



Law Goes Blue: A Phase towards a Sustainable Marine Life

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ABSTRACT

The blue economy concept gained significant momentum in Rio +20, where nations undertook the promise to embark on sustainable blue growth. The overexploitation of ocean resources has brought in a sustainable development crisis, and in response to tackling its challenges has emerged the concept of the Blue Economy, which encompasses the two competing discourses - exploiting the marine resources and ocean sustainability. Blue economy, therefore, offers a fresh approach to conserving the oceans while extracting its benefits equitably and sustainably. In an age where the emphasis is on the green economy, the blue economy tries to bolster it rather than replace it. Sri Lanka, due to its geographical location in the Indian Ocean, is blessed with maritime areas seven times larger than the land area, and it provides one of the frontiers for economic development. Fishing, sea transportation, tourism, seabed mining and minerals are the activities that have immense potential in providing sustainable livelihood. Findings of the existing literature on this topic show that they are not comprehensive nor give sufficient attention to the legislative framework of Sri Lanka in harnessing the emerging concept so as to attain sustainable development. Hence, there is a gap in the existing literature as no study has discussed the legislative and policy framework and the challenges in giving

effect to the blue economy. Research Problem includes despite the fact that there are catena of environmental legislation enacted in the idea of protecting and preserving the nature and its riches to which extent the legislations could be utilized to promote the blue economy concept? The purpose of this research paper is to examine the existing legal framework that bolsters the emerging concept of the blue economy and the challenges in protecting the marine ecosystem in the Sri Lankan context. This paper, employing a doctrinal legal research methodology, examines the importance of the blue economy concept to the island as a whole and the legislative initiatives that have been taken by the government to honour the concept of the blue economy while preserving and protecting the marine ecology. To this end, the paper analyses the relevant national legislations and the International Conventions which constitute as primary sources and to a lesser extent the scholarly articles on the concept as secondary sources. The paper concludes that the existing domestic legal framework could be utilized successfully to implement the concept and highlights the fact that the decision-makers and the judiciary should be willing and committed to recognizing the concept and, at the same, time prioritizing the conservation of the marine ecosystem.

1. INTRODUCTION

In the wake of climate change and exhaustion of resources that are generally termed as exhaustible, sustainable development and utilization of resources have become the central theme not only of environmental law but also of economics, politics and governance. The marine ecosystem is one that which faces the brunt of the adverse effects of climate change and the overexploitation of the resources. However, it is also one of the major sources of livelihood and economic prosperity. Hence, sustainable development and utilization of marine resources are pivotal

to ensure that they are not depleted and are available to the posterity. It is for this reason that the Sustainable Development Goals of the United Nations have included marine environment protection as part of its goal. Sustainable Development Goal 14 focuses on life below water, particularly on conserving and sustainably using the oceans, seas and marine resources for sustainable development. It emphasizes that dead zones areas of water that lack sufficient oxygen to support marine life in sea are rising at an alarming rate, from 400 in 2008 to 700 in 2019, over half of marine biodiversity is not protected and less than two per cent of national budgets are allocated for ocean science, all of which have brought the sustainability of the oceans under threat.¹ While calling for sustainability of oceans is one thing, - the more challenging aspect lies in finding ways or methods to utilize oceans without sacrificing the economic benefits that states derive from them. Blue economy has been proposed as a viable alternative to achieve this goal. Although the idea of a blue economy was first proposed by Gunter Pauli, who, in 2010, proposed that the focus of addressing climate crisis and overexploitation should shift from identify the problems to finding solutions², it was transformed into a concrete ideal only at the United Nations Conference on Sustainable Development held in Rio de Janeiro in 2012. The concept paper presented at the conference defined the terms as follows:

“[an ocean economy] that aims to the improvement of human well-being and social equity, while significantly reducing environmental risks and ecological scarcities.”³ [Emphasis added] Adopting the definition provided by the World Bank, the

1 United Nations, Sustainable Development Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development. Available at <https://sdgs.un.org/goals/goal14> (accessed on 10th April 2022).

2 Gunter Pauli, *Blue Economy: 10 Years, 100 Innovations, 100 Million Jobs* (1st edn, Paradigm Publications 2010)

3 United Nations Blue Economy Concept Paper (2014) Available at <https://sustainabledevelopment.un.org/concent/ documents/2978BEconcept.pdf> (Accessed 10th April 2022)

UNESCO defines the term as “the sustainable use of ocean resources for economic growth, improved livelihoods, and jobs while preserving the health of ocean ecosystem”⁴

The research problem of the paper, although the blue economy has been proposed as a viable model to conserve the sustainability of ocean resources, it is unclear if and to what extent the legislative and policy framework existing in Sri Lanka is sufficient to accommodate the concept effectively and could it be possible to implement and promote the concept.

2. LITERATURE REVIEW

The concept paper presented at the United Nations Conference on Sustainable Development held in Rio de Janeiro in 2012 defined the terms as follows: “[an ocean economy] that aims to the improvement of human well-being and social equity, while significantly reducing environmental risks and ecological scarcities.”⁵

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In 2008, the World Bank and the UN’s FAO jointly published the report ‘The Sunken Billions: The

4 World Bank, The potential of the Blue Economy: Increasing long-term benefits of the sustainable use of marine resources for small island developing states and coastal least developed countries (World Bank, Washington DC 2017).

5 United Nations Blue Economy Concept Paper (2014) Available at <https://sustainabledevelopment.un.org/concent/documents/2978BEconcept.pdf> (Accessed 10th April 2022)

6 United Nations, Sustainable Development Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development. Available at <https://sdgs.un.org/goals/goal14> (accessed on 10th April 2022).

Economic Justification for Fisheries Reform’⁷. According to the report “By improving governance of marine fisheries, society could capture a substantial part of this \$50 billion annual economic loss. Through comprehensive reform, the fisheries sector could become a basis for economic growth and the creation of alternative livelihoods in many countries. At the same time, a nation’s natural capital in the form of fish stocks could be greatly increased and the negative impacts of the fisheries on the marine environment reduced

A brochure titled “Sustainable Blue Economy Financial Initiative” by UNEP vividly elaborates what is meant by the blue economy. Accordingly, a sustainable blue economy is one that seeks to promote economic growth and preserve and improve livelihoods across a range of sectors, while ensuring the sustainable use of marine resources. It is an economy based on circularity, collaboration, resilience, opportunity and interdependence. Its growth is driven by investments that reduce carbon emissions and pollution, enhance energy efficiency, harness the power of natural capital, and halt the loss of biodiversity and the benefits that these ecosystems provide.⁸

D. Ranasinghe gives a detailed survey on the importance of the blue economy to Sri Lanka and the challenge that impedes its implementation.⁹ Her work considers the various interpretations given to the term ‘blue economy’, sectors that generally fall under it, its potentials and prospects and the issues and challenges that are attached to its implementation in Sri Lanka. Although the work is informative and provides certain recommendations that might be utilized by the policy makers, it fails to give due accord to existing

7 World Bank and FAO The Sunken Billions: The Economic Justification for Fisheries Reform ISBN: 978-0-8213-7790-1 (The International Bank for Reconstruction and Development / The World Bank 2009)

8 UNEP Sustainable blue economy <https://www.unepfi.org/wordpress/wp-content/uploads/2020/06/Sustainable-Blue-Economy-Brochure.pdf> accessed 10th April 2022

9 D. Ranasinghe, ‘Strategic Importance of Blue Economy to Sri Lanka and Challenges’ (KDU International Research Conference 2017)

legislative and policy framework that has a bearing on the effective implementations on the concept.

The lack of literature which addresses the effectiveness of the existing national legal framework in harnessing the blue economy concept and the challenges encumbered in implementing the concept have been recognized as the research gap and the paper strives to address the gap by analyzing the provisions of the environmental laws to ascertain the legislature has been successful in addressing the emerging concept of the blue economy.

3. METHODS AND METHODOLOGY

The research paper utilizes two fundamental methodologies. By adopting black-letter approach of law in the research a deep and an objective analysis of the law in the text, including legal provisions is intended. Also, international and comparative research methodology is utilized to assess the similarities and differences in blue economy laws and practices in different jurisdictions, and what these commonalities or divergences reveal. The methodology is used in this study to compare the Sri Lankan version of the blue economy with its international counterpart.

4. RESULTS AND DISCUSSION

4.1 Constitutional Provisions

Article 27 (14)¹⁰ of the Directive Principles of State Policy enshrines the state obligation to protect the environment and pro -contra Article 28¹¹ also imposes a fundamental duty on the citizens. Despite the fact that Directive Principles cannot be enforceable in a court of law Chunnakam case held that The Directive Principles of State Policy are not wasted ink in the pages of the Constitution. They are a living set of guidelines which the State and

10 (14) The State shall protect, preserve and improve the environment for the benefit of the community.

11 The exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations and accordingly it is the duty of every person in Sri Lanka – (f) to protect nature and conserve its riches.

its agencies should give effect to¹². The provisions read together could be also utilized to improve the blue economy concept despite the fact that the constitution does not expressly promote or recognize the blue economy concept.

4.2 The Legislative Framework

Coast Conservation Act No 57 of 1981¹³ makes provisions to regulate and control development activities within the coastal zone and for formulation and execution of schemes of work for coast conservation within the coastal zone. Section 4 of the Act makes the Director responsible for the administration and implementation of the provisions of the Act, for the formulation and execution of schemes of work for coast conservation within the coastal zone and for the conduct of research in collaboration with other departments, agencies and institutions for the purpose of coast conservation. As per section 6 the Act establishes the Coast Conservation Advisory Council and it shall be responsible for advising the Minister on all development activities proposed to be commenced in the coastal zone, reviewing the coastal zone management plan, and furnishing recommendations to the Director, to review environmental impact assessments furnished to the Director in connection with applications for permits under section 14, informing the Director of the need for schemes of work within the coastal zone whenever such need arises, and advising the minister or the Director on any matter relating to coast conservation that may be referred to the council by the Minister or Director.

Part II of the aforesaid Act deals with Coastal Zone Management. As per section 11 Director is responsible for conducting a survey of the coastal zone and preparing the reports based on the survey as enumerated in the section. The reports

12 Ravindra Gunawardana Kariyawasam v Central Environmental Authority SC FR Application No. 141/2015

13 Coast Conservation Act No 57 of 1981 Available at <https://www.lawnet.gov.lk/coast-conservation/> [Accessed 20th September 2023]

shall include an inventory of all structures , roads excavations harbours, outfalls, dumping sites and other works located in the coastal zones , an inventory of all commercially exploitable mineral deposits within the coastal zone , an inventory of all coral reefs within the zone an inventory of all estuarine or wetland areas with an indication of their significance as fisheries or wildlife habitat, an inventory of special value of research regarding coastal phenomena including fisheries and shell fisheries sea erosion littoral movement ,an inventory of all areas from which coral ,sand ,sea shells or other substances are regularly removed for commercial or industrial purposes. Part III deals with the permit procedure and section 14 specifically states that no person shall engage in any development activity other than a prescribed development activity within the coastal zone except under the authority of a permit issued on that behalf by the Director. The procedure for obtaining the permit is done by an application made to the Director in the prescribed manner . The application should be in the prescribed form and should contain the prescribed particulars together with the prescribed fee . The Minister shall dispense with the issuing of permit giving due regards to the effect of those development activities on the long term stability, productivity and environmental quality of the coastal zone . The Director is empowered under section 15 to refuse the grant of permit if the application is inconsistent with the coastal management plan and if it has adverse effect on the stability, productivity and environmental quality of the coastal zone. Section 16 deals with Environmental Impact Assessment. Upon the receipt of an application for permit to engage in a development activity within the coastal zone the Director may require the applicant to furnish an environmental impact assessment relating to developing activity .Section 24 has conferred the power to issue permit for occupation for not exceeding 3 years of any part of the foreshore or bed of the sea lying within the coastal zone and he

is empowered to cancel the permit if he is satisfied that the holder of the permit has contravened the conditions of the permit. Section 25 make the Director to give directions for prevention or intrusion of waste or foreign matter where the Director finds that the quality of the water in the coastal zone or stability of the zone adversely affected by such waste. Section 26 empowers the Director or any authorized officer to enter upon any land within the coastal zone and do such acts as may be necessary for the purpose of the Act. Section 27 A empowers the seizure of vehicle, vessel, boat, craft, machinery or other equipment along with any article or substance found thereon upon contravention of section 14. Despite the fact that these provisions do not recognize the blue economy concept, these provisions could be construed together so as to advance the blue economy concept. The Environmental Impact Assessment has a direct bearing on the blue economy concept since the very idea behind such assessment is to strengthen the sustainable development in a broader sense. So, it could be concluded that the Act could be utilized if the country is to embark on a blue economy.

Fisheries and Aquatic Resources Act No 2 of 1996¹⁴ provides for the management, regulation, conservation, development of fisheries and aquatic resources in Sri Lanka. Section 3 establishes the Fisheries and Aquatic Resources Council. The council shall be responsible for advising the Minister on management, regulation, conservation, development of fisheries and aquatic resources. Section 6 licensing of fishing operations enumerates that no person shall engage in fishing except with the license issued by the Director or any other responsible authority. Section 15 deals with registration of local fishing boats. Part IV deals with protection of fish and other aquatic resources. Section 27 enumerates prohibition against the use or possession

¹⁴ Fisheries and Aquatic Resources Act No 2 of 1996 Available at <https://www.lawnet.gov.lk/fisheries-and-aquatic-resource-2/> Accessed 20 September 2023]

of poisonous explosive substances. Section prohibits the use or attempt to use carrying or having possession of any poisonous, explosive or stupefying substance (including dynamic) or other noxious or harmful matter or substance for the purpose of poisoning, killing, stunning or disabling any fish or other aquatic resources. Subsection 2 of section 27 further prohibits landing, selling, buying, receiving, possessing or transporting fish or aquatic resources knowing that such fish or aquatic resources have been taken by the use of such explosives.

Part V deals with conservation. Section 38 states in consultation with the Minister of Wildlife, the Minister shall declare of fisheries reserve. The objective of such declarations is to afford special protection to the aquatic resources in danger of extinction, to protect and preserve the natural breeding grounds and habitat of fish and aquatic resources with regard to coral growth and aquatic eco systems, to promote regeneration of aquatic life in areas where such life has been depleted, to protect the aquatic medium and to promote scientific study and research and to preserve and enhance the natural beauty of such area. Section 37 stipulates that except without a permit no person shall engage in fishing, mining, collecting or gathering or processing coral or any other aquatic resources, constructing or erecting building in such reserves. So, it is apparent that the aforesaid Act also has the force in strengthening the blue economy concept.

Marine Pollution Prevention Act No 35 of 2008¹⁵ provides for the prevention, control, and reduction of pollution in the territorial waters of Sri Lanka or any other maritime zone its foreshore and coastal zone of Sri Lanka it established the Marine Pollution Prevention Authority. Notwithstanding the fact that the legislature did not anticipate the

15 Marine Pollution Prevention Act No 35 of 2008 [Accessed 20th September 2023] Available at <https://www.lawnet.gov.lk/wp-content/uploads/2016/12/MARINE-POLLUTION-PREVENTION-ACT-NO-35-OF-2008.pdf> [Accessed 20th September 2023]

blue economy concept at the time of enacting the Act, it could be argued that the provisions of the Act could be utilized to implement and promote the blue economy concept.

National Environment Act No 47 of 1980 , Section 18 deals with fisheries and enshrines that the Authority in consultation with the Council shall with the assistance of the Ministry of the Minister in charge of the subject of Fisheries, recommend to the Minister a system of rational exploitation of fisheries and aquatic resources within the territorial waters of Sri Lanka, or within its exclusive economic zone, or within its inland waters and shall encourage citizen participation therein to maintain and enhance the optimum and continuous productivity of such waters. Section 19 stipulates measures for the rational exploitation of fisheries and other aquatic resources may include the regulation of the marketing of threatened species of fish or other aquatic life.

National Aquatic Resources Research and Development Agency Act No 54 of 1981¹⁶, provide for the establishment of the National Aquatic Resources Research and Development Agency and section 2 of the Act establishes the Agency which shall be the national institution charged with the responsibility of conducting and co coordinating research development and management activities on the subject of aquatic resources. Section 4 lists out the objects and functions of the Agency .The objectives include ensure the application and utilization of scientific and technological expertise for the implementation of the national development programme on the subject of aquatic resources ,to promote and conduct research activities directed towards the identification assessment management and development of aquatic resources and in oceanography ,improvement and development of fishing craft ,fishing gears and equipment and

16 National Aquatic Resources Research and Development Agency Act No 54 of 1981 <https://www.lawnet.gov.lk/national-aquatic-resources-research-and-development-agency/> [Accessed 20 September 2023]

fishing methods ,the social and economic aspects of the fishing industry including the welfare of the fisherman and their dependents ,the processing and preservation and marketing of fish and related products ,the development management and conservation of aquatic resources in the inland waters coastal wetlands and off shore areas ,to provide advisory and consultancy services on scientific technological and legal matters relating to the exploitation management and development of aquatic resources ,to coordinate the activities of institutions engaged in the exploitation planning research development control and management of aquatic resources ,to undertake the collection dissemination and publication of information and data useful for development of aquatic resources and fishing industry in Sri Lanka and to provide training for persons required to conduct or assist in the work of the Agency. From the above analysis of the provisions, it could be said that the Act is a clear enactment to enhance the blue economy concept.

4.3 Regulations

Monofilament Nets Prohibition Regulation¹⁷, Culture of Coral Species on artificial substrates for export regulations No. 01 of 2017¹⁸ are notable Regulations which could be utilized in advancing the blue economy concept.

4.4 Policies

National Fisheries and Aquaculture Policy, National Wildlife Policy of 2000, National Biosafety Policy of 2005, Coastal Zone and Coastal Resource Management Plan (2016), National Oil Spill Contingency Plan of 2005, National Biodiversity Strategic Action Plan 2016-2022 contribute to the efforts taken in the phase of the blue economy.

17 Monofilament Nets Prohibition Regulation Available at <http://naqda.gov.lk/pdf/Monofilament-Nets-Prohibition-Regulations.pdf> [Accessed 20 September 2023]

18 Culture of Coral Species on artificial substrates for export regulations No. 01 of 2017 Available at <http://naqda.gov.lk/pdf/regulation/coral-farming.pdf> [Accessed 20 September 2023]

4.5 International Framework

United Nations Convention on the Law of the Sea (UNCLOS)¹⁹ is the overarching international legal instrument for the oceans and it defines rights and obligations of states within their maritime space, and also includes provisions for marine environmental protection and the management of its resources International Maritime Organization which is a specialized agent of the United Nations is obliged and empowered to conduct the enforcement of UNCLOS .International Convention on the Prevention of Pollution from Ships (MARPOL) ²⁰ is the main International convention covering prevention of pollution of the marine environment by ships from operational and accidental causes. The Convention includes 6 annexes; regulation for prevention of pollution by oil, regulation for the control of pollution by noxious liquid substances in bulk, regulation for prevention of pollution by harmful substances carried by sea in packaged form, regulation for prevention of pollution by sewage from ship, regulation prevention of pollution by garbage from ships, regulation for prevention of air pollution from ships .International Convention on Civil Liability for Oil Pollution Damage²¹ was adopted with the aim of ensuring adequate compensation to persons who suffer oil pollution damage resulting from maritime casualties involving oil-carrying ships.

5. CONCLUSION

The foregoing analysis clearly illustrates that there are several legislations of Sri Lanka that have a

19 United Nations Convention on Law of the Sea https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf [available at accessed 20th September 2023]

20 International Convention for the Prevention of Pollution from Ships [https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx) [accessed 20th September 2023]

21 Convention on Civil Liability for Oil Pollution Damage Available at [https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-\(CLC\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-(CLC).aspx)[accessed 20th September 2023]

bearing on the concept of the Blue Economy. Although many of them are older than the concept itself, and were enacted long before the UN Conference on Sustainable Development, they, nevertheless, grant ample room to integrate effectively the concept of blue economy. The initiative taken by the government in 2016 to introduce the blue economy concept through Sri Lanka NEXT is commendable. Pro contra such initiative steps should be continuously monitored by the decision makers. It is also apparent that the existing national legal framework and the international framework correspond with each other for the most part, and are conducive for a phase of a blue economy where the legislative enactment has strike a balance between the project proponent and the public at large whereas the concern is given to the preservation and protection of the marine eco system as well. The main problem then lies with the policy makers and implementers as they have not successfully utilize the existing framework to give full implementation and justice to the blue economy. The judges as the guardians of law should be informed themselves of these emerging concepts and should be concerned with giving due recognition to enhance and harness the environmental aspects. Notwithstanding the fact the Acts, policies and regulations do not expressly recognize the blue economy concept still the laws could be effectively utilized to enforce the blue economy concept while adhering to the green economy. The common and shared duty of the present generation is to utilize the natural resource while ensuring that the needs of the future generations are protected? . The paper concludes that rather than enacting a novel legislation which recognizes the blue economy concept, still the existing laws and regulations could be effectively utilized to give due recognition to the concept.

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