

The "Sector Principle": Two Indian Ocean Examples

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Introduction: Papal Bulls and polar claims

The use of the sector principle or using meridians in attempts to demarcate boundaries or claims on land and in the oceans, can be traced back exactly 500 years. In May 1493, Pope Alexander VI issued a Bull in which he granted to Spain,

*"...all islands and mainlands..towards the west and south, by drawing and establishing a line from the Arctic pole..to the Antarctic pole., the said line to be distant one hundred leagues towards the west and south from any of the islands commonly known as the Azores and Cape Verde."*¹

A year later a treaty between Spain and Portugal used a similar meridian, 270 leagues further west, to divide the lands of Spain on the westward side, from those of Portugal to the east.² Later still, in 1529, the same two parties used a line 297½ leagues east of the Molucca Islands to separate their respective claims on the other side of the world.³ (These instruments of course were largely ignored by Protestant rulers, and also by those Catholic rulers not favoured by the Pope!).

It is, however, in the polar regions that the sector principle has been most widely applied, although its general applicability, and the validity of particular claims based upon it, have frequently been contested. Donat Pharand asserts that the "first indirect use of the sector theory" in modern times was in a joint address from the Canadian House of Commons and Senate to the British Parliament, petitioning for all the lands and islands of the Arctic between the 141st meridian of longitude and the straits between Greenland and Ellesmere Island to be transferred to Canada. (There was some doubt as to the extent that an Order in Council of 23 June 1870 transferred to lands in the High Arctic to Canada.⁴).

A small number of other official Canadian maps published between 1897 and 1906 show the boundaries of Canada as being the 141° and 60°W meridians. In 1907 a Canadian Senator attempted

to persuade the Senate to resolve that all lands and islands "lying in the north of the Dominion and extending to the North Pole" should be regarded as Canadian. He was unsuccessful.⁵ Thereafter the doctrine was from time to time resurrected in relation to claims within the Arctic basin (to land, sea or ice) but without universal acceptance. Donat Pharand, in 1988, went so far as to conclude: "The sector theory has no legal validity as a source of title of State jurisdiction in the Arctic."⁶

In 1908 British Letters Patent attempted to consolidate claims within and close to the Antarctic dating back to the eighteenth century utilising the sector principle.⁷ In the same year an overlapping sector claim was made by Argentina. On the other side of the Antarctic continent New Zealand's Ross Dependency, in 1923, was similarly delimited. And at Commonwealth Bay, in what later became the Australian Antarctic Territory (AAT), Sir Douglas Mawson, on 5 January 1931, left a proclamation, claiming,

*"..the full sovereignty of the Territory of King George V Land and its extension under the name of Oates Land situated between Latitude 142 and 160 degrees east of Greenwich and between Latitude 66 degrees south and the South Pole."*⁸

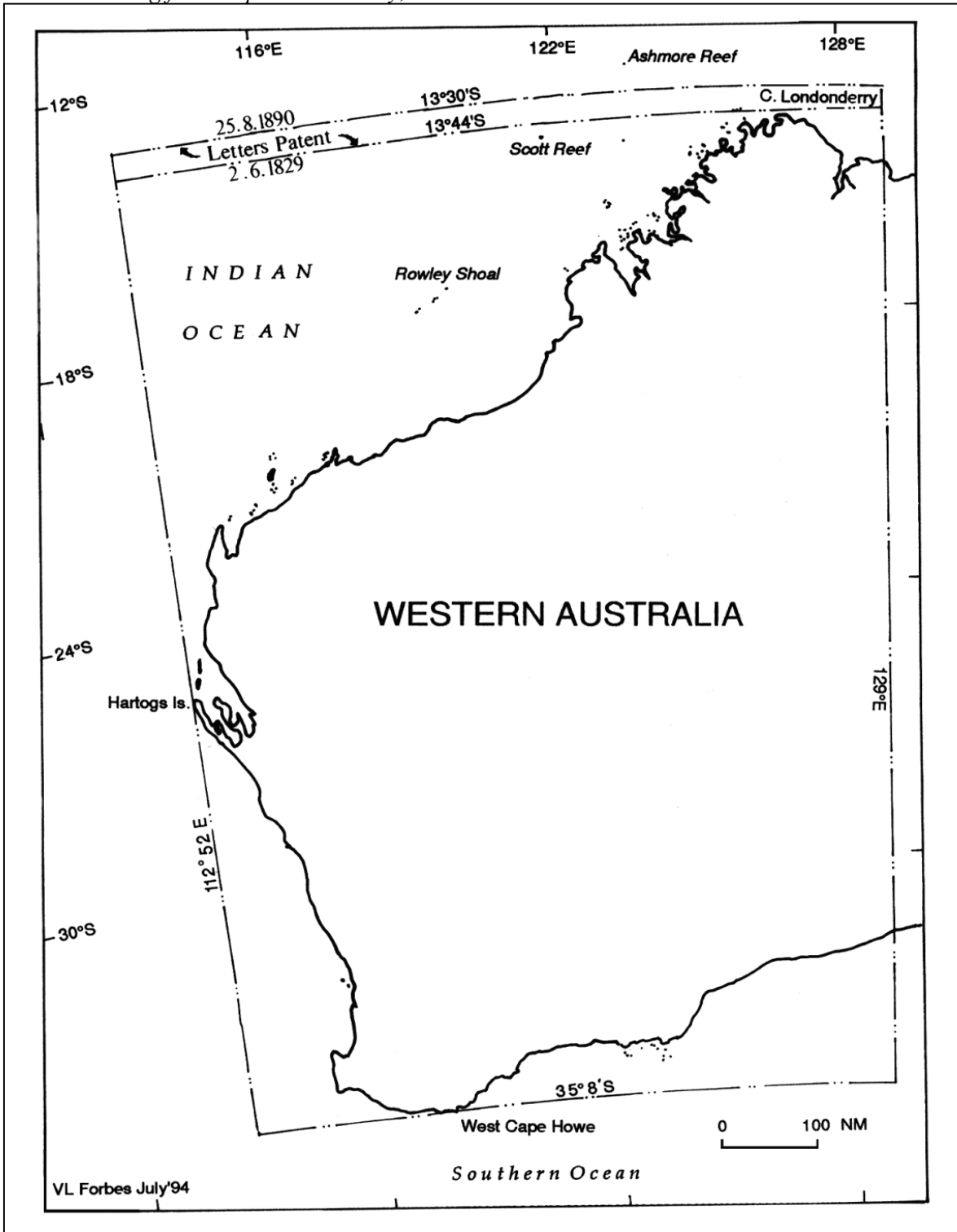
Similar procedures were adopted at several other places on what is now designated the AAT. In 1940 Chile, by a Presidential decree, claimed a sector between 53° and 90°W (overlapping both the British and Argentinian sectors).⁹ Most (but not quite all) the other claims that have been made in Antarctica adopt a similar configuration, with the claim running from a designated parallel of latitude, southwards to the South Pole, along specified meridians. Yet the fact that three of the sectorial claims overlap, and that they, and the others, are not recognised by the USA, Russia, and many other countries, implies that the doctrine, which appears to be based on the notion of contiguity, is not without its difficulties and does not command universal acceptance.¹⁰

The Western Australian case

It is not well-known that in granting Captain James Stirling authority as the first Governor of the infant Swan River Colony in 1829 he was given, in his Commission, dated 2 June 1829 (Letters Patent) authority over an area within:

"..the boundaries of our [i.e. King George IV's] Territory called Western Australia extending from Cape Londonderry, in

*latitude thirteen degrees forty-four minutes south; to West Cape Howe, in latitude thirty-five degrees eight minutes south; and from Hartogs (sic) Island on the west coast in longitude one hundred and twelve degrees fifty-two minutes ..to one hundred and twenty-nine degrees of east longitude reckoning from the meridian of Greenwich."*¹¹



The Commission also noted that the territory would include,

“..all islands adjacent in the Indian and Southern Oceans within the parallels of latitude aforesaid of thirteen degrees forty-four minutes south and thirty-five degrees eight minutes south and within the longitudes aforesaid.”.

Although it is not specifically stated in the document, it might be inferred that the waters surrounding the land within the prescribed geographical co-ordinates also constituted part of the colony of Western Australia. Whether this is the case or not, the document represents one of the earliest uses of the sector principle within the Indian Ocean basin (Figure 1).

These limits of the colony of Western Australia were in force until 25 August 1890, when a fresh grant of Letters Patent extended the boundaries to include the area,

“..from the parallel of thirteen degrees thirty minutes south latitude, to West Cape Howe in the parallel of thirty-five degrees eight minutes south latitude..including all islands adjacent in the Indian and Southern Oceans within the latitudes aforesaid.”..

As regards the land area of the colony, the new limits had the effect of including a small number of tiny reefs and shoals off the northern tip of Western Australia, such as the Holothuria Reefs (Lat 13° 35'S, Long 126° 1'E). The amendments were published in the *Western Australian Government Gazette*, No. 47 of 23 October 1890.

Although there is no official record of the abandonment of the sectorial claim, it can be inferred that the new State of Western Australia lost its claim to sovereignty over the more remote ‘adjacent waters’ (if it ever existed) when it opted to be incorporated into the Australian Federation which was brought into being on 1 January 1901.

The Maldives “constitutional rectangle”

Further west, and over a century later, the sector principle in the guise of a “*constitutional rectangle*”, was again employed as a means of claiming jurisdiction over an extended area of maritime space.

The independent state of the Republic of the Maldives comprises around 20 atoll groups, located southwest of the Indian subcontinent. The archipelago extends over eight degrees of latitude (1°S to 7°N) and a little less than two degrees of longitude (around 72° and 74°E).

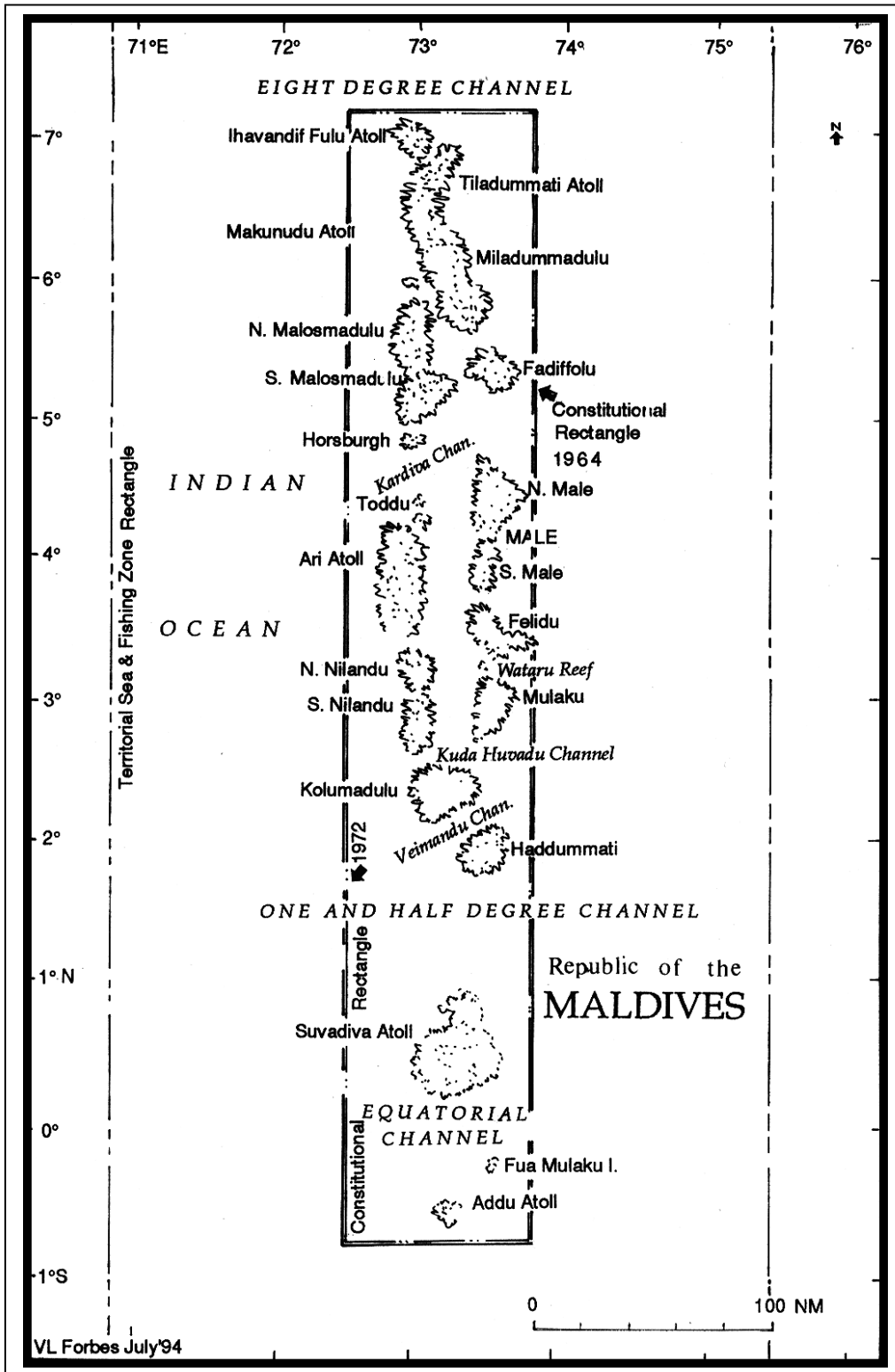
In its 1964 Constitution, the Government of the Republic of the Maldives defined its territory as including the islands and the air and sea surrounding and between the islands, encompassing within a rectangle formed by parallels of latitude and meridians of longitude. The limiting co-ordinates were nominated as Latitude 0° 45' 30"S and 7° 10' 15"N; Longitude 72° 29' 25" and 73° 49' 00"E.¹²

In 1972 the co-ordinates were amended in a revised Constitution. The rectangle was very slightly reduced in size, perhaps to bring its boundaries closer to some reefs, following more accurate surveys. The parallels of latitude were defined as 0° 45' 15"S and 7° 9' 30" N and the meridians as 72° 30' 30" and 73° 48' E. It was again stressed that the seas and air surrounding and between the islands were part of the territory.

Prescott observes that there is “*no evident historic justification*”¹³ for nominating these values. Indeed, at no point does the framework of the constitutional rectangle touch any of the land territory of the Maldivian Islands themselves.¹⁴ If such were the case, there might have been a justification for employing the “*rectangle*” as a modified form of territorial sea baseline. In fact the northern limiting line of the amendment passes within one nautical mile of the reef of the northernmost atoll. The eastern and western boundaries are more than 35 nautical miles of the nearest point on land.

Nevertheless, it appears that the Maldivian Government considers the constitutional rectangle as the baseline from which they have measured their territorial sea and fishing zone and exclusive economic zone (Figure 2 illustrates the two positions of the constitutional rectangle and the territorial sea and fishing zone; the exclusive economic zone is not shown).

It may be noted that the northeastern and northern maritime boundaries of the Maldives have been determined by an agreement with India, dated 28 December 1976 (entering into force on 8 June 1978), which fixed a series of co-ordinates approximately equidistant between the two countries (beyond the limits of Figure 2). Much



of the southern boundary, however, remains in dispute, as there is a potential overlap of claims with the seas surrounding the Chagos Archipelago, itself claimed by Mauritius, although still administered by Britain as part of the British Indian Ocean Territory. It seems unlikely that the southern boundary can be finalised until settlement is reached in this dispute.

Conclusion

This note has stressed that few sectorial claims have persisted, and remained unchallenged for long periods. The fact that a procedure for delimiting maritime boundaries based on a constitutional rectangle or sector is not acceptable in customary international law, and would seem to

be incompatible with the provisions of UNCLOS, does not seem to have discouraged the Maldives Government. It is thus unsurprising that the Maldives assertion has received little international approval. The situation will be watched with interest.

Notes and References

- 1 *Inter Caetera*, 4 May 1493. An English translation is given in W.M. Bush (1982) *Antarctica and International Law*, Vol. 1, at 532.
- 2 *Treaty of Tordesillas*, 7 June 1494, *Ibid*, at 533.
- 3 *Treaty of Saragossa*, 22 April 1529. Reproduced in *European Treaties Bearing on the History of the United States*, Vol. 1, at 149 (1917).
- 4 Pharand, D. (1988) *Canada's Arctic waters in international law*, Cambridge University Press, at 4.
- 5 *Ibid* at 8-11.
- 6 *Ibid* at 249.
- 7 21 July 1908. The region claimed was that south of 50°S and between 20° and 50°W. This area includes part of the southern tip of South America, although the text of the document excludes this. Nevertheless, to rectify this rather careless piece of drafting, the Letters Patent were reissued on 28 March 1917.
- 8 A photograph of the Commonwealth Bay proclamation is held by the Australian National Library, Canberra, ACT. It is reproduced in M.S. Betts (1981) *Australians in Antarctica*, AGPS, at 15.
- 9 *Polar Record*, 7, 146 (1956).
- 10 Despite the less than entirely satisfactory history of the sector principle, the idea seems to have been resurrected in a recent (but not unanimous) decision of the arbitral tribunal dealing with the case of the maritime boundary between Canada and the tiny French Islands of St Pierre and Miquelon, off the coast of Newfoundland. The arbitrators stated that France was "*fully entitled to a frontal seaward projection towards the south until it reaches the outer limit of 200nm*". This has the effect of giving the islands a more-or-less sectorial maritime boundary, their waters consisting of a narrow strip of ocean, the limits of which coincide with meridians of longitude. (Case Concerning the Delimitation of the Maritime Areas between Canada and France, Decision of 10 June 1992, para 73. See Highet, K. (1993) *The Gulf of Fonseca and St Pierre and Miquelon Disputes, Boundary and Security Bulletin*, 1(1), 87-91.
- 11 Letters Patent, dated 2 June 1829. The possibility that this represents one of the earliest maritime boundaries in the Indian Ocean region is discussed in Forbes, V.L. (1992) *The Maritime Boundaries of*

the Indian Ocean Region, Unpublished MA thesis, Curtin University of Technology, at 167.

- 12 *The Geographer* (1978) .Maritime Boundary: India - Maldives and Maldives' claimed "Economic Zone", *Limits in the Seas*, 78, Department of State, Washington, at 8.
- 13 Prescott, J.R.V. (1985) *The Maritime Political Boundaries of the World*, Methuen, at 16.
- 14 *The Geographer*, *op cit*, at 9.

At the time of writing both Viv Forbes and Patrick Armstrong were at the Department of Geography of the University of Western Australia. Viv has subsequently removed to the Reid Library of that University.