

## Chapter 2

# Legal Framework: *Rationale for Maritime Jurisdictional Claims*

### 2.1 Introduction

When Indonesia proclaimed independence on 17 August 1945 and sovereignty was gained, the governing powers of the day realised the necessity to enact laws to govern the seas in accordance with the geographical configurations of an archipelagic state. Such laws were necessary instruments for the unity and national resiliency of a country with a territory that encompassed all the islands, islets and the seas in between.

Due to the perception of the country's susceptibility to foreign intervention from the sea and for domestic security reasons, the Indonesian Government on 13 December 1957 issued the *Djuanda Declaration* on the extent of the territorial waters of the Republic. It stated that all the waters surrounding and between the islands in the territory came within Indonesia's sovereignty, and according to Buchholz (1987: 31) dared to challenge the concept of "freedom of the sea". The proclamation also determined that the country's territorial sea limit was 12 nautical miles, measured from a series of straight baseline connecting the outermost points of the outermost islands. By this Declaration Indonesia's maritime territory increased to nearly 3 million km<sup>2</sup> due to an increase in the width of the Territorial Sea of 12 M and the fact that straight archipelagic baselines were now an accepted standard for an archipelagic state in accordance with the provisions of Article 47 of the 1982 Convention.

However, the baseline system for measuring the width of the territorial sea (analysed in detail below) was not established until the enactment of *Act No. 4* which only entered into force on 18 February 1960, the date that it was published in *Government Gazette No. 22*. Subsequent minor amendments were made following the incorporation of East Timor into the Republic in 1975. The first set of amendments was in 1993 that nominated base points along the south coast of East Timor; then in 1996 and July 1998 to redefine the archipelagic claim in the vicinity of the Anambas Islands and again in October 1999. A major revision was proclaimed in *Government Regulation No. 38 of 2002* in June 2002; however, this

was considered incomplete in that provision to nominate additional base points was not incorporated with the removal of East Timor from the Province of Nusa Tenggara Timur in May 2002. Subsequently new base points have been nominated on islands that are to the north of Timor-Leste which will be utilised in future negotiations with the government of Timor-Leste in delimitating their common maritime boundary.

The Preamble to the 1960 Act considered “the geographical configuration of Indonesia as an archipelagic state” comprising thousands of islands each with its own characteristics and peculiarities and noted that “since time immemorial the Indonesian archipelago has constituted one entity” (See Appendix Part 1 for relevant texts relating to important legislation).

## 2.2 The Indonesian Archipelagic Outlook

In order to establish a just, equitable and prosperous society in a material and spiritual sense, the National Development programme is based on *Pancasila* (the philosophical basis of the Indonesian state namely, the Five Principles) (See Appendix Part 1-A). The concept to achieve the aims of the National Development is embodied in the Indonesian Archipelagic Outlook, which includes the realisation of the Indonesian Archipelago as one political unity and one social and cultural and economic unity. It is also viewed as one unity of defence and security, in a sense that: (i) a threat to any island or region is in effect a threat to the entire nation and state; and, (ii) every citizen shall have equal rights and duties regarding the defence of the country and its people (Department of Information 1990: 104–105).

In the pursuit of achieving its stated objectives for national development, expansion of its export markets and in the conduct of its foreign relations policies the Indonesian Government stresses that the country’s efforts should be based on the archipelagic principle. This principle was debated extensively during the negotiating processes of the Third United Nations Conferences on the Law of the Sea 1973–1982. The Republic of Indonesia was a signatory to the 1982 UN *Law of the Sea Convention* (1982 Convention) when it opened for signature on 10 December of that year. Indonesia was the 26th State to ratify the 1982 Convention which it did on 3 February 1986 under the provisions of Law No. 17 of 1985; and, the 98th State to ratify the Agreement Relating to Part XI of the 1982 Convention on 2 June 2000. Indonesia, at the time of writing, is not party to the Convention Relating to the Conservation and management of Straddling Stock and Highly Migratory Fish Stocks. Indonesia was not a party to the 1958 Geneva Conventions on the Law of the Sea.

As a sovereign nation, Indonesia is a party to many international treaties. The treaty making process in Indonesia is based on Article 11 of the 1945 Constitution. This Article grants the authority to the President to conclude treaties subject to the approval of the House of Representatives or the *Dewan Perwakilan Rakyat* (DPR). For the treaty making process under Article 11, the implementing regulation as such

and guidelines had been a Letter from the President to the DPR. This letter is better known as Presidential Letter No. 2826 of 1960 on the Conclusion of Treaties with Foreign States. In 2000, a Law was passed and enacted to replace Presidential Letter 2826 of 1960. The Law is referred to as the Law on International Treaties (hereinafter referred to as “Law on Treaties”).

It is therefore necessary to overview Indonesia’s attitude on certain aspects of the law of the sea and in particular, its political will to define its suite of maritime jurisdictional zones.

## 2.3 Maritime Jurisdictional Zones

Coastal states have naturally sought to extend jurisdiction over the waters adjacent to their coastline. Over the past centuries, customary international law stated that a zone of sea of three-nautical miles width, termed the territorial sea, was sufficient to safeguard the integrity of a coastal state. Beyond this zone lay the ‘High Seas’ through which ships were free to traverse, and where exploration, exploitation and harvesting of the marine resources were generally open to those persons, corporations and/or nations that possessed the financial capability and technical expertise to undertake such ventures in waters beyond the territorial sea of a coastal state.

However, during the last half of the twentieth century, coastal states sought to extend the width of the territorial sea from three to as much as 200 nautical miles (M) (for example, Somalia). One nautical mile is equivalent to 1,852 m. Furthermore, in a bid to obtain or control access to the use of the sea and the seabed and to the natural resources contained therein, national claims on sea space have been steadily expanding to the point where the majority of coastal states have claimed sovereignty over marine resources, for distances varying from 200 to 350 M. Claims by coastal states to the marine resources that lie in the substratum of the natural prolongation of their adjacent landmass had been contended since 1945 (*The Truman Proclamation*). The existence of extended maritime jurisdiction permits coastal states to claim rights over the adjacent seas for a variety of purposes and over varying distances from an established territorial sea datum.

## 2.4 Territorial Sea Baselines

The datum point for measuring the width of the suite of maritime jurisdictional zones extending from the coast seaward is the Territorial Sea Baseline. The normal baseline of a coastal state is the *low-water mark* as delineated on the large-scale charts adopted by the coastal states (the 1982 Convention’s Article 5). The baseline may deviate from the low-water line along the coast. Wherever possible, the Lowest Astronomical Tide (LAT) will be adopted, as this will give the coastal state the advantage of using the low-water line of a low-tide elevation (LTE).

In the instance of islands situated on atolls or of islands with fringing reefs, the datum is the seaward low-water line of the reef, as portrayed by the appropriate symbol on charts which are officially recognised by the coastal state (Article 6). The rules for defining and delineating baselines to suit various geographical coastal features, for example, across the mouth of rivers, enclosing bays, and connecting offshore islands, are contained in Articles 7–14 inclusive.

Coastal states may determine baselines by any method, or a combination of methods as provided in Articles 5–14, and these must be shown on a chart of a scale or scales adequate for ascertaining their positions. Alternatively, a list of geographical coordinates of the base points and the nominated geodetic datum may be substituted.

#### ***2.4.1 Archipelagic Baselines: An Analysis of Article 47 (the 1982 Convention)***

Article 47 of the 1982 Convention contains nine paragraphs which set the rules for delineating archipelagic baselines, safeguards for neighbouring states which might be affected and for the documentation and publication of archipelagic baselines.

These rules stand in contrast to those defined in the provisions of Article 7 for the establishment of straight baselines along mainland coasts. The first three paragraphs of Article 47 set out five tests which archipelagic baselines must satisfy. They must include the main island; they must enclose an area of sea that is at least as large as the area of enclosed land but not more than nine times that land area; no segment of baseline may exceed 125 nautical miles in length; not more than 3 % of baseline segments may exceed 100 nautical miles in length; and the baseline must not depart to any appreciable extent from the general configuration of the archipelago.

It is necessary to examine each of the tests in turn with particular reference to the Indonesian archipelagic baseline system as proclaimed by that country in February 1960.

The expression ‘main islands’ could be interpreted in a variety of ways. For different countries the main islands might mean the islands which are pre-eminent in an historical or cultural sense, the most populous islands, the largest islands, or the most economically productive islands. Indonesia easily satisfies this test. The baseline system encloses all the main islands.

The second test appears to be strict in that only 3 % of baseline segments may exceed 100 nautical miles in length. This is easy to calculate. A system comprising 2–33 segments is not entitled to any individual line segment exceeding 100 nautical miles whereas a system with 166–199 segments may include five lines with lengths greater than 100 nautical miles. As there is no restriction to the number of segments a state may delineate, and since the more segments employed the more realistically the system is likely to follow the general configuration of the archipelago, it will

usually be possible to adjust the number of segments to secure the necessary number of very long baselines.

The provision that the baselines should not depart to any appreciable extent from the general configuration of the archipelago which is highly subjective is similar to the requirement stipulated in Article 7 of the 1982 Convention that straight baselines should conform to the general direction of the coast. Prescott further comments that as archipelagic states are entitled to delineate baselines connecting the outermost points of the outermost islands and drying reefs, “it is probable that in the case of any scattered island groups different cartographers would select different lines to represent the general configuration of the archipelago” (Prescott 1985b: 71).

The test which establishes the ratio of water to land will be easy to apply in an objective manner if there is no uncertainty about which area is water and what portion is land. Paragraph 7 of Article 47 is explicit. The archipelagic baselines must enclose the main islands of the archipelago, and the enclosed water to land ratio must be between 1:1 and 9:1. This requirement prevents island countries such as Japan or New Zealand or the United Kingdom, which are made up of a few dominant islands, from claiming archipelagic status. It also ensures that states with widely dispersed archipelagoes such as Kiribati and Tuvalu cannot draw baselines around small distant islands. It introduced two conditions under which the land area may be increased for the purposes of the calculation. In the first instance, waters within fringing reefs of islands and atolls may be counted as land. However, where reefs around atolls or fringing reefs of islands are incomplete, problems of applying Article 6 may be encountered. The same problems would exist in applying this qualification. Second, waters lying over that part of a steep-sided oceanic plateau, as in the case of the Bahamas, which is enclosed or nearly enclosed by a chain of limestone islands and drying reef may be counted as land.

The third test poses no problem in determining whether the length of any segment is greater than 125 nautical miles. In the Indonesian example, two line segments attain lengths of 122.7 and 123.2 nautical miles. These occurred between the base points 59–60 and 71–72 respectively of the 1960 Proclamation.

The points which may be connected by the baselines include both low-tide elevations which lie within the breadth of the territorial sea measured from land, and those low-tide elevations which lie outside that range, if they are surmounted by a lighthouse or similar installation. A low-tide elevation is defined in Article 13 as a naturally formed area of land surrounded by, and above, water at low tide and yet submerged wholly or partly at high tide. Although this description conforms with that of a drying reef, the employment of two different terms may admit a loophole, for the eyes of international lawyers, which would enable states to draw baselines to their outermost drying reefs irrespective of their distance from land and whether or not they are surmounted by aids to navigation or similar installations (Prescott 1985a, b: 7). The term ‘similar installation’ is not expressly defined.

Archipelagic baselines, as with the method of delineating straight baselines, must not be drawn in a manner which would cut off the territorial sea of a neighbouring state from the high seas or the exclusive economic zone. Herein lies

a paradox: turning point 2 in the agreed territorial sea boundary between Indonesia and Singapore in the Straits of Singapore was located inside the baseline system (1960 version) proclaimed by Indonesia (discussed below). A similar situation exists further east in the Sulawesi Sea between Indonesia and the Philippines. This fact is also discussed below.

Paragraph 6 of the Article deals with situations where the archipelagic waters of one state lie between two parts of an adjacent country. This situation exists between the Malaysian peninsula and Sarawak by the extension of Indonesia's archipelagic waters associated with the Anambas and Natuna Islands. Provision is made for the existing rights and all other legitimate interests that the neighbouring country has traditionally exercised in those waters and all rights stipulated will continue and be respected as agreed between the archipelagic State and its neighbour. The last two paragraphs of Article 47 deal with the delineation of baselines on charts, their publicity, and the obligation by the state to deposit copies of the documents with the Secretary-General of the United Nations. Archipelagic as well as coastal states are required to portray their baselines on a chart(s) with an adequate scale for determining their positions, or with a list of the geographical coordinates of the base points. However, in providing a list of geographical coordinates, a geodetic datum must be stated so that no doubt remains as to the basis of the coordinates. This point is not mentioned in the Indonesian proclamation of February 1960 (see Appendix Part 1-B)

It is important to stress that a list of geographical coordinates is only a substitute for the chart where such values are linked by 'straight lines', or where the lines joining the coordinates are otherwise precisely described, for example, as arcs of circles centred on specified points. It is unusual to use a list of coordinates in the latter circumstances.

Where it is required in the Articles of the 1982 Convention that publicity is given to baselines or limits, a choice is permitted between the use of a chart and a list of geographical coordinates. Although charts provide an instant visual presentation of the information, even the largest practicable scale cannot provide the same precision as a list of precise geographical coordinate values. Such values can be listed to any degree of precision, although it is usual to give positions to the nearest second of arc ( $1''$ ), which equates to about 30 m in latitude and generally less in longitude.

To this end, the geographical coordinates values employed to define Indonesia's baselines in 1960 were published to the nearest  $0.1'$  of arc, a level of accuracy which translates to about 180 m in latitude. It is often preferable to use both: the chart for illustrative purposes, and a list of geographical coordinates to provide the definitive positions of the base points.

If a list of geographical coordinates linked by 'straight' lines is employed, uncertainties may arise unless the true nature of the lines linking the individual points is described. The equivalent of a 'straight line on the surface of the earth' would be the line of sight between two objects. In cartographic terms, this is the 'geodesic', namely, the shortest distance between two points on an ellipsoid (or on any regular surface). An equidistant line generated by two base points is very nearly the same as a geodesic. The geodesic appears practically as a straight line on certain

types of map projections. In the Mercator projection, which is widely used on nautical charts (an exception being the very large-scale charts), the geodesic is a curved line except where it is aligned on the Equator or along a meridian of longitude. On a Mercator chart a straight line is termed a rhumb line (or loxodrome).

The difference between a geodesic and a rhumb line joining two points can be very considerable, especially in high latitudes. Thus the precise nature of what a 'straight line' should be is generally of less importance than that its nature must be agreed upon between states when boundaries are determined and that it be specified by the parties claiming straight baselines of a length that would make differences significant. States' practice is varied. That of Indonesia's is now analysed.

### ***2.4.2 Indonesia's Archipelagic Baselines System of 1960***

Indonesia promulgated its archipelagic baselines on 18 February 1960. The Indonesian principle was not readily accepted in the earlier drafts of the 1982 Convention. Indeed, two decades had elapsed before the concept of archipelagic baselines was codified in the new law of the sea. Indonesia's archipelagic baselines system now appears to satisfy the rules. Indeed it has even been suggested that the rules could have been designed from the Indonesian model (Prescott 1985b: 163).

By adopting the 'archipelagic principle' in delineating straight baselines to encompass its land territory, Indonesia based its legislation upon an earlier Dutch law (*Royal Territorial Sea Ordinance* of 1939) which, while rather restrictive, did enclose certain water bodies in the Netherlands Indies. Archipelagic states have a special set of rules for the establishment of the territorial sea baseline (Table 2.1). These are discussed below and with special reference to the system proclaimed by Indonesia in 1960.

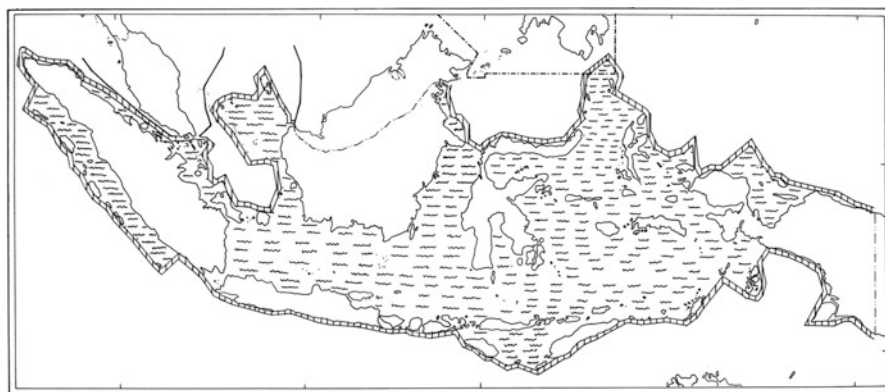
The amendments made slight adjustments to the values cited above. Any change is within the spirit and letter of the law. However, neighbouring States and users of the sea lanes within the revised Archipelagic Waters had objected to the proclaimed revisions. The extensive and unique in its scope (for 1960) Indonesian system listed the geographical coordinates of 200 base points which were located on headlands, islets, reefs and low-tide elevations. Five sectors may be identified in this extensive system: Points 1–35; 36–81; 82–113; 114 and 115; and 116–195 (Appendices and Fig. 2.1).

Commencing at base point 1, which is located at Tanjong Berakit on Pulau Bintan, this sector extended to base point 35, sited at Tanjong Datu, on the western coastal terminus of the land boundary between Indonesia and Malaysia on the territory of Sarawak, north Borneo. Straight lines connected the base points of this sector, which were located on the 'outer' coastline of the islands, islets and reefs and includes the Anambas and Natuna Islands.

The 35 line-segments measured 1,334.7 M and had an average length of 38.13 M. The shortest segment, between 1 and 2, measured 12.0 M whilst the

**Table 2.1** Rules for defining archipelagic baselines – Article 47 of the 1982 convention and Indonesia's 1960 model

The test	Indonesia's conformity
1. Archipelagic state	Yes – 13, 667 islands (official in 1960s) Five major islands and 30 smaller groups
2. Includes main islands	Yes
3. Water to land ratio	Land area – 1,900,000 km <sup>2</sup> Archipelagic waters – 2,284,730 km <sup>2</sup> 1:1.2
4. Segments <125 M	Yes
5. <3 % line segments exceed 100 M	Yes
6. Baselines follow general configuration of coast	Yes
7. Connects outermost points	Yes
Islands, reefs and LTEs	Yes
8. Cuts a territorial sea boundary of neighbour	Yes – Singapore, Philippines
9. Archipelagic waters between two parts in neighbouring state	Yes – that of Malaysia in the South China Sea
10. System delineated	Yes
11. Co-ordinates listed	Yes
12. Deposited with UN	Yes
13. Precision of values	Listed to 0.1' of arc.
14. In accord with UNCLOS	Generally yes.
15. Subsequent amendments	Implemented: 1993, 1998 & Oct. 1999

**Fig. 2.1** Indonesia's Archipelagic Baseline System as Proclaimed in Act No. 4, 1960. Note the enclosed 'Archipelagic Waters' depicted by waves in this sketch

longest was that between 15 and 16 which equated to 85.7 M. The linkages in this sector effectively closed the northern approaches to the Java Sea and encompassed several small isolated and detached island groups of Indonesia. Indeed base point 23 was about 23 nautical miles east of Pulau Aur off the east coast of the Malaya peninsula.



The second sector extended from base point 36, which was situated at Tanjong Saima on Pulau Sebatik to as far east as base point 81 at the intersection of Longitude 141° 00' East and the northern coast of the island of New Guinea. Point 81 is coincident with the boundary pillar demarcating the Papua and Papua New Guinea land boundary. The overall length of the 49 segments totalled 2,208 M or an average segment measurement of 45.06 M. This second sector effectively closed the northern approaches of Makassar Strait, Molucca Sea, and Seram Sea. The minimum segment was between 36 and 36A at 2.9 M and the maximum was 123.2 M between Points 71 and 72. Base point 56 is located on Indonesia's Pulau Miangas (known as Palmas Is. to the Philippines) which was considered to be within the defined territorial sea limits of the Philippines (*League of Nations Treaty Series*, Vol. 33, pp. 446–453).

From point 82, located at the southern boundary marker of the Irian Jaya/PNG border on the coastline abutting the Arafura Sea, the third sector extended to point 113, an islet off the western tip of Pulau Wetar. The straight-line segments of this sector enclosed the eastern/southern entrances of Banda Laut. The collective length of the 32 segments was 1,436.5 M; the mean length of the segments was 44.8 M. The maximum and minimum distances were 103.9 and 8.0 M for the lines 88–89 and 105–106 respectively.

When the baseline system was proclaimed in 1960, the eastern half of Timor Island and the enclave of Oecussi were under the jurisdiction of Portugal (East Timor). Thus, the fourth sector was a single line segment connecting points 114 and 115 which lay about 12 M offshore from Oecussi. The single line segment measured 25.8 M. Base points were not defined by Portuguese administrators. It would appear that Indonesian intention was to limit East Timor to a narrow territorial sea zone off Oecussi (Fig. 2.2).

The fifth sector extended from point 116, located at Mota Massin on the former boundary marker separating East and West Timor, back to base point 1. This final sector closed the southern approaches to Savu Sea, Java Sea, Lombok and Sunda Straits. The overall distance of the 79 segments totalled 3,111.6 M with an average length of 39.3 M. The shortest (190–191) and longest (186–187) segments measured 2.6 and 100.8 M respectively.

The entire archipelagic baseline system of Indonesia which measured 8,167.6 M comprised 199 individual line segments. The average length of the segment was 41.67 M. The baseline system encloses about 666,100 square M (about 2.3 million km<sup>2</sup>) of archipelagic waters. An additional 98,000 square M (about 335,160 km<sup>2</sup>) of territorial sea would fall under Indonesian jurisdiction based on that country's claim to a territorial sea zone of 12-nautical miles in width (*The Geographer* 1971: 8).

### 2.4.3 Subsequent Amendments to the Baseline System

During negotiations leading to the final solution to determine the final segment of the maritime boundary between Australia and Indonesia in the Timor Sea the latter



**Table 2.2** Indonesian archipelagic baseline reference points (WGS 72)

Base point	Geographical feature	Latitude (South)	Longitude (East)
TD 109	Meatil Miarang	8° 20' 37.388"	128° 30' 33.363"
TD 110	Pt. Tche-tche	8° 26' 47.4528"	127° 19' 53.097"
TD 111	Pt. De Lore	8° 41' 02.862"	127° 00' 47.804"
TD 112	Pt. Beaco	8° 56' 49.665"	126° 28' 35.776"
TD 113	Pt. Metibof	9° 08' 04.607"	125° 55' 59.30"
TD 114	Cabo Tafara	9° 24' 34.5"	125° 12' 36.3"
TD 115	Tg. Wetah	9° 37' 41.626"	124° 59' 13.0"
TD 116	Tg. Menu	9° 52' 22.69"	124° 45' 19.1"
TD 117	Reef (unnamed)	10° 07' 17.30"	124° 28' 40.03"
TD 118	Tg. Ela	10° 10' 08.918"	124° 23' 42.54"
TD 119	Tg. Tewee	10° 16' 35.5"	124° 00' 17.23"
TD 120	Tg. Pandalaun	10° 50' 09.25"	123° 11' 17.9"

9, of the 1982 Convention, was passage through the waters of the Natuna Sea, it was necessary to issue the new coordinates of points for that part of Indonesia's archipelagic waters.

The amended territorial sea base points, as enacted in the 1998 legislation, were designed to increase the surface area of the archipelagic waters by as much as 40,000 square M (136,800 km<sup>2</sup>) (Forbes 1998: 113–126). One line segment enclosed the northern approaches to the Java Sea; two other line segments completed the enclosure of the Natuna and Subi Besar Archipelagoes in accordance with the provisions of Article 47.

A further revision of the archipelagic baseline system was necessary in order for Indonesia to increase the surface area of the archipelagic waters and take full advantage of the provisions contained in Article 47 of the 1982 Convention

#### **2.4.4 The 2002 Proclamation**

On 28 June 2002, Indonesia proclaimed, in Act No. 38, a revised set of territorial sea base points in accordance with its obligations to the provisions of Article 47 of the 1982 Convention. The legislation, which entered into force on proclamation, listed the geographical coordinates of 183 points based on the World Geodetic System (WGS 84) and identified the names of the features upon which the base points are located. The geographical coordinates are listed to the nearest second of arc indicating greater precision than the 1960 values (See Appendix Part 1, below). There are 180 straight lines that connect the outer-most points of the islands to encompass the archipelagic waters. The document details in 14 Articles the rationale for defining these points. The points were plotted on maps compiled at a scale of 1:200 000.

Some minor adjustments were made to the initial base points that were defined in 1960 and in subsequent revisions. The geographical coordinates of 183 points as

proclaimed are a slight reduction from the initial 201 points. The collective length of the baselines proclaimed in 2002 is less than that of the 1960 system and yet all the islands are encompassed by the archipelagic principle, suggesting a rather simplified model.

The overall baseline system may be viewed and analysed as five distinct sections. The first section, covering the marine area of the South China Sea from Tanjong Berakit to Tanjong Datu (sometimes *Tanjung Dato*); section two, for the purpose of this exercise, takes in two islands, namely Pulau Ligitan and its associated reef system and Pulau Sipadan in the Sulawesi Sea, whose sovereignty was in dispute at the time of defining the base points, and connects to Pulau Sebatik. The proclamation was made before the judgment was handed down by the International Court of Justice in December 2002. Perhaps the islands were incorporated into the system to strengthen Indonesia's case in the proceedings. With this point in mind, the revision did not take into consideration the events that led to the 'birth' of an independent State of Timor-Leste in May 2002 and the implications of defining a maritime boundary between Indonesia and its new neighbour.

The third section extends from the terrestrial boundary on Pulau Sebatik to the terminal point of the terrestrial boundary between Indonesia and Papua New Guinea on the northern coast of New Guinea (Point 64); section four includes the coastlines of islands that abut the Arafura and Timor Seas from the southern terminal terrestrial boundary of Indonesia and Papua New Guinea (Point 65) to Pulau Meatimiarang (Point 101) that is close to, and east of, Jaco Island, which is under the sovereignty of East Timor; and, the final section commences at the southern terrestrial boundary of East Timor and Indonesia on the south coast of Timor Island and proceeds westwards, northwards along the Sumatran coast, round Pulau Rondo and then southwards along the east coast of Sumatra and eastwards returning to Point 1.

The two longest line segments, namely lines linking Points 44 and 45 and Points 54 and 55 are 122.75 M and 122.74 M respectively. The shortest are three straight base lines each of about 0.1 M in length. Five line segments, or 3 % of the total, measure between 100 and 123 M (Table 2.1) which is in accordance with Article 47 (Table 2.3).

The amendments will make a slight adjustment to the values cited above. Any change is within the spirit and letter of the law. However, neighbouring States and users of the sea lanes within the revised Archipelagic Waters have objected to the proclaimed revisions. A point of curiosity is that of the absence of defined potential base points on the north coast of West Timor and on the south coast of Indonesian Islands facing the Ombai and Wetar Straits. Perhaps these will be defined when East Timorese and Indonesian officials meet to negotiate their common maritime boundary.

The following tabulations, Tables 2.4 and 2.5, present an overview of the number of line segments, total distances of the sections and other information for ease of comparison with the criteria set out in Article 47.

The 2002 revision of the archipelagic baseline system of Indonesia is in accord with Article 47 of the 1982 Convention and does not pose any problems to the

**Table 2.3** Archipelagic baselines: Article 47 of the 1982 Convention and the Indonesian model of 2002

The test	Indonesia's conformity
1. Archipelagic state	Yes – about 19,000 islands (revised) Five major islands and 30 smaller groups
2. Includes main islands	Yes
3. Water to land ratio	ca. 1:1.2
4. Segments <125 M	Yes
5. <3 % line segments exceed 100 M	Yes
6. Baselines follow general configuration of coast	Yes
7. Connects outermost points	Yes
Islands, reefs and LTEs	Yes
8. Cuts a territorial sea boundary of neighbour	Possibly with the Philippines
9. Archipelagic waters between two parts in neighbouring state	Yes – that of Malaysia in the South China Sea
10. System delineated	Yes
11. Co-ordinates listed	Yes
12. Deposited with UN	Yes
13. Precision of values	Listed to 0.1" of arc
14. In accord with UNCLOS?	Generally yes
15. Subsequent amendments	Proposed base points for islands north of Timor Island

delimited Indonesian maritime boundaries, including the latest with Vietnam (signed in June 2003, and ratified in 2007). The revised baseline system may impact on the negotiations between Indonesia and its neighbours Australia and East Timor when the discussions of lateral maritime boundaries in the Timor Sea are raised. Its effect on the delimitation of maritime boundaries in the eastern and western approaches to the Straits of Singapore will also be viewed with great interest.

Section Two of the revised base line system, in the Appendix Part 1-C, below, is not relevant and should not be seen as a problem to Malaysia's ocean policy. It was necessary to include it to present the facts and to illustrate the manner in which the system was devised. New base points were proposed by the Centre for Administrative Boundary Mapping, *Bakosurtanal*, the official mapping and surveying agency of Indonesia. The proposed new base points are numbered TD 196 to TD 208, inclusive and are located on the islands of Leti, Wetar, the Alor Archipelago and Pulau Patek for the sole purpose of a datum for defining the maritime boundary with Timor-Leste.

Indonesia is to be congratulated for its promptness and openness in making public the document which lists the geographical coordinates of the archipelagic base points and thus permit researchers to analyse and disseminate the information. Subsequent revision to the baseline system was enacted through Government Regulation No. 37 of 2008 and deposited with the United Nations Secretary-General on 11 March 2009. The revision was for an area simply known as Ambalat, the precise meaning of which is undefined by relevant authorities in Indonesia and which is regional importance and geopolitical focus.

**Table 2.4** Sections, number of line segments and distances, 2002 model

Section	Base points	Distance	No. lines	Av. length (M)
1	Point 1 to Point 16	533.83	15	35.59
2	Point 17 to Point 20	76.41	3	25.47
3	Point 20 to Point 64	2,015.20	44	45.80
4	Point 65 to Point 101	1,171.26	36	32.54
5	Point 102 to Point 1	3,008.27	82	36.69
<b>Total</b>		<b>6,804.97</b>	<b>180</b>	<b>37.81</b>

**Table 2.5** Number of baselines categorised by length of line

Range of length (M)	Number of lines	Percentage
0–10.0	45	25.0
10.1–20.0	28	15.5
20.1–30.0	20	11.1
30.1–40.0	17	9.4
40.1–50.0	12	6.6
50.1–60.0	12	6.6
60.1–70.0	7	3.9
70.1–80.0	9	5.0
80.1–90.0	11	6.1
90.1–100.0	14	7.8
100.1–110.0	2	1.2
110.1–120.0	1	0.6
120.1–130.0	2	1.2
<b>Total</b>	<b>180</b>	<b>100</b>

The geographical coordinates for these points, in the northwest corner of the Sulawesi Sea are listed in Table 2.6:

However, since 2007, Indonesia has accused Malaysian naval patrols of entering Indonesian territorial waters surrounding an area referred to as Ambalat. What and where is Ambalat? The name does not appear in a gazetteer or on a standard map or in any renowned atlas – well none that are in my possession. It is an area of the *Laut Sulawesi* (Celebes Sea) which lies adjacent to Pulau (Island) Sebatik which in turn, is off the east coast of Borneo Island. Indeed, chart MAL 8425 would infer that it is within the confines of *Teluk Sibuko* (Bay Sibuko). Pulau Sebatik is politically divided, based on an Anglo/Dutch Convention of 1891, along the parallel of Latitude 4° 10' N. A border post is erected on this latitude at the east coast of Pu Sebatik. According to the Indonesian Military (TNI), this was Malaysia's ninth such incursion into the area in 2009. Malaysian authorities, however, have countered back by accusing Indonesia of breaching its borders 13 times.

The spat of early-June 2009 is probably caused as a direct result of a deposit, on 11 March 2009, by the Republic of Indonesia of a list of geographical coordinates of base points in pursuant to Article 47, paragraph 9 of the 1982 UN Law of the Sea Convention. In particular the location of Points identified as TD 036, 036 A and B and TD 037.

**Table 2.6** Revised base points off the coast of Pulau Sebatik, Sulawesi Sea

Point 036	Lat. 04° 10' 10" N Lon. 117° 54' 29" E
Point 036	A Lat 04° 09' 58" N Lon 117° 55' 44" E
Point 036 B	Lat 04° 09' 34" N Lon 117° 56' 27" E
Point 037	Lat 04° 00' 38" N Lon 118° 04' 58" E

Source: No. 37, 2008 *Penjelasan dalam Tambahan Lembaran Negara*, Republik Indonesia, Nomor 4854

## 2.5 Determination of a Seabed Boundary

Whatever its function the determination of the seabed boundary between coastal states is a vexing problem. This is particularly the case where the opposing coasts of the parties in the dispute are less than 400 nautical miles apart. In order to achieve an equitable solution, Articles 74:1 and 83 propose that the delimitation between states with adjacent or opposite coasts 'shall be effected by agreement on the basis of international law', and cites Article 38 of the Statute of the International Court of Justice to obtain the required results. The recommendations of the 1982 Convention, however, do not provide any definitive solutions to the problem (Forbes 1995: 113).

A provisional arrangement of a practical nature, without prejudice to the final delimitation, would be preferable to failure to proclaim the outer limits of the coastal state's maritime jurisdiction. However, where there is an agreement in force between the coastal states, the delimitation issue should be determined in accordance with the provisions of existing agreements (Article 74: 4).

Historically, the determination of maritime boundaries between states, that is, of any type, not just related to the seabed was rare. However, since the mid-1950s ocean resource development has prompted coastal states to define/delimit their maritime boundaries more precisely. Charney (1993: xxiii) observed that "the primary force behind the move to establish these boundaries has been the development of technology to recover highly valuable hydrocarbons and other non-living resources of the seabed and subsoil".

This is true; however, there are other factors that must be taken into account. These include: political, strategic and historical considerations; the legal regime of maritime boundary agreements; economic and environmental considerations; geographical configurations; offshore geographical features; the methods of baselines employed by the states to the agreement; and the geophysical, that is, geological and geomorphological factors of the seabed, although in the *Libya/Malta Case*, the Court (I.C.J. Report 13, 1985) held that there must be a better way of delimiting maritime boundaries than by contradictory speculation about geological and geomorphological phenomena.

Having taken the above factors into account, then the States that are party to the agreement must determine the methodology to employ to delimit the boundary. Six alternative methods are offered here and are exemplified by state practice in the Southeast Asian region.

1. The mid-channel or line of deepest water, as used in the Johor Selat between Malaysia and Singapore.
2. The median or equidistant line, equally distant throughout its entire length from the nearest point on each coast involved in the delimitation, for example, between India and Indonesia in the Great Channel separating Sumatra and Nicobar Islands.
3. The perpendicular to the general direction of the coasts, which represents in reality a special application of equidistance, as best depicted by the Indonesian/Papua New Guinea agreement for their common boundary in the Pacific Ocean.
4. The employment of a parallel of latitude and/or a meridian of longitude as defined in the *Treaty of Paris*, 1898 to delimit the territorial extent of The Philippines.
5. Although not a method as such, the concept of a 'natural boundary' incorporating a geological or geomorphological seabed feature, such as the Timor Trough which lies south of Timor Island, and which Australia used in its argument to close the 'Timor Gap' with a single line. The bathymetric axis has nevertheless been employed as the northern boundary in a zone of cooperation.
6. Ecological factors for the exclusive economic/fishing zones, for example the *Torres Strait Treaty*, 1978 signed by Australia and Papua New Guinea.

In seeking an answer as to why states would seek to agree on maritime boundaries Oxman (1993: 3) suggests these typical reasons: the likelihood of substantial activities subject to coastal state jurisdiction being conducted in an area of actual or potential dispute; one or both states may wish to stimulate uses, particularly fixed uses, of the ocean space in question. A single maritime boundary would be logical; there is no need for two boundaries for separate regimes. However, if the marine biotic and mineral resources straddle a perceived international political boundary it is possible that one party would argue for distinct boundaries to be defined, as individual regimes, for the sole purposes of the effective exploitation, harvesting and management of these potential resources. As a means of dispute resolution they may settle for a cooperative approach to exploit and/or harvest the resource. Maritime boundaries are best settled by negotiations, not arbitration and this principle has been adopted by Indonesia.

## 2.6 Indonesia's Exclusive Economic Zone

The 1982 Convention gives coastal and island states the right to establish by proclamation an Exclusive Economic Zone (EEZ) adjacent to and beyond the Territorial Sea (Article 55). This zone may extend to a maximum of 200 M, measured from the baseline used for determining the breadth of the Territorial Sea (Articles 5–16 and 57). If the sea is not open for this distance, that is, if the coastline of an opposite state is less than 400 M apart, agreements are to be made with opposite or adjacent coastal or island states, a matter which can be expected



from compulsory dispute settlement (Articles 74 and 298(1)(a)). It is important to note that within this zone of a maximum breadth of 188 M, the coastal state has rights for specific purposes (Articles 55 and 56), but does not possess sovereignty comparable with that which it enjoys in its territory and territorial sea; rather, it has – in the context of the provisions of the 1982 Convention – sovereign rights related to resources and jurisdiction with respect to artificial installations, marine scientific research and marine environment protection (Article 56.1).

A Declaration by the Government of Indonesia concerning the Exclusive Economic Zone of Indonesia was made on 21 March 1980 (Refer: Appendix Part 1-C, below). Legislation to implement the EEZ was enacted with the legal instrument of Act No. 5, 1983 and proclaimed in the *State Gazette of the Republic of Indonesia* No. 3260 (Appendix Part 1-D).

Article Two of the Indonesian EEZ Act of 1983 states that:

*The Indonesian Exclusive Economic Zone is the outer strip bordering the Indonesian Territorial Sea as determined by the law applicable to the Indonesian waters covering, the seabed, the subsoil thereof and the water above it with an outermost limit of 200 (two hundred) sea miles, measured from the baseline of the Indonesian territorial sea.*

Article Three of the 1983 Act relates to the delimitation of the EEZ boundaries. Indonesia has not otherwise defined the exact limits of its EEZ claim except through the conclusion of maritime boundary agreements with neighbouring states – no less than 17 negotiated agreements with seven of its ten potential delimitation partners. It should be noted that where these agreements were concluded before the Indonesia's EEZ claim and therefore deal with, for example, continental shelf rights, these delimitation lines are nevertheless still highly likely to form the basis of Indonesia's EEZ claims.

Article Four of Indonesia's Act No. 5 of 1983 provides that Indonesia will have and will exercise its sovereign rights to conduct exploration, exploitation and harvesting of the marine biotic and mineral resources within the water column, on the seabed and in the substratum within the limits of its EEZ. International freedoms of navigation and overflight and rights to the laying of submarine cables and pipelines are also acknowledged in this Article.

Articles 5–8 relate to activities within Indonesia's EEZ. Article 5 states that activities such as the economic exploration and/or exploitation of natural resources in the EEZ may only be undertaken based on permission from the Indonesian government or under an international treaty concluded with that government. Article 6 emphasises Indonesia's rights over artificial islands and similar structures, while Article 7 focuses on the issue of marine scientific research. Article 8 provides that whoever conducts any activity within Indonesia's EEZ has a duty to “*take steps towards preventing, minimising, controlling and surmounting the pollution of the environment.*”

## 2.7 Legal Limits of the Outer Continental Shelf

The concept of sovereign rights to the resources on and below the natural continental shelf emerged primarily in 1945 and was crystallised in the 1958 Convention; the concept of the EEZ was adopted during the 1973–1982 Law of the Sea Conferences. Provisions derived from both concepts expressly state that coastal and island states have sovereign rights to the non-living resources of the seabed and its substratum within the area of each of the zones (Articles 56(1) (a) and 77(1)). Whereas the continental shelf concept is dependent on the rise of the continental shelf (natural) and can basically applied only up to certain depth of the seabed, the EEZ's outer limits are determined solely in terms of distance from the coast (baseline), regardless of the depth of water (and whether there is a continental shelf or not) Articles 57 and 76.

Clarification between the EEZ and the natural continental shelf zone relating to sovereign rights to the resources therein is therefore necessary for two reasons:

1. A state party has to proclaim an EEZ, whereas the continental shelf rights exist for the coastal state independent of any proclamation or occupation. Consequently, a coastal or island state may exercise sovereign rights to resources of the seabed beyond the territorial sea, even where an EEZ has not been established or where it is not established to the full extent permitted;
2. If an EEZ has been established to the full extent permitted, a legal (or outer) continental shelf subject to the coastal state's jurisdiction beyond 200-M limit, if the topography of the seabed displays shelf characteristics. The legal shelf may not exceed 350 M from the territorial sea baseline or 100 M from the 2,500 m isobath, a line connecting the depth of 2,500 m (Article 76, Para. 5).

If an EEZ has been established – and this will be the general rule – two legal regimes exist with regard to the seabed subject to coastal state sovereign rights. Part of the shelf (seabed) is then subject to the regime of the EEZ and is governed generally by its provisions, which include reference to continental shelf provisions (Article 56, Para. 3). To avoid confusion, one should speak of the 'seabed of the EEZ' or synonymously, 'the primary seabed' and term the seabed beyond the limits of the EEZ the 'outer shelf'. The outer shelf would be governed by an independent legal regime under the application of the provisions of Part VI of the 'continental shelf' only.

The delimitation of the outer limits of the legal continental shelf must be undertaken by the coastal or island state on the recommendation of the Commission on the Limits of the Continental Shelf (CLSC) (Annex II of the 1982 Convention), which is based in New York. Corresponding charts or maps and relevant information relating to the claim are to be deposited with the Secretary-General of the United Nations (Articles 76 and 84) or the Secretary-General of the International Seabed Authority (ISA) (Article 84).

On 16 June 2008, Indonesia submitted to the CLSC in accordance with Article 76 of the 1982 Convention on the Law of the Sea, information on the limits of

continental shelf beyond 200 nautical miles from its archipelagic baseline system, as amended in 2002, in an area to the west of Sumatra. Details of this action are mentioned in Chap. 4, below.

## References

### *Books and Journals*

- Buchholz, H. J. (1987). *Law of the sea zones in the Pacific Ocean* (115 pp.). Singapore: Institute of Asian affairs and Institute of Southeast Asian Studies.
- Charney, J. I. (1993). Introduction. In J. I. Charney & L. M. Alexander (Eds.), *International maritime boundaries*. Dordrecht: Martinus Nijhoff.
- Department of Information, Indonesia. (1990). *Indonesia 1990 an official handbook* (p. 252). Jakarta: Directorate of Foreign Information Services.
- Forbes, V. L. (1995). *The maritime boundaries of the Indian Ocean region* (p. 267). Singapore: Singapore University Press.
- Forbes, V. L. (1998). Cooperative approaches to the utilisation of marine resources in the ASEAN region. In V. Savage, and others (Eds.), *The Naga awakens* (pp. 113–126). Singapore: Times Academic Press.
- ICJ (International Court of Justice). (1985). The Libya/Malta case. Report No. 13.
- Oxman, B. H. (1993). Political, strategic and historical considerations. In J. I. Charney & L. M. Alexander (Eds.), *International maritime boundaries*. Dordrecht: Martinus Nijhoff.
- Prescott, J. R. V. (1985a). *Australia's maritime boundaries* (Canberra Studies in World Affairs, No. 16). Canberra: Department of International Relations, ANU.
- Prescott, J. R. V. (1985b). *The maritime boundaries of the world*. London: Methuen.
- The Geographer. (1971). *Straight baselines: INDONESIA, limits in the sea*, No.62, US State Department, Washington, DC.

Indonesia's Delimited Maritime Boundaries

Forbes, V.L.

2014, XVII, 266 p. 38 illus., 19 illus. in color., Hardcover

ISBN: 978-3-642-54394-4