Australia and Maritime Delimitation vis-à-vis Neighbouring States

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Australia’s Maritime Boundaries

1. Papua New Guinea
2. Solomon Islands
3. France (Pacific)
4. New Zealand
5. France (Southern Ocean)
6. Indonesia
7. Timor-Leste
8. Antarctica*
Characteristics of Australia’s Maritime Boundaries

- Concluded by negotiation
- Pre-date and post-date UNCLOS
- Impact created by new States
  - PNG + Timor Leste
- Colonial powers
  - France + Indonesia
- Three different oceans
- Equidistance
Australia’s Maritime Jurisdiction
Australian Article 36 (2) ICJ Declaration

- Withdraws previous declaration and provides new declaration
- Acceptance of ICJ jurisdiction
  - Except disputes concerning delimitation of maritime zones including TS, EEZ, CS
  - Whaling case (Australia v. Japan; NZ intervening) [2014] ICJ Reports [30-41]
- Similar variation of ITLOS jurisdiction
Papua New Guinea

- 1978 Torres Strait Treaty
  - [1985] ATS 4; EIF 15 February 1985
- Pre-UNCLOS Delimitation
- Colonial power and former colony
  - PNG independence in 1975
- Status of 19th Century maps and charts
  - Raised issues as to status of certain islands
Papua New Guinea

Torres Strait Treaty

- Equidistance Lines
  - Seabed Line + Fisheries Line
- Diverges in centre of Strait
- Protected Zone
  - Cultural Rights + Migration + Customs
- 3nm Territorial Sea for enclaved Australian islands north of seabed line
Torres Strait Protected Zone
Australian Islands and 3nm Territorial Sea
Proximity of Australian islands to PNG coast
Australian Maritime Jurisdiction in Torres Strait
Solomon Islands

- 1988 Coral Sea Treaty
  - [1989] ATS 12; EIF 14 April 1989
- Has only 3 points; 150nm long
- Equidistance relying upon outermost islands and adjacent reefs as basepoints
- Connects Aust/PNG and Aust/France boundaries
  - Resulting in tri-points where boundary interests of 3 states coincide
Maritime Boundaries with PNG and Solomon Islands
France (Pacific)

- 1982 Coral Sea Treaty
  - [1983] ATS 3; EIF 9 January 983
- Boundary between Australia and French Overseas Territory of New Caledonia
- Total of 22 turning points: 1200nm
  - Modified Equidistance Line points
- Reliance upon certain islands
  - Are they Article 121 (3) islands?
Middleton Reef
Coral Sea Issues

- Legal Status of Middleton Reef
  - Island or Rock?
  - Article 121 UNCLOS
  - French concessions
Australia’s Maritime Jurisdiction in the Coral Sea
New Zealand [2006] ATS 4

- 2004 Treaty establishing certain EEZ Boundaries and Continental Shelf Boundaries
  - [2006] ATS 4; EIF 25 January 2006
- First Australia/NZ maritime boundary
  - Previous ‘informal boundary’ EEZ boundary
  - Pending CLCS submissions were incentive to finalise
New Zealand

- Single boundary through Tasman Sea
- Boundary predominantly framed around external islands
  - Macquarie Is, Norfolk Is, Lord Howe Is; Three Kings Island; Auckland and Campbell Islands
- Anticipates Article 76 outer continental shelf submissions to CLCS
- Can the outer continental shelf be delimited?
Coral and Tasman Sea Boundaries
Tasman Sea
Macquarie Island
France (Southern Ocean)

- 1982 Agreement on Maritime Boundary Delimitation
  - [1983] ATS 3; 10 January 1983
- Kergeulen Islands (France)/Heard and McDonald Islands (Australia)
- Median line
- Reliance upon all islands, islets, rocky outcrops
  - See Judge Vukas in *Volga case* (Russia v. Australia) (2002) ITLOS
Herd Island
Heard and McDonald Islands
Indonesia

- Multiple boundaries with Australia
- Extends from Arafura and Timor Sea in east to Indian Ocean in west
- Segments negotiated pre and post UNCLOS
- 1980s negotiations over East Timor
- Current uncertainty re Indian Ocean
Indonesia: Arafura Sea

1971 Aust/Indonesia Seabed Agreement 974 UNTS 307

- First Australian continental shelf delimitation
- Point B1 (offshore New Guinea) to Point A12 in Arafura Sea (adjusted to A3 >1975)
- Provision for possible shared deposits
- Equidistance line
Indonesia: Timor Sea

1972 Aust/Indonesia Seabed Agreement 974 UNTS 319

- Boundary either side of E Timor
- Impact of Timor Trough
- Difference of view re natural CS
- Runs from A12 – A23 (Timor Gap)
- Indonesia abandons median line
- Support for finalisation of boundary to gain access to potential seabed resources
Indonesia: Fisheries Boundary

1974 MOU on Traditional Fishing Activities

- Recognition of customary rights of Indonesian fishermen to take fish and sedentary species
- Access to Australian waters around Ashmore, Cartier Is and Scott, Seringapatam Reefs and Browse Islet
- Limited right to land on East and Middle Is of Ashmore Islands
- Traditional fishermen – those taking fish using traditional fishing methods over decades of time
MOU Box in Indian Ocean
Indonesia: Fisheries Boundary

- Fisheries Negotiations
  - Previous seabed delimitations excluded fisheries
  - 1981 Provisional Fisheries Agreement
    - Runs west of A12 further south than seabed
    - Bubble around Ashmore Island which is given diminished effect
    - Extends into Indian Ocean to Point 44
    - Gives to Indonesia 70% of area
Indonesia: Indian Ocean

1997 Perth Treaty

- Seeks to finalise seabed delimitation west of 1972 Agreement
- Seeks to finalise EEZ arrangements under 1981 Provisional Agreement
- Gives reduced effect to Christmas Is and other outer Australian islands
- Recognises area of overlapping CS and EEZ jurisdiction
  - Indonesian EEZ jurisdiction over Aust CS
  - EEZ sovereign rights and jurisdiction limited to water column
  - CS sovereign rights and jurisdiction limited to seabed
  - MSR by one party to be notified to the other
  - Each Party liable for marine pollution from activities under their jurisdiction
  - Straddling Seabed deposits will be subject to negotiation
Cocos and Christmas Islands
Timor Sea/Indian Ocean
Indonesia: East Timor

- 1975 Indonesian annexation of East Timor
- 1979 Negotiations begin on Timor Sea
- 1989 Timor Gap Treaty
- 1991 Portugal challenges Timor Sea Treaty in ICJ
- 1999
  - East Timorese UN administered vote
  - INTERFET mission to East Timor
  - Indonesian withdrawal
  - UNTAET administration
Timor Gap Joint Development
Timor Sea Boundaries: 2002

Legend:
- Agreed extension of the seabed boundary in the area between continental Australia and the Indonesian archipelago (Article 1)
- Agreed exclusive economic zone (water column) boundary in the area between continental Australia and the Indonesian archipelago (Article 2)
- Area subject to 1974 MOU regarding the operations of Indonesian traditional fishermen within the Australian fishing zone
- Zone of Co-operation (Timor Gap Treaty)
- Area of overlap between Australian seabed jurisdiction and Indonesian exclusive economic zone (water column) jurisdiction
- Previously agreed seabed boundaries (1971 and 1972)
- Indonesian exclusive economic zone boundary
- Australian exclusive economic zone boundary
- Agreed seabed and water column boundary between Christmas Island and Java (Article 3)
East Timor (UN control)

- 1999 UNTAET administration
- 2000 Exchange of Notes
- 2000 Negotiations on new boundary arrangements in Timor Sea
- 2002 conclusion of Timor Sea Treaty (negotiated by UN in conjunction with ET officials)
Timor Sea Joint Petroleum Development Area
Timor-Leste

- **2002 Timor Sea Treaty**
  - [2003] ATS 13; EIF 2 April 2003
  - Significant variance on Timor Gap Treaty
  - 90/10 split in favour of East Timor
  - Unitisation of adjacent deposits unresolved

- **2003 Unitisation Agreement**
  - Did not enter into force

- **2004 Unitisation Agreement** renegotiated
Timor-Leste

2006 Certain Maritime Arrangements in the Timor Sea Treaty (CMATS) [2007] ATS 12

- Sovereignty neutral + Revenue adjustment
- Petroleum resource jurisdiction (A 7)
- Water column jurisdiction (A 8)
- Maritime Commission (A 9)
- 50 y operation; or 5 y >exploitation ceases

2003 Unitisation Agreement [2007] ATS 11

- Application to the Sunrise and Troubadour Fields
Timor Sea Boundary Arrangements

Revenue split 50:50; delivering up to US$10 billion to East Timor

Splits resources 90:10 in East Timor’s favour

Expected to deliver as much as US$15 billion to East Timor

Hydrocarbon deposits
Antarctica

- Can Australia assert maritime claims offshore Antarctica?
  - Antarctic Treaty, Article 4
- Need to assert claims as an assertion of sovereignty
- Australian claims to TS, EEZ, CS and extended CS (before CLCS)
- Need for boundaries with NZ, France, Norway
Australia/France undefined Southern Ocean maritime zones
Australia’s potential Antarctic maritime boundary delimitations
Concluding Remarks

1. Boundaries concluded by negotiation
2. No third party dispute resolution
3. Innovative solutions
4. Different approaches depending on geography and political circumstances
5. Stronger national interest in areas that are resource rich
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