

5-1984

## The Emerging Regime of Islands as Archipelagic States

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### Recommended Citation

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THE EMERGING REGIME OF ISLANDS  
AS ARCHIPELAGIC STATES

A Major Paper  
Submitted to the Graduate Faculty  
Of the University of Rhode Island  
In Partial Fulfillment of The Requirements  
For the Degree of  
Master of Marine Affairs  
in  
The Department of Geography and Marine Affairs

by  
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May 1984

Master of Marine Affairs Major Paper:  
The Emerging Regime of Islands as Archipelagic States

by  
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Approved:

Faculty Major Professor Lewis Alexander

University of Rhode Island  
Kingston  
1984

## ILLUSTRATIONS

Andaman & Nicobar Islands  
Azores  
Bahama Islands  
Bermuda Islands  
Canary Islands  
Cape Verde  
Fiji  
French West Indies  
Galapagos Islands  
New Caledonia  
Papua New Guinea  
Saint Vincent and the Grenadines  
Seychelles  
Solomon Islands  
Tahiti and Moorea  
Tonga Islands  
Western Samoa

Maps Provided for Illustrative Purposes Only  
and Are Not to be Used for  
Baseline Determinations



## Introduction

The emerging regime of islands as archipelagic states is a study of both geography and International Law. It is a study of geography because archipelagos appear in all the ocean basins on the globe. International Law is represented primarily through the auspices of the United Nations.

This essay will discuss the significance of islands as archipelagos, i.e. any two or more islands identified politically as one entity. Within the body of this report will be references regarding the historical background to archipelagos and how they emerged into international topics of law. Further, the differences international law affords coastal archipelagos as opposed to outlying mid-ocean archipelagos will be interpreted. These differences include, for instance, the design of baselines used to enclose territorial waters.

As the paper progresses, the reader will begin to see how the Third United Nations Conference on the Law of the Sea (UNCLOS III) plays a pivotal role in defining and determining what an archipelago is and what an archipelagic state is, as defined for today's applications.

UNCLOS III has given international legal status to archipelagos that have become politically sovereign and seek acceptance into the family of nations. With sovereignty comes certain freedoms and responsibilities. But the reader should take note that some of these international community freedoms have been hedged to some extent primarily by the world's maritime nations. This was achieved through deliberations during UNCLOS III meetings.

Additionally, the paper will analyze when some of these archipelagos and/or archipelagic states became political units and why nine articles pertaining to them appear in the Draft Convention of UNCLOS III. The remainder of the paper addresses who and where these archipelagos are, and if the benefits provided by the nine articles can and should be taken advantage of.

What constitutes an Archipelago?

The idea that groups of islands should be linked for the purpose of delimiting maritime jurisdictional zones and for determining who has sovereignty over them is primarily a twentieth century phenomenon.

Prior to the Hague Codification Conference of 1930, little attention was given to any need for special treatment of groups of islands. In addition, the Hague Codification Conference failed to adopt an article for the determination of an archipelago.<sup>1</sup> The family of nations disagreed as to whether archipelagos should be treated as a single entity or whether each individual island should have its own territorial sea. Agreements were not achieved to distinguish between coastal and mid-ocean archipelagos. Additionally, no discernable discussion about the system of baselines which could be applied to either mid-ocean or coastal archipelagos arose. However, the preparatory work for the conference did influence directly later efforts of the International Law Commission.

One individual was very pronounced in his efforts for defining what constitutes an archipelago, Professor Alvarez. This man was chairman of the Committee on

Neutrality at a meeting of the International Law Association in 1924 at Stockholm. He proposed, in the case of an archipelago, that the islands should be considered as forming a single unit with the breadth of the territorial sea measured from the furthest islands from the center of the archipelago.<sup>2</sup> There were no limits specified for the distance allowed between islands however.

Later, scholarly works relating to the geojuridical ideas of archipelagos was authored by Jens Evensen of Norway. His preparatory documents were submitted for scrutiny before the First Conference on the Law of the Sea in 1958 at Geneva. He tried to define archipelagos in a physical geography sense, to wit, the shape and position of the archipelagos and the size and number of islands and islets. Evensen distinguished between two basic types of archipelagos: coastal and mid-ocean (outlying). Coastal archipelagos could be shaped as a string of islands, islets, or rocks forming an embankment for the mainland against the ocean, or they can be perpendicular to the mainland coast creating a protrusion into the sea, much like a peninsula. In some archipelagos, presumably to include mid-ocean ones as well, the islands and islets are clustered in a

compact geographical group while in others, they are spread out over great areas of water. Evensen though, provided a general definition, applying to both coastal and mid-ocean archipelagos. He stated: "An archipelago is a formation of two or more islands [islets or rocks] which geographically may be considered as a whole".<sup>3</sup>

Evensen's idea of treating an archipelago "as a whole" was a new trend in ideas in deciding what constituted an archipelago. Earlier writings by scholars prior to Eversen approached the idea of archipelagos from a land-centered concept over those of a sea-centered concept. There were some authorities ready to accept grouping of islands, on the premise that the islands were not too far apart. Basically, none of the pre-Evensen writers believed that the islands and waters composing the archipelago should be considered as a whole, but rather that the islands and the keys should be grouped.

In addition, earlier writings on the subject of archipelagos centered under the heading for delimiting the territorial sea, which were considered to be the waters seaward of the baselines. The relationship of the waters within the archipelago were not mentioned. The interest in the legal regime of the enclosed waters

has become one of the primary concerns in studies today.

More specific criteria on what constitutes an archipelago has been advanced by the United States through their State Department. They believe a rational archipelago should include the following characteristics:

- ... There must be a substantial number of relatively large islands scattered throughout a sea in an areal and not a linear pattern (probably so as not to include Hawaii);
- The islands should be situated so as to relate geographically (adjacency) to each other and to others in the group; and
- They should be perceived as a unitary whole because of political administration.<sup>4</sup>

These criteria were discerned from what was believed to be the first region on the globe that these principles should apply. Initially the three criteria noted above were assessed from the Aegean Sea. Their analysis of the Aegean Sea revealed a random scattering of islands throughout the sea, with the islands in general, being large in the sense that the average size



island would contain several hundred square miles and not be of islet and rock proportions primarily. But through debate, the generic term of archipelago has universally been accepted to designate the studding islands within the sea.

Noted Geographers Hodgson and Alexander believed that an archipelago was one example of a "special circumstance". They distinguished between an island group and an archipelago and between coastal and outlying (mid-ocean) archipelagos. Additionally, they noted a diversity of conditions under which a special circumstance may be applied for an outlying archipelago.<sup>5</sup> Historic or economic factors are but two of the special circumstances that could be applied to an archipelago.

The key factor stressed by Hodgson and Alexander for determining the concept of archipelago is adjacency.<sup>6</sup> But in their 1972 article they concluded that it is more difficult to discern mid-ocean-outlying archipelagos than coastal archipelagos. Newer law articles have attempted to do that in more recent times.

Offshore fringing islands came to be known as "coastal archipelagos" via the Anglo-Norwegian Fisheries case decided by the International Court of Justice

in 1951. In this case the Court decided the legitimacy of national claims to offshore areas by considering new factors. These new factors were the fringing islands and rocks lying just off the coast of a continental mainland. However, the factors in this Court's decision cannot be uniformly applied to other similar cases or cases which may involve the situations of oceanic archipelagos.

The outer coastline theory which was presented by Norway to the International Court of Justice and upheld was based on a hierarchy of concepts. Primarily, the coast of the land mass is dominant. The Court's guiding principles appeared based on a hierarchy of land and sea, with a dominant continent and a subordinate in the offshore waters. According to the Court, it was the land which conferred the right to the waters off its coasts.<sup>7</sup>

This special importance imparted by the Court in this case served to show the uniqueness with which this decision was made. The subordination of fringing islands and adjacent waters to a nearby abutting land domain is the concept of a coastal archipelago. To apply that concept to an outlying (mid-ocean) archipelago would be inappropriate. Since there is no primary

dominant coastline to use as reference points, for the outlying archipelago, the focus must be on the "island studded sea."

A good number of nations which had been placed by scholarly writers in the category of coastal archipelagic nations have in practice resorted to a system of straight baselines to measure their territorial seas.

The straight baseline method was introduced by Norway in 1935. Until that time, the traditional baseline, known as "normal baselines" from which the breadth of the territorial sea was measured, was the low-water line on the coast. Through the use of baselines a division is made between internal waters and the territorial sea waters. In addition these baseline divisions are to be recorded on large-scale charts officially recognized by the coastal state.<sup>8</sup>

Norway adopted a series of straight baselines connecting "their" outermost islets and rocks known as the skjaergaard, as the boundary of its internal waters and the "coastline" from which they measured out their four nautical mile territorial sea. Norway's straight baseline system was condoned by the International Court of Justice in the Anglo-Norwegian Fisheries case decided before the Court in 1951.<sup>9</sup>



Straight baselines were only employed in the case of bays in international law previous to the Court's decision of 1951. They were used as closing lines of bays in order to close off bays as internal waters. The International Court of Justice specified this rule as the accepted criteria for enclosing internal waters and they also recognized the case of "historic waters" too.<sup>10</sup>

It is important to realize that the International Court of Justice decision in the Anglo Norwegian Fisheries case, in referring to the term archipelago, were speaking specifically of coastal archipelagos. Since Norway's coast is deeply indented and cut into and there was a close dependence of the fringing islands and rocks and the interspersed waters upon the continental land domain, then it was legitimate for such a state to claim those offshore areas.

There are now many other examples of states using straight baselines to encompass offshore islands.<sup>11</sup> But, the adoption of straight baselines is not to be considered universal. Some nations which have not, include the U.S., Australia, Canada, Greece, and Japan despite the fact that parts of their coastline may be better suited to using straight baselines than states which have employed them.

One of the essential points is that the application problems in using straight baselines may have been cleared up in the case of coastal archipelagos via the Court's decision in the Anglo-Norwegian Fisheries case. Recently, some nations have also felt that the Court's decision of 1951 is now part of declaratory custom law and applicable to all coastal states with similiar circumstances.

A new unique approach for the use of straight baselines was developed unilaterally by the Philippines and Indonesia for determining their territorial sea. Each of the two states claimed the right to draw a perimeter around their outermost islands based on historical, political, and economic reasons; and other criteria including national security. The waters claimed within this perimeter were to be considered historic internal waters.

The territorial waters would then extend outward from the straight baselines envisioned by the two nations.<sup>12</sup> A glance at a map of the countries would reveal the huge extent of the internal seas claimed under the mid-ocean archipelago theory. The Philippines cover an area roughly 600 miles wide and 1000 miles long, measuring north to south. Indonesia's perimeter ex-

tends over 3000 miles from east to west and approximately 1300 miles in a north to south direction. If the mid-ocean archipelago theory as put forth by the Philippines and Indonesia were accepted by other states, or if the other states acquiesced to the claims, the proclaimed internal waters status of the seas enclosed within the perimeters in question would prevent certain high seas freedoms. The claims would eliminate rights of free passage, the right of submarines to enter and travel submerged, and all rights of foreign aircraft to fly over the waters involved, unless special treaties would be enacted to the foreign nations who would agree to the provisions set up by the archipelagic nation.

But certain international law agreements have emerged to impose some constraints upon claims by the Philippines and Indonesia. But first a look back before these constraints were approved.

It should be noted that the method of using straight baselines was placed into convention law with the Geneva Convention of the Territorial Sea and the Contiguous Zone adopted in April of 1958 as article four.<sup>13</sup> The convention codified the practice of straight baselines for coastal archipelagos and gave

the status of internal waters to those landward of the straight baselines allowing in certain areas for the right of innocent passage. This right includes stopping and anchoring, but only insofar as the same are incidental to ordinary navigation or are rendered necessary by distress or by force majeure. In short the passage of a foreign vessel through the territorial sea is not believed innocent, if it is prejudicial to the peace, order, or security of the coastal states. However, this Convention on The Territorial Sea and the Contiguous Zone, 1958 did not include, at that time, any provisions relating specifically to mid-ocean archipelagos which is probably the reason the Philippines and Indonesia did not ratify the Convention.

But even without ratifying the convention it did not deter either of these recently sovereign "archipelagic states" from applying their method of straight baselines to delimit their territorial sea and other zones for jurisdiction.

It is important to note here that the idea of "archipelagic states" was quite new to the family of nations since the Philippines who gained independence in 1946 and Indonesia who gained independence in 1949 were the two largest (in area) nations trying to claim

"archipelagic state" status less than 15 years after independence!

Indonesian claims were placed on notice in their Indonesia Act No. 4, February of 1960. The Philippines filed its system of straight baselines in Republic Act No. 3046, of June, 1961.<sup>14</sup>

But, the enactment of the Philippine system did not receive acquiescence from other nations. Their actions received protests by the United Kingdom and the United States among others.<sup>15</sup> Similiar protests were filed against Indonesia's claims as well.<sup>16</sup>

The examples of the Philippines and Indonesian systems of straight baselines used to enclose sovereign national mid-ocean archipelagos shows the vastness of area involved. In addition, the reason so many maritime nations protested the actions of both countries may be realized when one notes that at least eleven straits used for international shipping and navigation in Southeast Asia could have been cordoned off as internal waters.

It is important to understand that the emerging concept of mid-ocean "archipelagic states" not be confused with mid-ocean archipelagos. Archipelagic states



consist solely of islands and parts of islands and "no mainland" and they must be independent nations. Mid-ocean archipelagos are just a group of islands, interspersed waters and other natural features forming an intrinsic, geographical, economic and political entity, or which historically has been regarded as such. But the key difference is that they are not independent nations.

Some examples of the latter type include the Faeroes and the Galapagos Archipelagos. These mid-ocean archipelagos have the common feature of necessary distance from, or other geographical relationship to, the colonial mainland state to justify separate differentiated baselines.

The above examples have been claimed as mid-ocean archipelagos by Denmark and Ecuador respectively. Either in theory or by practice, other island groups could be subject to similar archipelagic claims notably; The Azores of Portugal, the Malvinas of the United Kingdom and New Zealand's Cook Islands. There are additional islands not mentioned.

But the most vociferous archipelagic claims emanate from the distinguishable group of islands which

makeup the independent "archipelagic states". The Philippines and Indonesia as mentioned are pre-eminent among this group. By the end of 1982, five other nations had proclaimed archipelagic state status; the Cape Verde Islands, Fiji, Papua New Guinea, the Solomon Islands and the Associated state of Sao Tome and Principe.<sup>17</sup>

When an independent archipelago claims archipelagic state status what exactly is it claiming? What rights does international law afford this nation and what rights remain in and about archipelagic waters for the other maritime nations of the world?

Some of the components that are a part of the concept of mid-ocean archipelagos are the legal status of the waters within the straight baselines and the new administration of archipelagic sea lane passage. Additionally, there is the issue of archipelagic state baselines and how they are delineated.

The Third United Nations Conference on The Law of the Sea (UNCLOS III) represented the latest international action taken in support of archipelagic status, and the most comprehensive. Nine articles are devoted to "archipelagic states", that is, "a state constituted

wholly by one or more archipelagos and may include other islands".<sup>18</sup> In addition, UNCLOS III defines what is meant by an archipelago; "a group of islands including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such".<sup>19</sup>

Article 47 of UNCLOS III covers the issue of archipelagic baselines. In essence it states that a country is able to draw archipelagic baselines if the ratio of water area to land area, including atolls, enclosed by the baselines, is between 1 to 1 and 9 to 1. The straight baselines are to join the outermost edges of the outermost islands, including drying reefs, of the archipelago. The length of the individual baselines, while not departing to any appreciable extent from the general configuration of the archipelago,<sup>20</sup> are not to exceed 100 nautical miles, except up to 3 percent may be up to 125 nautical miles where all baselines are totalled up.<sup>21</sup>

The archipelagic baselines cannot be drawn to and from low-tide elevations unless lighthouses or similar installations that are constantly above sea level have



been placed on them.<sup>22</sup> Also the straight baselines shall not be affixed so as to cut off from the high seas or the exclusive economic zone the territorial seas of a nearby state.<sup>23</sup> Either the geographical coordinate of points will be given or adequate scale charts depicting the baselines will be available to the international community to serve as due publicity.<sup>24</sup>

The implication of the status of the waters landward of the baselines needs attention. The draft text of UNCLOS III has placed servitudes upon the waters of archipelagic states. Behind the baselines are the internal, waters which are given the designation of archipelagic waters of the applicable country. But the archipelagic state cannot close off innocent passage to foreign vessels in its (internal) archipelagic waters. Even though the archipelagic state is said to have sovereignty over its internal waters in actuality that sovereignty is not absolute.

Article 49 of the Draft Convention of 1982 established the administration of archipelagic sea lanes passage.<sup>25</sup> What this entitles an archipelagic state to do is to designate sea lanes and air routes above them, for the continuous passage of foreign vessels and aircraft through or over its archipelagic waters and the

adjacent territorial sea, which lies seaward of its baselines.<sup>26</sup> If the state does not designate sea lanes or air routes, then passage by foreign vessels may be exercised through the routes normally used for international navigation.

The rights of navigation and overflight through archipelagic sea lanes means that travel by foreign craft, will be continuous and expeditious in the normal mode.<sup>27</sup> This is another servitude placed upon archipelagic states in that submarines may travel submerged through their (internal) sea lanes. This differs from innocent passage as it applies to territorial seas, in that submarines must travel on the surface and show their flag when dealing with territorial seas of mainland states. This situation creates security problems for archipelagic states.

But, if an archipelagic state does choose to designate sea lanes for international traffic they also can designate the traffic separation schemes within the passage route.<sup>28</sup> The width of the sea lanes should be roughly 50 miles in width, or 80 percent of a figure that is smaller, that is, if the width of a channel between baselines is 20 miles wide then the designated sea lane for passage would be 16 miles across, two miles off each opposite basepoint.

Additional rights that archipelagic states have received via UNCLOS III include, the ability to substitute other sea lanes or traffic separation schemes and adjacent territorial sea passage too, as long as they conform to generally accepted international regulations.<sup>29</sup> One competent international organization which can help set standards here would be the International Maritime Organization.

Although there can be a substitution of archipelagic sea lane passage by the host state the right to pass over, under, or through the appropriate archipelagic state as a form of sea lane transit passage is unconditionally non suspendable for the international maritime community.<sup>30</sup>

The compromise arrived at in Geneva (UNCLOS III) acknowledges coastal-state sovereignty over the internal waters, archipelagic waters, and the territorial sea, but the indispensable properties of sovereignty are affixed with wide ranging servitudes as they apply to archipelagic states. These states are hedged with a totally new administration of archipelagic sea-lanes passage which restated, was an attempt to balance the territorial integrity of the archipelagic states with the right of transit through designated ways within the

archipelago by the world's maritime fleets. Therefore, it seems that the status of archipelagic waters is restricted from the international essence of "sovereignty".

With this criteria in mind, will it pose obstacles in front of emerging independent, or long-time independent nations from proclaiming themselves as archipelagic states?

The decision of the conferences of UNCLOS III that the ratio of between 1:1 and 9:1 (water to land) for drawing baselines would rule out archipelagic state status for large-area island countries. Examples would include the United Kingdom and New Zealand. In addition, small widely dispersed island nations such as Tuvalu would not qualify either.<sup>31</sup>

The reason Tuvalu, which became independent in October of 1978, could not qualify for archipelagic state status is because the nine islands that makeup this nation are dispersed over a geographical area of 360 miles in length. The baselines that would connect the outer reaches would exceed the 100 nautical mile length as agreed upon in the latest Law of the Sea Convention.

As was noted earlier in this paper only seven independent island nations have proclaimed themselves to be archipelagic states through 1982.<sup>32</sup> It is important to restate that the whole regime of archipelagic states status is an emerging concept due to the fact that none of the claimants were independent prior to 1946!

The five latest proclaimers of archipelagic state status truly emphasize the newness of the international concept of archipelagic states. Why? When one notes when these five became solely autonomous, i.e. independent entities the pictures becomes, I believe, quite clear.

Of these five, Fiji is the oldest. This nation with its approximately 840 islands of which only 106 are inhabited by 7000,000, gained sovereignty in October of 1970. Three of the remaining four achieved independence in 1975, less than 10 years ago! On July 5, 1975 Portugal relinquished all claims to the Cape Verde Islands. Thus, the 15 islands with its 340,000 people achieved sovereignty. Seven days later the Associated State of Sao Tome and Principe broke from Portugal also. These islands had been occupied by Portugal since 1471! In September of the same year, Papua New Guinea, now with 3.3 million people, achieved independence. An



expedition from Peru in 1568 landed on the Solomon Islands, but it was not until July of 1978 that it had achieved formal independence. The Solomon's are primarily ten large volcanic and rugged islands and four groups of smaller ones. Today, only 240,000 people occupy these islands.

But are there other island archipelagos around the globe that have achieved independence from some colonial power and not declared for themselves archipelagic state status? Furthermore, are there some island archipelagos that are still politically affiliated either as a "protectorate" or "overseas department" or "trusteeship" with a mainland country and consequently unable to proclaim archipelagic state status for themselves because they are not sovereign? Let's see by looking at the ocean basins of the world to check where they may lie.<sup>33</sup>

In the North Atlantic bounded on the south by a line from the north coast of Cuba (230°) to the southern coast of the Strait of Gibraltar (360°N) we find some possibilities. We can note the Azores, 740 miles west of Portugal and a Portugese possession as well. This group of islands with its 300,000 people encompasses 904 square miles and would benefit more from

UNCLOS III if it were independent. Also located in this region is Bermuda. This archipelago is a possession of the U.K. It has 360 small islands of coral formation on which 20 are inhabited. Denmark's Faeroe islands which lie 850 miles from Denmark proper also lie in the North Atlantic region. Forty-five thousand people live on 18 inhabited Faeroe islands.

The central Atlantic belt lies between 230°N-360°N and a line from Cape Sao Roque, Brazil (50°S) to Dakar, Senegal (150°N). There are numerous possibilities here including the Canary Islands. These islands belong to Spain and lie in the Atlantic west of Morocco, and include the islands of Tenerife, Palma, Gomera, Hierro, Grand Canary, Fuerteventura, and Lanzarote, along with smaller cays and islets. Another possession of Portugal is Madeira. This archipelago is home to more than 300,000 people and geographically lies 360 miles from Morocco. This region would also include the Bahamas, an archipelago of 700 or so islands of which only about thirty are inhabited with 260,000 people. Though the Bahamas gained sovereignty in July of 1973 they have not through 1982 attempted to gain world acceptance as an archipelagic state.

Moving into the marginal sea known as the Caribbean one denotes a broad applicability for the various archipelagos incorporated within the Caribbean Sea. For example, Jamaica has an acceptable ratio to apply itself as an archipelagic state because its small islets and isles warrant a special effect. Jamaica possesses a limited area, and the Morant and Pedro Cays constitute a relatively significant segment of it, at least according to some scholars.<sup>34</sup> Jamaica has been independent since August of 1962, and could now proclaim itself an archipelagic state, but it probably would not gain too much by doing so because the aforementioned cays are not known to be threatened by outside interests, which would include fishing.

Some, but certainly not all, of the islands in the Caribbean that may qualify for archipelagic state status include: (1) the Republic of Trinidad and Tobago, which is an oil trans-shipment center; these two islands are twenty miles apart; (2) the country known as Antigua and Barbuda, independent only since November of 1981; it has a population of only 77,000; (3) recently independent (1983) St. Christopher and Nevis; (4) Grenada and its Grenadines, an independent archipelago since February, 1974; (5) the French Overseas



Departments - in particular the Guadeloupe archipelago which would include the islands of Guadeloupe, Basse Terre and Grand Terre, together with La Desirade, Marie-Galante and the Saintes. However, independence from France does not appear on the horizon so these islands are unable to be an archipelagic state at the present time. Also, the independent island nation of St. Vincent and the Grenadines. This archipelago received sovereignty in October of 1979. While St. Vincent is 133 square miles the Grenadines are at least 100 islands (600 if you count all the rocky outcrops) that extend for some thirty-five miles from St. Vincent to the island of Grenada. St. Vincent's Grenadines are sparsely populated with but 18,000 inhabitants. With the political troubles which Grenada was having as recently as November of 1983, it would seem to be to St. Vincent's advantage to incorporate itself with base-lines extending to include all its Grenadines before any political uprising would make that difficult.

Moving into region III the South Atlantic - South of the Cape Sao Roque to Dakar line- there are fewer examples to illustrate. One example may be the Falklands belonging to the U.K. The Falklands or Islas Malvinas include about 200 islands with a population of

only 1800 or so, but it is not as yet independent. Another example in this region could be Tristan da Cunha, the principal of a group of islands of volcanic origin positioned half way between the Cape of Good Hope and South America. The islands, however, are a dependency of the U.K. through St. Helena island.

The Indian Ocean Basin has some island archipelagos that might qualify for archipelagic state status as for instance, the Seychelles. This archipelago consists of eighty six islands about half coral and half granitic. It has been independent since June of 1976 and withstood an attempted coup in November of 1981 from the African mainland. Another example is the Maldives, a major archipelago in size consisting of some nineteen atolls with 1087 islands of which only 200 are inhabited. None of the islands are greater than five square miles and nearly all are flat. Only about 155,000 people reside in the Maldives, which have been sovereign since July of 1965. The Comoros islands provide another example. These have been independent since July of 1975 and consist of three main islands and interspersed cays located within the Mozambique channel. There are other archipelagos located in this basin though they are not independent today, e.g. the

Andaman and Nicobar archipelagos administrated over by India.

But the widest possibilities of emerging archipelagic state status lies in the Pacific Ocean regions. The part of the Pacific Ocean basin south of the Tropic of Cancer and east of the International Date Line has numerous examples. One example is Western Samoa, with 158,000 inhabitants; it has been independent since January 1962. It consists of four islands but they may be situated so far apart that their baseline closures represent unacceptable ratios. Another future possibility for archipelagic state(s) status includes the French Polynesia Overseas Territory which comprises 130 islands widely scattered among five archipelagos; Tuamotu, Marquesas, Gambier, Austral, and Society islands archipelagos. Altogether there are but 160,000 people, with half residing on Tahiti. Additionally, the Pitcairn archipelago halfway between South America and Australia is administered as a British colony currently, but could become independent some day. If it does it may very well be the least populated state on earth. There were but 54 people residing on 19 square mile Pitcairn island and none on the Pitcairn group islands of Henderson, Oeno, and Ducie in 1981!

One last example in this region is Kiribati which received independence in July of 1979. This nation consists of thirty-three Micronesian islands formerly known as the Gilbert, Line and Phoenix groups. But according to some sources Kiribati, like Tuvalu is too widely dispersed to be included into one archipelagic state due to length of baseline limitations.<sup>35</sup>

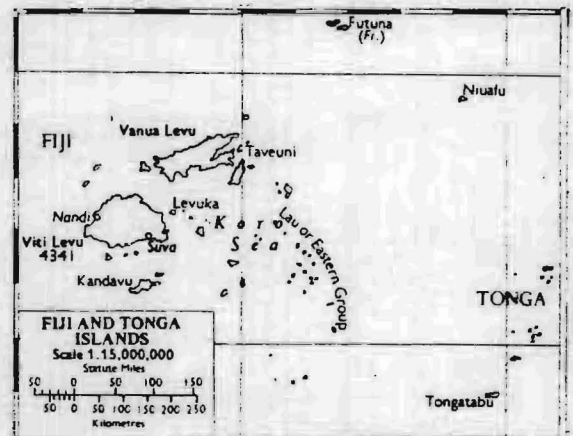
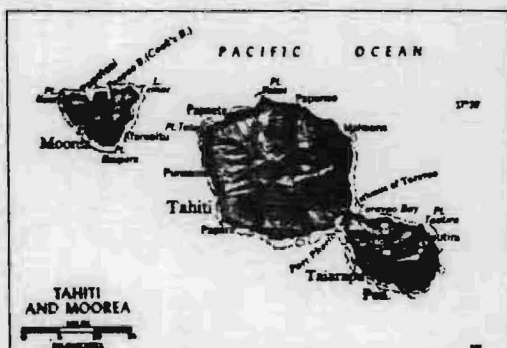
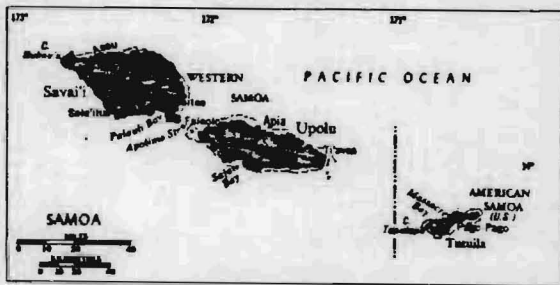
Moving into my last area of analysis this would be that part of the Pacific basin south of the Tropic of Cancer and west of the International Date Line. This is a very complicated geographical area comprised of several marginal seas and many island archipelagos. A few examples in this region, realizing that part of Kiribati crosses the Date Line, may include the French possession of New Caledonia and its Dependencies; the Loyalty Islands, the Isle of Pines, the Huon islands, and the Chesterfield islands. There are only 140,000 people scattered about the 8,548 square miles of space. However, if it became independent its nickel mining might be able to sustain the economy to some extent. Tuvalu, which I have mentioned before, is an archipelago of 9,000 people on nine islands 360 miles long. Although it has been independent since October of 1978, its length is too long to be placed within archipelagic



state baseline ratios. On June fourth of 1970 the 169 volcanic and coral islands known as Tonga became independent. Only forty-five of the islands are inhabited with 100,000 people. Ten years later Vanuatu, formerly known as the new Hebrides, became sovereign (July 1980). Some 4707 square miles are occupied by 125,000 people.

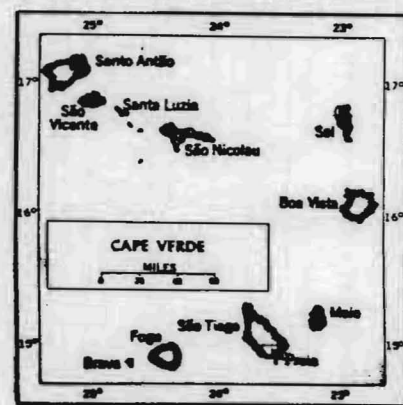
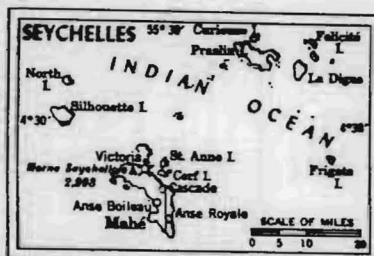
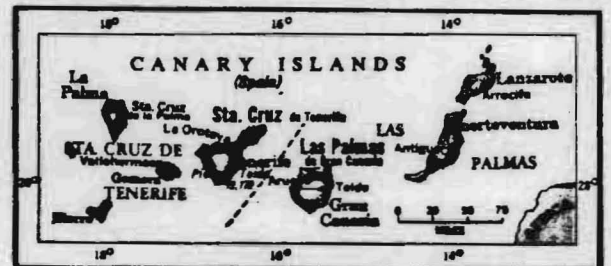
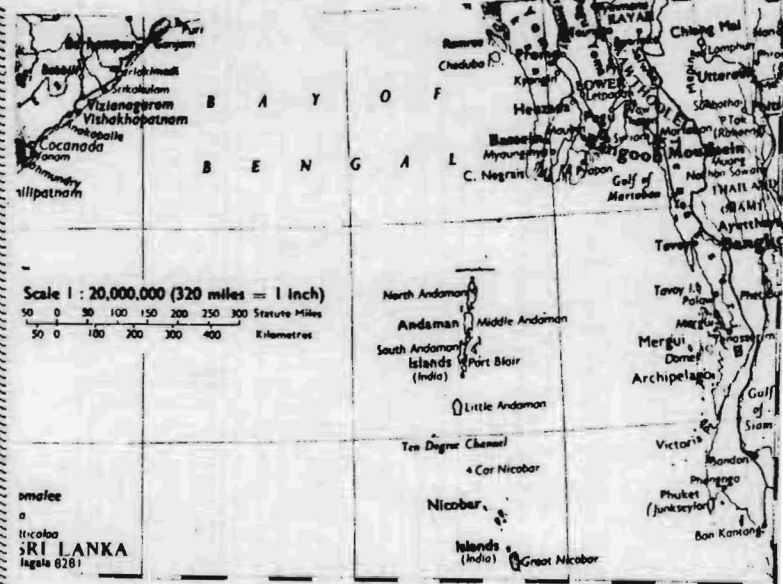
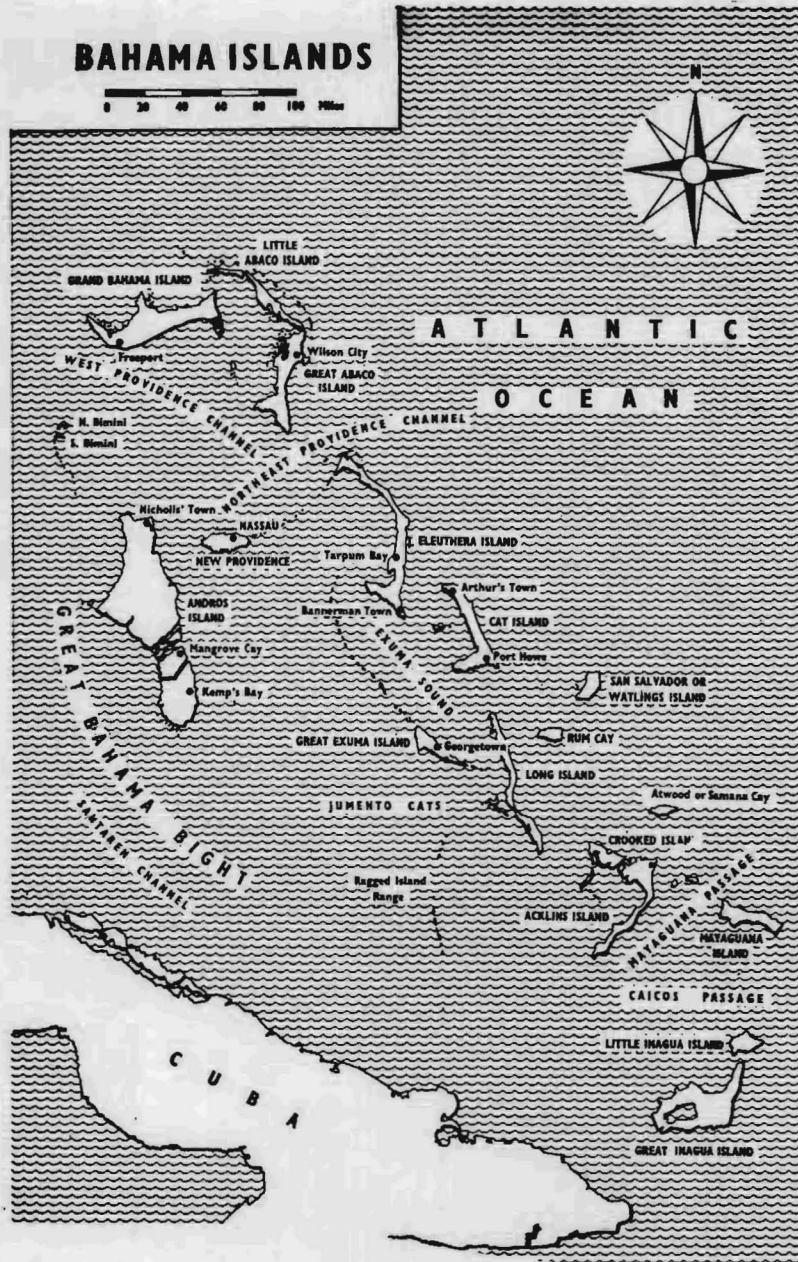
It may be of interest to note that of the seven proclaimed archipelagic states, five are within or adjacent to this last geographical section. To wit: Papua New Guinea, Fiji, Solomon Islands, the Philippines, and Indonesia.

(Please see archipelagos illustrated on the following two pages. These have been provided to show the wide variances in size and shape of the many island groups the world over.)



# BAHAMA ISLANDS

0 20 40 60 80 100 Miles





While the aforementioned list of islands on the last few pages seems like all possible candidates for archipelagic state status, to be sure there are others. The number of island archipelagos talked about was not meant to be an exhaustive sampling but more or less an illustration of both the current candidates and some future candidates for archipelagic state status.

Perhaps some of the current candidates i.e. already independent nations, would utilize what UNCLOS III has provided them if they would note the world straits and shipping lanes.<sup>36</sup> For instance, Vanuatu is somewhat criss-crossed by the Sydney to Honolulu trade along with the Panama to Torres strait traffic. The potential for a tanker spill or grounding is possible on one of its outlying isles. Another heavy traffic area steams right through the Comoros islands. Here you have the Mozambique channel where the Cape of Good Hope to both Bombay and Al Basrah trade routes move right through Comoros waters. But, the Bahamas may be the best example for major ocean going traffic passing right through its waters. Most if not all Gulf of Mexico Ports e.g. New Orleans, cargo handling between it and Europe passes through the Northeast Providence Channel of the Bahamas. Moving through the Crooked



Island (Bahamas) Passage is the New York to Panama trade. The potential for a shipping accident is possible particularly if the ship uses celestial navigation only.

Similar examples exist through archipelagos which have not attained independence from another country. A couple of examples here would be, for one, French Polynesia. The Papeete to San Francisco trade route meets on Tahiti. Additionally, the Wellington to Panama trade passes, by the Austral islands of French Polynesia. The Azores have traffic moving from Port-of-Spain and Panama to Bishop Rock England passing right through its 200 - N.M. maritime zone. Further, India's Nicobar, and Andaman islands have cargos bound to and from the Straits of Malacca (Singapore) passing through their maritime zones as well.

What this means in particular for the non-independent archipelagos is that in order for the for them to designate sea lanes and air routes above them, for the continuous passage of foreign vessels and aircraft through or over the archipelagos waters, they would have to receive some kind of consent from their colonial captives. Or, put another way UNCLOS III does

not provide the non independent archipelagos with a means of doing the above independently.

With the advent of 200 nautical mile maritime zones some of these island archipelagos which "appear" to be of considerable distance from each other actually now, through the Law of the Sea treaties, have jurisdictional zones which overlap. While this overlapping is not allowed for generally in international law, some countries have set up "joint development zones"<sup>37</sup> to ease administrative differences over water space. These "joint development zones" could appear to be the order for highly congested island studded seas such as the Caribbean, Coral and South China seas for instance. Otherwise, dispute settlements before the International Court of Justice may be excessively employed to ease zonal differences.

Furthermore, because of UNCLOS III requirements that nations produce maps, or charts in the case for archipelagos, for due publicity of a country's maritime zones,<sup>38</sup> these charts must show the "low-water line" from which the breadth of the baseline zones are measured from.<sup>39</sup> This presents problems.

The Nautical Charts which most archipelagos would use as official maps for due publicity are not generally designed and constructed for boundary delimitation but rather for navigational purposes. As a result, the hydrographic map maker will choose to construct the two-dimensional (map/chart) representation of the three-dimensional earth (globe) on a Mercator projection.<sup>40</sup>

Because the mariner is concerned with course navigation, distortions in scale (area) are deemed less important than true direction. The Mercator projection suffers from changes in scale on any axis that does not move east to west, while showing a constant true direction to the meridians as a straight line. This line is known as the rhumbline.

As a result of the use of the Mercator projection, scale distortions are introduced. The real ground distances of the charted equidistant boundary will not be equally relative to ground locations in spite of the apparent geometric equality on the chart when used over great distances, except when the distance is measured along a line of equal latitude.<sup>41</sup>

As a consequence, Mercator projection charts should not be relied upon for equidistant boundary delimitations that extend, e.g. farther than the breadth of the territorial sea , i.e. 12 N.M. But, the Mercator projection charts can be employed for use in the basic delimitation process for the area from 15° south to 15° north of the equator.<sup>42</sup> This is where many of the Pacific archipelagos lie as well as some Southern Caribbean states too.

But, computers may be employed to determine the precise distances and azimuths, either in cooperation with a geometric determination or by a manual or direct programming sequence. Perhaps it is now best to rely on computer cartography particularly when trying to decipher "low-water" in islands scattered about an island studded sea. And, for the measurements of the consequential 200 N.M. maritime zones.

In conclusion, this paper has attempted to point out the emerging regime of international law as applied to two or more politically identifiable islands. It was not until 1957 that a group of islands known as Indonesia took the first steps in delimiting the baselines for its territorial waters.<sup>43</sup> Four years later the Philippines followed suit.<sup>44</sup> But it has been



primarily UNCLOS III, which began in 1974, that provided the impetus for more politically identifiable and sovereign islands to lay claims to the interspersed waters between or among the scattered islands, and the waters beyond their outermost islands as well. For example, Cape Verde made its claims in 1977 while Fiji and the Solomon Islands employed their archipelagic state status in 1978.<sup>45</sup>

However, while the aforementioned states took advantage of the provisions provided to them by UNCLOS III they also have some additional legal responsibilities not previously mentioned in this report. Two, worthy of mention would be, traditional fishing rights and, existing submarine cables.

An archipelagic state must recognize traditional fishing rights and other similar activities, but only for countries that are immediately adjacent to it. This means that Japanese claims to Filipino fisheries are not applicable under UNCLOS III because Japan is not immediately adjacent.<sup>46</sup> This is certainly of benefit to the Philippines if they wish to phase out Japanese fishing in their waters.



Lastly, existing submarine cables shall be allowed to be maintained or replaced by the country that placed them within archipelagic waters of another country.<sup>47</sup> This is allowed as long as those cables do not go upon the land domain of the host archipelagic state.

It would seem to me that it is still better for islands to be independent of colonial rule now that UNCLOS III gives them so many rights.

Footnotes

- <sup>1</sup>Jens Evensen, "Certain Legal Aspects Concerning the Delimitation of the Territorial Waters of Archipelagos, United Nations preparatory document No. 15, November, 1957.
- <sup>2</sup>International Law Association Report of the 33rd Conference, 1924, p.266.
- <sup>3</sup>Evensen, op. cit.
- <sup>4</sup>U.S. Department of State, Bureau of Intelligence and Research Islands: Normal and Special Circumstance (Washington, D.C. December 10, 1973) pp. 26-27.
- <sup>5</sup>Robert D. Hodgson and Lewis M. Alexander, Towards an Objective Analysis of Special Circumstances, Occasional Paper No. 13, (University of Rhode Island Law of the Sea Institute, 1972) pp.45-46.
- <sup>6</sup>Ibid., p. 45.
- <sup>7</sup>International Court of Justice Reports for 1951, pp.116-206.
- <sup>8</sup>U.N. document A/CONF 13/L 52, article 3.
- <sup>9</sup>International Court of Justice, op. cit.
- <sup>10</sup>Hodgson and Alexander, p. 23.
- <sup>11</sup>International Boundary Series issued through the United States Department of State.
- <sup>12</sup>Arthur H. Dean "The Geneva Conference on the Law of the Sea: What was Accomplished "American Journal of International Law (1958).
- <sup>13</sup>U.N. Document A/CONF. 13/L.52.
- <sup>14</sup>U.S. Department of State, International Boundary Studies Series A: Limits in the Seas (Washington D.C.: Department of State, 1971) p. 1-8.
- <sup>15</sup>Ibid., p.62
- <sup>16</sup>D.P. O'Connell, "Mid-ocean Archipelagos in International Law," British Yearbook of International Law," 1971. Vol. 40, p.60.

- 17Office of the Geographer, United States, Department of State.
- 18LOS III Art. 46A 1982.
- 19LOS III Art. 46B 1982.
- 20LOS III Art. 47(3) 1982.
- 21LOS III Art. 47(2) 1982.
- 22LOS III Art. 47(4) 1982.
- 23LOS III Art. 47(5) 1982.
- 24LOS III Art. 47(8) 1982.
- 25LOS III Art. 49(4) 1982.
- 26LOS III Art. 53(1) 1982.
- 27LOS III Art. 53(3) 1982.
- 28LOS III Art. 53(6) 1982.
- 29LOS III Art. 53(7+8) 1982.
- 30LOS III Art. 44 + 54 1982.
- 31Lew Alexander "Baseline Delimitations and Maritime Boundaries," The Virginia Journal of International Law. Vol. 23, No. 4, p. 519.
- 32Office of the Geographer, United States, Department of State
- 33World Almanac and Book of Facts 1984, Newspaper Enterprise Assoc. 1983.
- 34Hodgson, Islands: Normal and Special Circumstances Research Study of the U.S. State Department Bureau of Intelligence and Research December 1973, p. 65.
- 35Office of the Geographer United States, Department of State.
- 36Office of the Geographer, United States, Department of State. Map published December 1981.

- <sup>37</sup>"Joint Development Zones" have been employed by Spain and France in the Bay of Biscay and by Japan and South Korea in the Korean Strait.
- <sup>38</sup>LOS III Art. 47(8) 1982.
- <sup>39</sup>Ibid.
- <sup>40</sup>Hodgson and Cooper, "The Technical Delimitation of a Modern Equidistant Boundary in Ocean Development and International Law, Vol. 3, No.4, 1976, pp.361-388.
- <sup>41</sup>Ibid.
- <sup>42</sup>Ibid.
- <sup>43</sup>Office of The Geographer, United States, Department of State.
- <sup>44</sup>Ibid.
- <sup>45</sup>Ibid.
- <sup>46</sup>LOS III Art. 51(1) 1982.
- <sup>47</sup>LOS III Art. 51(2) 1982.

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21. Von Glahn Gerhard. "Law Among Nations" MacMillan Publishing, New York 1981.
22. *World Almanac and Book of Facts*. New York 1984.