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Keywords

island, boundaries, pacific, states, delimitation, maritime

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The Delimitation of Maritime Boundaries among the Pacific Island States

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Abstract

The Pacific island States possess limited land territory but enormous maritime entitlements. Claims to maritime jurisdiction out to 200 nautical miles offshore, and in some cases the existence of continental shelf rights extending beyond the 200 mile limit, have resulted in overlapping claims and the creation of numerous “new” international maritime boundaries. The majority of these potential maritime boundaries both among the Pacific island States and between the Pacific island States and their maritime neighbours have yet to be delimited. The paper outlines relevant claims to maritime jurisdiction including recent submissions regarding outer continental shelf limits, explores how maritime boundaries are to be delimited and examines progress towards the delimitation of potential maritime boundaries in the Pacific islands region before concluding with some preliminary thoughts on the key challenges involved in this context.

Keywords: Pacific, maritime delimitation, overlapping claims, baselines, exclusive economic zone, outer continental shelf, territorial disputes, capacity

Introduction

Although the Pacific island States generally have restricted land territories, at least in terms of their areas, they nevertheless also tend to possess expansive maritime jurisdictional entitlements. This scenario is essentially the result of the significant extension of national maritime claims offshore, coupled with the remote location of these States both from one another and their Pacific Rim neighbours. A further direct consequence of the advent of the extension of coastal State maritime claims to the 200 nautical mile (nm)¹ limit (and in some cases beyond, see

¹ Technically the correct abbreviation for a nautical mile is “M” with “nm” referring to nanometres. However, “nm” is widely used by many authorities (for example the UN Office of Ocean Affairs and the

below) has been the creation of numerous “new” potential maritime boundaries and, perhaps inevitably, in the absence of their delimitation, the existence of overlapping claims to maritime jurisdiction. The majority of the potential maritime boundaries that exist in the Pacific islands region have yet to be delimited.

This situation has in recent times been exacerbated as a consequence of States from the region making submissions regarding the outer limits to their continental shelf rights extending beyond 200nm from their coasts. As a number of the areas of ‘outer’ or ‘extended’ continental shelf subject to these submissions overlap with one another, additional potential maritime boundaries have come into existence that have also yet to be delimited.

This paper outlines the claims to maritime jurisdiction that the Pacific island States have made, including outer continental shelf submissions and assesses the relevant international legal principles relevant to the delimitation of maritime boundaries in the light of recent developments in cases before international courts and tribunals. The paper then reviews the progress that has been made towards the delimitation of maritime boundaries in the Pacific islands region before briefly addressing some of the key impediments to maritime delimitation that exist.

The Maritime Claims of the Pacific Island States

The Pacific island States comprise twelve independent States located in the western and central Pacific Ocean: the Federated States of Micronesia (FSM), Fiji, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea (PNG), Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Additionally, two States, Cook Islands and Niue, are freely associated with New Zealand whilst another territory, Tokelau, is dependent on New Zealand. Furthermore, there are a number of territories dependent on or in free association with extra-regional metropolitan powers such as France (French Polynesia, New Caledonia, Wallis and Futuna) the United Kingdom (Pitcairn Islands) and the United States (American Samoa, Guam and Northern Mariana Islands).² The terms “Pacific island States” and “Pacific islands region” are used in this paper to collectively refer to the

Law of the Sea), appears to cause less confusion than “M”, which is often assumed to be an abbreviation for metres, and is therefore used as the abbreviation for nautical miles in this paper.

² See Tsamenyi, B.M. and Manarangi-Trott, L. “The Role of Regional Organizations in Meeting LOS Convention Challenges: The Western and Central Pacific Experience” in Elferink, A.G.O. and Rothwell, D.R. (eds) *Oceans Management in the 21st Century: Institutional Frameworks and Responses*, The Hague, Kluwer, 2004, pp. 187-208.

above-mentioned independent, freely-associated and dependent States and territories. Additionally, the maritime claims of a number of States which adjoin the Pacific islands region, and can thus be regarded as the immediate maritime neighbours of the Pacific islands States, are considered here. These States include Australia, Indonesia, Japan, the Philippines and New Zealand (see Figure 1).

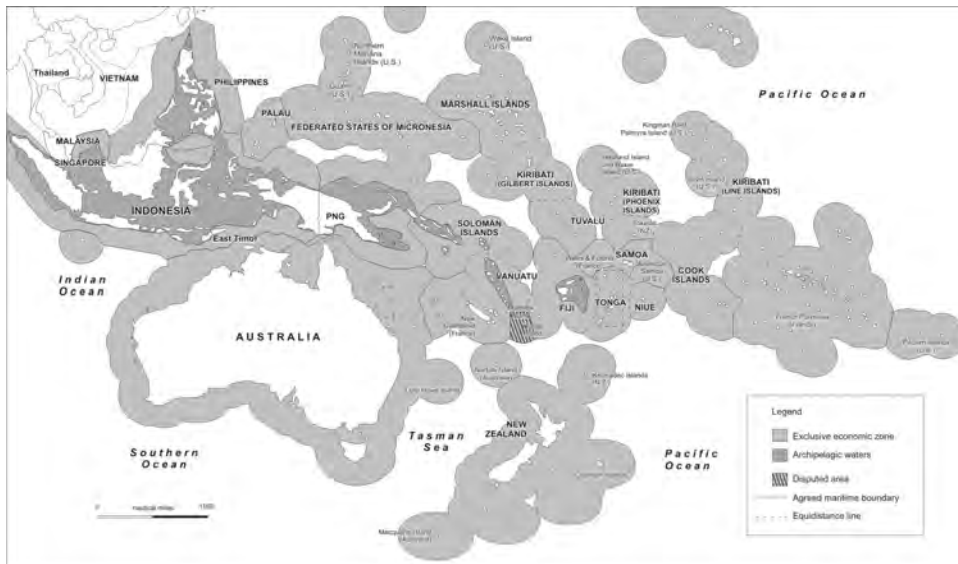


Figure 1: The Maritime Claims of the Pacific Island States. Source: Adapted from Hanich, Q., Schofield, C.H. and Cozens, P. (2009) ‘Oceans of Opportunity?: The Limits of Maritime Claims in the South Pacific’, pp.17-46 in Hanich, Q. and Tsamenyi, M. (eds), *Navigating Pacific Fisheries: Legal and Policy Trends in the Implementation of International Fisheries Instruments in the Western and Central Pacific Region*, (Wollongong: Ocean Publications), p.22.

The United Nations Convention on the Law of the Sea (LOSC) of 1982³ provides the fundamental international legal framework for claims to maritime jurisdiction and the delimitation of maritime boundaries. LOSC has gained widespread international recognition and at the time of writing there were 160 parties to it.⁴ All of the South Pacific’s independent States

³ United Nations, *United Nations Conventions on the Law of the Sea*, Publication No. E97.V10. United Nations, New York, 1983. Available at:

<http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm> (hereafter “LOSC”).

⁴ Comprising 159 States plus the European Community. See, United Nations (2010) *Status of the United Nations Convention on the Law of the Sea, of the Agreement relating to the implementation of Part XI of the Convention and of the Agreement for the implementation of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks* (New York: United Nations, updated to 1 January 2010), available at

<http://www.un.org/Depts/los/reference_files/status2008.pdf>

have ratified LOSC, as have most of the extra-regional states with territory in the region.⁵ The notable exception to this rule is the United States.⁶

LOSC articulates the rights and responsibilities that coastal States have over their adjacent waters and enables coastal States to claim sovereignty within territorial seas out to 12nm offshore and over archipelagic waters (within archipelagic baselines, see below), as well as specific rights within contiguous zones out to 24nm offshore and sovereign rights over exclusive economic zones out to 200nm and continental shelf areas which may extend beyond the 200nm limit where the continental margin extends that far offshore (see below). Such maritime claims are measured from a coastal State's baselines. In accordance with LOSC, a coastal State's "normal" baselines will consist of "the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State" (LOSC, Article 5). Under certain circumstances a variety of straight line types of baselines may be defined along the coast, notably straight baselines, river and bay closing lines, as well as closing lines for ports and roadsteads (see LOSC, Articles 7-12). In particular, a number of Pacific island States, notably Fiji, PNG, the Solomon Islands and Vanuatu,⁷ claim archipelagic status and have designated archipelagic baselines in accordance with Article 47 of LOSC. Indonesia and the Philippines are also archipelagic States.

Taken altogether, the Pacific island States total just over 550,000km² of land (84 per cent of which is provided by Papua New Guinea) scattered over the vast 165 million km² Pacific Ocean which encompasses around one third of the surface of the earth.⁸ The remote location of the Pacific island States both from one another and their maritime neighbours, coupled with 200nm

⁵ Although Fiji was the first state to sign LOSC, the Pacific small island developing States were not especially swift to adopt the LOSC due to a number of political, practical and policy considerations. See, Wolfers, E.P. "The Law of the Sea in the South Pacific" in Crawford, J. and Rothwell, D. (eds) *The Law of the Sea in the Asian Pacific Region*, Kluwer, The Hague, 1995, pp. 41-49, at pp. 41-46.

⁶ United Nations, *Status of the United Nations Convention on the Law of the Sea, of the Agreement Relating to the Implementation of Part XI of the Convention and of the Agreement for the Implementation of the Convention Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, United Nations, New York, updated to 4 June 2008, available at <http://www.un.org/Depts/los/reference_files/status2008.pdf>

⁷ Kiribati claims archipelagic status but has yet to define archipelagic baselines.

⁸ Anthony, J.M. "Conflict Over Natural Resources in the Pacific" in Ghee, L.T. and Valencia, M.J. (eds) *Conflict Over Natural Resources in Southeast Asia and the Pacific*, Oxford University Press, Oxford, /United Nations University Press, 1990; and Tsamenyi and Manarangi-Trott, 2004: 187-189.

exclusive economic zones (EEZs),⁹ means that the Pacific island States have enormous claims to maritime jurisdiction, encompassing an estimated area of 30,569,000km² (see Figure 1 and Table 1).¹⁰ Additionally, a number of Pacific island States are in a position to assert rights over substantial areas of continental shelf extending beyond their 200nm limits.

“Additional” Maritime Areas: Outer Continental Shelf Submissions

In accordance with the EEZ concept every coastal State has the right to claim sovereign rights over both the seabed and the water column out to 200nm, regardless of whether the continental margin actually extends that distance offshore, and provided there are no overlapping claims with neighbouring states. However, where coastal States are positioned on broad continental margins, they are able to assert rights over those parts of the continental shelf beyond the 200nm EEZ limit forming part of their natural prolongation. These areas of continental shelf beyond the 200nm limit are frequently referred to as the ‘outer’ or ‘extended’ continental shelf.¹¹

Article 76(1) of LOSC establishes that the continental shelf of a coastal State consists of “the seabed and subsoil of submarine areas”, extending to a distance of 200nm from relevant baselines or “throughout the natural prolongation of its land territory to the outer edge of the continental margin.” Article 76 goes on to set out a complex series of formulae through which the coastal State can establish its rights to, and the outer edge of its continental shelf areas seaward of the 200nm limit.¹² These provisions are complex and require considerable investments in order to gather the required information on the morphology of the continental margin in question together with its geological characteristics, as well as bathymetric

⁹ Regarding the breadth of the EEZ, Article 57 of LOSC provides that: “The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.” As most coastal States claim a 12nm territorial sea the actual breadth of the EEZ is usually 188nm seaward of territorial sea limits.

¹⁰ Gillet, R. “Pacific Island Countries Region’ in *Review of the State of World Marine Resources*, FAO Fisheries Technical Paper 457, FAO, Rome, 2005, pp. 144-157.

¹¹ The term ‘extended’ continental shelf gives a somewhat misleading impression that coastal States are somehow advancing claims to “additional” areas of continental shelf. This is not the case as coastal State sovereign rights over the continental shelf are inherent (see LOSC, Article 77(3)).

¹² Essentially, Article 76 provides two formulae according to which coastal States can establish existence of a continental margin beyond the 200 nm limit – the “Gardiner Line”, based on reference to depth or thickness of sedimentary rocks overlying the continental crust, or the “Hedberg Line” consisting of 60nm from the foot of the continental slope. Two maximum constraints, or ‘cut-off’ lines are then applied - either a distance of 350nm from relevant baselines or 100 nautical miles from the 2,500 metre isobath. See, LOSC, Article 76(4-5).

information relating to water depth. However, they represent a significant development as compared with the open-ended definition of the continental shelf under the relevant 1958 Convention, under which conceivably the entirety of the sea floor of the oceans could ultimately be subject to national claims.¹³

Table 1: Maritime Jurisdictional Claims of the Pacific Island States, States Neighbouring the Pacific Islands Region and Extra-regional States with Territories in the Pacific Islands Region

State	Law of the Sea Convention		Territorial Sea	Contiguous zone	Exclusive Economic Zone
	Signature	Ratification/Accession(a)			
Australia	10/12/82	5/10/94	12	24	200
Cook Islands	10/12/82	15/2/95	12		200
FSM	-	29/4/91(a)	12	-	200
Fiji	10/12/82	10/12/82	12	-	200
France	10/12/82	11/4/96	12	24	200
Indonesia	10/12/82	3/2/86	12	-	200
Japan	7/2/83	20/6/96	12	24	200
Kiribati	-	24/2/3(a)	12	-	200
Marshall Islands	-	9/8/91(a)	12	24	200
Nauru	10/12/82	23/1/96	12	24	200
Niue	5/12/84	11/10/06	12	-	200
Palau	-	30/9/96(a)	3	-	200
Philippines	10/12/82	8/5/84	12	-	200
PNG	10/12/82	14/1/97	12	-	200
Samoa	29/8/94	14/8/95	12	24	200
Solomon Islands	10/12/82	23/6/97	12	-	200
Tokelau (New Zealand)	10/12/82	19/7/96	12	-	200
Tonga	-	2/8/95(a)	12	-	200
Tuvalu	10/12/82	9/12/02	12	24	200

¹³ Article 1 of the Convention on the Continental Shelf of 1958 defined the continental shelf as “the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the Territorial Sea to a depth of 200 metres”, “or to a depth beyond that limit where exploitation of resources was possible”. McDorman has stated that the fact that “the real achievement” of Article 76 of LOSC lies not in the complexity of its provisions or in the establishment of the CLCS but in the fact that it provides for “a definable limit” to continental shelf claims “however difficult the defining of that limit may be”. See, McDorman, T. “The Role of the Commission on the Limits of the Continental Shelf: A Technical Body in a Political World” in *International Journal of Marine and Coastal Law*, Vol. 17, No. 3, 2002, pp. 301-324, at p. 307.

United Kingdom (Pitcairn)	-	25/9/97(a)	3	-	200
USA	-	-	12	24	200
Vanuatu	10/12/82	10/8/99	12	24	200

Sources: United Kingdom Hydrographic Office (UKHO) *National Claims to Maritime Jurisdiction*, Annual Notice to Mariners, No.12 (12/10), available at

<<http://www.ukho.gov.uk/ProductsandServices/MartimeSafety/Pages/NMPublic.aspx>>; and, *Status of the United Nations Convention on the Law of the Sea, of the Agreement Relating to the Implementation of Part XI of the Convention and of the Agreement for the Implementation of the Convention Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, United Nations, New York, updated to 1 January 2010, available at <http://www.un.org/Depts/los/reference_files/status2008.pdf>.

A submission on a State’s proposed outer continental shelf limits then needs to be made to a specialised United Nations body, the Commission on the Limits of the Continental Shelf (CLCS). The CLCS is a body consisting of 21 scientists. Importantly, the CLCS is not a legal body and it does not therefore adjudicate on submissions. Instead, the CLCS plays, or was intended to play, a technical role, evaluating whether coastal States, through their submissions, have fulfilled the requirements of Article 76. On the basis of this assessment the CLCS makes recommendations to the coastal State on the basis of which the coastal State can establish limits that are “final and binding” (LOSC, Article 76(8)).

The original deadline for submissions to the CLCS was in 2004 (ten years after LOSC entered into force, see LOSC, Annex II, Article 4) . It became clear, however, that many potentially interested States would struggle to formulate their submissions in time so the deadline was extended, for most states, to 13 May 2009.¹⁴ Furthermore, as the May 2009 deadline approached it became clear that numerous potentially eligible States required additional time to draft their submissions. Consequently, the submission rules were relaxed so as to allow for the submission of preliminary information to the CLCS.¹⁵ A number of the Pacific island States have either made submissions to the CLCS or, alternatively, have made submissions of preliminary information as a prelude to making full submissions to the Commission in due course (see Tables 2 and 3).

¹⁴ Rather than the date of LOSC entering into force, the date of the adoption of the Commission’s Scientific and Technical Guidelines, 13 May 1999, was instead taken as the start of the 10-year clock, at least for those States that were parties to LOSC before that date. See:

<http://www.un.org/Depts/los/clcs_new/issues_ten_years.htm>. See also: SPLOS/72 at <http://www.un.org/Depts/los/meeting_states_parties/SPLOS_documents.htm>.

¹⁵ See also: Decision of the eighteenth Meeting of State Parties, SPLOS/183 at <http://www.un.org/Depts/los/meeting_states_parties/SPLOS_documents.htm>.

Table 2: Outer Continental Shelf Submissions made by States of the Pacific Islands Region, States Neighbouring the Pacific Islands Region and Extra-regional States with Territories in the Pacific Islands Region

Submitting State(s)	Date of Submission	Status
Australia	15 November 2004	Recommendations adopted
Cook Islands	16 April 2009	Recommendations pending
Fiji (partial)	20 April 2009	Recommendations pending
FSM/PNG/Solomon Islands (joint)	5 May 2009	Recommendations pending
Indonesia (partial)	16 June 2008	Recommendations pending
Japan	12 November 2008	Recommendations pending
New Zealand	19 April 2006	Recommendations adopted
Palau	8 May 2009	Recommendations pending
Philippines (partial)	8 April 2009	Recommendations pending
Tonga	11 May 2009	Recommendations pending

Source: *Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982*, United Nations, New York, updated to 30 October 2009, available at <http://www.un.org/Depts/los/clcs_new/commission_submissions.htm>.

Among the above-mentioned submissions the Commission has recommended that 95 per cent of Australia’s submitted outer continental shelf area (excluding areas off Antarctica), or 2.56 million km², form part of its outer continental shelf.¹⁶ Of New Zealand’s submitted area, 97 per cent or 1.7 million km² of seabed, were confirmed as part of New Zealand’s outer continental shelf.¹⁷

¹⁶ Symonds, P., Alcock, M. and French, C. (2009) “Setting Australia’s Limits: Understanding Australia’s Marine Jurisdiction”, *AUSGEO News*, Issue 93 (March).

¹⁷ New Zealand MFAT, 2008. UN confirms NZ’s extended seabed claim. Accessed on 26 April 2008 from <<http://www.mfat.govt.nz/Media-and-publications/Features/990-NZ-extended-seabed-claim.php>>.

Table 3: Submissions of Preliminary Information on the Outer Continental Shelf by States of the Pacific Islands Region, States Neighbouring the Pacific Islands Region and Extra-regional States with Territories in the Pacific Islands Region

Submitting State(s)	Date of Submission
Fiji	21 April 2009
Fiji/Solomon Islands (joint)	21 April 2009
Fiji/Solomon Islands/Vanuatu (joint)	21 April 2009
France (French Polynesia and Wallis and Futuna)	8 May 2009
FSM	5 May 2009
New Zealand (Tokelau)	11 May 2009
PNG	5 May 2009
Solomon Islands	5 May 2009
Vanuatu	10 August 2009

Source: Preliminary Information indicative of the outer limits of the continental shelf beyond 200 nautical miles, United Nations, New York, updated to 9 November 2009, available at, <http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm>.

The CLCS will, in due course, consider pending submissions, make recommendations and the coastal States will declare their “final and binding” outer continental shelf limits. However, it is clear that the CLCS is facing a huge workload and backlog of submissions to examine as a result of the rush of submissions stimulated by the May 2009 deadline. One year prior to this deadline a mere 11 submissions had been lodged with the CLCS. By 14 May 2009, however, the number of full submissions stood at 50 (and has since risen to 51). Additionally, because numerous states were struggling to meet the 13 May 2009 deadline, and 43 sets of such preliminary information were also lodged with the Commission by the deadline.

It also apparent that many of the above-mentioned submissions overlap with one another where neighbouring States are located on shared continental margins. For example, there exist multiple overlaps between the areas of outer continental shelf subject to submissions by Australia, New Zealand, Fiji, France (on behalf of New Caledonia) and Tonga, located north of New Zealand (the Lord Howe Rise, Fiji Basin and Kermadec Ridge). Additionally, it is worth noting that France and Vanuatu dispute sovereignty over Matthew [Umaenupne] and Hunter [Umaeneag] Islands and has protested that part of France’s submission relating to these islands. Moreover, it is notable that France’s submission on behalf of New Caledonia not only overlaps with the northern areas of Australia’s outer continental shelf submission, but crosses the international maritime boundary between Australia and New Zealand agreed in 2004.¹⁸ Similarly, Palau and Japan have overlapping submissions to parts of the Kyushu-Palau Ridge. Further to the south

¹⁸ Treaty between the Government of Australia and the Government of New Zealand establishing certain Exclusive Economic Zone and Continental Shelf Boundaries, 25 July 2004 (entry into force, 25 January 2006). Treaty text available at [2006] ATS 4 [hereafter, Australia-New Zealand Treaty].

there exist potential overlaps between the outer shelves of the Federated States of Micronesia and Papua New Guinea with a further partial submission by Indonesia. Additionally, the Cook Islands has made a submission in respect of outer continental shelf areas on the Manihiki Plateau region to its north as has New Zealand, on behalf of Tokelau. France has also indicated that it will make a submission to this area (on behalf of Wallis and Futuna Islands). There also exist overlapping outer continental shelf submissions between France and the Cook Islands to the west and between France and the UK (on behalf of the Pitcairn Islands) to the east. It is the case, however, that in a number of instances the interested States have sought to head off potential outer continental shelf disputes and facilitate the work of the Commission by either making joint submissions or indicating to the CLCS that the States involved have no objection to Commission examining an individual State's submission without prejudice to the delimitation of maritime boundaries.

This highlights the fact that multiple "new" outer continental shelf boundaries have been brought into existence. However, in this context it should be emphasised that the Commission is a scientific rather than technical body. As such it does not have the mandate to consider areas subject to a sovereignty dispute or subject to overlapping maritime claims. Furthermore, the Commission's recommendations are specifically without prejudice to the delimitation of maritime boundaries. Ultimately, it will up to the coastal States themselves to resolve any overlapping maritime claims and disputes and delimit their "new" outer continental shelf boundaries.

Maritime Boundary Delimitation and the Pacific Islands Region

A key consequence of the significant extension of the spatial extent of national claims to maritime jurisdiction seawards, has been the creation of a multitude of 'new' maritime political boundaries as States 400nm distant from one another abruptly found themselves to be maritime neighbours with potentially overlapping claims to maritime jurisdiction. Furthermore, in the context of outer continental shelf entitlements, maritime neighbours in need of the delimitation of a seabed boundary may hypothetically be in excess of 700nm distant from one another.¹⁹

The provisions of LOSC governing the delimitation of maritime boundaries provide only limited guidance as to how such boundaries are to be defined and delimitation disputes may be

¹⁹ Prescott, J.R.V. and Schofield, C.H. (2005) *The Maritime Political Boundaries of the World*, Leiden/Boston: Martinus Nijhoff Publishers, p. 216.

resolved. In relation to the delimitation of the territorial sea, Article 15 of LOSC favours the use of an equidistance or median line. However, this does not apply should the States concerned agree to the contrary or there exists an “historic title or other special circumstances” in the area to be delimited which justify a departure from the equidistance line. The median line was also given preference under Article 6 of the 1958 Convention on the Continental Shelf unless, similarly, an agreement to the contrary or “special circumstances” existed that justified an alternative approach. Under LOSC, however, Articles 74 and 83 of LOSC, dealing with delimitation of the continental shelf and EEZ respectively, merely provide, in identical general terms, that agreements should be reached on the basis of international law in order to achieve “an equitable solution”. No preferred method of delimitation is indicated.

Even though there has been a marked shift away from preference for equidistance when the 1958 and 1982 Conventions are compared, it is nonetheless apparent that in practice the equidistance method has proved more popular than any alternative method by far and most agreed maritime boundaries are based on some form of equidistance.²⁰ Consequently, equidistance lines are often constructed at least as a means of assessing a maritime boundary situation or as the starting point for discussions in the context of maritime boundary negotiations. Such lines have also frequently been adopted as the basis for the final delimitation line, especially where there is no major disparity between relevant coastal fronts. Furthermore, it is evident that in recent cases the International Court of Justice’s (ICJ) approach has been to construct an equidistance line as a provisional delimitation line in the first instance. Indeed, in its, at the time of writing, most recent judgment involving maritime delimitation, that in the Black Sea Case between Romania and Ukraine, the Court was explicit in stating that “[i]n keeping with its settled jurisprudence on maritime delimitation”, a provisional delimitation line should be established consisting of an equidistance line “unless there are compelling reasons that make this unfeasible in the particular case.”²¹ The ICJ’s practice has then been to determine whether there exist any reasons to modify the provisional equidistance line in order to achieve an equitable result.²²

In the Pacific islands region progress towards the delimitation of potential maritime boundaries has been slow. Table 4 shows that fifteen maritime boundaries have been concluded to date

²⁰ Legault, L. and Hankey, B. (1993) ‘Method, Oppositeness and Adjacency, and Proportionality in Maritime Boundary Delimitation’, pp.203-242 in Charney, J.I. and Alexander, L.M. (1993) (eds) *International Maritime Boundaries*, Vol.I, (The Hague: Martinus Nijhoff): 205

²¹ *Case Concerning Maritime Delimitation in the Black Sea* (Romania v. Ukraine), Judgment of 3 February 2009, available at <<http://www.icj-cij.org/docket/files/132/14987.pdf>>, paras.116-118.

²² Prescott and Schofield 2005: 240-241.

whilst Table 5 indicates that a further 30 remain to be delimited. These agreed and undelimited maritime boundaries are also illustrated on Figure 1.²³ It is worth noting that these figures only relate to maritime boundaries within 200nm of the coast, that is, between overlapping EEZs, rather than to outer continental shelf delimitations.

Concluding Thoughts: Overcoming Impediments to Maritime Delimitation among the Pacific Island States

The extension of coastal State maritime claims to the 200nm limit and in some cases beyond it has led to overlapping claims to maritime jurisdiction and the creation of numerous “new” maritime boundaries among the Pacific island States and between them and States neighbouring the Pacific islands region. As noted above the majority of potential maritime boundaries in the Pacific islands region have yet to be delimited.

In some respects this is surprising as many of the potential boundaries in question involve small islands, and thus analogous coastal fronts, on both sides that would on the face of it seem well suited to the application of equidistance lines as the basis for delimitation. Such an approach would be consistent with the approach currently adopted among these States in the past as well as with prevailing international legal practice. Furthermore, while territorial and maritime jurisdictional disputes are not completely absent from the region such disputes have not served as the major impediments to maritime delimitation that they have elsewhere, for example in Southeast and East Asia.²⁴

It is the case that certain technical and capacity arise. In particular, the delineation of baselines remain a challenging task.²⁵ A further reason why progress towards maritime delimitation in the

²³ Prescott, J.R.V. and Boyes, G. *Undelimited Maritime Boundaries in the Pacific Ocean Excluding the Asian Rim*, Maritime Briefing, Vol. 2, No. 8, 2000, International Boundaries Research Unit, Durham; and, Prescott and Schofield, 2005: 397-428.

²⁴ Problematic issues within the region in this respect include the island sovereignty dispute between France and Vanuatu mentioned above, Tonga’s claims in respect of the so-called “Tongan Box” arising from that country’s Royal Proclamation of 1887 as well as Tonga’s claims to sovereignty over North and South Minerva Reefs [Teleki Tokelau and Teleki Tonga] which lie within 200nm of Fiji.

²⁵ In this context it is worth noting that the South Pacific Applied Geosciences Commission (SOPAC), based in Fiji, hosts the Pacific Island Regional Maritime Boundaries Project, with the objective of assisting countries around the South Pacific region in the delimitation of their maritime boundaries. See: <<http://www.sopac.org/tiki/tiki-index.php?page=Pacific+Island+Regional+Maritime+Boundaries+Project>>

Pacific islands region has been limited thus far relates to the issue being given limited priority. Political will is clearly a crucial ingredient to effecting the delimitation of maritime boundaries. Instead in the Pacific islands region collective approaches have been developed designed to circumvent disputes and to a large extent obviate the need for formal maritime boundary delimitation. This is especially clear with regard to the key marine resource in the region: fisheries. In this context interim maritime boundaries, based on equidistance lines, have been employed to determine the distribution of a substantial portion of the access fees among Forum Fisheries Agency (FFA) States, and this has largely served to defuse the issue and relegate maritime boundary delimitation to the back-burner in policy terms. It remains to be seen whether this becomes a more urgent concern as other activities develop, for instance sea floor mining activities and developments on the outer continental shelf, especially where national submissions overlap. Arguably there is a growing requirement within the Pacific islands region for the jurisdictional certainty and clarity that the delimitation of maritime boundaries provides.

Table 4: Agreed Maritime Boundaries in the Pacific Island States Region

Cook Islands – France (French Polynesia)
 Cook Islands – United States of America (American Samoa)
 Federated States of Micronesia – Marshall Islands
 Federated States of Micronesia – Palau
 Fiji – France (New Caledonia)
 Fiji – France (Wallis and Futuna)
 France (New Caledonia) – Papua New Guinea
 France (New Caledonia) – Solomon Islands
 France (Wallis and Futuna) – New Zealand (Tokelau)
 France (Wallis and Futuna) – Tonga
 France (Wallis and Futuna) – Tuvalu
 France (French Polynesia) – UK (Pitcairn)
 New Zealand (Tokelau) – United States of America (American Samoa)
 Niue – United States of America (American Samoa)
 Papua New Guinea – Indonesia

Table 5: Undelimited Maritime Boundaries in the Pacific Island States Region

Cook Islands – Kiribati

Cook Islands – New Zealand (Tokelau)

Cook Islands – Niue

Federated States of Micronesia – Papua New Guinea

Federated States of Micronesia – United States of America (Guam Island)

Fiji – Tonga

Fiji – Tuvalu

Fiji – Vanuatu

France (French Polynesia) – Kiribati

France (New Caledonia) – Vanuatu

France (Wallis and Futuna) – Samoa

Indonesia – Palau

Japan – United States of America (Northern Mariana Islands)

Kiribati – Marshall Islands

Kiribati – Nauru

Kiribati – New Zealand (Tokelau)

Kiribati – Tuvalu

Kiribati – United States of America (Baker and Howland Islands)

Kiribati – United States of America (Jarvis Island)

Kiribati – United States of America (Palmyra Atoll and Kingman Reef)

Marshall Islands – Nauru

Marshall Islands – United States of America (Wake Island)

New Zealand (Tokelau) – Samoa

Niue – Tonga

Niue – United States of America (American Samoa)

Palau – Philippines

Samoa – Tonga

Samoa – United States of America (American Samoa)

Solomon Islands – Vanuatu

Tonga – United States of America (American Samoa)