

Indonesia's Maritime Claims and Outstanding Delimitation Problems

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Introduction

Since 1960 Indonesian authorities have been industrious in seeking to define the country's marine domain. This industry has been successful in many respects but some delimitations are incomplete. In this essay the successes are noted and the outstanding delimitations are identified.

Baselines

Indonesia's baseline from which maritime claims are measured was defined in Act No. 4 on 18 February 1960. This archipelagic baseline was 22 years ahead of its time since the right to draw archipelagic baselines was not available until the United Nations Convention on the Law of the Sea (UNCLOS) was signed by 119 delegations in December 1982 (Figure 1).

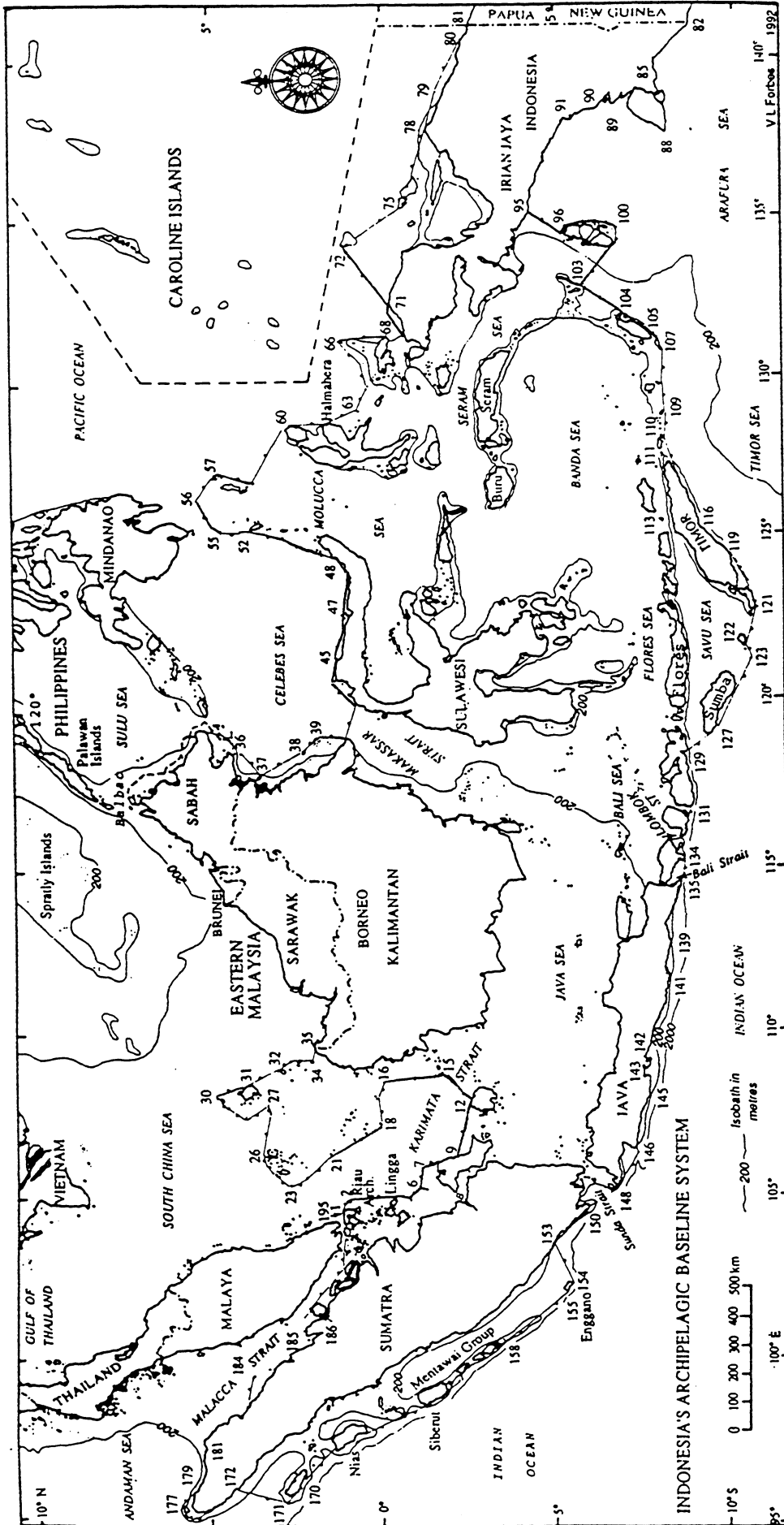
When Indonesia's archipelagic baselines are tested against the mathematical rules governing such baselines the conclusion is inescapable that Indonesia's baselines were kept in mind as the rules were designed. The 1960 Act defines the baselines by 200 points in four segments. The longest segment stretches from the south coast of central Timor to the northernmost tip of Sumatera, then via the Malacca Strait and the Laut Natuna to Tandjung Datu, where the land boundary between Kalimantan Barat and Sarawak reaches the sea. The next segment stretches from Tandjung Saima, where the land boundary between Kalimantan Timur and Sabah on Pulau Sebatik meets the sea, via the south and east shores of the Celebes Sea and the western edge of the Pacific Ocean to Oinake on the north shore of New Guinea. The point at Oinake coincides with the terminus of the land boundary between Indonesia and Papua New Guinea. The third segment starts at the southern terminus of the same boundary and continues along the northern edge of the Arafura Sea to Pulau Wetar lying northwest of Dili. The final short segment measures 25 nautical miles (nm) and joins two points in the

sea lying about 12nm from the coastal termini of the former Portuguese territory of Pante Macassar.

A review of Indonesia's archipelagic baselines has been underway for some time but no official amendments have been made. It appears that amendments when they are published might be of two kinds. First some points might have been resurveyed and more accurate coordinates obtained. Second some sections of the 1960 configuration might have been altered. The evidence for the second kind rests on a map published in 1983 at a scale of 1:5 million. The map is entitled *Peta Wilayah Kedaulatan Dan Yurisdiksi Indonesia* (Chart of the areas under the jurisdiction of Indonesia) apparently authorised by the Department Pertahanan Keamanan Staf Territorial – Pankorwilnas (Committee on Coordination of National Defense and Security of the Territorial Section of the Defense and Security Department).¹ This map shows various maritime zones and the territorial sea is shown by a thick black line representing a zone 12nm wide. This means that the inner edge of the line represents the approximate location of the archipelagic baseline. Even at this scale it is possible to identify the following apparent changes to the 1960 baselines. In Malacca Strait the segment joining Tandjung Temiang and Pulau Berhala, Points 183 and 184 respectively, appears to have been replaced by two lines, closer to the coast joining Tandjung Temiang to Tandjung Sibungabunga and then that cape to Pulau Berhala. If these new lines were adopted they would correspond more closely to the general configuration of the archipelago.

In the vicinity of Kepulauan Natuna the 1983 map shows a new arrangement. According to the 1960 description the baselines proceeded from Pulau Timau (North Haycock Island) northeast to Pulau Salor, which lies 5nm west of Pulau Natuna Besar, and then northwest to Pulau Semiun. According to the 1983 map the baseline proceeds almost due north to Pulau Tokong Boro, which lies 30nm west of Pulau Natuna Besar, and then on to Pulau Semiun. Pulau Tokong Boro consists of four rocks

Figure 1: Indonesia's Baselines



(Source: V.L.Forbes *The Maritime Boundaries of the Indian Ocean Region*; Singapore University Press, 1995)

standing above high water, close together on a steep-to reef which has a diameter of about 900 metres. If this arrangement was adopted Indonesia's archipelagic waters would increase by about 1,130nm². It is surprising that the original baselines did not include Pulau Tokong Boro. A map produced by *The Geographer* in 1970 to illustrate the Indonesian-Malaysian seabed boundary of 1969 shows the variation that appears on the 1983 map.²

The most obvious change closes the baseline system along southern Timor. On the 1983 map the 1960 baseline appears to have been preserved as far as the village called Luhulele on Pulau Leti which is Point 110 in the 1960 Act. The baseline on the 1983 map then trends southwest to join the south coast of Timor and link up with the 1960 baseline that recommenced at the coastal terminus of the boundary between Indonesia and Portuguese Timor as it existed in 1960. The 1983 map is at too small a scale to identify the points that might have been joined by the connecting segments on the coast of Timor, but a clue to their identity is provided by lists of Indonesian basepoints signed by Indonesian and Australian officials. This list and a corresponding Australian list was signed by Indonesia's Chief Hydrographer and Australia's Assistant Director of National Mapping on 15 May 1981. These basepoints were identified and agreed during technical work in preparation for the negotiations on the Provisional Fisheries and Surveillance Line which was delimited in October 1981. The list of Indonesian basepoints includes four points defined along the section of coast that was formerly part of Portuguese Timor. Proceeding westwards they are Tandjung Suloro (Ponta De Lore on Portuguese maps), Tandjung Oka Ona (Ponta Ima), Tandjung Viqueque (Ponta Beaco) and Tandjung Motalaclo (Ponta Metibot). Since the next basepoint on the Indonesian list is Tandjung We Toh, which is numbered 117 in the 1960 description, it is possible that the new arrangement will abandon Point 116 located at the terminus of the former international boundary on a slightly concave coast.

Indonesia claimed territorial seas 12nm wide through Regulation No.4 on the same date that the archipelagic baselines were enacted. The claim to an Exclusive Economic Zone (EEZ) 200nm wide was first made in a Declaration on 21 March 1980 and re-affirmed in Act No.5 of 18 October 1983.

Only at the eastern end of Malacca Strait and in Singapore Strait is Indonesia prevented from

claiming the full width of 12nm territorial seas because of the nearness of Malaysia and Singapore respectively. In contrast Indonesia's claim to the full width of an EEZ is much more restricted. Unfettered claims to an EEZ 200nm wide can be made in three areas. The first extends from Pulau Mangudu off the large island Pulau Sumba westwards to a point on the south coast of Java at 110°25'E. The eastern and western limits of the outer limit of Indonesia's 200nm EEZ off this coast are also 200nm from Australia's Scott Reef and Christmas Island respectively.

The second sector stretches from Tandjung Guhakolak on the southwest coast of Java and Tandjung Rusa on the northwest coast of Sumatera. This sector is bounded by Points 148 and 175 respectively, from which claims begin to overlap with Australia's Christmas Island and India's Great Nicobar Island.

The third sector is found along in the Pacific Ocean from Pulau Miangas, where an overlap with The Philippines occurs and Oinake at the northern terminus of the land boundary between Indonesia and Papua New Guinea. This sector is bounded by Points 56 and 81.

Agreed international maritime boundaries

Indonesian claims to an EEZ 200nm wide overlap with similar claims of seven neighbours. Proceeding clockwise those neighbours are India, Thailand, Malaysia, Vietnam, The Philippines, Papua New Guinea and Australia. While no boundaries have been settled with Vietnam or The Philippines the boundary with Papua New Guinea is apparently complete. The Indonesian-Papua New Guinea boundaries north and south of New Guinea were constructed by Australia and Indonesia prior to 1975 when Papua New Guinea became independent and by direct negotiations between the two countries after that date. Even before independence the indigenous authorities in Papua New Guinea were informed of the Australian-Indonesian negotiations and endorsed the outcomes. The Indonesia-Papua New Guinea agreement of 13 December 1980 entered into force on 10 July 1982 and put the seal on previous boundary constructions.³ This agreement extended the equidistant seabed boundary north of New Guinea to a point 200nm from the baselines and noted that the seabed boundaries north and south of New

Guinea would also separate EEZs or fishing zones claimed by both states.

Indonesia's seabed boundaries with India were settled in three agreements in 1974, 1977 and 1979.⁴ The first two created a boundary that extended from close to the Indonesia-India-Thailand tri-junction to a point in the Indian Ocean 183nm from the nearest points on Sumatera and Great Nicobar Island. The third agreement also involved Thailand and defined the trijunction and the short linking segment.

Assuming it was not an oversight it is not clear why this boundary stopped short of 200nm. Indonesia's boundary with India would be completed by extending the boundary a further 17nm and by deciding that the seabed boundary would also divide the EEZs claimed by the countries. This should be a simple matter since the seabed boundary is equidistant and there seems to be no reason why division of the water column should depart from the division of the seabed.

Indonesia's seabed boundary with Thailand is complete. It was settled in two agreements between them in 1971 and 1975, and in two trijunction agreements in 1971 and 1978 involving Malaysia and India respectively.⁵ When the boundary is compared to a line of equidistance it is evident that in its western sector the boundary favours Thailand and lies up to 27nm south of the line of equidistance. There is no explanation for this divergence in the treaty and it can only be guessed that the much gentler gradient of the seabed on the Thai side of Malacca Strait persuaded Indonesia to be generous. It is possible that Indonesia will not agree to the seabed boundary being converted to a maritime boundary separating the seabed and the overlying waters. The 1983 map of Indonesian jurisdiction shows claims to the water column on the Thai side of the boundary, in that sector of the boundary which runs south of the line of equidistance.

Indonesia and Malaysia have four sections of maritime boundary. The first proceeds from the tri-junction with Thailand to the tri-junction with Singapore off the western entrance to Johor Strait. The second stretches from the tri-junction between the same three countries at the eastern end of Johor Strait to the tri-junction where the claims of Indonesia, Malaysia and Vietnam meet in the southwest of the South China Sea. The third section extends northwards into the South China Sea from

Tanjung Datu which marks the western terminus of the land boundary that separates Sarawak from Kalimantan Barat. The final section is anchored on the eastern terminus of their land boundary on Borneo and reaches into the Celebes Sea. The first three sections have delimited boundaries, but none is complete.

The first seabed boundary through Malacca Strait was agreed in November 1969 and it was joined to the Thai tri-junction in July 1973; a territorial sea boundary was agreed in the eastern half of Malacca Strait in October 1971.⁶ The first section of seabed boundary in Malacca Strait was equidistant between Indonesia's archipelagic baselines and construction lines that Malaysia seems to have drawn with Indonesia's approval. The short northwestern extension to the Thai tri-junction lies just on the Indonesian side of the equidistant line.

The 1983 map of Indonesian jurisdiction shows a claim beyond the seabed boundary in the vicinity of Pulau Perak and Pulau Jarak. Although the scale of the map is too small to allow accurate calculations of the area of water claimed above Malaysia's continental margin it does suggest an attitude that Indonesia might adopt. For the claim shown on the map to be justified Indonesia would have to argue that the seabed boundary is inappropriate in this area to divide the water column and that Malaysian claims from Pulau Perak and Pulau Jarak should be discounted. It would be surprising if Malaysia did not resist such proposals on three grounds.

First it can be argued that if the seabed boundary was deemed to be a fair allocation of that region there are no factors that suggest the same boundary should not define the division of the water column. Second, since it is plain from the 1969 seabed agreement that Pulau Perak and Pulau Jarak were given full effect in selecting the boundary they must also be given full effect in drawing the boundary to divide the seas. Third, since Indonesia allowed Malaysia to use construction lines in respect of the seabed boundary it would be appropriate to allow such lines to be used again. If Malaysia is not allowed to use construction lines, which were designed to give parity with Indonesia's archipelagic baselines, then the question arises whether Indonesia's baselines should be given full effect.

If baselines were ignored and a strict line of equidistance drawn in this sector Indonesia would gain about 1100nm² of sea above Malaysia's seabed

and Malaysia would gain about 100nm² of sea above Indonesia's seabed. The particular areas of water would have to be particularly valuable in resources to be worth the administrative problems that would be created by having two separate boundaries dividing the sea and seabed.

The seabed and territorial sea boundaries terminate at the same point which is about 12nm west of the equidistant tri-junction with Singapore at the western entrance to Johor Strait. The failure to define this tri-junction has resulted in some administrative problems for Malaysian authorities concerning masters dumping waste from vessels without permission.

It is convenient, at this point in the discussion of boundaries between Indonesia and Malaysia, to insert the territorial sea boundary which Indonesia agreed with Singapore in 1973.⁷ This boundary extends for about 25nm, starting about 6nm east of the Malaysian tri-junction at the western entrance to Johor Strait and ending about 2nm west of the Malaysian tri-junction at the eastern entrance to Johor Strait.

Resuming consideration of the seabed boundary created by Indonesia and Malaysia in 1969, the second segment stretches from the eastern entrance of the Strait of Singapore, about 24nm east of the tri-junction with Singapore, for 310nm to the tri-junction with Vietnam. This boundary is mainly an equidistant line and separates claims from Peninsular Malaysia and Indonesia's Kepulauan Anambas and Kepulauan Natuna. It will presumably be raised to the status of a boundary that separates all maritime claims from the two countries.

The final segment of seabed boundary created by the 1969 agreement commences at Tandjung Datu and proceeds 264nm to a point on the 100 fathom (183 metres) isobath. Apart from a short section near the coast this boundary trends west of the line of equidistance delivering to Malaysia an area of about 6,250nm² which would have belonged to Indonesia if the boundary had followed the line of equidistance. The 1983 map of Indonesia's jurisdiction shows the water column in this area falling within Indonesia's claim. The terminus of this boundary segment lies closer to Spratly Island and Amboyna Cay than to any part of Malaysia so if Malaysia is unable to establish its claim to either of those islands Indonesia eventually might have to negotiate with another country.

Australia and Indonesia have negotiated an innovative set of maritime boundaries in the Arafura and Timor Seas since 1971. The first package involved the 1971 and 1972 seabed boundaries which were respectively a line of equidistance and a line based on the principle of Australia's natural prolongation.⁸ It was this second line which created the Timor Gap because of Portugal's unwillingness to negotiate with either Indonesia or Australia. In 1981 the two countries drew a Provisional Fisheries Surveillance and Enforcement Line which trended south of those sections of the seabed boundary that were not equidistant.⁹ Finally in 1989 Australia and Indonesia created a coffin-shaped Zone of Cooperation to plug the Timor Gap.¹⁰ Although the treaties that set up these last two boundary arrangements note that the search for a definitive boundary will continue, it seems very unlikely that such pursuit will be a high priority for either country.

The remaining problem for Australia and Indonesia in the western Timor sea is to extend the seabed boundary and the Provisional Fisheries Line out to a point 200nm from their baselines in the northeast Indian Ocean. The two countries have different views about how this should be done. Australia prefers that the seabed line should be continued as a line of equidistance westwards to a point 200nm from the baselines of each. This would involve the abolition of the western sector of the Provisional Fisheries Line. The Indonesian authorities prefer an arrangement which sees the terminus of the seabed line joined to the Provisional Fisheries Line 20nm distant, and the Fisheries Line continued to a point 200nm from the baselines of each country, assuming certain tiny Australian outposts are totally discounted.¹¹

Areas where no delimitation has occurred

There are four segments of maritime boundaries where Indonesia appears to have made little progress in negotiating maritime boundaries with neighbours.

First there is the remaining problem of maritime delimitation between Indonesia and Malaysia in the Celebes Sea. The eastern coastal section of the Anglo-Dutch land boundary inherited by these two countries follows parallel 4°10'N across Pulau Sebatik. The problem in this area is caused by both countries claiming Pulau Sipadan and Pulau

Ligitan. Pulau Ligitan is one of three islands located on Ligitan Reef which extends 17nm from east to west and about 10nm north-south. In addition to the islands the reef has extensive patches that dry to 0.6 metres along its eastern edge. The island is covered with bushes and low trees and bears a lighthouse. Sipadan is a solitary island lying on the northwest edge of a steep-to reef. It also possesses a lighthouse and a renowned diving resort.

Malaysia appears to have a stronger claim to these islands than Indonesia. Malaysian authorities occupy both islands and base that occupation on direct succession to British occupation which can be traced back at least to the beginning of this century. Various acts by British authorities include giving licenses for fishing and pearling and establishing a nature reserve on Ligitan in 1933. In contrast the Indonesian claim appears to have been raised only in 1969, and it is surely significant that neither of these islands was used as basepoints when Indonesian archipelagic baselines were enacted in 1960.

Indonesian claims seem to rest mainly on an interpretation that the Anglo-Dutch boundary agreement of 20 June 1891 allocated the islands to the Netherlands. There does not appear to be any basis for this argument in the English translation of the treaty.¹² Article I of the treaty makes it clear that the boundary that begins on the east coast of Borneo at 4°10'N is separating British and Dutch territories on that island. Article IV consists of a single sentence. First it observes that parallel 4°10'N will be carried eastwards from the east coast of Borneo "...across the island of Sebittik". The second part of the sentence then notes that the part of Sebatik north of the parallel belongs to the British North Borneo Company and the remainder of Sebatik to the south belongs to the Netherlands. The phrase 'across the Island of Sebittik' must mean from the west side of the island to the east side; that is the only interpretation which makes sense of the rest of the sentence which notes the partition of the island by the boundary. If it had been intended that the line would continue across Sebatik and then continue in to the sea east of the island to allocate further territories it would have said so. In 1891 there were colonial precedents, some involving Britain, for allocating islands by defining straight lines on charts.

But the failure to use Pulau Sipadan and Pulau Ligitan as basepoints in Indonesia's system of

archipelagic baselines in 1960 suggests very strongly that the present claim is of recent origin. These features are in a different category to Pulau Tokong Boro in the Kepulauan Natuna which was not included in the 1960 definition of baselines. Pulau Sipadan and Pulau Ligitan are unquestionably islands whereas Pulau Tokong Boro is a collection of four rocks with no pretence of being an island.

It seems that negotiations to settle the maritime boundary through the northern Celebes Sea has not started and will have to await settlement of sovereignty over the islands. Malaysia declared its continental shelf boundary in this region in 1979. In respect of Indonesian rights the Malaysian line follows the general configuration of the line of equidistance which might separate their claims, but in two sectors it has strayed on to the Indonesian side of the line.

Preliminary negotiations have started about constructing a maritime boundary between Australia's Christmas Island and Java. This does not seem to be an urgent matter but Indonesia is known to believe that, north of the Island, Australia should be restricted to a zone say 24nm wide. Australian authorities are hoping for a much wider zone and have proclaimed an EEZ limit along the line of equidistance.

Indonesia and Vietnam have conducted negotiations without result over their common boundary in the South China Sea. Indonesia attaches importance to the conclusion of these discussions because of concerns about possible Chinese intervention. China might eventually begin to display an interest in the border-sea based on the broken lines shown on Chinese maps to indicate its area of interest in this region.

Indonesia and The Philippines will eventually draw a common maritime boundary through the northern part of the Celebes Sea and the corridor to the Pacific Ocean that lies between Indonesia's Pulau Miangas and The Philippines' Sarangani Islands. Pulau Miangas provides Point 56 in Indonesia's archipelagic baseline system. However the island also lies within the treaty limits of the Philippines as set out in the American-Spanish Treaty of 1898. The Philippines claims all waters between its baselines and the treaty limits as territorial waters. The Philippines does not dispute Indonesia's sovereignty over Miangas which rests firmly on the judgement of Max Huber sitting as a Court of

Arbitration in 1928 when he confirmed the Netherlands' sovereignty against counter claims by the United States of America. Eventually The Philippines will have to abandon the unwise and indefensible claim to unusual territorial seas and then it will be possible for a boundary to be drawn with Indonesia. Until then it is apparent that the matter does not impair relations between the two countries.

Notes

- ¹ The translations of these titles were obtained from Indonesian officials and K. Adelaar of the University of Melbourne.
- ² The Geographer, 1970, Continental shelf boundary: Indonesia-Malaysia, Limits in the Seas, No.1, Department of State: Washington DC.
- ³ Charney, J. I. and Alexander, L. M. (eds) (1993) *International maritime boundaries*, Martinus Nijhoff, London, Vol. I, 1039-43.
- ⁴ Charney and Alexander (1993) Vol. II, 1363-1388.
- ⁵ Charney and Alexander (1993) Vol. II, 1379-88 and 1443-72.
- ⁶ Charney and Alexander (1993), Vol. I, 1019-1038 and Vol. II, 1443-1454.
- ⁷ Charney and Alexander (1993) Vol. I, 1049-56.
- ⁸ Charney and Alexander (1993) Vol. II, 1195-1218.
- ⁹ Charney and Alexander (1993) Vol. II, 1229-44.
- ¹⁰ Charney and Alexander (1993) Vol. II, 1246-1328.
- ¹¹ Prescott, J.R.V. (1995) The problems of completing maritime boundary delimitation between Australia and Indonesia. *International Journal of Marine and Coastal Law*, 10 (3), 389-96.
- ¹² Parry, C. (ed.) (1978) *The consolidated treaty series*, Oceana: New York, Vol. 175, 236-40.

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