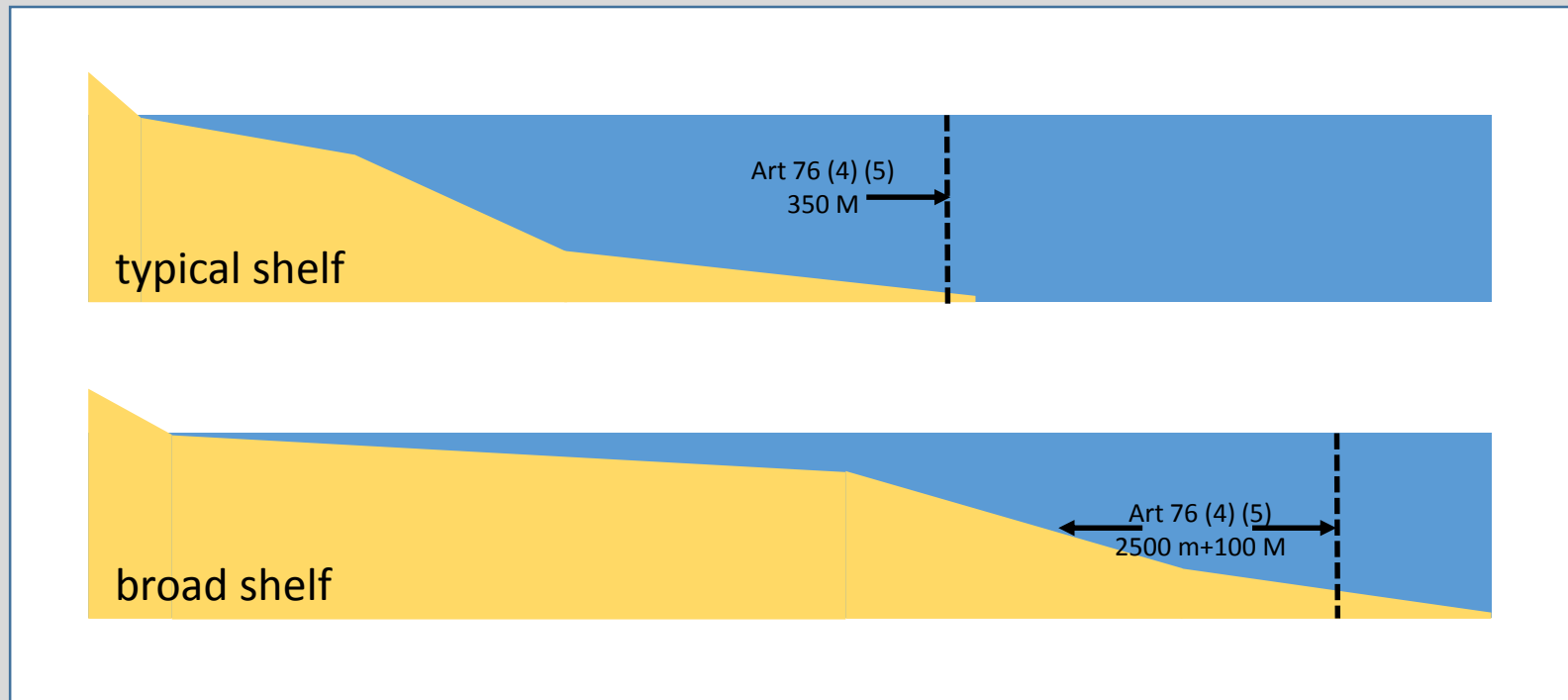
Technical and Legal Challenges of the Statement of Understanding

Ray Wood and Elana Geddis

Summary of Talk

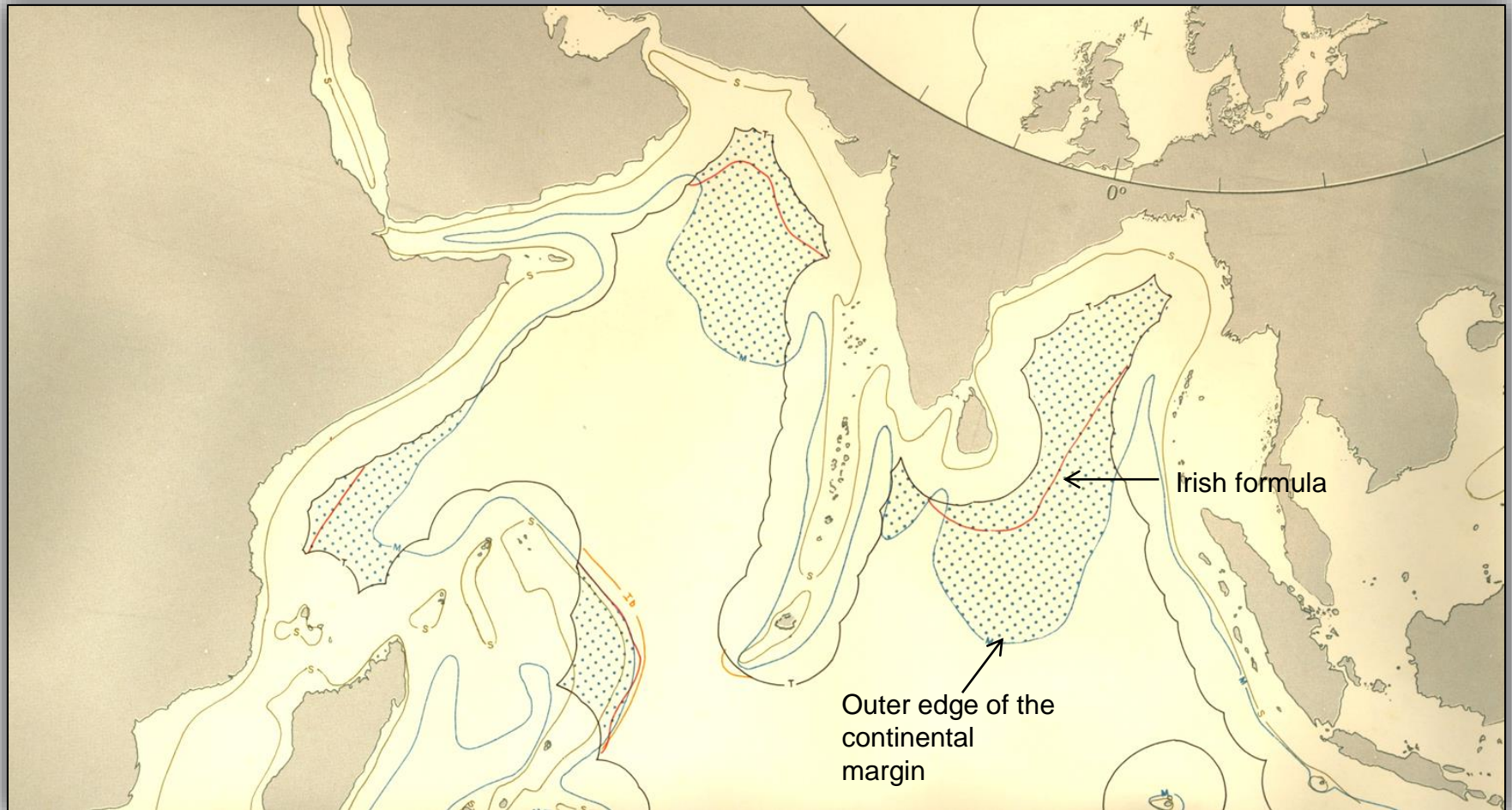
- Origin of the Statement of Understanding (SoU)
- Interpretation of the SoU
- Practical challenges of applying the SoU
- Sri Lanka's application of the SoU
- Myanmar's application of the SoU
- Kenya's application of the SoU

UNCLOS article 76 recognizes 2 categories of continental shelves



maximum extent of the continental shelf

The L-98 map highlighted the inequity of Article 76 for Sri Lanka



L-98 Map (A/CONF.62/C.2/L.98/Add.1)

UNCLOS acknowledged Sri Lanka's special conditions

“The conference also decided ... that **the statement of understanding on ... delimitation of the continental shelf** applicable to certain specific geological and geomorphological conditions would be incorporated in an annex to the Final Act.”

(from the Final Act of the 3rd UN Conference on the Law of the Sea)

The SoU extends the definition of the continental shelf to States with broad rises

ANNEX II

STATEMENT OF UNDERSTANDING CONCERNING A SPECIFIC METHOD TO BE USED IN ESTABLISHING THE OUTER EDGE OF THE CONTINENTAL MARGIN

The Third United Nations Conference on the Law of the Sea,

Considering the special characteristics of a State's continental margin where: (1) the average distance at which the 200 metre isobath occurs is not more than 20 nautical miles; (2) the greater proportion of the sedimentary rock of the continental margin lies beneath the rise; and

Taking into account the inequity that would result to that State from the application to its continental margin of article 76 of the Convention, in that, the mathematical average of the thickness of sedimentary rock along a line established at the maximum distance permissible in accordance with the provisions of paragraph 4(a)(i) and (ii) of that article as representing the entire outer edge of the continental margin would not be less than 3.5 kilometres; and that more than half of the margin would be excluded thereby;

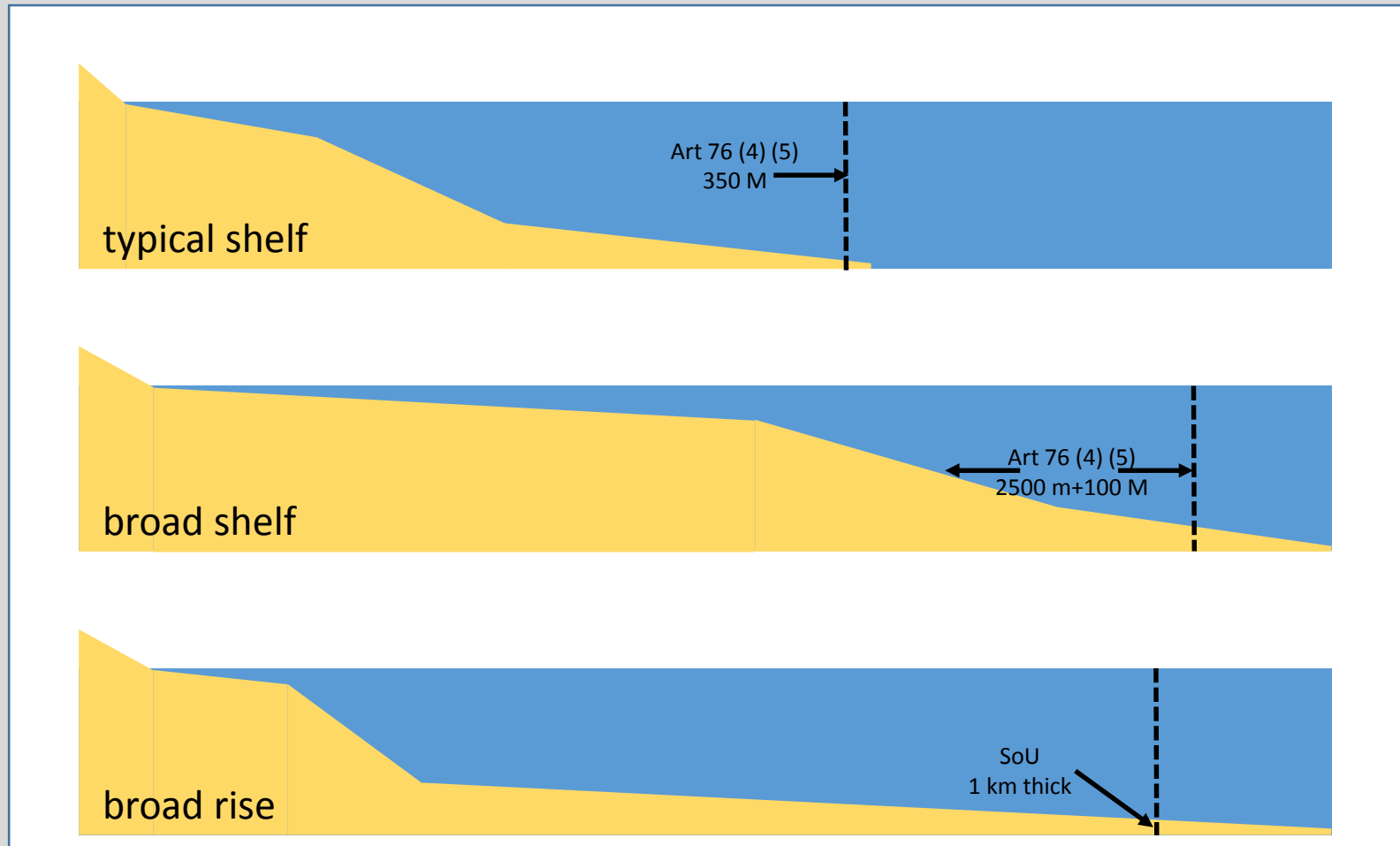
Recognizes that such State may, notwithstanding the provisions of article 76, establish the outer edge of its continental margin by straight lines not exceeding 60 nautical miles in length connecting fixed points, defined by latitude and longitude, at each of which the thickness of sedimentary rock is not less than 1 kilometre.

Where a State establishes the outer edge of its continental margin by applying the method set forth in the preceding paragraph of this statement, this method may also be utilized by a neighbouring State for delineating the outer edge of its continental margin on a common geological feature, where its outer edge would lie on such feature on a line established at the maximum distance permissible in accordance with article 76, paragraph 4(a)(i) and (ii), along which the mathematical average of the thickness of sedimentary rock is not less than 3.5 kilometres.

The Conference requests the Commission on the Limits of the Continental Shelf set up pursuant to Annex II of the Convention, to be governed by the terms of this Statement when making its recommendations on matters related to the establishment of the outer edge of the continental margins of these States in the southern part of the Bay of Bengal.

The Statement of Understanding was drafted to address the inequity of the application of Article 76 to Sri Lanka

SoU recognizes an additional category of continental shelf



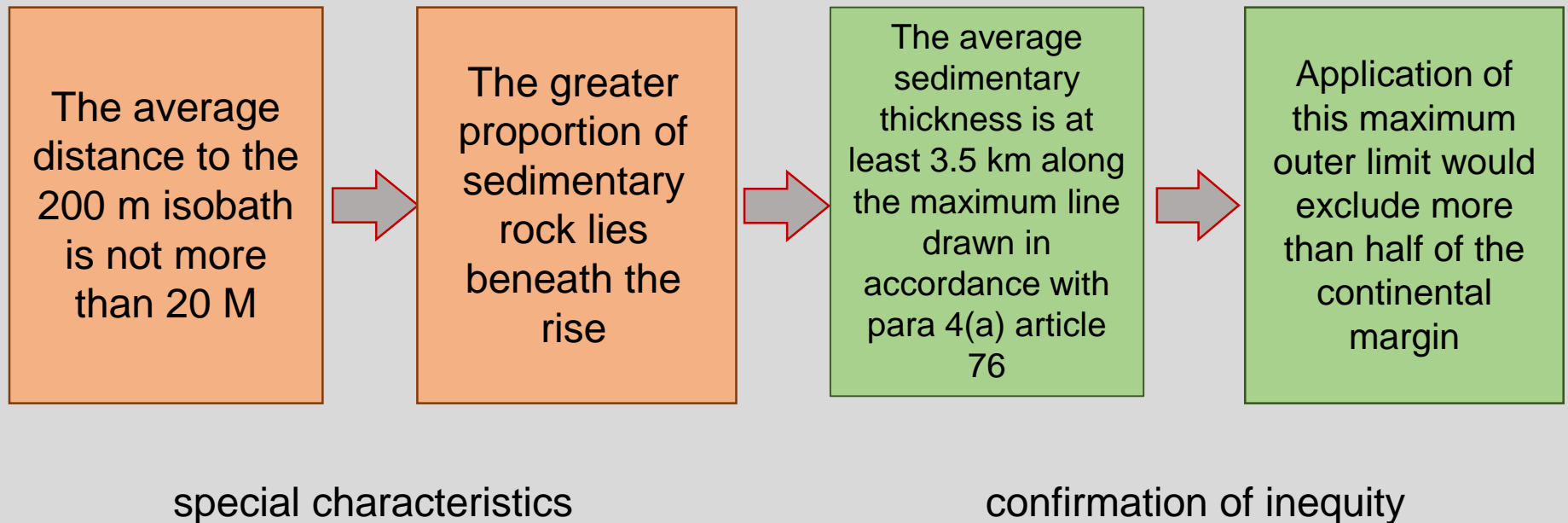
maximum extent of the continental shelf

Does the 350 M cutoff apply?

CLCS Technical Guidelines 8.1.12

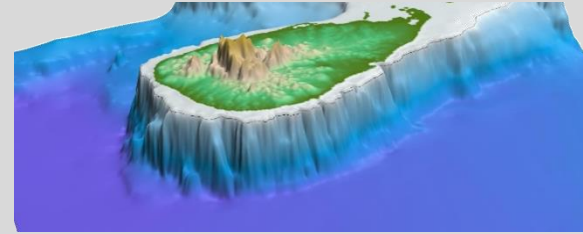
“The Commission acknowledges that .. an exception to the provisions of ***paragraph 4*** is provided for by the Statement of Understanding... A State that is entitled to implement this provision, and opts to do so, is expected by the Commission to submit data at fixed points not more than 60 M apart along the submitted boundary line of ***the continental shelf*** to document that the thickness of sedimentary rock is not less than 1 km at each of these fixed points.”

The Four Elements of the Statement of Understanding

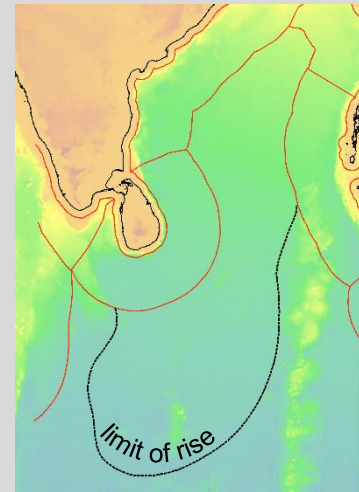


The Four Elements of the Statement of Understanding

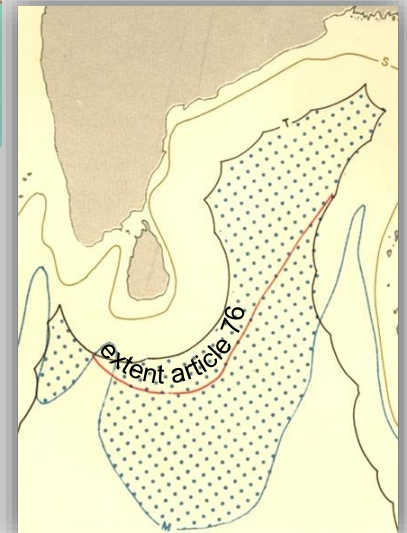
- The average distance to the 200 m isobath



- The greater proportion of sedimentary rock is beneath the rise



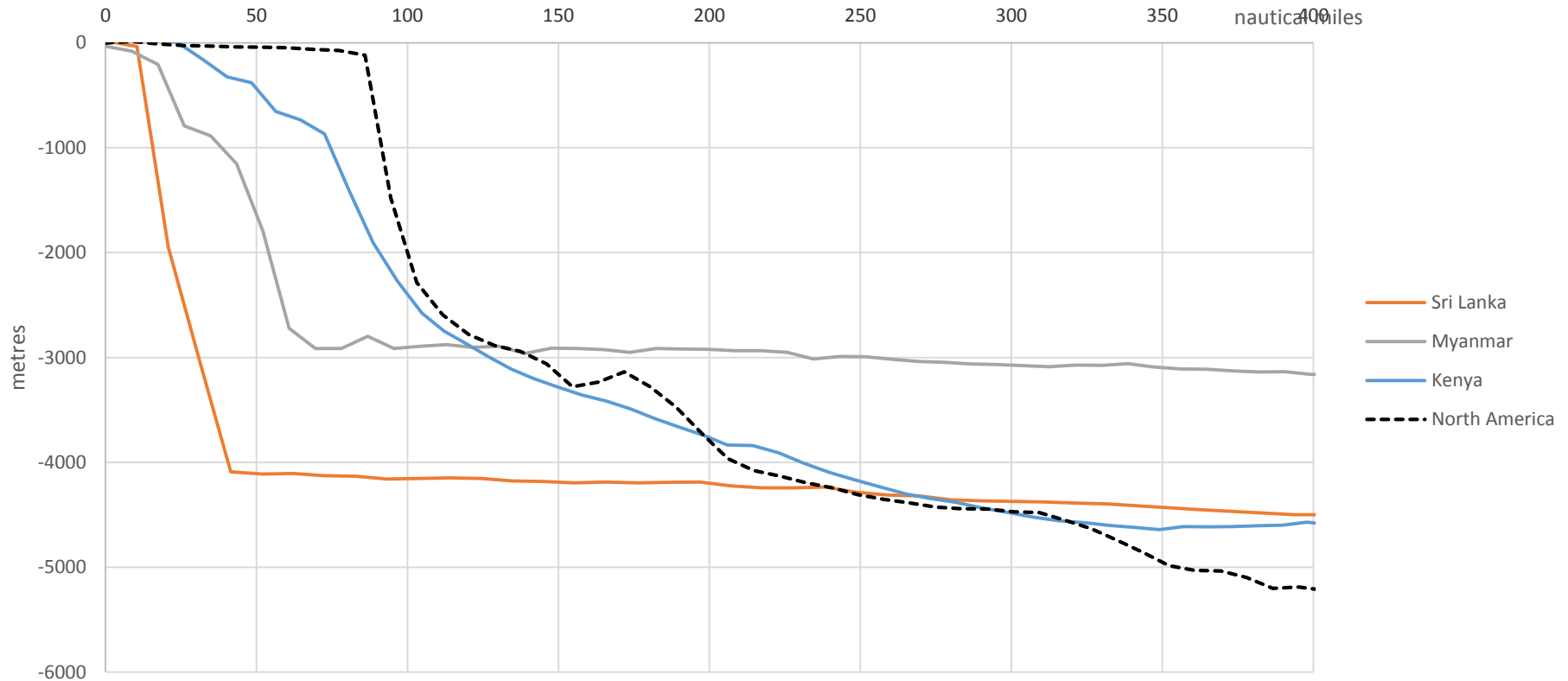
- The average sedimentary thickness along the maximum line
- This maximum outer limit would exclude more than half of the continental margin



Some questions arising from the application of the SoU

1. Who is entitled to use the SoU?
2. Can the SoU and article 76 be used on the same margin?
3. “The greater proportion of the sedimentary rock of the continental margin lies beneath the rise”
 - How is the outer limit of the rise determined?
 - Does “the greater proportion” refer to area or volume?
 - What data are used and how is this calculated?
4. What data are required to demonstrate the inequity of article 76 paragraph 4 (a) (i) and (ii)?
 - article 76 requires data at 60 M spacing
5. Does the 350 M cutoff apply?

Bathymetry Profiles From Sri Lanka, Myanmar and Kenya



data source: GEBCO Compilation Group (2019) GEBCO 2019 Grid

Sri Lanka's application of the SoU

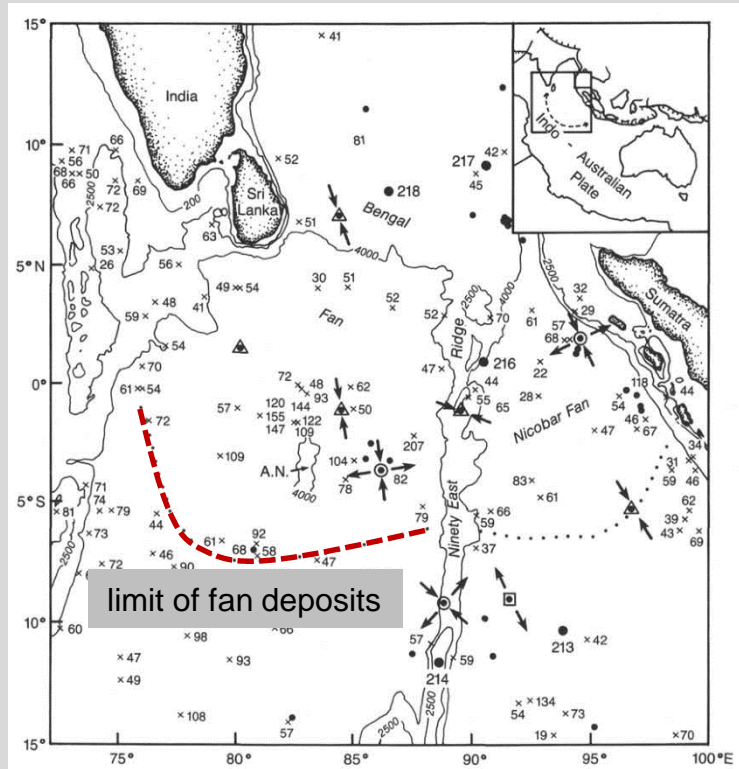
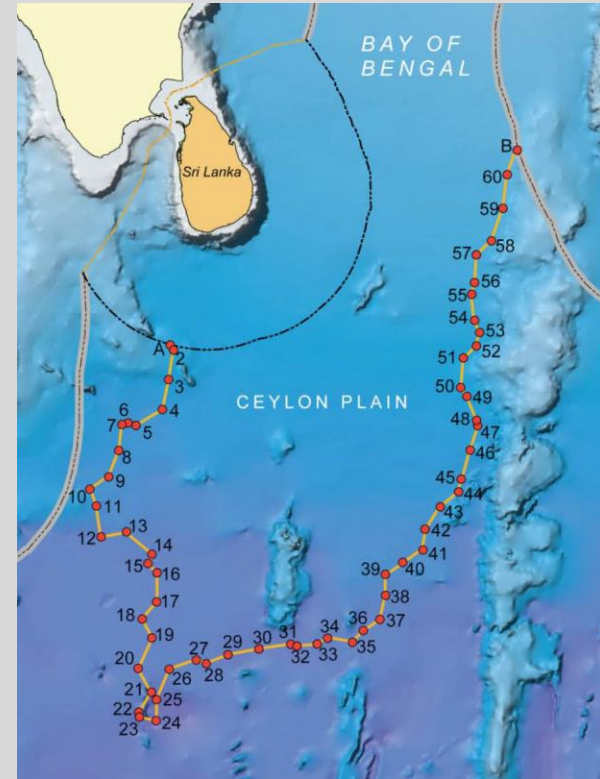
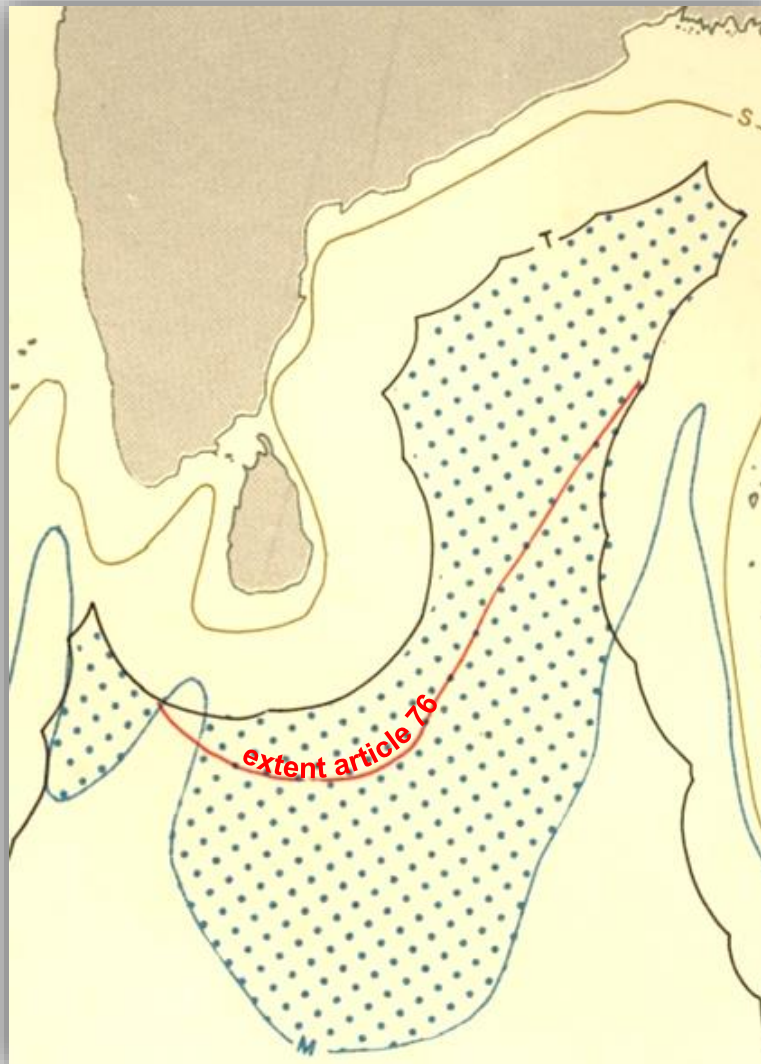


figure from Cochran et al. 1988

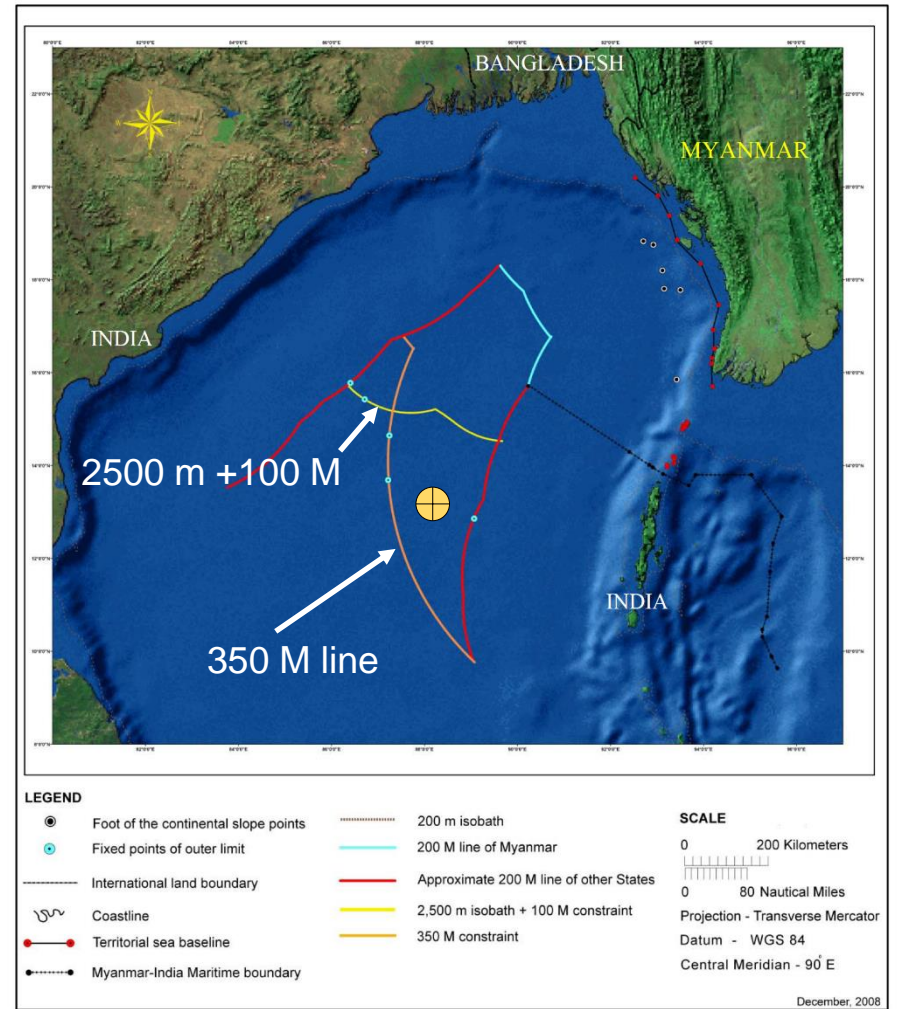
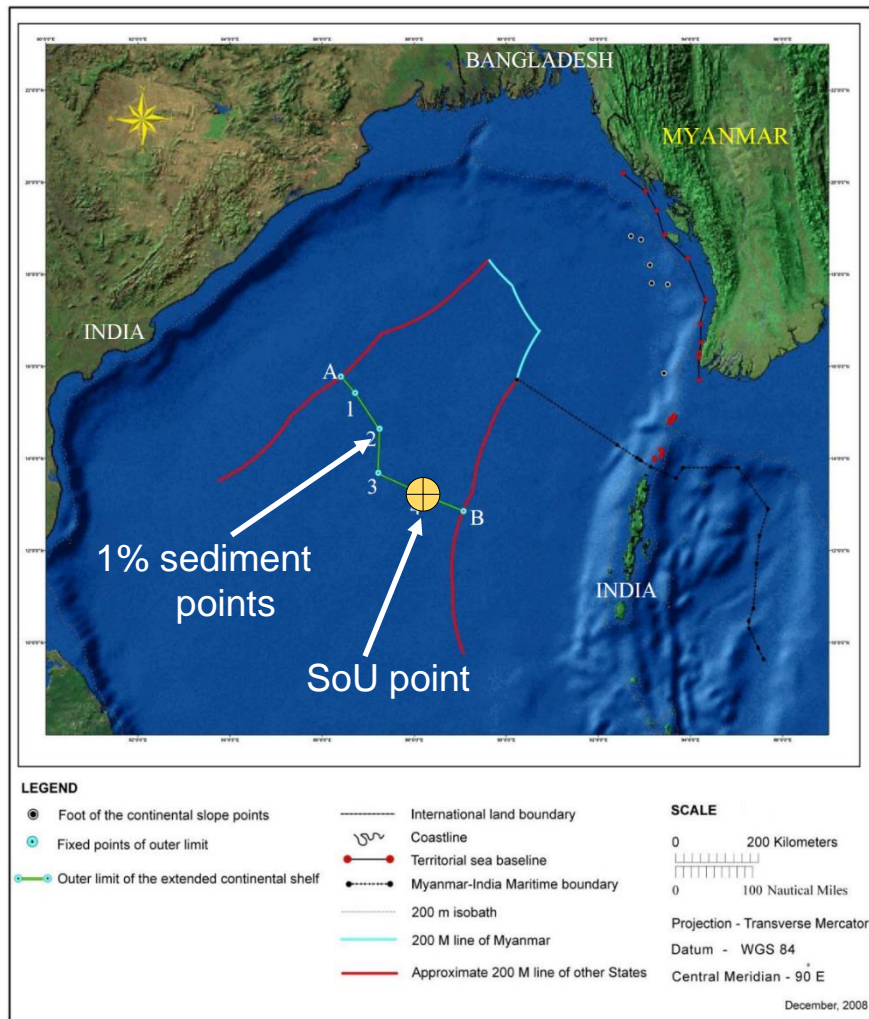


Sri Lanka's 1 km sediment points

Sri Lanka's application of the SoU



Myanmar's application of the SoU



Myanmar's application of the SoU

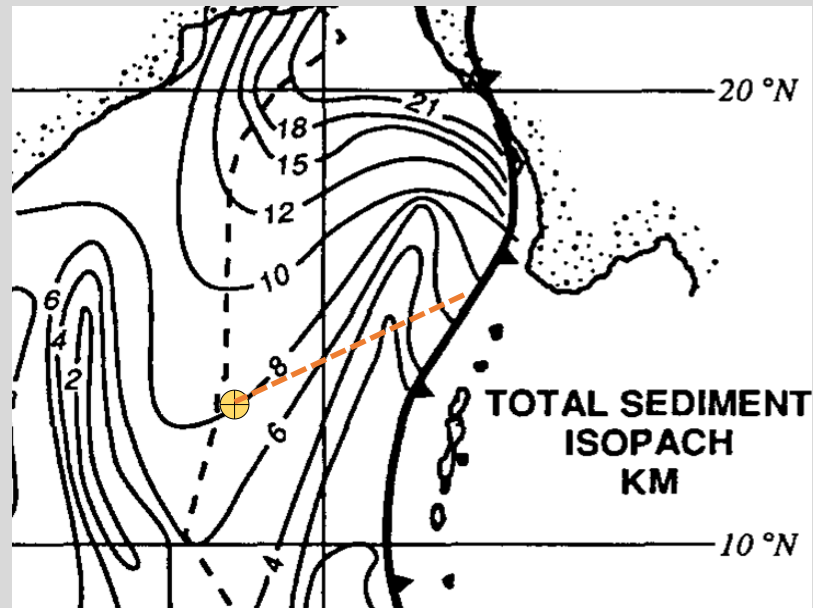
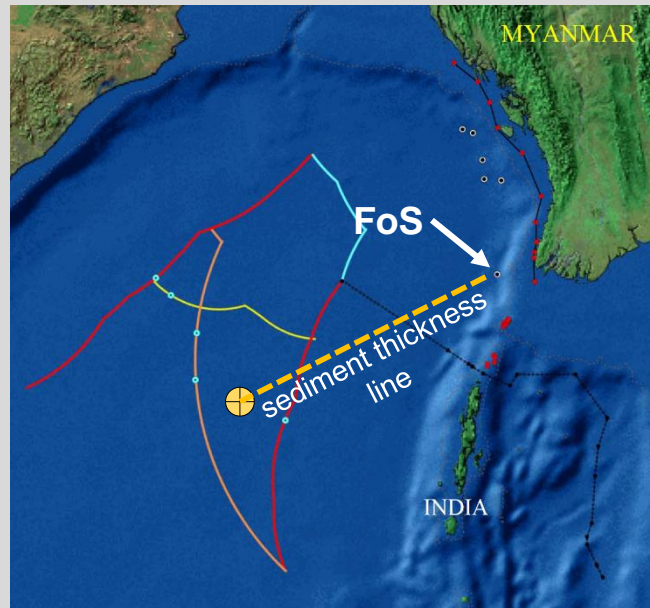
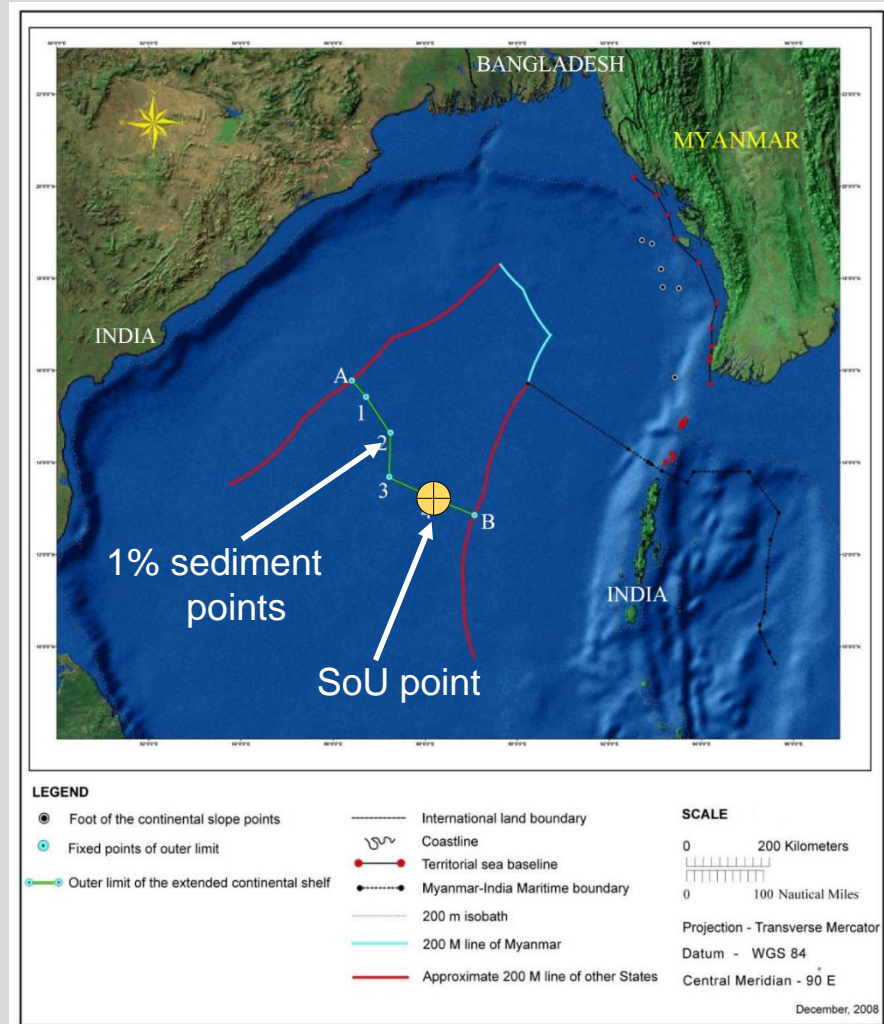
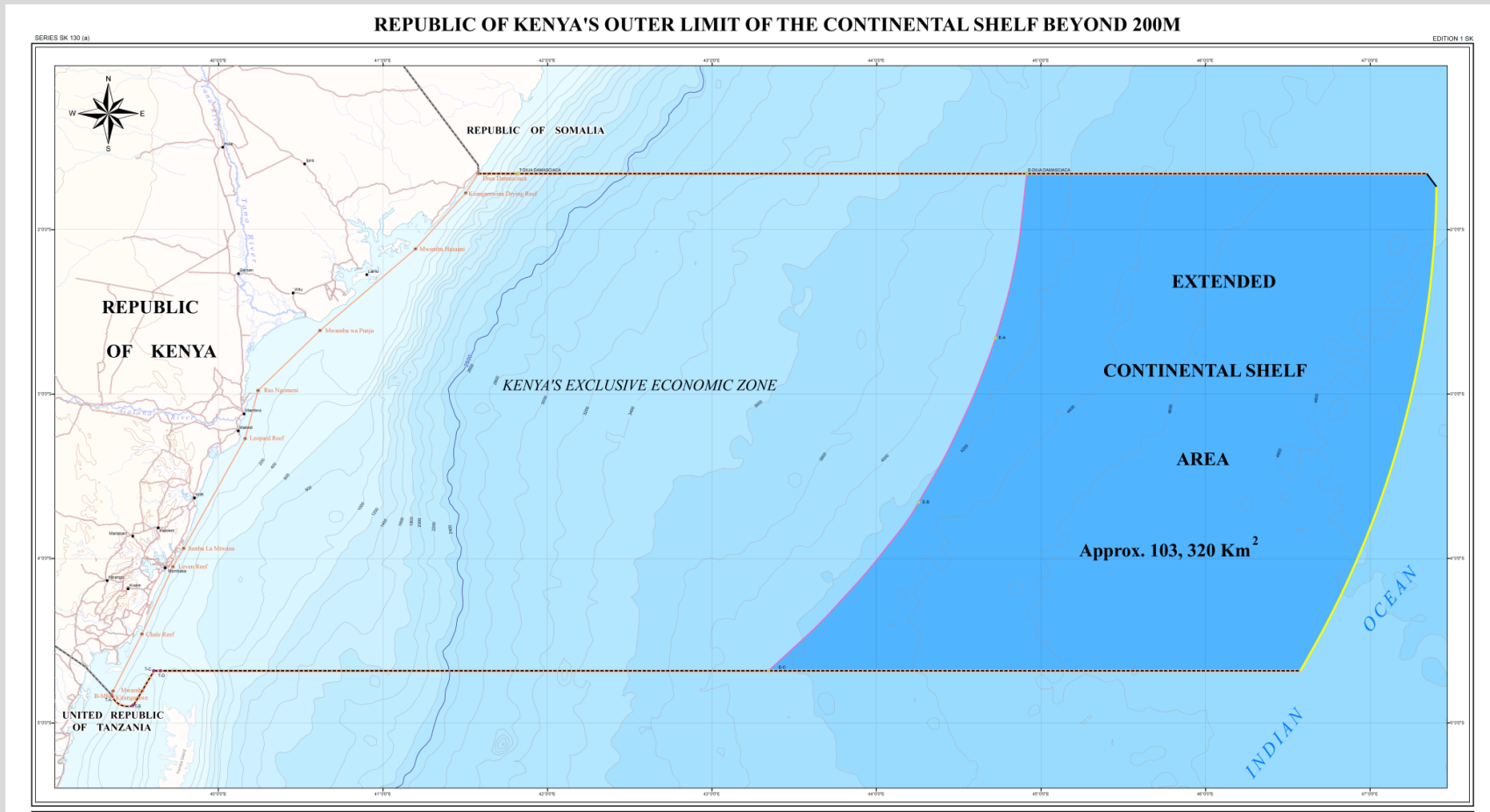


figure from Curray 1994

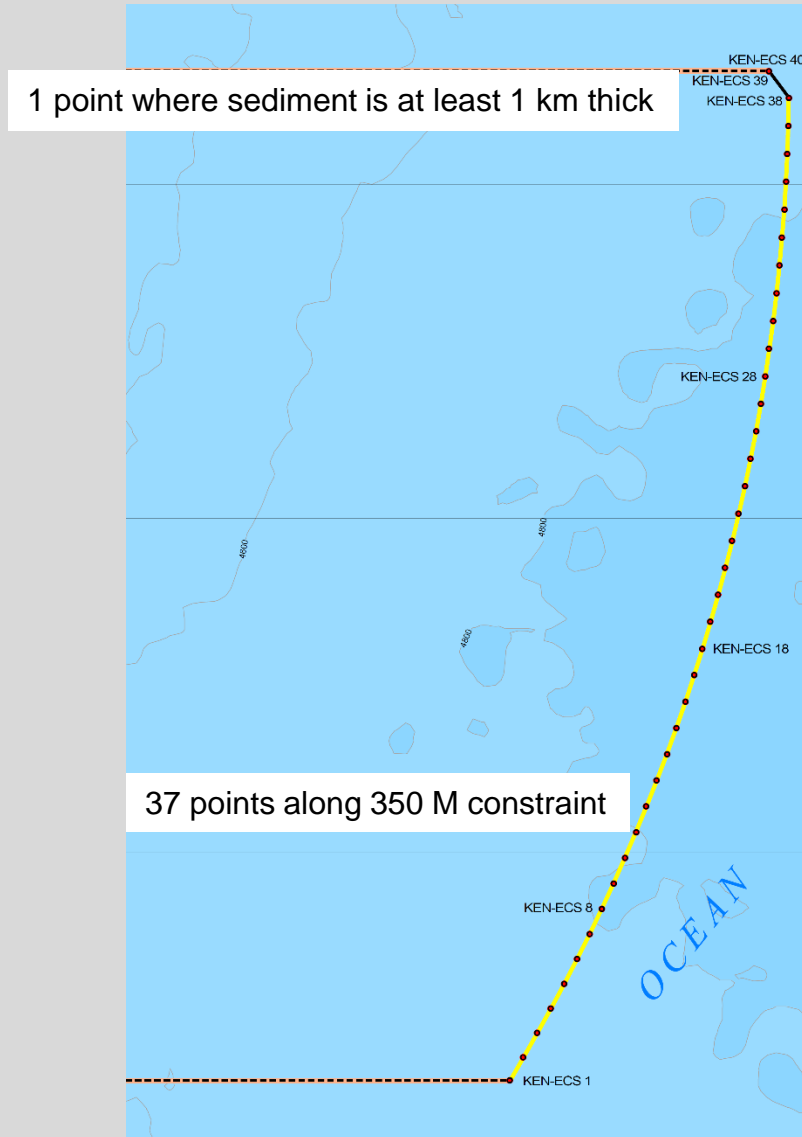
Myanmar's application of the SoU



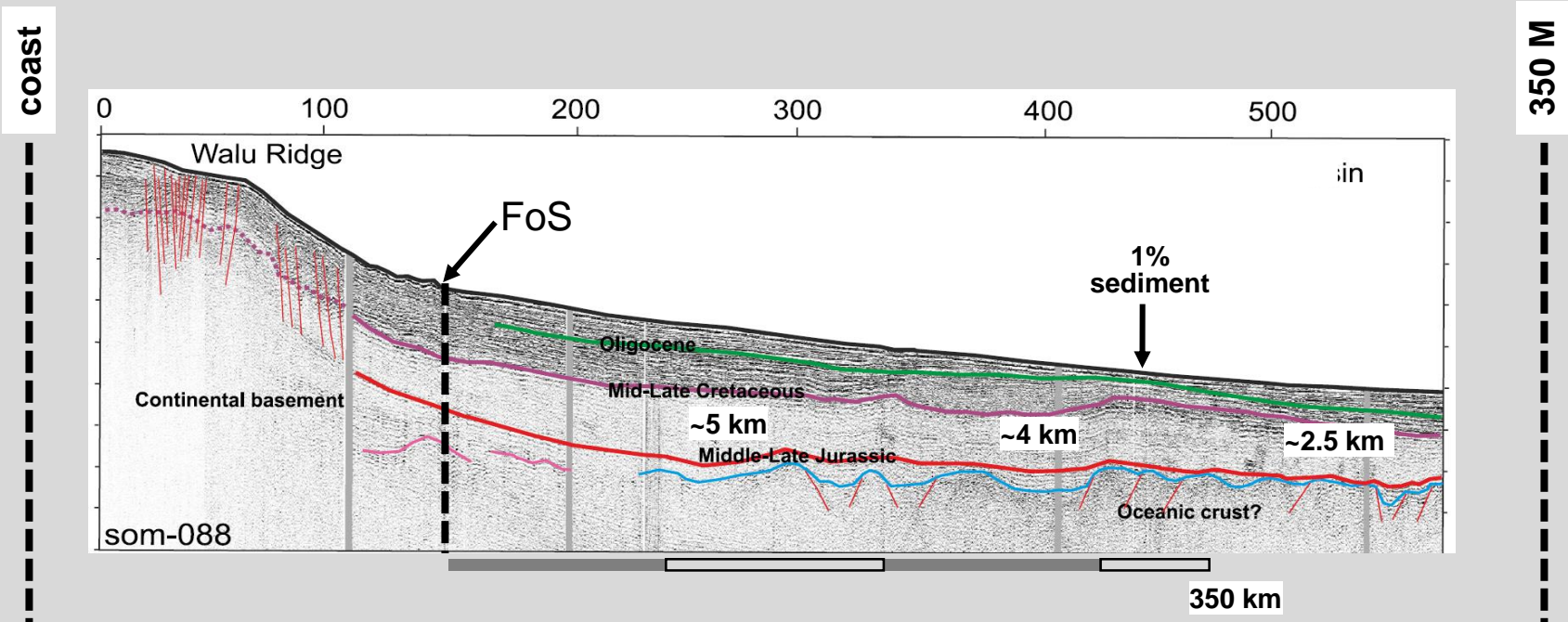
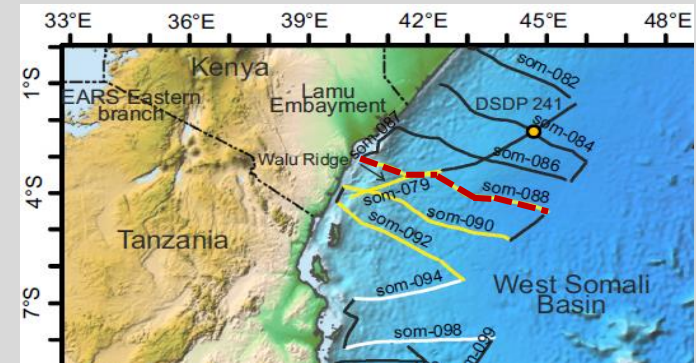
Kenya's application of the SoU



Kenya's application of the SoU



Seismic data offshore Kenya



Conclusions

- Three States have used the SoU to establish all or part of the outer limits of their continental shelves
- They have all interpreted the SoU and supporting documents differently
- Differences include
 - how to show most of the sediments lie under the rise
 - how the sediment thickness along a line of maximum distance permissible according to article 76 is determined
 - how to demonstrate that more than half the margin would be excluded by the application of article 76
 - whether the 350 M constraint of article 76 applies