

MARITIME BOUNDARIES IN THE PACIFIC REALM

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PURVA

**CENTRE FOR INTERNATIONAL POLITICS,
ORGANIZATION AND DISARMAMENT
SCHOOL OF INTERNATIONAL STUDIES
JAWAHARLAL NEHRU UNIVERSITY
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1991**

TO MY PARENTS & SISTERS



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19th JULY 1991

TO WHOMSOEVER IT MAY CONCERN

Certified that the dissertation entitled
"Maritime Boundaries in the Pacific Realm"
submitted by Ms. Purva in fulfilment of nine
credits out of total requirements of twenty
four credits for the award of Degree of Master
of Philosophy (M.Phil) of this University, is
her original work and may be placed before the
examiners for evaluation. This dissertation
has not been submitted for the award of any
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CONTENTS

PAGE NO.

ACKNOWLEDGEMENTS

LIST OF FIGURES

CHAPTER 1	:	INTRODUCTION	1-18
1.1	:	OBJECTIVES	
1.2	:	DATABASE AND METHODOLOGY	
1.3	:	DESIGN OF STUDY	
1.4	:	SURVEY OF LITERATURE	
		REFERENCES	
CHAPTER 2	:	MARITIME ZONES AND BOUNDARIES	19-54
2.1	:	HISTORICAL PERSPECTIVE	
2.2	:	OFFSHORE ZONES : A THEORETICAL FRAMEWORK	
2.3	:	KINDS OF BASELINES	
2.4	:	FACTORS INFLUENCING THE DELIMITATION OF MARITIME BOUNDARIES	
2.5	:	PROVISIONS OF THE UNITED NATIONS FOR DRAWING OF THE BASELINES	
		REFERENCES	
CHAPTER 3	:	SOUTH WEST PACIFIC OCEAN: A GEOGRAPHICAL SETUP AND SPATIAL OFFSHORE CLAIMS	55-85
3.1	:	GEOGRAPHY OF THE OCEAN	
3.2	:	SPATIAL PATTERN OF MARITIME CLAIMS IN THE SOUTHWEST PACIFIC OCEAN	
		REFERENCES	

CHAPTER 4	:	DEMARCATIION AND DISPUTES	86-107
4.1	:	ACTUAL DISPUTES	
4.2	:	POTENTIAL PROBLEMS	
4.3	:	SETTLED AGREEMENTS	
REFERENCES			
CHAPTER 5	:	REGIONAL PEACE AND DEVELOPMENT STAKES (CONCLUSION)	108-119
SELECTED BIBLIOGRAPHY			120-126

LIST OF FIGURES

	Page No.
1.1 SOUTHWEST PACIFIC : STUDY REGION	5
2.1 NATIONAL MARITIME ZONES	28a
2.2 TYPES OF BASELINES	31
2.3 TERRITORIAL SEA CLAIMS	46
2.4 LINE OF CLOSURE (BAYS)	49
3.1 PACIFIC OCEAN : A PROFILE	57
3.2 SOUTHWEST PACIFIC : RESOURCE BASE	66
3.3 AUSTRALIAN BASELINES	71
3.4 INDONESIAN BASELINES	74
3.5 PHILIPPINES' BASELINES	76
3.6 VANUATU'S BASELINES	78
3.7 EEZ CLAIMS	81
4.1 SPARTLY ISLANDS	88
4.2 DISPUTED CLAIMS (MALAYSIA-INDONESIA AND MALAYSIA-PHILIPPINES)	94
4.3 CLAIMS IN GULF OF THAILAND	96
4.4 TORRES STRAIT CONFLICT	100

"THE POTENTIAL FUTURE STRENGTH OF WORLD POWERS WILL BE IN PROPORTION TO THE LENGTH OF THEIR FRONTS ON THE PACIFIC OCEAN AND THE KIND OF RESOURCES POSSESSED BY THEIR RESPECTIVE HINTERLANDS. SMALL WONDER, THEREFORE, THAT THE PACIFIC OCEAN EXERTS SO GREAT A DRAWING POWER ON EXPANSIONIST, IMPERIALISTIC MINDED YOUNG NATIONS".

- RATZEL (1900)

CHAPTER - 1

INTRODUCTION

The seas are medium of communication, source of food, vast treasure of untapped resources, a world of teeming marine life and a vital link in earth's life support system. Oceans are no more seen in their conventional sense -the means of transport, but a means that can serve the mankind in a more larger way.

Since 1945, there has been virtual stampede to the oceans to occupy more and more offshore areas by the coastal states, giving rise to the question of delimitation of maritime boundaries.

Actually speaking the concept of boundaries' as such is as old as human beings. In historical times, when the stage for human settlement was set, and great empires of the world emerged, since then, there has been continuous struggle over the geographical units. Man has always followed the policy of expansion of his territories over the surrounding areas. But his lust for the occupance of larger territories was not met over the land surface, for it was limited, thus he turned to the great water masses of the world the Oceans, over which he has been trying to make claims as large as possible, no matter even if it is at the cost of other nations.

Maritime boundaries differ from boundaries on land, in that, they do not separate people's homelands or fields from one

another, they do not divide ethnic groups or industrial areas, and there are no mountains or drainage divides on which to base the delimitation. No borders are marked in the seas so they, then, belong to all nations equally or to no one? Why does a country want to extend its sovereignty over larger offshore areas? And, in reality, how far out to the sea does a nation's sovereignty extend their right? These are some of the problems pertaining to maritime boundaries, which have emerged on the global level posing threat to the mankind. and giving rise to severe conflicts, disputes and strained relationship between the nations, leading to a show of military power even.

Maritime boundary delimitation in this age has become a preoccupation of many of the coastal states of the world. Historically, security was usually the prime motive of jurisdictional claim in coastal waters. These interests were normally satisfied by the legal guarantee of the territorial sea rarely more than 3 nautical miles.

In the 20th century extended jurisdictional claims have owed less to security than to the determination of coastal states to acquire and control the resources in offshore regions. Boundary delimitation requirements were accentuated in the 1970s with the world wide acceptances of 12 n.m. of the territorial sea and 200 miles of EEZ. Moreover, the coastal topography of the nations have all the more complicated the maritime boundary negotiations, for in many cases the boundaries and the claimed areas overlap.

In the delimitation of these boundaries Geography has a very decisive role to play. The coastal topography, the shape and the nature of the coasts, physiography of the oceans, resources, all regulate the process of delimitation of the offshore boundaries. Certain geographical features like bays, cays or offshore islands or rocks pose difficulty to the delimitation process and complicate the maritime boundary negotiations too.

There are three types of boundary delimitation problems that exist in marine areas - the delimitation of baselines, the determination of seaward extent and delimitation of lateral boundaries between opposite and adjacent states. The International Community has made efforts to deal with these problems through the various United Nations conventions on the law of the sea. (Prescott, 1987)

In recent times many bilateral treaties have established marine boundaries in many areas to the world. But most of the offshore boundary disputes are in the waters of the Pacific Ocean - particularly amongst the nations of the South West Pacific Australia, Indonesia, Malaysia, Philippines and other archipelagic and island states.

This area under dispute is an area rich in fish stock and hydrocarbon deposits offshore and contains powerful states including China, Japan, Korea with the USSR impinging to the north and the large archipelagic penninsular states and Australia to the south. There are disputes over fishing rights

continental shelf, boundary, rocks and islands. There is continuously increasing tension over the command of marine spaces, often with the backing of the major powers, to the smaller contenders. Particularly, the influence of Chinese policy in relation to marine areas, is of fundamental importance to peace in this region and to the orderly development offshore resources.

Moreover, this Pacific region is the focus of the century to come. The region has the major trade route and is also an area of attraction for economic shifts from the Atlantic-European world, hence the region acquires all the more importance.

1.1 OBJECTIVES

This study, thus is an attempt towards the analysis of the issue from a geographical point of view, which plays a great role in carving out the outerlimits of the nations, their relations with other nations and also their ocean policies. The main objectives of the study are to pickup and study a few disputed maritime boundary regions from the whole South West Pacific and also the potential areas of conflict. It also aims: aims to investigate the nature of geopgrahical factors influencing strategic negotiations in this study area. This is to have a better understanding of the role played by geography in determining the "extrovertness" of the nations, thereby determining their strategy of negotiations, when the world marches into the "PACIFIC CENTURY"

SOUTH WEST PACIFIC REGION



Fig 1.1 Southwest Pacific : Study Region

1.2 DATA BASE AND METHODOLOGY

This study is mainly within conceptual framework. It rests upon the information gathered from the secondary sources as published by various authors, journals, newspapers and government documents. United Nation's Law of the Sea series provided much needed and rudimentary information pertaining to the study region.

For showing the national maritime claims by various countries, maps have been used. These maps are based on the reports of the UNCLOS III, on 'Baselines'.

Despite all efforts, certain limitations regarding the information still remain to overcome. Certain limitations were also faced for baseline maps as many countries like Malaysia have not yet published their maps as they are not very sure of the delimitation principles to be adopted. Moreover, it involves strategic planning, which is of prime importance to the nation's security, hence the policies too, of most of the nations were not available.

This is so that most of the work on the study deals with legal aspect, as seen from a lawyer's point of view or by political scientists or environmentalists. Not much work has been done by geographers, and whatever work has been done by the geographers, it came only after 1982 UNCLOS; therefore it is comparatively a new field for geographers.

Inspite all such limitations, efforts have been made to probe into the issue from geographical point of view.

1.3. DESIGN OF STUDY

This work is mainly divided into five chapters.

The present chapter deals with the proposed problem and the reasons for its selection. Thereafter aim and objectives of the study have been discussed, along with the methodology and techniques of the study. One section of the chapter analyses the literature available on the subject by way of literature survey and literature review.

Chapter 2 has five subdivisions. Section one deals with the historical perspective of maritime boundaries and their evolution over a period of time. The various conventional offshore zones have been discussed in the section two. In the following subsection, kinds of baselines have been analysed. These baselines are the backbone of all maritime zones delimitation. This section also deals with international maritime boundary lines.

There are certain factors which influence the process of maritime boundary delimitation: What are these factors and how do they influence the delimitation process? All this has been discussed in section four of chapter 2. And the final section is on the provisions of the UN which are the guiding principles for any offshore zone and boundary delimitation. This chapter mainly deals with conceptual and theoretical issues related to maritime boundary delimitation.

Chapter 3 is on study area in particular ie the South West Pacific. Its first section deals with geography of the oceans in general and Pacific in particular. In the second section, 'spatial patterns of maritime claims by different South West Pacific countries have been dealt with. The claims made by countries like Australia, Indonesia, Malaysia, Philippines, etc., for their offshore waters have been discussed in the light of the UN provisions.

Maritime boundary delimitation is a complicated process. Disagreements over the demarcation process often give rise to disputes. These disputes fall into various categories - actual, potential and settled agreements. Such distinction is made on the basis of the levels of negotiations between the nations. All these boundary problems are discussed in chapter 4 under the title 'Demarcation and Disputes'.

The 5th chapter consists of proposal for the initiation of regional peace and development stakes in the region. In the concluding chapter, a summary of the present study has been made along with recommendations for conflict resolution in the South West Pacific Region.

1.4 A SURVEY OF THE LITERATURE

'Maritime Boundaries' is relatively new area of study, which emerged in its full fervour only after the UNCLOS-II in 1970. However, its seeds were sown as early as 1945 after the World War II. Initially it was exclusively an area that was dominated by lawyers, economists, political scientist and

environmentalists. Geographers were not much a part of the research in this field as, it involved mainly the legal aspects. But with the emergence of the 'New Law of the Sea', which has 'spatial dimension' too, with the introduction of terms like 'territorial sea' contiguous zone, straits, archipelagoes, exclusive economic zone, regime of islands etc, the field of study has been opened up for geographers too.

If we look back into the history, we find that ancient scholars were conscious about the 'role of the oceans, but their writings differed from present day works, which were more generalised then.

Great scholars like Mahan, Ratzel, Mackinder, Whittlesay and Spykman all were concerned with the factors of location and the struggle between the maritime powers for the occupance of more and more space. Following the writings of Ratzel, Ellen Sample tried to explore the impact of proximity to the sea and nature of coastline upon the characteristics of the coastal people.

During the initial stages of the modern period scholars like Cohen tried to make geostrategic and geopolitical regionalisation of the world, by drawing the regional boundaries vaguely, across the sea.

The modern studies concering the 'Maritime Boundaries in the Pacific Realm' can be grouped into five groups.

1. Concepts
2. Approaches

3. Principles of demarcation
4. Conflict issues and problems of the study area i.e. South West Pacific.
5. Miscellaneous.

Concepts

Boggs (1937) has dealt with the technical questions of boundary construction and interpretation of geographical terms used in the Law of the Sea. Boggs also discusses the criteria to delimit the territorial sea and the definition of water boundaries, along with the solution to the problems associated with the construction of maritime boundaries.

Pearcy (1959) examines the geographical aspects of the law of the sea (Geneva Conference). After the convention, the geographical aspects of the law of the sea, in terms of the 'territorial sea', the 'baseline', the 'continental shelf', 'offshore boundaries' and 'landlocked countries' were established. Author has analysed a close interrelationship between these offshore zones and concepts and has put forth their evolution over a period of time. Pearcy also introduces the various official terms of the LOS, like 'median line', 'middle line', 'equidistant line', 'straits', 'archipelagoes', from the point of view of a geographer.

Approach

Alexander (1986) builds up an approach towards the delimitation of maritime boundaries. The process of delimitation involves several types of issues. One is the

source of authority like the International Court of Justice (ICJ) for such delimitation, a second is the 'principal' methods, by which the delimitation is carried out, and the third is dispute settlement process, and lastly the technical problems of actually drawing a boundary. Out of these basic issues arise many others. Should adjacent and opposite states have a single maritime boundary or different ones for their EEZ and their continental shelves? What principles should be used for the delimitation of boundaries between two nations? All these issues have been discussed by the author.

Charney (1984) discusses boundary conflict resolution. The precedents state that an adjudication of a maritime boundary between nations should be based on all the relevant factors. Taken together, those factors will determine a boundaryline to be delimited by the courts or the parties according to an appropriate cartographic method.

Fentress (1985) examines the resolution of sovereignty disputes concerning the continental shelf, with emphasis on the decision of ICJ on Gulf of Maine Case. The absence of a clear course of action by the ICJ in resolving such disputes is noted, and suggestions for a more predictable approach are advanced in an effort to encourage settlement of disputes.

Principles of Demarcation

Alexander (1990) identifies the principle of 'Equidistance' for the delimitation of international maritime boundaries. He argues that one of the earliest and still

relevant, principles is that of apportioning maritime areas roughly equally between or among concerned parties. In most maritime boundary situations, one party can be expected to hold to this principle, while the other will focus on special or relevant circumstances to be used in order to arrive at an equitable solution.

Pounds (1959) concentrates on the methods by which landlocked states seek access for their goods and citizens to the high seas. The three methods identified were by the use of international rivers by securing rights - 'freedom of movement' and by acquiring a corridor of land thereby ending, effectively, the landlocked conditions.

Apart from these writers there has been a series of the reports of the United Nations' various conventions and resolutions, which act as the guiding principle for the delimitation of maritime boundaries among coastal state. United Nations (1986) has a compilation of the national legislation of states on the EEZ, the fishery zone, including the declaration there on. This legislation is based on the new concept of the EEZ introduced into the law of the sea by the UNCLOS III.

United Nations (1989) is an examination of baselines. This manuscript examines all the provisions of the articles in the convention dealing with baselines and attempts to give guidance on their application without prejudging controversial matters of law.

United Nations (1990) is a study devoted to the legislative history of part IV (Archipelagic states) of the convention, consisting of articles 46 to 54. It is divided into two parts. Part one covers the statements by delegations as well as proposals and the other texts regarding archipelagoes and archipelagic states, presented in the seabed committee. Part two contains detailed descriptions of the drafting process of part IV of the convention, session by session.

Conflicting Issues and Problems of South West Pacific

Buchholz (1990) deals with the law of the sea boundaries in the south Pacific and their claims on maritime zones and mining areas.

Chiu (1986) concentrates on the 'political geography in the western Pacific after the adoption of the 1982 UNCLOS. Then UNCLOS-III has laid the guidelines for the delimitation of offshore zones. Which can aid in resolving maritime boundary questions in the western Pacific. Many of these questions are closely related to territorial disputes. Primarily over certain islands, which must be resolved. It identifies various principles of delimitation. The disputes studied are those of Japan and South Korea, China and North Korea. China and South Korea, Taiwan and the Philippine, China, Taiwan, the Philippines, Veitnam and Malaysia. Chiu also suggests an interim solution to these disputes.

Djalal (1979) discusses the conflicting territorial and jurisdictional claims in the South China sea. He discusses the

complex interplay of different interests in the area.

Leng (1982) examines, from a geographical standpoint, the main contentious issues debated at the UNCLOS as they apply to the waters of the South East Asia. There are separate chapters the territorial seas, the seabed and its resources, the landlocked states and international straits and dispute regions.

Melamid (1986) highlights the problem of delimitation of boundaries in narrow seas, especially if the parties disagree over the use of the principle of delimitation. This problem is illustrated by the delimitations made or pending in the Persian Gulf, the North sea, the Timor sea and the Torres strait. However, these problems are partially resolved by establishing neutral zones in which resource rights are shared.

Min (1990) puts forth the dispute over the group of islands in the South China sea. There are three large group of islands - Spartly, Paracel, and Paratas, covering a vast area. Not, one or two but many countries have claimed the sovereignty of these islands, keeping in view, their national interests. Such multilateral claims in the region have led to poor international relations, and a growth in potential for armed conflict. Author presents each countries' point of view of claim.

Miscellaneous

Under this head various articles and papers are included, which generally do not fall in any of the above categories,

however, such a categorization is not a very rigid one as an article or book may cover all the topics mentioned above.

Alexander (1977) has dwelled in the field of lawyers, ie. the LOS conference, as a geographer. In this article Alexander draws attention to the frequent use of the word 'region' in the documents of UNCLOS and the growing number of regional arrangements which are being concluded by groups or interested states to solve common maritime problems. He then reviews the characteristics of regions and the type of maritime regions which have been defined.

Clingan Jr. (1986) illustrates the conflict between the US and Mexico and has put forth the way such conflicts can be resolved if there is a political will on both the sides.

Glassner (1986) tries to relate the law of the sea with political geography. With the emergence of the new LOS, during the UNCLOS, a "new political geography of oceans" has emerged as a field for study, which concerns with the spatial dimensions of the LOS, ie. the territorial sea, the contiguous zone, the EEZ etc.

Prescott (1985) makes a detailed study of the maritime boundaries of the world. This comprehensive work has been divided into two sections. One deals with the general theories and principles of demarcation and the second section deals with the regional case studies covering the entire ocean expanses over the globe. Author has talked at length about the various kinds of conflicts actual and potential that can be seen all

over the world and has also dealt with the various treaties and agreements amongst these nations.

In another work Prescott (1987) deals with maritime boundaries, its legal concept the various terminology used. Later he traces the origin of national maritime claims. In one section he analyses the problem of boundaries between Australia, Indonesia and the islands of the South Pacific Ocean, though the entire work deals with political boundaries and the frontiers of the world -- be it on land, sea or air.

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CHAPTER 2

MARITIME ZONES AND BOUNDARIES

2.1 HISTORICAL PERSPECTIVE

(a) Evolution:

The division of land areas into political units differ from each other. The land boundaries are the concern of only two or the neighbouring states, where as the water boundaries, dividing the national territory from the high seas, may be a matter of concern for the entire mankind.

Since time immemorial, there has been struggle for more and more claims of the vast sphere of waters. With the scientific development, new explorations of sea areas, its treasure and resources, new techniques to exploit marine resources have all increased the importance of maritime boundary delimitation.

As early as 14th century, countries like Denmark became an important maritime power, with its control over Iceland, Norway and Faeroe islands. The expansion of maritime power in Holland and England began in late 16th Century and in France, one of the major maritime powers of that time, in 17th century. All these countries then, had the common trade interests.

Most of the maritime claims during this time were due to trade and fishing interests. At the end of the 13th century,

Norway did not allow the foreigners to sail without the royal license, through their waters, in order to prove their sovereignty over the waters. England also followed the Norwegian law in 15th century.

" From the 13th century through the 16th century, the English frequently referred to their special rights in the English seas. The first indication of English claims to control the surrounding water is to be found in an ordinance issued by King John in 1201 century which required all ships at sea to lower the sail" (ALEXANDER, 1977 P.7).

In the beginning of the 18th Century two concepts of control in coastal waters existed - one based on the principle of effective occupation and other favouring off shore zones of uniform breadth measured from the shore line. Numerous wars of 17th and 18th century and consequent opportunities of acquiring war prizes, also the problem of smuggling and neutrality and at the same time growing power of the Northwest European countries, created a need for accurate delimitation of maritime claims.

The actual origin of water boundaries demarcation goes back to the conditions in lakes and rivers. The treaties between the United States and Great Britain in 1783 and 1814, defined the boundary in the Great lakes as "the middle of" several lakes and water communication.

After the second world war, ever since 1945 in particular, there has been virtual stempede to the oceans, in search of oil, gas, fish, maganese nodules, precious and semiprecious stones and other resources. There has been an increase in the more

traditional uses of the sea for transport and national security. As a consequence the UNITED NATIONS INTERNATIONAL LAW COMMISSION was charged with preparing some draft conventions on the LAW OF THE SEA (LOS) dealing with the maritime claims like 'Territorial waters', 'Continental shelf', 'Exclusive Economic Zone' (EEZ), 'Fishing Zones or High seas'. These drafts were discussed at the first UNITED NATIONS CONVENTION ON LAW OF THE SEA (UNCLOS) 1958, which produced four conventions codifying most of the existing customary laws of the seas (except for the specific units of the territorial waters and settlement of disputes). UNCLOS II was convened to resolve these principal outstanding issues, but nothing much came of this convention.

In 1982, after more than 20 years, on the basis of the progress achieved at the first and the second UNCLOS, 159 states and organizations approved and signed the UNCLOS III and its resolutions, which established the sovereign right of coastal states to extend jurisdiction over the maritime resources in their EEZ of upto 200 nautical miles, in which more than 95% of marine fisheries, now exploited are caught.

Usually there has been three main concerns behind these maritime claims, with less of geography involved in it. The major concern was legal so as to enable the state to exercise its jurisdiction over parts of the sea. The legal limits of these seas and seabeds and then their actual definition has always been secondary. For instance Fenn (1926), one of the major contributors to international law wrote that in 'early times Roman Empires had their full sovereign right over the sea

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and the Emperor had all the right to punish the wrong doer at the sea, to check piracy'. But ever then there had been the problem of placing a limit to the territorial waters.

(b) National Maritime Claims:

Way back in 19th century, there did seem a time when the question of how much of the sea fully under national jurisdiction had been answered. All the major naval powers claimed territorial sea, 3 nautical mile (Nm.) wide and they refused to recognise wider claims apart from the 3 nm, which at times countries like Spain did claim. Later in 1945, Russia's claim, of 12 nm of water in 1909, became the base for general consensus. In the mediterranean and the southern reaches of the North Sea, the "Canon Rule" led to the concept of continuous belt of the territorial sea. Denmark played an important role in the establishment of this concept of continuous extension of territorial waters. In 1985 Denmark completed its control over the shores of North Atlantic Ocean, as it already had Norway and Ireland. Danish authorities were encouraged to assert a claim over this region and used to give licenses to fish and navigate, to aliens, with in their domain. They were not allowed to explore the "coastal waters" adjacent to the coasts.

Gradually Denmark was forced to reduce its maritime claims several times, as other maritime powers like England and Russia flourished. The most primitive criterion to delimit the national claims of maritime boundaries was formulated by Bynkershoek, as early as 1610. This was the "canon shot" rule to

solve the fishing dispute between Britain and Netherlands. This rule was applied by various countries throughout the 17th century Bynkershoek judged that a state should possess the coastal seas which they could command from their shores:

"Therefore it evidently seems more just that the power of land (over the sea) be extended to the point where missiles are exploded.... the power of the land is bounded where the strength of the arms is bounded" (PRESCOTT, 1965 P.138).

This rule has been quite controversial leading to conflicting situation. It led to varied claims depending upon the type of the canon, its height above the sea, the charge used and the weight of the ball. Under such situation, if there was no canon on the shore, then the state will have no territorial waters and above all, it could be applied only to the waters commanded by a line of imaginary guns of known range mounted along the entire coast of the country.

Most of the countries, before 1945 claimed only a single maritime zone. None of these claims extended beyond 12 nm. In some cases conservation zones were declared to protect marine life. But there were no binding claims for the continental shelf by countries before 1945. However, some claims were made for the resources associated with these features. These were mainly the precious and semi precious resources like pearls and oysters. Similarly claims to the seas bed resources - mineral mining areas were claimed only after 1945 (inspite of the fact that

crude oil was being extracted since long time from these area as early as 1899).

Thus 1945 marks the watershed for the offshore areas, continental shelf and EEZ being the most common demand. Apart from these, there was also a demand for the delimitation of 'Contiguous Zone', 'Archipelagic Waters' and the 'Safety Zones'. The 1958 UNCLOS and the 1982 UNCLOS III have defined these zones, which may be claimed by any national state, off their coasts. The UNCLOS III also laid down the provisions for the delimitation of these off shore regions, which answer many of the questions pertaining to the maritime claims, over which there has, always been disagreement between the countries.

2.2. OFF SHORE ZONES: A THEORETICAL FRAME WORK

To a lay man the wide spread oceans may appear to be mere expanse of waters to infinite limit, uncaught by bare eyes. But these mighty oceans are storehouse of lot many things. Beneath its water surface, there are the maritime zones which the coastal states claim. These zones have been distinguished according to their distance and their characteristics delimited from the BASELINE¹.

For any coastal state there are five conventional zones. Proceeding towards the sea, from the coast, these are 'INTERNAL

1. The line from which the seaward limits of a state's territorial waters and other zones of jurisdiction are measured.

WATERS', 'TERRITORIAL SEA/WATERS', 'CONTIGUOUS ZONE', 'EXCLUSIVE ECONOMIC ZONE (FISHING ZONE)', 'CONTINENTAL SHELF' or 'CONTINENTAL MARGIN' and finally the 'HIGH SEAS'. In the case of archipelagic states,² there's another additional zone - the 'ARCHIPELAGIC WATERS' (Fig. 2.1).

1. Internal Waters:

These are the waters along a coast inside the baseline, used for measuring the breadth of the territorial sea water areas in bays and estuaries as well as those inside straight baselines³ comprise internal waters. Sovereignty over such waters is identical to land area of the coastal state along which they lie. Thus these are the waters between shorelines and the baselines.

In the case of an archipelago, it is the water encompassed, after drawing the baselines around the outermost islands of the archipelagic state. But the archipelagic state has to define its internal waters within its archipelagic waters.

This zone need not to be continuous because the internal waters lie landwards from the baselines and can be drawn only after special circumstances particularly when the coast is highly indented.

2. Archipelagic states means a state constituted wholly by one or more archipelagoes and may include other islands too (Art 46 UNCLOS).

3. See p.30.

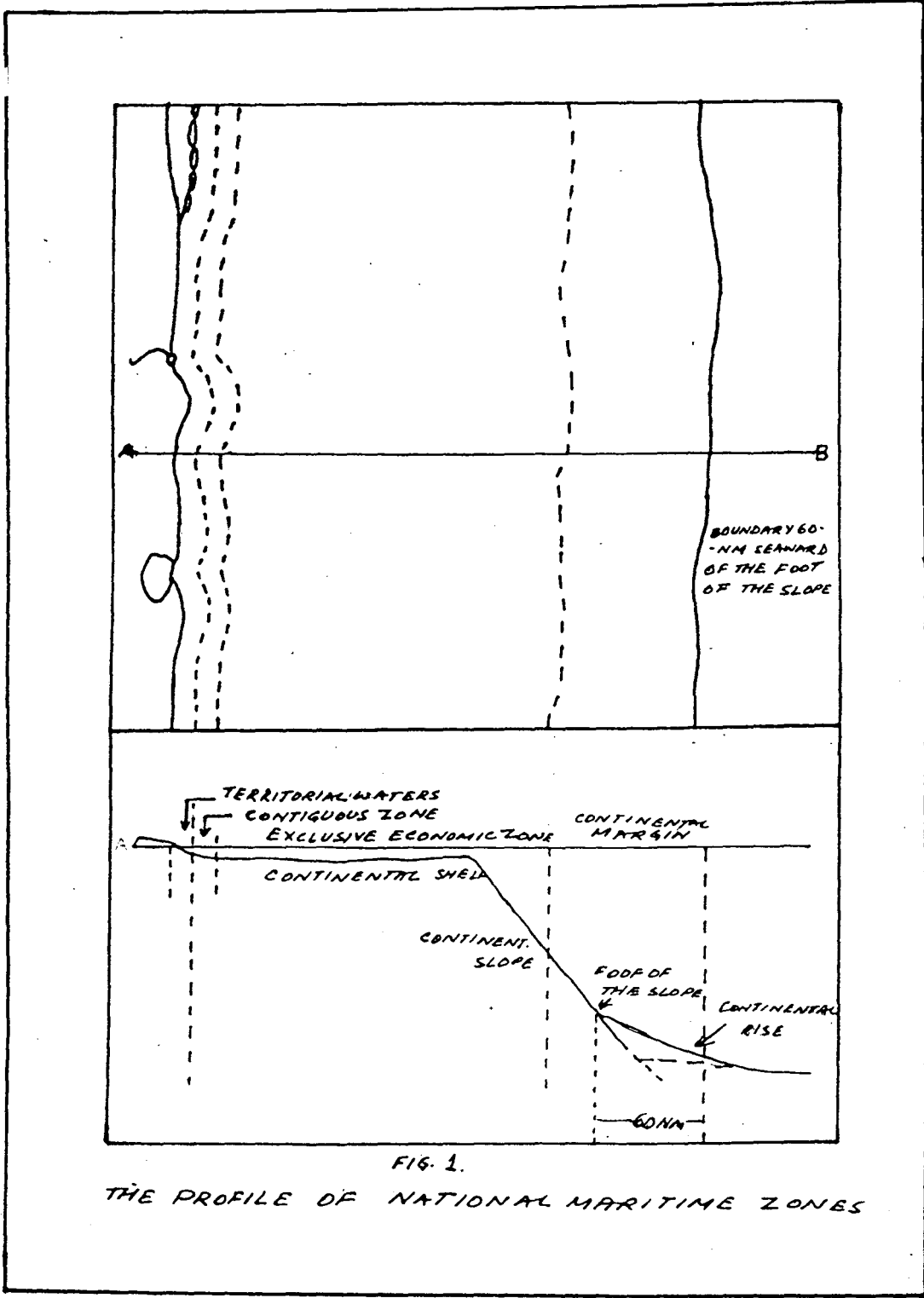


FIG. 1.

THE PROFILE OF NATIONAL MARITIME ZONES

Fig. 2.1 National Maritime Zones.

2. Territorial Waters:

The next seaward maritime zone is of territorial waters or seas. This zone is measured seawards from the baselines drawn according to the rules set out in 1982 UNCLOS and should not exceed 12 nm in width.

Prior to this, the width of the territorial sea followed the U.S. policy and tradition of three nautical miles. The coastal states maintain complete sovereignty over the territorial seas, but the ships are given the right of innocent passage.⁴

This right of innocent passage is only applicable to the ships not to the aeroplanes.

3. Contiguous Zone:

The third zone possessed by any state is the contiguous zone - a zone of water off the coast of the state, outside or beyond the territorial sea, in which the coastal state may exercise control over the customs and sanitation. It is measured from the same baseline as the territorial seas. It extends another 12 nautical miles from the outer edge of the territorial sea. Within this zone, a state may exercise controls necessary to prevent or punish infringements of its customs, fiscals,

4. The right of innocent passage means navigation for the purpose of traversing the sea or proceed to a port in a manner which is not prejudicial to the peace, good order and security of the coastal states. Submarines are required to navigate at the surface while exercising the right of innocent passage.

immigration and sanitary regulations which are also applicable to the territorial sea.

4. Exclusive Economic Zone:

It is the fourth zone extending 200 nautical miles beyond the baseline, from which the territorial sea is measured. In this region the coastal state has sovereign right for the purpose of exploring and exploiting, conserving and managing the natural resources - living or nonliving - of the seabed, subsoil and superadjacent waters and of using the seas and winds for the production of energy. This means that no alien can conduct any economic activity without the permission of the coastal state, but the aliens are entitled to navigate or overfly and to lay or repair submarine cables. Apart from these exclusive sovereign right, the coastal states also reserve the jurisdictional authority in establishment and use of artificial islands, marine research and preservation of marine environment.

5. Continental Shelf:

The seabed areas beyond the outer limit of the territorial sea, which may be exploited exclusively by any adjacent state for minerals and other resources. This is because, at the harvestable stage living resources, belonging to sedentary species, are either immobile or under the seabed or, are incapable of moving, except in contract with seabed. Thus no state has an exclusive right to fish the waters which overlie the continental shelf more than 200 nautical miles.

In 1953 Geneva convention, on the Law of the Sea, no provisions were made to distinguish between the waters of the contiguous and those of the continental shelf. But it is necessary to make separate claims for the continental shelf, it is wider than 200 nm, because a claim to an EEZ provides control over the seabed and subsoil out of that distance.

6. High Seas:

Apart from the above mentioned five conventional zone, there is a 'no man's water' too. It is the water beyond the EEZ constituting the 'COMMON HERITAGE OF MANKIND' - the High Seas. It consists of the seabed and ocean floor and subsoil beyond the limits of national jurisdiction. Thus it comprises of all the waters beyond the outer limits of the Territorial sea. These are the vast ocean areas of the world subject to the freedom of the seas-surface navigation, ariel navigation, fishing, laying submarine cables and laying pipelines to name some of the more important activities.

The High Seas, though they coexist with contiguous zone and continental shelf, but still, the freedom of High Seas does not invalidate the right of coastal states in the waters of the previously mentioned maritime zones.

2.3 THE BASE LINE: BASIS OF ALL MARITIME ZONATION

Key to all the off shore zones, listed above, and the seabed off the coast of any state is the BASELINE. 'A baseline is simply a line which is properly to be taken as the inner line

of the coastal belt of the territorial sea'. It may be the coast itself, which has no end except where it abuts on the frontiers of other states, where as in the case of an island, it may have no end at all.

The baselines form the maximum seaward margin of state's internal waters - such as bays, inlets, estuaries and other bodies of water associated with the shoreline. They also serve as a point of departure for determining both the inner and outer limits of the contiguous zone indirectly and the inner limits of the continental shelf and the high seas.

Since baselines are the keynote of maritime boundary delimitations, their specific placement becomes more important. Baselines are fundamental in ascertaining just how far seaward a state may exercise any given form of jurisdiction - whether it is complete sovereignty or only exercise of control to prevent infringement of regulations over such matters as customs, immigration and sanitation. There are certain features that make the identification and drawing of baselines more complex and difficult too, which have been dealt later in the chapter.

a) **Kinds of Baselines**

Baselines are the lines that help any coastal state to demarcate the area under its national jurisdiction, hence, they are the main feature of 'National Maritime Boundaries'⁵.

-
5. The maritime boundaries of the world and their delimitation has been grouped into two different categories.
- National maritime boundaries
 - International maritime boundaries

(i) NATIONAL MARITIME BOUNDARIES:

These are more or less 'unilateral' claims, demanded by a state to demarcate the limits of the waters over which they have a complete sovereignty like - 'Internal waters'. Such claims are mainly for security purpose and national interests.

The national maritime boundaries are same as baselines, on which depends the outer limit of the other maritime zones. The baselines are either 'normal' or 'straight'.

The NORMAL BASELINE is the low water mark⁶ around the coast of a state and around the coast of any island, that a state might own. There are often many low water marks, amongst which a state has to choose. Since most countries seek to secure the largest possible areas of the sea and seabed, they normally choose the low water mark which lies further seaward. Such a line should be the lowest astronomical tide, i.e., the lowest tide which can be predicted to occur under average meteorological and under combination of any astronomical conditions. This level can only be achieved by studying tidal records over a full tidal cycle of 18.6 years. But most of the countries simply refer to low water mark without providing any further details. Only Australia used the lowest astronomical tide.

The STRAIGHT BASELINES are a substitute for the low water mark or normal baselines, under special circumstances like

6. Low water mark or line is the intersection of the plane of low water with the shore (lowest recorded tide) i.e. the line along a coast or beach to which the sea recedes at low waters.



(a)

THIS IS AN HYPOTHETICAL SITUATION DEPICTING NORMAL (a) AND STRAIGHT BASELINES (b). IN (a) A COMPLEX PATTERN OF TERRITRIAL WATERS IS PRODUCED FROM THE NORMAL BASBLINES & BAY CLOSING LINES. WHERE AS (b) SHOWS THE ROLE OF STRAIGHT BASELINES IN SIMPLIFYING TERRITRIAL WATER' BOUNDARY.

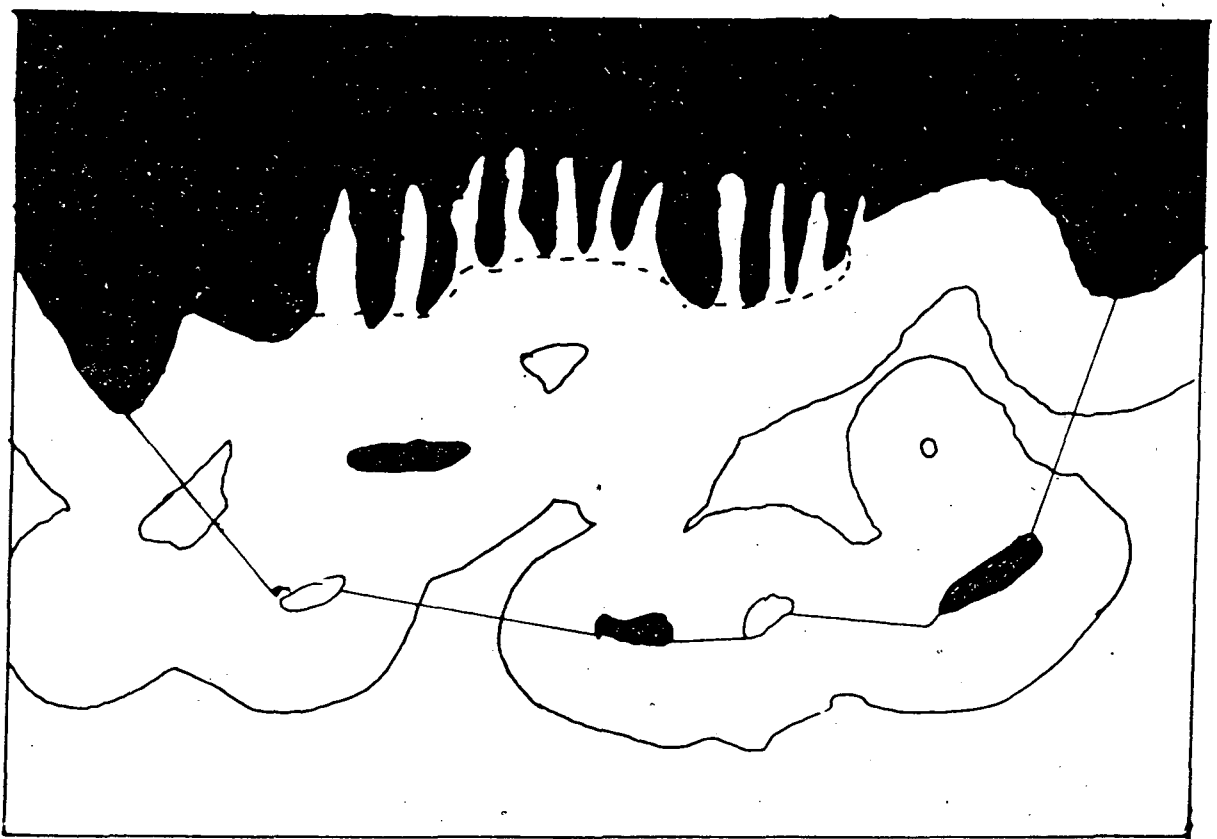


Fig 2.2. Types of Baselines^(b)

deeply indented coasts, fringe of islands, deltas, bays etc. Thus, stright baselines are a "system of straight lines joining specified or discreet points on the low water line, usually known as straight baseline turning points, which may be used only in localities where coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity." (UNCLOS, 1989, Baselines P.49).

The straight baselines have two categories - local straight baselines and regional straight baselines. The local straight baselines are found along the short sections of coasts and they link longer sections, where the low water line is used. Those lines are most commonly found closing the mouths of rivers and bays. Secondly, there are the regional straight baselines. These lines are drawn along coasts which are deeply indented and fringed with islands, along the unstable and rapidly retreating coasts and around the islands, forming the territory of archipelagic state. (Fig.2.2)

(ii) INTERNATIONAL MARITIME BOUNDARIES:

The second set of the maritime boundaries is of International maritime Boundaries - constituting boundaries between two or more coastal states and delimiting their zone from each other. There are three systems of International maritime boundaries. These may also be taken as the methods of drawing the international maritime boundary.

First is the system of EQUIDISTANCE LINE.⁷ It is a line, which is equidistant from the nearest points on the baselines of

depend on the baselines along the coasts of the respective countries, whose offshore areas are to be separated by the boundary. There may be a difficult situation, if one country uses 'normal baseline', following the sinuosity of the coasts and the other employs a 'straight baseline' connecting the outermost islands, promontories and rocks. It does not necessary lead to the equity conditions, either for total water area or resources. The boundaries between Puerto Rico - Venezuela, the U.S. and Mexico in the Gulf of Mexico is equidistance line.

An alternate to equidistance line is the MODIFIED EQUIDISTANCE LINE. These are the lines with more variations to account for a particular condition. There may be, for instance, islands or rocks located at some distance off one country's coast, if such features are given full effect through the equidistance line, then they will have a disproportionate effect on the location of the line. So the parties agree to ignore these features completely, to give it a partial effect.

The countries, thereby, through agreements define 'artificial baselines', not relying on the baselines which follow the sinuosities of the coast, for the purpose of their equidistance type boundaries. (E.g. French - Spanish maritime boundary in the Bay of Biscay). The location of specific turning points on the equidistance line may be shifted, in order to

7. Also known as median lines. In this work both the terms are used and they mean the samething.

smoothen out the boundary. Small areas on each side of the maritime boundary may be exchanged, but the basic premise remains of a boundary based, primarily on equidistance method.

The third category of the international maritime boundary system is of RELEVANT CIRCUMSTANCES BOUNDARY. These are the marine boundaries whose delimitation is based on the criteria other than the equidistance. This is to achieve equidistance solution to the problem. There are many forms of relevant circumstances, which might be used as a basis for such boundaries. These are:

(a) Natural Prolongation:

The argument is that a state's adjacent continental shelf is natural extension of the land territory into and under the sea. Particularly, in the cases where the shelf adjacent to a coastal state extends beyond the median line into a structural depression in the sea floor, it is argued that the state should have control over the under sea areas (like the chinese claim to the floor of the East China Sea, beyond the median line with Japan, out to Okinawa trough).

(b) Coastal Front Theory:

It states that a country should have jurisdiction over the seabed and water column immediately in front of its coasts. This is supported by the 'proportionality criterion', based on the judgement given by the International Court of Justice (ICJ), 1969 that "a reasonable degree of proportionality which a

delimitation... ought to bring about between the extent of continental shelf area appertaining to the coastal state and the length of its coast measured in the general direction of the coastline" (ALEXANDER, 1986 P.22).

(c) General Configuration of the Coast:

The above mentioned 1969 judgement of ICJ also noted the general configuration of the coasts of the parties as a factor to be taken into account of, in a delimitation process, carried out in accordance with equitable principles. In the case of a concave coast, median lines drawn perpendicular to the coast tend to converge not far off shore.

(d) Unity of Deposits:

This an argument with two facets. One is the contention that, if possible, a subsurface deposit, such as oil or gas, should not be divided by a boundary line. Where as the other concerns living marine resources and hold that, to the extent possible, stocks of fishes could be managed by one state rather than divided by a boundary.

(e) Socio Economic Elements:

The socio economic elements on the series can be broken into three components.

(i) In a dispute over the ownership of the marine resources - who got it first, who first surveyed it and then charted them?

(ii) Which is the predominant researching coastal state? and;

(iii) Which country is the most dependent on sea resources for its economic well being?

Depending upon the answers to these questions the process of boundary delimitation takes place, as the theory of "Survival of the Fittest" also applies here and hence the most dominant state gets the maximum of the benefits.

(f) Relative Circumstance:

There are other relative circumstances also, like major oil spill in a disputed area may show some negative effect over the coast of one country than other. There may be some old treaties too, between the countries, which may be relevant to the countries and can be used to delimit the international boundaries.

These are the circumstances which have been used by the nations, irrespective of the fact whether or not, they are persuasive in a particular court of law is another matter.

2.4 FACTORS INFLUENCING THE DELIMITATION OF MARITIME BOUNDARIES

Identification of the baseline, which leads to the delimitation of maritime zones and also the international boundaries between the coastal states, is not a process so easy. It is to account for lot many factors which complicate the drawing of maritime boundaries. They can be either geographical, political or economic depending upon any nations interest.

1. Coastal Topography:

Coastal topography plays an important role in determining a country's offshore claims and drawing of the baselines. Indentations and breaks in the coast requires special dispensation in determining the baseline. One has to choose the type of baseline to be drawn for the particular kind of feature. For instance there is less scope for drawing straight baselines along indented coast, or the coasts, fringed with islands. Some of these islands may be located either too near or too far from the mainland. Some times these islands can even be on the shelf of the other adjacent coastal state, whose territorial sea has already been delimited.

2. Presence of Deltas and Estuaries:

All the rivers of the mainland pour themselves into the mighty oceans. They carry lots of load with themselves which is deposited at the mouth of the river in the old age. This deposition is not uniform and static and hence, there is always a change in the course of the river and shift in the delta.

On the other hand, there are estuaries complicating the delimitation process. An estuary 'is no more than a wide river mouth subject to tidal action, qualified as bay in legal application of a baseline' (PEARCY, 1959, p.8). A classic example of an estuary is that of Rio-de la plata on the east coast of South America. Its legal status is complicated by Argentina's occupying one shore and Uruguay on the other.

3. Fringing Islands:

Irregularities of the coastal contours may be augmented by 'Fringing Islands'⁸. The problem arises when a tract is submerged at the time of high tide and exposed during the low and when there is a question that whether a tract separated by the main land by a narrow channel should also be considered as the 'islands fringing the coast'. Thus there are two aspects. One is whether the feature is an island or just a 'Low tide Elevation'⁹. Second aspect pertains to the location of islands when the island of one country is located too close to the shore of the neighbouring state, then the claims of the latter are restricted.

Such a situation, of location of islands was the root cause of dispute over boundaries between France and Great Britain. France argued successfully that the British Channel Islands should not prevent it from claiming some of the continental shelf near the middle of the English Channel. The poor relation between Greece and Turkey in the Aegean Sea relate to the close proximity of Greek Islands to the Turkish mainland.

-
8. Islands as per the Webster dictionary are just a 'tract of land usually of moderate extent, which is surrounded by water'. But in legal terms they have been defined in Article 121 of UNCLOS, so as to facilitate the process of determination of boundaries. Fringing Islands is a chain of islands along the coast in off shore waters.
 9. A tract which is submerged under water during high tides and exposed at the time of low tides.

4. Character of the Sea Bed¹⁰:

The character of the seabed shared by two states can complicate the delimitation process. This is particularly the case when a trench or deep submarine valley divides the shelf into two unequal parts. In such circumstances the country which owns the shore farthest from the declivity often argues that its axis marks the limit of the natural prolongation for both the countries. Such a situation has been responsible for the dispute between Britain and Norway, Australia and Indonesia; Libya and Malta.

5. Natural Resources:

Natural resources constitute one of the basic points of contention in maritime boundary delimitation. They are associated with the economic activities. The main economic activities in the offshore region are fishing, mining and sometimes recreation. The offshore areas of the continents vary in the opportunities they provide for commercial fishing and mining. It should not be assumed that a large country with longer coast will have access to more of the wealth of oceans, than the states with shorter coasts.

Fishing grounds and mineralized regions can be localized. For example, Iceland draws more wealth from its offshore

10. Seabed is the top of the surface layer of sand, rock, mud or other material typing in the bottom of the sea and immediately above the sub soil.

fisheries than Brazil which has a much longer coastline. Thus, there is a marked disparity in the wealth and resources of the two parties. A poorer state might argue, as it has always happened, that it should be favourably treated so that disparity might be reduced. This is an argument which Papua New Guinea exploited with skill during its negotiation with Australia over boundary through the Torres Strait.

Further, there are areas which overlap. If it is known that the overlapping areas contain valuable resources like crude oil and natural gas, the state may be reluctant to compromise until they have exhausted every effort to secure the entire resources.

Not only the deficiency of important mineral resources influences the delimitation of offshore boundaries, but the nobility of the living resources also affects the delimitation process. No country, under such circumstance would like to loose the resource regions, if it falls within the nearby areas.

6. Historic Bays:

Negotiations can be made more difficult, if one of the parties is wedded to a particular historic point of view, which the other cannot accept, as in the cases of the historic bay.

Historic bays are those, over which the coastal state has publicly claimed and exercised jurisdiction and this jurisdiction has been accepted by other states. They need not meet the requirement in the definition of 'bay' contained in the Article 10.2 of the UNCLOS..

The resolution of the Beagle Channel dispute was delayed by the traditional Argentinian view that Chile could never be an Atlantic power. So has been the case of MALACCA STRAITS. The Vietnam's conviction that the Sino-French Boundary Agreement of 1887 which divided the Gulf of Tongking will have to be set aside before there is any chance of China agreeing to a maritime boundary in this sea.

7. Bilateral Relations:

The political circumstance also come into the scenario while dealing with the settlement of boundary issues. In absence of the formal relations between the countries or serious tensions where formal relation exist, the process of boundary delimitation gets hard to negotiate.

Thus lots of factors work simultaneously in the process of maritime delimitation. (PEARCY, 1959, pp 1-23).

2.5 PROVISIONS OF THE UNITED NATIONS FOR DRAWING OF THE BASE LINES

The delimitation of maritime boundaries, as seen earlier took different faces depending upon the national interest of any country with the increasing pressure on the off shore regions. For various purposes, there was a need for a code of conduct for the nations for delimiting the maritime boundary and zones. The United Nations was entrusted with the responsibility to codify the rules and regulations for the delimitation of marine

boundaries. The LAW OF THE SEA deals with the maritime affairs of the world. Historically it was just seen as a law regulating movements of vessels, products and people. During the last half of the twentieth century, the law of the sea has witnessed a marked increase in the extent of the coastal states' maritime claims. In 1982 UNCLOS fixed the limits of the territorial sea at 12 nautical miles - putting an end to an old controversy. It also introduced various new aspects/concepts like EEZ. All of these zones were measured from the baseline. In addition 1982 UNCLOS also identified 'archipelagic waters'¹¹ and archipelagic state¹². These developments have all enhanced the importance of baselines.

Ever since 1920s several bodies have tried to codify the law of the sea. Finally the 1982 UNCLOS laid down the provisions for drawing the baselines. The convention also clarified the status of atolls¹³ and islands with fringing reef¹⁴.

The provisions of the 1982 UNCLOS have four parts: part I deals with Normal Baselines; Part II with straight Base lines;

11. Archipelagic waters are the waters that surround an archipelagic state. They are state's internal water.

12. As defined in Article 46 of 1982 UNCLOS: 'a state constituted wholly by one or more archipelagos i.e. group of islands and may include other islands too.'

13&14 These two terms need special consideration here. Geomorphologists reserve the term atoll for reefs which surrounds a lagoon and are surrounded with one or more islands. The reefs are usually interrupted by channels generally on the beside of the atoll and water in the lagoon.

Part III; special local circumstance and Part IV lays the provision for the marking of baselines on the chart and their publicity.

Article 5 of the 1982 UNCLOS defines normal baseline and Articles 6 and 13 deal with particular cases of normal baselines when associated with islands situated on atolls or islands with fringing reefs and the low tide elevations.

A. The Normal Baselines are usually taken as the low water line along the coast as marked on 'large scale charts',¹⁵ officially recognised by the state. (ARTICLE 5, UNCLOS). The low water line is the intersection of a plane of low water with the shore. The low water mark on the chart is the line depicting the level of chart datum¹⁶. The technical resolution of the International Hydrographic Organization States that, 'the level used as the chart datum shall be a place so low that the tide will not frequently fall below it' (UNCLOS: Baselines, 1989, p.2). The state may choose an appropriate low water line.

15. Chart in UNCLOS means a nautical chart intended for use by marines as an aid to navigation. Only nautical charts show all relevant features such as low water lines, low tide elevations, drying reefs etc.

16. Also known as Geodetic datum. A datum defines the basis of a coordinate system. A datum is associated with a specific reference ellipsoid which best fits the surface of the area of interest. A global geodetic datum is now related to the centre of the earth's mass and its associated spheroid is a best fit to the size and shape of the whole earth.

Usually normal baselines are drawn in the case of reefs, atolls and low tide elevations. For atolls, UNCLOS, makes provision through Article 6. In the case of Islands situated on the atolls or islands having fringing reefs, the baselines for measuring the breadth of the territorial sea is the 'sea ward - low line of the reef, as shown by appropriate symbols on the charts officially recognized.

Article 6, however, is not confined to atolls in the strict scientific sense. There are features that correspond to more general definition of an atoll, for instance, a ring shaped reef with or without an island situated on it surrounded by open sea, that encloses a lagoon.

It would be worth mentioning about the types of atolls, according to the locations, which need the special consideration for drawing of the baselines. There are Oceanic Atolls, which have localised foundations, usually volcanic in origin, most common in the west Pacific Ocean (like Maloelap and Marshall islands - around 171° OE & $8^{\circ}30'N$ and 159° W & $18^{\circ}55' S$ respectively). Shelf Atolls are found with less deep foundations on the shelf like Scott reef located off north west coast of Australia. Finally, Compound atolls consisting of recent structure surrounding the remains of former atolls (Moutman, Albrohos islands off the west coast of Australia.

On the other hand reefs are derived from biological process involving coral, oysters and lime secreting organisms. They are often distinguished from a rock platform, which is cut

down by erosion and the submerged. Example of true reef is around Rarotonga islands near Cook Islands. If the reef is uncovered at the time of tide then Article 5 applies.

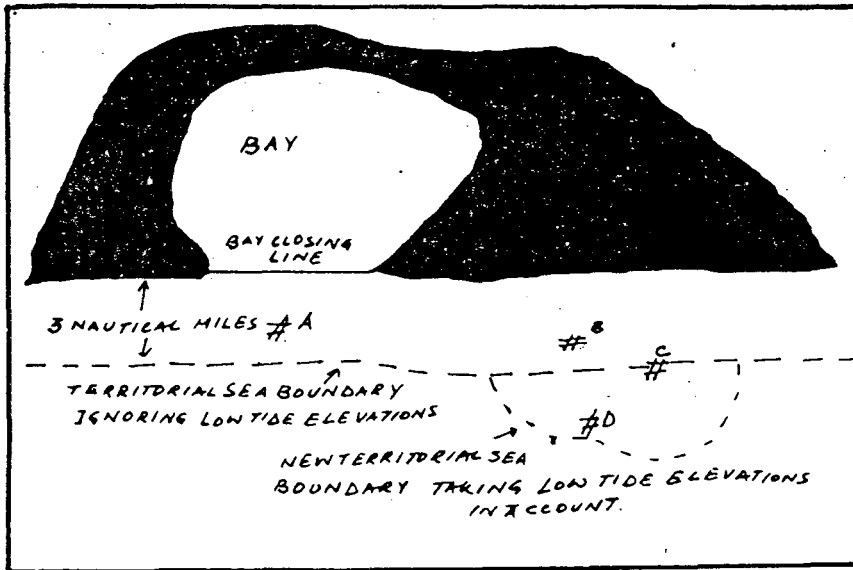
The reference of fringing reef in Article 6 can be applied without distinction to any reef including the barrier reefs which are separated from the low water line of the island and form a fringe along its shore.

This article, however, does not deal with the 'Lagoon Waters' or the waters enclosed by fringing reefs. These waters have been dealt later in Article 47 of 1982 UNCLOS.

Low Tide Elevations:

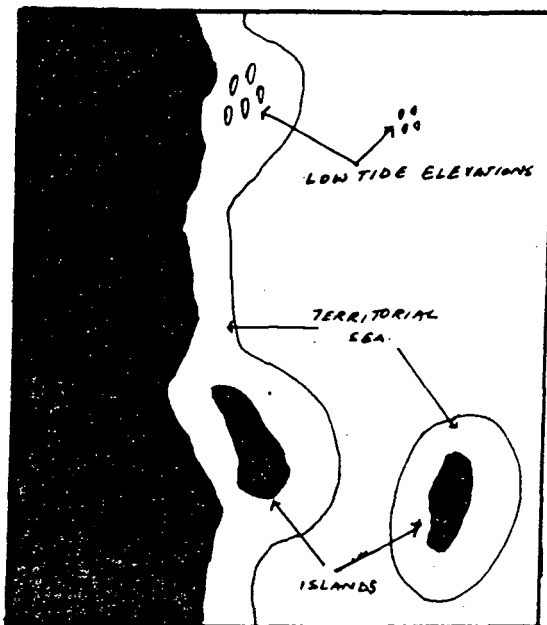
Article 13 of the 1982 UNCLOS deals with the baselines for the low tide elevations. According to this article, low tide elevation is a "naturally formed area of land which is surrounded by and is above water at low tide but submerged at the hightide". (UN, 1989, p.14. Under such geographical conditions, if a low tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the main land or an island. The low water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea. And if a low tide elevation is wholly situated beyond the breadth of the fixed territorial limits of 12 n.m. then, it has no territorial sea of its own.

The application of this rule is shown in Fig.3. These are four low tide elevations. Only two of which may be used to generate the territorial sea. (Fig. 2.3)



(a)

CLAIMS FROM LOW TIDE ELEVATION.



(b)

ISLANDS AND LOW TIDE ELEVATION
AFFECT TERRITORIAL SEA CLAIMS.
FORMER HAVE THEIR OWN T.S. &
LATTER ONLY EXTENDS IT.

Fig 2.3 T. S. Claims

B. The STRAIGHT BASELINES are a substitute for the normal baselines along the sections of the coasts which meet those geographical conditions as laid down in the Article 7 of the 1982 UNCLOS. It provides that the straight baselines can be drawn in "localities where the coastline is deeply indented and cut into or if there is a fringe of islands along the coast in its immediate vicinity" (UN, 1989, p.16. In such cases appropriate points are taken along the coasts and joined to get the straight baselines, from which the claims of offshore zones are made.

Secondly, in the case of deltaic coasts or highly unstable coasts, straight baselines are drawn by selecting the points along the farthest seaward extent of low water line. 1982 UNCLOS also makes it clear that straight baselines should 'not cut off the territorial sea of another state from the high seas and the EEZ' and also that they should not depart from the general direction of the coast and the sea areas lying off the coast. Further straight baselines cannot be drawn from low tide elevations unless, there are light houses or similar installations, which are permanently above the sea level during the low, or, except in the cases where drawing of baselines to and from such elevations has received general international recognition.

C. The 1982 UNCLOS has also specified the criteria for identifying the baselines and delimitation of the territorial sea under SPECIAL SITUATION i.e. within the vicinity of the mouths of rivers, bays, ports and roadsteads.

(i) Mouth of Rivers: These are the cases where rivers directly flow into the sea, under such situation the straight baseline is drawn across the mouth of the river between the points on the low water lines on its banks (Article 8).

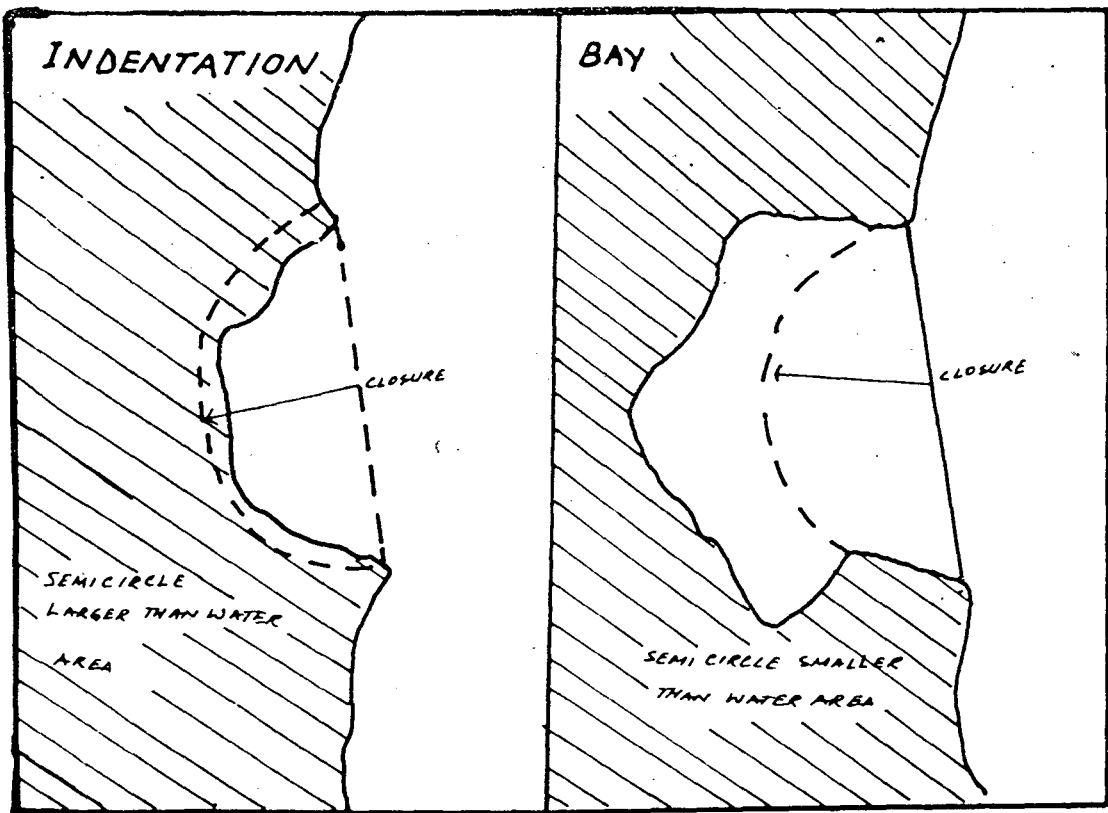
(ii) Bays: A bay is, as the convention, specifies, is a well marked indentation whose penetration is in such proportion to the width of its mouth as to contain land locked waters and constitute more than a mere curvature of the coast. An indentation shall not be regarded as a bay unless its area is as large as, or larger than that of the semicircle whose diameter is a line drawn across the mouth of that indentation (UN, Baseline-1989, Article 10, para 2, p.27)

In the case of a bay, there can be two situations:

1. One the distance between the low water marks of the natural entrance points of a bay exceed 24 n.m. and;
2. the distance between these two points is less than 24 nautical miles.

Under the first situation, a straight baseline of 24 n.m. is drawn in such a way that it encloses the maximum area of water that is possible with a line of that length. In latter, just a closing line is drawn between these two low water marks and the waters enclosed are, thereby, the 'internal waters'.

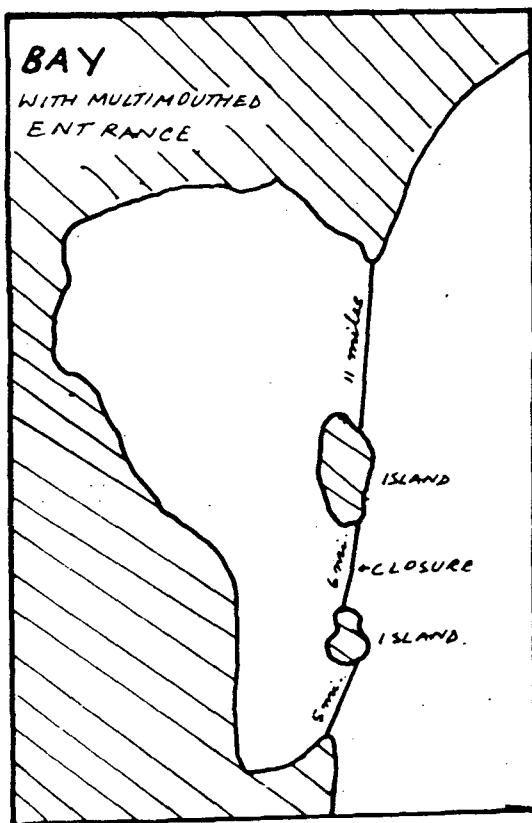
These provisions of Article 10 of 1982 UNCLOS do not apply to 'Historic bays' or, in any case where the system of straight baselines provided for in Article 7 is applied. (Fig.2.4).



(a)

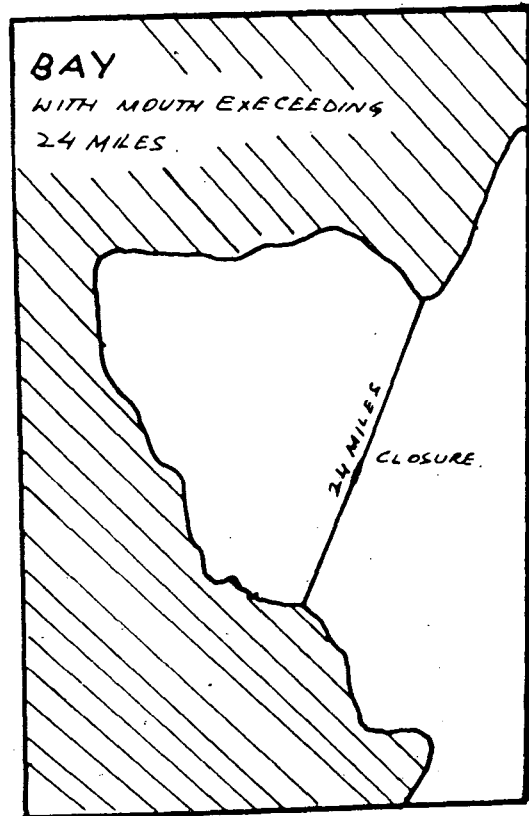
(b)

AN INDENTATION QUALIFIES AS A BAY ONLY IF A LINE CLOSING ITS ENTRANCE SERVES AS THE DIAMETRE OF A SEMICIRCLE THAN THE AREA OF WATER ENCLOSED. HERE ONLY 'B' MAY BE LEGALLY CONSIDERED AS BAY.



(c)

THE CLOSING LINE OF THE BAY WITH A MULTIMOUTHED ENTRANCE MAY HAVE A MAXIMUM LENGTH OF 24 MI. INDIVIDUAL SEGMENTS MUST BE STRAIGHT LINES.



(d)

A STRAIGHT LINE OF 24 MILES IS MAXIMUM PERMITTED TO CLOSE A BAY. THIS IS DONE IN SUCH A WAY THAT IT ENCOMPASSES MAXIMUM AREA.

Fig 24. Line of Closure

Ports: For the purpose of delimiting the territorial sea, the outermost permanent harbour works which is an integral part of the harbour system are regarded as forming part of the coast. Offshore installations and artificial islands shall not be considered as permanent harbour works (Article 11, UNCLOS, 1982).

Roadsteads: These are normally used for loading and unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea are included in the territorial sea. (Article 12).

Archipelagoes: These geographical entities are the most problematic ones, as in these cases more of national interests security aspects come in and any state tries to have more of the seaward areas.

Article 47 of the UNCLOS 1982, provided that an archipelagic state may draw straight baseline joining the outermost islands and drying reefs of the archipelago. Such a baseline should include the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls between 1:1 and 9:1.

The length of these baselines should not exceed 100 n.m. and only 3% of the total no. of the baselines enclosing an archipelago may exceed that length but only upto 125 n.m.

Apart from this, general configuration of the archipelago, the provisions for low tide elevation EEZ and territorial zone of the other states should be accounted for.

There may be a situation when a part of the archipelagic waters of a state may lie between two parts of an immediate neighbouring state. Under such situations, the existing rights and all other legitimate interests which the latter states has traditionally exercised in such waters and all rights stipulated by agreement between those states shall continue and will be respected.

Apart from these provisions for the baselines, these are some articles, those dealing with INTERNATIONAL MARITIME BOUNDARIES where two adjacent countries share the same coastline and where two countries are separated by a comparatively narrow belt of sea, some of their maritime claims will overlap. The 1982 convention offers assistance to countries faced with the need to draw a common boundary at sea.

Article 15 of 1982 UNCLOS states that, 'where the coasts of two states are opposite or adjacent to each other, neither of the state is entitled to extend its territorial sea beyond the median line, every point of which is equidistance from the nearest points on the baselines. However, it does not apply in the case of historic bays and under special circumstances' (UN, 1983, pp.5-6).

Thus the delimitation of maritime boundaries is not an easy process, like the delimitation of land boundaries. It

involves a series of process like marking of the boundaries on the charts, whose scales too have been fixed - for long boundaries 1:1 million or 1:2 million and for short boundaries 1:500,000. Once such charts are made then the turning points on the boundary are tested to discover the relationship it bears to the nearest points on each coasts. And then these charts are open to public for any disagreement or open discussion. Some countries may even have secret baselines.

To conclude, there are three sets of maritime boundaries which a coastal state might have to draw. First, the baselines that draw territorial sea. Contiguous zone and the EEZ. The second boundary limits the outer edge of the continental shelf and must be drawn by the states with an extent more than 200 n.m. The third set of boundaries which are for the overlapping areas.

The provisions of the United Nations, though have helped in codifying the law of the sea, but they are generally ambiguous, which has been discussed in the later chapters. But still on the basis of 1982 UNCLOS, Nations have been trying to come to a consensus to benefit the mankind.

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CHAPTER - 3

SOUTHWEST PACIFIC OCEAN: A GEOGRAPHICAL SET UP AND SPATIAL OFFSHORE CLAIMS

3.1. GEOGRAPHY OF THE OCEAN:

The surface of the earth is occupied by land and sea. The sea covers about 361,059,000 square kilometers i.e. 70.8% of the earth's surface and land covers 148,892,000 Sq.km. i.e. 29.2% of the total surface areas. Ocean cover is about 2.42 times more than that of land. The land represents the elevations on the "geoide" and the seas represent the depressions.

The change from continental relief to the deep oceanic relief is by way of a transitional feature which is by way of a transitional feature which has been named as CONTINENTAL MARGIN and which has been divided into two distinct regions:

- (a) The Continental Shelf, and
- (b) The Continental Slope.

THE CONTINENTAL SHELF: Just below the shoreline, there is a zone prolonging the region of emerged land. It deepens according to a slope analogous to that of the neighbouring continent as far as depth, classically, conceded to be of the order of 200 m or 100 fathoms, but which in fact varies between 100 to 400 mts. The limit of this zone is delimited by a break in the slope.

This zone extends enormously off, regions of plains where great rivers are present, the regions which are devoid of mountains.

If we consider the whole of the oceanic shorelines then, the mean width of the continental shelf is around 50 km and slope of the order of 0.4%. The slope is gradual, but not uniform and not even smooth, as it has terraces, depressions, peaks, crests and cravesses, following the gradient, may be upto the continental slope. These are called 'Submarine Canyons'. This relief of continental shelf is the prolongation of the rivers, where "geological seas were and are still at work". (TCHERNIA, 1980, p.7.)

It is a zone of active erosion, with marked variation in characteristics of water, of intense tidal currents and rich and plentiful marine life. (Its development in North Atlantic Ocean - the Grand Bank, and in the North Sea, the Baltic and the Bay of Biscay has been a factor in the great maritime development of the bordering nations).

THE CONTINENTAL SLOPE: Its an area, 3000-4000 m of depth with an abrupt decent. Its slope varies from place to place. Along the mountainous coasts, it has a steep slope of 6%, where as along the plain coasts, and adjoining low lying areas it does not exceed 3 to 3.5%. There is a distinct break in the slope, which marks the limit between the continental shelf and the continental slope.¹

1. The continental shelf and the slope together are the continental margin.

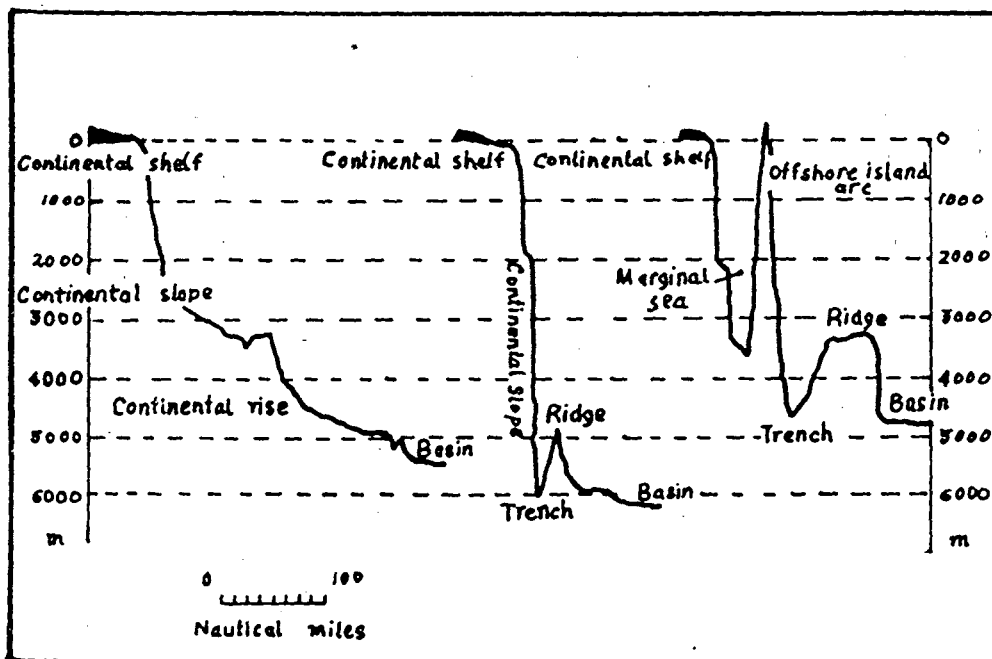


Fig. 31. Pacific Ocean: A Profile.

This continental margin is the expression of greatest structural discontinuity on the surface of the earth, i.e. the transition from the continental crust to the oceanic crusts. It is marked by an escarpment 3500 m high and more than 350,000 km long.

THE GREAT OCEANIC DEPTHS: Next to the continental margin, there are the great oceanic depths, beyond 3000-4000 m where one can see the structural relief. The very great depths - greater than 7000 m which are found in certain ocean basins are of very restricted extent; they are elongated trenches with steep sides, which are never found in the middle of the ocean basins but only near continents and islands areas, and on the convex side of these areas.

Fig.3.1 shows the profiles of the slopes connecting the continents to the ocean basins. They are of three types:

- (a) the theoretical type;
- (b) corresponds to a profile existing in coastal regions of very bold relief.
- (c) the third, is found off the coast of a chain of islands isolating a marginal sea.

In spite of the unequal distribution of land and sea over the territorial globe, there are certain singular features which are very striking - like the land and sea are antipodal to each other in which PACIFIC OCEAN occupies the prime position, as the two most important land masses oppose it - i.e. Eurasia and

Africa. Secondly the land masses are for the most part concentrated in the northern hemisphere (60.7% of land and 30.3% of sea). The southern hemisphere has 80.9% of the sea and only 19.1% of the land. Therefore we have "continental northern hemisphere" and a "maritime southern hemisphere".

Such differences in the presence of land masses have not affected the importance of southern hemisphere - Particularly when it comes to the PACIFIC OCEAN. It is still the stage for the enactment of most of the maritime activities - including disputes over the occupance of off shore regions.

3.2 THE PACIFIC OCEAN

(a) Limit, Extent and Distribution:

Of the total expanse of the hydrosphere over the earths surface, the domain of the Pacific Ocean, with its numerous adjacent - Marginal seas in the extreme western part, covers about 30% of the total surface area of the planet earth or the 40% of the total area of the total oceans and practically the same area as the raised islands in the oceans.

Pacific ocean is three times greater than the Indian Ocean, twice the size of the Southern Ocean and 1.7 times that of the Atlantic Ocean. This is the largest and the deepest of the oceans, extending by the east coasts of Australia in the west, the inner position of the arc of the Sunda Islands, the coasts of South East and North West Asia. In the North, practically extending till the polar circle, by the Berring

Strait. To the east, by the mountainous coasts of the American continent, as far as 40°S . To the south, it is largely open between Australia and Cape Horn on to the Southern Ocean and its limit is the 'Subtropical Convergence' or 40°S latitudes.

It stretches from 100°E to 80°W over 180° of longitudes (10,800 n.miles), while on the 170°W between the Berring Strait and subtropical convergence, it spans 106° of latitudes (6,360 n.miles). To the north the closing of the land masses of the North East Asia and North West America leave only the narrow passage of the Berring Strait - a mere 40 n.miles of width, whose shallowness causes the North Polar Basin, to be connected to the Atlantic Ocean. The opening between Australia and America in the South, represents 135° of longitudes or around 6,500 n.miles.

Pacific Ocean can be divided into - NORTH PACIFIC and SOUTH PACIFIC, with the equator being the dividing time. However this distinction may not be very rigid one as there may be minor latitudnal variations where as for the purpose of this study, Pacific Ocean has been divided into four parts:

- (i) Northern Pacific: the deepest part of the ocean, with an average depth between 5000-6000 m
- (ii) Central Pacific: This part is studded with islands, mostly of coral and volcanic origin like the Hawaiis. Deeps are almost absent in this region. The chains of islands are parallel to the narrow 'back deeps' of the island arcs.

(iii) South West Pacific: This part is also marked by variety of islands and the marginal seas and continental shelf with submarine trenches. The average depth of the ocean is 4000 m.

(iv) South East Pacific: Broad submarine ridges and plateau are recorded in this part with no marginal seas in the region.

(b) Bottoms Relief of the South West Pacific Ocean:

To Oceanographers, Pacific Ocean does not interest them much, like the Atlantic or Arctic Ocean. For them, it is just a "Sluggish Ocean, with rather uniform deep waters". (TCHERNIA, 1986).

But when it comes to the study of maritime boundaries and its features, then this ocean turns out to be the store house of interesting facts.

The relief of the South West Pacific Ocean - which is the area of study too has been put under four heads. Continental shelf, Ridge, Basins and Deeps.

CONTINENTAL SHELF: One finds a variation in the width of the continental shelf along the Pacific according to the nature of the coast. Eastern coast of Australia, East Indies and the Asian continent have broad continental shelf. The continental shelf is marked by the presence of various Asian Archipelagoes - Indonesia, Japan, Philippines and New Zealand. Apart from these archipelagoes, there are very inland seas like the Bering Sea.

The Sea of Okhotsk, the Sea of Japan, the Yellow Sea, the China Sea, the Java Sea and the Coral Sea. The average depth of the continental shelf is about 100 m and width varies between 100 - 1000 kms.

RIDGE²: Unlike other Oceans, the South Pacific region does not have any central ridge. Only on the eastern margin of the ocean, a few submarine ridges can be located.

One important ridge is East Pacific Ridge or Albatross Plateau at a depth of 3000-4000 m, which is quite extensive. It extends from the coast of Central America towards southwest. It is 1000 miles broad and bifurcates into San Felix-Juan Ferandez Ridge in the east, parallel to Chilean coast, and the Western ridge moves to the South and forms a wide plateau - the South Eastern Pacific Plateau. This plateau forms the curved Pacific Antarctic ridge.

However there is one important RISE³ in the Central Pacific-the Hawaiian Swell -600 miles in width and 1900 miles long. It extends from 35°N to 17°N latitudes in northwest to south east direction. It has a depth of only 2000 m. The islands of Hawaii and Honolulu are on this rise on 20°N latitudes, with an average depths of 3000 m.

-
2. Ridge: A raised feature of submarine topography. A long elevation of deep sea floor with steep sides and irregular topography (Fig. 3.1) Eg. The mid Atlantic and Indian Ocean Ridge.
 3. RISE: An elongated broad elevation of the ocean floor with gentler and smoother sides than those of ridges.

BASINS⁴: The South Pacific Ocean is marked by many basins and depressions of various depths. These basins have an average depth varying from 4000 m to 6000 m. To name few of the basins:

Philippines Basin: in the east of Phillipine Islands, this basin extends upto 5°N, with a depth between 5000-6000 m.

Fiji Basin: is in the south of Fiji, between 10°N to 32°S latitudes. The depth is more than 4000 m. It is seperated by a rise into north and south basin.

East Australian Basin: extending in the east of Australia with areas deeper than 5000 m, is a compact and circular basin.

There are some more basins like the Aleutian basin, West Carolin and East Carolin basin the South Australian basin, the South Western and South Eastern Pacific basin and finally the Pacific Antarctic basin.

These is a TRENCH⁵ too, east of Tonga between 10°-55°S and 150°-152°W, about 5000 m. deep.

DEEPS⁶: There are total 32 deeps in the Pacific, most of them trenches by nature. They are found parallel to mountain chains

-
4. BASIN: A sunken feature of marine topography. It is a circular or elleptical depression of seabed of any diameter.
 5. TRENCH: A long, narrow depression having relatively deep sides.
 6. DEEPS: A depression of any shape, without relation to the great morphological features of the ocean, of which the depth is greater than 6000 m.

or island areas and are located mostly in the Western part of the ocean. (e.g. Aleutian, Kurile, Japan, Philippine trenches).

Marginal Seas And The South Pacific Countries: Marginal seas of the Pacific are located mostly in the western part of the ocean.

They are narrow and longitudinal in nature. The important seas are Bering, Aleutian, Okhotsk, Sea of Japan, Yellow Sea, East and South China Sea and Celebes and Banda Sea. Amongst these only Yellow Sea, is shallow. There are some seas around Australia too, like Gulf of Carpentaria, the Arafura Sea or the Bass Strait, all are shallow and be on the continental shelf. On the eastern side only shallow Gulf of California and submerged coastal seas near British Columbia are found.

The coastal states of the Pacific can be divided into East and West Pacific countries. In the Eastern Region there are three continental states of Chile, Peru and Ecuador. In the West there are 19 insular territories which fall into three groups: First there are eleven independent states: Australia, Fiji, Kiribati, Nauru, New Zealand, Papua NewGuinea, Solomon Islands, Tonga, Tuvalu, Vanuatu and Western Samoa. Then there are four territories of the Cooks Islands, Niue and Tokelau with special relationship with the metropolitan power of New Zealand and American Samoa is an unincorporated territory of the United States. The remaining territories are colonies Pitcarin (British) and French Polynesia, Wallis and Fatuna and New Caledonia (French).

There is another group of coastal states which have their own identity, not falling in the above groups. They are mainly in the South China Sea. They constitute the world famous archipelagoes of Japan, the Philippines, Indonesia, the countries like people's Republic of China (PRC), Republic of China (ROC - Taiwan), the Democratic Peoples Republic of Korea (DPRK), the Republic of Korea (ROK), Vietnam and Malaysia. These are the major countries, playing the leading role in the delimitation of the maritime boundaries in the Pacific Ocean. (SHARMA, 1980).

(c) Resources:

Continental shelves contain many valuable resources, of both types - living and nonliving. Among the living resources, fish are the most important, consisting of non sedenatary species caught in the waters above the shelf. Biologically, shelves tend to be rich fishing grounds; for example, off western Europe, Iceland and Newfoundland, and off the Seas of Okhotsk and Japan are the extensive fish reserves. The marginal seas of the Pacific are no exception, where the favourable temperature conditions, the ocean currents all nurture the living resources.

Lying off their mainlands, the shelves are accessible and can be easily exploited. Since most of the South West Pacific countries are still the developing ones, thus, for them, there is still a long way to go before the fish resources can be fully exploited. Many South West Pacific country fishermen,

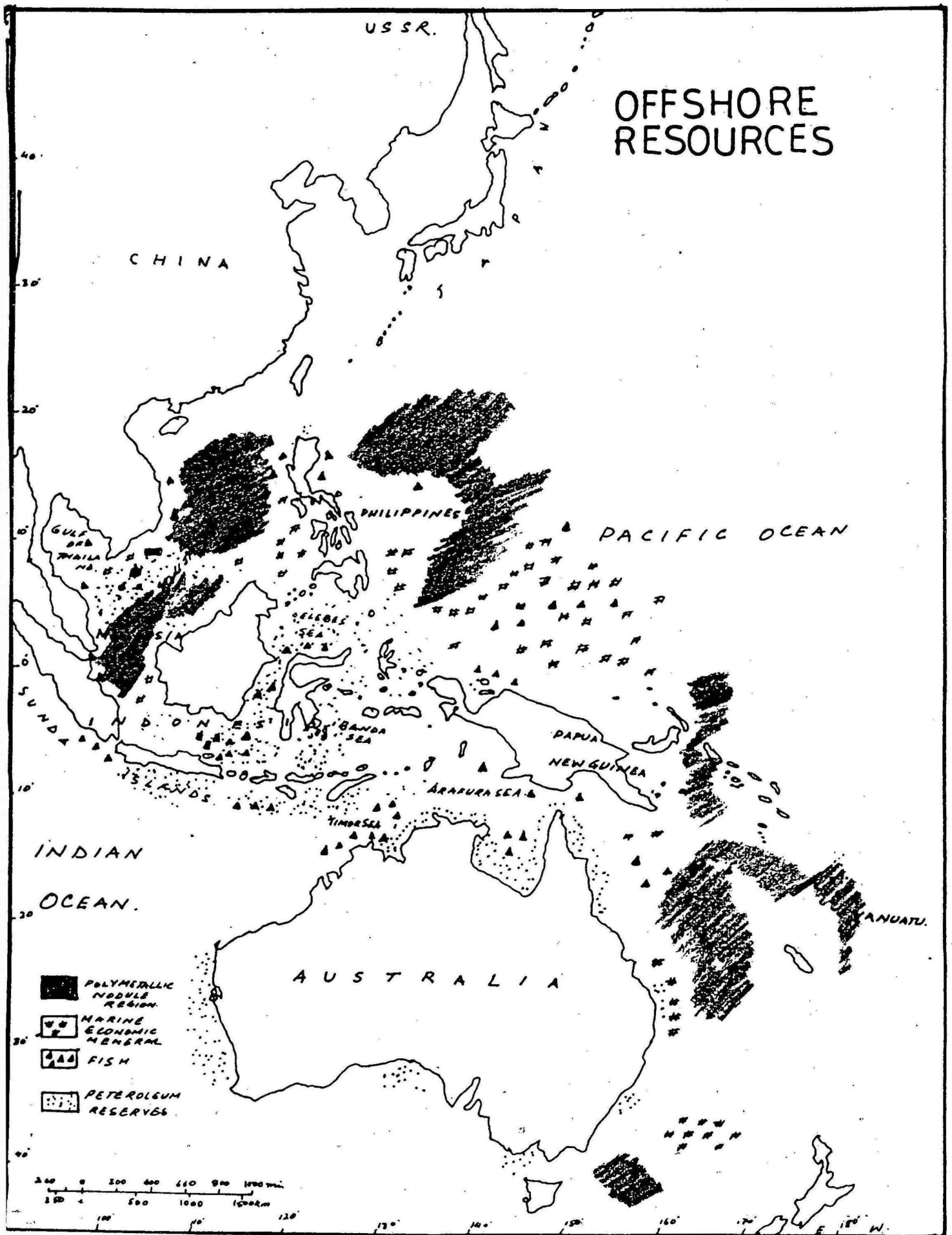


Fig 3.2 Southwest Pacific: Resource Base

particularly those of South East Asia⁷ are engaged in inshore subsistence fishing, but the catch from capital intensive trawler fleet still comes from the foreign countries.

In recent years, two types of resources have become very important. The first type consists of mineral deposits which lie on, or just below, the surface of the shelf in unconsolidated deposits, including phosphorite nodules. The second type consists of mineral deposits lying deep below the surface of the continental shelf, either consolidated or unconsolidated. They include the most important fuels obtained from beneath the surface of the shelf, namely, petroleum and natural gas. (It is estimated that about 20% of the world's crude petroleum and 15% of the natural gas production comes from the continental shelf). At present oil and natural gas reserves of the world are estimated to be about 90% of the total value of minerals recovered from the seabed. (Fig.3.2)

In the South Pacific, current interest chiefly centres on the natural gas and petroleum reserves beneath the Sunda shelf. Although it produces only about 3% of the world's oil, in the last 10 years more than 40 international oil companies have come to prospect for oil in the marginal seas of the Pacific. Such prospecting has led not only to arguments between oil states and prospecting companies over the share of the profits but also to

7. SOUTH EAST ASIA: A name given to the archipelagic states of Indonesia, Philippines, Malaysia, Cambodia, Malaysia, Burma, Vietnam, Taiwan.

competition and conflict among states over several issues like the occupance of offshore zones.

While oil resources receive much of the interest, other mineral resources abound on the South West Pacific seabed. The maganese modules deposits in the ocean floor greatly exceed those known and accessible on land. Large maganese modules, containing copper, nickle, cobalt, titanium and other metals, have been widely found. Phosphorites, tin and diamonds are also being extracted from parts of the continental shelves. (WERK, 1967).

In this technological age, some states are interested in claiming sovereignty over the continental shelf for another reason particularly the military interests. But with the 1945 TRUMAN DECLARATION⁸, many states in the South West Pacific region are in the race to claim the sovereignty over the areas of the continental shelves which abound in natural resources. (Times Atlas of Oceans).

3.2 SPATIAL PATTERN OF MARITIME CLAIMS IN THE SOUTH WEST PACIFIC OCEAN

(a) Territorial Waters and Archipelagic Waters:

The phenomenon of maritime claims in the Pacific Ocean, or

8. TRUMAN DECLARATION: The declaration was made by the American President Truman in 1945. It proclaimed that the 'continental Shelf boundary between the United States and the neighbouring states shall be determined in accordance with 'equitable principles' i.e. distribution according to justice - based on the famous principle 'to everyone according to his capabilities'.

as a matter of fact in any other ocean, is comparatively a recent one - just three decades old. As till recently, it was dominated by the naval powers like, the United Kingdom; the U.S. and France. Most of the countries have not evolved their own system of claims of offshore areas.

In spite of the criteria laid by the United Nations, there is not much of a consensus in delimitation of these areas. Moreover, the United Nations has made provisions for the drawing of the 'Baselines' only under different conditions and circumstances, in 1982 UNCLOS; rest other off shore zone claims are yet to be codified.

Regarding the drawing of the baselines, there are certain procedures, which every country - any coastal state must complete - like publication of charts with coordinates, then drawing the baseline as per the provision in the article 5-13 of 1982 UNCLOS and then making these claims open for public, if in case there is any dispute, then discussions can be held. But most of the countries have not yet completed these basic requirements and hence, there arises the problem when one has to discuss the 'Spatial Pattern of Maritime Boundary Claims'. Due to the non-availability of the charts and maps of the baselines, the offshore boundaries and the claims of the zone becomes little arbitrary with no uniformity around the globe, as all the countries have their own code of these claims.

Some developed countries and coastal states have published their charts and maps of baselines, which have been accepted by the U.N., so there off shore claims have been discussed in the following sections.

(b) Delimitation of the Baselines:

Baselines, as already mentioned, constitute a fundamental aspect of the new regime established by the 1982 UNCLOS. Since, the breadth of the zone under national jurisdiction is to be measured from the baselines, some nations have already published their charts and maps. The number of countries making proper claims is very less. In South West Pacific, only the major nations have drawn baselines, without any complication. Rest are archipelagic nation States and their claims are more complicated. Since baselines are unilateral claims and does not involve another adjacent state hence the South West Pacific countries have drawn their baselines but Malaysia has not yet drawn such boundaries and hence its claim has not been accepted.

1. AUSTRALIA: The Australian claims of the baselines is provided by the Sub Section 7(1) of the SEAS AND SUBMERGED LANDS ACT 1973, known as the Proclamation of 4th Feb. 1983' (UNITED NATIONS, 1989, p.19). It determined the breadth of the territorial sea, and the baseline from which any part of the traditional sea is measured. Such a proclamation came into effect from 14th Feb. 1983. (Fig.3.3)

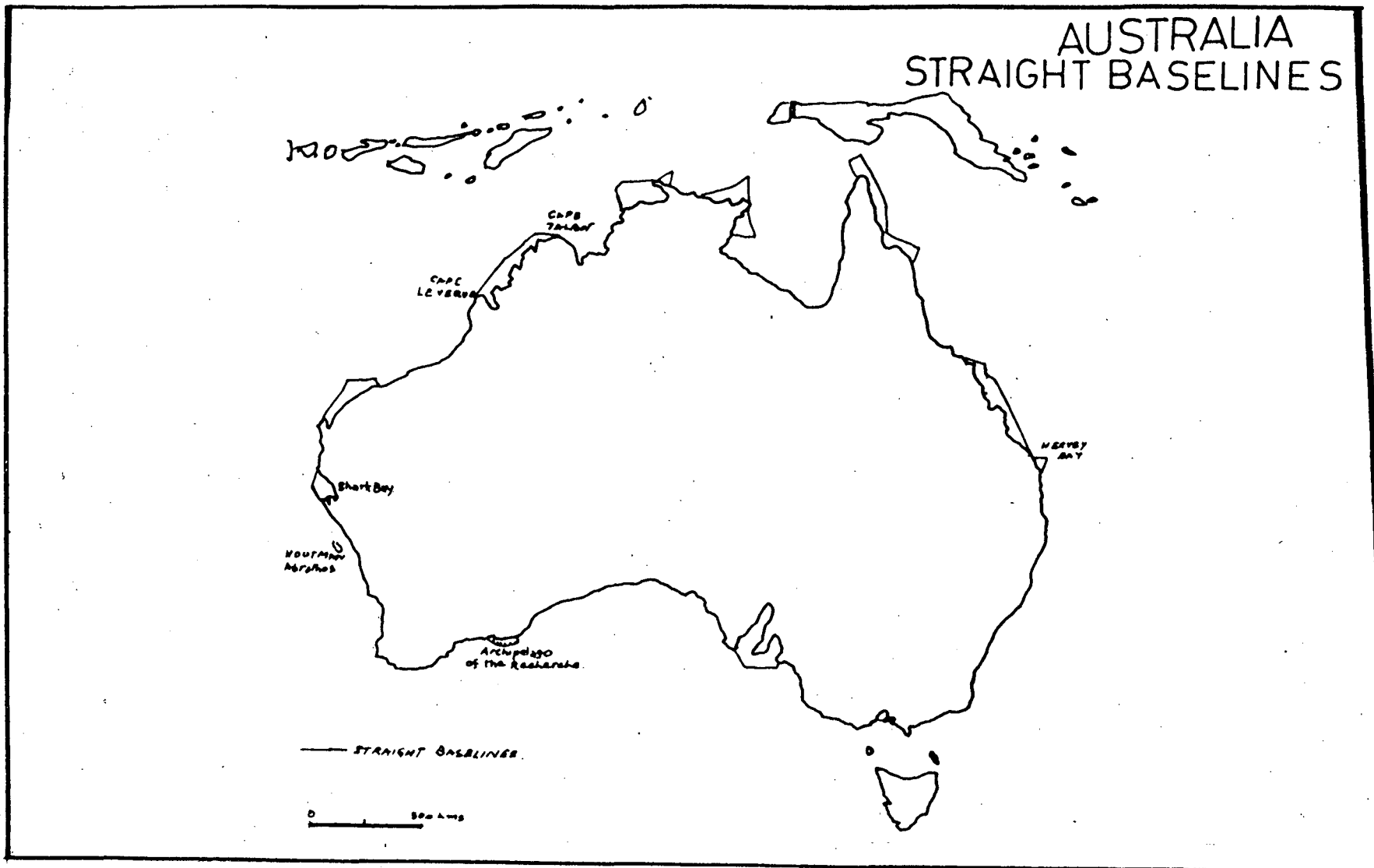


Fig.3.3. Australian Baselines

It accepts the United Nations provision for the low tide elevations, the criterion for the low water mark, the closing line of 24 n.m. for the indentations and bays etc. It also considers the outer most permanent harbour works as the integral part of the coastal system.

The proclamation states that the baselines from which the breadth of that point of territorial sea adjacent to the mainland of Australia is to be measured is the line constituted by the following lines:

- (a) the low water line along the coast except where that low water line is landward of a line referred to in the following sections - b, c or d.
- (b) in the case of each river that flow directly into the sea on that coast, a straight baseline is drawn across the mouth of the river, between points on the respective low tide lines of its banks, except where line is landward of line referred to in para c and d below,
- (c) in the case of each bay on that coast, a line drawn between respective low water marks of the natural entrance points of the bay, except where the line is landward or, identical with a line as mentioned in para d.
- (d) the straight baseline joining each part on the low water of the coast that are on or closest to the points of

latitudes and longitudes specified, in reference to the Australian Geodetic system⁹.

The breadth of the territorial sea for the island state of Tasmania, too would be based on the criteria laid as above, for the drawing of the baselines, except for the para 'c' where it makes a little alteration stating that, in the case of each bay on the coast of the island, or on the coast of an island included in the group of islands, as the case may be, a straight baseline drawn between respective low water marks of the natural entrance points of the bay (except where the line is landward).

It has Turnagain Island, Turu Cay and Pearce Cay belonging to Queensland. The Group of Islands are:

- (i) Aubusi, Boigu and Moimi
- (ii) Dauam, Kaumag and Saibai
- (iii) Anchor Cay and East Cay
- (iv) Black Rocks and Bramble Cay.
- (v) Deliverance Islands and Kerr Islet.

Further, if the low water line an area of land interest with straight baseline, then the outermost points of inter section are to be considered. The most seaward points of the islands are

9. Australian Geodetic System: In reference to the equatorial radius of the earth (6,378,160 mts) and a flattening of 100/29825 by reference to the position of JOHNSTON GEODETIC STATION in the Northern Territory. Johnston Geodetic Station is situated at at latitude 25° 26 54.5515 South and at longitudes 133°12' 30.0771"E and have a ground level of 571.2 mts above the sea level. (United Nations, 1989).

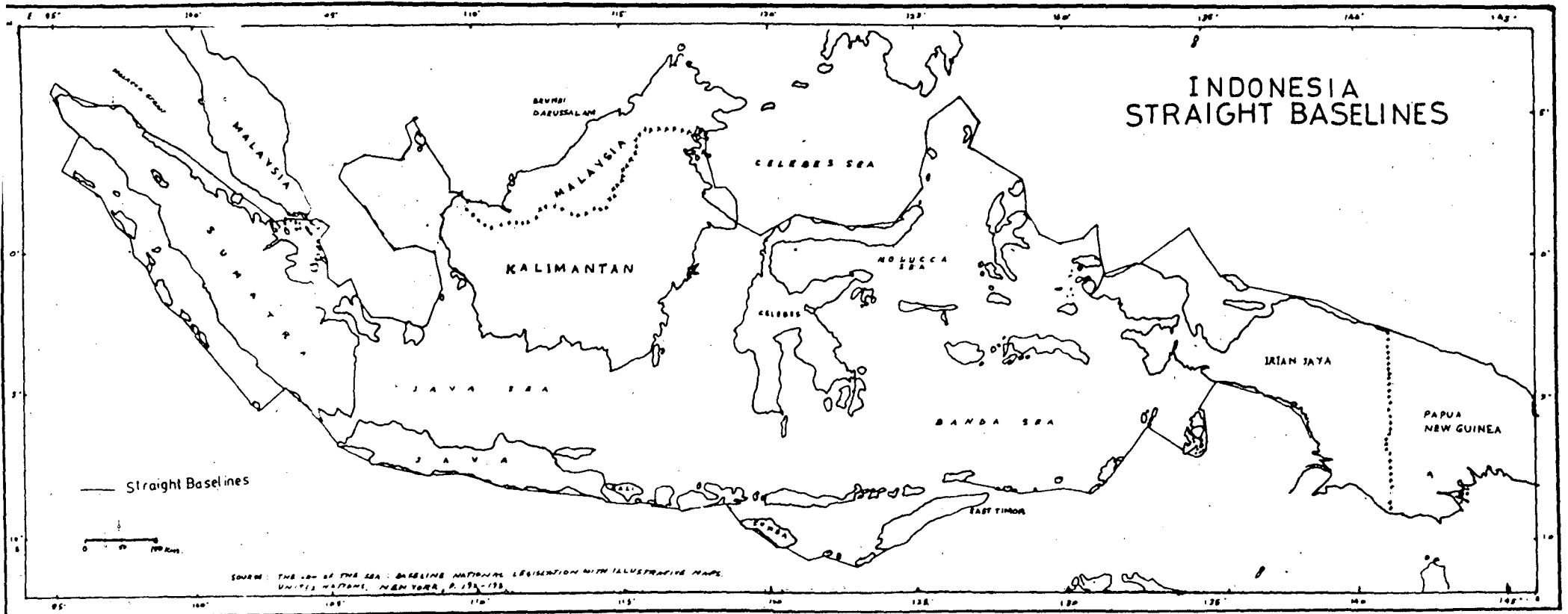


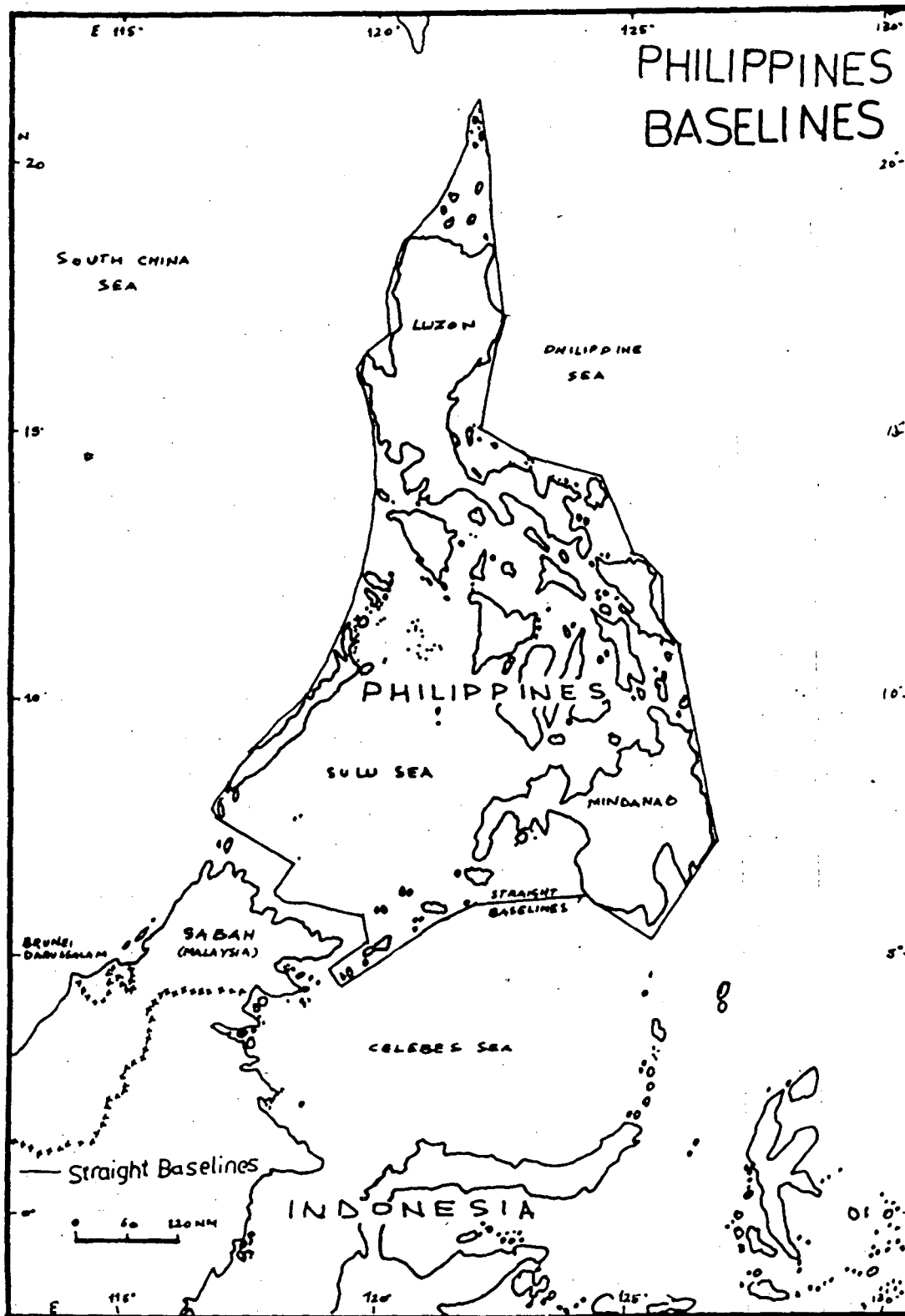
Fig 34. Indonesian Baselines

to be taken for the baselines. Secondly, the outer limit of the territorial sea to the islands mentioned in Australian territory is a continuous line formed by a series of intersecting areas of the circles having a radius of 3 miles.

INDONESIA: Indonesia, declared its' baseline through Act No. 4 (Straight baseline) of Feb' 1960 published in International Boundary Studies series: A limit to the seas (office of the Geographers Bureau of Intelligence and Research of the U.S. department of State, No.35, July 1971. (United Nations, 1989).

Indonesian waters consist of territorial sea and the internal sea. The Indonesian territorial sea has a width of 12 n.m. The outer limits, is measured perpendicularly to the baselines or the points on the baselines, which consists of the straight lines connecting the outer most islands or part of such islands, through their outermost points. It is delimited with a priori in the case of straits of a width of not more than 24 n.m. The outer limit of the Indonesian territorial sea shall be drawn in the middle of the strait in the case of a neighbouring state's claim over the same strait. (Fig.3.4)

3. MALAYSIA: This coastal state claims to have drawn straight baseline along its coast, but as such no proclamation has been made about their location, because Geographer 1970(2) mentioned that Malaysia had recently constructed the baseline, based on 1969 agreement with Indonesia over the continental shelf. Where as factor, the Geographer 1973(3) also mentioned about Malaysia's drawing the 'straight' baseline. Though till date no



SOURCE: THE LAW OF THE SEA: BASELINES, NATIONAL LEGISLATIONS WITH ILLUSTRATIVE MAPS, UNITED NATIONS, 1983, P. 289

Fig. 3.5 Philippines' Baselines

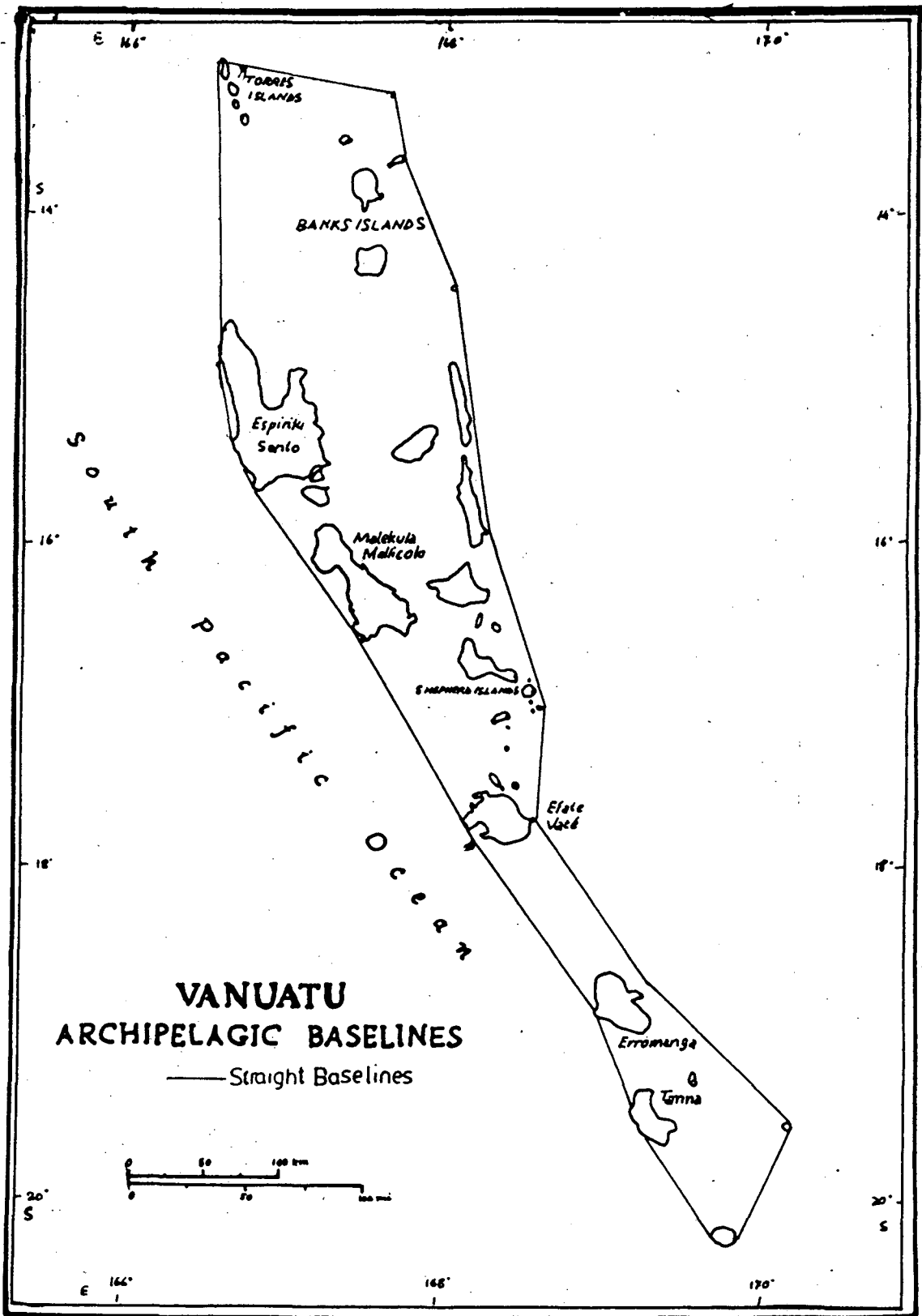
such specific map has been published for lots of reason particularly larger interests of the nation.

4. PHILIPPINES: The constitution of Philippines, in its Republic Act No.3046 of 17th June 1961, where is an act to define the baselines and the territorial sea of Philippines, describes the Philippine baseline and the territorial sea. First specifying it's national territory. It comprises of all the areas ceded to the U.S. by treaty of Paris concluded between the U.S. and Spain on December 10, 1898 and the territories over which the government of the Philippines exercised jurisdiction at the time of the adoption of its constitution (UN, 1989, p.250).

Now, all parts of water with in these territories is the internal water of Philippines. Philippines considers the water between the various islands of its archipelagoes as the necessary appurtenances of the territory forming part of the inland or internal waters of Philippines. All the waters beyond the outer most islands of the archipelago, but with in the limits of the boundary set in the various treaties, constitute the territorial waters of Philippines. (Fig.3.5)

The baseline of Philippines consists of straight lines joining the outermost islands of the archipelago and it also provides that the baselines should clarify and should be defined for the information of all concerned.

5. VANUATU: The small archipelagic state in the South West Pacific described its off shore claims through the Maritime Zone



SOURCE: THE LAW OF THE SEA; BASELINE: NATIONAL LEGISLATION WITH ILLUSTRATIVE MAPS, UNITED NATIONS, 1983, P. 380.

Fig 3.16 Vanuatu's Claim

CYLEM 7

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Act No.23 of 1981. It is in three parts: Part 1 deals with the interpretation of various terms like 'low water line or low water marks', 'Low tide elevations etc.' Part 'II' makes the provision for claiming the internal waters for the archipelagic state and part III lays down the criteria for the archipelagic waters and the territorial seas.

Internal waters of Vanuatu comprise of all waters that are contained within the baselines or areas enclosed by the straight baselines and the waters within the inner most limits of the archipelagic waters.

The archipelagic waters comprise all waters other than internal waters contained within the archipelagic baseline. The inner most limit of the archipelagic waters shall be:

(1) Low water line in the case of the bay:

- (a) where the bay has only one mouth and the distance between the low water line of all natural entrance points of the bay, not exceeding 24 n.m.;
- (b) where, because of the presence of islands, the bays have more than one mouth and the distance between the low water line of the natural entrance point of each mouth added together does not exceed 24 n.m. along a series of closing line, across each of the mouths so as to join those low water line;

(c) where neither para (a) or (b) applies along a closing line 24 n.m. in length drawn from low water line to low water line within the bay in such a manner, as to enclose the maximum area of water that is possible with a line of that length; and,

(d) in the case of the mouth or each mouth of a river, a closing line across the river mouth between points on the low water line on its bank.

Apart from those major states, which also constitute the part of the constellation of the countries under dispute, there are hundreds of island nations either independent or under colonial rule, they too have been claiming archipelagic waters, but they have not yet published their base line maps as the process of drawing the baselines is a recent one. (Fig.3.6)

(b) Exclusive Economic Zone and Exclusive Fisheries Zone:

The 1982 UNCLOS on the various aspects of the sea gives coastal states the right to establish an EEZ which may extend upon to 200 n.m. from the baseline¹⁰. The coastal state has sovereign right over all the resources to be found in this zone. Apart from these rights, the coastal state also has certain competence under the convention, with regards the jurisdiction over the establishment and use of artificial islands,

10. Article 57 of the 1982 UNCLOS; (Part V)

SOUTH WEST PACIFIC POTENTIAL 200NM & DEEP SEA BED MINING CLAIMS

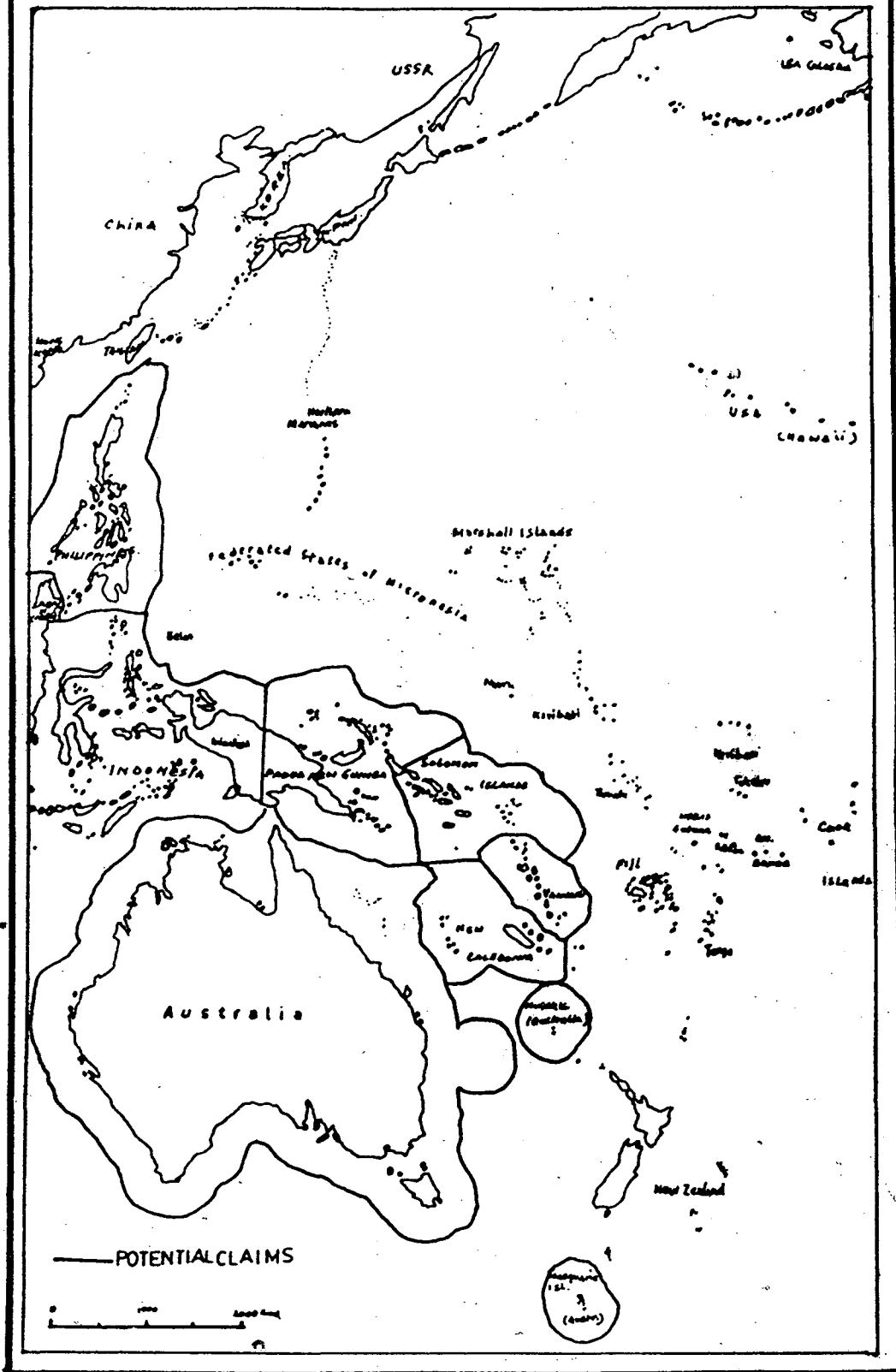


Fig. 3.7 E.E.Z. Claims.

installation and structures, marine scientific research, and the protection and preservation of marine environment¹¹.

1982 UNCLOS also makes the provision for the conservation and exploitation of natural marine resources and the settlement of disputes¹².

Most of the coastal states of Pacific Ocean have laid down the provision for remaining EEZ and other off shore areas, as per the United Nations code laid down in articles 55 to 76. All the states have agreed over 200 n.m. of the outer limit of the EEZ measured from their baselines. In the cases of overlapping of EEZ, with the neighbouring states, the provision of MEDIAN LINE is acceptable to them. Further the disputes, as the countries accept, shall be settled "amicably" through agreement and treaties between them. These countries have also laid down the provisions for the "aliens" specifying their rights over the EEZ¹³. (United Nations, 1986) (Fig.3.7).

(c) Regime of Islands

The Pacific countries particularly those of the South West Pacific, have always had the problem pertaining to the island states and the regime of island states.

11. Article 58-60 the 1982 UNCLOS.

12. Article 81-74; Ibid.

13. As in the LOS; National Legislation on the EEZ, the Economic Zone and the Exclusive Fishery Zone (Office of the Special Representative of the Secretary General for the LOS, UN, New York, 1986.

The governments of the 5 South West Pacific Countries, drew the attention of the Sub-Committee of the UNCLOS to the special importance of marine resources to the islands of the South West Pacific. Emphasis was also placed on the need for taking into account the interest of island state.

Apart from considering the matter related to the EEZ, the problem of regime of islands under 'Foreign Domination' and control of Exclusive Fishing Zone, reference was also made to various working papers submitted by various countries over the regime of islands, in 1972.

Since there is no specific guideline by the United Nations over such issue, thus the coastal states have varied opinion over the regime of islands and when it comes to the islands under foreign domination and under colonial dependency or when an island is located on the continental shelf of the other coastal state.

Small island Nations like SAMOA; TONGA, TUVALU, etc. demand that no distinction should be made between islands irrespective of their size and population, the continental land mass, and the criteria relating to the delimitation of the territorial sea, the continental shelf, the EEZ same provisions must be applied, as applied for the continental land masses. In the cases of disputes principles of 'Median' or the 'Line of Equidistance' should be applicable, as well as the "Principle of Sovereign Equality of States of the indivisibility of sovereign

integrity and its implication under International law and Charter of the United Nations". (United Nations, 1988, p.12).

The spatial claims in the Pacific Ocean as in other Oceans have been made with more of National interests rather than keeping in view the global interests and the interests of Mankind as such. Such conditions and claims have always led to conflicting situation and overlapped claims. (GOUNARIS, 1985)

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CHAPTER 4

DEMARCATIION AND DISPUTES

Maritime boundary delimitation is a complicated process, because of both the number of real and potential boundary situations throughout the world and complexities of the delimitation process. In many cases territorial seas and continental shelves of neighbouring states abut on one another. The result then is an almost bewildering array of disputed maritime boundaries.

Several maritime questions in the 'South West Pacific Region' are closely related to territorial sea claims primarily over certain islands, thus complicating the situation in the region. There are questions giving rise to disputes include the validity of baselines, the method of delimitation between opposite and adjacent states, ownership of rocks and rights of fishing and rights of access and now the incipient disputes over resources beyond the zones of national jurisdiction.

One of the main legal problem involved in dividing areas of sea and seabed is the principle of equidistance. This basically means that a median line is drawn at an equal distance from the coasts of opposite states, but it is complicated by the geographical characteristic of the coasts, especially where the presence of islands and bays may give one state more advantageous position.

South West Pacific Region is a region with plethora of coastal states - constituting the continental land mass and islands as well. The major coastal states in the region are Malaysia, Indonesia, Philippines, Papua New Guinea, Australia, New Zealand, Vanuatu Fiji, Solomon Islands, Tuvalu, Tonga, Western Samoa, in the South West Pacific and Peru, Chile, Ecuador in the South East Pacific. These are major independent states. Apart from these are small island countries like which are colonial dependencies - like Tokelau (New Zealand) American Samoa (the US) New Caledonia, Wallis and Fatuna and French Polynesia (France) to name a few. If these countries start making offshore claims as per UNCLOS III specifications then one can imagine what chaos it would be! But still the presence of some islands and the offshore claims by these countries have posed a threat to the peace in the region. The conflict gets invigorated more as this region is rich in fish stocks and hydrocarbon deposits and now the Seabed mining has also added up to the disputes.

The maritime boundary claims in the region can be grouped into three distinct categories i.e. actual disputes, potential problems and settled agreements.

4.1 ACTUAL DISPUTES

Spartly Islands

Sparatly Group of Islands is one of the major area of disputes in the Pacific Ocean South West Pacific Ocean. These islands are situated in the middle of the most important

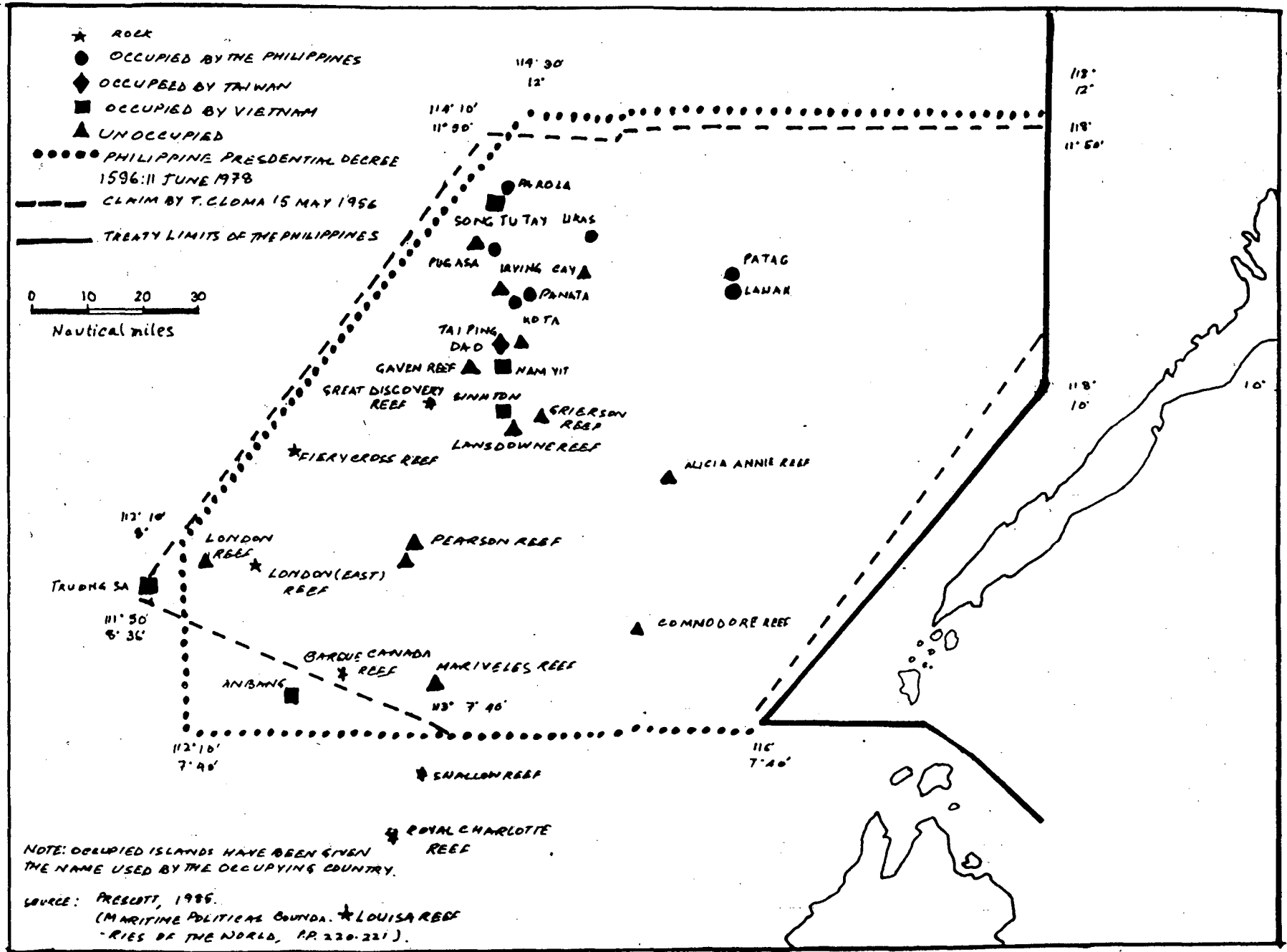


Fig 4.1 SPARTLY ISLANDS

marginal sea of South West Pacific Ocean - the South China Sea.

No other part of the world possesses to the same extent, the twin difficulty of a plethora of claims and a lack of precise basic geographic information that exist there. There is no defined extent of Spartly Islands, but they are situated 12° north and east of 112° east meridian. It does not include the archipelagic baselines of Philippines and those lying within 40 n.m. of the coast of Borneo.

The Spartly Islands cover a sea area of about 250,000 Km² and include about 230 barren islets, reefs, sandbars and atolls, 180 of which have been named. About 30 of them are protruding above sea level, but only few of them have fresh water and can sustain human life. The largest island, itself is only 43 Km² in size (CHANG, 1990).

Interest in the Spartlys have grown during past two decades or so, especially after the 1973 oil crisis, mainly for three reasons. First, they encompass a vast integrated geographical area located strategically in the South China Sea; secondly, it is rich in marine resources and, lastly, it is believed that it may contain huge offshore oil deposits and natural gas. However, precisely, because of their vast expanses and uninhabitable nature, no coastal state has been able to effect paramount settlement or exercise effective control over more than a small portion of the islets and the surrounding areas, hence the claims and the counter claims made on an archipelago and the growing potential for armed conflict.

So far five countries claim sovereignty over the Spartlys-China, Taiwan, Vietnam, the Philippines and Malaysia. The first three countries claim ownership on the basis of prior discovery and occupation, directly or indirectly. The Phillipines claims only a few islands which it occupied after the second world war. Malaysia is the fifth state to have staked its claim on a dozen of tiny reefs and atolls in the south east part of Spartlys.

The Chinese nationalist government in Taiwan was the first in the 20th century to claim complete sovereignty over the entire archipelago, basing its claim on first discovery and continuous patronage of these islands dating back to the first century A.D. In 1946, it incorporated archipelago in its Guandong province administratively. In 1948, warships were dispatched to the archipelago to conduct surveys and erect landmarks. Since 1956, its claims are carried out in form of military operation, by a permanent of garrison stationed on the largest island of the group - Ita Aba.

China claimed sovereignty over the entire group in 1949, with the coming of the communist government.

Vietnam too has made historic claims arguing the Vietnamese discovery and unchallenged exercise of sovereignty over the sparatlys, which dates back to 19th century. Vietnam has also built its military installations, over the islands.

The PHILLIPINES is the fourth major claimant, though it has not claimed the entire archipelago, nor it has gone into the history to substantiate the archipelago as "Terra millious"

until 1956 when a Phillipino fisherman Tomas Cloma "discovered" them on behalf of Phillipines.

Only fourteen of the insular features of the Spartly Group are occupied. The Phillipines occupying seven islands. Loaita, Thitu and North East Cay were occupied in 1968 and later West York Island, Flat Island, Nanshan Island and Lankian Cay were occupied and fortified. The Phillipines has a garrison of Marines and airstrip on its main island of Pagasa, 250 Kms. west of Palawan. The Phillipines calls these islands as KALAYAN (Freedom) and has also asserted that these islands do not belong to any other nation. The Phillipines has its effective control over the largest six islands of the archipelago. On 10th July 1971; President Marcos of Phillipines declared that the 'Spartly Islands were derelict and disputed and therefore subject to occupation and control' (LENG 1982 P.50). (Fig. 4.1).

MALAYSIA did not make any claims to sections of the Spartly Group until 1978. It appears that the claims are based on the fact that the insular features stand on Malaysian continental shelf. It has staked its claim on a dozen of tiny shelves and atolls in the South Eastern portion of the Spartlys as a result of national mapping exercise carried out in 1979, which listed 11 atolls as a part of Malyasian EEZ. In May 1983, for the first time Malaysian troops landed Swallow Reef and since, has maintained a platoon of soldiers on it.

There is no present indication how these conflicting claims will be resolved. While the Phillipines authorities are the most active in the area, there is absolutely no indication that either China or Vietnam will relinquish their total claims. If there were only two countries involved it was possible that a joint zone might be created to allow development of resources before the claims were settled. The involvement of five countries seems to make this unlikely.

Malaysia and Indonesia:

In the Celebes Sea, Malaysia's unilateral claims to territorial sea and the continental shelf have created problem with Indonesia. The main difficulty concerns the ownership of SIPADAN and LIGITAN islands. These islands, constitute the base points for Malaysian baselines and lie south of the parallel which defines the last segment of the Anglo - Dutch border of Borneo. Thus, such a location helps Indonesia also to claim those islands.

Malaysia claims that the people of its province Sabah have used those islands and lighthouses have also been constructed on them. Moreover, the area is regularly paterolled by Malaysican authorities.

If Indonesian claim succeeds then Malaysias maritime zones based on the principle of equidistance would be sharply curtailed in the Celebes Sea. However, even if Malaysia is favoured, then also it would be objectionable to Indonesia particularly the Malaysian continental shelf boundary

(Fig.4.2) as the Malaysian claim crosses the median line in the direction of Indonesia in two places.

Malaysia and Phillipines:

Not only Indonesia has complaints over Malaysia's unilateral claims to the continental shelf, but the Philippines has much greater grounds for complaints against Malaysia's claim. Malaysia appears to have ignored both Frances Reef and Sibutu Island (Fig.4.2). While, there may be possibilities that Frances Reef might be considered as a rock without any economic life. The area claimed by Malaysia is firstly, beyond the equidistant line and secondly, it encompasses quite a big area of 2180 sq. nautical miles in the sea.

Gulf of Thailand:

Gulf Thailand is one of the two major gulfs of the South China Sea. Constituting the part of the South West Pacific Ocean, whereas, the Gulf of Tongking which lies between Vietnam and China constitutes the part of the North Pacific Ocean (Fig.4.3) shows the claims of Cambodia, Vietnam and Thailand in the Gulf of Thailand. All these three countries have drawn equidistant line criteria to delimit the boundary between them and also, in order to secure the largest possible area for themselves.

While drawing the equidistant line, Thailand has apparently ignored its own islands Kokra and Kolosin, and those of Cambodia and Vietnam called KoWay and dao Tho Chu. This has

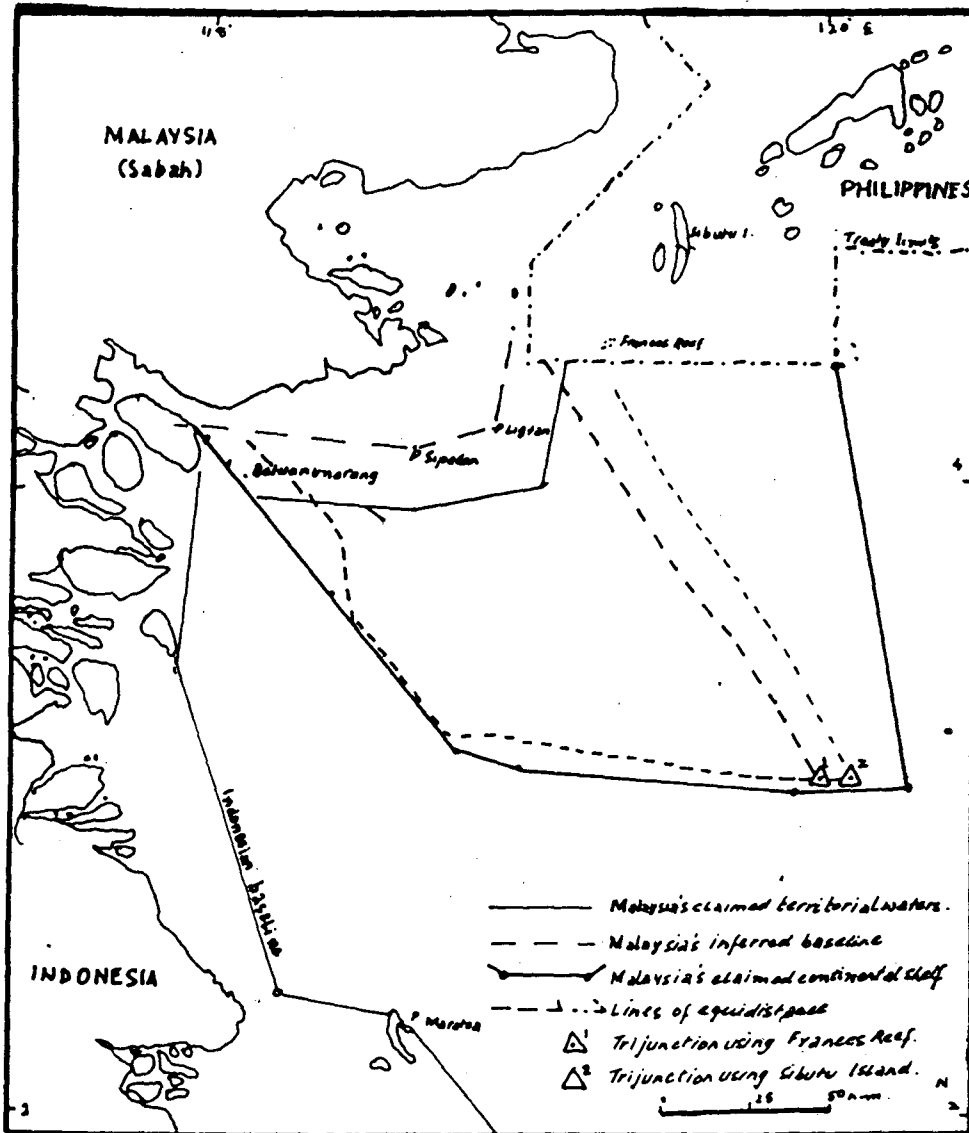


Fig 4.2 Disputed claims (MALAYSIA-INDONESIA) & (MALAYSIA-PHILIPPINES)

been done, in order to claim more area. It was done because KoWay and dao Tho Chu are far from the Thai coast and the line of equidistance has been moved eastward in favour of Thailand.

Further, Cambodia's claim (Fig.4.3) intersect the Thai island called KoKut. The area of historic waters belonging to Cambodia and Vietnam is shown on the map, illustrating the Vietnamese baselines.

It seems likely that Cambodia will have the greatest interest in finally resolving the problems of conflicting claims, because it has the smallest claim to the continental shelf. Its neighbours have large areas free from conflicting claims, where exploration can continue, that is not the case for Cambodia, putting it at a disadvantage.

Indonesia and Australia:

In the South West Pacific, east South East Asia, lies the Sahul shelf which is shared between Indonesia and Australia. The Indonesians while demarcating the shelf assumed the equidistant line, not acceptable to Australia. In 1967 the Australian authorities stretched their boundaries upto Timor Sea. Australians argued that their "trough" divided the area into two shelves - a narrow Timor continental shelf and a very wide Australian shelf. Where as Indonesian view was that there was only one continental shelf and Timor trough was not a "definitive edge" of the two shelves" (LENG 1982 p.52). However, this disagreement in principle was reached to a settlement in 1971 and 1972 with certain concession made by Australia.

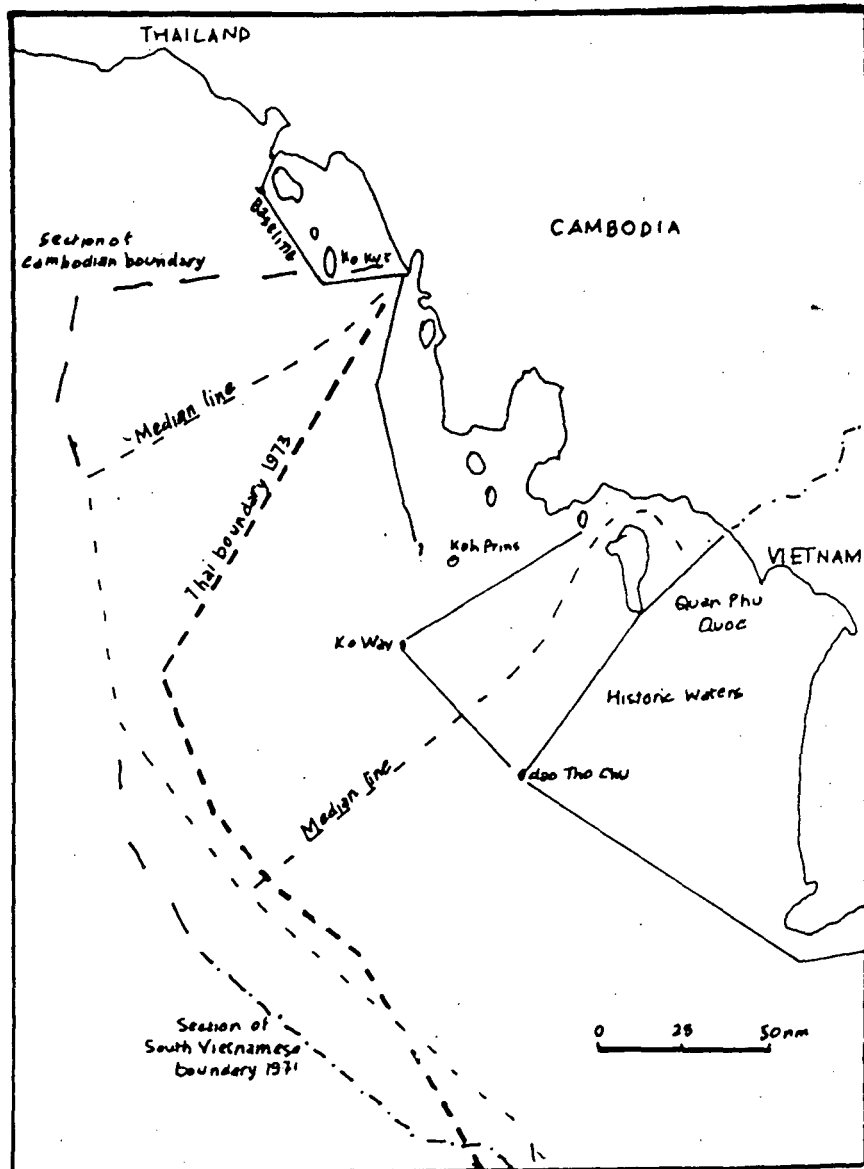


Fig 4.3. Claims in Gulf of Thailand

When this agreement was made the eastern part of the Timor island was still under Portuguese administration. Like the Indonesians, the Portuguese too did not share the Australian view of the shelf. The Portuguese maintained that there was one continuous continental shelf and a median line should be drawn half way between Australia and Timor.

This was the situation until the incorporation of East Timor by Indonesia in 1976. This did not automatically settle the seabed boundary between Australia and Indonesia, so there is still a gap in sea frontiers between Australia and Indonesia. Australia hopes that the Indonesians will follow the precedents established in drawing the boundary to the West and East of the gap.

On the other hand the Indonesians are now dissatisfied with the 1971-72 agreements as they feel that it gave too much to the Australians. Moreover, they are not in any hurry to settle the dispute as Australia has always been critical of their incorporation of the East Timor Sea.

The situation for negotiations is complicated all the more, as the Portuguese government had offered concessions to an American oil firm in July 1974, South of East Timor island and this has been hindering Indonesia's claims. However the two countries have decided to negotiate over the issue.

Vanuatu and France:

East of New Caledonia are two islands called Matthew and

Hunter islands. There is a dispute whether the islands belong to France or Vanuatu, Matthew island was discovered in 1788. It is of volcanic origin, where as Hunter island was discovered in 1798. It is a volcanic block covered with grass and scattered trees.

Vanuatu claimed in 1983 that the islands belong to it, decrying the 1975 France's claim. The area of water and seabed which can be claimed from Matthew and Hunter islands amount to 59,400 nm² France is quite confirm in its resolve to keep the island, there by forcing a small island country to plunge into a disadvantageous position from the point of its security and sovereignty. (MARCTON, 1973).

Australia and Papua New Guinea:

The major disputes in the South West Pacific Ocean are caused due to the presence of islands in between the waters of the two countries. At times these islands are not located at sufficient distance, so as to claim the maritime zones. The situation gets all the more complicated where islands groups were divided between two colonial powers, at one point of history.

In Torres Strait, which stretches for about 80 nautical miles between Cape York in Australia and Coreigengemuba Point on the Coast of Papua, there are about 120 islands. Although these islands vary in size and are unevenly distributed across the strait.

Australia claims these islands historically, because when the colony of Queensland was created in 1859, it included 'all and every adjacent island', their members and appurtenances, in the Pacific Ocean'. (PRESCOTT, 1985, p.290). Australia's ownership of most of the islands in Torres Strait, including some hard against the coast of Papua New Guinea, created difficulties when Australia and Papua New Guinea started to negotiate the location of maritime boundaries through the strait.

Papua New Guinea had claimed that the chain of the Australian islands in the Torres Strait would produce an "inequitable" boundary if they were given full effect. With such a distribution Papua New Guinea would be at a disadvantage as most of the resource based ocean areas, over which Papua New Guinea depended would go in Australia's favour. (Fig.4.4).

The two countries did reach an agreement over the dispute in December 1978, but that was a partial one, as it has not solved the problem completely. Australia made some concessions by giving some islands, north of the strait to Papua New Guinea, by waiving its legitimate claim of seabed and fishing rights. But Papua does not seem to be contented with such concessions.

However the treaty has helped in many ways, like in avoiding the tension in the region, by preserving the traditional way of life for the Torres strait islanders. The mining in this region has been prohibited and Australia has offered that in future, if it increased its territorial sea

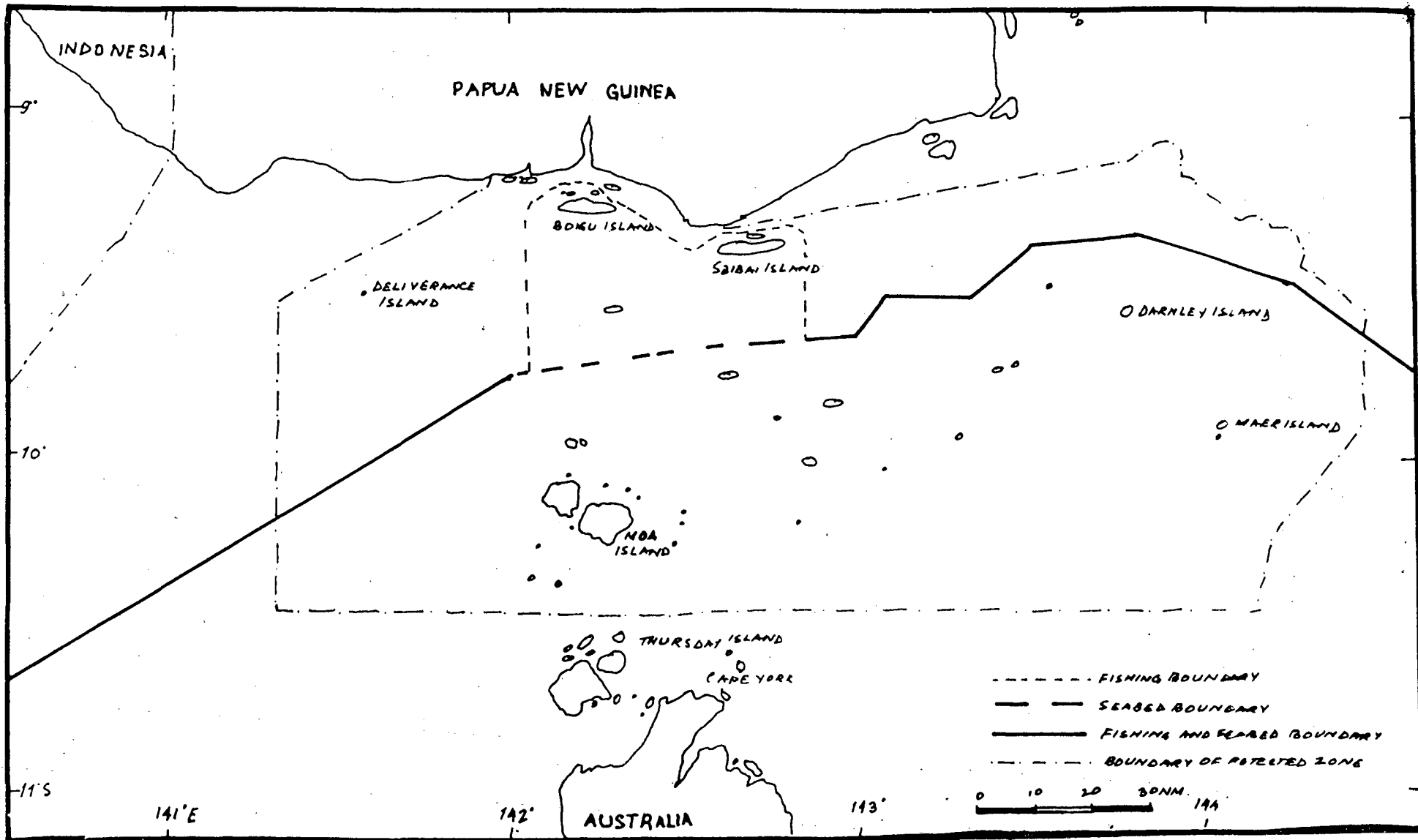


Fig 44 Torres Strait Conflict

claims than it will not make that increase effective for those islands North of the continental shelf boundaries of Australia, such concessions leave a ray of hope for the settlement of such complicated disputes.

4.2 POTENTIAL PROBLEMS:

The South West Pacific region with its numerous island nations and archipelagic states, apart from the disputed areas, has certain areas prone to turn into disputable zone, thus having the potential problem of maritime boundary delimitation. These potential problems usually concern the delimitation of offshore zones. There may be lots of areas which may have the potential to give rise to disputes, with in the region but there are a few, which pose serious threat to the peace in the region.

Malaysia and Indonesia, though have already been negotiating over the continental shelf boundary, which deviates from the equidistance line in Malaysia's favour. It is possible that when the boundary to separate the EEZ of the two countries is drawn in this region, then Indonesia would claim an equidistant line. If such a claim is made, then Indonesia will have exclusive economic rights in the water column, overlying Malaysia's continental shelf. Such situations though quite common, but they do create the potential for friction, if fishing and mining activities interfere with each other.

The other potential problems involve less important countries like Tonga, Western Samoa, New Caledonia etc. There is a potential problem involving Tonga's claim to the North and

South Minerva reefs. If Tonga insisted on using these reefs as basepoints from which its EEZ is measured, then it would curtail the area available to Fiji and New Zealand. The regional organizations like South West Pacific Forum¹ has also recognized Tonga's historic association with the reef and agreed that other claims will not be recognized, thus creating a more complicated situation.

Another possible problem could involve Western Samoa's attempt to obtain some relief from its seriously disadvantaged condition. As it is a zone locked by its neighbour to the point that it is only able to make the smallest maritime claim in the South West Pacific. One island which restricts its claims from Swains Island which is 194 n.m. from Tutuila. Ownership of this island accounts for about 1/3 of the maritime area which can be claimed. Here is the question of more equitable division of offshore zones.

Another potential problem concerns Pocklington reef. This feature is located in the Solomon sea and is deemed to belong to Papua New Guinea. The problem is that it is capped only by some rocks. If this reef is used as a base point in setting any

1. South West Pacific Forum: There are two main regional organisations in the South West Pacific Ocean - SOUTH WEST PACIFIC COMMUNITY formed in Feb. 1979 aiming to promote the Socio-economic welfare and advancement of the people of the South West Pacific countries - particularly independent nations and Britain, France and the U.S. as its members.

Second is South West Pacific Forum created in Aug. 1971 with no written constitution and Chief activity being the annual meeting of the heads of the governments to sort out the problems.

boundary with Solomon Islands, the boundary will be deflected in favour of Papua. The question which the authorities of Solomon Islands may ask is; whether the Pocklington reef have an economic life of their own? If Papua is unable to answer such a question with a positive evidence, then the dispute may arise.

4.3 SETTLED AGREEMENTS

The settlement of maritime boundary dispute is equally complicated process, as it's delimitation which involves lots of factors, as discussed earlier (Chap.II). There have not been many agreements in the South West Pacific, except a very few, that too minor ones. The major disputes still remain to be settled.

The major maritime boundary agreements were signed between Australia and France, Australia and Indonesia, France and Tonga and France and Fiji.

Australia and France agreed on Maritime boundary over the separation of France's EEZ and seabed from Australia's fishing zone and seabed, from New Caledonia, which is a French colony. It is done through the line based on equidistance. The agreement was signed on 4th January 1982.

France and Tonga signed an agreement on 11th Jan. 1980. This agreed boundary is a line of equidistance separating the EEZ claimed from Tonga and Wallis and Futuna.

Australia and Indonesia signed two treaties, on 18th May 1971 dealing with the sea bed boundaries in the coral sea and

Torres strait and those in Timor and Arafura sea.

France and Fiji governments agreed over the separation of EEZ of the two countries, between Fiji from Fatuna and Wallis - New Calidonia, on 19th Jan. 1983. But this agreement has not yet come into force.

The maritime boundary negotiations in the South West Pacific region has been complicated because of various reasons. Firstly it is a region of multitude of island states with a long colonial history. These countries have made unilateral claims to the continental shelf, at the cost of other country. This has lead to poor political relations among the countries, thereby further diminishing the prospects of successful boundary negotiations.

Secondly, these nations states differ in sizes, political power and wealth. They all have some interest in securing the additional resources contained in the maritime zones off their coasts.

Thirdly, the presence of lots of island in group and scattered near the middle of the largest area of water and the fact that all or some of these islands are claimed by more than one nation, means that no successful bilateral or multilateral agreement can be reached soon.

However, there is a need to settle these disputes, as they are leading to an open military power display, thereby threatening the peace of the region and staking the development

of the region. For this regional association like and ASEAN, SOUTH PACIFIC FORUM, SOUTH WEST PACIFIC COMMUNITY, which not only would establish peace in the region, but would also help in strengthening this important route for the commercial marine traffic of much of the world.

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CHAPTER 5

REGIONAL PEACE AND DEVELOPMENT STAKES

(CONCLUSIONS)

"It is hotly debated question whether connection with the sea is to advantage or the detriment of a well ordered state".

- ARISTOTLE

These are the words of great scholar philosopher, Aristotle, from his immortal work 'Politics'. The relationship between nations has always been questioned, on account of their access to sea. As early as, when the flower of civilization had just started to bloom, eyebrows were raised over the maritime issues, and now in the modern times all these doubts have taken the shape of a reality. The 'connection with the sea' has become a detriment to the relationship between two coastal states.

The focus of world politics has gradually shifted to oceans, towards small island nations, particularly those in the South West Pacific, which now hold the key to the major trade routes of the world. This is one of the regions, rich in marine resources particularly offshore oil, which still remains unexploited, untapped. Moreover, the region has lots of uninhabited islands, which always have been areas of attraction, because it is here that the great harvest of marine resources

can be gathered here the commercial sea lanes converge and they provide a safe location for military bases too, which is one of the prime requisites of any nation's security.

The borders in the oceans can neither be marked artificially, nor there are any physical features like mountains, rivers, lakes etc. which can delimit and demarcate the maritime boundaries. As seen, often situation arise when two countries indulge in the mere show of sophisticated deadly weapons to prove their point for the occupance of a territory, be it on land or in the oceans. This is so because their boundaries overlap and their national interests are at stake. This leads to conflicting situation, disputes and tensed political bilateral relations.

States which have the necessary strength to defend their claims can claim rights over the adjacent seas, for a variety of purposes, out to differing distances. However, quite fortunately, apart from rare exceptions such as North Korea's claim to a Military Warning Zone, coastal countries have restricted themselves to five conventional maritime zones - the internal waters, territorial waters, contiguous zone, exclusive economic zone and continental margin, and in the case of archipelagic states archipelagic waters.

The south west Pacific region has its own history of maritime boundary delimitation. The region has thousands of island nations, which constitute the group of developing countries. These nations were the colonies of the great powers

once upon a time. Therefore, geography and the colonial policies of these various maritime powers like the Great Britain, France, Portugal etc. combined to give the history of International boundaries. The economic incentive and territorial drive in the region was the pushing factor behind the competing colonial powers for the delimitation of marine boundaries.

Political decisions made in European capitals decided where a boundary should lie. For instance, the 1824 'London Agreement' between the British and Dutch, which decided that British sphere of influence should be north of the equator and the Dutch sphere, to the south of the equator. Similarly the 1904 'Anglo-French Agreement' decided the British and French sphere at Kra Isthmus and the Malay peninsula in the region. Both these agreements were in the security of the interests of the colonial powers. The most important part of such delimitation was that there was no precise drawing of the maritime boundaries, but the boundaries were defined and delimited by 'allocation' of islands to the two states.

Once the era of imperialism was over, after the World War-II, these colonial nations got independence and then they did not agree to such boundary agreements. However, since independence, many of the states flushed with their new found 'nationalism' have been more diligent in policing these boundaries. As a result boundary disputes have arisen now and then.

In the past, it was "colonialism" that effected the maritime boundary delimitation but in the present times also, we have not yet overcome this problem of maritime boundary delimitation. Now it is the "Neocolonialism" that dictates the maritime boundary issues. Weak, underdeveloped states are dominated by more powerful nations. Such a problem has been enhanced more, by the vague and ambiguous language of certain sections of the UNCLOS, which can have more than one interpretations.

There are certain rights reserved for the coastal states and the aliens in different maritime zones. For example, aliens have more rights concerned with communication involving navigation, overflight and the laying of submarine cables, than they have with fishing and the conduct of marine scientific research, but they have no rights at all in respect of mining the continental margin. Exactly how real these rights are for both the parties remain to be tested. It is possible that some coastal states may be able to restrict alien rights by adopting one interpretation of the terms of the UNCLOS, rather than another. And it is often seen that powerful nations insist on a generous interpretation of their rights in the maritime zones of a weaker state - particularly in South West Pacific where two great superpower have their vested interests.

To take the case of South West Pacific the maritime boundary issue has been complicated by the prevailing potential conditions and the foreign policy interests of the USSR and the

USA. It has further been aggravated with the Soviet involvement with Vietnam in joint exploration of the South China Sea, over which China, along with many other island nations has widespread claims.

To avoid all such ambiguities and confusions over the delimitations of maritime boundaries, it is essential to check the process of boundary delimitation in the light of their 'evolution'. Crystal clear delimitation of maritime boundaries is possible only when they are evolved through three phases of their evolution.

Evolution in definition,

Evolution in position, and

Evolution in the state function.

Evolution in definition involves - allocation, delimitation, demarcation and administration. Allocation of boundaries is possible when there are well established geographical facts, the area is already divided into well defined political units. It is done either by joining some geographical coordinates or by dividing some territories - culturally or socially homogeneous. Delimitation involves the selection of a specific boundary sites, particularly when the region is of some intrinsic economic value and is necessary to pacify two states. Demarcation is identifying the delimited lines through some visible feature. It is necessary for the purpose of clarity and good administration. Administration obviously is the regulation and management of delimited boundaries.

Evolution in position is necessary for, it decides the state policies, state functions and the influence of borders over the development of landscape, the nation.

Evolution of state function refers to the function of the boundary which is to mark the limits of state sovereignty. Thus, the nature of the boundary defined and the conditions of demarcation determine the effectiveness with which the boundary serves this function.

Often, these steps are missed in the process of delimitation of maritime boundaries, hence, there are often varied opinions over the boundaries between the adjacent coastal states, giving rise to disputes. This calls for the negotiations between two nations, in order to promote regional peace. Moreover, negotiation is one of the three processes of maritime boundary construction, other two being the selection of baseline and the determination of the outer edge of the continental margin.

Boundary negotiations between states usually originate once a conflict of interest develops or seen imminent and they are usually designed to promote peace and better administration. Previously the coastal states could resolve their problems relating to the uses of the oceans through bilateral negotiations or small regional arrangements. New technology and changing law of the sea has added stress and changed the concept of marine management. Now it is necessary to cooperate not only in resource management, but also in marine scientific research,

delimitation of marine boundaries, trans-boundary pollution and peaceful settlement of maritime boundary disagreement.

There can be two levels of negotiations to promote regional peace and to resolve the maritime boundary disputes. They can be either 'unilateral' or 'bilateral' in nature. Usually bilateral action is preferred, for it involves the two or other coastal states involved in dispute. Here, the conflict should be solved through mutual talks, agreements and signing of treaties. This would lead to healthy development of the region. Under such process of negotiations, there can be two solutions for the disagreed boundary. They are: interim boundary and joint zone.

Interim Boundary is temporary agreed boundary till the process of negotiation is completed and some agreement is reached upon. Joint Zone is more of economic and political importance. This zone may be used as 'common resource region' where the two countries have equal rights. But if there is disparity in the levels of two countries, then the resources exploited from the zone should be distributed 'equitably'. This would not only usher peace in the region but also lead to the healthy growth and overall development of mankind too. Politically such zones may act as 'buffer zones' or 'no man's territory' where anybody's entry is prohibited. This would also help in maintaining the security of the region and avoiding unnecessary clashes. Under such cases, the resources are not exploited and they may be left as reserves and can be used when the resources of the other regions get exhausted. There may be a single joint

zone or multiple zones depending upon the number of disputes and disagreements a coastal state has with the other adjoining state.

If such methods of negotiations do not work out, then the special tribunals of the International Court of Justice and the third party for arbitration come in the forefront. There may be a group of representative of the states of the region to discuss and settle the matter.

For the negotiations through the tribunal of ICJ, it is necessary that both the sides have faith in the tribunal and then its decisions are accepted by them, even if one country is at a little loss, for such a decision is in the larger interest. The tribunal, on the other hand should give its decision objectively. If the agreement is not reached, then there can be an intervention of a third party too, whose decisions would be acceptable to other two parties under question. Arbitration is one of the common methods of negotiations.

Apart from these, it is suggested that there can be group of countries with common interest working in same direction, towards the building up of a more stronger region, strengthening the pillars of mankind. There are two main regional organisation in the South West Pacific Ocean - The South Pacific Commission and The South Pacific Forum. The former has the independent countries of the region and the metropolitan powers, Britain, France and the United States as its members, where as latter has most of nations of the region as its member.

However, these organisations have somehow, been lost into oblivion. These organisations should come together to promote the economic and social welfare and advancement of the peoples of the south west Pacific ocean. They can take up matters pertaining to economic cooperation, consultation amongst its members in respect of economic development, trade, transport, tourism and amicable settlements of disputes. They may also provide technical information for exploitation of resources, fisheries and management of resources. These organisations may also regulate the fishing fleets, their catch and other vessels operating in the area, so as to direct the benefits to the poor nations of the region. This would also check the encroachment of other alien nations over the resource base of the South West Pacific region. However, the organisation which has metropolitan powers as its member should not be dictated by their terms and conditions, but their agenda should be in favour of the interests of the south west Pacific countries.

Apart from these regional organisations, there can be some more regional arrangement for better use of resources region. Such regional arrangements may lead to the use of area on shared, complimentary or compensatory bases. The 'shared use' is to utilize the same marine area on equitable footings, the resources are thus shared equitably by the nations, complementary use involves that the part of investment in the region is done by the participant nations and some part is by the regional organization - like International Fisheries Commission and Councils. The investment takes the form of

cooperative action in data acquisition, conservation measures and ocean research etc. to promote cooperative action among the developing nations. Where as 'compensatory use' may be in favour of disadvantage states where some agreement is done in form of levies to be paid by the operating country to the backward coastal states or geographically disadvantaged nations. This would help in 'regional cooperation, harmony and development.

These regional organisation should not limit their activities to resolve conflicts or to the management of resources but this should also involve in planning at the regional level ie. in the south west Pacific region, decision making and also the implementation of development process.

Apart from such common resource sharing problems, the major issue in the region and also at the global level is the 'regime of islands'. The entire south west Pacific region is a scramble of islands, with countless islands - habited and unhabited, scattered all over the mighty ocean. Strategically the control over the islands would give the controlling state tremendous power over the stability over the area, since islands straddle the routes of international sea and air communications. The states who control the islands would be in a position to upset movements of great powers, thus such control may have its repurcussions to the world situation in general.

For the countries of the South West Pacific, control over the islands is important for their own respective or collective security. And from legal and economic point of view also, the ownership or territorial sovereignty over the islands entails substantial extension of national jurisdiction over the resources of EEZ and the continental shelf.

Under such conditions, most of the disputes in the south west Pacific, as seen, is over the occupance of these islands. The UNCLOS has also not given very clear guidelines over the regime of islands, thus this problem remains unresolved. For such conflicting issues, it is demanded that efforts should be made towards building of the 'common heritage of mankind'.

For the islands under disputes there can be a separate competent organisation as suggested by Malta¹, under a draft treaty. This INTERNATIONAL OCEAN SPACE INSTITUTION would deal with all such disputable cases of islands. All such islands, reefs, sandbanks can be transferred to such institution. This institution will use the islands, reefs etc only for international community purpose - such as scientific stations, nature parks, tourism, development of beaches, preserving environment, resource conservation etc. There may be some guiding principles for the transfer of such areas to the institution, like there should be a consensus of the inhabitants

1. The United Nations : 'LOS : Regime of Islands'. United Nations Secretariat, New York, p.7. Recommendation by Malta : A Draft Ocean Treaty.

of the islands, or once the transfer has been done then no claim can be made to these islands or reefs, by any nation. This would not only help the region in particular, but the entire world on the whole.

These are only some of the basic issues, there are many more problems which have arisen out of, UNCLOS which has acted as a quite revolution, radically changing the mankind's ways of using and sharing earth's greatest single resource - its oceans and seas. These issues are also to be solved, not through closed room policies, by discussions forged in conference rooms, but by involving people too, small weak nation states as well, for, all this bids to have a more immediate impact on how people live and the way states dwell together.

Since there are no legal impediments to the relationship of the bilateral problems, it can be accomplished if there is the "political will" on both sides to do so. Thus,

"To remove every subject of discord, every occasion for quarrel, one should mark with clarity and precision, the limits of territories".

- VATTEL.

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