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Maritime Boundary Delimitation in the Gulf of Thailand

Clive Howard Schofield

Thesis submitted for the degree of Doctor of Philosophy

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Department of Geography

University of Durham

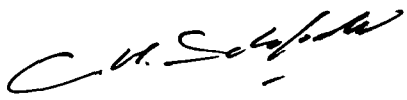
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Abstract

Clive Howard Schofield

Maritime Boundary Delimitation in the Gulf of Thailand

The Gulf of Thailand, bordered by Cambodia, Malaysia, Thailand and Vietnam, encapsulates many of the challenges facing coastal states seeking to resolve questions of jurisdiction worldwide. Among the key considerations for maritime boundary delimitation in the Gulf of Thailand are the fact that the Gulf is a relatively confined semi-enclosed sea. This necessitates maritime boundary delimitation between neighbouring states. A major constraint is also posed by the Gulf's complex coastal geography, including the presence of numerous islands, large and small. The existence of competing sovereignty claims to islands, has also complicated the development of claims and retarded attempts to resolve maritime boundary delimitation disputes.

The problems posed by the existing national jurisdictional claims are also significant. There are multiple unresolved maritime boundary delimitations, lengthy straight baseline claims, maximalist unilateral maritime claims resulting in extensive areas of overlapping claims, and a number of undefined jurisdictional claims as well as claims based on alleged historic rights. Additionally, there exist a number of maritime boundary agreements, aspects of all of which are subject to interpretation, and several joint development or interim joint arrangements, which serve to defer delimitation and are themselves potentially open to question. These factors have to be set against the complexities of the coastal states' political and economic characteristics together with the opportunities and challenges associated with the Gulf of Thailand itself.

This study examines critically the development of the Gulf of Thailand coastal states' maritime claims and existing maritime boundary agreements with a view to exploring the challenges associated with resolving the remaining undelimited boundary situations. Its key aims can be summarised as follows:

- to examine the interplay between between the disciplines of law and geography in the application of the law of the sea to the geographical realities of the Gulf of Thailand;
- to analyse the baseline claims of the littoral states;

- to review and evaluate unilateral national claims to maritime jurisdiction;
- to provide an overview and analysis of existing maritime boundary agreements within the Gulf of Thailand;
- to analyse unsettled boundary delimitations and disputes;
- to offer prospects for the future including the options for maritime boundary dispute resolution in the Gulf of Thailand.

Despite the obstacles to maritime boundary delimitation in the Gulf of Thailand outlined in this study, there are signs of progress and prospects for the future, particularly in the wake of the geopolitical transformation of the region in the 1990s, must be considered to be good.

Contents

		Page
Declaration		i
Abstract		ii
Contents		iv
List of Figures		xii
List of Tables		xv
Acronyms		xvii
Acknowledgements		xix
Chapter 1		
Introduction		
1.1	Introduction	1
1.2	The Delimitation of Maritime Boundaries	4
1.3	The Gulf of Thailand	7
	1.3.1 Geographical Context	7
	1.3.2 Historical and Geopolitical Contexts	8
	1.3.3 Economic Context	10
	1.3.4 Maritime Interests of the Coastal States	11
1.4	Significance and Limitations of the Study	19
1.5	Previous Studies	21
1.6	Research Methods	23
	1.6.1 Documentary Research	23
	1.6.2 Interviews	23
	1.6.3 Fieldwork	24
	1.6.4 Cartographic Techniques	24
	1.6.5 Research Problems	25
1.7	Structure of Study	26

Chapter 2

The Law of the Sea and Maritime Jurisdiction

2.1	Introduction	27
2.2	The Development of the Law of the Sea	28
2.3	Baselines	34
	2.3.1 'Normal' Baselines	35
	2.3.2 Reefs	38
	2.3.3 Straight Baselines	39
	2.3.4 River Mouths	56
	2.3.5 Bays	57
	2.3.6 Ports and Roadsteads	63
2.4	Zones of Jurisdiction	64
	2.4.1 Inter-tidal Foreshore	64
	2.4.2 Internal Waters	64
	2.4.3 Territorial Waters	65
	2.4.4 The Contiguous Zone	65
	2.4.5 Exclusive Fishing Zone	66
	2.4.6 Continental Shelf	66
	2.4.7 The Exclusive Economic Zone (EEZ)	67
2.5	The Gulf of Thailand Littoral States and the Law of the Sea	68

Chapter 3

The Delimitation of Maritime Boundaries

3.1	Introduction	70
	3.1.1 Delimitation of the Territorial Sea	70
	3.1.2 Delimitation of the Continental Shelf and Exclusive Economic Zone	70
3.2	Methods of Maritime Boundary Delimitation	72
	3.2.1 Equidistance Lines	72
	3.2.2 Enclaving	80
	3.2.3 Lines of Bearing	82
	3.2.4 Other Geometric Methods of Delimitation	89

3.2.5 'Natural' Boundaries 90
3.2.6 Evaluation 90
3.3 Relevant Circumstances 95
3.4 Factors Related to Physical Geography 97
3.4.1 The Role of Coastal Geography 97
3.4.2 The General Geographical Framework, Relevant Area and Macrogeography 98
3.4.3 Geophysical Factors – Natural Prolongation, Geology and Geomorphology 98
3.4.4 Coastal Relationship 103
3.4.5 Relative Coastal Length and Proportionality 111
3.5 The Regime of Islands 115
3.5.1 What Constitutes an Island? 116
3.5.2 Rocks 120
3.5.3 Reefs 120
3.5.4 Low-Tide Elevations 121
3.5.5 Submerged Banks and Shoals 122
3.5.6 The Role of Islands 122
3.6 Non-Coastal Geography Related Factors 122
3.6.1 Political Factors 122
3.6.2 Security Issues 124
3.6.3 Economic and Environmental Interests 125
3.6.4 Conduct of the Parties and Historical Factors 127
3.7 Summary 128

Chapter 4

Baseline Claims in the Gulf of Thailand

4.1 Introduction 130
4.2 Cambodia's Straight Baseline Claims in the Gulf of Thailand 131
4.2.1 Introduction 131
4.2.2 Cambodia's 1957 Straight Baselines Claim 133
4.2.3 Cambodia's 1972 Straight Baselines Claim 141
4.2.4 Cambodia's 1982 Straight Baselines Claim 148

4.3 Malaysia's Straight Baseline Claims in the Gulf of Thailand 162
4.4 Thailand's Straight Baseline Claims in the Gulf of Thailand 176
4.4.1 Introduction 176
4.4.2 Thailand's Historic Bay Claim 176
4.4.3 Thailand's 1970 Straight Baselines Claim: Areas 1 and 2 179
4.4.4 Thailand's 1992 Straight Baselines Claim: Area 4 187
4.5 Vietnam's Straight Baseline Claims in the Gulf of Thailand 190
4.6 Conclusions 196

Chapter 5
Claims to Maritime Jurisdiction in the Gulf of Thailand

5.1 Introduction 209
5.2 Territorial Sea and Contiguous Zone 210
5.2.1 Cambodia 210
5.2.2 Malaysia 211
5.2.3 Thailand 212
5.2.4 Vietnam 213
5.2.5 Summary 214
5.3 Continental Shelf 215
5.3.1 Cambodia 215
5.3.2 Malaysia 223
5.3.3 Thailand 225
5.3.4 Vietnam 230
5.3.5 Summary 234
5.4 Exclusive Fishing Zone 242
5.5 Exclusive Economic Zone 244
5.5.1 Cambodia 244
5.5.2 Malaysia 245
5.5.3 Thailand 245
5.5.4 Vietnam 247

Chapter 6

Maritime Boundary Agreements in the Gulf of Thailand

6.1	Introduction	250
6.2	Malaysia-Thailand Agreements	250
	6.2.1 Overview	250
	6.2.2 Malaysia-Thailand: Territorial Sea Treaty	251
	6.2.3 Malaysia-Thailand: Continental Shelf Memorandum of Understanding	259
	6.2.4 Malaysia-Thailand: Joint Development Area	263
6.3	Cambodia-Vietnam: Joint Historic Waters	274
6.4	Malaysia-Vietnam: Joint "Defined Area" Agreement	280
6.5	Thailand-Vietnam: Maritime Boundary Agreement	285
6.6	Conclusions	300

Chapter 7

Undelimited Maritime Boundaries and Boundary Disputes in the Gulf of Thailand

7.1	Introduction	301
7.2	Cambodia – Thailand	302
	7.2.1 Introduction	302
	7.2.2 Historical Background	302
	7.2.3 Sovereignty Issues	308
	7.2.4 Scope of the Dispute	312
	7.2.5 Delimitation between Adjacent Coasts	317
	7.2.6 Delimitation between Opposite Coasts	325
	7.2.7 Factors Applicable to the Delimitation as a Whole	329
	7.2.8 Progress in Negotiations	333
	7.2.9 Prospects	341
7.3	Cambodia – Vietnam	352
	7.3.1 Introduction	352
	7.3.2 Historical Background	353
	7.3.3 Scope of the Dispute	372

7.3.4 Progress in Negotiations 374
7.3.5 Delimitation Within the Joint Historic Waters Area 378
7.3.6 Delimitation Beyond the Joint Historic Waters Area 382
7.3.7 Prospects 383
7.4 Cambodia – Thailand – Vietnam 384
7.5 Malaysia – Thailand 386
7.5.1 Problems Relating to Existing Boundaries 386
7.5.2 Dividing the Joint Development Area (JDA) 386
7.6 Malaysia/Thailand – Vietnam 388
7.7 Malaysia-Vietnam 390
7.8 Problems of Ocean Management 390
7.9 Technical Issues 395

Chapter 8

Conclusions: Maritime Boundary Delimitation in the Gulf of Thailand and Prospects for Dispute Resolution

8.1 Introduction 397
8.2 Overview of Findings 399
8.3 Prospects for the Gulf of Thailand 408
8.3.1 Options for Dispute Resolution in the Gulf of Thailand 408
8.3.2 Opportunities and Constraints in the Gulf of Thailand 419

Appendices

Appendix 1 Statute of the International Court of Justice, Article 38 423
Appendix 2 Cambodian Council of State Decree on Territorial Waters, 31 July 1982 424
Appendix 3 Agreement on Historic Waters of Vietnam and Kampuchea, 7 July 1982 427
Appendix 4 Survey of Longest Baseline Segments 429
Appendix 5 Statement of the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone, and the Continental Shelf of Vietnam, 12 May 1977 431
Appendix 6 Cambodian *Kret* No. 439-72/PRK, 1 July 1972 433

List of Figures

Figure 1.1	Maritime Boundary Claims and Agreements in the Gulf of Thailand	3
Figure 1.2	Oil and Gas Fields in the Gulf of Thailand	17
Figure 2.1	The Role of Straight Baselines in Simplifying Territorial Sea Boundaries	42
Figure 2.2	Fringing Islands	47
Figure 2.3	Distance of Fringing Islands from the Mainland Coast	48
Figure 2.4	Island Chain Lying Perpendicular to the Coast	49
Figure 2.5	Fringing Islands and the General Direction of the Coast	52
Figure 2.6	Burma's Straight Baselines	55
Figure 2.7	Bays: The Semi-Circle Test	58
Figure 2.8	Port Waitangi, Chatham Island	60
Figure 2.9	Baie Anarua, French Polynesia	61
Figure 3.1	Equidistance Between Opposite Coasts	73
Figure 3.2	Equidistance Between Adjacent Coasts	74
Figure 3.3	The Delimitation between Malta and Libya	76
Figure 3.4	The Delimitation between France and the United Kingdom	77
Figure 3.5	The Delimitation between Libya and Tunisia	78
Figure 3.6	The Delimitation between Sweden and the USSR	79
Figure 3.7	The Delimitation between Italy and Yugoslavia	82
Figure 3.8	The Delimitation between Guinea and Guinea-Bissau	85
Figure 3.9	The Delimitation between Canada and France (St. Pierre et Miquelon)	86
Figure 3.10	The Delimitation between Chile and Peru	87
Figure 3.11	The Delimitation between Kenya and Tanzania	88
Figure 3.12	The Distorting Effects of Equidistance	108
Figure 3.13	Delimitations in the North Sea	109
Figure 4.1	Straight Baseline Claims in the Eastern Gulf of Thailand	132
Figure 4.2	Cambodia's 1957 Straight Baselines Claim	135
Figure 4.3	Cambodia's 1972 Straight Baselines Claim	144
Figure 4.4	Cambodia's 1982 Straight Baselines Claim and Vietnam's Straight Baselines Claim in the Gulf of Thailand	151
Figure 4.5	Excerpt from the 'Malaysian Map' or *Peta Baru*	163

Chapter 1
Introduction

1.1 Introduction

The Gulf of Thailand offers a significant research opportunity to the maritime boundary scholar. This confined maritime space, bordered by Cambodia, Malaysia, Thailand and Vietnam, encapsulates many of the challenges facing coastal states seeking to resolve questions of jurisdiction worldwide.[1]

Challenges relating to the physical geography of the Gulf of Thailand include the fact that the Gulf is a restricted geographical space necessitating maritime boundary delimitation and that it boasts a complex coastal geography including the presence of numerous islands, large and small. The existence of competing sovereignty claims to islands, particularly in the course of the development of maritime boundary claims, has also complicated attempts to resolve maritime boundary delimitation disputes. The problems posed by the existing national jurisdictional claims are also significant. There are multiple unresolved maritime boundary delimitations (see Table 1.1), lengthy straight baseline claims, maximalist unilateral maritime claims resulting in extensive areas of overlapping claims (see Figure 1.1), a number of undefined jurisdictional claims (particularly in relation to the exclusive economic zone (EEZ)) as well as claims based on alleged historic rights. Additionally, there exist a number of maritime boundary agreements, aspects of all of which are subject to interpretation, and several joint development or interim joint arrangements, which serve to defer delimitation and are themselves potentially open to question.

These factors have to be set against the context of the coastal states' political and economic characteristics together with the opportunities and challenges associated with the Gulf of Thailand itself. Politically, the region has been afflicted by the legacies of colonial and later American intervention. This resulted in inimical relations between several of the Gulf of Thailand states characterised by suspicion and distrust. This political environment has been largely transformed by the end of the Cold War and

[1] For example, Stormont and Townsend-Gault (1995: 53) describe the Gulf of Thailand as an *"area of complex maritime disputes par excellence."*

removal of the 'Cambodian Question' from the regional agenda. Economically, the four Gulf of Thailand littoral states are all developing countries. Nevertheless, there are significant disparities between them. Malaysia and Thailand have been among Southeast Asia's 'tiger economies' in recent years and are well on the way towards becoming an industrialised nations. Vietnam and particularly Cambodia, emerging from decades of conflict and international isolation, lag far behind this sustained economic development. The peripheries of the Gulf of Thailand are therefore experiencing rapid industrialisation coupled with burgeoning coastal populations.

Table 1.1 ***Status of Maritime Boundary Delimitation in the Gulf of Thailand***

Delimitation	Status
Cambodia-Thailand	
Territorial Sea	Unresolved
Contiguous Zone (Cambodia) – Continental Shelf/EEZ (Thailand)	Unresolved
Continental Shelf/EEZ	Unresolved
Cambodia-Vietnam	
Historic Waters	**Joint Zone**
Territorial Sea	Unresolved
Contiguous Zone	Unresolved
Continental Shelf/EEZ	Unresolved
Malaysia-Thailand	
Territorial Sea	**Resolved**
Continental Shelf/EEZ	**Partially Resolved/Joint Zone**[2]
Malaysia-Vietnam	
Continental Shelf/EEZ	**Joint Zone**[3]
Thailand-Vietnam	
Continental Shelf and EEZ	**Resolved**

Source: Author's research.

The Gulf of Thailand itself is host to abundant, proven oil and gas resources. Additionally, the Gulf has proved to be a significant source of living resources. These two factors alone make the Gulf of Thailand a vital resource to the littoral states. The Gulf of Thailand has also traditionally been a source of both security and insecurity for the littoral states and their strategic interests in the Gulf should not be underestimated. Exploitation of hydrocarbons combined with the expansion of seaborne trade, and the escalating pollution which economic development implies, do, however, pose an increasing threat to the marine environment of the Gulf of Thailand. It is also widely

2 The Thai-Malaysia agreement refers solely to continental shelf (see Section 6.2.2).

3 The Malaysia-Vietnam "Defined Area" is exclusively concerned with seabed resources (see Section 6.4).

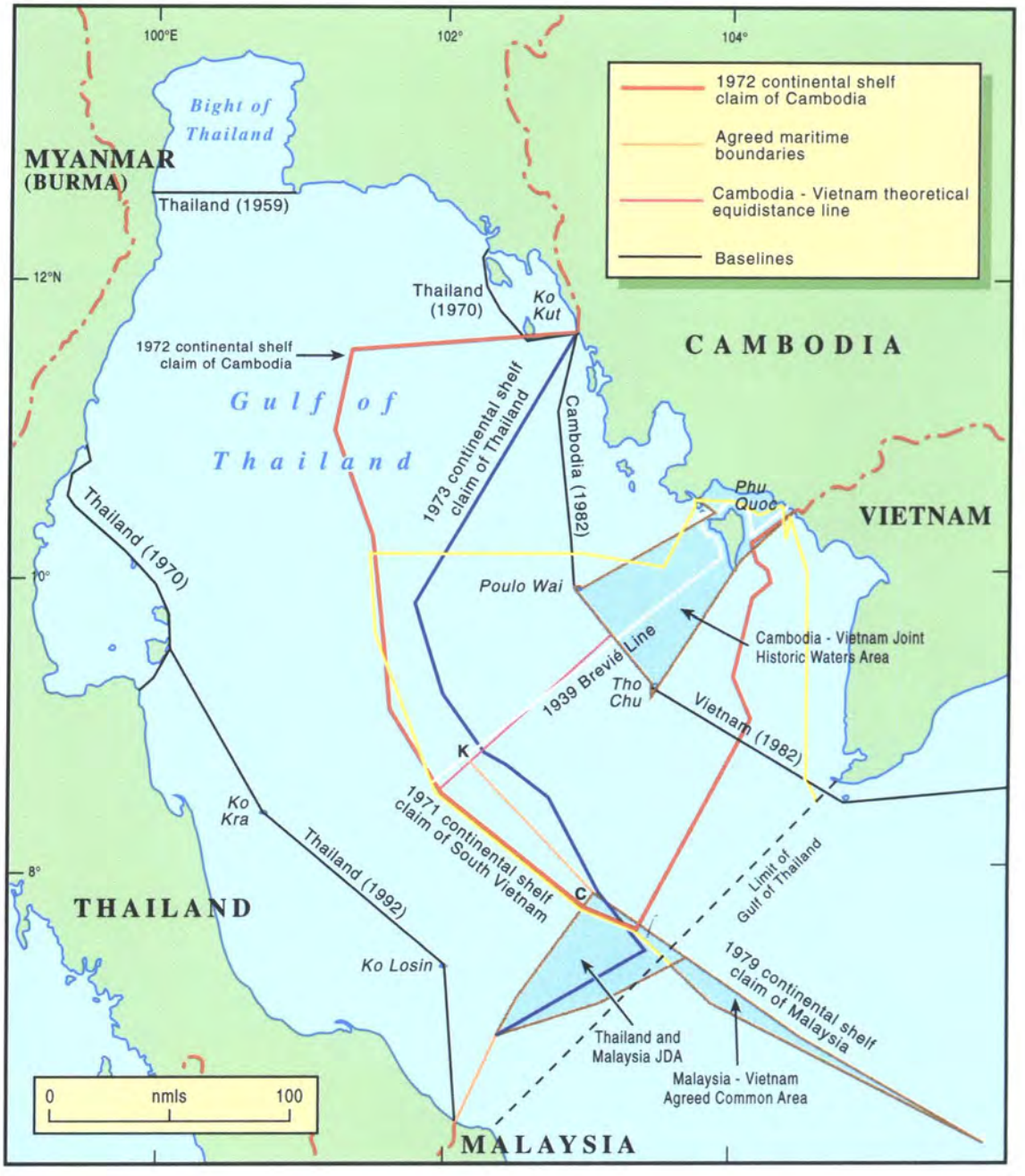


Figure 1.1 *Maritime Boundary Claims and Agreements in the Gulf of Thailand*

Source: Author's research.

acknowledged that the Gulf's living resources are subject to destructive levels of overfishing.

With this political, geographical, strategic economic and environmental context in mind, the core objective of this study is to examine critically the development of the Gulf of Thailand coastal states' maritime claims and existing maritime boundary agreements with a view to exploring the challenges associated with resolving the remaining undelimited boundary situations. This thesis also aims:

- to examine the interplay between between the disciplines of law and geography in the application of the law of the sea to the geographical realities of the Gulf of Thailand;
- to analyse the baseline claims of the littoral states;
- to review and evaluate unilateral national claims to maritime jurisdiction;
- to provide an overview and analysis of existing maritime boundary agreements within the Gulf of Thailand;
- to analyse unsettled boundary delimitations and disputes;
- to offer prospects for the future including the options for maritime boundary dispute resolution in the Gulf of Thailand.

1.2 The Delimitation of Maritime Boundaries

The legal and theoretical framework for the delimitation of maritime boundaries is provided by the international law of the sea, largely enshrined in the United Nations Convention on the Law of the Sea (UNCLOS).[4] While the law of the sea is fundamental to maritime boundary delimitation, this process is also profoundly dependent on geographical factors. The critical importance of geography to maritime boundary delimitation has been widely acknowledged by maritime boundary scholars, including those from the legal field.[5] The inherently geographical nature of the delimitation process can also be detected within the relevant international legal conventions themselves, in the pronouncements of international legal courts and tribunals and in state practice (see Chapters 2 and 3). The disciplines of law and

4 United Nations, 1983.

5 See, for example, Birnie (1987); Weil (1989 and 1993); Prescott (1985a); Evans (1989); and, Charney (1994). See also, Section 3.4.

geography are therefore intimately intertwined in maritime boundary delimitation and provide a central theme running through this thesis.

In general terms, geography is fundamental to maritime boundary delimitation in that it determines when delimitation is required. Indeed, maritime boundary delimitation occurs only when the geographical context means that states are unable to claim the full extent of their maritime rights uninterrupted by the presence of another state's claims.[6] This frequently leads to unilateral overlapping maritime claims which necessitate resolution.

Political geography invariably has a crucial role as the political relations between the partners in a delimitation and their political will, or lack of it, towards achieving a maritime boundary agreement will inevitable determine the success or failure of attempts to secure resolution of a dispute.[7] In the Gulf of Thailand context it is also probably true to observe that certain countries, Cambodia in particular, have been afflicted by such pressing internal instability that maritime boundary issues have been relegated to near the bottom of the list of national priorities.[8] The history of the parties' bilateral relations can therefore prove to be either of assistance or an impediment to maritime boundary dispute resolution.[9] Political and historical factors also determine sovereignty over territory which in turn defines access to the sea. Sovereignty disputes between states have frequently proved to be intractable obstacles to successful boundary delimitation.[10]

Geographical factors are otherwise often primarily expressed in terms of the physical geography of a state's coastline, as maritime rights are generated from the interface of land territory with the sea (see Section 3.4). Of particular importance in this context is the relative length of the interested parties' coastlines, their orientation towards one another and configuration (particularly whether they are concave or convex). A geographically complex coastline can give rise to difficulties in delimitation negotiations with the presence of islands often proving a contentious subject (see Section 3.5).

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6 Prescott, 1985a: 83.

7 For example, Prescott (1985a: 90) describes the relation between the governments concerned as the *"critical circumstance."*

8 Prescott, 1985b: 74.

9 Prescott (1985a: 91-92) notes that where one state holds a particular historic view which limits its scope for compromise, delimitation negotiations will be complicated.

10 For example, Kiitichaisaree (1987: 70), writing about Southeast Asian maritime boundaries, noted that sovereignty disputes rendered hopes of delimitation settlements *"futile."*

Other geographical factors – economic and environmental in nature – may also play a significant role (see Section 3.6).[11] Where there is a significant economic disparity between the states conducting a delimitation, this is frequently raised by the economically disadvantaged state as a legitimate argument for a greater share of the overlapping claims area at stake. The maritime interests of coastal states tend to be primarily driven by economic concerns and this may emerge as a factor in maritime boundary delimitation. This may, however, prove a double-edged sword. Desire for access to offshore resources may act as a positive factor, promoting cooperation and encouraging maritime boundary dispute resolution. Conversely, perceptions that ocean resources (real or imagined) are too valuable to give up, or their location is unknown, such that there is fear that a state may 'miss out' if it fails to secure its maximalist claim, may retard efforts towards resolving overlapping claims. States are also likely to perceive national security concerns in gaining control over maritime space, particularly that close inshore. Additionally, as pressure on ocean resources grows, both in terms of exploitation and from pollution, environmental factors are proving of increasing significance in efforts towards delimitation and, particularly, transboundary management of resources.

It is important to recognise, however, that the law of the sea only provides only a framework of guiding principles within which maritime boundary delimitation can take place. There are no precise rules governing delimitation[12] and thus the scope for dispute remains ample. Furthermore, in contrast to land boundaries, the majority of maritime boundaries remain undelimited (see Section 2.1). Having briefly examined the question of the factors influencing maritime boundary delimitation, the following section will provide an overview of the geographical background to the Gulf of Thailand. This will provide initial insights into what factors are likely to prove of significance in maritime boundary delimitation in the region.

[11] In the Southeast Asian context see Morgan and Fryer (1985a).

[12] Prescott, 1985a: 88; Valencia and Van Dyke, 1994: 222-223.

1.3 The Gulf of Thailand

1.3.1 Geographical Context

The Gulf of Thailand is a semi-enclosed tropical sea which has been defined as lying to the north and west of a straight line joining Mui Ca Mau at the southern tip of the Vietnamese mainland to a point on the Malaysian coast in the vicinity of Tumpat.[13] The total surface area of the Gulf has been estimated at 82,715nm^2 (283,700km^2).[14] The Gulf extends approximately 400nm (740km) along its southeast-northwest axis to the head of the Bight of Bangkok. As the Gulf of Thailand is uniformly less than 400nm across this necessitates maritime boundary delimitation between the coastal states.

The Gulf of Thailand is bordered, from the southwest, by Malaysia (c.10.8nm/20km), Thailand (c.783nm/1,450km), Cambodia (c.151nm/280km)[15] and Vietnam (c.184nm/340km).[16] The maximum depth of water in the central part of the Gulf is approximately 83m below the lowest low-water while the average depth is around 50m. Geologically, the Gulf of Thailand is entirely composed of continental shelf covered with a layer of sediments up to 8km thick, deposited since the Tertiary period. The Gulf of Thailand's sedimentary basins have proven to host hydrocarbon deposits (see Figure 1.2). The Gulf's climate, along with that of Southeast Asia as a whole, is dominated by the Asian-Australian monsoon system including seasonal tropical cyclones and typhoons, although the Gulf of Thailand is considered outside the usual track of such storms through the South China Sea. Tidal ranges are highest, in excess of 2m, at the head of the Gulf and lowest, 0.5m, at its mouth. Tidal currents flow towards the head of the Gulf during the flood and flow out during the ebb. Wind and wave-driven currents are governed by regional weather patterns.[17] As a result of its unique topography, oceanography and climate, the Gulf of Thailand can be considered

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13 Prescott, 1998: 10; Snidvongs, 1998: 11. Prescott defines the point near Tumpat as being located at 6° 12'N., 102° 20'E. and the length of the line defining the limit of the Gulf as 204nm (378km). Snidvongs cites the International Hydrographic Organization (Seas and Oceans of the World) as the source of his definition of the Gulf.

14 Prescott, 1998: 11. However, Snidvongs (1998: 11), puts the area of the Gulf at 93,298nm^2 (320,000km^2).

15 An indication of the difficulty of supplying absolute figures for coastal lengths of the Gulf of Thailand states, such measurements being inherently dependent on scale (see Anderson, 1987), is provided by the fact that while Snidvongs gives an estimate of Cambodia's coastal length of approximately 280km, the CIA World Factbook (1998) states that the figure is 443km.

16 Snidvongs, 1998: 11.

17 Summarised from Snidvongs (1998: 11-22). For more details on the oceanography of the Gulf of Thailand, see Snidvongs (1998). See also, Morgan and Fryer, 1985a: 28-29.

to be a large single marine ecosystem, as well being one of the richest biological resources in the world.[18]

The coastal geography of the Gulf of Thailand is complex. The Gulf is host to numerous islands which have served to complicate maritime boundary delimitations and have contributed to maritime boundary disputes (see Figure 1.1 and Chapters 6 and 7). Additionally, the 'U'-shaped configuration[19] of the Gulf has resulted in a constriction in the maritime claims of certain coastal states, while the Gulf's restricted area means that its littoral states, particularly Cambodia and Thailand, are zone and shelf-locked.[20]

1.3.2 Historical and Geopolitical Context

The pre-colonial history of the Gulf of Thailand sub-region was marked by the steady expansion of both the Thai and Vietnamese Kingdoms at the expense of the declining Khmer Empire (see Figures 7.3 and 7.13).[21] This has left a legacy of deep-seated suspicion and latent hostility, particularly between Cambodia and its neighbours. This has coloured dealings between the Gulf of Thailand states, especially when sensitive issues such as sovereignty and sovereign rights are at stake in boundary negotiations (see Sections 7.2 and 7.3).

In the colonial period, Britain occupied the area that in due course became Malaysia, while France eventually secured dominion over 'Indochina', an area comprising modern day Cambodia, Laos and Vietnam. Thailand, in contrast, retained its independence, thanks in part to its role as a buffer state between competing British and French imperial interests. The intervention of the colonial powers led to the conclusion of boundary treaties which in large part define the land boundaries and distribution of territory between the four Gulf of Thailand littoral states.[22] These treaties are therefore fundamental to the Gulf of Thailand states' maritime claims in that they determine what portion of the Gulf's coastline belongs to each state. Additionally, they provide the starting point for maritime boundaries between adjacent coasts by defining where the land boundaries intersect with the coast of the Gulf.

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18 Mohamed, 1998: 4.

19 What Mohamed (1998: 4) has referred to as its *"elliptic parabolic"* shape.

20 The terms 'shelf-locked' and 'zone-locked' are taken to mean that a vessel belonging to one of the states mentioned must transit the continental shelf or exclusive economic zone (EEZ) of its neighbours in order to gain access to the high seas. On the complexity of the coastal geography of the Gulf of Thailand see also, Kittichaisaree (1987: 97-99). Thailand was particularly unenthusiastic about the concept of the EEZ precisely because of this eventuality (see, for example, McDorman, 1986; Ake-uru, 1987; Kittichaisaree, 1990a and Sucharitkul, 1991).

21 See, for example, St John, 1998: 4-8.

Following World War II the region became embroiled in a succession of damaging conflicts which have to a large extent retarded progress in maritime boundary delimitation. In the immediate aftermath of the war, French attempts to reimpose the colonial order on its possessions in the region were met with indigenous resistance resulting in the 'First Indochina War' from 1945-1954. The involvement of the United States in what it perceived to be a battle against communist expansion, set against the context of superpower rivalries and the Cold War, led to the 'Second Indochina War' of 1959-1975. The 'Third Indochina War', a conflict involving Cambodia, Vietnam and the People's Republic of China, broke out directly after the twin communist victories in Cambodia and Vietnam and was brought to an end only with Vietnam's intervention in Cambodia from December 1978 and the conclusion of the Sino-Vietnamese border war of 1979 (see Section 7.3). The Vietnamese presence in Cambodia, coupled with Cold War realities, placed an ideological schism through the middle of the Gulf of Thailand with Western-leaning Malaysia and Thailand on one side and Soviet-oriented Cambodia and Vietnam on the other. This situation mitigated against meaningful dialogue on maritime boundary issues or, indeed, virtually any other issue of mutual concern.

The demise of the Soviet Union and the end of the Cold War, has led to resolution of the 'Cambodian Question' through the UN's intervention in Cambodia in 1991-1993.[23] All four Gulf of Thailand coastal states are now fully accepted members of the international community and are also all members of the Association of Southeast Asian Nations (ASEAN).[24] The geopolitical situation in the Gulf of Thailand has therefore been transformed. It is important to note that these events have thrown up fresh challenges as well as benefits. For instance, the almost complete removal of the Soviet navy from region and significant scaling down in the US military presence in Southeast Asia has, arguably, been a factor in the growth in piracy in the region[25] and has given rise to the potential for a regional arms race[26] as well as providing the

22 For copies of these documents see Prescott, 1975.

23 For analysis of the UN mission in Cambodia see Findlay (1995) and Brown and Zlasoff (1998). For a view on the reasons for Vietnam's reversal in its foreign policy and abandonment of its 'special relationship' with Cambodia, allowing the UN-brokered peace deal to go ahead, see Williams (1992: 59-83).

24 ASEAN admitted Cambodia, the last Gulf of Thailand state to joint the regional grouping, on 30 April 1999 (ASEAN Secretariat website, Jakarta, 30/4/99 (BBC SWB FE/3523)).

25 According to a special ICC report on piracy (1998: 5) the reduction in the presence of Soviet, US and UK naval forces in the region has *"diminished the deterrent effect"* on pirates.

26 See, for example, Acharya (1994); Mak (1994) and Schofield and Stormont (1996).

opportunity for tension between erstwhile allies afflicted by resurgent nationalism.[27] Furthermore, the Gulf of Thailand states face serious economic problems which are likely to put great strain on their new-found political harmony once national interests are at stake in the form of access to potentially vital maritime resources. Nevertheless, overall, the political climate in which maritime boundary delimitation negotiations can proceed must be considered more favourable than at any previous period in modern times.[28]

1.3.3 Economic Context

As previously mentioned, significant economic disparities between claimant states are frequently raised in the course of maritime boundary delimitation negotiations. Several economic indicators for the Gulf of Thailand coastal states are summarised on Table 1.2. Of immediate note is the combined population of the Gulf of Thailand states of 168.2 million and high population growth rates, particularly for Cambodia, Malaysia and to a lesser extent Vietnam. Given that 75% of Southeast Asia's population lives in the coastal zone, the potential impact on the Gulf of Thailand's resources and environment is significant.[29] From the information contained in Table 1.2 it is clear that all four Gulf of Thailand states are developing countries. However, it is also abundantly clear that Malaysia and Thailand are well on the way to becoming industrialised countries. Both these states have been bracketed among the 'tiger economies' of Southeast Asia, experiencing annual economic growth rates of 6-8% over the last two decades.[30] The GDP growth rates shown on Table 1.2 do, however, indicate the impact of the Asian economic crisis of 1997-1998.[31] The impact of what has been termed 'Asian economic flu' on the economies of both Malaysia and Thailand has been significant. GDP growth in Malaysia for 1998 was predicted at 4-5% by the government but projected at only 2% by private forecasts – down from 7.4% in 1997. Austerity

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27 See, for example, Section 7.3.4. A considerable literature has developed relating to the transformed security environment in Southeast Asia and particularly ASEAN's response to that transformation. See, for example, Babbage and Bateman (1993); Bateman and Bates (1996); Gill and Mak (1997); Jeshurun (1993); McInnes and Rolls (1994); O'Neill (1992); Rau (1994); Singh (1997); Snitwongse (1994); Solomon (1994) and Tyler (1992).

28 Valencia (1997: 265) notes that: *"for the first time in a generation, South-East Asia now has an opportunity to build a lasting peace."*

29 Mohamed, 1998: 12-13.

30 ASEAN Secretariat website, Jakarta, 30/4/99 (BBC SWB FE/3523).

31 An indication of the impact of the Asian economic crisis is that the Thai baht lost 42% of its value against the US dollar over the rate a year previously and the Malaysian ringgit 37%. Additionally, the market capitalisation of the stock markets in Bangkok and Kuala Lumpur suffered falls of 63.4% and 74% respectively (Mohamed, 1998: 14).

measures to combat the crisis were predicted to cut government spending by an astonishing 20%.[32] Meanwhile, the Thai economy dropped deep into recession in 1998 having contracted by 0.4% in 1997. The Asian economic crisis has, unsurprisingly, strained inter-ASEAN relations. It is worth noting that the economic downturn is likely to put significant additional pressure on governments to secure the maximum possible share of contested offshore space and therefore resources.

In contrast to the economic success stories of Malaysia and Thailand, at least up to the recent economic crisis, Cambodia and Vietnam lag far behind. Cambodia faces the enormous task of overcoming decades of internal conflict, low human resource levels, an almost total lack of basic infrastructure and recurring political instability which serves to discourage foreign investment.[33] Cambodian economic development is also hindered by administrative inexperience and pervasive corruption. Indeed, leading Cambodian opposition politician Sam Rainsy has memorably described modern Cambodia as *"a mafia state in a banana kingdom"* casting doubt on the government's competence, sincerity and legitimacy.[34] Despite significant progress over the last decade, Vietnam also faces major economic challenges. Vietnam is populous but poor, suffers from the aftermath of decades of conflict in the region (almost continuous from 1945-1979), and from economic dislocation as a result of the collapse of the Soviet bloc, as well as the legacies of Soviet-style economic management which are only slowly being addressed.[35]

1.3.4 Maritime Interests of the Coastal States

The Gulf of Thailand has been of vital importance to its coastal states since ancient times as a source of food and as a natural geopolitical link between them. The Gulf has therefore provided a conduit for the littoral states' interactions, both in terms of trade and military conflict. The modern maritime interests of the coastal states are, unsurprisingly, to a large extent driven by economic imperatives. Of particular note are fishery and hydrocarbon resources, but navigational, security and environmental interests are also salient. Political factors do, however, play an important role – the resolution of maritime boundary disputes and cooperative management over the Gulf's

32 CIA, 1998.
33 CIA, 1998.
34 *The Economist*, 12/12/98.
35 CIA, 1998.

Table 1.2 *Economic Characteristics of the Gulf of Thailand Coastal States*

Country	Area	Population[36]	Population Growth Rate[37]	GDP[38]	GDP Growth Rate	GDP per capita[39]	External Debts
Cambodia	181,040km^2	11.3m	2.51%	US$7.7bn	6.5% (1996) 1.5% (1997)	US$715	US$2.2bn[40]
Malaysia	329,750km^2	20.9m	2.11%	US$227bn	7.4% (1996) 4.5% (1997)	US$11,100	US$27.5bn[41]
Thailand	514,000km^2	60m	0.97%	US$525bn	-0.4% (1997)	US$8,800	US$90bn[42]
Vietnam	329,560km^2	76m	1.43%	US$128bn	8.5% (1997)	US$1,700	US$21-30bn[43]

Source: *CIA World Factbook 1998*[44]

36 July 1998 estimates.
37 1998 estimates.
38 1997 estimates. Estimates derived from purchasing power parity calculations (see *CIA World Factbook*, 1998).
39 1997 estimates.
40 1996 estimate.
41 1995 estimate.
42 1997 estimate.
43 Composed of US$7.3bn to Western countries, US$4.5bn to CMEA (primarily Russia) and US$9-18bn nonconvertible debt (former CMEA, Iraq and Iran).
44 See: http://www.odci.gov/cia/publications/factbook

resources being potential means by which political relations between the Gulf of Thailand littoral states may be enhanced.[45]

Fishing

The Gulf of Thailand has traditionally been an important source of fish for all the littoral states.[46] However, rising demand for fish from increasing coastal populations for food, as well as for export, has resulted in rapid increases in marine fishery production.[47] In the 1970s Thailand emerged as a major commercial fishing nation, ranked among the top ten in the world with a significant distant-water fishing fleet (the largest in Southeast Asia) accustomed to fishing throughout the Andaman Sea, and South China Sea as well as the Gulf of Thailand.[48] Fish products therefore became an important facet of the Thai economy.[49] Fisheries development in Malaysia also gathered pace from the 1960s onward (albeit largely outside the Gulf of Thailand) while that of Cambodia and Vietnam has lagged behind, gaining momentum only from the 1980s.[50] As a result of these developments, the total fishery catch of the four littoral states was estimated at 5.95 million tonnes for 1996, having achieved an average annual increase of a startling 4.9% per annum in the period 1988 to 1994.[51]

45 For a review of national maritime interests in Southeast Asia as a whole see Valencia (1985a).

46 Prescott, 1998: 11. Dzurek (1985: 264-265) describes the countries bordering the South China Sea as a whole as being *"extraordinarily dependent"* on the fisheries of the region, obtaining 13% of their protein from marine products in comparison to 3% for the USA. For a review of fisheries throughout Southeast Asia see Samson (1985) and United Nations (1995).

47 Mohamed, 1998: 4.

48 McDorman, 1985: 298 and 1990: 41; Torell, 1991.

49 By 1984 the export of fishery products from Thailand accounted for almost 9% of Thailand's total exports (Torell, 1988: 132).

50 Menavesta, 1998: 209. Nevertheless, it has been estimated that the fisheries sector accounts for up to 5% of Cambodia's GDP (Cambodia, 1994: 105). See Valencia (1991: 5-8) in relation to Malaysian fishing activities.

51 Mohamed, 1998: 6.

Table 1.3 ***Fish Catch and Per Capita Consumption of the Gulf of Thailand Coastal States***

Country	Total Catch (tonnes)	Catch in Gulf of Thailand	Percentage of catch in the Gulf	Consumption Kg/Capita
Cambodia	103,200	30,960[52]	1.21%	21.6
Malaysia	1,181,763	–	–	36.6
Thailand	3,522,233	2,297,575	89.8%	34.6
Vietnam	1,150,000	230,000[53]	8.99%	12.5
Total/Average	5,957,196	2,558,535		26.3[54]

Source: Mohamed, 1998.[55]

Mohamed describes the threat of overfishing in the Gulf of Thailand as *"real and ominous."*[56] This assessment is backed up with analysis showing dramatic declines in catch per unit effort (CPUE) in the Gulf indicating that overfishing is evident.[57] If the trends outlined continue unchecked, the possibility of the eventual collapse of fisheries in the Gulf of Thailand has been raised. The need for strict ecosystem-wide, and therefore transboundary management of these threatened resources is incontrovertible.[58]

Oil and gas

In the context of the relatively limited oil and gas resources located in Southeast Asia, the Gulf of Thailand has proven to be a major source of oil and particularly gas resources.[59] The distribution and exploitation of these resources is, however, uneven (see Table 1.4).

52 Based on 30% of Cambodia's catch being composed of marine fish according to Sour and Vuthy (1997), as referred to in Mohamed (1998: 24).

53 Based on a 20% contribution to Vietnam's total catch from its southwestern region, according to Pham Thouc and Huy Son (1997), as referred to in Mohamed (1998: 24).

54 This compares with average global consumption per capita of 14.5kg (Menavesta, 1998: 53).

55 See also APFIC, 1996: 18-21 and 45-47; and, SEAFDEC (1997a and 1997b).

56 Mohamed, 1998: 3. It should be stressed that this problem is by no means exclusive to the Gulf of Thailand. Indeed, most marine fisheries around the world are in danger of severe depletion with the UN's Food and Agriculture Organization (FAO) estimating that 11 of the world's 15 major fishing areas and 69% of the world's main fish species are in decline (McGinn, 1998: 60). See also Weber (1994). See Matics (1997), Samson (1985) and Tangsubkul (1982) for assessments of the prospect for Southeast Asia as a whole.

57 According to Mohamed (1998: 3), long term systematic surveys by the Thai Department of Fisheries indicates that the daytime CPUE has declined from 290 kg/hr in 1963 to approximately 50 kg/hr in 1993 while the night time CPUE has declined from 57 kg/hr in 1976 to 21 kg/hr in 1995 – less than half its previous value. The same author states that these findings are also supported by surveys conducted in Vietnamese waters.

58 For an overview of transboundary fishery management needs in Southeast Asia see Munro (1993) and Soegiarto (1993).

59 For a review of regional oil and gas potential see Valencia (1985b) and Tabgsubkul (1982).

Table 1.4: ***Oil and Gas Resources of the Gulf of Thailand Coastal States***[60]

Country	Oil			Natural Gas		
	Reserves bn. bbl.	*Production `000 b/d*	*R/P Ratio*[61] *years*	*Reserves tn. cm*	*Production bn. cm*	*R/P Ratio years*
Cambodia	–	–	–	–	–	–
Malaysia	3.9	730	15.1	2.26	39.4	57.4
Thailand	–	–	–	0.20	12.7	15.6
Vietnam	0.6	195	8.5	0.17	–	>100

Source: BP Statistical Review of World Energy, 1998.

It has been estimated that one third of *Cambodia's* potentially oil and gas bearing sedimentary basins are located offshore.[62] However, despite strenuous efforts and initial promise, Cambodia has no production of either oil or gas and little prospect of such in the immediate future, at least as far as exclusively Cambodian waters are concerned (see Section 7.2.8). In regional terms *Malaysia* is clearly a major oil and gas producer, boasting significant reserves. These resources are, however, largely located outside the Gulf of Thailand. Malaysia is also a major oil and gas exporter but with domestic demand for oil reported to be rising at a rate of 6.7%/year, Malaysia's exports look set to be limited in the future.[63] *Thailand* is also an established gas producer with the majority of its offshore activity concentrated in the Gulf of Thailand.[64] Major finds have been made in the central Gulf of Thailand in exclusively Thai waters (see Figure 1.2). Among these are the Erawan field with 50 billion cubic metres of initial proven gas reserves, the Satun field with 80 billion and the enormous Bongkot field with 180 billion.[65] It has been reported that the Bongkot field alone fulfils 30% of Thailand's gas needs.[66] The *Thai-Malaysian JDA* has also recently emerged as a major source of gas with estimated reserves of 10 trillion cubic feet.[67] For its part, *Vietnam* has taken steps towards becoming a commercial oil and gas producer. The finds that have been made are, however, located outside the Gulf of Thailand. Licensing and exploration activity in Vietnam has also taken a nose-dive in recent years as a consequence of lower than hoped for exploration success rates, high exploration costs and administrative problems

60 Includes reserves located outside the Gulf of Thailand.

61 The Reserves/Production (R/P) ratio can be defined as follows: If the reserves remaining at the end of any year are divided by the production in that year, the result is the length of time that those remaining reserves would last if production were to continue at that level (BP, 1998: 4).

62 Praing, 1997: 2.

63 *Petroleum Review*, November 1998: 16.

64 As of 1 January 1997 63% of contracts active in Thailand (excluding the Thai-Malaysian JDA) were located in the Gulf of Thailand (*Petroleum Review*, November 1998: 18).

65 Praing, 1997: 3.

66 *Offshore*, December 1996: 8.

67 *Bangkok* Post, 21/4/98; The *Nation*, 21/4/98.

in dealing with the authorities in Hanoi.[68] Nevertheless, it is estimated that off Vung Tau in the Con Son Basin alone, Vietnam has reserves of 1 billion bbl of oil and 5 trillion cubic feet of gas.[69] Additionally, it has been reported that the *Malaysia-Vietnam "Defined Area"* is host to at least 200 million bbl of oil.[70]

As noted, oil and gas reservoirs have been located in the thick sedimentary basins in the Gulf of Thailand. These are predominantly located in the central part of the Gulf and are aligned along the Gulf's northwest-southeast axis.[71] Of particular significance here is the Pattani Trough. This structure straddles the boundary between exclusively Thai waters and the Thai-Cambodian overlapping claims area. On the Thai side of the line several major hydrocarbon finds have been made including the Benchamas, Tantawan, Satun, Erawan, Pailin and Bongkot fields (see Figure 1.2). As the Trough extends into waters disputed with Cambodia, there appears no reason to suspect that this area will not prove similarly productive.

Security of navigation and piracy

All four of the Gulf of Thailand littoral states, in common with coastal states worldwide, have a clear interest in ensuring their maritime defence and security.[72] The Gulf of Thailand provides an essential route by which the littoral states gain access to world markets. For example, Hamzah has commented that *"All of Malaysia's exports – except those that go to Singapore via the causeway or that trickle across the border into Thailand or Indonesian Borneo – go by sea."*[73] Similarly, Navavichit has noted that Thailand is dependent on seaborne trade for the import and export of 95% of its volume of manufactured goods, agricultural products and raw materials.[74] The same author goes on to state that, *"Piracy, robberies at sea, the smuggling of illegal goods and immigrants, and drug trafficking and environmental damage remain challenging problems."*[75]

68 *Petroleum Review*, November 1998: 18.
69 *Offshore*, May 1997: 162.
70 *Offshore*, November 1996: 40.
71 The two key basins are the Thai Basin running broadly north-south in the Gulf of Thailand and the Malay Basin running northwest-southeast off the northeast coast of peninsula Malaysia (Valencia, 1985b: 156).
72 Morgan and Fryer, 1985a: 23-24; and 1985b.
73 Hamzah, 1998: 51. It should also be pointed out that Malaysia is particularly concerned with navigation issues as a consequence of its territory being divided by the South China sea (Valencia, 1985a: 46; Hamzah, 1987: 357).
74 Navavichit, 1998: 79.
75 Navavichit, 1998: 80.

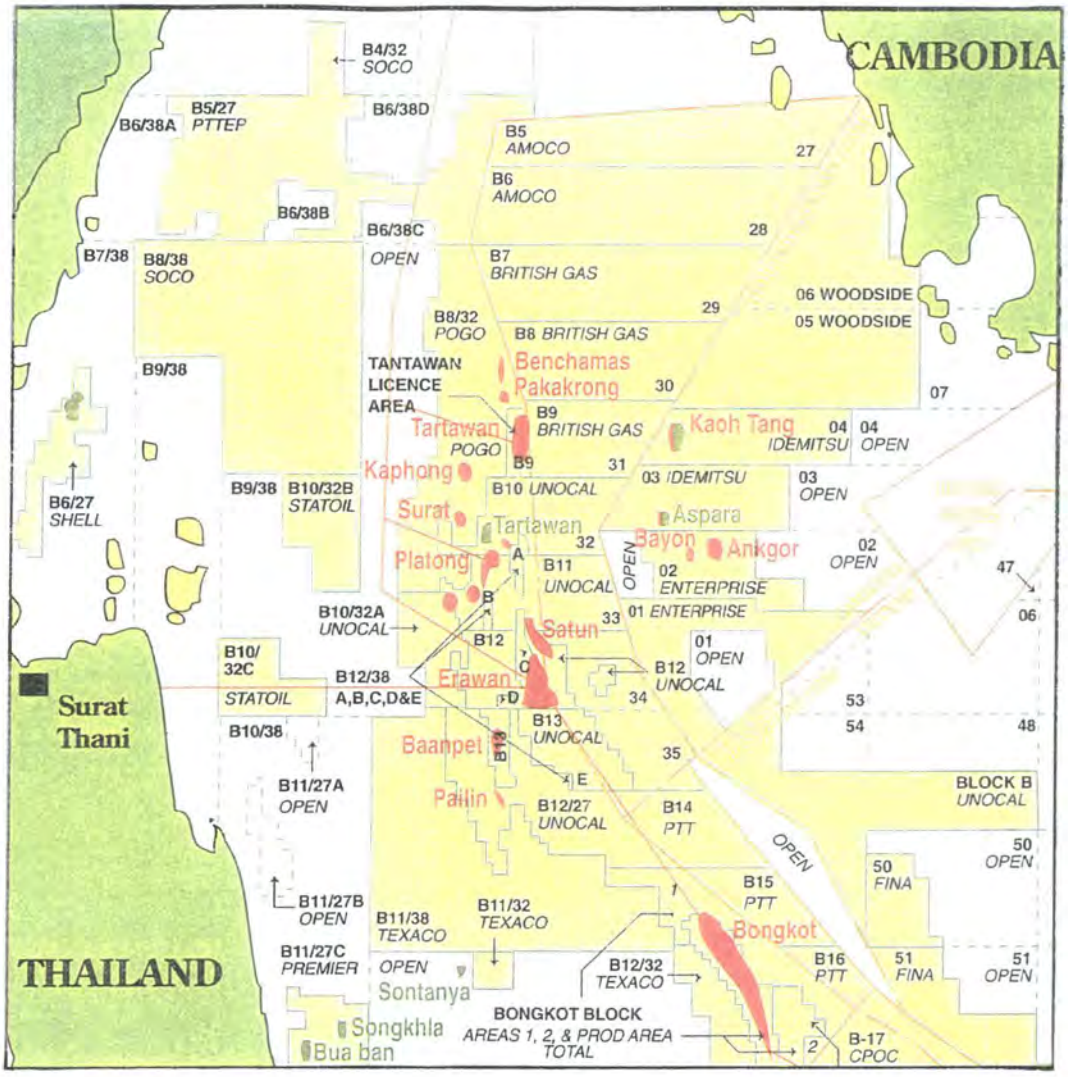


Figure 1.2 *Oil and Gas Fields in the Gulf of Thailand*
Source: *1998 Offshore Oil & Gas Concession Map.*

It is clear that there has been a dramatic increase in acts of piracy,[76] particularly in Southeast Asian waters in the 1990s. For example, 229 incidents were reported in 1997 as compared with 38 in 1986. The incidence of piracy has increased year-on-year with the exception of one year when there was a slight fall.[77] Unfortunately, the waters of the Gulf of Thailand have not proved immune to this threat. A total of 26 acts of piracy

76 In its strict definition under UNCLOS piracy is an illegal acts on the high seas. The majority of attacks occur within territorial waters and therefore fall outside this definition. As the ICC has dryly observed, however, *"it makes little difference to the seafarer to know that the man who shot him is a robber rather than a pirate."* The International Chamber of Commerce's (ICC) International Maritime Bureau definition of piracy is as follows: *"Piracy is an act of boarding any vessel with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act"* (ICC, 1998: 2).

77 ICC, 1998: 10-11. It should be noted that the problem is often underestimated as many incidents are not reported to the authorities as the relatively small financial loss as a consequence of a robbery are often outweighed by the cost of delays incurred during investigations (ICC, 1998: 4).

were reported in the waters of the Gulf of Thailand states in 1997 with Thai waters ranking as second only to Indonesian waters as most prone to such attacks.[78]

Piracy is therefore a significant, and growing, problem for the Gulf of Thailand states. As previously mentioned, the problem has arisen in part because of the end of the Cold War and the removal of the deterrent provided by the presence of superpower naval contingents patrolling the region. Despite the development of what has been termed a regional arms race,[79] primarily for economic reasons the surveillance and enforcement capabilities of the littoral states remain inadequate to fill the vacuum left by the withdrawal of the Soviet and US navies.[80] Unfortunately, piracy has also developed as a consequence of economic hardships. For example, with their traditional fishing grounds out of bounds, the temptation to indulge in robbery at sea has reportedly proved too much for some Thai fishermen.[81] Some action to combat the threat to navigation posed by piracy has already been taken in the form of the joint patrolling efforts mentioned in relation to fisheries management (see Section 7.8). However, more intensive cooperation will clearly be required in the future.

Environmental issues

A related issue to the question of navigation is the environmental threat that this intense maritime activity poses.[82] The development of oil and gas production in the Gulf of Thailand, coupled with rapid industrialisation among its coastal states and reliance on the sea as the predominant conduit for trade has raised a significant threat of marine collisions. As a result the possibility of major oil spills in the confined space of the Gulf of Thailand has been raised. Additionally, the Gulf is threatened by pollution from both land and marine-based sources and has been termed a *"concentration area"* for marine pollution.[83] Indeed, the inner part of the Gulf, particularly the waters immediately adjacent to southern Thailand have been classed as one of the most heavily polluted marine areas in the world.[84] It is estimated that in excess of 200,000 tonnes of waste, approximately 70% from land-based sources, is discharged into the Gulf of Thailand

78 ICC, 1998: 12. Clearly not all these incidents took place within the strict confines of the Gulf of Thailand.

79 See Schofield and Stormont, 1996.

80 ICC, 1998: 5.

81 McDorman, 1986: 193. See Valencia and VanDyke (1994: 231) for similar allegations concerning Vietnamese involvement in piracy.

82 For a regional review of marine pollution threats and conservation of the marine environment see Jaafar and Valencia (1985) and White (1985).

83 Ake-uru, 1987: 418.

annually. This discharge is dominated by domestic wastes but industrial effluents are recognised as containing more toxic chemical substances.[85] Despite this it has been concluded that, *"the marine environment of the Gulf of Thailand is not yet seriously polluted."*[86] Nevertheless, Johnston and VanderZwaag refer to pollution from land-based activities alone as:

> *...a huge environmental problem in the area, critically affecting the future health of the waters as a source of food production and their amenability to attract tourists and local recreational users of the beaches and inshore areas.*[87]

If urgent steps are not taken by the littoral states to address this problem, coastal population and economic growth indicate that a serious deterioration in the Gulf's marine environment will be only a matter of time.[88] As well as having a negative impact on the renewable living resources of the Gulf such a development would also impact on the increasingly important tourist industry (particularly in Malaysia and Thailand). Additionally, there is a growing realisation that the coastal states lack the information required to address the environmental and resource problems posed by the Gulf of Thailand and that unilateral actions are likely to prove inadequate, leading to a recognition that progress needs to be made on cooperative marine scientific research efforts.[89]

1.4 Significance and Limitations of the Study

The significance of the Gulf of Thailand to the littoral states is to a large extent self-evident from national maritime priorities and interests outlined in the preceding section and is therefore difficult to overstate. It is clear that lack of clarity over the limits of maritime claims, leading to confusion and uncertainty over jurisdiction, retards resource development and results in conflicting activities and competing uses in the maritime sphere and may ultimately pose the risk of armed conflict.[90] These activities, many of

84 Johnston and VanderZwaag, 1998: 74-75.
85 Chongprasith and Srinetr, 1998: 141. See also, Piyakarnchana *et al.*, 1990.
86 Chongprasith and Srinetr, 1998: 176.
87 Johnston and VanderZwaag, 1998: 75.
88 See UNEP, 1983 and 1987.
89 Valencia and VanDyke, 1994: 220-221.
90 As far as living resources are concerned, confusion over jurisdiction leading to lack of adequate management and open access has been referred to as the 'tragedy of the commons'.

them essentially transnational in character, may in turn lead to ungoverned resource depletion, environmental damage and political tension. As Valencia has observed:

> *The overlaying of a mosaic of uncoordinated national jurisdictional regimes on inherently transnational resources and activities will inevitably create conflicts.*[91]

This thesis is devoted to the study of the delimitation of maritime boundaries in the Gulf of Thailand. It can be strongly argued that definition of the extent of coastal states' jurisdiction is a necessary precursor to the full realisation of the potential benefits of the Gulf of Thailand to them. Similarly, the unambiguous delimitation of maritime boundaries will provide a sound basis for the sustainable management and protection of the resources of the Gulf. Furthermore, the resolution of maritime boundary disputes would remove a significant potential source of tension between states and could therefore lead to enhanced political relations. No previous study has specifically examined in depth the issues which are addressed in this thesis.

However, the limitations of the research need to be understood from the outset. This study is narrowly focused on delimitation of maritime boundaries in the Gulf of Thailand. The plethora of issues relating to the management of the resources of the Gulf of Thailand and disputes arising out of competing ocean uses are touched upon but not dealt with in detail. It is also important to note that this thesis necessarily draws on the combined disciplines of law and geography – the essential components of the maritime boundary delimitation process. However, it is left to other scholars, for example those grounded in political science, to explore in detail other aspects of maritime boundaries in the Gulf of Thailand, for instance, the detailed reasons why particular negotiations have proved successful while others did not.

Nevertheless, it is hoped that this thesis will provide a meaningful contribution to the understanding and the ultimate resolution of maritime boundary delimitation questions in the Gulf of Thailand.

1.5 Previous Studies

The law of the sea and maritime boundary delimitation are issues which between them have generated an enormous volume of literature. In the context of this study it is not proposed to attempt a review of the seemingly exponentially expanding body of published works on these topics. Many key studies devoted to these issues will, however, be referred to and addressed throughout this thesis, particularly in Chapters 2 and 3. Instead, a review of studies specifically concerned with maritime boundary delimitation in the Gulf of Thailand is offered here.

As previously mentioned, this thesis represents the first comprehensive study concerned solely with maritime boundary delimitation in the Gulf of Thailand. Previous studies specifically devoted to the topic have been limited in scope. Nevertheless, two recent studies deserve special mention. These are Dzurek's paper *Maritime Agreements and Oil Exploration in the Gulf of Thailand* presented at the International Boundaries Research Unit's (IBRU) July 1996 conference and published by the same research unit in 1998; and Prescott's 1998 monograph, published under the auspices of the Malaysian Institute of Maritime Affairs (MIMA), entitled *The Gulf of Thailand.* These two, undeniably useful, papers are the only studies which are directly devoted to the core topic of this thesis and will be referred to in the main text of this study. However, as a consequence of their limited length they carry the debate only so far.

Maritime boundary delimitation in the Gulf of Thailand has otherwise been dealt with in the context of global surveys of maritime boundaries such as Prescott (1985a) or regional ones, notably Buchholz (1987), Dzurek (1985 and 1994), Johnston and Valencia (1991), Kittichaisaree (1987), Prescott (1981 and 1985), Siddayao (1978), Tangsubkul (1982) and Valencia (1980 and 1997).

Studies devoted to the development of and nature of the maritime claims of a particular Gulf of Thailand state have also proved valuable, not least because such works inevitably seek to address the question of that state's maritime boundaries with its neighbours. In *Cambodia's* case, two relatively early studies written in French are worth highlighting. These are Sarin Chhak's book *Les Frontieres du Cambodge* (1966) and Norodom Ranariddh's doctoral thesis *Les Limites du Domaine Maritime du Cambodge.* In analysing these texts it is, however, important to acknowledge backgrounds of the authors concerned. Sarin Chhak became Foreign Minister of the

[91] Valencia, 1997: 266.

GRUNK[92] in 1970. Prince Ranariddh is one of King Sihanouk of Cambodia's sons, leader of the pro-Royalist FUNCINPEC party and from 1993-1997 was First Prime Minister of Cambodia. It is therefore fair to observe that both of these works have been written from the Cambodian perspective. It is also worth noting that Chhak's book is primarily dealt with land boundary questions and devoted only one chapter to maritime boundary issues. In addition, M.Khim Y.'s 1978 doctoral thesis entitled *Le Cambodge et le Problème de l'Extension des Espaces Maritimes dans le Golfe de Thailand* is worthy of attention. Apart from these three substantial documents there is a notable paucity of studies on Cambodia's maritime claims.

With regard to studies of *Malaysian* maritime claims, those of Hamzah (1987, 1988 and 1998) deserve to be highlighted. Valencia (1991) has also made a useful contribution, as has Haller-Trost (1998) in her substantial study of Malaysia's contested territorial and maritime boundaries. Several authors have addressed the development and status of *Thailand's* offshore claims including Ake-uru (1987), Kittichaisaree (1990), McDorman (1985) and Navavichit (1998). Similarly, *Vietnam's* maritime jurisdictional claims have attracted commentators including Pham Hao (n.d. and 1998) Valencia (n.d., 1990 and 1993) and Valencia and Van Dyke (1994).

It is also important to note that there is a developing literature devoted to the Gulf of Thailand, though by no means specifically concentrated on maritime boundary issues. This has to a large extent been inspired by the efforts of the Southeast Asian Programme on Ocean Law and Policy (SEAPOL) (see in particular several volumes of papers edited by Johnston *et al.* and Matics *et al.*). The most recent developments in this regard have been the convening of annual meetings from 1997 under SEAPOL's Gulf of Thailand Project. The outcome of these meetings are SEAPOL's *Integrated Studies* of the Gulf of Thailand which proved an important source of background information on the claims and attitudes of the Gulf's littoral states.

[92] French acronym for the Royal Government of National Union of Cambodia – the government-in-exile set up by Prince Sihanouk in collaboration with the Khmer Rouge after he was ousted in the coup that brought Lon Nol to power in 1970 (see Section 7.3.2).

1.6 Research Methods

1.6.1 Documentary Research

Both primary and secondary documents were collected and these form the backbone of the present research. Primary documents predominantly took the form of national legislation relating to the maritime claims of the Gulf of Thailand coastal states and their bilateral maritime boundary agreements. Several of the most significant of these primary documents are included as appendices to this study. Limitations of length prevented the inclusion of other important primary documents collected. These documents are listed in the bibliography and are held on file with the author. Secondary materials collected included relevant reports by global institutions such as the United Nations and national government publications as well as academic books, theses or dissertations and articles plus cartographic sources referred to. These documents are listed in the bibliography.

These documents were collected from a number of libraries and archives primarily in Durham, London and Taunton in the UK and in Bangkok, Hanoi, Kuala Lumpur, New York, Melbourne, Phnom Penh and Singapore abroad. Of particular note were the archives of the Malaysian Institute of Maritime Affairs (MIMA) in Kuala Lumpur, the headquarters of the Southeast Asian Programme on Ocean Law and Policy (SEAPOL) in Bangkok and the library of the National University of Singapore. Documents were also obtained through contacts with the relevant governments, particularly the foreign affairs and hydrographic authorities concerned, and through correspondence with interested scholars. Furthermore, access to certain secondary sources which were difficult to obtain was facilitated through the inter-library loan system and in particular from the British Library at Boston Spa.

1.6.2 Interviews

Semi-structured interviews represented another important research tool.[93] Interviews were conducted with government officials in all four Gulf of Thailand coastal states. For the most part these interviews were conducted in confidence at the request of the

[93] The term 'semi-structured' means that rather than using a 'structured' technique such as a formal questionnaire or a wholly 'unstructured' method of interviewing analogous to a general discussion, a relatively straightforward interview 'menu' of key questions and topics of concern was prepared before each interview. This was designed to enable the interviewer to guide the

interviewees. Additionally, a number of other interviews were undertaken with relevant experts from the United Kingdom Hydrographic Office (UKHO), the United States Department of State, the international oil industry and in academic circles. Reference to these interviews is made in the thesis text where appropriate.

1.6.3 Fieldwork

In order to gain access to particular archives in the region and to key individuals and government departments so that interviews could be conducted, a number of visits to the Gulf of Thailand states were undertaken. Visits to Cambodia took place in March, May and July 1995 and in April 1996. Visits to Malaysia in May 1995 and December 1998. Visits to Thailand in July 1995 and November-December 1998. The author was invited to participate as a speaker in SEAPOL's second Gulf of Thailand experts meeting in Hanoi in July 1998 and elected to remain in Vietnam into August.[94] Additionally, research-related visits abroad were undertaken to New York (February 1997), Singapore (June 1995 and November 1998), Vancouver (May 1994), and Washington D.C. (November 1996).

1.6.4 Cartographic Techniques

In order to assess accurately the maritime claims of the Gulf of Thailand states, considerable cartographic work, using primarily British Admiralty charts, was conducted. This involved the plotting of coordinates and measurement and construction of theoretical equidistance lines on charts depicting the Gulf of Thailand in whole or in part. The charts used are listed in the bibliography. British Admiralty charts were selected for this task not only because they provide excellent coverage of the area in question at a variety of scales, but also because the Gulf of Thailand littoral states themselves have shown a tendency to refer to precisely these charts in advancing their unilateral claims and in their bilateral maritime boundary agreements.

Additionally, geodetic tasks, for example the accurate calculation of areas of overlap between competing jurisdictional claims, were performed with the aid of the library of computer programs collectively known as DELMAR.[95] Areas were also

conduct of the interview, maximise the relevance and quality of the information gleaned yet retain considerable flexibility in order to adapt to the interviewee's responses.

94 See Grundy-Warr and Schofield, 1999 (forthcoming).

95 DELMAR derives its name from the DELimitation of MARitime boundaries. For a fuller description of the attributes and capabilities of DELMAR, see Carrera (1994: 49-58).

measured with the aid of a planimetre and appropriate charts. A planimetre is an instrument which allows the accurate measurement of the areas of spaces not defined by straight lines. Use of the planimetre therefore allowed areas bound by coastlines and arcs to be accurately assessed. Three readings of every area measured with the planimetre were made and the average taken. When a known area was measured, the averaged planimetre reading was within 0.05% of the true area.

1.6.5 Research Problems

The chief difficulty encountered in the research undertaken relates to the sensitive nature of the subject under discussion. The delimitation of maritime boundaries is inevitably linked intimately to a state's sovereign rights. This meant that certain key documents remained classified and thus unavailable to the researcher. As well as resistance to allowing documents to enter the public domain, this sensitivity over the focus of the research also translated into reticence on the part of government officials in particular when questioned on issues pertaining to maritime boundary delimitation. This was certainly the case in relation to undelimited boundary situations where negotiations were ongoing. Similarly, with regard to existing maritime boundary agreements, the rationale behind the selection of a particular boundary line has frequently been left opaque by the parties to the agreement. The governments concerned are often reluctant to clarify why one boundary alignment was chosen in preference to another. The content of maritime boundary negotiations, both past and present, is therefore widely treated as being confidential. In these circumstances analysis of maritime boundary delimitations necessarily requires a certain degree of intuition and educated guess work.

A further problem encountered during the collection of information was that some of the earlier documents have, over the years and largely as a consequence of political turmoil, become unavailable. The text of South Vietnam's 1971 continental shelf claim is a good example of this. This problem is particularly evident in Cambodia where it is believed that many original documents have been destroyed.[96]

[96] Interview with Cambodian Foreign Ministry official, March 1995.

1.7 Structure of Study

The present chapter, Chapter 1, provides introductory comments on maritime boundary delimitation and on the Gulf of Thailand and states the aims and significance of the research. A brief review of relevant literature is included, together with details of research methods employed and an outline of the structure of the thesis. Chapters 2 and 3 concentrate on the theoretical framework for the study of maritime boundaries in the Gulf of Thailand. This reviews and analysis of the relevant provisions of the international law of the sea in respect of maritime jurisdiction and maritime boundary delimitation. The close interrelationship of the geography and law is explored and the preponderance of geographical factors, coupled with the political will of the parties involved, as the key variables in determining maritime boundary delimitation is demonstrated. These chapters provide the framework for analysis of claims on the Gulf of Thailand.

Chapter 4 critically evaluates the baseline claims of the littoral states. Chapter 5 offers a review of national claims to maritime jurisdiction as a prelude to examining agreed and unsettled delimitations in the Gulf of Thailand. Existing maritime boundary agreements, both delimitation lines and joint arrangements, are detailed in Chapter 6. Chapter 7 focuses attention on the remaining undelimited maritime boundary scenarios in the Gulf of Thailand.

The concluding part of this thesis, Chapter 8, reviews the findings of this study, highlights the options open to the Gulf of Thailand states to resolve their outstanding maritime boundary delimitation problems and evaluates the prospects for future delimitation agreements in the Gulf.

Chapter 2

The Law of the Sea, Maritime Jurisdiction and the Gulf of Thailand

2.1 Introduction

Prior to World War II state jurisdiction rarely extended more than three nautical miles (nm) offshore. The delimitation of maritime boundaries between states, confined in scope to such a relatively narrow band of inshore waters, was therefore infrequently a controversial process.

The tremendous increase in the maritime space coming under the jurisdiction of coastal states in the post-war period, coupled with similarly significant changes in the diversity and intensity of offshore activities, has, however, radically transformed the nature of maritime boundary negotiations, enhancing both their complexity and importance. Clearly, the extension of coastal states' sovereignty seawards has generated the potential for a great number of 'new' maritime boundaries and, inevitably, a host of overlapping jurisdictional claims and offshore boundary disputes. This latter point is amply illustrated by the incomplete nature of the maritime political map of the world. Of an estimated 427-434 potential maritime boundaries,[1] only about 160 have been formally agreed.[2]

The delimitation of maritime areas between two or more states is governed by the principles and rules of public international law. In this context it is clear that geographical factors, and in particular coastal geography, are fundamental to international law as it pertains to maritime boundary delimitation (see Section 3.4). This is true, whether a boundary dispute is resolved by negotiation between the parties or whether it is submitted to third party settlement. Nevertheless, there is a significant distinction in character between these types of dispute settlement (see Chapter 8).

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1 Based on US Department of State (1988) figures updated by the author. On the basis of this analysis there are 427 potential maritime boundaries around the word or 434 if the 7 potential boundaries of the Caspian Sea are considered to be maritime boundaries.

2 Blake, 1999. Volumes I and II of Charney and Alexander (1993), examines 134 maritime boundary agreements while Volume III (1998) includes details of 18 more such agreements. As a 'rule-of-thumb' it may be estimated that, on average 3-4 new agreements are concluded every year (Blake, 1999).

In a resolution by negotiation, states are free to agree to any boundary they want provided that the rights and interests of third states, or of the international community, are not prejudiced. Nevertheless, international law generally provides the context within which negotiations take place.

Where agreement cannot be reached, customary international law – now largely reflected in the United Nations Convention on the Law of the Sea (UNCLOS)[3] (see Section 2.2) – will apply. While this does not mean that states are obliged to settle their maritime differences or to submit such differences to adjudication or other means of third party settlement, international law does provide the relevant framework for analysing the respective merits of each side's position.

The purpose of this chapter, therefore, is to provide an overview of the international law of the sea as it relates to maritime jurisdiction and sovereign rights at sea. Particular attention will be devoted firstly to the UNCLOS, as to a large extent this treaty embodies the law of the sea, and secondly to the law of the sea as it applies to maritime boundary delimitation in the Gulf of Thailand. The following chapter will explore key principles of geography and international law as they relate to the delimitation of international maritime boundaries.

2.2 The Development of the Law of the Sea

Up to the close of the medieval period, the international law of the sea was notable by its absence.[4] Piracy represented a significant threat to seaborne trade and states lacked the naval wherewithal to police offshore areas effectively and thus exert their authority over ocean spaces in order to enable them to claim national jurisdiction over them.

Nevertheless, as early as 1493 ownership of the oceans was partitioned between Portugal and Spain by a Papal Bull of 4 May of that year. This division of the world's seas between the two Iberian powers was later modified by the *Treaty of Tordesillas* of 7 June 1494 but the Portuguese and Spanish claims to a global maritime monopoly

3 United Nations, 1983.
4 Brown, 1994, Volume II: 6.

remained.[5] These claims to national sovereignty over the oceans were hotly contested by other emerging European maritime powers, notably the English and the Dutch.

From the seventeenth century onwards, a debate emerged between the leading writers (representing the leading powers) of the day, between those advocating state sovereignty and control over offshore areas and those proposing unfettered freedom of navigation.[6] These competing trends are exemplified by renowned works such as Hugo de Groot's (Grotius) chapter *Mare Liberum* ('free sea') in his book *De Domino Maris* of 1604, and John Seldon's *Mare Clausum* ('closed sea') published in 1635.[7]

The debate between state sovereignty and freedom of navigation eventually led to compromise and the emergence of two key principles in the law of the sea. Firstly, the concept of state sovereignty over a territorial or *"small sea"*[8] of limited extent emerged. This came to be defined by reference to the so-called 'cannon-shot rule' – the distance a cannon could throw a ball, as proposed by the Dutch in negotiations with the English as early as 1610.[9]

Secondly, and significantly as the European trading powers entered their imperial era in the eighteenth and nineteenth centuries, the principle of freedom of navigation on the 'high seas' beyond the narrow limits of national jurisdiction was established. This principle was consolidated and safeguarded by the Great Powers, and particularly Great Britain as the pre-eminent maritime power at that time, whose imperial ambitions and prosperity were dependent upon seaborne trade.[10]

The 'cannon shot rule' hardly provided a precise definition of territorial sea width.[11] Nevertheless, by the early twentieth century, several states including, notably,

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5 According to the Papal ruling, Portugal's zone lay between approximately 37°W and 143°15'E. The Treaty of Tordesillas altered these limits to 46°10'W and 134°E respectively (McConnell, 1991: 10).

6 Sanger, 1986: 11-13.

7 Perhaps unsurprisingly, both of these works were driven by state policy interests. Grotius advocated the freedom of navigation sought by his client, the Dutch East India Company, while Seldon was charged with defending 'British Seas' from Dutch maritime interests on behalf of England's Stuart Kings (Brown, 1994, Volume I: 7). Grotius wrote: *"The sea, since it is as incapable of being seized as the air, cannot have been attached to the possession of any particular nation"* (Siddayao, 1978: 42).

8 Grotius as noted in Sanger, 1986: 12.

9 Sanger, 1986: 12.

10 In large part, Britain's role as guardian of the right to freedom of navigation has, in the latter part of the twentieth century, been assumed by the United States as the modern world's leading sea power (Brown, 1994, Volume I: 6-8).

11 Clearly, with the development of technology, artillery was able to throw shells further and further over time. The US states of Louisiana and Texas took this to its logical conclusion in 1938 and 1941 respectively by passing laws claiming a 27-mile territorial sea on the grounds that guns then had that range. Sanger (1986: 22) who describes these claims, termed them *"ridiculous."*

major maritime powers such as Britain and the United States, had unilaterally adopted a 3 nautical mile (nm) territorial sea limit. These states, and in particular the maritime powers, keen to limit coastal state jurisdiction and thus maximise the area of the high seas where freedom of unrestricted freedom of passage was allowed, led a push for the 3nm territorial sea limit to be adopted as a universal rule.[12]

However, when the representatives of 42 states met under the auspices of the League of Nations at the Hague Codification Conference of 1930, no consensus was reached on a standard limit for the breadth of the territorial sea. This failure was followed by a period of what has been termed *"creeping coastal state jurisdiction"*,[13] which reflected the tension between the interests of coastal states as opposed to the established maritime powers.

In the immediate aftermath of the Hague Conference, in the 1930s and early 1940s, a number of states made territorial sea claims beyond 3nm-breadth and up to 12nm.[14] This process of expanding coastal state claims to maritime space and the erosion of the 3nm 'rule' accelerated in the post-World War II period as decolonisation led to a radical increase in the number of coastal states, many of which were keen to challenge the established maritime order. Furthermore, rapidly increasing populations and hence resource demands prompted significantly greater interest in the oceans as sources of food and mineral wealth and this was coupled with advances in technology allowing for more efficient exploitation of resources in and under the sea.

Leading the way was the United States. In 1945, US President Truman issued a pair of Presidential Proclamations. That relating to the continental shelf stated that:

> *...the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control.*[15]

The US similarly claimed the right to designate fishery conservation zones in the high seas beyond American-claimed territorial sea.

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12 McConnell, 1991: 11.

13 McConnell, 1991: 11.

14 For example Colombia, Cuba, Greece, Italy, Iran and Uruguay all claimed 6nm territorial seas; Mexico claimed a 9nm limit; and, both Guatemala and Venezuela claimed 12nm (McConnell, 1991: 11).

15 *Presidential Proclamation No.2667 concerning the policy of the United States with respect to the natural resources of the subsoil and sea bed of the continental shelf*, 28 September 1945. Copy included in Volume II of Brown, 1994: 113. See also, Siddayao, 1978: 43.

The continental shelf declaration, often referred to as the *Truman Proclamation*, did not define precise limits to the US claim to continental shelf. However, it later emerged that a 200 metre depth criterion was contemplated.[16] Oil company lobbying was probably significant in prompting the Truman Proclamation related to the continental shelf – emphasising increasing concerns on the part of coastal states to secure access to offshore resources beyond the narrow band of jurisdiction represented by the territorial sea. Indeed, the opening paragraph of the Truman Proclamation notes that the action was taken in recognition of *"the long range world-wide need for new sources of petroleum and other minerals."*

The intensification of the process of creeping coastal state jurisdiction eventually led to the convening of the first United Nations Conference on the Law of the Sea (UNCLOS I), held in Geneva in 1958. The work of this conference, attended by the representatives of 86 states, was in large part founded on seven years of preparatory work undertaken by the International Law Commission (ILC) which presented the conference delegates with 76 draft articles.

Ultimately, four key Conventions emerged from UNCLOS I, each approved by a clear majority of the states represented:

- The *Convention on the Territorial Sea and Contiguous Zone*;
- The *Convention on the Continental Shelf*;
- The *Convention on the High Seas*; and,
- The *Convention on Fishing and Conservation of the Living Resources of the High Seas.*[17]

These four Conventions represented a useful degree of codification and clarification of the existing international law of the sea, coupled with a certain amount of innovative development in response to the fresh challenges posed primarily by technological change and its impact on the intensity and range of activities undertaken at sea.[18] The provisions of the Geneva Conventions were largely incorporated into the UNCLOS (see below).

One notable failing of the 1958 Conference was that no agreement on the maximum breadth of the territorial sea could be reached.[19] As a result, in 1960, at the instigation of Australia, 88 states met for UNCLOS II which was specifically devoted to

16 Sanger, 1986: 14-15.

17 Copies of the four Geneva Conventions of 1958 are included in Volume II of Brown, 1994.

18 Brown, 1994, Volume II: 9.

establishing proper limits for the territorial sea. The Conference came extremely close to achieving its aim. However, a joint US-Canadian proposal for a 6nm territorial sea with a 6nm fishing zone beyond that, ultimately failed by just one vote to achieve the two-thirds majority necessary for these limits to be adopted by the Conference.[20]

Technological advances did not cease in 1958.[21] The development of efficient distant-water fishing capabilities by several states raised new concerns and in some cases serious tensions (e.g. the Anglo-Icelandic 'Cod War').[22] The possibility of deep-sea mining far offshore, beyond the limits of national jurisdiction also caught many observers' imaginations and generated considerable debate.

These fresh concerns were coupled with the abiding problem of defining the limits of claims to territorial seas and the changing international political context.[23] All these factors contributed to the convening of a further UN-sponsored conference on the law of the sea – UNCLOS III.

The 'blue touch-paper' was lit by the Maltese Ambassador to the UN, Arvid Pardo. His famous speech to the UN General Assembly in 1967, called for, among other things, the area beyond *"present"* national jurisdiction to be preserved as the *"common heritage of mankind"* which should be *"used and exploited for peaceful purposes and for the exclusive benefit of mankind as a whole."*[24] He also warned of the potentially dire consequences of unchecked exploitative and military activities as sea. This impassioned call for action led directly to UNCLOS III.[25]

Thus, the key international treaties governing the law of the sea relating to maritime delimitation are the four Geneva Conventions of 1958 and their successor, the 1982 United Nations Convention on the Law of the Sea.

The latter was signed at Montego Bay, Jamaica, by 119 states on 10 December 1982.[26] As at 16 November 1993 60 states had deposited their instruments of

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19 Siddayao, 1978: 43-44.

20 Sanger, 1986: 17-18.

21 Brown (1994: 9) describes post-war developments in the law of the sea as being *"shaped"* by developments in marine technology.

22 Sanger, 1986: 17.

23 As well as the increasing influence of post-colonial developing nations in international forums, an important element in the success of UNCLOS III was the Soviet Union's moves towards the deployment of an ocean-going 'blue water' navy. This latter development led Moscow to share many of the freedom of navigation concerns held by the United States as a global naval power (Sanger, 1986: 20-21).

24 Quoted in Siddayao, 1978: 44.

25 Sanger, 1986: 19.

26 Koh, 1983: xxxiii. Koh described the number of signatures on the first day on which it was opened for signature as *"remarkable"*, all the more so because of the diversity of the states

ratification or accession for the 1982 UN Convention. The Convention therefore entered into force on 16 November 1994. As of mid-1999 the number of ratifications or accessions to the Convention stood at comfortably over 100.[27]

Technically, only states which have ratified the Convention are obliged to accept the rights and obligations defined therein. However, although the Convention is not formally binding on non-signatories, much of it can now be considered as customary international law and it would be difficult for any state to defend contradictory practice in the context of bi- or multi-lateral negotiations.

Those articles which deal with baselines are largely unaltered from the 1958 Convention on the Territorial Sea and Contiguous Zone and may be considered as having been accepted as customary international law. The articles on delimitation of the continental shelf differ from those of the relevant 1958 Convention but may, so far as actual delimitation is concerned, also be considered as expressing customary international law.[28] The concept of the 200 mile Exclusive Economic Zone (EEZ) has been generally accepted although not all states have actually claimed one, whilst some states have claimed only extended zones of fisheries jurisdiction as far as 200 miles out at sea (see Section 2.4).

The UN Convention therefore codifies many of the rules and principles relating to the law of the sea and maritime delimitation which have formed the basis for the judgements handed down by the International Court of Justice (ICJ) and international arbitration tribunals, as well as the context within which states have negotiated bilateral maritime boundary agreements.

In addition to the various United Nations Conventions and judicial decisions concerning maritime delimitation, there are over 150 bilateral agreements between states which have negotiated maritime boundaries of various types since 1942. These illustrate possible solutions to particular technical – and political – problems peculiar to the parties which may be applicable in similar circumstances elsewhere.[29]

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signing it - from every region of the world, North and South, East and West, coastal and land-locked or geographically disadvantaged.

27 130 as of 1 June 1999 according to the United Nations Department for Ocean Affairs and the Law of the Sea (DOALOS) web-site at: http:\\www.un.org/depts/los/

28 McConnell, 1991: 15.

29 It is beyond the scope of this research to undertake a detailed study of each of these although they will be frequently referred to in the course of this study where relevant to the argument. However, Charney and Alexander (1993 and 1998) do provide a brief commentary on 152 of these agreements.

There remain, however, uncertainties over the interpretation of certain articles and definitions in the Convention which frequently makes maritime boundary delimitation a complex and controversial process. It is clear that the principles and rules of delimitation that have evolved over the past thirty years are often fluid in their application. Nonetheless, an analysis of the relevant provisions of UNCLOS coupled with reference to the other prime sources of the international law of the sea – case precedents decided by the International Court of Justice and international tribunals, as well as state practice (i.e. maritime boundaries agreed by states) – permits the identification of the kind of factors that are likely to influence the course of maritime boundaries in the Gulf of Thailand and the weight that these factors should be accorded.

Ultimately, each particular case or dispute depends on its own peculiar facts or situation, particularly geographic and historic factors. The following sections will therefore seek to provide an overview and appreciation of the key elements of the law of the sea affecting maritime boundary delimitation in the Gulf of Thailand including baselines, relevant maritime jurisdictional zones (Chapter 2) and delimitation methodologies and potential relevant circumstances (Chapter 3).

2.3 Baselines

The significance of baselines lies in the fact that a state's rights to maritime jurisdiction, be it to territorial sea, contiguous zone, continental shelf, exclusive fishing zone or exclusive economic zone, are measured from such baselines, the outer limits of each of these zones being at a specified distance from the baseline. Correspondingly, baselines also represent the limit of a state's internal waters which lie landward of the baseline.

The establishment of baselines is a necessary precursor to the claiming of zones of maritime jurisdiction, as it is essential to determine the points from which the breadth of such zones are measured. An understanding of a particular state's baselines is therefore fundamental to the assessment of its maritime claims.

The concept of baselines, as it is currently understood, emerged in the early nineteenth century with an 1839 Anglo-French Fisheries Convention being the first

treaty to refer to the low-water line as the normal baseline and to apply closing lines for bays.[30]

Although attempts were made to codify international practice in relation to baselines, notably in the 1920s and at the Hague Conference of 1930, they did not lead to the conclusion of an agreement on the baselines issue. Nevertheless, these efforts resulted in the formulation of draft articles dealing with baselines largely reflecting internationally accepted custom at the time and which provided the foundation for the International Law Commission's work on baselines leading up to the First United Nations Conference on the Law of the Sea held in Geneva in 1958.[31]

Article 4 of the resulting Geneva Convention on the Territorial Sea and Contiguous Zone relating to straight baselines did, however, also owe much to the International Court of Justice's judgement in the Anglo-Norwegian Fisheries case of 1951 which supported Norway's use of a system of straight baselines along part of its coastline.[32]

The baseline articles included in the 1958 Convention were subsequently reviewed during the Third United Nations Conference on the Law of the Sea and largely repeated in the UN Convention of 1982. The latter Convention did, however, see the introduction of several noteworthy additional provisions relating to atolls, fringing reefs and baselines in the vicinity of unstable coastlines. International law therefore provides for several types of baseline to be defined as outlined below.[33]

2.3.1 'Normal' Baselines

Under usual circumstances, according to Article 5 of the UN Convention, a state's baselines consist of: *"the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State."* Article 5 of the UN Convention, therefore, repeats the provisions of Article 3 of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone almost verbatim. This type of baseline, commonly

30 Nandan, 1989: viii. The concept of closing lines for bays was, however, proposed as early as 1610 when the Dutch proposed the 'cannon-shot' rule in relation to the breadth of the territorial sea to the British: according to this argument, no prince *"could challenge further into the sea than he command with a cannon, except gulfs within their land from one point to another"* (quoted in Sanger, 1986: 12).

31 Nandan, 1989: viii.

32 Kapoor and Kerr, 1986: 33.

33 As none of the Gulf of Thailand coastal states are archipelagic states, archipelagic baselines are omitted from this review.

referred to as the 'normal' baseline, is the predominant type of baseline claimed by states and is, in effect, a state's default baseline.

A key element in the interpretation of this article is determining what constitutes the *"low-water line."* The level of the low-water line is dependent on the vertical tidal datum used.[34] Clearly, the lower the low-water line selected, the further seaward the normal baseline will lie. The area claimed from such a baseline will correspondingly increase, as will the area designated as internal waters landward of the baseline. However, unless there is a significant tidal range or the coastline in question shelves particularly gently, the impact of applying a lower tidal datum on the extent of the maritime zones claimed from that baseline will be minimal.[35]

The choice of vertical tidal datum will also determine which features near to the low-tide level will emerge above low-tide and therefore qualify as low-tide elevations. Equally, the same choice will determine which formations close to the high-tide level qualify as islands rather than as low-tide elevations. This is significant because if a feature does indeed qualify as a low-tide elevation or island, that feature may, under certain circumstances, be used as the basis for generating maritime zones (see Section 3.5.4).

Unfortunately, neither the 1958 or 1982 Conventions specify that a particular vertical datum be used for the depiction of the low-water line on charts used for determining the normal baseline. As a result, a variety of datums have been used by states, providing a range of low-water lines and thus the scope for dispute.

The potential for dispute related to choice of vertical datum is to some extent minimised by the fact that charts are primarily designed to aid the navigator and it is recognised that they generally tend to err on the side of caution.[36] Modern charts therefore frequently take the Lowest Astronomical Tide (LAT), defined as the lowest tide level which can be predicted to occur under average meteorological conditions and under any combination of astronomical conditions, as the low-water datum and this has been accepted as the preferred datum for navigational charts by the International Hydrographic Organization (IHO).[37]

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34 International Hydrographic Organization, 1993: 67-70.
35 Carleton, 1997a.
36 Carleton, 1997a.
37 Carleton, 1997a.

Nevertheless, if any of the numerous alternative vertical datums are used on charts which a particular state recognises, under the terms of the UN Convention these must be considered legitimate for determining that state's normal baseline.

An example of the difficulties that can arise in terms of maritime boundary delimitation related to the choice of tidal datum concerns a long-running dispute between Belgium and France. On the one hand France used the lowest astronomical tide as its chart datum for determining the low-water line. In contrast, Belgium used the mean low-water spring tides as the datum for the construction of its charts. In effect the French datum represented a low tidal level which is rarely reached while the Belgian datum was an average low-tide level measured over the internationally accepted tidal period of 18 and two-thirds years. The less conservative Belgian tidal datum was approximately 30 centimetres higher than that used by France.

The dispute between the two states rested on the suitability of a feature called the Banc Breedt, located 2.5nm off the French coast as a territorial sea basepoint. Under the French datum, Banc Breedt qualified as a low-tide elevation. Under the Belgian datum, however, the feature was permanently below the low-water level and was therefore unsuitable for use as a basepoint in constructing the territorial sea boundary between the two sides. The dispute was eventually resolved in 1990 by splitting the difference between two delimitation lines constructed, one using the Banc Breedt as a basepoint and one ignoring it.[38]

In certain cases coastlines may be subject to rapid erosion or accretion, thus shifting the position of the low-water line/normal baseline. This has been referred to as the *"natural ambulatory nature"* of the normal baseline.[39] It is, however, worth recognising that Article 5 refers to the low-water line along the coast *"as marked on large-scale charts officially recognised by the coastal state."* It is therefore the chart that is the legal document determining the position of the normal baseline and this remains the case even where the coastline has, in reality, changed. Where this is the case, the normal baseline will only come to reflect the physical change in the coastline if a fresh survey is undertaken and the chart correspondingly updated. In areas where the coastline is highly unstable, specifically where deltas exist, Article 7 permits the use of straight baselines (see Section 2.3.3).

38 Charney and Alexander, 1993: 1,891-1,900.

2.3.2 Reefs

According to Article 6 of the UN Convention:

> *In the case of islands situated on atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on charts officially recognized by the coastal state.*

The key terms here are *"atoll"* and *"fringing reef"*, both of which have strict geomorphological definitions.[40] However, as Prescott points out, Article 6 makes no distinction between the various types of atoll (oceanic, shelf or compound) or fringing reef recognised by geomorphologists and *"there is no evidence that those who drafted the Convention took such a restricted view."*[41] Furthermore, the UN study on baselines states categorically that Article 6 *"is not confined to atolls in the strict scientific sense."*[42]

It is therefore reasonable to conclude that Article 6 also applies to 'almost atolls', that is, features which have a similar configuration and appearance to atolls but fall outside the precise scientific definition.[43] Similarly, Article 6's mention of fringing reefs might be stretched to apply to barrier reefs at some distance from the coastal low-water line.[44]

One further noteworthy point relating to reefs and the UN Law of the Sea Convention is that there appears to be no specific provision allowing straight baselines to be drawn across the channels which penetrate a reef system and connect lagoon waters to the open sea. This appears to be something of an oversight, as it should not be a difficult task to make the case that lagoon waters are sufficiently closely linked to the land domain to be considered subject to the regime of internal waters as provided for by Article 7(3) dealing with straight baselines (see Section 2.3.3). Similarly, it could be argued that lagoons, whose waters are land-locked save for narrow channels to the open

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39 Carleton, 1997a.

40 The UN study on baselines notes that geomorphologists reserve the term *"atoll"* for reefs which surround a lagoon and are surmounted by one or more islands; such reefs being generally pierced by channels and the lagoon waters having an average depth of 45 metres. The UN report goes on to acknowledge that such atolls are also categorised according to their location, with oceanic and shelf atolls being distinguished (United Nations, 1989a: 5). Similarly, the term *"fringing reef"* has a strict scientific meaning, the most significant element of which is the fact that fringing reefs are the result of biological processes and are therefore distinct in character from rock platforms (United Nations, 1989a: 8).

41 Prescott, 1985a: 48.

42 United Nations, 1989a: 6. See also, Beazley (1994b).

43 United Nations, 1989a: 6.

sea, could be viewed as being comparable to a bay with multiple mouths and it is highly likely that the lagoon waters would fulfil the semi-circle test set out for bays by Article 10 (see Section 2.3.5).[45]

Furthermore, the right to close such channels with straight baselines and claim lagoon waters as internal waters is implied by Article 47 dealing with archipelagos, paragraph 7 of which provides that lagoon waters may be counted as land when land:water ratios are calculated.

2.3.3 Straight Baselines

Where particular, restricted, geographical circumstances exist, international law allows states to depart from the application of normal baselines and measure maritime jurisdictional zones from straight baselines drawn along selected parts of their coastlines.

As noted, Article 4 of the Geneva Convention on the Territorial Sea and Contiguous Zone was largely inspired by the ruling of the International Court of Justice in the Anglo-Norwegian Fisheries case. This 1951 judgment by the Court therefore represents one of the most significant judicial decisions of relevance to the delimitation of international maritime boundaries generally and the construction of baselines in particular.[46]

As early as 1935 Norway established a series of straight baselines along joining the outer points of islands and rocks fringing part of its northern coastline for the purpose of establishing the limits of its 4nm exclusive fisheries zone.[47] Enforcement of this fisheries zone resulted in several British fishing vessels being detained, a situation which led the UK to institute proceedings before the ICJ in 1949 in order to establish the outer limits of the Norwegian zone through the application of relevant principles of international law.[48]

The key question before the Court, therefore, was the validity of Norway's straight baseline system which served to extend the limits of the Norwegian exclusive fishing zone from those limits that would have existed if the normal baseline had been

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44 United Nations, 1989a: 8.
45 Prescott, 1985a: 49; United Nations, 1989: 11-12.
46 Kapoor and Kerr, 1986: 33.
47 For a history of the case see Reisman and Westerman (1992: 19-37).
48 Kapoor and Kerr, 1986: 33-34.

used. In finding in favour of Norway, and confirming the validity of the Norwegian straight baseline system, the Court simultaneously stipulated that:

> *a) where a coast is deeply indented and cut into...the baseline becomes independent of the low-water mark and can be determined by means of geometric construction; and,*
>
> *b) the drawing of baselines must not depart in any appreciable extent from the general direction of the coast.*[49]

Article 4 of the Geneva Convention was therefore drafted with the ICJ's 1951 decision in mind.[50] The provisions of Article 4 were later largely repeated in Article 7 of the UN Convention on the Law of the Sea. Article 7 does, however, also provide guidance in relation to baselines on highly unstable coastlines and allows for the possibility of using low-tide elevations without lighthouses as basepoints in a straight baseline system so long as such lines have acquired general international recognition – provisions absent from Article 4. The latter provision was, in fact, included in order to confirm the validity of several basepoints used by Norway in its baseline system and expressly approved in the ICJ's 1951 judgement.

Article 7 of the UN Convention provides that:

> *1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.*
>
> *2. Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low water line and notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.*
>
> *3. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land to be subject to the regime of internal waters.*
>
> *4. Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of baselines to and from such elevations has received general international recognition.*

---

49 Kapoor and Kerr, 1986: 34.

50 Prescott, 1987b: 289.

5. *Where the method of straight baselines is applicable under paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and importance of which are clearly evidenced by long usage.*

6. *The system of straight baselines may not be applied by a State in such a manner as to cut off the territorial sea of another State from the high seas or an exclusive economic zone.*

The intention of Article 7 and its predecessor, Article 4, of the Geneva Convention is to cater for unusual coastal geography whereby the configuration of the coastline is such that simply using normal baselines and bay closing lines would result in enclaves or pockets of non-territorial sea surrounded by the territorial sea of a particular state. Such a scenario, involving a complex patchwork of territorial and non-territorial sea areas would inevitably raise problems in terms of marine management. A UN study on straight baselines included a hypothetical example of such a situation where the application of straight baselines would significantly simplify the pattern of maritime jurisdiction, therefore resolving associated management problems (Figure 2.1).

The provisions set out in Article 7 of the 1982 UN Convention give rise to several significant queries, as precise definitions for the terms allowing the establishment of straight baselines are not provided. For example:

- What constitutes a *"deeply indented and cut into"* coastline?
- How is a *"fringe"* of islands defined and at what distance offshore is such a fringe of islands in the coastline's *"immediate vicinity"*?
- What is meant by the term *"highly unstable"*?
- By what means is the *"general direction"* of the coastline and what angle represents divergence to an *"appreciable extent"* from that direction?

Article 7 similarly fails to provide any rule for ascertaining whether the sea area enclosed by a particular straight baseline system is *"sufficiently closely linked to the land to be considered subject to the regime of internal waters."* In addition, there is no definition as how the *"economic interests peculiar to the region"* are to be quantified and no test is provided whereby states may prove their *"long-usage"* of areas so enclosed.

As a consequence of this lack of precision in definition, and thus the absence of any means to test the validity of a particular straight baseline system, the adoption and application of straight baseline systems has been open to wide interpretation in state

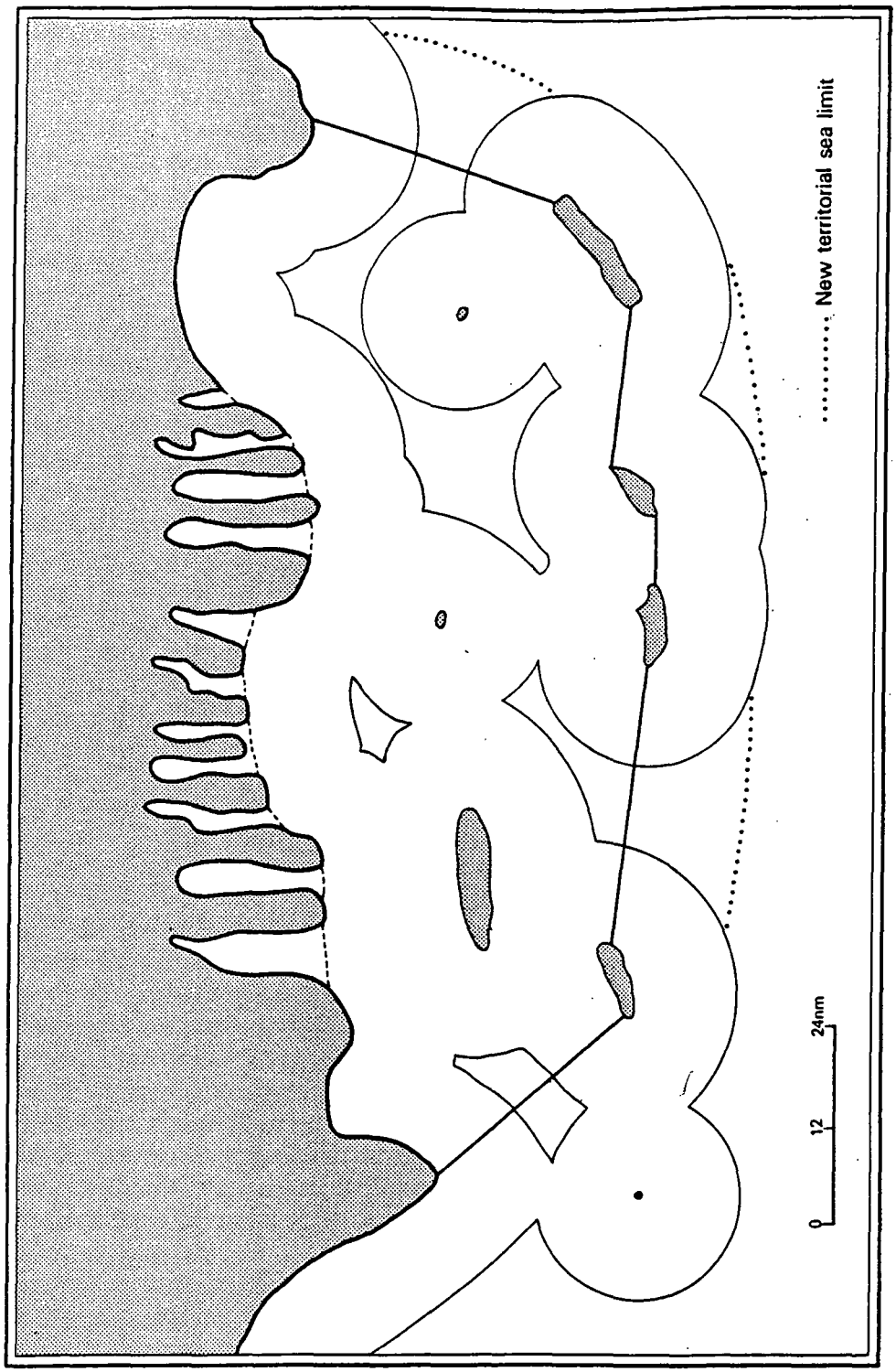


Figure 2.1 *The Role of Straight Baselines in Simplifying Territorial Sea Boundaries*

Source: United Nations, 1989a.

practice.[51] Unsurprisingly, states have sought to interpret Article 7 to their maximum advantage, resulting in the establishment of what might be termed liberal or even aggressive straight baseline systems often reaching significantly offshore in order to secure the maximum advantage in any maritime delimitation with neighbouring states.[52] The littoral states of the Gulf of Thailand have proved no exceptions (see Chapter 4). As Prescott notes: *"the imprecise language [of Article 7] would allow any coastal country, anywhere in the world, to draw straight baselines along its coast."*[53]

Several authorities have attempted detailed analysis of international law as it relates to straight baselines with the aim of shedding some light on the question of how international law should be interpreted and applied.

An early analysis of note was that of Hodgson and Alexander who examined the Norwegian straight baseline system which had earlier been subject to dispute before the ICJ and whose validity had been upheld by that body.[54] This 1951 ICJ decision may be considered fundamental to the introduction of the straight baselines concept into international law, leading directly to the drafting of Article 4 of the Geneva Convention and Article 7 of the UN Conventions of 1958 and 1982 respectively. Hodgson and Alexander found that in the case of the Norwegian straight baselines:

- only two or three lines varied more than 15° from a general direction as judged from small scale charts;
- the distinguishing features – fringing islands or deep indentations – extend along between 60% and 70% of the coastal stretch concerned;
- the ratio of water to land enclosed between the baselines and the mainland coast is 3½:1;
- the longest single stretch of baseline is 45 sea miles.[55]

Beazley, commenting on Hodgson and Alexander's analysis also noted that, with regard to the concept of the *"general direction of the coast"*, the ICJ had found in 1951 that the term lacked any mathematical precision and the Court stated that:

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51 Francalanci (1998: 112) noted that *"A mathematical formula which can be appled to all geographical cases does not exist; it would need to contain so many variable parametres that it becomes an impracticable enigma.*

52 Roach and Smith, 1994; Scovazzi *et al.*, 1989. Reisman and Westerman (1992: xv) refer to an *"explosion"* of unilateral straight baseline claims post-1951, many of which they view as *"manifestly inconsistent with formal legal requirements"* resulting in *"chaos"* in this area of the law of the sea.

53 Prescott, 1985a: 64 and 1987b.

54 Hodgson and Alexander, 1972: 23-44.

55 Summarised in Kapoor and Kerr, 1986: 36.

> *In order to properly apply the rule, regard must be had for the relation between the deviation complained of and what, according to the terms of the rule, must be regarded as the general direction of the coast. Therefore one cannot confine oneself to examining one sector of the coastline alone, except in a case of manifest abuse; nor can one rely on the impression that may be gathered from a large scale chart of this sector alone.*[56]

Turning to analyses of the articles related to straight baselines in the UN Convention on the Law of the Sea, perhaps the most influential is a 1987 US Department of State study which goes so far as to offer guidelines which seek to address some of these questions.[57] The report concentrates on the key baseline concepts of defining deep coastal indentations and the use of fringing islands. The aim of the US study was to suggest standard guidelines in order to allow a *"reasoned evaluation"* of straight baseline systems claimed around the world making it possible to identify *"with a certain degree of confidence"* those straight baseline systems conforming to international law and those which do not.[58]

It must be emphasised, however, that these US suggestions are by no means universally accepted. Indeed, as the preamble to the study itself states, the guidelines suggested *"do not have international standing as benchmarks against which all such systems should be measured"*, and are not offered as *"unequivocal yardsticks of the legality of straight baseline systems."*[59] Nevertheless, many commentators regard the US rules as a *"useful benchmark"* even if state practice has shown them to be too constricting.[60]

The study also identifies the *"inevitable tension between, on the one hand, a desire for establishing objective and uniform standards and, on the other hand, a realistic appreciation for the lack of uniformity of the world's coastal geography"*, but maintains that to abandon efforts to establish objective guidelines *"invites the grossest distortions of the rules for establishing straight baselines."* The US analysis therefore advances the argument for the development of *"reasonable and defensible standards"* which may be applied *"with a realistic recognition of the fact that, in some cases,*

56 Quoted in Kapoor and Kerr, 1986: 36.
57 US Department of State, 1987a.
58 US Department of State, 1987a: 2.
59 US Department of State, 1987a: 2.
60 Carleton, 1997.

straight baseline systems having minor deviations from such standards can still be in general conformance with international law."[61]

In addition, the United Nations has itself issued a 1989 report in its Law of the Sea series entitled *Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea* which also attempts to tackle the thorny problem of interpreting the provisions contained in Article 7 of the UN Convention.[62]

These two key studies deserve particular attention and are therefore referred to extensively in the course of the following analysis.[63]

Deeply Indented Coasts

With respect to coastlines that qualify as *"deeply indented"* the Department of State identified the following criteria to test a given coastline's suitability:[64]

- Within the particular locality being considered, baseline segments accounting for at least 70% of the total length of the relevant baselines should each have at least 6:10 ratio of coastal penetration to segment length;
- A coastline must have at least three significant indentations in any given locality;
- No individual straight baseline segment should exceed 48 nautical miles in length.

The United Nations' study emphasises the need to *"focus on the spirit as well as the letter"* of the first paragraph of Article 7, the aim of which is to avoid the undesirable mosaic of territorial and non-territorial sea areas which would result from the application of the normal baseline in certain geographically complex coastal situations (Figure 2.1).[65]

Although the report observes that no objective test by which to identify deeply indented coasts has been developed which has gained general acceptance, it concludes that it has been generally accepted that there must be several indentations involved, which individually would satisfy Article 10's requirements, to be considered a juridical bay.

In the United Nations' view, the spirit of Article 7 is preserved if straight baselines are drawn so that a complex pattern of territorial seas produced by the use of

61 US Department of State, 1987a.
62 United Nations, 1989a.
63 For a strict interpretation of the straight baseline regime see Reisman and Westerman (1992: 71-104).
64 US Department of State, 1987a: 5.

the normal baseline can be eliminated by the use of straight baselines *"without significantly pushing the seaward limits of the territorial seas away from the coast"* as *"it is not the purpose of straight baselines to increase the territorial sea unduly."*[66]

Fringe of Islands

Concerning baseline systems in cases where there is a *"fringe of islands along the coast in its immediate vicinity"* the US guidelines advanced the following criteria to identify qualifying coasts:[67]

- In light of the provision that *"the drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast"* (Article 7 (3)), the directional trend of the outer islands (i.e., the islands on which the straight baseline turning points will be situated) should not deviate more than 20° from the opposite mainland coastline;
- There must be a consideration of distance between the outermost islands and the mainland coastline;
- Islands considered part of the fringe should not be further apart from each other than 24 nautical miles (see Figure 2.2);
- Such islands should mask 50% of the opposite mainland coastline;
- No individual straight baseline segment should exceed 48 nautical miles in length;
- Such islands should be no more than 48 nautical miles offshore (see Figure 2.3).[68]

Once again the United Nations' study makes it plain that there exists *"no uniformly identifiable objective test which will identify for everyone islands which constitute a fringe in the immediate vicinity of the coast."*[69] Instead states are recommended to follow the *"spirit"* of Article 7.

The only firm guidelines the UN study offers are the observations that the term *"fringe of islands"* suggests that there must be more than one island involved (while noting that it is *"difficult to specify a minimum number"*) and that the requirement that

65 United Nations, 1989a: 17; Prescott, 1985a: 50.
66 United Nations, 1989a: 17 and 20.
67 US Department of State, 1987a: 17-18.
68 US Department of State, 1987a: 22.
69 United Nations, 1989a: 20.

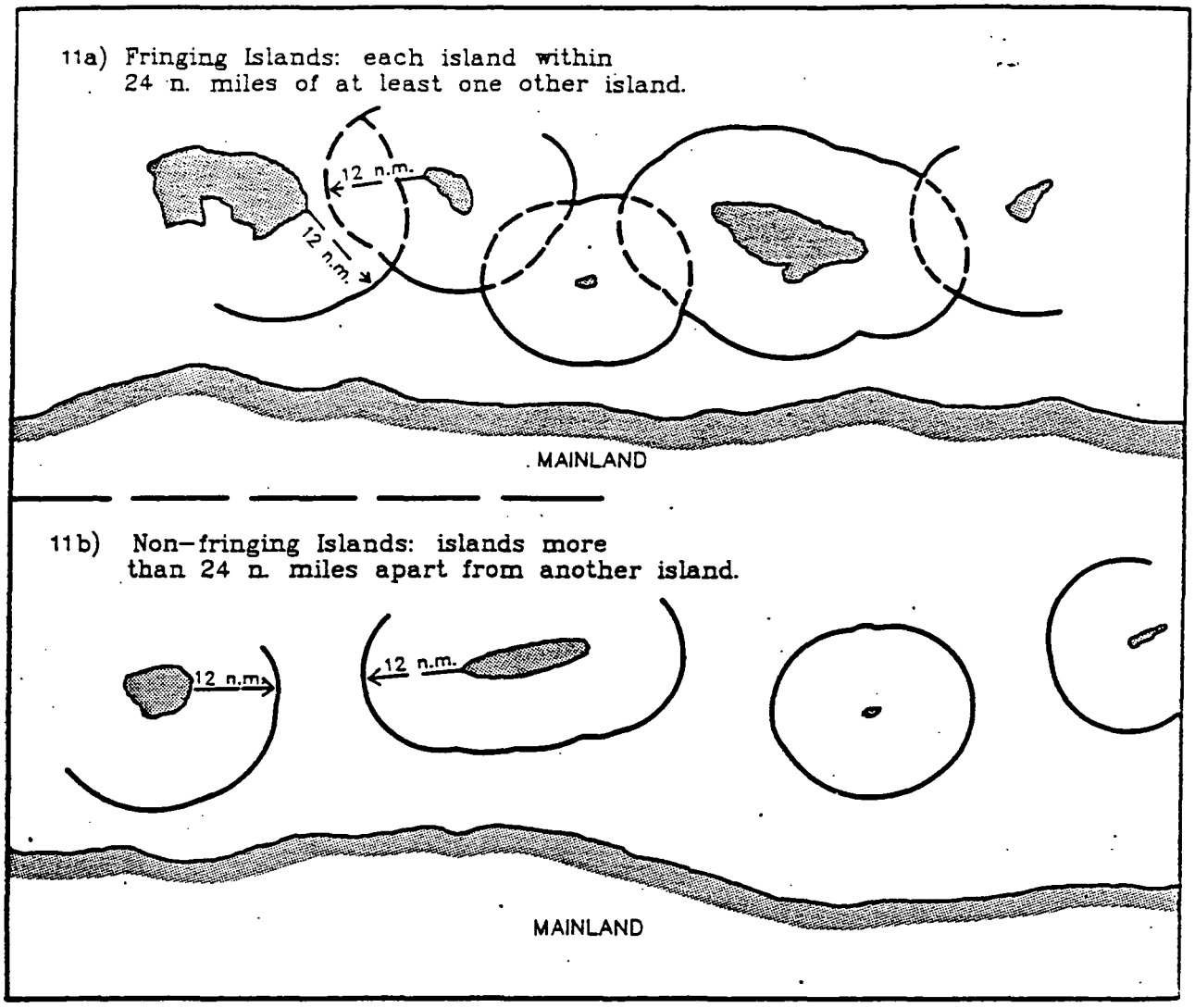


Figure 2.2 *Fringing Islands*
Source: US Department of State, 1987a.

the fringe be *"along the coast"* would mean that a chain of islands aligned perpendicularly to the coast would not qualify (see Figure 2.4).[70]

Instead of objective rules and tests, the United Nations' report offers two scenarios, backed by examples, where a fringe of islands is likely to exist.[71] Firstly, where islands *"appear to form a unity with the mainland"* as in the case of Norway's *skjaergaard*; and secondly where islands at some distance from the coast *"form a screen which masks a large proportion of the coast from the sea."* In the latter case the islands along Yugoslavia's (now Croatia's) coastline from Pula to Sibenik are cited as typifying this sort of fringe.

70 United Nations, 1989a: 20.

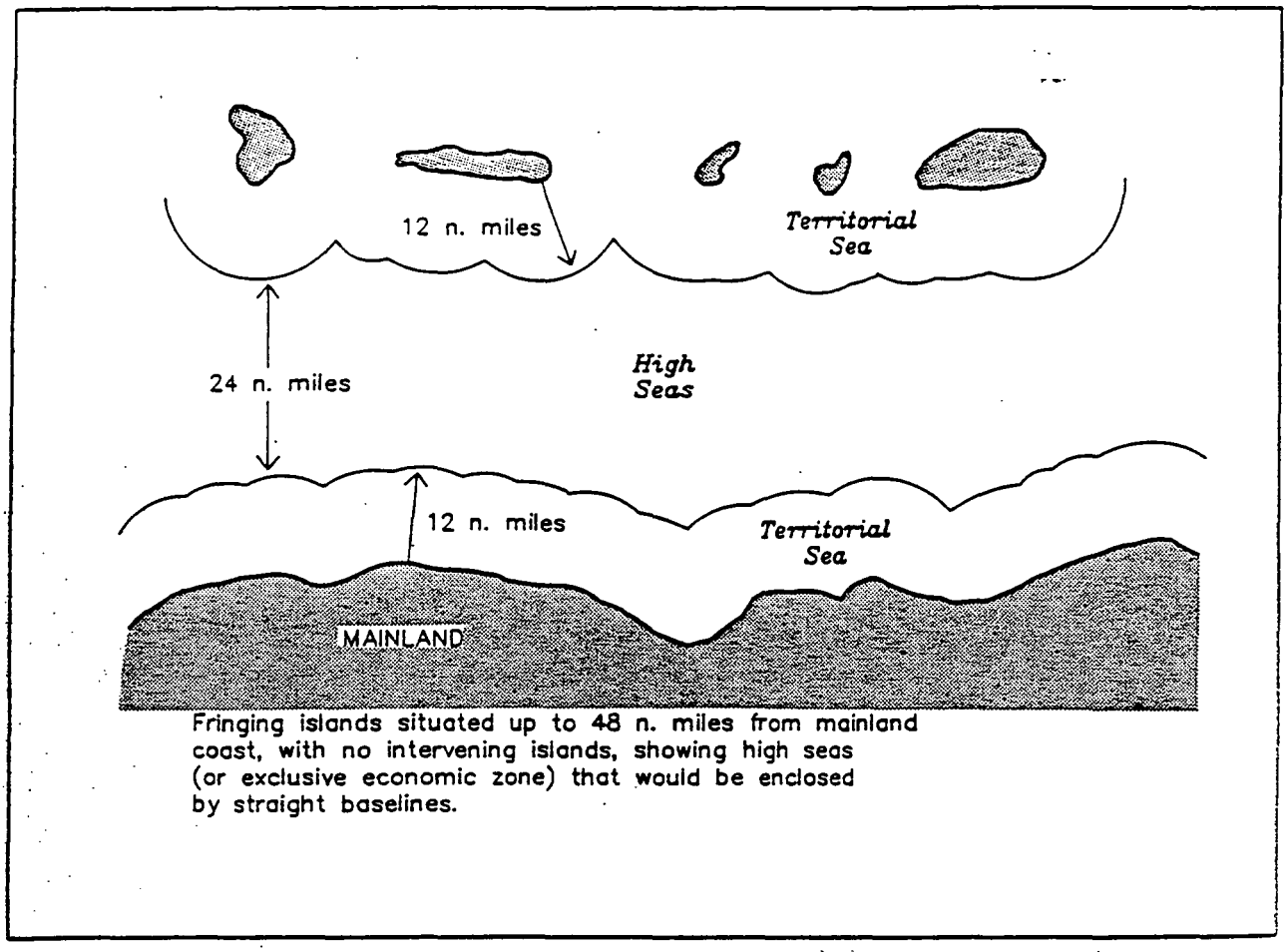


Figure 2.3 *Distance of Fringing Islands from the Mainland Coast*
Source: US Department of State, 1987a.

Immediate Vicinity

While the intent of the phrase in the coast's *"immediate vicinity"* is clear enough, Article 7 once again fails to deliver a clear-cut, objective test by which to judge whether certain islands are close enough to a mainland in order to be considered in its immediate vicinity. The US study cites Prescott[72] as noting that while there was probably a general consensus that a fringe of islands 3nm from the coast was within the coast's immediate vicinity whereas one 100nm from the coast would not be, *"Unfortunately, it would not be possible to predict with confidence what the majority thought of a fringe of islands 25, 40 or 65 nautical miles from the coast."*[73]

For its part the US study suggested that there was likely to be general agreement that if the area between the islands and mainland would fall within a state's territorial sea measured from normal baselines, then it would be difficult to argue that those islands were excessively far offshore not to be termed in the mainland coast's immediate

71 United Nations, 1989a: 20.
72 Prescott, 1985a: 4.
73 US Department of State, 1987a: 22.

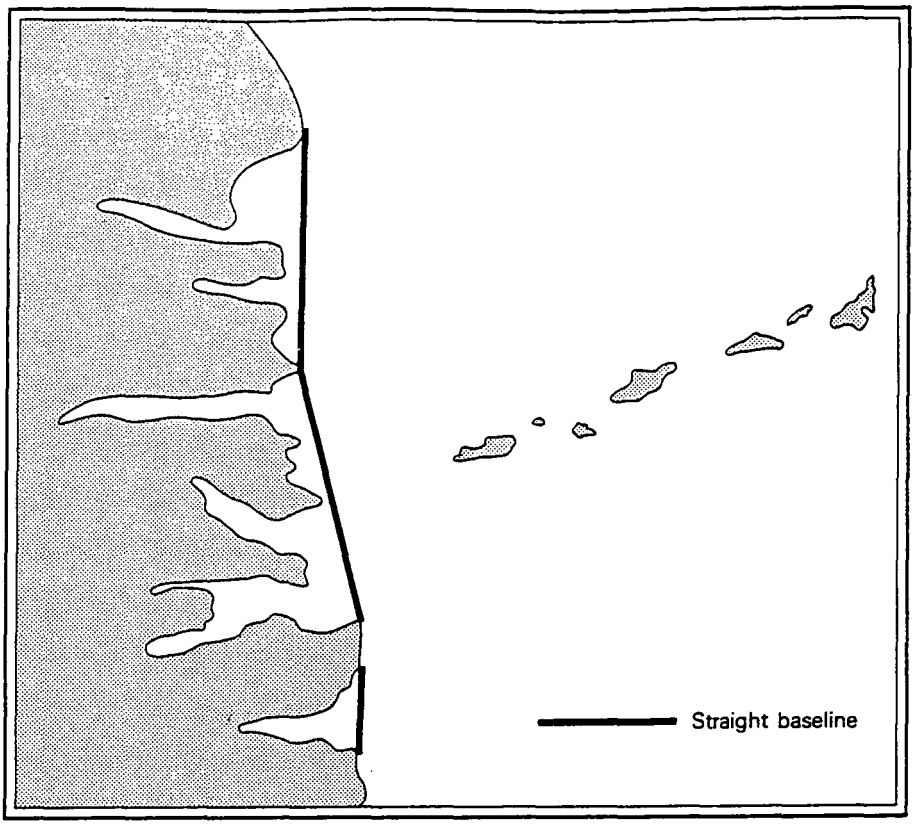


Figure 2.4 *Island Chain Lying Perpendicular to the Coast*
Source: United Nations, 1989a.

vicinity. With 12nm-breadth territorial seas this gives a limit of 24nm between the mainland and the island fringe.

This 24nm distance was proposed as a minimum limit. A maximum limit of a 48nm separation between islands and mainland was also suggested, the logic being that no more than twice the area of hypothetical territorial seas drawn from the normal baselines of the islands and mainland would be enclosed by the straight baselines system and thus converted into internal waters. Despite providing this maximum limit, the US study did envisage circumstances where the 48nm rule might prove too restrictive, for example where: *"an island grouping consisting of a number of islands that are not far separated from each other but that, nevertheless, work their way considerably seaward of the mainland coast."* In such a case, the report went on, *"if other criteria were met, straight baselines in these areas would not be precluded by this rule."*[74]

That the US guidelines themselves contain such loopholes illustrates the problems of attempting to establish hard and fast rules which remain universally applicable in the face of the complexity and diversity of coastal geography.

[74] US Department of State, 1987a: 22.

The UN study concurred with the argument that a 24nm separation between island fringe and mainland is probably generally agreed upon but observed that the 48nm limit *"is not necessarily widely agreed upon."*[75] Indeed, it is understood that the US itself has retreated from its own 48nm rule proposal to the more conservative and restrictive 24nm rule.[76]

Deltas

In addition to outlining the key conditions which justify the application of straight baselines (deep indentations and/or fringe of islands), Article 7 also provides rules relevant to a specific coastal circumstance – deltas.

Although the US study of 1987 is silent on the question of straight baselines and deltas as dealt with by Article 7(2), the UN report does highlight three key points.

The second paragraph of the article is *subordinate* to the first rather than being an *alternative* to it. Thus the requirements of paragraph 1 of Article 7 – that the coastline in question be deeply indented and cut into, or there be a fringe of islands along that coast in its immediate vicinity – must first be met before Article 7(2) may be applied.

Article 7(2) refers to *"a delta **and** other natural conditions"* [emphasis added] so that for this paragraph of the Article to apply, a delta must exist. Additionally, the coastline concerned must be *"highly unstable."* No precise definition is provided within the UN Convention for the latter term.

Article 7(2) was introduced into the UN Convention with a specific case in mind – the delta of the Ganges/Brahmaputra Rivers – where environmental conditions can lead to rapid erosion and sedimentation resulting in significant advance and retreat of the low-water line. The provisions outlined here allow states faced with such a situation to establish straight baselines without the obligation of continuously altering them with each change in the normal baseline.

Location of basepoints and use of low-tide elevations

Article 7 further provides that straight baselines should join *"appropriate points."* The UN study makes it explicit that there are requirements that such appropriate points should be on or above the charted low-water line, on the territory of the state

75 United Nations, 1989a: 21.

establishing the straight baselines and that the straight baseline system as a whole be closed (that is, it should start and finish on or above the low-water line).

Paragraph 4 of Article 7 specifies that low-tide elevations are not to be used in the drawing of straight baselines unless one of two conditions is met. Firstly, if the low-tide elevation concerned is surmounted by a lighthouse or similar structure, or, alternatively, if the use of the low-tide elevation as a basepoint for constructing straight baselines has received general international recognition.

The first condition is fairly clear-cut, as low-tide elevations are specifically defined in Article 13 of the UN Convention (see Section 3.5), and it is generally clear whether a lighthouse or similar installation does indeed exist on it or not. The second condition is somewhat more problematic because, at least to some extent, it may be a matter of interpretation as to the degree of international recognition that exists in relation to the use of a particular low-tide elevation as a basepoint in a straight baseline system.

The latter provision, absent from Article 4 of the Geneva Convention, was included in the 1982 Convention in order to take into account Norway's straight baseline system. Norway's straight baselines employ low-tide elevations lacking any structures, lighthouse or not, as basepoints and this system of straight baselines was expressly approved by the International Court of Justice in 1951. Technically, therefore, despite the ICJ's ruling, the Norwegian straight baselines contravened the terms of Article 4 of the Geneva Convention. Article 7 of the UN Convention was therefore designed to accommodate the Norwegian system and resolve this apparent conflict between the Geneva Convention and the judgement of the ICJ.[77]

General Direction

Article 7, paragraph 3 specifies that the alignment of straight baselines *"must not depart to any appreciable extent from the general direction of the coast"*, a concept which stemmed from the 1951 *Anglo-Norwegian Fisheries* case judgement. As noted earlier, it was found that in the case of the Norwegian straight baselines that almost all the straight baseline segments diverged from what the Court determined as the general direction of the coast by no more than about 15°.

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76 Interview with Bob Smith, Office of Ocean Affairs, US Department of State, 9 July 1997.

77 United Nations, 1989a: 24.

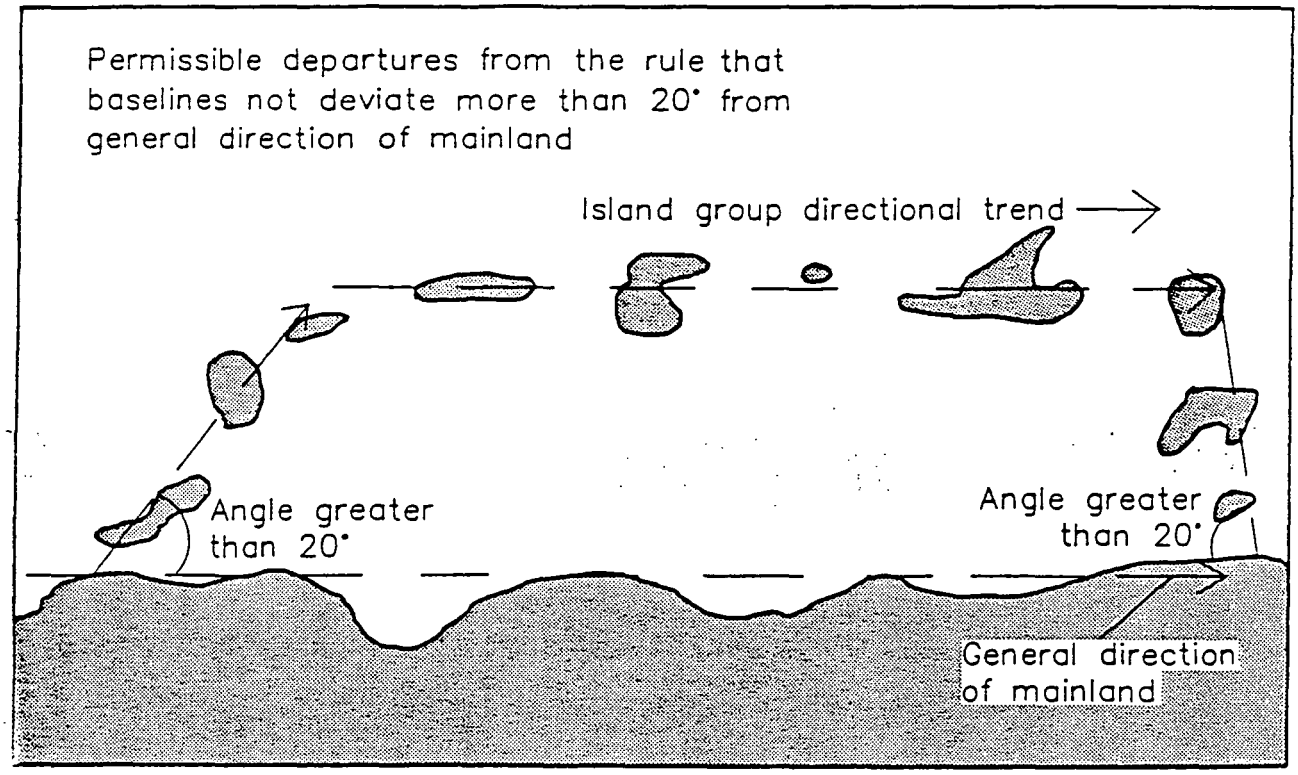


Figure 2.5 *Fringing Islands and the General Direction of the Coast*
Source: US Department of State, 1987a.

Subsequently, the US guidelines on this issue proposed an upper limit of divergence from the general direction of the coast of no more than 20°. This suggested limit was qualified by the proviso that in cases where the fringe of islands concerned is generally parallel to the coast, the lines joining that fringe to the mainland coast may exceed the 20° rule (see Figure 2.5).[78]

Nevertheless, it is worth recalling that in the *Anglo-Norwegian Fisheries* case the International Court of Justice found the entire concept of general direction to be *"devoid of mathematical precision."*[79] As the UN report observes, it has, therefore, not only been impossible to determine a generally accepted precise angle of deviation from the general direction of the coast against which to test this rule, but the fundamental problem of determining what constitutes general direction in the first place has defied resolution.

Internal Waters

A further concept introduced into the UN Convention with the Anglo-Norwegian Fisheries Case in mind is the requirement that the sea areas enclosed by straight baselines *"must be sufficiently closely linked to the land domain to be subject to the*

78 US Department of State, 1987a: 21.

régime of internal waters" (Article 7(3)). Although the spirit of this provision is clear, and in the 1951 case this idea was linked to rules relating to the determination of bays, no mathematical test by which to accurately assess this provision has emerged. For its part the UN report opts to quote from the Swedish government's submission to the International Law Commission on this issue that:

> *...the expanse of water in question is so surrounded by land, including islands along the coast, that it seems natural to treat it as part of the land domain.*[80]

Economic Interests, Long Usage and Cut Off

Paragraph 5 of Article 7 provides the possibility of *"economic interests peculiar to the region concerned, the reality and importance of which are clearly evidenced by long usage"* having an influence on the determination of particular baselines. It has been observed that such economic interests do not *themselves* justify the establishment of straight baselines in the absence of deep indentations and/or a fringe of islands. Rather, these factors may provide justification for an altered alignment of a segment or segments of a straight baseline system, not reason for the establishment of that system itself.[81]

The UN Convention gives no guidance as to what constitute valid economic interests, how to assess their *"reality and importance"* and what timespan amounts to *"long usage."* Neither the US study or the UN report offer real guidelines on this topic. The use of such subjective terms as *"importance"* and the open-ended nature of what might be termed *"economic interests"* and *"long usage"* effectively negates the possibility of applying mathematical formulae by which to test these rules and provides significant scope for flexibility in its application and thus dispute.

The final paragraph of Article 7 requires that a state's straight baselines should not be aligned in such a manner as to *"cut off the territorial sea of another State from the high seas or an exclusive economic zone."* This provision is unambiguous and therefore should not pose particular difficulties in its application.[82]

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79 Kapoor and Kerr, 1986: 36.
80 United Nations, 1989a: 25.
81 United Nations, 1989a: 25.
82 United Nations, 1989a: 25.

Summary

It is often difficult to establish whether particular baselines or basepoints have played a substantive role in determining the final location of a maritime boundary. States are free to depart from strict equidistance and seldom include details of the methodology used in arriving at their maritime boundary agreements (see Section 3.2.6). It is unlikely, therefore, that the text of an agreement will provide a detailed rationale for that boundary and particularly which basepoints or baselines were significant. Thus, frequently, a degree of uncertainty remains in the analysis of the delimitation of maritime boundaries and baselines.

Nevertheless, straight baseline systems themselves may be assessed against the international standard provided by Article 7 of UNCLOS and by suggested rules for the analysis of straight baselines, such as the US guidelines. For example, if the US provisions were to be applied, it can be seen that the former Yugoslavia's baselines (see Figure 3.7) would pass the test. The baseline segments are relatively short (with an average length of 9.4nm and a maximum of 22.5nm), are compatible with the general direction of the coastline, enclose a fringe of islands close to both the mainland coastline itself (maximum distance offshore 6.6nm) and to one another and are drawn around a fringe of islands that clearly mask much of the mainland coast.

In contrast, Burma's (Myanmar's) claimed baselines would fail the US test, not least for including a baseline segment (A – B on Figure 2.6) of some 222nm in length with a maximum distance offshore of 75nm.[83] This segment alone clearly does not conform to the general direction of the coast in the Gulf of Martoban as well as being far too far off shore and concerns connecting islands far apart from one another and certainly not significantly masking the coastline.

It should be stressed that the US guidelines, or indeed the United Nations baselines report, are no more than that, with no legal standing either as accepted international rules or in terms of state practice. However, they do provide a useful yardstick by which to assess straight baseline systems.

Overall, it is abundantly clear that the imprecision inherent in the terminology of the 1982 Convention has provided ample scope for liberal interpretation and extravagant baseline claims thus giving rise to numerous potential disputes between states. The baseline claims made by the Gulf of Thailand littoral states are no exception (see

[83] Roach and Smith, 1996: 123.

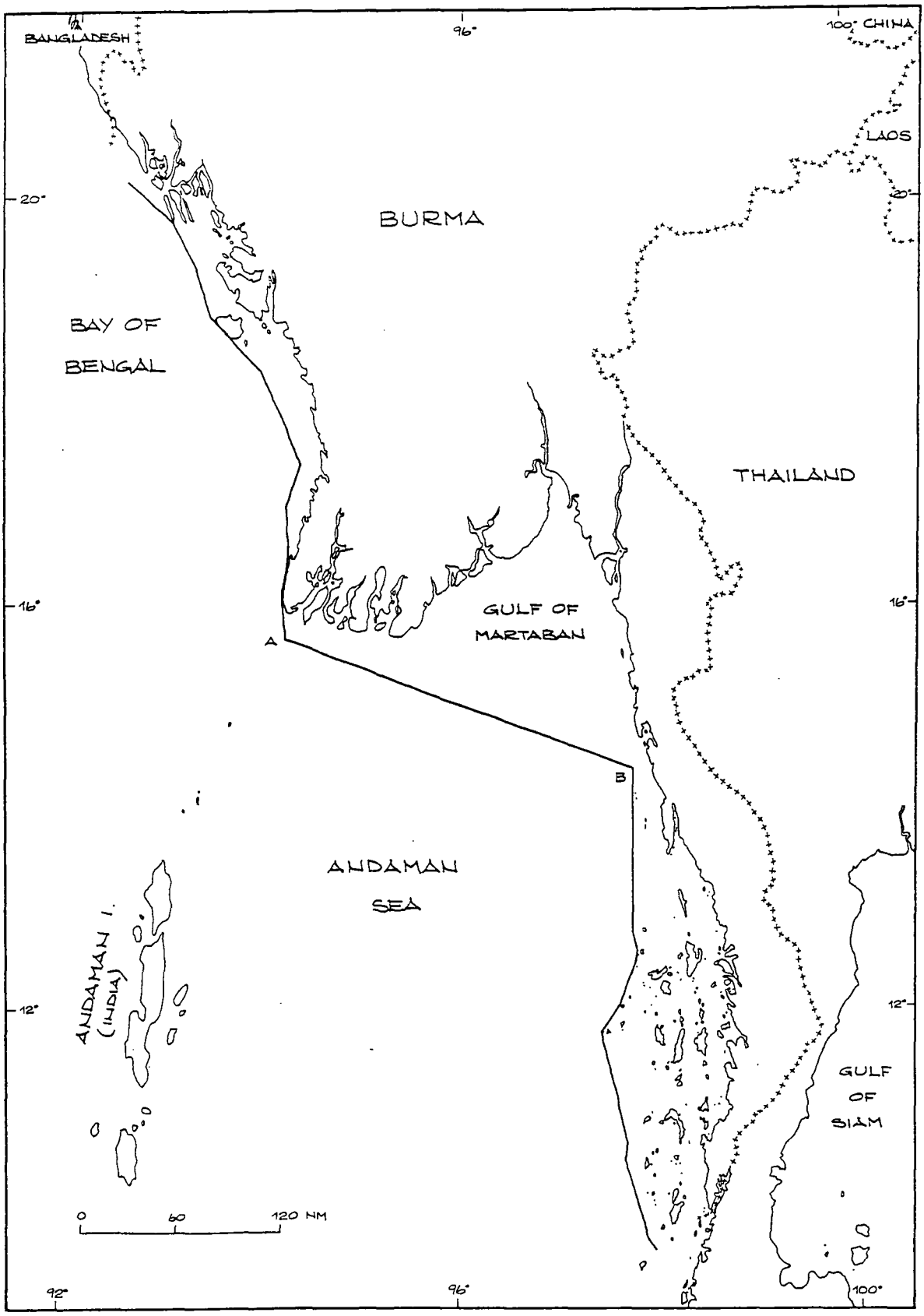


Figure 2.6 *Burma's Straight Baselines*
Source: Francalanci and Scovazzi, 1994.

Chapter 4). Having made that ominous comment, the way in which the UN Convention came to be concluded should be recalled. In a 'package deal' negotiation between numerous factions of competing state interests, compromise in its terms and thus scope for differing interpretations of them was perhaps inevitable. In these circumstances it is all the more remarkable that UNCLOS was drafted at all – had the issues outlined above been subject to even more intense analysis it sees doubtful that a Convention would have been concluded at all. Coupled with this background to the negotiation process is the fact that the Convention's provisions had to be cast in such a way as to apply globally, despite the geographical complexity of the world. It is hardly surprising, therefore, that a degree of flexibility was retained within the Convention's terms.

2.3.4 River Mouths

Where a river *"flows directly into the sea"*, Article 9 of the UN Convention provides that *"the baseline shall be a straight line across the mouth of the river between points on the low-water line of its banks."*

Significantly, the authentic French text of the first part of this Article of the Convention reads slightly differently from the authentic English text, instead saying, in translation, *"If a river flows into the sea without forming an estuary..."*[84] According to the UN Committee of Experts, the authentic English text should be interpreted in light of the meaning of the French text in this case.[85] That is, Article 9 only applies where no estuary is present. Estuaries themselves are to be dealt with in accordance with the provisions of Article 10 relating to Bays.

Further, it should be noted that Article 9 offers no restrictions on the length of the baseline closing a river mouth (both banks of which need not necessarily fall within the territory of one country). Article 9 has been left similarly flexible in relation to the choice of basepoints anchoring the baseline closing the river mouth. It is likely that this is the case because of the difficulties frequently associated with defining the precise mouth of a river[86] (see also Section 2.3.5 for analogous problems relating to the mouths of bays).

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84 *"si un fleuve se jette dans la mer sans former estuaire..."*

85 United Nations, 1989a: 26.

86 Prescott, 1985a: 51.

2.3.5 Bays

Article 10 of the UN Convention on the Law of the Sea, which is itself an almost verbatim repetition of Article 7 of the Geneva Convention on the Territorial Sea and Contiguous Zone of 1958, provides that:

1. *This article relates only to bays the coasts of which belong to a single State.*

2. *For the purposes of this Convention, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.*

3. *For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water mark of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.*

4. *If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 nautical miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.*

5. *Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 nautical miles, a straight baseline of 24 nautical miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.*

6. *The foregoing provisions do not apply to so-called "historic" bays, or in any case where the system of straight baselines provided for in article 7 is applied.*

Article 10 therefore offers both objective and subjective tests of bay status.[87] Paragraph 2's references to *"a well-marked indentation"*, and a bay being *"more than a mere curvature of the coast"* both indicate, as Prescott[88] notes that *"It is expected that the bay will be marked by a large change in the azimuth of the coast."* The concept of the bay's depth of penetration versus width of mouth being such that its area may constitute *"land-locked waters"* expresses the idea of a body of water surrounded on all but one side. These terms are, nonetheless, open to varied interpretation.

87 For a comprehensive legal analysis of bays see Westerman, 1987.

88 Prescott, 1985a: 51.

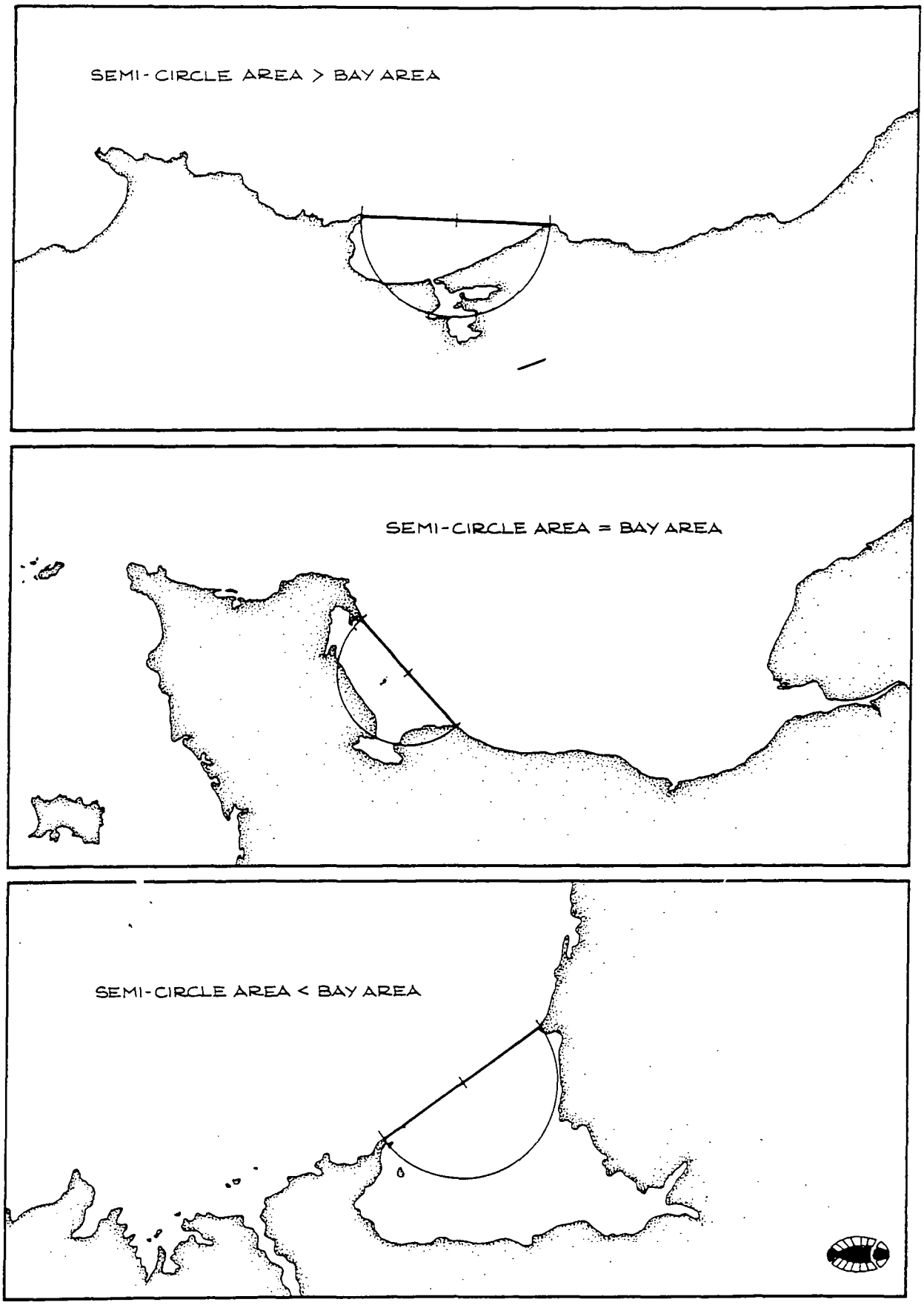


Figure 2.7 *Bays: The Semi-Circle Test*
Source: Francalanci and Scovazzi, 1994.

In order to overcome this problem a specific and unambiguous mathematical test was included in the Article, the semi-circle test. This formula is detailed in paragraph 3 of Article 10 where it is made explicit that the diameter of the semi-circle to be used to test the validity of a particular bay should be equivalent to the width of the mouth (or mouths) of the bay. Its conditions are illustrated in Figure 2.7. Prescott[89] also makes the observation that, strictly speaking, the semi-circle test should only be applied when it has been ascertained that a *"well-marked indentation"* exists. In reality, however, he suggests that it would be *"inconceivable"* for a state to object to the closing of a bay which satisfied the semi-circle test on the grounds of it not being a well-marked indentation.

Uncertainty remains, however, concerning how, in certain circumstances, the *"natural entrance points"* of a bay may be identified. As the UN Committee of Experts report indicates, certain bays may boast a number of points which could be considered its natural entrance(s) while others may possess smoothly curved entrances where it is difficult if not impossible to identify a single point as marking the entrance on one or both sides.[90] In this scenario there is no necessarily 'right' answer. It must therefore be concluded that a state may select any appropriate closing line for the bay as long as the terms of the semi-circle test are fulfilled.

Where one natural entrance point can be readily identified but not the other because of the smooth coast, Prescott has suggested a method designed to identify the second entrance point. He promotes the idea of measuring the distance between the natural entrance point and the point where that headland merges with the smooth coast in the depth of the bay. The same distance can then be projected along the smooth coast to fix an arbitrary entrance point. This was illustrated by reference to Port Waitangi, Chatham Island (Figure 2.8).[91]

Where the natural entrance points of a bay are themselves smooth and rounded, it is similarly difficult to identify a single point representing the precise natural entrance. Shalowitz[92] has proposed constructing lines representing the general direction of both the coast outside and inside the bay. As the bay is itself a well-marked indentation where the azimuth of the coast alters significantly at the entrance point, the two general direction of the coast lines can be projected to intersect off the natural entrance point

89 Prescott, 1985a: 53.
90 United Nations, 1989a: 28.
91 Prescott, 1985a: 56.

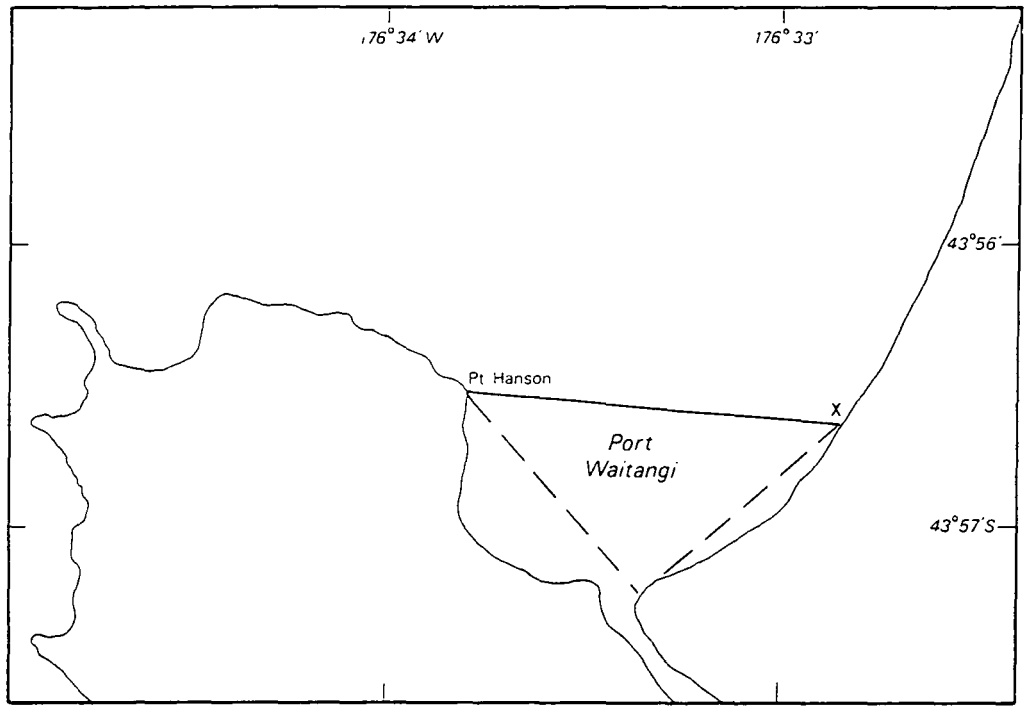


Figure 2.8 *Port Waitangi, Chatham Island*
Source: Prescott, 1985a.

headland. The angle between these two lines can then be bisected and traced back to the headland so that a specific entrance point can be fixed where the bisector reaches the coast. This method was illustrated by Prescott by reference to Baie Anarua, French Polynesia (Figure 2.9).[93]

Another, rather less significant problem, relates to the area of the bay where subsidiary bays exist or rivers flow into the bay. Should the area of such subsidiary bays be included for the purposes of calculating the area versus diameter equation set out in the semi-circle test? Similarly, should straight lines be drawn across the mouths of rivers flowing into bays, thus restricting the area of the bay for that test? Clearly, these questions only become an issue if the area of the bay is close indeed to that of the semi-circle. It has further been suggested that if islands forming the mouths of a bay lie seaward of the direct line between the two mainland natural entrance points, they should not be joined by closing lines and the direct line should be used. A similar argument has been advanced in cases where the entrance points between such islands are not navigable.[94]

As far as subsidiary bays are concerned, if the shoreline of such bays forms part of the low-water line and amounts to part of the penetration of the sea into the land, they would seem to qualify under the terms of Article 10. The situation with regard to rivers

92 Shalowitz, 1962: 64-65; Prescott, 1985a: 56; Hodgson and Alexander, 1972: 12.
93 Prescott, 1985a: 55.

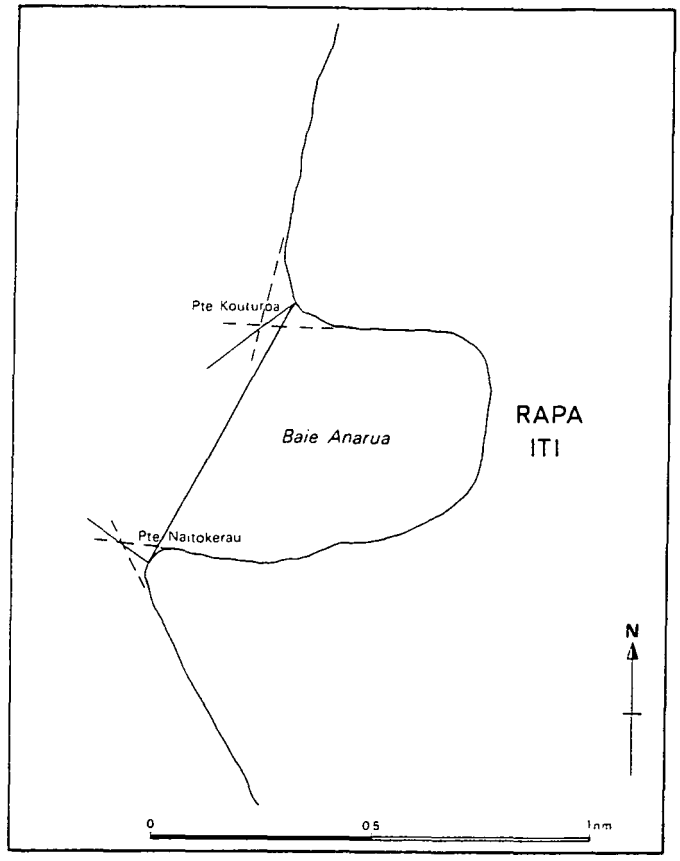


Figure 2.9 *Baie Anarua, French Polynesia*
Source, Prescott, 1985a.

interrupting the low-water line of a bay is less clear, particularly where such river mouths are wide and penetrated by tides. Presumably, that area affected by the tide, representing the penetration of the sea, could be claimed as being part of the surface area of the bay.[95]

Concerning islands in the mouth of bays, Article 10 does not specify that they have to lie directly in the mouth of a particular bay. This in itself gives rise to some ambiguity over quite how far removed from the mouth of a bay such islands might realistically be (within the confines of the semi-circle test). Article 10 gives no guidance on this issue, nor does it specify that the channels between islands must be navigable. Nevertheless, Article 10, paragraph 5 does restrict bay closing lines to a maximum length of 24nm, a provision which must necessarily prevent any island in the mouth of a bay being more than 12nm offshore. In addition, where the distance between the natural entrance points of a bay exceeds this distance, the bay closing line must be pulled back deeper into the bay in order to fulfil the requirements of Article 10.[96]

[94] United Nations, 1989a: 30.
[95] United Nations, 1989a: 28.
[96] Prescott, 1985a: 59-60.

The first and last paragraphs of the Article outline three types of bay which are not covered by Article 10's restrictions. Firstly, Article 10 only applies to bays belonging to a single state. Secondly, Article 10 does not apply to historic bays and lastly it doesn't apply where Article 7 relating to straight baselines is being applied. The first and last of these three qualifications are precise and easily understood. That relating to historic bays is significantly more problematic.

It is worth quoting Prescott[97] at length on this point:

> *In a Convention where many of the articles mean all things to all men the rules about bays are fairly clear. Unfortunately the force of this clear language is undermined by the disclaimer that the rules do not apply to historic bays. It would not be so damaging if there was a general understanding of the definition of historic bays, but that is the only place such features are mentioned in the Convention.*
>
> *Recourse to proclamations of authority over historic bays allows states to escape from the provisions concerning the drawing of closing lines and defining legal bays. This escape is simplified by the lack of codification of international law regarding historic bays.*

The concept of historic bays is clearly closely allied to the term 'historic waters'. Historic waters may on the one hand be viewed as constituting the maritime space enclosed within a historic bay. However, the regime of historic waters have also been applied to maritime areas outside bays. A prime example of such a 'non-bay' claim to historic waters is that made by Cambodia and Vietnam (see Section 6.3).

The question of historic bays and historic waters represents something of a longstanding, and thorny, issue. Indeed, proposals concerning this topic were discussed at UNCLOS I and UNCLOS III (see Section 2.2). Perhaps the closest that the international community has come to codification of rules governing historic bays and waters was UNCLOS I's request to the UN to conduct a study of the subject which the UN Secretariat duly published in 1962. This report concluded that a state may indeed claim title to a bay on historic grounds if it can demonstrate that for a considerable period of time it has claimed the bay in question is internal waters, exercised its sovereignty there and that its claim has received the acquiescence of other states.[98]

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97 Prescott, 1985a: 60-61.

98 Churchill and Lowe, 1988: 36-37.

This interpretation has been adopted by the United States Supreme Court in relation to federal-state cases and seems to reflect the current United States view, as expressed by Roach and Smith:[99]

> *To meet the international standard for establishing a claim to historic waters, a State must demonstrate its open, effective, long-term, and continuous exercise of authority over the body of water, coupled with acquiescence by foreign States to the exercise of that authority. The United States takes the position that an actual showing of acquiescence by foreign States in such a claim is required, as opposed to a mere absence of opposition.*[100]

The United States is of the opinion that few of the 18 claims to historic bays world-wide meet the international standard and has issued diplomatic protests concerning 15 of them.[101]

In the absence of formal codification, the application of historic bays and historic waters is governed by customary international law and this is supported by the International Court of Justice which found in the *Tunisia-Libya Continental Shelf* case that:

> *...general international law...does not provide for a single 'régime' for 'historic waters' or 'historic bays', but for a particular régime for each of the concrete, recognised cases of 'historic waters' or 'historic bays'.*[102]

2.3.6 Ports and Roadsteads

Articles 11 and 12 of the UN Convention deal with ports and roadsteads respectively. The former stipulates that for delimiting the territorial sea *"the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast."* An example of such a feature would be a detached breakwater protecting the mouth of a port. The Article goes on to specifically exclude offshore installations and artificial islands from consideration as permanent harbour works. Article 11 is therefore clear and reasonably unambiguous. Although it is not specifically stated it may be assumed that the mouth of harbours may be closed by

99 Roach and Smith, 1996: 31.
100 Roach and Smith, 1996: 16.
101 For a comparative analysis of historic bay claims see Nixon (1981). See also O'Connell (1982: 417-438).
102 Cited in Churchill and Lowe, 1988: 36.

straight baselines – this is, however, unlikely to have a significant impact on the extent of the territorial sea claimed.[103]

Article 12 of the UN Convention largely repeats Article 9 of the Geneva Convention of 1958 and allows roadsteads used for loading, unloading and anchoring of ships which would otherwise fall wholly or partially outside the outer limit of the territorial sea to be included in the territorial sea. It would seem that this Article has become increasingly redundant. It was originally drafted when many states still claimed a 3nm-breadth territorial sea. As the majority of states have moved towards 12nm territorial sea, the incidence of roadsteads beyond the territorial sea has significantly diminished.[104]

2.4 Zones of Jurisdiction

The 1958 and 1982 Conventions provide for a number of maritime zones – horizontal, vertical and functional – over which states may exercise varying degrees of jurisdiction or sovereignty. There are many complexities to these zones, the key attributes of which are outlined below.[105]

2.4.1 Inter-tidal foreshore

This lies between high and low tidemarks. The coastal state maintains absolute sovereignty over this area as for other parts of its land territory.

2.4.2 Internal Waters

Article 8 of the Convention defines internal waters in the following manner: *"waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State."* The sovereignty of the state over these waters is fully fledged, the Law of the Sea does not apply to them, and there is thus no right of *"innocent passage"* (see

103 Prescott, 1985: 62.

104 Kapoor and Kerr, 1986: 52.

105 Zones not applicable to the Gulf of Thailand, notably continental shelf beyond 200nm from the coast, the high seas and deep seabed are omitted from this review. See Carleton (1997) for a zone-by-zone review of the responsibilities of coastal states on ratification/accession to UNCLOS.

below). Internal waters usually include such areas as ports, estuaries inlets, and inter-island waters.

2.4.3 Territorial Waters

Article 2 of UN Law of the Sea Convention states that:

> *The sovereignty of a coastal State extends beyond its land territory and internal waters...to an adjacent belt of sea, described as the territorial sea. This sovereignty extends to the air space over the territorial sea as well as its bed and subsoil.*

The contentious issue of the breadth of the territorial sea was resolved in Article 3:

> *Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.*

By no means all states currently claim a 12nm zone. World-wide, some 10 states claim territorial seas of less than 12nm, whilst 16 states claim territorial sea in excess of 12nm (11 of which still claim 200nm territorial seas).[106] Thus, the claims of 10 states to territorial seas of less than 12nm breadth are in accordance with the provisions of UNCLOS (a 12nm zone being a limit to jurisdiction not a compulsory breadth of zone) while, in contrast, those claims to territorial seas beyond 12nm, are not. All of the Gulf of Thailand littoral states claim 12nm territorial waters.

A state's sovereignty over its territorial sea whilst, apparently having all the attributes of its sovereignty over its land territory is, however, limited in one significant way. According to Article 17 of the Convention, sovereignty over the zone in question is limited by the traditional *"right of innocent passage through the territorial sea"* not *"prejudicial to the peace, good order or security of the coastal state."*

2.4.4 The Contiguous Zone

The 1958 Convention on the Territorial Sea and Contiguous Zone provided for states to claim a zone contiguous to the territorial sea of up to 12nm breadth within which a state could exercise jurisdiction over matters such as customs and immigration. The 1982 Convention retained these provisions but expanded the allowable breadth of the

[106] Of these 16 states, 6 have signed and ratified the UN Law of the Sea Convention thus accepting the 12nm principle

contiguous zone to 24nm. In light of the 200nm exclusive economic zone (EEZ) (see below) provided for by the 1982 Convention the contiguous zone has little relatively contemporary relevance.

2.4.5 Exclusive Fishing Zone

Prior to development of the EEZ concept states sometimes declared an exclusive fishing zone (EFZ) beyond territorial waters and contiguous zone limits in order to protect fish stocks. This type of jurisdictional claim has been largely superseded by the EEZ. Nevertheless, several states, retain EFZ claims.[107]

2.4.6 Continental Shelf

The 1958 Geneva Convention on the Continental Shelf gave state parties sovereign rights for the purpose of exploring the continental shelf, that is *"the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea"*, and exploiting its natural resources:

> *...to a depth of 200 metres or, beyond that limit, to where the depth of the superadjacent waters admits of the exploitation of the natural resources of the said areas* and *to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands* (Articles 1 and 2).

The UNCLOS granted the same sovereign rights but defined the maximum allowable claim differently. Paragraph 1 of Article 76 of the UNCLOS states that:

> *The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.*

It is worth noting that, in contrast to other zones of maritime jurisdiction, the continental shelf does not have to be specifically claimed under UNCLOS – every coastal state has one, whether specifically claimed or not:

> *The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation* (Article 77, 3).

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[107] See Smith, 1986: 4.

It is also important to acknowledge that rights to the seabed and subsoil acquired through EEZ claims are, nonetheless, still governed in accordance with the UN Conventions provisions relating to the continental shelf.

2.4.7 The Exclusive Economic Zone (EEZ)

The 1982 Convention allowed for a substantial extension of the jurisdiction of coastal states seawards. The principle of a zone extending 200nm from a state's baseline within which the state could have exclusive jurisdiction over resources was incorporated into Part V of the Convention. Article 55 provides the specific legal regime of the exclusive economic zone as being:

> *The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal régime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.*

Article 56, concerning the rights, jurisdiction and duties of the coastal State in the exclusive economic zone specifies that:

> *1. In the exclusive economic zone the coastal State has:*
> *(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superadjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;*
> *(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:*
> *(i) the establishment and use of artificial islands, installations and structures;*
> *(ii) marine scientific research;*
> *(iii) the protection and preservation of the marine environment;*
> *(c) other rights and duties provided for in this Convention.*
> *2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other coastal States and shall act in a manner compatible with the provisions of this Convention.*
> *3. The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI [concerning the continental shelf].*

While Article 57 defines the breadth of the EEZ as being:

> *The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.*

It should be noted that within the EEZ states do not have sovereignty, rather they have certain *"sovereign rights"*, *"jurisdiction"* and *"duties"*.

2.5 The Gulf of Thailand Littoral States and the Law of the Sea

Of the four Gulf of Thailand coastal states, only Vietnam and Malaysia are full parties to the United Nations Convention on the Law of the Sea (UNCLOS), both countries signing the Convention when it was concluded in December 1982 and subsequently ratifying it. While both Thailand and Cambodia have signed the Convention, neither country has yet deposited its instruments of ratification with the United Nations (see Table 2.1).

It is also worth noting that before the drafting of the 1982 UN Law of the Sea Convention, three of the four Gulf of Thailand littoral states – Cambodia, Malaysia and Thailand – also became parties to both the 1958 Conventions dealing with the Territorial Sea and Contiguous Zone, and the Continental Shelf, respectively.[108]

Table 2.1 ***The Gulf of Thailand States and Law of the Sea Conventions***

State	UNCLOS[109]		Geneva Conventions[110]	
	Signed	*Ratified*	*Territorial Sea and Contiguous Zone*	*Continental Shelf*
Cambodia	1 July 1983	–	9 October 1964	6 October 1964
Malaysia	10 December 1982	14 October 1996	9 October 1964	6 October 1964
Thailand	10 December 1982	–	7 November 1968	7 November 1968
Vietnam	10 December 1982	25 July 1994	–	–

Technically, only states which have ratified the Convention, such as Vietnam, are obliged to accept the rights and obligations defined therein. However, although the Convention is not formally binding on non-signatories, as mentioned, much of the Convention, particularly those parts relating to maritime zones and maritime boundary delimitation, may be considered as having been accepted as customary international law.

108 The Gulf of Thailand littoral states are also bound by their past commitments to the 1958 Geneva Conventions and it is notable that the terms and provisions contained in those Conventions relating to the territorial sea, the contiguous zone and the continental shelf were incorporated almost verbatim into the 1982 UN Convention on the Law of the Sea.

109 National Claims to Maritime Jurisdiction/United Nations Division of Ocean Affairs and the Law of the Sea (DOALOS) website: http://www.un.org/Depts/los/losconv1.htm#StatusConvention

The Gulf of Thailand states, whether parties to UNCLOS or not, have not been slow to advance claims to straight baseline systems and extended maritime jurisdiction. This is demonstrated by Table 2.2 which summarises the maritime claims made by the Gulf of Thailand states:

Table 2.2 *Maritime Claims in the Gulf of Thailand*

Country	Straight Baselines	Historic Waters	Territorial Sea	Contiguous Zone	Continental Shelf	EEZ
Cambodia	✔	✔	✔	✔	✔	✔
Malaysia	✔	✘	✔	✘	✔	✔
Thailand	✔	✔	✔	✘	✔	✔
Vietnam	✔	✔	✔	✔	✔	✔

Source: Author's research.

The baseline claims of the Gulf of Thailand coastal states will be considered in Chapter 4 while their claims to territorial sea, contiguous zone, continental shelf and EEZ claims will be dealt with in Chapter 5.

[110] Brown, 1994, Vol.II.: 387-389.

Chapter 3

The Delimitation of Maritime Boundaries and the Gulf of Thailand

3.1 Introduction

3.1.1 Delimitation of the Territorial Sea

The delimitation of the territorial sea between states with opposite or adjacent coasts is governed by Article 15 of the UN Convention which repeats, almost verbatim, the text of the 1958 Convention on the Territorial Sea and Contiguous Zone. Article 15 provides that, unless the states agree otherwise or there exists an *"historic title or other special circumstances"* in the area to be delimited, neither state is entitled to extend its territorial sea beyond the median line, *"every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured."*

It is apparent from this provision that there is a clear presumption in favour of equidistance for the delimitation of the territorial sea, although this presumption does not apply where historic title or *"special circumstances"* exist. While the latter terms are not defined in the Law of the Sea Convention, the burden is clearly on the state asserting such circumstances to demonstrate that an exception exists – in other words, that it has historically exercised a sufficient administration and control over the area in question, to the exclusion of others, to warrant a departure from equidistance.

3.1.2 Delimitation of the Continental Shelf and Exclusive Economic Zone

The 1958 Convention on the Continental Shelf provides, in Article 6 that:

> *1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances,* ***the boundary is the median line****, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each state is measured.*

> 2. *Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances,* ***the boundary shall be determined by application of the principle of equidistance*** *from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured* (emphasis added).

Under the Law of the Sea Convention, however, the provisions dealing with the delimitation of the continental shelf and the exclusive economic zones are identical. Thus, both Article 74(1) dealing with the EEZ, and Article 83(1) dealing with the continental shelf, state:

> *The delimitation of the continental shelf [or exclusive economic zone] between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.*[1]

Significantly, unlike Article 15 dealing with the delimitation of the territorial sea, these provisions do not refer to any particular method of delimitation such as equidistance. The emphasis is clearly on achieving an equitable result.

This stance is echoed in recent cases decided by the International Court of Justice and by arbitral tribunals. In the *Libya-Malta* case, for example, the Court held:

> *Delimitation is to be effected in accordance with equitable principles and taking account of all the relevant circumstances so as to arrive at an equitable result.*[2]

The predominant types of relevant circumstances brought into play in maritime boundary delimitation are outlined in Sections 3.3-3.6.

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1 Article 38 of the Statute of the ICJ is included as Appendix 1.

2 *Libya/Malta* Case, para.29. Republished in Research Centre for International Law, Vol.II, 1992: 1,547.

3.2 Methods of Maritime Boundary Delimitation

3.2.1 Equidistance Lines

Strict Equidistance

A strict equidistance line, defined by the 1958 and 1982 Conventions as a line *"every point of which is equidistant from the nearest basepoints on the [territorial sea] baselines"* of the states concerned is a geometrically exact expression of the midline concept and is best illustrated graphically.[3]

Figure 3.1 depicts a straightforward equidistance line between opposite coastlines. Sector a-b represents the perpendicular bisector of the line joining basepoints A and B respectively. Any point on that perpendicular bisector is equidistant from points A and B.[4] Due to coastal irregularities, however, such straight lines rarely remain equidistant from the relevant coasts for long. To maintain equidistance, new perpendicular bisectors between other points on the coastline are required such that an equidistance line is built up consisting of a succession of sections of perpendicular bisectors of straight lines joining the closest points on the coasts of the states concerned.[5]

Thus, Point b represents a tripoint equidistant from basepoints A, B and C. Basepoints A and C now become the control points for the equidistance line. Point b is therefore a turning point on the strict equidistance line with sector b-c being the perpendicular bisector of the line joining A and C, and so on. This idea is illustrated by the circles on Figure 3.1, centred on the equidistance line with radii such that their circumference passes through the nearest basepoints. If the line under examination is indeed equidistant from the two coastlines, then it can be seen from this exercise that no basepoints lie within the circumference of any of the circles. The same principles can also be applied to adjacent coasts as illustrated in Figure 3.2.

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3 See also, for example, Boggs, 1937 and Hodgson and Cooper, 1976.

4 Figure adapted from Beazley, 1994a: 24.

5 Beazley, 1994a: 7-9.

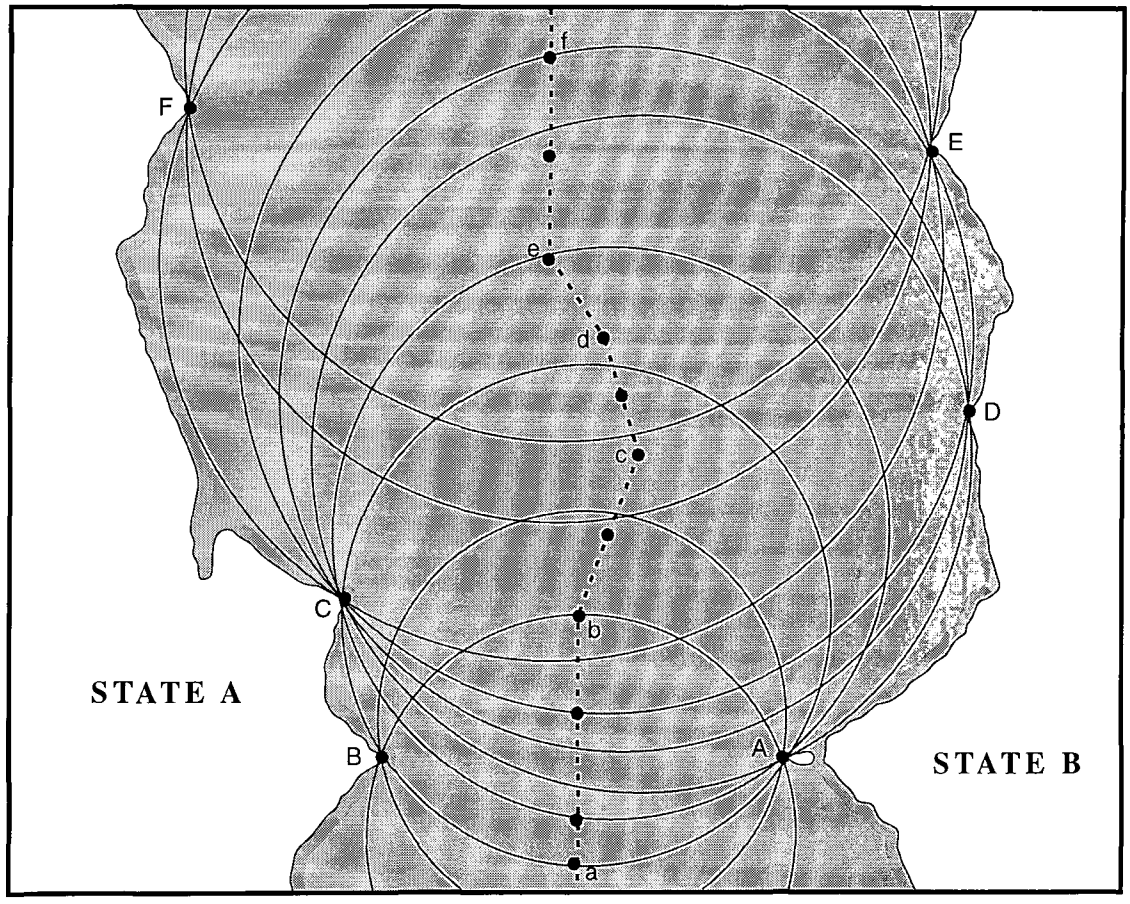


Figure 3.1 *Equidistance Between Opposite Coasts*
Source: Beazley, 1994a.

Simplified Equidistance

Where the parties' coastlines are complex and there are consequently numerous basepoints on either side, the application of strict equidistance can frequently result in a rather convoluted line involving a large number of turning points and a corresponding plethora of short straight-line equidistance line segments. This scenario raises practical problems for maritime management, particularly in relation to navigation and the development of living and non-living offshore resources. In addition, strict equidistance often makes the illustration of the line on a chart problematic and results in an overly long list of coordinates to describe the line.[6]

This 'problem' or inconvenience is often resolved by adapting a strict equidistance line in order to 'straighten' sections of it – resulting in a *simplified equidistance line*. This method involves reducing the number of turning points to a manageable level, thus reducing the number and increasing the length of the intervening straight-line segments. The remaining basepoints are often selected such that an equal

[6] Beazley, 1994a: 9

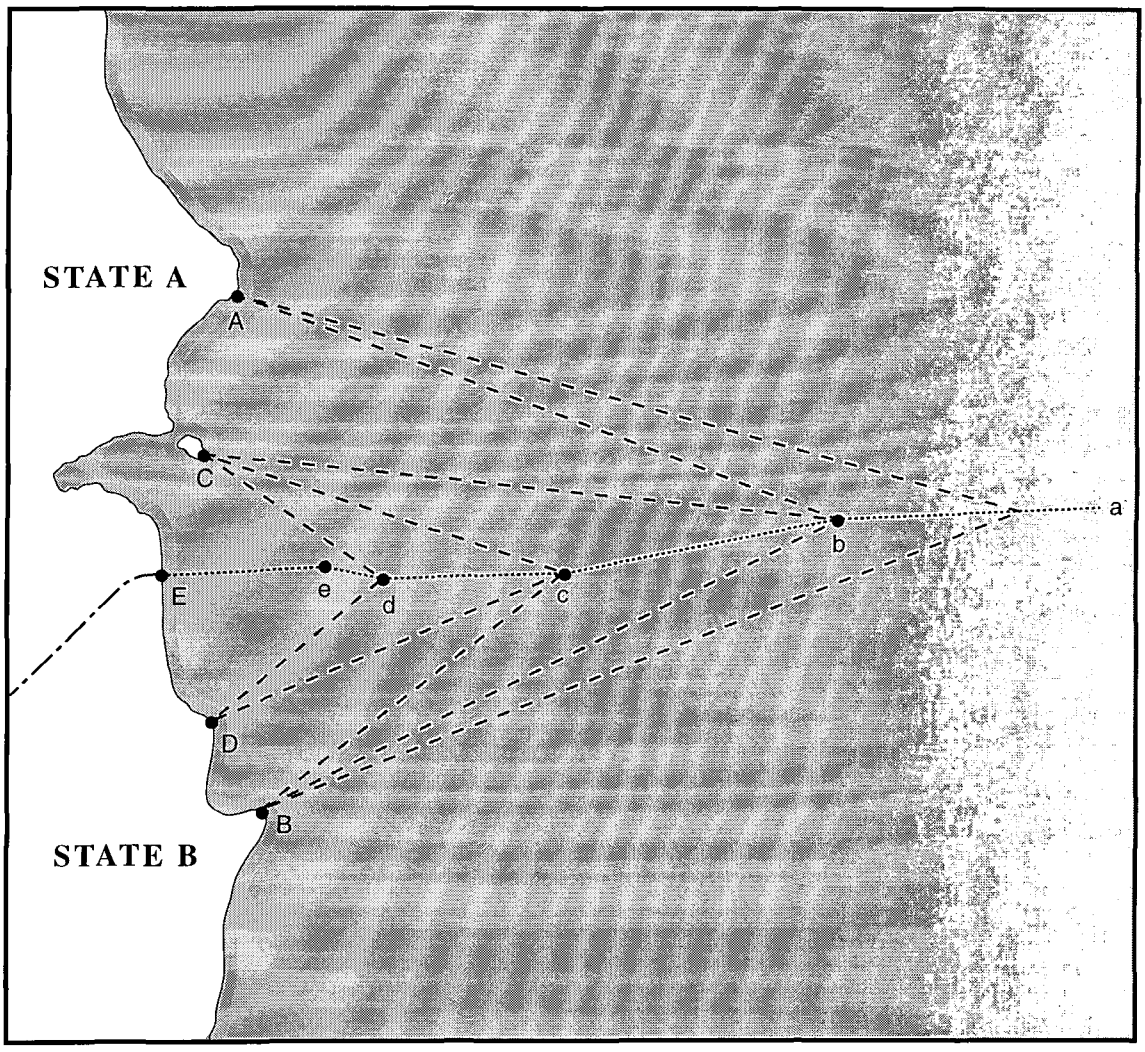


Figure 3.2 *Equidistance Between Adjacent Coasts*
Source: Beazley, 1994a.

exchange of area between the two sides results – a method resulting in what is frequently termed an *area compensated line*.[7]

A good example of the application of this method of maritime boundary delimitation is that provided by the Mexico-United States boundary, where the number of turning points in the Gulf of Mexico delimitation and Pacific coast delimitation were reduced from eight to five and sixteen to four respectively. In both cases this simplification resulted in only a very slight exchange in maritime space between the parties.[8]

Other, less accurate, methods of simplification include the selection of only certain key basepoints therefore eliminating the complexities to the resulting dividing line caused by the intervening basepoints.

[7] Beazley, 1994a: 9; Legault and Hankey, 1993: 207.

Modified Equidistance

In the absence of outstanding geographical features, strict equidistance will result in an equal division of maritime space and thus an equitable delimitation. In the case of delimitations between opposite coasts such outstanding geographical features capable of considerably influencing an equidistance line, and thus the equitability of the resulting division, are commonly offshore islands. In the case of delimitation between adjacent coasts such features common include promontories in the vicinity of the coastal terminus of the land boundary of the two states on the coast.

Where such features do occur, a frequently applied solution has been to apply equidistance principles but to modify the resulting equidistance line by either discounting certain basepoints or by according to them a reduced effect. This method commonly results in a significantly greater alteration to strict equidistance than that in the case of a simplified equidistance line. Furthermore, unlike simplified equidistance lines, modifications of an equidistance line in this manner usually result in an *unequal* distribution of maritime space between the parties as compared with a division on the basis of strict equidistance.[9]

One popular way to modify a strict equidistance line is to adopt some flexibility in terms of the *selection of appropriate basepoints*. Under this method the parties to a dispute may agree to discount particular basepoints when constructing a boundary line which is otherwise based on equidistance. This method has been widely used, a good example being the Iran-Qatar continental shelf agreement of 1969. In this case, the parties agreed to delimit their common boundary on the basis of equidistance but to ignore all islands, rocks, reefs and low-tide elevations as basepoints. The resulting boundary is therefore equidistant from the nearest points on Iran's and Qatar's mainland coastlines.[10]

An alternative solution to the problem of the disproportionate effect of particular geographical features when the equidistance method of maritime boundary delimitation is applied is to accord the island or other feature concerned only *partial effect* (See Section 3.5). This was the case in the delimitation between Malta and Libya whereby the equidistance line was shifted 18 minutes of latitude northwards (i.e. to Libya's

8 Charney and Alexander, 1993: 427-446.
9 Legault and Hankey, 1993: 208.
10 Charney and Alexander, 1993: 1,511-1,518.

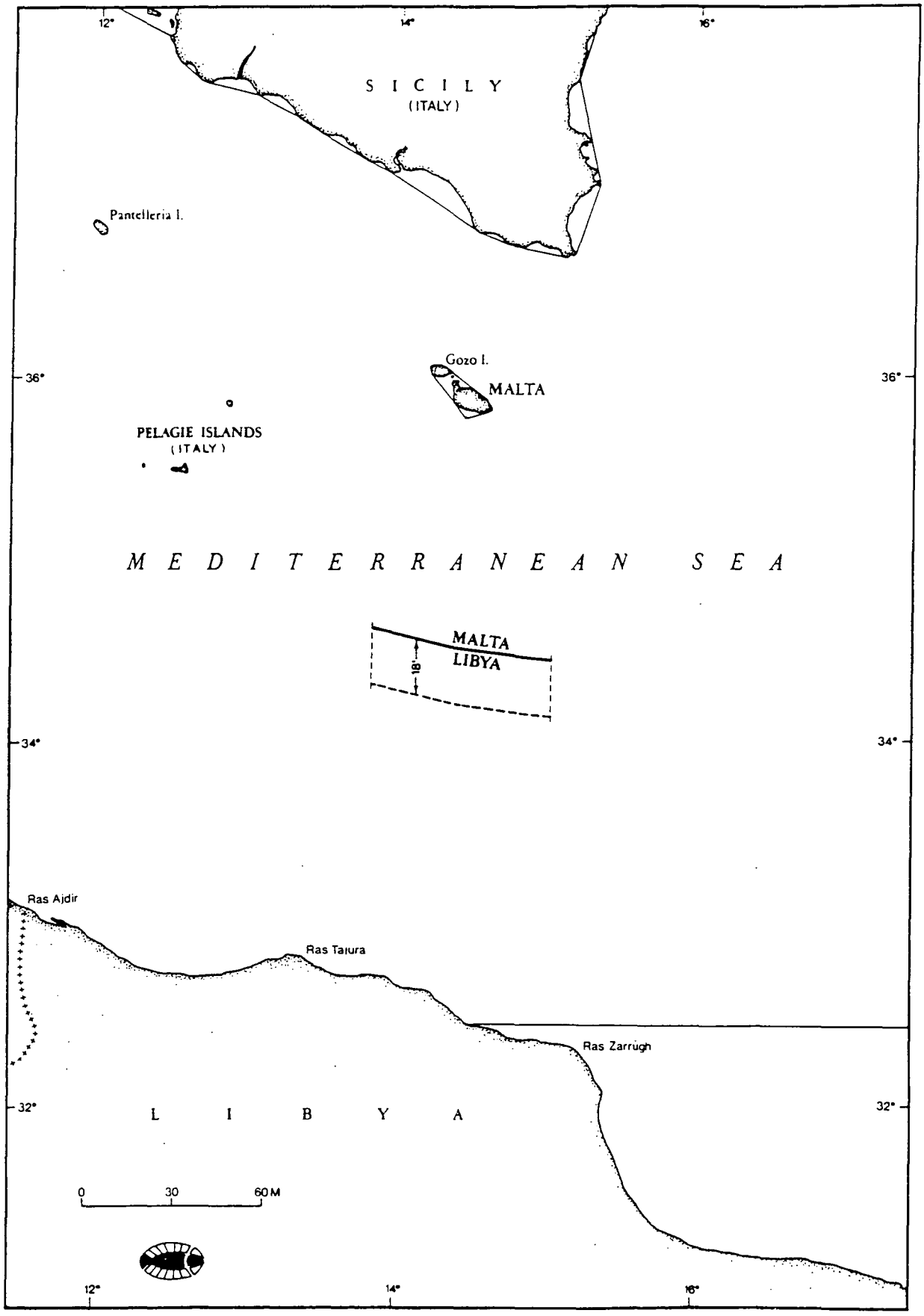


Figure 3.3 *The Delimitation between Malta and Libya*
Source: Francalanci and Scovazzi, 1994.

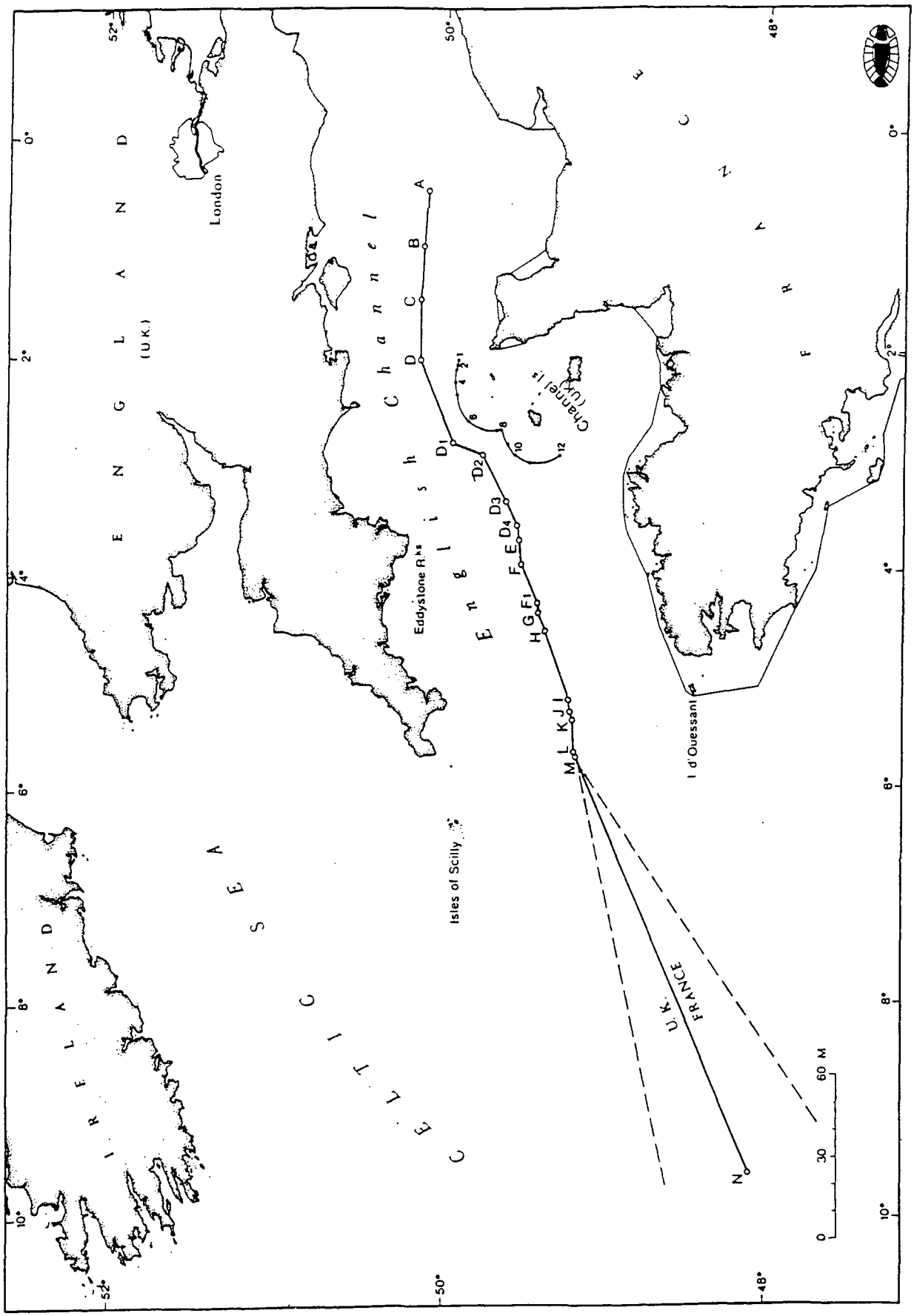


Figure 3.4 *The Delimitation between France and the United Kingdom*
Source: Francalanci and Scovazzi, 1994.

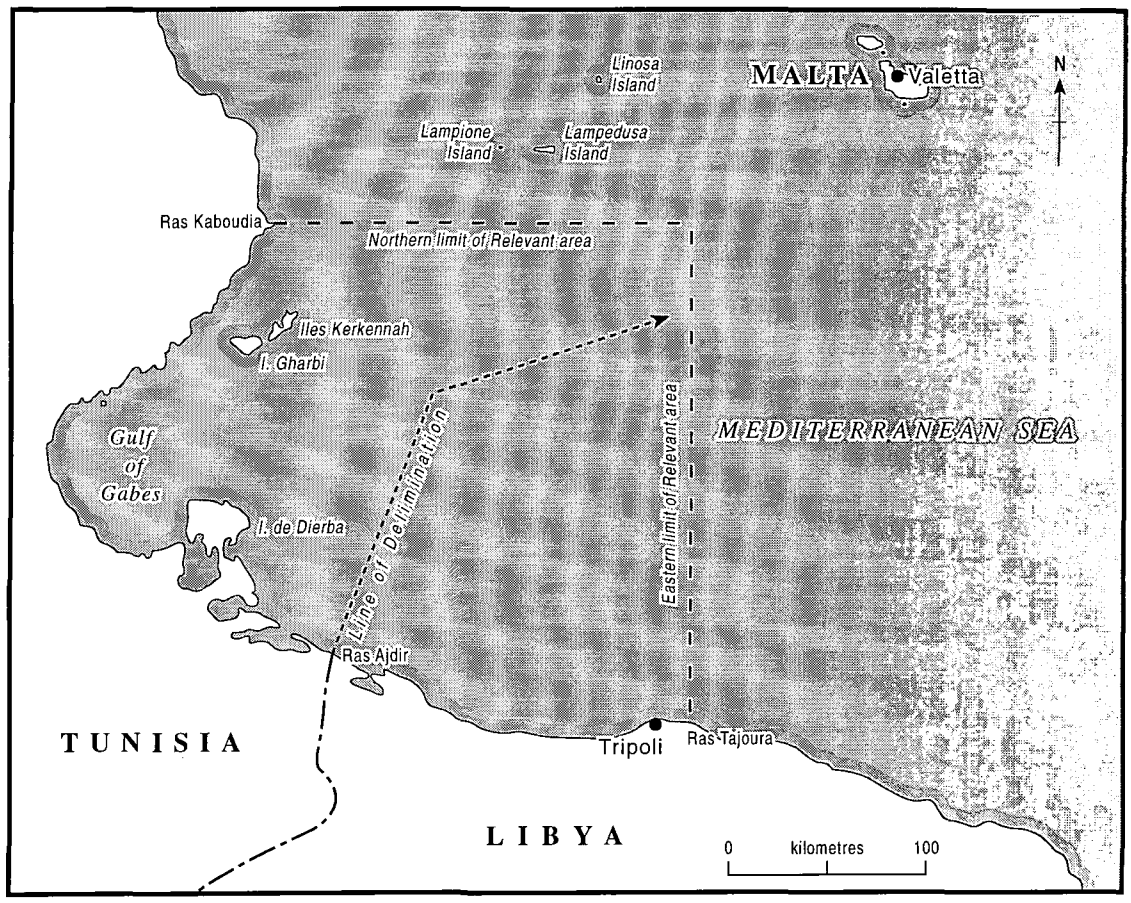


Figure 3.5 *The Delimitation between Libya and Tunisia*
Source: IBRU, 1999.

advantage) giving the Maltese islands less than full effect on the final delimitation line (Figure 3.3).[11]

In many cases *half-effect* has been applied, for example in relation to the Scilly Isles in the UK-France Arbitration[12] (Figure 3.4) and the Kerkennah Islands in the Tunisia-Libya delimitation[13] (Figure 3.5), but there is certainly no obligation or hard and fast rule on this issue as illustrated by the Sweden-USSR delimitation where a 75:25 ratio was applied[14] (Figure 3.6) and in the Libya-Malta case mentioned above.

Half-effect can be applied by means of a 'bisector' method whereby the feature or features to be accorded a reduced effect are reduced to a single representative point.[15] An equidistance line can then by drawn using this point and an agreed point on the coast of the state with whom the boundary is being delimited. Another equidistance line can be constructed using the latter point, but ignoring the point representing the features being given reduced affect, and a half effect line drawn by bisecting the angle between

11 Charney and Alexander, 1993: 1,649-1,662.
12 Charney and Alexander, 1993: 1,735-1,754.
13 Charney and Alexander, 1993: 1,663-1,680.
14 Charney and Alexander, 1993: 2,057-2,076.
15 For a detailed analysis of half-effect applied to equidistance lines see Beazley, 1979

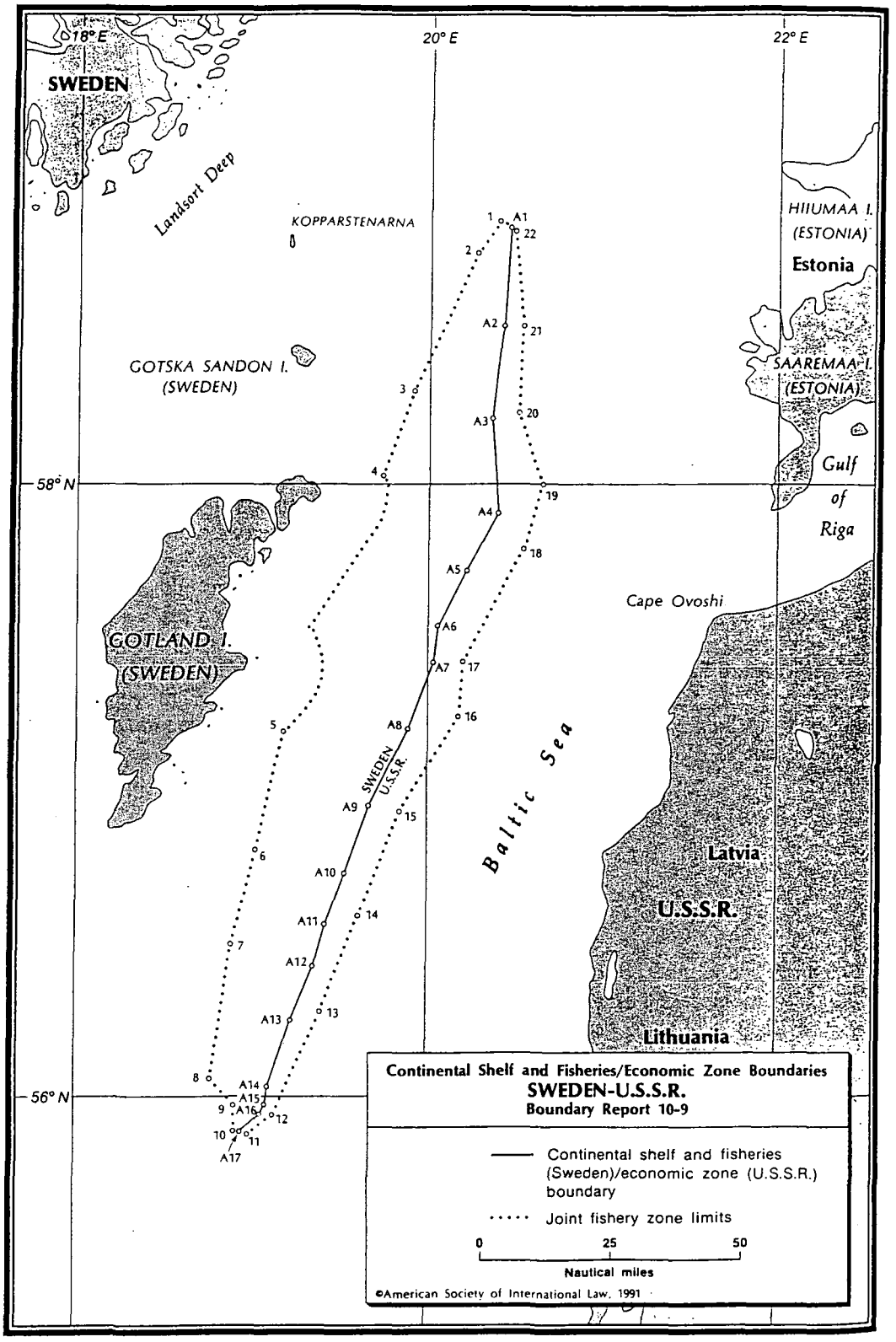


Figure 3.6 *The Delimitation between Sweden and the USSR*
Source: Charney and Alexander, 1993.

the two equidistance lines. This method was followed in relation to the Scilly Isles in the Anglo-French arbitration case (Figure 3.4).[16]

Alternatively, two equidistance lines can be constructed, one giving the features concerned full effect and the other ignoring them. A third line, equidistant from the other two, can then be drawn in order to accord the features a half effect. This method was applied in relation to the influence of the Iranian island of Kharg on the Iran-Saudi Arabia continental shelf agreement of 1968.[17] Similarly, this method was used in the Sweden-USSR case, although a 75:25 ratio between the two lines using and ignoring the Swedish islands of Gotland and Gotska Sandon was agreed upon (to Sweden's advantage) rather than a 50:50 half effect one (Figure 3.6).[18]

The half-effect approach can also be applied to non-equidistance line-based boundary delimitations as happened in the Tunisia-Libya case before the ICJ. Here, two lines were constructed, one following the general direction of Tunisia's mainland coast and the other the general direction of the Kerkennah Islands group. A bisector between these two lines was then drawn and the angle of that line applied to the seaward part of the boundary between the parties thus giving the Kerkennah Islands a half-effect on the delimitation (Figure 3.5).[19]

3.2.2 Enclaving

Where islands belonging to one state are nearer to the mainland coast of the opposing state than to their own state's mainland coast, that is, they fall on the 'wrong' side of an equidistance line between mainland coasts, the states concerned may opt to ignore the islands altogether for the purposes of constructing an overall division between their mainland coastlines.

In such circumstances, the islands concerned may be wholly or partially *enclaved*, usually being accorded no more than a restricted belt of jurisdiction, often no more than that over territorial sea.[20] The fundamental intent and effect of such a method, which is often applied in conjunction with some form of equidistance, is to

16 Charney and Alexander, 1993: 1,735-1,754.

17 Charney and Alexander, 1993: 1,5191,532; Bundy, 1994a: 180, 1994b: 30.

18 Charney and Alexander, 1993: 2,057-2,076.

19 Charney and Alexander, 1993: 1,663-1,680.

20 Common practice is for such islands to be awarded a 12nm territorial sea. Occasionally, however, as in the case of Italy-Tunisia, enclaved islands may be granted a 13nm belt – 12nm of territorial sea plus a symbolic 1nm of continental shelf or exclusive economic zone jurisdiction in order to demonstrate that the feature concerned is fully-fledged island and not a mere rock (Section 3.2.1).

eliminate inequalities and reduce the maritime area falling to the state whose islands are enclaved relative to the application of strict equidistance.[21]

A fine example of the application of the full enclaving method was that which was applied in the France-United Kingdom delimitation in the English Channel. The Court of Arbitration, which had been asked to render a decision on the delimitation question, found that between the opposite mainland coasts of the two states, irregularities in the coastlines of the parties generally cancelled one another out such that a median line would result in a generally equitable delimitation. Indeed, if the Channel Islands did not exist, the Court found that a median line *"is precisely how the delimitation of the boundary of the continental shelf in the English Channel would present itself."*[22] Having admitted that the Channel Islands do in fact exist, albeit located not only on the French side of a median line drawn between mainland coasts but *"practically within the arms of a gulf on the French coast"*,[23] the Court concluded that:

> *...the Channel Islands are not only 'on the wrong side' of the mid-Channel median line but wholly detached geographically from the United Kingdom.*[24]

The Court therefore specified that the Channel Islands be enclosed in an enclave formed by 12nm arcs from their baselines to the north and west and by a boundary between them and the nearby French coasts to their east, south and southwest to be negotiated by the two states.[25]

Where small islands exist in close proximity to a potential median line a further method of accommodating them is to *partially enclave* them. This method was applied in the continental shelf boundary agreement between Italy and the then Yugoslavia concluded in 1968. The Yugoslav (now Croatian) islands of Pelagruza and Galijula were accorded rights to territorial sea jurisdiction but no influence on the overall equidistance line. As a result 12nm arcs were drawn from the islands and as a result, in

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21 Legault and Hankey, 1993: 212.

22 *Anglo-French Arbitration*, para 182. Republished in Research Centre for International Law, Vol.I, 1992: 442.

23 *Anglo-French Arbitration*, para 183. Republished in Research Centre for International Law, Vol.I, 1992: 442.

24 *Anglo-French Arbitration*, para 199. Republished in Research Centre for International Law, Vol.I, 1992: 448.

25 The exact course of the boundary between the Channel Islands and the French mainland coast was beyond the scope of the Court's jurisdiction and was not therefore specified (Charney and Alexander, 1993: 1,741). This was partially resolved through an agreement between France and the UK on behalf of Guernsey which defined two equidistance-based fishery boundaries (Charney and Alexander, 1998: 2,471).

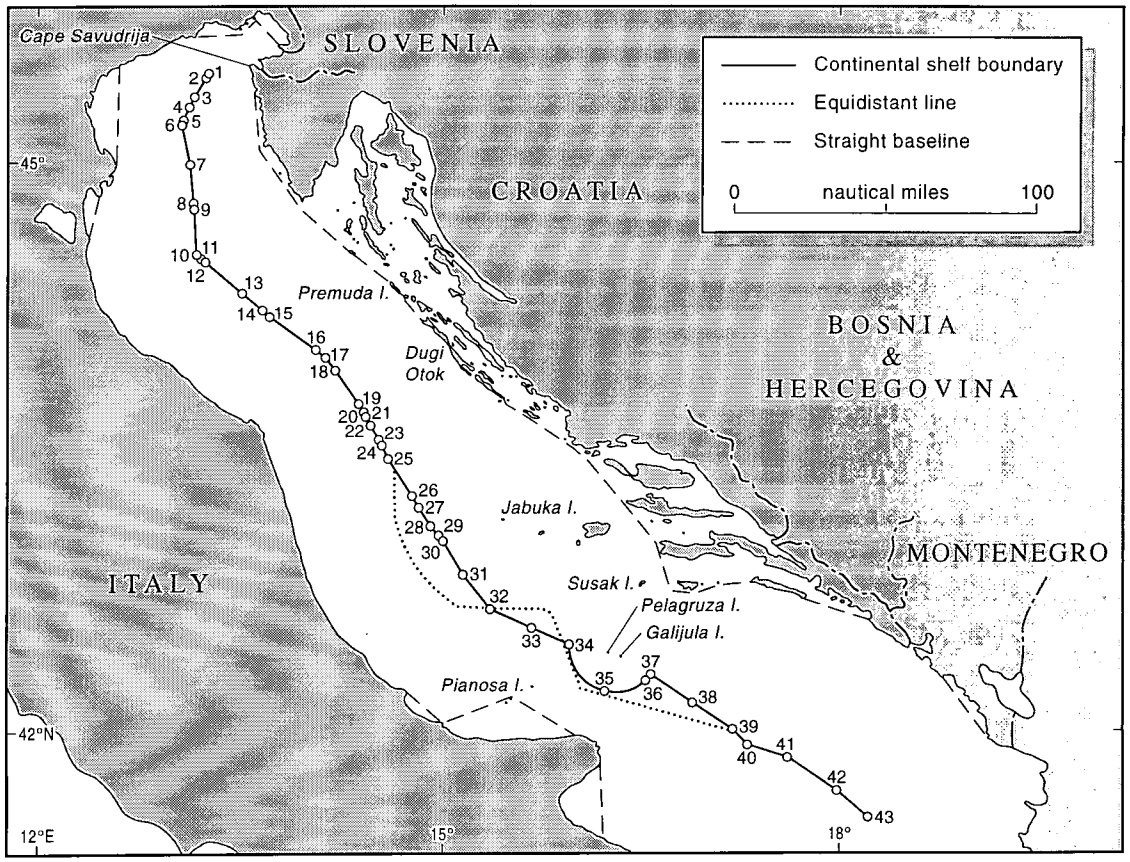


Figure 3.7 *The Delimitation between Italy and Yugoslavia*
Source: IBRU, 1997.

this section of the boundary, Italy gained 1,400km^2 as compared with a delimitation based on strict equidistance (Figure 3.7).[26]

A yet more striking illustration of this method was included in the continental shelf agreement between Iran and Saudi Arabia of 1968 (Figure 3.8). Here, although the boundary generally follows the equidistance principle, in the central section of the boundary line both Iran's Farsi Island and Saudi Arabia's Al- 'Arabiyah Island were accorded territorial seas and thereby partially enclaved by 12nm arcs with a local equidistance line between them.[27]

3.2.3 Lines of Bearing

The other main geometric method of constructing an equidistance line evident from state practice and case law is that of a line of bearing, that is, a line of constant compass bearing.[28]

26 Blake *et al.*, 1996: 15-16.
27 Charney and Alexander, 1993: 1,519-1,532.

Perpendiculars

Where this method of delimitation is employed, frequently the line of bearing taken in such circumstances is one *perpendicular to the general direction of the coast* in order to take into account the macro-geography of the region. In effect, this represents a much simplified form of equidistance.

Thus, where states are adjacent to one another and boast relatively uncomplex coastlines, a line of bearing perpendicular to the general direction of the coast may represent an easy and equitable option. In addition, Beazley[29] has observed that where a number of adjacent states have a short coastal length as compared with the possible seaward extent of their maritime boundaries:

> *Such a situation might well produce a series of equidistance lines which would cut off one state from its full reach whilst affording another a disproportionate offshore area of jurisdiction. By employing a general direction, or general directions, of the coast and a series of perpendiculars to form the maritime boundaries, many of the anomalies which might result from using strict or modified equidistance will be avoided.*

It is rare, however, that a particular coastline is so regular as to be unambiguously summarised by a single straight line – a step fundamental to the construction of a perpendicular line. The disadvantage of the method therefore lines in the fact that there is almost inevitably disagreement the precise angle of the general direction of the coast – a problem induced by the apparent simplicity and therefore the arbitrary nature of such a simplified form of equidistance.[30]

Nevertheless, a good example of this method's application is the maritime boundary which was eventually concluded between the West African states of Guinea and Guinea-Bissau. The parties, having failed to reach agreement in relation to their maritime boundaries as a consequence of their maintaining incompatible claims to equidistance on one hand as opposed to a system of parallel of latitude on the other, submitted their dispute to an international Arbitral Tribunal. The Tribunal found that in order to fulfil its aim of delivering an equitable delimitation guaranteeing each state jurisdiction over those maritime areas in front of their coasts, and avoiding any

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28 Beazley, 1994a: 11.

29 Beazley, 1994a: 12.

30 When the Committee of Experts appointed by the United Nations International Law Commission considered this method of delimitation in the drafting of the articles which became the 1958 Geneva Conventions on the Law of the Sea, it found the method *"too vague."* This was because

enclavement or 'cut-off' effects, the configuration of the parties' relevant coastlines had to be taken into account.

The facts that the coastlines of the two states were partially adjacent and partially opposite, and that combined they displayed a concave shape in the context of the convex coastline of West Africa as a whole, were therefore taken into consideration. In addition, the Tribunal members were keen to provide a delimitation which would be in character with the region as a whole and would not disrupt the conclusion of other maritime boundary agreements in West Africa.

As a result the Tribunal found that, seaward of the parties' offshore islands, the boundary should constitute a straight line along a bearing of 236° to the outer limit of the maritime zones claimed by the two states and recognised under international law (Figure 3.8). The bearing of 236° was arrived at by taking into consideration the general direction of coastline of West Africa and represents a straight line perpendicular to the general direction of the coast as shown by a line connecting Almadies Point and Cape Shilling.

A slightly different approach, which has been used on occasions, is that of constructing lines representing the general direction of the relevant coastlines of *each* of the parties and then taking the *bisector of these two lines* as the boundary. This method was applied to the inner part of the Gulf of Maine by the International Court of Justice in 1984 because of the profusion of rocks and islands in the innermost part of the bay and as a result of the Canada and the United States' conflicting claims to certain islands.

One further variation on this theme, which also holds the advantage of preventing 'cut-off' caused by converging equidistance lines, is the construction of a pair of *parallel straight lines.* This technique has been used on two occasions for the delimitations between France and Dominica, France and Monaco and was employed by the ICJ in the St.Pierre et Miquelon case between Canada and France (see Figure 3.9).

establishing the general direction of the coast was *"often impracticable"* because it depended on

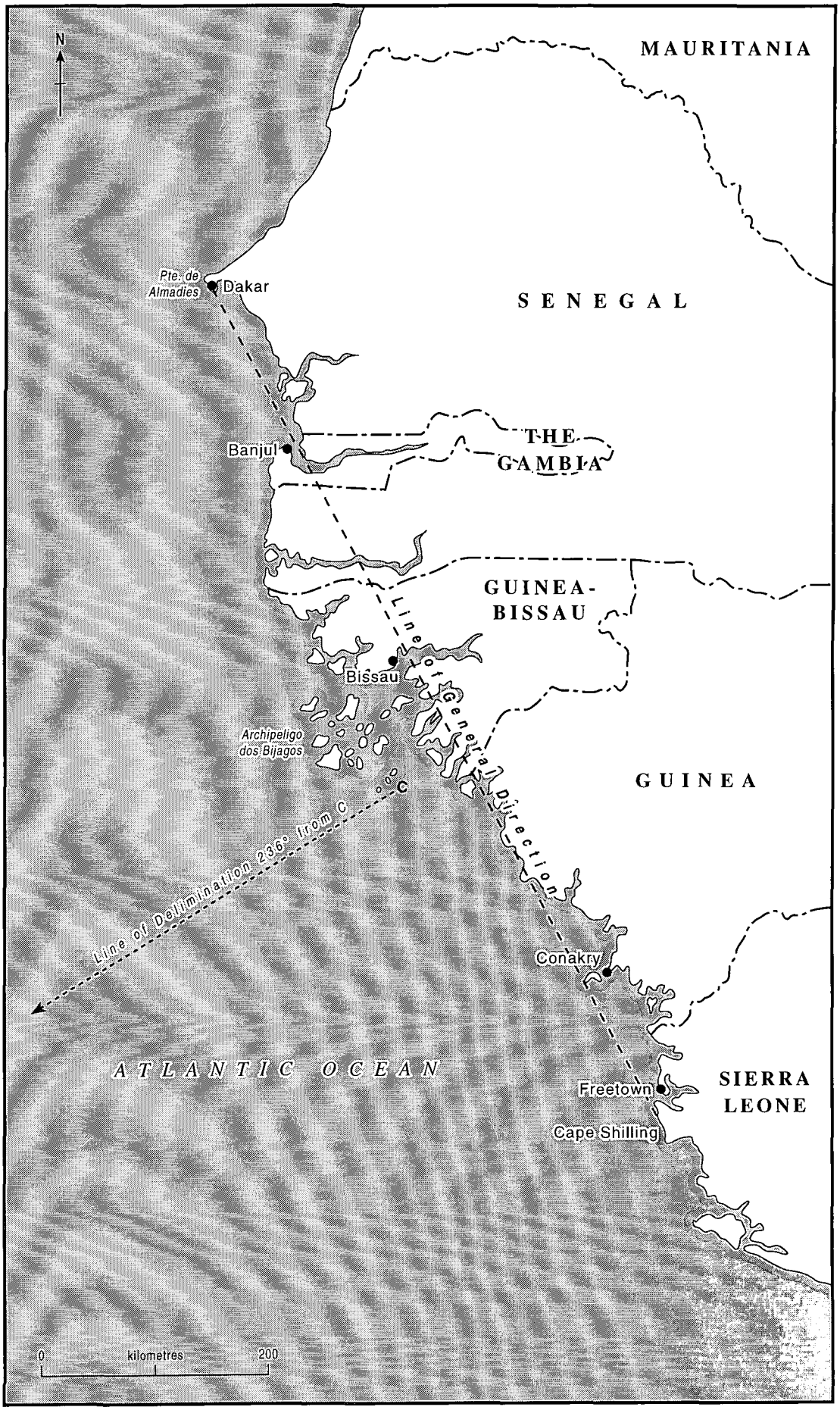


Figure 3.8 *The Delimitation between Guinea and Guinea-Bissau*
Source: IBRU, 1999.

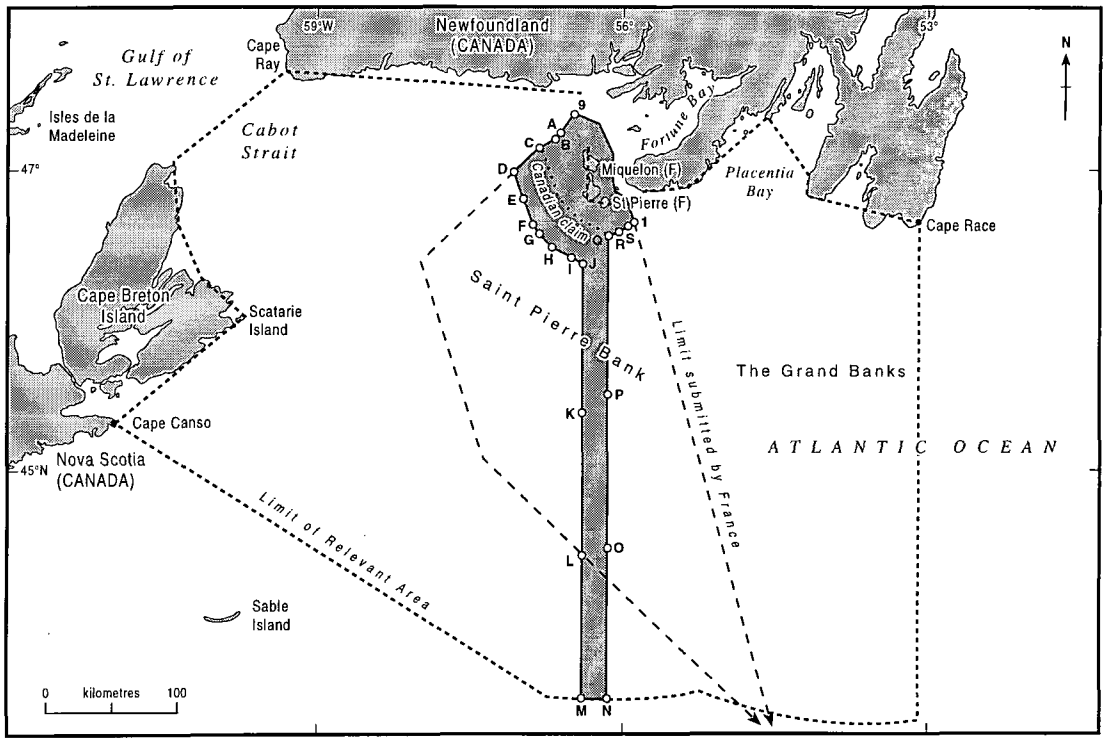


Figure 3.9 *The Delimitation between Canada and France (St. Pierre et Miquelon)*
Source: IBRU, 1999.

Parallels and Meridians

In a similar vein, some states have concluded agreements simply based on *parallels of latitude* or *meridians of longitude.* Such arrangements between adjacent states often involve the use a parallel or meridian constructed from the terminus of the states' land boundary on the coast. The agreement between Chile and Peru is excellent examples of this relatively rarely adopted method of maritime boundary delimitation (Figure 3.10). A variation of this is the application of equidistance for the initial part of the boundary, close to the coast, and then a parallel or meridian further offshore, as was the case with Kenya's 1976 agreement with Tanzania (Figure 3.11).

In appropriate circumstances, the advantages of parallels and meridians are similar to those associated with perpendiculars. That is, where there are adjacent states with concave or convex coastlines, or there are numerous islands and rocks, the use of a parallel or meridian can circumvent the possibility of 'cut-off' which might occur if equidistance were applied.

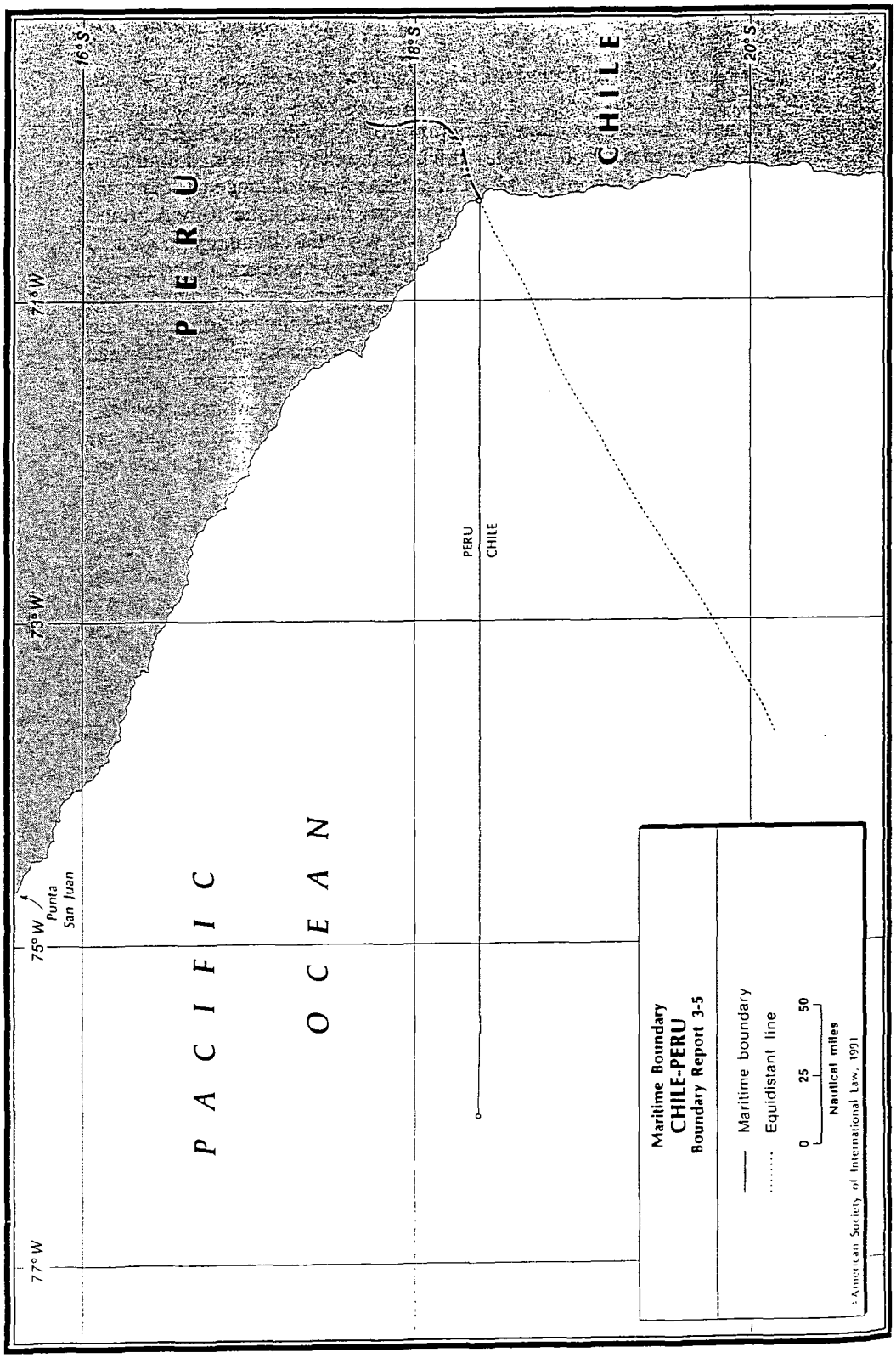


Figure 3.10 *The Delimitation between Chile and Peru*
Source: Charney and Alexander, 1993.

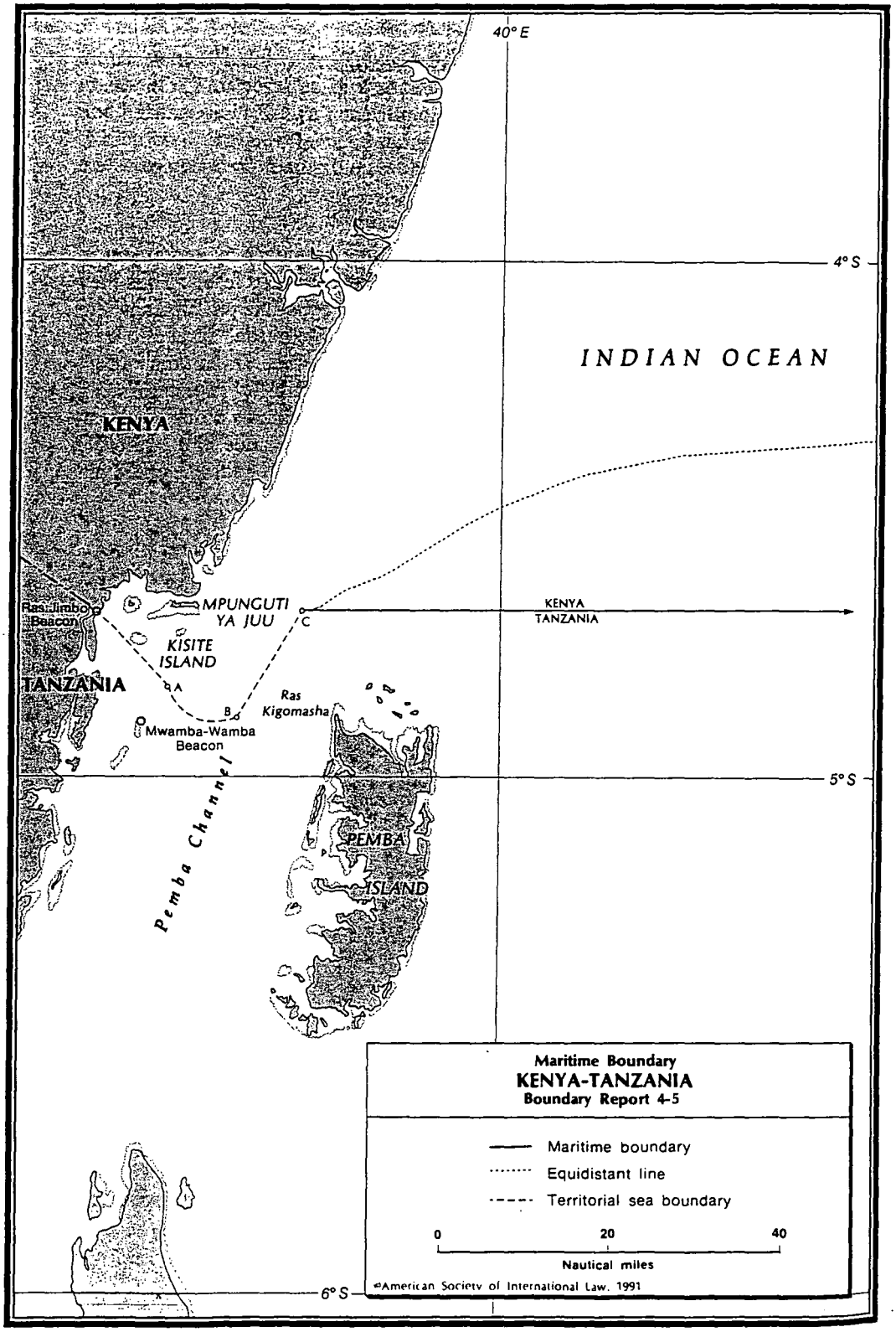


Figure 3.11 *The Delimitation between Kenya and Tanzania*
Source: Charney and Alexander, 1993.

3.2.4 Other Geometric Methods of Delimitation

Two alternative methods of maritime boundary delimitation were identified by a Committee of Experts appointed by the United Nations International Law Commission when it was asked to draft the articles which in due course became the basis for the 1958 Geneva Conventions on the Law of the Sea.

As well as considering the merits and drawbacks of equidistance lines and lines perpendicular to the general direction of the coast, the Committee also evaluated the possibility of delimiting maritime boundaries based on a *continuation of the direction of land frontier offshore* or by drawing a *line perpendicular to the coast at the point of its intersection with the land frontier.* Both of these alternative delimitation techniques were found to have serious drawbacks by the Commission which recommended equidistance as the preferred method of delimitation.[31]

Nevertheless, there are instances of states seeking to employ such alternative methodologies where geographical circumstances mean that they provide that state with a particular advantage. For instance, in continental shelf delimitation case between Libya and Tunisia before the International Court of Justice (1988), the Court found that the convention establishing the land frontier constituted a relevant circumstance since it determined the starting point of the maritime boundary on the coast and was accepted by both parties. The Court could not, however, accept the Libyan contention that the maritime boundary should reflect the north-south alignment of the land boundary – a division of maritime space which would have been highly advantageous to Libya at Tunisia's expense.

Clearly, land boundaries have not generally been delimited with maritime jurisdiction in mind and attention has therefore, unsurprisingly, not been paid to the angle at which a particular land boundary intersects with the coast. As a consequence, in many circumstances, a seaward continuation of the land frontier would result in an inequitable distribution of maritime space.

The drawing of a line perpendicular to the coast at the point of its intersection with the land frontier really represents a simplified and therefore more arbitrary version of a perpendicular to the general direction of the coast. The fact that the general

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31 With regard to extending the land boundary offshore it was observed that where the angle of the land boundary meeting the coast was acute *"the result is impracticable."* Use of a line at right angles to the coast where the land boundary intersects with the coast was also criticised on the grounds that where the coastline in question is curved such a line *"may meet the coast again at*

direction of the coast is not taken into consideration necessarily provides greater scope for an inequitable division of maritime space based on this method.

3.2.5 'Natural' Boundaries

Over time, certain states have advanced the argument that their maritime boundaries can be determined according to 'natural' physical boundaries akin to what are perceived as natural divisions on land such as mountain ranges and rivers.

In relation to territorial sea or continental shelf boundaries, the concept of the *thalweg*, or line of deepest soundings, commonly used in relation to river boundaries, has been transplanted to the offshore arena and applied to submarine trenches and channels. Similarly, the geomorphology, that is the shape and form, of the seabed and its geological make up have been raised as factors favouring certain maritime divisions (see Section 3.4.3). In relation to the water column above the seabed, ecological factors have also been presented as a justification for a particular delimitation (see Section 3.6.3).

Nevertheless, the tendency to claim the physical nature of the seabed as a factor in the determination of maritime boundaries has diminished over time. This is principally due to the fact that such natural features generally produce zones of transition rather than precise boundary lines.[32]

3.2.6 Evaluation

The law of the sea does not specify that maritime boundaries should be delimited according to a particular method. Even in the case of the territorial sea, under Article 15 of the UN Convention, states are merely abjured from extending their claims beyond a median line *"failing agreement between them to the contrary."* In effect, though, so long as third party rights are not infringed upon, states are free to agree upon any maritime boundary delimitation they choose.

It follows therefore, that there is similarly no limit to the methods of delimitation that may be employed, so long as the parties agree or the court or other legal tribunal charged with resolving a dispute deems it to be equitable. A court or arbitration tribunal will, however, be guided by the rules and principles of international law. This is not

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another point." The International Law Commission concurred with the Committee of Experts preference for equidistance, albeit *"very flexibly applied"* (United Nations, 1956: 272).

[32] Evans, 1989: 118.

always the case for delimitations achieved through negotiations (see Section 3.3). It is therefore impossible to consider all the options and methodologies of maritime boundary delimitation available to states as these are, at least theoretically, unlimited.

Nevertheless, it is clear that in practice one method in particular has proved significantly more popular as the basis for international maritime boundary agreements over time – the equidistance method.

The advantages of equidistance lines

The principle advantage of equidistance line based delimitations is the fact that, in the absence of outstanding geographical irregularities in the parties' coastlines, the principle of equidistance produces an equal division of maritime space. While an equal division is not necessarily an equitable division, this is in fact often the case. Another key attraction of equidistance lines as maritime boundaries is that they are based on proximity. That is, the foundation of equidistance provides for the allocation to a particular state of those maritime areas closest to its coastline – a factor of particular concern to states, primarily for security reasons (i.e. the territorial sea).

Equidistance lines also provide an *objective* method of dividing maritime space. As Beazley[33] has noted:

> *Provided that both parties are agreed on the legitimacy of the respective territorial sea baselines and basepoints, there is only one equidistant line which will satisfy those conditions, and its course can be determined on strict geometric principles without ambiguity.*

Equidistance lines can therefore be constructed in an unambiguous manner according to mathematical principles, result in the capture of those areas in closest proximity to a particular states coast, and, in the absence of outstanding geographical features, have a general tendency towards providing an equitable division of maritime space.

As a result of these characteristics, the equidistance line concept, accorded a degree of flexibility by the proviso that *"special circumstances"* might justify an alternative delimitation, was adopted in the 1958 Geneva Conventions on the Territorial Sea and Contiguous Zone and on the Continental Shelf at Articles 12 and 6 respectively (see Sections 3.1.1 and 3.1.2). In effect, though, the inclusion of reference to median

[33] Beazley, 1994a: 7.

lines in the 1958 Conventions represented the high-tide for the general acceptance of equidistance as the preferred or privileged method of delimitation.

The retreat from equidistance

Despite the fact that in the 1969 North Sea Continental Shelf Cases the ICJ noted that a median line between opposite states usually resulted in an equal division of the maritime space involved (see Section 3.4.4), the Court concluded that the provisions relating to equidistance in the 1958 Conventions had not become customary international law and that boundaries could diverge from that rule.[34] Similarly, the Anglo-French Court of Arbitration's judgement, while adhering to equidistance for much of the boundary, gave no particular preference to equidistance as a principle overall.[35] The progressive retreat from equidistance as a preferred method of delimitation in case law continued through the 1980s with the *Libya-Tunisia* case of 1982, the *Canada-United States* Gulf of Maine case of 1984 and the *Guinea-Guinea-Bissau* and *Libya-Malta* cases, both of 1985.[36]

This shift away from equidistance over time is particularly well demonstrated by a comparison of the texts of Article 6 of the 1958 Convention on the Continental Shelf and Article 74 of the UN Convention of 1982 (Section 3.12). In the former, in the absence of agreement, *"the boundary is the median line."* In contrast, the UN Convention merely provides that the boundary should be effected by agreement *"in order to achieve an equitable solution"* and no mention of equidistance or median lines is made. This change in emphasis strongly indicates that the equidistance principle is by no means obligatory in international law and was the result of strong pressure from states at the Third Law of the Sea Conference against the concept of the mandatory application of equidistance for ocean boundaries.

Equidistance has therefore, at least in theory, been gradually relegated to a status and importance equivalent to any other method of maritime boundary delimitation. As a result of equidistance being knocked from its pedestal as the preferred method of delimitation, the law of the sea as codified by the UN Convention and supported by judicial decisions has been stripped down to the process of taking into account all

34 Charney, 1987: 509. Legault and Hankey (1993: 204) term this the *"first blow"* struck against the privileged status of the equidistance-special circumstances rule.

35 Instead the Court adopted a unified equidistance/special circumstances rule (Charney, 1987: 509; Legault and Hankey, 1993: 204).

36 Legault and Hankey, 1993: 204. See also, Birnie, 1987: 15-37.

relevant circumstances in accordance with equitable principles in order to achieve an equitable result.[37]

Nevertheless, there are two geographical situations where the equidistance principle appears to have maintained a stronger position in international maritime boundary law – with regard to the territorial sea and in delimitations between opposite states.

Where equidistance retains a particular role

The provisions relating to delimitation of the territorial sea in the 1982 UN Convention, contained in Article 15 (see Section 3.1.1), are virtually identical to those laid down by the 1958 Convention on the Territorial Sea and Contiguous Zone. Both of these documents call on states, in the absence of agreement to the contrary, not to extend their territorial sea *"beyond the median line every point of which is equidistant from the nearest points on the baselines from which the territorial sea is measured."*

This preference for equidistance in the case of the territorial sea reflects concerns by states to control those maritime areas closest to their land territory, for economic and particularly security reasons. The application of equidistance answers these concerns admirably, as the foundation of the concept is the provision of a division on the basis of proximity. In addition, the fact that the territorial sea is a relatively narrow maritime zone, generally up to 12nm in breadth as compared to 200nm in the case of the EEZ, means that there is a correspondingly limited risk of major distortions caused by coastal irregularities, resulting in large areas inequitably falling under the jurisdiction of a neighbouring state. This distinction in the provisions regarding the territorial sea, as opposed to the continental shelf or EEZ, therefore reflects the greater importance attached to the maritime space in close proximity to the mainland coast (see Section 3.6.2).

In addition, even if a strict equidistance line does not become the final line of division, such a line frequently provides the starting point for negotiations, if only as a way of detecting where inequities might occur. This is particularly the case where a delimitation between opposite coasts is at issue. The question of equidistance as it relates to opposite as opposed to adjacent delimitation situation will be addressed in Section 3.4.4.

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[37] Legault and Hankey, 1993: 204-205.

It is also worth noting that the introduction of the EEZ and the 'distance principle' it entails in UNCLOS with regard to areas within 200nm of a state's baselines has effectively eliminated geophysical factors from the delimitation equation in these areas (see Section 3.4.3). It has been observed that this development, ironically, amounts to little more than a *"disguised throwback to equidistance."*[38]

Despite the recession in the importance of equidistance as a favoured, even binding, method from the legal perspective, 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.[39]

Equidistance and maritime boundary agreements

The ICJ itself noted in the 1969 *North Sea Continental Shelf* cases that maritime boundary agreements at the time were predominantly based on the equidistance principle. Furthermore, Legault and Hankey's analysis of the 134 maritime boundary agreements contained in Charney and Alexander's 1993 study[40] found that fully 103 boundaries (77% of the total) were based on some form of equidistance, whether strict, simplified or modified. Of these, 63 boundaries (47%) utilised strict or simplified equidistance for all or most of their length while for a further 40 boundaries (30%) modified equidistance was employed.[41] Of the 18 agreements included in the third volume of the Charney and Alexander series, published in 1998, 16 (89%) are based on equidistance, strict, simplified or modified, for at least part of their length.[42]

This trend is understandable in relation to pre-1969 delimitations as, prior to the North Sea cases of that year, many boundary makers assumed, largely based on the provisions of the 1958 Geneva Convention on the Continental Shelf, that a clear presumption existed favouring the equidistance method. What is clear, however, is that the equidistance method of maritime boundary delimitation has retained its popularity among states in the post-1969 period.

This, on the face of it, rather surprising turn of events, has chiefly occurred because the advantages related to the equidistance method, briefly outlined above, have not themselves diminished. Application of the equidistance principle therefore often

38 Highet, 1993: 183.
39 Legault and Hankey, 1993: 205.
40 Legault and Hankey, 1993: 203-242.
41 Legault and Hankey, 1993: 214.
42 Author's analysis based on Charney and Alexander, 1998.

results in an equitable and politically mutually acceptable delimitation and is therefore frequently resorted to in state practice.

In addition, it has also been observed that the adoption of the equidistance method is highly unlikely in the case of judicial awards for the simple reason that were a boundary delimitation question easily resolved through the construction of an equidistance line or a variant of one, the parties would have resolved the dispute between them without reference to any third party conflict resolution procedure. The cases that are brought before bodies such as the ICJ are necessarily those which the parties have failed to resolve through negotiations and can therefore be considered to be the most complex, controversial and, critically, least likely to be suited to the application of a boundary delimitation method based on equidistance.[43]

Despite the enduring popularity of the method illustrated by the weight of state practice in its favour it is clear that no norm in international maritime boundary law has emerged requiring the use of equidistance as the basis for a delimitation – in fact, if anything, there has been a retreat from that position. Instead of there being any preferred method under the law of the sea, the principle of achieving an equitable result through an examination of all circumstances relevant to a particular delimitation problem is fundamental to the delimitation of maritime boundaries.

3.3 Relevant Circumstances

According to the UN Convention, therefore, the key to reaching an equitable result is to identify the relevant circumstances and accord them their appropriate weight in the delimitation process. Unfortunately, there has been no systematic definition of the criteria which should be used to determine an equitable delimitation. As a result, equitability remains a rather vague and imprecise concept.

As the ICJ noted in the 1984 Gulf of Maine case between the USA and Canada:

> *There has been no systematic definition of the equitable criteria that may be taken into consideration for an international maritime delimitation, and this would in any event be difficult a priori, because of their highly variable*

[43] Legault and Hankey, 1993: 205.

> *adaptability to different concrete situations. Codification efforts have left this field untouched.*[44]

Similarly:

> *International law does not require that maritime boundaries be delimited in accordance with any particular method; rather it requires that they be delimited in accordance with equitable principles, taking into account all of the relevant circumstances of the case so as to produce an equitable result. The equitable principles are indeterminate and the relative circumstances are theoretically unlimited.*[45]

Thus there is ample scope for differing interpretations as to which factors are applicable to a particular case and therefore potential for dispute and deadlock in delimitation negotiations. In a similar fashion, there is much potential conflict in the stances of states as to the emphases to be afforded to the principles or rules that might be applicable to a particular delimitation.

The clear distinction between the factors considered before international courts and tribunals and those raised in the course of negotiations should, however, be understood. Although in many cases the factors considered under both types of maritime boundary dispute resolution will predominantly overlap, it is well to recall that while courts and tribunals are bound to render a decision on the basis of international law, in the context of negotiations the states concerned are merely required under international law to negotiate in good faith.

As has been noted elsewhere (see Section 3.2.6), that given agreement between the protagonists and no infringement on the rights of any third parties, states are free to divide their offshore areas as they wish. Similarly, in negotiations states are at liberty to consider practically any factor they both consider to be relevant. In certain instances states may therefore give greater weight to factors than an international court or tribunal might, for example the relative levels of economic development of each party, and may even tie the question of maritime boundary delimitation to considerations unrelated to that boundary or, indeed, maritime jurisdiction in general.[46]

Furthermore, states are by no means bound to divulge either precisely how a particular delimitation was achieved (that is, what methodology was applied in order to

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44 *Gulf of Maine* case, para.157. Republished in Research Centre for International Law, Vol.I, 1992: 800.

45 Charney, 1994: 230/1987: 507.

46 Oxman, 1993: 11.

construct the line) or what factors ultimately came into play in the course of bilateral negotiations. Indeed, most states tend towards reticence on this issue therefore frequently making maritime boundary delimitation a recondite process. The challenge for the boundary scholar lies in interpreting such agreements based on incomplete information and this often involves a certain amount of 'educated guesswork' based on the geographical and legal principles outlined here.

3.4 Factors Related to Physical Geography

3.4.1 The Role of Coastal Geography

Geography has a fundamental role to play in the delimitation of international maritime boundaries. By the term 'geography', what is really meant in this instance is physical geography and coastal geography in particular. Having said that, it is well worth noting the Charney's observation that: *"coastal geography is preponderant in maritime boundary delimitation law."*[47] This situation is based on two key principles:

> *...the land dominates the sea and it dominates it by the intermediary of the coastal front.*[48]

Geography can, in fact be reasonably regarded as the dominant factor in maritime boundary delimitation:

> *...the primacy of geographical considerations is found in each and every maritime delimitation, regardless of whether it concerns territorial sea, continental shelf, fishery zone, or exclusive economic zone; or whether it is negotiated and agreed by the interested parties, or decided by a third party in judicial or arbitral proceedings.*[49]

The key geographical factors of significance are related to coastal geography, particularly the configuration of the coasts under consideration, relative coastal length and the impact of outstanding geographical features, notably islands. Considerations drawn from economic, social and human geography have received little weight before

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47 Charney, 1994: 253. See also Birnie (1987: 33-34) who quotes Legault and Hankey as stating that *"Geography is not so much the most neutral factor as the most* ***positive*** *factor in relation to both the seabed and the water column."*

48 Weil, 1989: 50.

49 Weil, 1993: 116.

the courts but have nevertheless, frequently, played a significant role in negotiated delimitations.

3.4.2 The General Geographical Framework, Relevant Area and Macrogeography

The first step in maritime boundary delimitation involving geography is the identification of the 'relevant area'. Once this area is determined, *"it is the geographical circumstances which primarily determine the appropriateness of equidistance or any other method of delimitation in any given case."* Thus, the relevant area identified will provide the general geographical framework within which the delimitation takes place. This, in turn, will influence, for example, the crucial considerations of what parts of the coastline can be considered to be opposite or adjacent, concave or convex. This is not to say, however, that the general geographical context of the relevant area unequivocally dictates the appropriate delimitation method in a deterministic manner. Nevertheless, identifying the relevant area is a vital step, as the significance of particular geographical factors can only be assessed in the context of this area.[50]

The relevant area is generally determined by reference to the area of potential overlap between the parties and their relevant coastlines. Clearly there is a large degree of interaction between these two elements and there exist no hard and fast rules by which to identify the relevant area.

In addition, the scope of the relevant area may be modified in the light of 'macrogeographic' factors. A view of the wider, macrogeographic, context of the region may very well seriously affect, for instance, assessments of the concavity or convexity of coastlines, their oppositeness or adjacency or general direction which are highly dependent on scale. A macrogeographic view may therefore serve to undermine the importance of a factor apparently of significance in the immediate vicinity of the area to be delimited, or vice versa, and this may well have a major impact on the relevant area selected and thus the delimitation.

3.4.3 Geophysical Factors – Natural Prolongation, Geology and Geomorphology

The concept of natural prolongation is fundamental to claims to jurisdiction over continental shelf areas. Indeed, the precursor to modern continental shelf claims, the

[50] Evans, 1989: 124-125.

Truman Proclamation, while not mentioning natural prolongation explicitly, was undoubtedly founded on the concept of offshore areas being regarded as a territorial continuation of the land (see Section 3.2).

From this point of departure, it was no great step to suggest that the physical geography of the seabed, as opposed to that of the coastline, should have a role in determining continental shelf boundaries. Two aspects of the physical geography of the seabed were swiftly identified as being of potential relevance – geomorphology, that is the shape, form and configuration of the seabed, and geology, its composition and structure. These two facets of the physical geography of the seafloor may be referred to jointly as geophysical factors.

Natural prolongation does not, however, truly represent a relevant circumstance for delimitation. Its primary role is, in fact, that of providing the *source of title* to the continental shelf rather than the means to delimit that shelf. Confusion has, however, reigned over the years as to whether natural prolongation may be regarded as: *"a means of delimitation, an equitable principal of delimitation, a criterion for delimitation and as a relevant circumstance."*[51]

This has in large part stemmed from the *North Sea Continental Shelf* cases of 1969. This represented the first time that the ICJ had dealt with a continental shelf case. In addition, the Court was restricted by the parties, Denmark, the Federal Republic of Germany and the Netherlands, simply to identifying the principles and rules of international law which should be taken into account in achieving a delimitation agreement. The Court's judgement was accordingly general and descriptive, providing that:

> *...delimitation is to be effected...in such a way as to leave as much as possible to each party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other state.*[52]

Furthermore, the Court referred to the Norwegian Trough, close to the Norwegian coast but ignored it for the purpose of delimiting the UK-Norway continental shelf boundary, to illustrate that although those areas seaward of the trough could not be considered part of the natural prolongation of Norway's landmass, states were not bound to delimit their

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51 Evans, 1989: 100.

52 *North Sea Continental Shelf* cases, para.101. Republished in Research Centre for International Law, Vol.I, 1992: 135.

boundaries according to this factor. This apparently gave natural prolongation a role in the delimitation process as well as its role in terms of giving title to jurisdiction over the continental shelf.[53]

Highet[54] refers to the term natural prolongation as *"vague and marvellous"* and the Court's use of it as:

> *...a descriptive attribute, designed to elaborate and describe the basic nature of the continental shelf and its attributes...not a functional attribute in the sense that it was not intended to provide a reason for finding the boundary.*[55]

Nevertheless, the North Sea judgement opened the floodgates to claims based geophysical factors and a *"passionate search for troughs and faults and rift zones"* which were proposed as 'natural' geophysical continental shelf boundaries in later cases.[56]

In the *UK-France* arbitration, the British side advanced the argument that the *"Hurd Deep Fault Zone"*, a geomorphological feature, perhaps unsurprisingly, lying closer to France than the UK, should be taken into account by the Tribunal in delimiting the boundary between the parties.[57] Similarly, in the *Tunisia-Libya* case before the ICJ, Tunisia claimed that bathymetry demonstrated the prolongation of the Tunisian landmass eastwards offshore, as opposed to that of Libya northwards.[58] Furthermore, in the *US-Canada* Gulf of Maine case, also before the ICJ, while the US argument was primarily founded on coastal geography, its submissions were also laced with elements of geomorphology, geology and ecology.[59] This was evident in the proposition that a natural boundary existed between two offshore banks.[60]

In each case the judges concerned, whether appointed to a special arbitration Tribunal or of the ICJ, considered the often considerable and conflicting mass of detailed scientific evidence, and found it wanting – rejecting the geophysically-inspired arguments presented. In each instance, however, the evidence was discarded as being insufficient rather than inappropriate – thus not excluding the possibility of geophysical factors playing an important role under other circumstances.

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53 Highet, 1989: 89.
54 Highet, 1989: 87.
55 Highet, 1989: 90.
56 Highet, 1989: 89.
57 *Anglo-French Arbitration*, para 12. Republished Research Centre for International Law, Vol.I, 1992: 375; Highet, 1989: 90.
58 Highet, 1989: 90-91.
59 Highet, 1989: 91.

This situation remained the case up to the *Libya-Malta* case of 1985. In that case before the ICJ, Libya contended that a *"Rift Zone"* lay between the parties of such a profound character, described as a *"fundamental discontinuity"*, that it should form the basis of the continental shelf boundary between the two states.[61]

Ultimately, however, the Court decided to do away with geophysical arguments in their entirety, at least in relation to those areas within 200nm of the coast. The Court therefore found that, on the basis of *"new developments in international law"* (i.e. the signature of the UNCLOS in 1982 and the introduction of the EEZ concept), as there was less than 400nm between the parties' coastlines, *"the geological and geomorphological characteristics of those areas...are completely immaterial"*, and that:

> *...since the development of the law enables a State to claim that the continental shelf appertaining to it extends up to as far as 200 miles from its coast, whatever the geological characteristics of the corresponding seabed and subsoil, there is no reason to ascribe any role to geological or geophysical factors within that distance either in verifying the legal title of the States concerned or in proceeding to a delimitation as between their claims.*[62]

The Court's decision was based on the development of the concept of the exclusive economic zone introduced as part of UNCLOS and with it the so-called 'distance principle'. This development in international law effectively eliminates the possibility of relying on physical natural prolongation as the basis for delimitation as the EEZ is not dependant on geophysical factors and has *"essentially assumed control over the legal regime of the shelf in the method of its delimitation."*[63]

Thus although the UN Convention provides that natural prolongation remains the basis for title over the continental shelf, geophysical factors are removed from the delimitation equation by the establishment of the 'distance principle' of 200nm from shore. As Article 76 (1) of UNCLOS states:

> *The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin,* ***or to a distance of 200 nautical miles*** *from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance* (emphasis added).

60 Evans, 1989; Highet, 1989 and 1993.

61 *Libya/Malta* case, para.36. Republished in Research Centre for International Law, Vol.II, 1992: 1,550.

62 Quoted in Highet, 1993: 177.

63 Highet, 1993: 177.



The role of natural prolongation in the delimitation of international maritime boundaries is therefore restricted to overlapping continental shelf areas beyond 200nm from either party's coastline, that is beyond the scope of the EEZ, and in relation to defining the margin of the continental shelf as provided for in Article 76 of the Convention. Within 200nm of the coast then, as is the case in the Gulf of Thailand, natural prolongation has no direct role to play in the delimitation of maritime boundaries.

Thus, despite all the arguments marshalled and the wealth of complex scientific evidence presented to international courts and tribunals in favour of using geophysical features to determine continental shelf boundaries, no geophysically-based delimitation emerged. An examination of state practice also reveals a strong element of caution in the application of geophysical factors to maritime boundary delimitation.

Highet's[64] analysis in this regard is revealing. Of the 132 maritime boundary agreements he reviewed, geophysical factors were potentially relevant to delimitation in 47-58 of them.[65] Of these 47-58 agreements identified, geophysical factors were actually taken into account in 15-21 cases (32-36%). He therefore found that:

> *...in approximately one-third of the cases where geological or geomorphological features were noted, the parties took account of them in their delimitations, and that in roughly two-thirds of those cases such features were ignored.*[66]

This led Highet[67] to the conclusion that, *"geophysical factors have been ignored far more frequently than they have been used."* Indeed, of those agreements where geophysical factors were or might have been influential, in only two cases were delimitations based directly on them and, moreover, these two delimitations were themselves between the same parties.[68] Thus, ultimately only two out of the 132 agreements analysed were intimately linked to geophysical considerations.

This general reticence in relation to employing geophysical features as 'natural' maritime boundaries in an analogous manner to the long-standing use of physical features, such as rivers and watersheds, to mark international land boundaries is, perhaps, not particularly surprising. Clearly, one of the prime benefits of using physical

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64 Highet, 1993: 163-202.

65 The variation in the figures is caused by uncertainty in certain cases as to whether geophysical factors were relevant. As delimitation agreements rarely provide a detailed analysis of what factors prompted the particular boundary alignment adopted, this uncertainty is inevitable.

66 Highet, 1993: 194.

67 Highet, 1993: 195.

features to delimit a boundary on land is that it makes the location of that boundary more readily identifiable. The same advantage is hardly afforded to a marine navigator if a maritime boundary is fixed according to sub-surface features.

This disadvantage of applying the concept of 'natural' boundaries to the maritime sphere is compounded by the fact that geophysical features such as the *"Rift Zone"* of the *Libya-Malta* case represent just that – *zones* rather than the precise boundary line which is the object of the delimitation exercise.

It is therefore clear that the international law of the sea in relation to geophysical factors has developed dramatically in the period between the *North Sea* cases in 1969 and the *Libya-Malta* case in 1985. This, coupled with the evident disadvantages of utilising sub-surface geophysical features as maritime boundaries, makes it highly unlikely that arguments similar to those presented in the cases outlined above will be placed before third-party adjudicators in the future and, furthermore, are unlikely to be much employed in state practice either.

3.4.4 Coastal Relationship

Coastal geography

There can be little doubt that coastal geography, and in particular the configuration of the coasts of the parties, is the most important factor in maritime delimitation. This has been underscored in all of the relevant decisions thus far and certainly plays a role in the disputes in the Gulf of Thailand (see Chapter 7).

As was observed in the *Libya-Malta* case:

> *The capacity to engender continental shelf rights derives not from the landmass, but from sovereignty over the landmass; and it is by means of the maritime front of this landmass, in other words by its coastal opening, that this territorial sovereignty brings its continental shelf rights into effect.*[69]

Thus it is not the landmass itself that is significant to offshore delimitation but the geography of the coastline which fronts that landmass. This principle in international law applies to judicial or arbitral decisions. However, in negotiated settlements the parties may bring to bear any consideration they chose and it would not be unreasonable

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68 Between Australia and Indonesia in relation to the Timor and Arafura Seas and the Timor Gap respectively (Highet, 1993: 194).

69 *Libya-Malta* case, para.49. Republished in Research Centre for International Law, Vol.II, 1992: 1,556-7.

to suggest that the larger state would seek a greater share of the maritime space under discussion.

One aspect of coastal geography which is of great significance concerns the relationship of the coasts of the parties to each other, that is, whether they are adjacent or opposite. This is important because, even though the UN Convention does not make any distinction between opposite or adjacent delimitations, the law of maritime delimitation as developed by the International Court of Justice suggests that the two situations are treated differently.

In general, for opposite coasts, lines of equidistance are broadly thought to produce an equitable division. In the case of adjacent coasts, however, the presence of even a small coastal irregularity such as a headland or an offshore island can cause an equidistance line to shift significantly towards one state, thereby undermining the principle of equitability.[70] In both the Germany-Netherlands and Germany-Denmark delimitations, therefore, the ICJ found that equidistance represented an unsuitable method of delimitation and that equidistance was not a rule of customary international law. Therefore the case law suggests that equidistance does not have a privileged status for adjacent state delimitations, while it is often used, at least as a first step, in delimitations between opposite states. Nevertheless, regardless of the coastal relationship, in negotiations states will invariably start with an equidistance line, if only to assist in the development of their case.

Adjacent coasts

For example, in the case between Libya and Tunisia decided in 1982, both parties stated that the application of equidistance would result in an inequitable delimitation. Instead of an equidistance line Libya relied on an argument based on the northward thrust or prolongation of the African continental landmass, while Tunisia advanced historic arguments coupled with geological, geomorphological and bathymetric data to bolster its own natural prolongation contentions and geometric methods linked to proportionality concepts and relevant coastal fronts.[71]

For its part the ICJ found that although in the immediate vicinity of the terminus of the land boundary on the coast, the coastlines of the parties ran in approximately the

70 Legault and Hankey, 1993: 216.

71 Charney and Alexander, 1993: 1663-1680.

same direction, creating a situation of lateral adjacency, the Tunisian coast subsequently turns sharply northwards and this could be considered as a relevant circumstance:

> *The change in direction may be said to modify the situation of lateral adjacency of the two States, even though it clearly does not go so far as to place them in a position of legally opposite States.*[72]

As a result the Court resorted to two different delimitation methodologies to be applied to those areas effected by the two distinct coastal configurations. In terms of the seaward section to be delimited, the Court decided that the change in the direction of the coastline, while not going all the way to transforming the relationship between the disputants from that of adjacent states to opposite states, did *"produce a situation in which the position of an equidistance line becomes a factor to be given more weight in the balancing of equitable considerations than would otherwise be the case."* [73]

As far as the section where the Libyan and Tunisian coastlines were clearly laterally adjacent to one another, the ICJ rejected use of the equidistance method, instead opting for an equitable line, 26° east of north corresponding closely to what the Court viewed as a *de facto*, working boundary between the oil exploration concessions issued by both states (Figure 3.6).

None of these elements had anything to do with equidistance, and the Court went out of its way to emphasise that it was not constrained to consider equidistance as having any kind of privileged status as a possible method of delimitation.

Furthermore, in 1972 Canada and France established a territorial sea boundary between the Canadian island of Newfoundland and the French islands of St. Pierre and Miquelon, located just off the Newfoundland coast. Negotiations over the delimitation of the maritime area to the south and west of the French islands reached deadlock leading the two states to establish an *ad hoc* Court of Arbitration, consisting of five judges, to render a binding decision on the dispute.

France claimed that the boundary should be delimited on the basis of equidistance. This would have accorded St. Pierre and Miquelon a 14,500nm^2 maritime zone. In contrast, Canada argued that the French islands should be enclaved and awarded no more than a 12nm breadth zone around their coasts amounting to 1,070nm^2.

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72 *Tunisia/Libya* case, para.78. Republished in Research Centre for International Law, Vol.II, 1992: 972.

73 *Tunisia/Libya* case, para.126. Republished in Research Centre for International Law, Vol.II, 1992: 997.

The Court of Arbitration duly delivered its decision on 10 June 1992, establishing a single maritime boundary between the parties applicable to both continental shelf and EEZ jurisdiction. The Court established an equidistance line boundary between the islands and the Canadian coastline where they faced one another, a 24nm-breadth zone around the west of the islands and toward the south, where the islands and Newfoundland's coastal front relationship was effectively laterally adjacent, a 10.5nm-wide 'corridor' running due south to the 200nm limit of EEZ jurisdiction. This delimitation accorded the French islands a 3,617nm^2 maritime zone and rejected the use of equidistance as a delimitation method where the parties' coastlines were adjacent to one another (see Figure 3.9).

Opposite coasts

In opposite state situations the courts and tribunals have taken a different view, and have often applied equidistance as a first step in the delimitation process, and then adjusted the resulting line to take into account any other relevant factors, such as the presence of islands or the lengths of the coasts of the parties, in order to reach an equitable result. This was the approach adopted by the ICJ in the *Libya-Malta* case (Figure 3.3). In similar situations it is clear that it will be necessary to assess the relative strengths and weakness of the basepoints chosen and the weight that should be given to islands (see Sections 3.2.1 and 3.5.6).

In the case between Malta and Libya in 1985, the ICJ referred back to its 1969 North Sea decision elaborating that as the Court was faced with a delimitation exclusively between opposite states:

> *It is clear that, in these circumstances, the tracing of a median line between those coasts, by way of a provisional step in a process to be continued by other operations, is the most judicious manner of proceeding with a view to the eventual achievement of an equitable result.* But that this, *...should not be understood as implying that an equidistance line will be an appropriate beginning in all cases, or even in all cases of delimitation between opposite States.*[74]

Similarly, in the *US-Canada* case concerning the Gulf of Maine, a median line was selected as a starting point for delimitation in the central portion of the Gulf between

[74] *Libya/Malta* case, para.62. Republished in Research Centre for International Law, Vol.II, 1992: 1,563. ,

opposite coasts and later altered in light of other factors.[75] Furthermore, in the 1993 case concerning Greenland and Jan Mayen island, the Court concluded, at least as far as the continental shelf was concerned, that it was appropriate to start with a median line as a provisional line.[76]

State practice

This trend in case law is strongly reinforced by reference to state practice. Indeed, as of 1993, if both third-party awards and negotiated maritime boundaries between opposite states are considered, fully 89% were based on some form of equidistance which by their very nature are dependent on coastal geography.[77] However, the picture is very different when adjacent state delimitations are considered.

Of the 32 maritime boundary agreements (including territorial waters delimitations) concluded up to 1993 between states with adjacent coastal configurations, only 12 (38%) employed equidistance. Alternative methods of delimitation such as lines of bearing, frequently lines perpendicular to the general direction of the coastlines of the parties or parallels of latitude or meridians of longitude, have proved far more popular.[78] Charney and Alexander's 1998 volume provides an opportunity to update this analysis. Of the 18 new agreements included in the study, only one relates to an adjacent coastal situations where perpendicular lines were employed while two involved mixed opposite/adjacent situations where equidistance was used for at least part of the boundary lines but was substantially modified.[79]

Another important and allied consideration related to coastal geography is whether a state's coastline is either concave or convex. Clearly, if a state's coastline is

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75 On examining the geography of the Gulf of Maine area, the Chamber decided that it should be delimited by a line composed of three segments – from the agreed starting point in the Gulf, through the middle of the Gulf to the Gulf's closing line and from that closing line seaward. The first segment of that line was between the laterally adjacent sections of the two states' coastlines on the Gulf of Maine. In this area the Chamber rejected the use of an equidistance-based boundary line and instead opted for a 'straight' line bisecting the angle between two lines representing the general direction of each states coastline. In the central section of the boundary where the coastal relationship was opposite an equidistance line was applied, modified to reflect the disparity in the two states' relevant coastal lengths. In the final section, once again between adjacent coasts, a line perpendicular to the bay closing line was chosen rather than a strict equidistance line.

76 Charney and Alexander, 1998: 2,508.

77 Legault and Hankey, 1993: 214.

78 Legault and Hankey, 1993: 216.

79 Author's analysis based on Charney and Alexander, 1998.

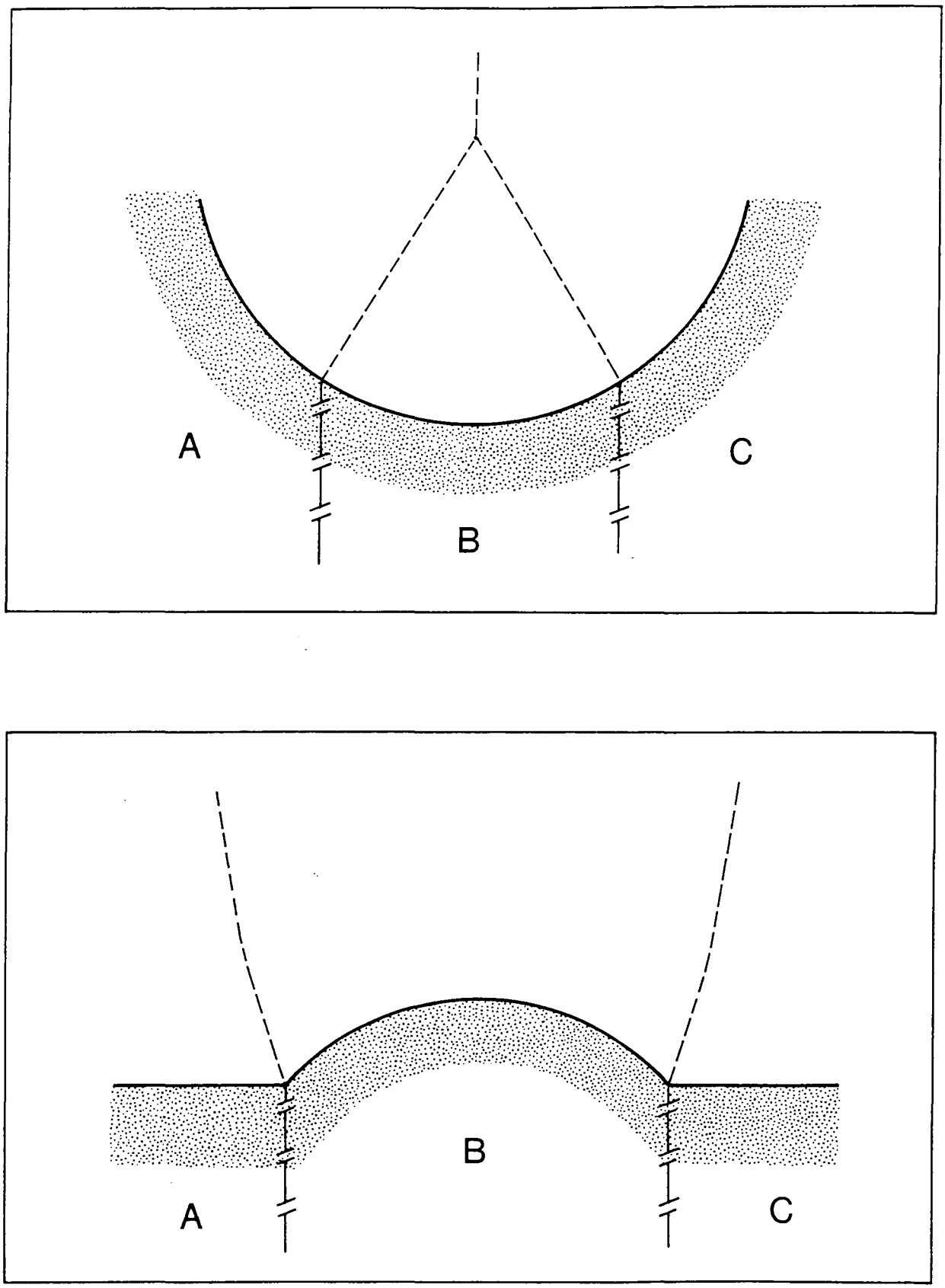


Figure 3.12 *The Distorting Effects of Equidistance*
Source: Francalanci and Scovazzi, 1994.

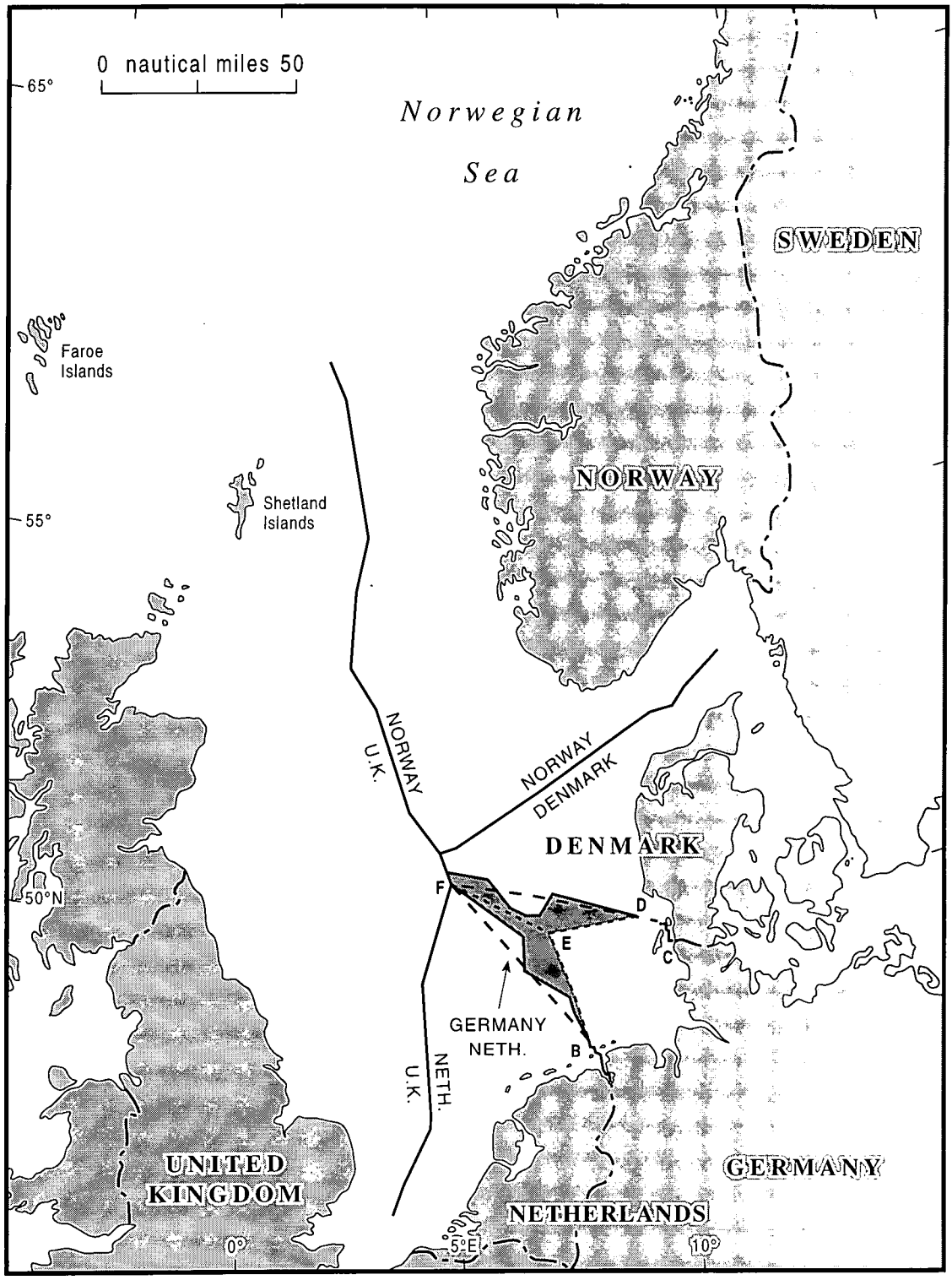


Figure 3.13 *Delimitations in the North Sea*
Source: Adapted fromFrancalancia and Scovazzi, 1994.

concave, its maritime space, if delimited on the basis of equidistance will be restricted – in effect 'squeezed' by the presence of its neighbours. The opposite situation may be observed if a state possesses a convex coastal configuration (see Figure 3.12).

It was precisely this problem which faced the ICJ in the *North Sea Continental Shelf* cases where the Federal Republic of Germany's coastal front, and thus maritime jurisdiction on the North Sea on the basis of equidistance, was effectively constricted by the presence of Denmark to the north and the Netherlands to the west. Ultimately, the Court found that further negotiations among the parties should take into account *"the general configuration of the coasts"* in relation to the Germany-Netherlands delimitation[80] and *"the general direction of the coasts"* in the Germany-Denmark delimitation.[81] Strict equidistance was therefore found to be inappropriate given this situation and agreements were eventually concluded providing for German jurisdiction considerably beyond the area that would have been accorded to it under a strict equidistance formula (see Figure 3.13).

Similarly, Guinea and Guinea-Bissau, having failed to reach agreement in relation to their maritime boundaries as a consequence of their maintaining incompatible claims to equidistance on one hand as opposed to a system of parallel of latitude on the other, submitted their dispute to an international Arbitral Tribunal. The Tribunal found, in its judgement of 14 February 1985, that in order to fulfil its aim of delivering an equitable delimitation guaranteeing each state jurisdiction over those maritime areas in front of their coasts, and avoiding any enclavement or 'cut-off' effects, the configuration of the parties' relevant coastlines had to be taken into account.

The fact that the coastlines of the two states were partially adjacent and partially opposite, and that combined they displayed a concave shape in the context of the convex coastline of West Africa as a whole, were therefore taken into consideration. In addition, the Tribunal members were keen to provide a delimitation which would be in character with the region as a whole and would not disrupt the conclusion of other maritime boundary agreements in West Africa.

As a result the Tribunal found that, seaward of the parties' offshore islands, delimitation on the basis of equidistance should be rejected and the boundary should constitute a straight line along a bearing of 236° to the outer limit of the maritime zones claimed by the two states and recognised under international law (Figure 3.8). The

[80] Quoted in Charney and Alexander, 1993: 1,837.

bearing of 236° was arrived at by taking into consideration the general direction of coastline of West Africa and represents a straight line perpendicular to the general direction of the coast as shown by a line connecting Almadies Point and Cape Shilling.

The application of an equidistance line in the first instance, to be subsequently modified in order to accord with equitable principles reflects what has been termed the *"dual function"* of geography.[82] Coastal geography assumes a positive role in being the principle factor dictating the delimitation line. A negative role is also accorded to coastal geography in that is then often necessary to ignore or limit the impact of certain outstanding geographical features, such as islands far offshore from the mainlands of the parties and/or in the midst of the area to be delimited, thus modifying the proposed delimitation line.

This process is in keeping with the Court's 1969 findings that *"there can never be any question of completely refashioning nature"* or *"totally refashioning geography."*[83] The key words here are *"completely"* and *"totally"*, providing as they do latitude for modification of a delimitation line based exclusively on coastal geography.

3.4.5 Relative Coastal Length and Proportionality

Closely connected with the question of the configuration of the coasts of the parties is the question of coastal lengths and the element of proportionality. The concept of proportionality emerged from the *North Sea Continental Shelf* cases of 1969 where Federal Republic of Germany claimed that each of the states concerned should have a *"just and equitable share"* of the available continental shelf , *"in proportion to the length of its coastline or sea frontage."*[84] The ICJ rejected the contention that proportionality should be a direct element in achieving a just and equitable share but did accept it as a factor in the application of equitable principles:

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81 Quoted in Charney and Alexander, 1993: 1,803.

82 Weil, 1993: 119.

83 *North Sea Continental Shelf* cases, Para.91, quoted in Weil, 1993: 119. See also, Research Centre for International Law, Vol.I, 1992: 77-352.

84 Evans, 1989: 224.

> *The element of a reasonable degree of proportionality which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas appertaining to the coastal state and the length of its coast measured in the direction of its coastline.*[85]

In addition, the Court has also held that significant disparities in the lengths of the coasts of the parties should be taken into account in the delimitation equation.

With respect to the first point – proportionality – the situation that the Court was concerned about in the North Sea case was the delimitation between Denmark, the Netherlands and Germany (Figure 3.13).

Whilst Germany had a coastline that was roughly equal in length to that of Denmark and the Netherlands, application of the equidistance method would have 'squeezed' its maritime entitlement as can be seen from the figure. The Court, therefore, ruled that Germany should receive a more 'proportionate' allocation of shelf, although it also indicated that delimitation should not necessarily be carried out in accordance with a precise mathematical formula based on proportionality calculations.

With respect to coastal lengths, the Court has certainly adjusted median line boundaries between opposite states to take into account differences in coastal lengths. A clear example of how this has been accomplished is provided by the *United States-Canada* case.

In the seaward part of the boundary where the coasts of the United States and Canada are opposite to each other, the Court started with a median line between the two countries. The Court then adjusted that line to fall closer to the Canadian coast by the same ratio (1.38 to 1.00) that the lengths of the two parties' relevant coasts bore to each other. In other words, since the United States had the longer coastline abutting the Gulf of Maine, it received a correspondingly greater share of shelf.

As a result in almost every maritime boundary delimitation case brought before the ICJ or other international arbitral body, the state with the longer coast has argued that this gives it the right to a correspondingly greater area of maritime jurisdiction. The same can most probably also be said for maritime boundary negotiations.

Proportionality has not, however, been treated as a relevant circumstance in the delimitation process but merely as a test, or 'broad assessment' of the equitability of a particular delimitation line arrived at through reference to other equitable

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[85] *North Sea Continental Shelf* cases, para.101, republished in Research Centre for International Law, Vol.I, 1992: 137. See also, Evans, 1989: 224-231.

considerations. There are several reasons, both in principle and practice, why the idea that there should be a direct link between the length of a state's coastline and the area of offshore jurisdiction that accrues to it, has been treated with such caution in ICJ cases.

In principle, as far as *title* is concerned there is no direct, constant relationship between the length of a particular coastline and the maritime area generated from it. It has been argued that if this is true of title then it follows that this also applies to delimitation.

Thus, in the *Anglo-French* Arbitration Court's award of 1977, the Court held that proportionality could not be *"an independent source of rights to the continental shelf"* and was not *"itself a source of title"* such that *"an equitable delimitation...is not...assigning to them...areas...in proportion with the length of their coastlines."*[86]

Similarly, in the *Gulf of Maine* and *Libya/Malta* Cases, the judges found that proportionality could not be regarded as *"an autonomous criterion or method of delimitation"*; and that coastal length itself was not a *"principle of entitlement...and...method of putting that principle into operation"*, respectively.[87] In the former case it was also categorically stated that:

> *...a maritime delimitation can certainly not be established by a direct division of the area in dispute proportional to the respective lengths of the coasts belonging to the parties in the relevant area.*[88]

On a practical level the concept of proportionality swiftly runs into significant difficulties. Not least among these is the fact that 'coastal length' is itself a deceptively simple term. The question 'what is the length of a state's coastline?', immediately raises the conundrum of how that length is to be measured. Should every sinuosity and indentation be included or should the 'general direction' of the coastline be used? If the latter, what constitutes that direction and how is that to be determined objectively? Much also rests on the scale of map or chart used for measurements as more indentations will often become apparent with reference to a more detailed chart.[89] The scope for dispute is clearly abundant and this problem has been described as:

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86 *Anglo-French Arbitration*, para.101, republished in Research Centre for International Law, Vol.I, 1992: 412.

87 Quoted in Weil, 1989: 79.

88 *Gulf of Maine* case, para.185. Republished in Research Centre for International Law, Vol.I, 1992: 811. See also, Weil, 1989: 78-79.

89 See Anderson (1987) for an analysis of the importance of geographical scale to maritime boundary problems.

> *...a situation where maps can be made to say more or less what one wants, and it is not unusual to find parties, on the basis of identical cartographic data, producing quite different figures for the length of their coasts.*[90]

Similar problems of interpretation emerge in relation to deciding what constitutes the coastal front relevant to a particular disputed area. The parties to a dispute will naturally try to limit the opposition's relevant coastal front while maximising their own and no sure way of determining the relevant coastline fronting onto a given maritime area has been generally accepted. The 'relevant' coastal front is therefore often *selected* by states rather than objectively determined, almost inevitably leading to dispute between the parties.[91]

A further question arises as to what offshore areas should be in ratio to the relevant coastal fronts? Should this simply be the areas of overlap? Or perhaps a ratio between the maritime zones of each side throughout the area of dispute – but if so how is that area of dispute to be defined? As the ICJ observed in its judgement in the *Libya-Malta* case:

> *...the geographical context is such that the identification of the relevant coasts and the relevant areas is so much at large that virtually any variant could be chosen, leading to widely different results.*[92]

Finally, an additional problem relates to the presence of third states. If boundaries with third states are unresolved, what limit should be assumed for the sake of proportionality calculations? If, subsequently, a boundary differing from that assumed is concluded with that third state, any proportionality calculations based on the assumed limit would necessarily be undermined.

It is therefore hardly surprising that over the years international tribunals have increasingly resisted the temptation to opt for such an apparently simple delimitation formula based on proportionality. As Prosper Weil[93], has observed:

> *In short there is nothing riskier than models of proportionality, which experience shows to be of such flexibility that they make it possible to prove in an allegedly scientific way, almost anything one wants to. Theoretically unjustifiable, impossible to put into practice, the test of proportionality is, moreover, useless.*

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90 Weil, 1989: 77.
91 Weil, 1989: 77.
92 *Libya/Malta* case, para.74, Research Centre for International Law, Vol.II, 1992: 1,569.
93 Weil, 1989: 244.

> *Whether it is in the context of a direct consideration of coastal lengths or, more modestly, of a last-minute proportionality test, the legal relevance of considerations of coastal length, surface areas and proportionality ought not to survive re-examination by the courts.*

Although it may be concluded that no 'proportionality principle' requiring a division of maritime space on the basis of the ratio between coastal front exists, proportionality nevertheless retains a role, however controversial, in terms of checking that a particular delimitation does not result in an unreasonable disproportion between the lengths of the parties' relevant coasts and the maritime areas accruing to each party. The relative coastal lengths of the parties also certainly remains a factor relevant to delimitation. After all, the length of a state's coastline is an important characteristic of a state's coastal front from which it may make claims to maritime jurisdiction. The problem remains, however, that the proportionality 'concept' is open to such wildly differing interpretations that the scope for dispute arising from its use seems well nigh limitless.

3.5 The Regime of Islands

The question of the treatment of islands in maritime boundary delimitation is a complex and crucially important one. It therefore seems appropriate to devote a separate section to this vexed issue.

It is important to distinguish between the two main types of island disputes – those relating to sovereignty over islands themselves and those concerned with the *role* of particular insular features in the delimitation of maritime boundaries. It is also worth observing in this context, of course, that the potential role of islands in delimitation may itself be a factor influencing any dispute over ownership. Escalating concerns over, frequently small, islands and their capacity to generate claims to maritime jurisdiction reflects increasing interest in offshore resources, the exhaustion of nearshore and onshore resources, growing populations and therefore resource demands, allied to technological developments allowing for the exploitation of marine resources in deeper waters further and further offshore. As a single point of land, if considered an island, could theoretically generate a claim to 125,664nm^2 (431,014km^2) if no maritime

neighbours were within 400nm of the feature, the potential importance of such features is difficult to underestimate.[94]

This section will deal with the frequently contentious questions of what constitutes an island or related feature (e.g. rock or low-tide elevation) and what role islands play in generating maritime zones and their use as basepoints in the delimitation of maritime boundaries.

Article 121 of UNCLOS, dealing with the *Régime of islands* provides the basis for this analysis. In full Article 121 states that:

1. *An island is a naturally formed area of land, surrounded by water, which is above water at high tide.*
2. *Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.*
3. *Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.*

3.5.1 What Constitutes an Island?

Paragraph 1 of Article 121 of UNCLOS represents a direct repetition of Article 10, paragraph 1 of the 1958 *Convention on the Territorial Sea and Contiguous Zone*. Four requirements are identified by these Articles which a feature must fulfil if it is to legally qualify as an island. These insular criteria are that an island must be *"naturally formed"*, be an *"area of land"*, be *"surrounded by water"* and, critically, must be *"above water at high tide."*

Naturally formed

The first requirement, that an island be *"naturally formed"* clearly serves to disqualify artificial 'islands' such as platforms constructed for example on submerged shoals, low-tide elevations or reefs. Such artificial islands are not considered to be legal islands in the international law of the sea as is made explicit by Article 60, paragraph 8 of UNCLOS:

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94 Such an eventuality is, however, extremely unlikely. Indeed, Prescott (1988: 33) has pointed out that were Hawaii to gain independence from the USA it would be the only coastal country in the world without overlapping maritime claims with a neighbouring state.

> *Artificial islands, installations and structures do not posses the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.*[95]

Island-building activities on the part of states, keen to thereby enhance their claims to maritime space by creating new islands, is therefore at variance with the UN Convention and the customary international law of the sea. Nevertheless, several states have sought to protect certain insular features which, although naturally formed, are unstable and susceptible to erosion such that they are in danger of losing their status as islands through falling below the *"above water at high tide"* criterion.

Perhaps the most striking example of such efforts to preserve the insular character of vulnerable formations is Japan's efforts to maintain its southernmost islet of Okintorishima above the high tide level. This feature generates approximately 160,000 square miles of claimed exclusive economic zone for Japan despite consisting merely of two small peaks sitting atop an otherwise submerged reef. One of these peaks is no more than three feet above the high-tide level. The Japanese authorities have therefore taken the rather unorthodox and somewhat dramatic step of building artificial sea defences *entirely surrounding* the islet. Although these artificial structures are in fact *higher* than the naturally formed above high tide formations themselves, it is the latter which are vital in terms of generating extended maritime zone.[96]

Area of land

The provision that an island be composed of *"an area of land"* would seem, at first glance, to be a fairly self-evident requirement. However, in certain circumstances this aspect of insular definition can be problematic and open to dispute. A fine example of this is that of Dinkum Sands, a formation lying off the Alaskan arctic coast. Composed of alternating layers of sea ice and gravel, the dispute over the feature between the Alaskan state authorities and the US Federal government turned on whether that part of the formation's vertical height made up of ice could be counted when testing the feature against the *"above water at high-tide"* provision.[97]

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95 States may, however, declare *"reasonable"* safety zones around artificial structures (UNCLOS, Article 60, 4).

96 Silverstein, 1990: 409-431; Symmons, 1995: 3.

97 Briscoe, 1988: 17-18; Symmons, 1995: 3-4. It is conceivable that similar difficulties may arise in relation to coral cays. Islands in coral-inhabited areas are frequently described as 'cays' although this is not a term of art in Law of the Sea terminology. The International Hydrographic

Surrounded by water

The *"surrounded by water"* requirement may be regarded as a largely uncontroversial rule. This is so because if a feature is indeed linked to the mainland coast by, for example, a sandbar, to such an extent that it may be considered an integral part of the mainland coast, then it follows that that feature takes on the characteristics of the mainland coast. As such the feature would have a baseline and thus be capable of generating claims to the full suite of maritime zones, just as it would do as a full-fledged island.

Above water at high-tide

The question of an island being *"above water at high-tide"* is fundamental – as the preceding sections relating to the other requirements of Article 121(1) demonstrate. A particular feature's relationship to the tidal level is vital in distinguishing between islands (above high-tide), low-tide elevations (above low-tide but submerged at high-tide) and non-insular features (submerged at low-tide).[98] This concern is, however, intimately linked to the choice of vertical tidal datum used to determine what represents the high and low tidal levels. No universally accepted vertical tidal datum in use (see Section 3.3.1).

Alternative Definitions

The question of the definition of islands has provoked fierce debate over the years. Perhaps the most significant issues of contention is related to island size and habitability. Many commentators, and indeed states, have proposed that there should be some size limit coupled with the definition of what constitutes an island, such as to

Organisation (1990: 37) describes a cay (or kay or key) as *"A low flat island of sand, coral etc. awash or drying at low water, a term originally applied to the coral islets around the coast and islands of Caribbean Sea."* This definition indicates that cays might submerge at some stages of the tidal cycle. For a detailed analysis of the Dinkum Sands case see Symmons, 1999.

Other commentators, for example Nunn (1994), have characterised cays as being impermanent accumulations of sand and shingle which, with the accumulation of beach rock, may develop into more stable features termed *motu*. This gives the impression that cays may be subject to evolution and decay over time. It is, however, reasonable to assume that on those cays which are occupied measures have been taken by the occupants to prevent the feature's erosion and there may even have been attempts to promote island-building. As a result such features may well qualify as 'rocks' or even 'islands' (see Hancox and Prescott, 1995)

98 Briscoe, 1988: 18-19; Symmons, 1995: 4.

prevent each *"mere pin-prick of rock"*, even if permanently above water, from generating maritime claims.[99]

Arguments of this type were certainly evident in the run up to and during the drafting of Article 10 of the *Convention on the Territorial Sea and Contiguous Zone* concluded in Geneva in 1958.[100] In the end, however, no size criterion was included.

An important attempt to tackle the problem of defining islands by size was, however, subsequently undertaken by Robert Hodgson, The Geographer at the United States Department of State. His 1973 Research Study *Islands: Normal and Special Circumstances* included a categorisation of islands as follows:

1. ***rocks**, less than .001 square mile in area;*
2. ***islets**, between .001 and 1 square mile;*
3. ***isles**, greater than 1 square mile but not more than 1,000 square miles; and,*
4. ***islands**, larger than 1,000 square miles.*

Similar proposals were advanced before and during UNCLOS III. Malta presented draft articles defining an island as a *"naturally formed area of land, more than one square kilometre in area"* and an *"islet"* a similar area of land of less than one square kilometre in area. African states and Romania also made notable proposals, concerning both size and habitability, broadly aimed at denying or restricting small insular features which the maritime zones accorded to 'true' islands.[101]

This trend to link island definition with size and habitability were, however, counteracted by several delegations at UNCLOS keen to preserve the *status quo*. As the UK delegate pointed out:

> *...there was an immense diversity of island situations, ranging from large and populous islands of even larger continental states to small islands with self-sufficient populations, and that, inter alia, the attempt by some delegations to categorise islands in terms of size would not result in any generally applicable rules which would be equitable in all cases; and there was grave danger of discounting many islands of both absolute and relative importance.*[102]

Ultimately, the forces for *status quo* prevailed – Article 121 of UNCLOS lacks any size criteria for defining islands and the 1958 definition remained intact. However, concerns over size and habitability were included in the 1982 Convention in the form of

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99 Johnson (1951) 'Artificial Islands', *International Law Quarterly*, 4. Quoted in Symmons, 1979: 37.

100 See Bowett, 1979 and Symmons, 1979 for details of this debate.

101 See Bowett, 1979 and Symmons, 1979.

102 Symmons, 1979: 40.

paragraph 3 of Article 121 which introduces into the international law of the sea a disadvantaged sub-category of island, the *"rock"*.

3.5.2 Rocks

A further conundrum relates to the distinction made in Article 121 between islands and rocks. Article 121(3) states that:

> *Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.*

Rocks, therefore represent. a disadvantaged sub-category of island whose zone-generative capacity, and thus value to a potential claimant is significantly reduced.

This provision presents a twofold interpretational problem. The UN Convention provides no definition as when a feature *"cannot sustain human habitation"* or what constitutes the *"economic life"* of a particular feature.

All subsequent attempts to define rocks and islands on the basis of criteria such as size or the presence of vegetation have come to nothing, primarily because the terms used in Article 121 in relation to rocks are not only vague but are also essentially concerned with the functions of technology, economics and culture.[103] For example, at the extreme end of the debate, if a space-station can be made 'habitable' and economic functions be performed there, under the terms of Article 121, there is nothing to stop any rock, however small, from being interpreted as a fully-fledged island.[104]

There is therefore no objective way to distinguish between an island and a rock under the terms of the UN Convention. Unless one or more of the parties to a dispute over the insular status of a particular feature possesses the political will to compromise in the course of negotiations, deadlock will inevitably occur.

It should be remembered, however, that in order to qualify as a rock, the other requirements for insular status laid down in Article 121(1) must first be met.

3.5.3 Reefs

Under the Law of the Sea Convention (fringing) reefs do not qualify as insular formations except in certain circumstances in confined geographical situations in which

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103 Attempts at objective analysis with a view to codification have, however, been made. For example, writers such as Kwiatkowska and Soons (1990) have argued that Article 121(3) applies to barren, uninhabited islands.

104 Dzurek, contribution to discussion on int-boundaries e-mail list, 18/3/97.

they act as an extension of another feature, for example in the case of *"islands situated on atolls or islands having fringing reefs"* (Article 6) (see Section 3.3.2). Drying reefs may, however, qualify as low-tide elevations (see Section 3.5.4).

3.5.4 Low-Tide Elevations

A low-tide elevation is defined in Article 13 of the Law of the Sea Convention, which repeats the terminology used in Article 11 of the Geneva Convention on the Territorial Sea and Contiguous Zone, as a *"naturally-formed area of land which is surrounded by water at low-tide but submerged at high-tide."* Such a feature may be used as a territorial sea basepoint, but only if it falls wholly or partially within the breadth of the territorial sea measured from the normal baseline of a state's mainland or island coasts. A low-tide elevation's value for maritime jurisdictional claims is therefore geographically restricted to coastal locations. Such features have therefore been termed *"parasitic basepoints"* as their zone-generative capacity is reliant on their proximity to a mainland or island baseline.[105]

It is worth noting that although low-tide elevations which fall partially within the territorial sea measured a mainland or island coast qualify and may generate a territorial sea of their own, those falling partially or wholly within a territorial sea measured from a straight baseline do not. Additionally, low-tide elevations which fall wholly or partially within the territorial sea of another low-tide elevation (itself wholly or partially within the territorial sea of a mainland or island coast), do not qualify so that there can be no 'stepping stone' effect offshore of low-tide elevations linked by territorial seas.

It follows that low-tide elevations located beyond the territorial sea may not be used as basepoints for generating maritime zones and therefore represents *"no more than a navigation hazard."*[106]

The exception to this rule is provided by Article 7(4) of the Convention whereby low-tide elevations may be used as appropriate basepoints for straight baselines if lighthouses or similar structures have been constructed on them or where general international recognition of the drawing of baselines from such features exists (see Section 3.3.3).

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105 Symmons, 1995: 7.

3.5.5 Submerged Banks and Shoals

Such entirely submerged features have no zone generative capacity even if a structure has been built on them which is itself permanently above sea level. Many such structures have been constructed among the disputed Spratly Islands in the South China Sea.[107]

3.5.6 The Role of Islands

The question of how outstanding geographical features, such as islands significantly far offshore, are treated is one of the most contentious issues in maritime boundary delimitation. If a formation fulfils the requirements of this definition, it may generate the full suite of maritime zones known to the international law of the sea – territorial sea, contiguous zone, 200-mile exclusive economic zone (EEZ) and continental shelf. As a result, islands may be of vital importance for the fixing of maritime zones and thus critical to a state's claims to maritime jurisdiction.

Even if a feature can be categorised as a fully-fledged island under law of the sea rules, it must be borne in mind that islands are not always accorded 'full effect' in maritime boundary delimitations – achieved either through negotiations or with third-party assistance. Indeed, there are numerous examples of state practice and case precedents where islands have received a substantially reduced, frequently half, effect, been partially or wholly enclaved or completely ignored (see Section 3.2.1).[108]

In the context of the Gulf of Thailand, therefore, it should be remembered that even if a formation achieves recognition as an island under the Law of the Sea Convention definition it may well not be accorded a full effect in any eventual maritime boundary negotiation, arbitration or judicial settlement before, for example, the ICJ.

3.6 Non-Coastal Geography Related Factors

3.6.1 Political Factors

It is often difficult, if not impossible, to distinguish when political factors have had a direct impact on the course of a delimitation. Nonetheless, political considerations are

106 Symmons, 1995: 7.
107 Hancox and Prescott, 1995.
108 For example see Bowett, 1979; Jayewaedene, 1990; Symmons, 1979 and 1995.

fundamental to the maritime boundary delimitation, dealing as it does with sovereign rights. Delimitation is therefore essentially a *political* exercise. As Prescott has pointed out, Ancel's dictum on land boundaries is just as apt in relation to maritime boundary delimitation:

> *Il n'y a pas de problèmes de frontières. Il n'est que des problèmes de Nations [There are no boundary problems. There are only problems of nations.]*[109]

It is, of course, necessarily a political decision to enter into negotiations (or, indeed, whether to take a dispute to third-part adjudication), to decide what proposals to present in such talks, what concessions to make to the other side and, finally, to accept or reject the proposed boundary delimitation.[110]

Maritime boundary delimitation is in essence a political exercise because it involves sovereignty and jurisdiction over territory and maritime space. In a general sense political geography and history play a significant role in determining sovereignty over territory and thus the possession of coastlines by certain states. A state's land boundaries and the extent of its sovereignty over land territory will therefore define that state's coastal front from which maritime claims can be made (see Section 3.3.1).

It should be noted in this context that it is possession of the coastline that is significant, rather than the landmass behind that coastal front. Equally, the position where the land boundary reaches the coast is important in that it divides the coastline between state jurisdictions. The course of the land boundary behind the coast, however, has generally been viewed as being irrelevant to delimitation, at least in jurisprudence. For example, the Court rejected Libya's argument in the *Tunisia-Libya* case that the boundary line offshore should maintain the generally northerly alignment of the land boundary between the states (Tunisia/Libya, para.85).

The *political will* of the parties, particularly in the case of a boundary reached through negotiations, is therefore the paramount factor in maritime boundary delimitation. If relations are cordial and the political will exists to reach a fair and equitable resolution, then a mutually acceptable maritime boundary agreement can be achieved no matter what other complications exist in relation to the area to be delimited. Political will is therefore required to curb a state's natural desire to maximise the area under its control and instead avoid dispute and make the concessions necessary in order

[109] Quoted in Prescott, 1985b: 74.

to achieve an agreement. The reverse is, naturally, also true. Poor relations and distrust will readily give rise to dispute in the course of important and complex maritime boundary negotiations.[111]

It is also worth observing that all other factors considered relevant to a particular delimitation are seen through a political lens and are subject to political analysis by the governments concerned which will assess matters in light of its policy objectives.

3.6.2 Security Issues

Defence and national security interests have frequently been raised as a relevant factor in the course of maritime boundary negotiations, particularly in cases where the boundary concerned is in close proximity to a state's coastline. As with political factors, however, it is less than easy to discern when security concerns have had a direct bearing on the precise alignment of a maritime boundary, as issues of national defence and security are rarely, if ever, explicitly mentioned in agreements. In addition, security interests in the broader sense are often part and parcel of other factors, for example economic concerns.[112]

Military security-based arguments have also been proposed before international courts and tribunals. While the latter have stressed that such interests may constitute legitimate relevant circumstances for delimitation, they have hitherto accorded such factors only limited weight.[113]

The most immediate and pressing security concern shown by states, in terms of the traditional and narrow definition of security as military security, is the protection of state territory and exclusion of other potentially threatening activities on the part of hostile states and other actors close to that state territory. This security concern equates to a desire on the part of states to exert control over those maritime areas in close proximity to its coastlines. State interests of this nature are often addressed in the adoption of an equidistance line based solution – that is, a line based on proximity with those maritime areas closest to each state's land territory belonging to that state (see Section 3.2).

Another major security concern for states is that of access to and from its ports. This demands a wider definition of security than the traditional militaristic one.

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110 Oxman, 1993: 10-11.
111 Prescott, 1985b: 74.
112 Oxman, 1993: 22.

Concerns over access and navigation include not simply the requirement of freedom of access on the part of a state's naval forces (and those of its allies), but also access for commercial shipping which may very well be crucial to that state's economic security. It is, therefore, frequently difficult to distinguish between strictly military security issues and economic interests in state concerns over access and navigation. Indeed, numerous factors considered as distinct relevant circumstances for delimitation, such as resource and environmental issues, could easily be included under the umbrella of security concerns – as they are often fundamental to a state's prosperity and long-term survival and thus its security in the broader sense.

It is worth observing that it would be extraordinary for defence officials to be excluded from the teams negotiating the boundary or for them not to be an integral part of the decision-making body entrusted with accepting or rejecting a proposed boundary. Whatever the factors apparently influencing the final boundary line, it would be surprising if that potential delimitation were not analysed from a defence and security perspective as part of the negotiating process.[114]

3.6.3 Economic and Environmental Interests

If there is a clear economic disparity between the parties to a dispute, the less well-off state frequently advances the argument that it should be compensated for this circumstance by means of shifting the delimitation line in its favour. This sort of argument has met with little sympathy before the International Court of Justice, which has on more than one occasion held that such factors are not of relevance as they are liable to significant change over time. This situation arose in the *Tunisia/Libya* case in 1982 when Tunisia argued its poverty relative to Libya. The Court's response was unequivocal:

> *...these economic considerations cannot be taken into account for the delimitation of the continental shelf appertaining to each Party. They are virtually extraneous factors since they are variables which unpredictable national fortune or calamity, as the case may be, might at any time cause to tilt the scale one way or the other. A country might be poor today and become rich tomorrow as a result of an event such as the discovery of a valuable economic resource.*[115]

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113 See, for example, Evans, 1989: 172-178.

114 Oxman, 1993: 22-23.

115 *Tunisia/Libya Continental Shelf* case, 1982: para. 107.

The Court has, however, left the door slightly ajar to consideration of such economic disparity arguments as a test of the equitability of the result, ruling that they are generally to be disregarded unless to do so would entail *"catastrophic repercussions"* for the states concerned.[116]

The relative level of economic development of the parties is, however, an issue quite distinct from the economic and environmental attributes of the maritime space to be delimited. It has been argued before the ICJ that, much as geophysical features could provide the basis for a 'natural' maritime boundary, so too could environmental considerations. The US claim, in the Gulf of Maine case, that a natural boundary existed between the Brown's and George's banks on a geophysical basis (the Northeast Channel) was supported by extensive evidence on marine environmental factors such as the pattern of water flow and fisheries resources (the latter could, of course, also be considered to be an economic factor). This argument suffered from the same drawbacks that plagued geophysical boundary proposals – environmental factors tend to provide zones of differentiation rather than distinct lines and are as invisible to the mariner as sub-surface geophysical features thus offering little advantage to adopting the potential natural boundary.

There is, however, a significant difference between the approach adopted by the courts and that of states entering into bilateral (or multilateral) negotiations. This is unsurprising in that, firstly, states are quite free to raise any factors they chose for consideration between them, and, secondly, economic and environmental issues are frequently the prime concern of the parties and thus the driving force behind the negotiations in the first place. In certain circumstances, therefore, these issues can hold a dominant role in determining the course of the delimitation line.[117] It is also worth noting that the perceived economic potential of the area in dispute may prove a critical factor in both encouraging the parties to negotiate and, conversely, discouraging them from compromise.[118] In this context Prescott cites Britain and Germany's experience in the 1880s in relation to long drawn out negotiations over a comparatively small coastal

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116 *Gulf of Maine* case, 1984: para.237.

117 For example, Papua New Guinea was able to play the economic disadvantagement card effectively in negotiations with Australia when it sought a larger share of the marine resources of the Torres Strait area than a delimitation according to equidistance would have provided (Prescott, 1985b: 78). Similarly, Iceland seemingly gained a favourable boundary with Norway in relation to Jan Mayen island on the basis of arguments related to economic dependence on fish storcks (Prescott, 1988: 36).

118 In the Gulf of Thailand, this factor was clearly at work in Thai-Malaysian negotiation leading up to the establishment of their joint development area (see Section 6.2.4).

area on what is now the Cameroon-Nigeria boundary. Neither side would contemplate compromise over the disputed territory as it *"might prove to be an Eldorado or a worthless swamp."*[119]

It is also well to observe that *real politik* dictates that, perhaps inevitably, the more economically prosperous and powerful state is likely to hold an advantage in the course of negotiations. This is certainly the case for negotiated agreements, even though the existence of such an economic disparity would cut little ice before an international court or tribunal.

Indeed, Kwiatkowska[120] found in the course of her review of over 130 maritime boundary agreements that in as many as 36 cases economic and/or environmental issues had played a critical role in the decision on the methodology for and ultimate course of the boundary. Of these 36 cases identified, 21 were guided by mineral resources issues, nine by navigational factors, seven in relation to the existence of fisheries and one on environmental grounds. In addition, these factors were acknowledged as subsidiary issues of concern in many other cases.

Even if economic and environmental factors may not frequently directly guide the parties directly to the method of delimitation, it is quite conceivable that they may play a secondary, though potentially significant, role to geography, in influencing the final course of the maritime boundary.

3.6.4 Conduct of the Parties and Historical Factors

In general, historical factors frequently coincide with other relevant circumstances for delimitation and are therefore often difficult to separate from those considerations. For example, traditional fishing activities may well be bound up with arguments of an economic nature rather than being a distinct historic factor.[121]

Nevertheless, it has been shown that the prior conduct of the parties can play a critical role in maritime delimitation. This is particularly true when the states concerned have either expressly or implicitly recognised a particular line as limiting their respective jurisdictions and have acted accordingly. Also relevant would be evidence

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119 Prescott, 1985b: 78.

120 Kwiatkowska, 1993, 75-113.

121 Oxman, 1993: 32. An example where traditional fishing activities were accorded particular prominence in the course of delimitation was in relation to the Torres Strait between Australia and Papua New Guinea where a protected zone was established as a result.

that a state has historically exercised administration or control over a particular area and that the competing state has acquiesced to that administration.

Where past treaties have included lines at sea, for example to define ownership over islands, the question arises as to whether the parties to the treaty intended such lines to denote a division of maritime space as well the land territory within the area concerned. The determining factor in such cases is often the extent to which such lines have over the years in fact been used as the limits of each side's activities and jurisdiction. This may well have a bearing on the delimitation of the Cambodia-Vietnam maritime boundary in relation to the Brevié Line.

For example, in the *Tunisia-Libya* case, the ICJ eventually selected a line based on historic factors, at least for the first part of the boundary in close proximity to the terminus of the land boundary on the Mediterranean coast. This part of the boundary delimitation was based on a line drawn by the Italian colonial administration in Libya in 1919 and subsequently respected by both parties in the issuing of their oil exploration concessions. The Court therefore found that a *de facto*, working boundary was already in existence and observed over a considerable time by both sides, thus making it a suitable basis for its decision on delimitation of that sector of the disputed area.

3.7 Summary

It seems clear, therefore, that there exist a multitude of methods of maritime boundary delimitation. However, the equidistance method, even if not obligatory, has proved far and away the most popular delimitation method. The reasons for this relate to its mathematical precision, lack of ambiguity and its accordance with equity where the parties' coastlines are broadly comparable. Where the coastlines in question are not comparable and a strict equidistance line would result in an inequitable delimitation, the equidistance method has frequently been used as a starting point and then modified. Equidistance has therefore proved an adaptable and flexible method of delimitation, particularly in opposite coast situations. Nevertheless, as Legault and Hankey have observed:

> *The choice of means or methods for translating the relevant geographical and other circumstances into a precise line is, as ever, the most difficult issue in the law of maritime boundaries.*[122]

With regard to the relevant circumstances that can be raised in the course of maritime boundary delimitation negotiations or other form of dispute settlement, there is no restriction on the arguments that may be raised by states within the framework of the international law of the sea. This has naturally provided ample scope for overlapping maritime claims, dispute and deadlock between states over maritime jurisdictional issues. Nevertheless, geographical factors, particularly coastal geography, have proved to be of primary importance, eclipsing all other factors.

Chapter 2 and 3 have provided a review of the key facets of the law of the sea relevant to maritime jurisdictional claims and maritime boundary delimitation. The objective of this overview and evaluation was to provide the tools for analysis of maritime boundary claims, agreements and disputes in the Gulf of Thailand which are be addressed in subsequent chapters.

[122] Legault and Hankey, 1993: 206.

Chapter 4

Baseline Claims in the Gulf of Thailand

4.1 Introduction

The preceding chapters concentrated on a review of the key elements of the international law of the sea relevant to maritime jurisdiction and maritime boundary delimitation as well as establishing the positions of the Gulf of Thailand littoral states in relation to the main multilateral agreements on these issues. In addition, an indication of the means by which these states may resolve maritime boundary disputes has been made. It is therefore appropriate to begin to apply the results of these theoretical background studies and turn critical attention towards the Gulf of Thailand. This chapter will initiate the detailed examination of the maritime claims of the Gulf of Thailand coastal states.

The focus of this chapter is the baseline claims propounded by the Gulf of Thailand littoral states. As indicated in Section 2.3, baseline claims are fundamental to a state's overall claims to maritime jurisdiction because the baseline represents the starting point for the measurement of the extent of any state's maritime rights. This therefore constitutes the logical to start an analysis of Cambodia, Malaysia, Thailand and Vietnam's offshore claims.

The baseline claims that have been made within the Gulf of Thailand are complex and extensive, in view of the number of straight baseline claims that have been made within the Gulf. As Table 4.1 indicates, all four Gulf of Thailand states have made claims to straight baselines and these claims have developed over time such that, for instance, Cambodia has comprehensively revised its straight baseline claims no less than three times since 1957. Complicating this scenario is the fact that Cambodia and Vietnam (jointly) and Thailand have all made claims to parts of the Gulf of Thailand on the basis of historic rights. These claims are dealt with in more detail in Sections 6.1 and 7.2.

Table 4.1 *Claims to Straight Baselines in the Gulf of Thailand*

State	Date of Claim	Type of Claim
Cambodia	1957	Predominantly fringing islands but with mainland coastal points.
	1972	Predominantly fringing islands but with mainland coastal points.
	1982	Fringing islands.
Malaysia	1979	Predominantly fringing islands but with mainland points within Gulf of Thailand.
Thailand	1959	Historic bay closing line.
	1970	Fringing islands in two groups within Gulf of Thailand.
	1992	Extension of claim to include additional islands.
Vietnam	1977[1]	Fringing islands.

Source: Author's research.

Overall, as a consequence of their straight baseline claims, the Gulf of Thailand littoral states have laid claim to approximately 26,066nm^2 of the Gulf as internal waters. In addition, Thailand's claim to the Bight of Thailand as an historic bay amounts to 2,834nm^2 and Cambodia and Vietnam's joint Historic Waters Area covers around 2,711nm^2. The total area of the Gulf claimed landward of straight baselines or closing lines therefore amounts to 31,611nm^2 – equivalent to just over 11% of its total area.[2] The following discussion will deal with the development each Gulf of Thailand coastal state's baseline claims in turn before concluding with a comparative analysis. The intrinsic importance of baseline claims to certain claims to extended maritime jurisdiction will be analysed further in relation to particular cases in the Gulf of Thailand in subsequent chapters.

4.2 Cambodia's Straight Baseline Claims in the Gulf of Thailand

4.2.1 Introduction

Cambodia's claims to straight baselines have been steadily developed over time (see Figure 4.1). As a result Cambodia's straight baselines system has been progressively extended incorporating as basepoints insular features further and further offshore.

1 Although Vietnam promulgated legislation concerning straight baselines in 1977, the locations of these lines was only revealed in 1982.

2 Prescott gives the total area of the Gulf of Thailand as 283,700km^2 which is equivalent to 82,715nm^2 (Prescott, 1998: 11).

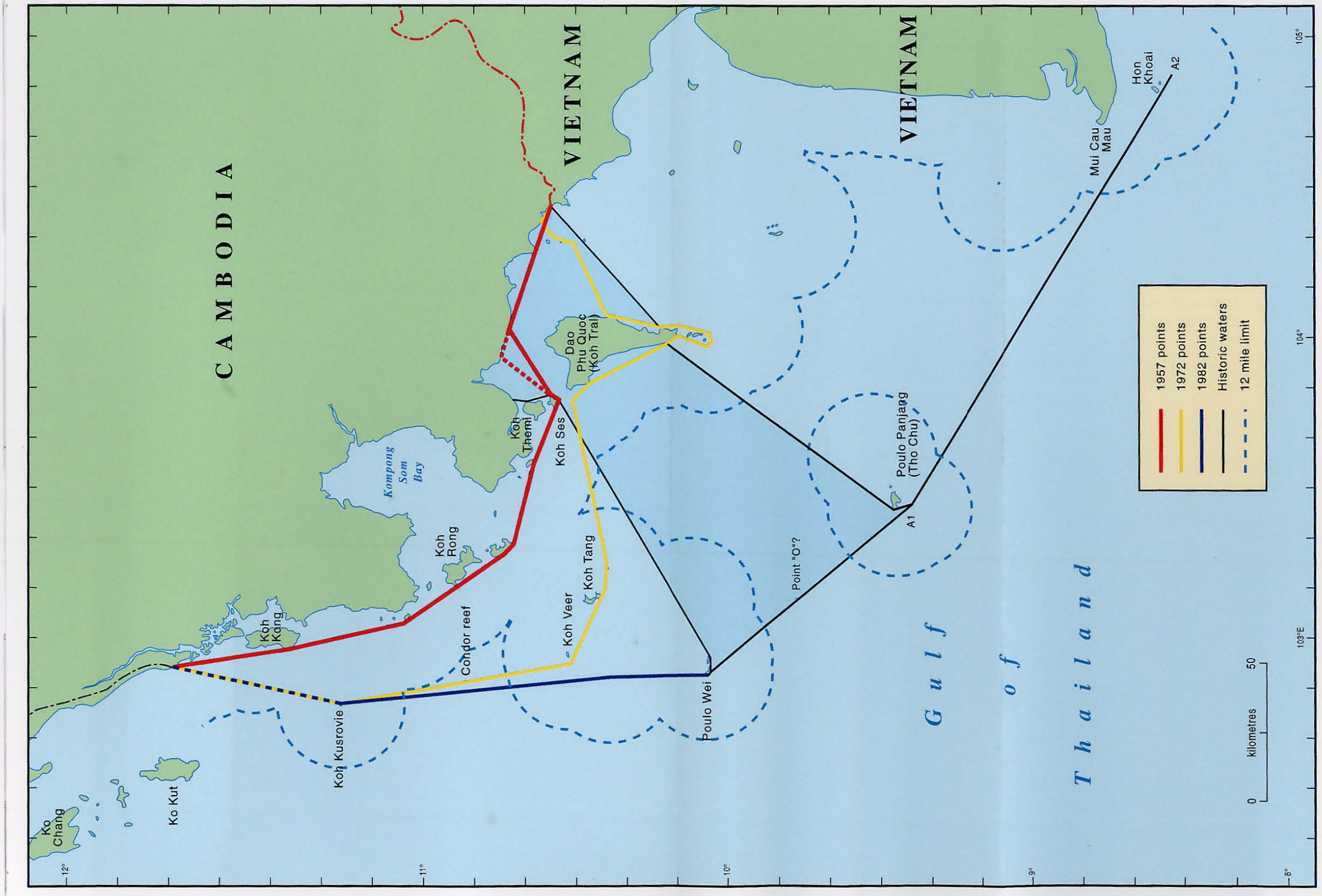


Figure 4.1 *Straight Baseline Claims in the Eastern Gulf of Thailand*

Source: Author's research.

4.2.2 Cambodia's 1957 Straight Baselines Claim

Cambodia adopted its first, relatively modest, system of straight baselines in 1957 (see Figure 4.2).[3] This system fronted the entirety of Cambodia's mainland coast from the terminus of the Cambodia-Thailand land boundary on the coast in the north to the intersection of the Cambodia-Vietnam land boundary with the coast in the south. Cambodia's 1957 straight baselines consist of 12 segments linking a mixture of 13 defined island and mainland coastal points. The baselines system can be considered as falling into three distinct sections.

In the northern part of Cambodia's coastline, the 1957 claim constructed straight baselines from the terminus of the Cambodia-Thailand land boundary on the coast (Point A) to the islands of Koh (Kaoh) Kong (C1), one of the Koh Samit group (C2)[4] and Koh Smach (C3) which all lie close inshore (see Table 4.2).[5] These three islands are also relatively closely grouped together, Koh Kong lying 16.47nm (30.5km) from the island used as a basepoint in the Koh Samit group which in turn lies 3.1nm (5.75km)

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3 Coordinates of Cambodia's claim to straight baselines of 1957 are included in Prince Norodom Ranariddh's thesis (1976: 24-25).

4 The precise positions of points C1-C3 were deduced from a combination of clues. This is because the coordinates supplied in Prince Ranariddh's thesis, when plotted on British Admiralty Chart 3985 at a scale of 1:500,000, place point C1 inland on Koh Kong and points C2 and C3 offshore with point C3 being accorded a latitude north of point C2 therefore seemingly taking the straight baseline system back upon itself. The text descriptions of the locations of the basepoints, coupled with a sketch map included in the thesis were therefore used to try and clarify the location of the basepoints concerned.

Thus, the definition of point C1 as the *"west point of Koh Rong"*, in addition to an examination of the sketch map allowed for the deduction of the actual position of the basepoint despite the uncertainties of applying coordinates of unknown datum to a chart of known datum. In a similar fashion it was possible to locate point C3 which was defined as the western point of Koh Smach. Unfortunately, less certainty surrounds the precise location of point C2, not only because the coordinate mentioned lies offshore but the text description of the position of the basepoint as the first island in the Koh Samit group does not tally with the sketch map which marks point C2 as coinciding with *"Roche de la Table"*, an isolated rock to the north of the Samit group. In any case, it is unclear where the Samit group of islands begins and ends and there exist several features which could qualify as the first island in the group. As a result, a 'best guess' as to the location of point C2 has been taken and this is illustrated on Figure 4.2. It should be stressed, however, that there is potential for error in the position accorded to this feature on the map and the coordinates included in Table 4.2.

The coordinates provided for the other basepoints anchoring the baseline system generally agree closely with the sketch map, text descriptions and the coastline itself when plotted on Admiralty Chart 3985. The exception is the position of point C10. The sketch map positions this point approximately 5.4nm (10km) west of that according to the coordinates provided in the thesis. The former position is illustrated on Figure 4.2 with a dashed line.

Attempts to locate an original copy of the legislation establishing Cambodia's 1957 straight baseline claim proved unsuccessful. This is likely to be the consequence of Cambodia's turbulent internal political circumstances from the 1960s onwards. However, there is no reason to doubt the veracity of Prince Ranariddh's statements regarding this claim.

5 It is also worth noting that there are a significant number of islands lying inshore of the defined straight baselines, particularly in the vicinity of Koh Samit and Koh Smach, which could be considered as forming part of a fringe of islands off the Cambodian mainland coast.

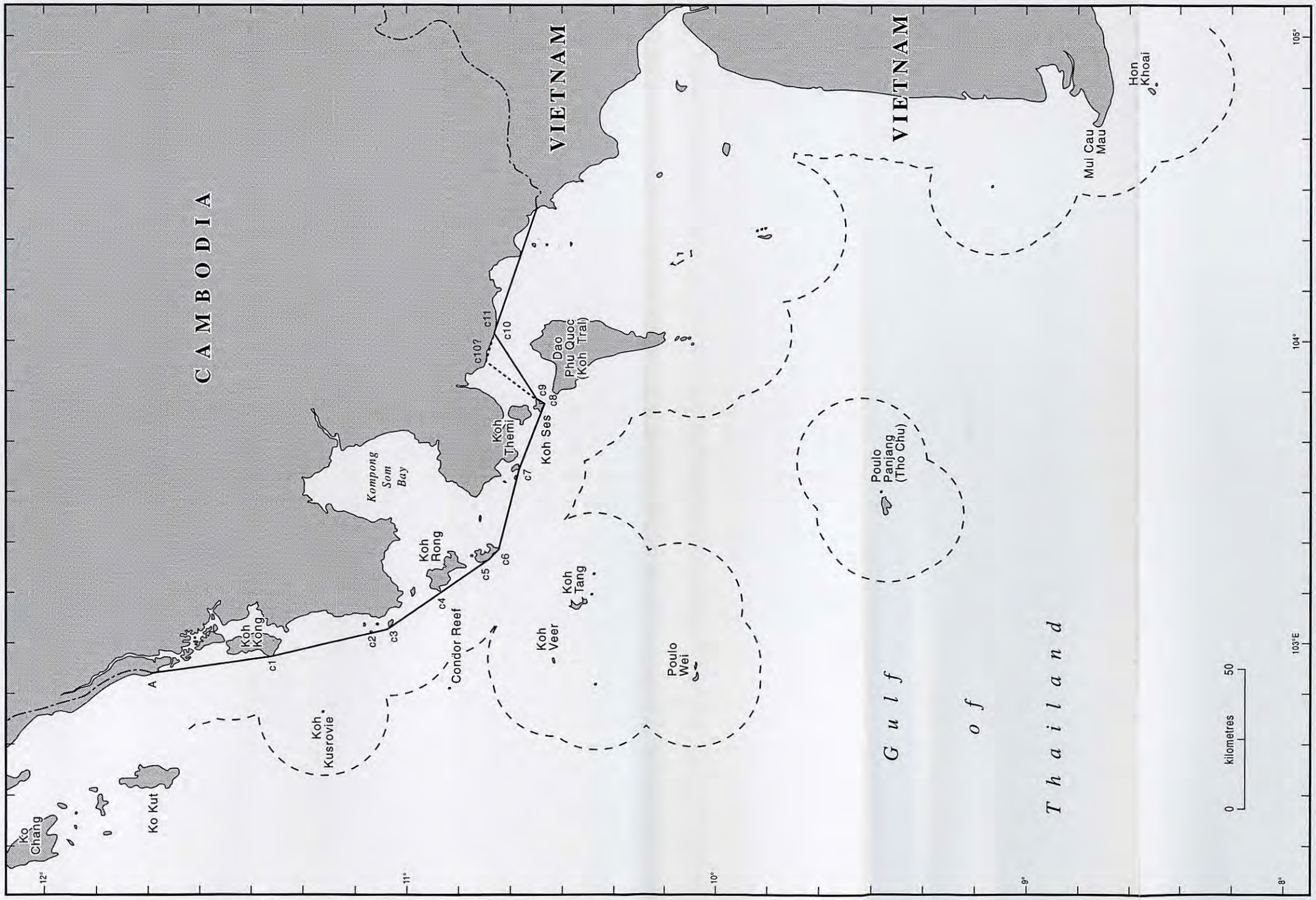


Figure 4.2 *Cambodia's 1957 Straight Baselines Claim*
Source: Ranariddh, 1976 and author's research.

In the central part of Cambodia's coastal front the 1957 straight baselines linked a number of islands located across the mouth of Kompong Som Bay. The island concerned were Koh Rong, Koh Rong Samlem and Koh Ta Kiev before the baselines proceeded southeastwards to Koh Ses. Two basepoints were defined on each of Koh Rong Samlem and Koh Ses. These islands are generally somewhat further offshore than those linked by baselines in the northern part of the coast, but are also relatively close to one another, Koh Rong Samlem being 2.02nm (3.75km) from Koh Rong and 1.35nm (1km) from Koh Ta Kiev which is in turn 10.8nm (20km) from Koh Ses (see Table 4.2).[12]

Table 4.3 *Cambodia's 1957 Straight Baselines Claim: Segment Lengths*

Segment	Length
A-C1	22.27nm (41.25km)
C1-C2	19.03nm (35.25km)
C2-C3	4.05nm (7.5km)
C3-C4	11.34nm (21km)
C4-C5	11.61nm (21.5km)
C5-C6	1.62nm (3km)
C6-C7	16.74nm (31km)
C7-C8	12.69nm (23.5km)
C8-C9	1.89nm (3.5km)
C9-C10	11.61nm (21.5km)
C10-C11	7.83nm (14.5km)
C11-C12	22.68nm (42km)
Total	**143.36nm (265.5km)**
Average	**11.95nm (22.13km)**

Source: Author's research.

From Koh Ses, the straight baselines claimed in 1957 proceed to a point on Cambodia's southern mainland coast. The baselines then terminate at the intersection of the Cambodia-Vietnam land boundary on the coast via another mainland coastal point (see Figure 4.2 and Table 4.2). Cambodia's 1957 claim related specifically to straight baselines. It can be deduced from this that 'normal' baselines along the low-water mark apply to Cambodian islands seaward of the straight baselines claim.

Overall, Cambodia's 1957 straight baseline claim can be regarded as conservative rather than aggressive or expansionist in nature, hugging Cambodia's mainland coast. It can further be observed that the baselines claimed in 1957 broadly accord with Article 4 of the Geneva Convention on the Territorial Sea and Contiguous

[12] Measured on British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000.

Zone and Article 7 of UNCLOS. This is, perhaps, particularly impressive bearing in mind the fact that the straight baseline system was formulated relatively soon after independence in 1949[13] and prior to the Geneva Conventions being opened for signature in 1958.

The distances of the islands used as basepoints for anchoring the straight baselines from the nearest mainland coastal point are summarised in Table 4.2 while the lengths of the straight baseline segments concerned are listed in Table 4.3. The average length of the baseline segments making up the 1957 system is 11.95nm (22.13km) with the longest segment being 22.68 (42km) in length, while the average distance between the islands fringing the coast used as basepoints is 9.8nm (18.1km) with the maximum distance between such islands being 16.47nm (30.5km).[14] Although neither Article 4 of the relevant Geneva Convention nor Article 7 of UNCLOS specify the maximum length for individual straight baseline segments, the US Department of State has advanced the view that the upper limit should be 48nm (see Section 3.3.3).[15] The latter source also proposed that islands considered part of the fringe should not be further than 24nm apart.[16] As the major maritime power, US policy on this issue has revolved around attempting to minimise what it perceives to be excessive maritime claims and to maximise freedom of navigation. The US guidelines on straight baselines can therefore be regarded as a strict rather than liberal interpretation of the rules laid out in the Geneva and UN Conventions.[17] Even when set against these restrictive prohibitions, however, it is clear that, on these two elements at least, Cambodia's 1957 claim is above reproach.

Perhaps even more tellingly, the average distance offshore of the islands fringing the Cambodian coast linked by straight baselines in 1957 is 3.74nm (6.93km)[18] and the entirety of the maritime area landward of those baselines thereby claimed as internal waters, amounting to 1,286nm^2 (4,411km^2), would in any case have fallen within Cambodia's territorial sea (i.e. within 12nm) as measured from 'normal' low-water line baselines. Furthermore, of the territorial sea measured from the 1957 straight baselines, the area that could be considered 'additional', that is areas claimed over and above that

13 Cambodia achieved independence from France on 8 November 1949.
14 Measured on British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000.
15 US Department of State, 1987: 14.
16 US Department of State, 1987: 17.
17 See Roach and Smith (1996: 15-28) on how the United States identifies what it regards as excessive claims.
18 Measured on British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000.

claimed from island or mainland 'normal' baselines, is negligible.[19] The Geneva and UN Conventions failed to provide a specific distance offshore (or any other objective test) by which to measure whether a particular fringe of islands is close enough to the coast to be considered in its *"immediate vicinity"*[20] or in order to assess whether the waters enclosed by the straight baselines are *"sufficiently closely linked to the land to be subject to the regime of internal waters."*[21] Nevertheless, the US State Department suggested that a 24nm separation (i.e. two territorial sea breadths) between the mainland coast and a fringe of islands was probably generally accepted as being appropriately close, and further proposed that two territorial sea widths (48nm) be regarded as the upper limit.[22] A UN Committee of experts report concurred with the former finding as constituting general international practice but also raised some question over the level of international acceptance of the upper 48nm limit.[23] Once again, Cambodia's 1957 straight baseline claim comfortably passes these tests.

Concerning Article 7 of UNCLOS's provision that straight baselines should *"not depart to any appreciable extent from the general direction of the coast"*, it has already been noted that the concept of the general direction of the coast is predominantly dependent on the scale of observation and is therefore a vague quality.[24] Divergence from the general direction of the coast is thus a well nigh impossible concept to apply rationally (see Section 3.3.3). Having made this rather negative observation, it can be argued that the relatively short baseline segments, positioned close inshore, which Cambodia claimed in 1957, conform closely to the configuration of the coast and thus, in this author's view, accord with the spirit of Article 7 in this regard.

Nevertheless, one general criticism that can be levelled at Cambodia's 1957 straight baselines claim is its tendency to use straight baselines to simplify the coastal front as a whole – enclosing the entire mainland coastline with straight baselines. Alternatively, straight baselines could have been applied somewhat more selectively, linking sections of coast where 'normal' baselines might have been more appropriate.[25] Thus, in the northern section of the baseline system, it could be argued that rather than

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19 The area of 'additional' territorial sea was so small that it defied measurement using a planimetre and British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000.

20 UNCLOS, Article 7(1).

21 UNCLOS, Article 7(3).

22 US Department of State, 1987: 14.

23 United Nations, 1989a: 21.

24 See Anderson (1987) on scale.

25 Given the vintage of the claim, predating both the Geneva and UN Conventions, this lapse is perhaps excusable (or at least understandable).

defining the western tip of Koh Kong as a basepoint, straight baselines could have been defined by the island's northern point and from its southern extremity with the low-water line of Koh Kong's seaward-facing western coast forming the 'normal' baseline between these two points. The net effect on claims to maritime jurisdiction of enclosing Koh Kong with straight baselines rather than in part using the island's 'normal' baseline is, however, minimal.

In the central part of the Cambodian coast, it is immediately apparent that several islands are strung across the mouth of Kompong Som Bay. One somewhat more conservative alternative to the straight baselines declared by Cambodia in 1957 for this part of the coast would have been the drawing of bay closing lines (see Section 2.3.5). The bay clearly qualifies under the semi-circle test of Article 10 of UNCLOS as a juridical bay. In addition, the combined length of hypothetical closing lines drawn across the multiple mouths of the bay, is approximately 15.7nm (29km) – within Article 10's maximum bay closing line length of 24nm.[26] It is also worth noting that at this time Cambodia could have also designated Kompong Som Bay a *"historic"* bay.[27] In light of the deep penetration of the bay into Cambodia's mainland territory, its geographical configuration whereby it's waters are clearly surrounded by Cambodian territory on three sides, (indeed, almost four if the large islands in its mouth are considered) and the strong arguments that can no doubt be marshalled concerning the long-standing and sustained use of the bay by the Cambodian people, such a claim to historic status for Kompong Som would not seem unreasonable. This is particularly true when Thailand's historic claim to the analogous Bight of Thailand is considered.[28] However, such an historic claim was not advanced at that time and would be well-nigh impossible to advance today.

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26 Measured from the headland in the vicinity of the Samit island group in the north to that at Kampong Saom in the south by way of Koh Mano, Koh Rong, Koh Rong Samlem and Koh Kaong Kang (Measured on British Admiralty Chart 3985, 1987 edition at a scale of 1:500,000). Article 10(4) of UNCLOS states that *"If the distance between the low-water marks of the natural entrance points of a bay exceeds 24 nautical miles, a straight baseline of 24 nautical miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with that length of line."*

27 Article 10(6) provides that *"The foregoing provisions do not apply to so-called 'historic' bays, or in any case where the system of straight baselines provided in article 7 is applied."* Ultimately Cambodia opted to declare baselines which can be justified on the basis of Article 7.

28 The two bodies of water can be considered analogous in terms of their strategic and economic importance to coastal populations and geographical configurations - penetrating into the mainland core of each state. If anything, however, Kompong Som Bay is more surrounded by Cambodian territory than the Bight of Thailand is by Thai territory as a result of the presence of substantial Cambodian islands in the bay's mouth.

Instead, straight baselines were defined enclosing not only the bay itself but the islands in the mouth of the bay. As is the case for the northern section of the Cambodian coast, it could be argued that Cambodia could have defined straight baselines linking rather than enclosing, for example, Koh Rong and Koh Rong Samlem, relying on the 'normal' baselines of these features' seaward-facing coasts between the straight baseline segments. Instead, Koh Rong Samlem is host to two basepoints. This would have constituted a mildly more conservative alignment of straight baselines without having a significant impact on claims to maritime jurisdiction. The counter-argument that the arrangement claimed in 1957 simplified the coastline while not constituting an excessive claim does have some merit, but perhaps runs counter to a strict interpretation of the spirit of the relevant portions of the Geneva and UN Conventions, such that straight baselines should only be applied where the geographical circumstances specifically warrant them.

While the criticisms of Cambodia's 1957 straight baseline system outlined above in relation to the northern and central sections of the Cambodian coastline are reasonably mild, there exist more substantial grounds for complaint concerning the southern part of the coast. This observation is particularly true south and east of Koh Ses (C8 and C9). From Koh Ses, the 1957 straight baselines proceed to the Cambodia-Vietnam land boundary intersection with the coast via two mainland points. Such an arrangement could, of course, only be justified on the basis of the deeply indented or cut-into nature of the coastline concerned (rather than on the presence of a fringe of islands).[29] It is certainly difficult to justify baseline segments C10-C12 on this basis as the coastline concerned is relatively smooth. A more acceptable arrangement would have been for the straight baseline system to terminate at Point C10, or perhaps at a point on the coast similar to where the limits of the joint Cambodia-Vietnam historic waters area meets the coast of Kampot Province (Figure 4.2), and then the 'normal' baseline could have been utilised along the remainder of Cambodia's southern coast. Instead, Cambodia appears to have slipped into error by pursuing its policy of enclosing the entirety of its coastline with straight baselines regardless of the suitability of that coastline for such claims. The impact of the application of straight baselines to the southern part of the Cambodian mainland coast is, however, slight because of the manner in which the straight baselines conform to the shape of the coastline and,

[29] UNCLOS, Article 7(1).

critically, because of the presence of the Vietnamese island of Phu Quoc opposite and wholly within two territorial sea breadths of this section of the Cambodian coastline.

These relatively mild criticisms of Cambodia's 1957 straight baseline claim do not, however, detract from the fact that a fringe of islands exists along the northern and central sections of the Cambodian mainland coast, that these islands are in close enough proximity to one another to be linked by straight baselines and that the waters so enclosed are close enough to the mainland to be considered suitable for the application of the regime of internal waters to them – even under examination according to the stringent US State Department's guidelines.

4.2.3 Cambodia's 1972 Straight Baselines Claim

In 1972 Cambodia moved to revise its claimed system of straight baselines by *Kret* No.518/72/PRK dated 12 August. Unlike the 1957 claim, however, this decree specifically provided for both straight and normal baselines. The new system of straight baselines, composed of 20 segments connecting 21 points, was significantly more complex than Cambodia's earlier claim and, with the exception of the initial and terminal points on the coast, entirely superseded the straight baselines claimed in 1957. The 1972 claim therefore departed from the mainland coast at the intersection of the Cambodia-Thailand land boundary with the littoral of the Gulf of Thailand and terminated at the Cambodia-Vietnam land boundary on the coast. The remainder of the 1972 system, however, extended seaward of that claimed in 1957 (see Figure 4.3).

The revised baseline system therefore retained one of the prime features of the 1957 claim in that the entirety of the mainland coastline was fronted by straight baselines. The key differences between the 1972 and 1957 straight baseline systems lay in the fact that the islands used as basepoints were significantly further offshore than had previously been utilised, coupled with the inclusion of the major island of Koh Tral (Phu Quoc to Vietnam) and its associated islets within Cambodia's straight baseline system. The latter point is important in that the island concerned was at the time subject to a sovereignty dispute with Vietnam and it is likely that this was one of the main factors motivating the declaration of the revised straight baselines system.

The straight baselines described in the 1972 claim can, similarly to those claimed in 1957, be considered in three sections – firstly the northern and central area, secondly the area in the vicinity of Phu Quoc island and thirdly the area inshore of Phu Quoc.

In the first section, the northern and central portion of the Cambodian coastline, the straight baselines claimed in 1972 therefore proceeded from the Cambodia-Thailand land boundary terminus on the coast (Point A) to Koh Kusrovie (C1), lying just beyond Cambodia's theoretical territorial sea as measured from the mainland coastline under the 1957 legislation.[30] From Koh Kusrovie the straight baselines proceeded to Koh (Recife) Condor (C2) then to an islet west of Koh Prins (C3), an islet to the south of Koh Tang (C4), a point among the Southwest Islands (C5) and on to Ko Tray Boy just offshore the coast of Phu Quoc (Koh Tral) Island (C6).

In the second section, the straight baselines describe a loop around Phu Quoc island (C7-C15) including five points on Phu Quoc itself – one unnamed (C7), Point Han (C8), Point Ong Dal (C13), Point An Yen (C14) and Point Pau (C15) – with the remainder of the basepoints for the straight baselines around the island (C9-12) being located on small islands or rocks around the southern tip of Phu Quoc. Specifically these are Koh Kim Qui (C9), Koh Trang (C10), Koh Hong Tay (C11) and Koh Knong (C12).

Thirdly, inshore of Phu Quoc the straight baselines connect to the terminus of the Cambodia-Vietnam land boundary on the coast (C20) via three points in the Pirate Islands group – Koh Ses (C16), one of the northern Pirate islands (C17) and Koh Tbal (C18) – and one mainland coastal point (C19) (see Figure 4.3). The distances of the islands used as basepoints for anchoring the straight baselines from the nearest mainland coastal point are summarised in Table 4.4 while the length of the straight baseline segments concerned are detailed in Table 4.5.[31] 'Normal' low-water baselines were also specified for islands claimed by Cambodia lying further offshore, specifically Koh Veer, the Poulo Wei group, Koh Despond, the Poulo Panjang group, *"Rocher Table"*, *"Rocher Blanc"*, *"Ile de L'Est"* and *"Koh Table."*[32]

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30 Based on the assumption that Cambodia's territorial sea had a breadth of 12nm. At the time, 1957, Cambodia had not declared a territorial sea but did so in 1969 claiming 12nm. Cambodia has maintained a claim to a 12nm territorial sea thereafter.

31 Measured on British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000. It is worth noting, however, that several of these islands are considerably closer to the main near-shore islands fronting the major coastal indentation of Kompong Som Bay than the mainland coastline itself. For example, while the islet west of Koh Prins used as a basepoint is 31.86nm from the nearest mainland coastal point it is only 24.57nm (45.5km) from Koh Rong Samlem. Similarly, the islet south of Koh Tang is only 18.9nm (35km) from the coast of Koh Rong Samlem as opposed to 28.21nm from the mainland coast and the Southwest island used as basepoint is 17.95nm (33.25km) from Koh Rong Samlem rather than 25.38nm from the mainland coast.

32 Ranariddh, 1976: 43-45. Cambodia subsequently relinquished its claim to the Poulo Panjang group to Vietnam (see Sections 6.3 and 7.3).

Table 4.4 *Cambodia's 1972 Straight Baselines Claim: Locations of Turning Points*

Point	Location	Coordinates		Distance of Island Offshore
		Latitude	*Longitude*	
A	Cambodia-Thailand land boundary terminus	11° 39' N.	102° 54'.06 E.	–
C1	Koh Kusrovie	11° 06'.75 N.	102° 47'.6 E.	16.3nm (30.25km)
C2	Koh Condor	10° 43'.8 N.	102° 51'.6 E.	17.14nm (31.75km)
C3	Islet furthest west of Koh Prins (Koh Pring)	10° 21'.9 N.	102° 55'.25 E.	31.86nm (59km)
C4	Islet southeast of Koh Tang	10° 15'.3 N.	103° 10'.0 E.	28.21nm (52.25km)
C5	South East Island	10° 14'.8 N.	103° 14'.25 E.	25.38nm (47km)
C6	Koh Tray Boy	10° 21'.5 N.	103° 48'.4 E.	9.18nm (17km)
C7	Point on Koh Tral (Phu Quoc)	10° 18'.5 N.	103° 51'.2 E.	6.48nm (12km)
C8	Point Han (on Koh Tral/Phu Quoc)	10° 00'.75 N.	104° 00'.4 E.	6.48nm (12km)
C9	Koh Kim Qui	9° 55'.2 N.	103° 58'.7 E.	36.99nm (68.5km)
C10	Koh Trang	9° 54'.1 N.	103° 59'.7 E.	37.8nm (70km)
C11	Koh Hong Tay	9° 54'.4 N.	104° 01'.2 E.	36.85nm (68.25km)
C12	Koh Knong	9° 55'.0 N.	104° 01'.5 E.	35.9nm (66.5km)
C13	Point Ong Dal (on Phu Quoc)	10° 00'.5 N.	104° 03'.1 E.	6.48nm (12km)
C14	Point An Yen (on Phu Quoc)	10° 04'.1 N.	104° 02'.5 E.	6.48nm (12km)
C15	Point Pau (on Phu Quoc)	10° 14'.75 N.	104° 04'.5 E.	6.48nm (12km)
C16	Koh Ses	10° 21'.35 N.	104° 19'.2 E.	7.02nm (13km)
C17	Northern Pirate island or Koh Russey	10° 24'.0 N.	104° 20'.1 E.	4.72nm (8.75km)
C18	Koh Tbal	10° 25'.4 N.	104° 20'.2 E.[33]	3.1nm (5.75km)
C19	Mainland point[34]	10° 27'.0 N.	104° 23'.2 E.	–
C20	Cambodia-Vietnam land boundary terminus	10° 25'.15 N.	104° 26'.38 E.	–
Average				**17.94nm (33.22km)**

Source: Ranariddh (1976) and author's research.

The average length of the baseline segments making up Cambodia's 1972 straight baselines claim is 10.44nm (19.33km) with the longest segment being 33.2nm (61.5km) in length. The average distance between the islands fringing the coast used as basepoints and the nearest point on the mainland is 22.85nm (42.32km) with the

[33] The coordinates listed were derived from British Admiralty Chart 3985 (1987 edition at a scale of 1:500,000) in light of the text description of Point C18's location and sketch map included in Prince Ranariddh's thesis as this coordinate was missing from the Prince's thesis.

[34] *Pointe Sud sur la Côte de Phnom Ang Kol*

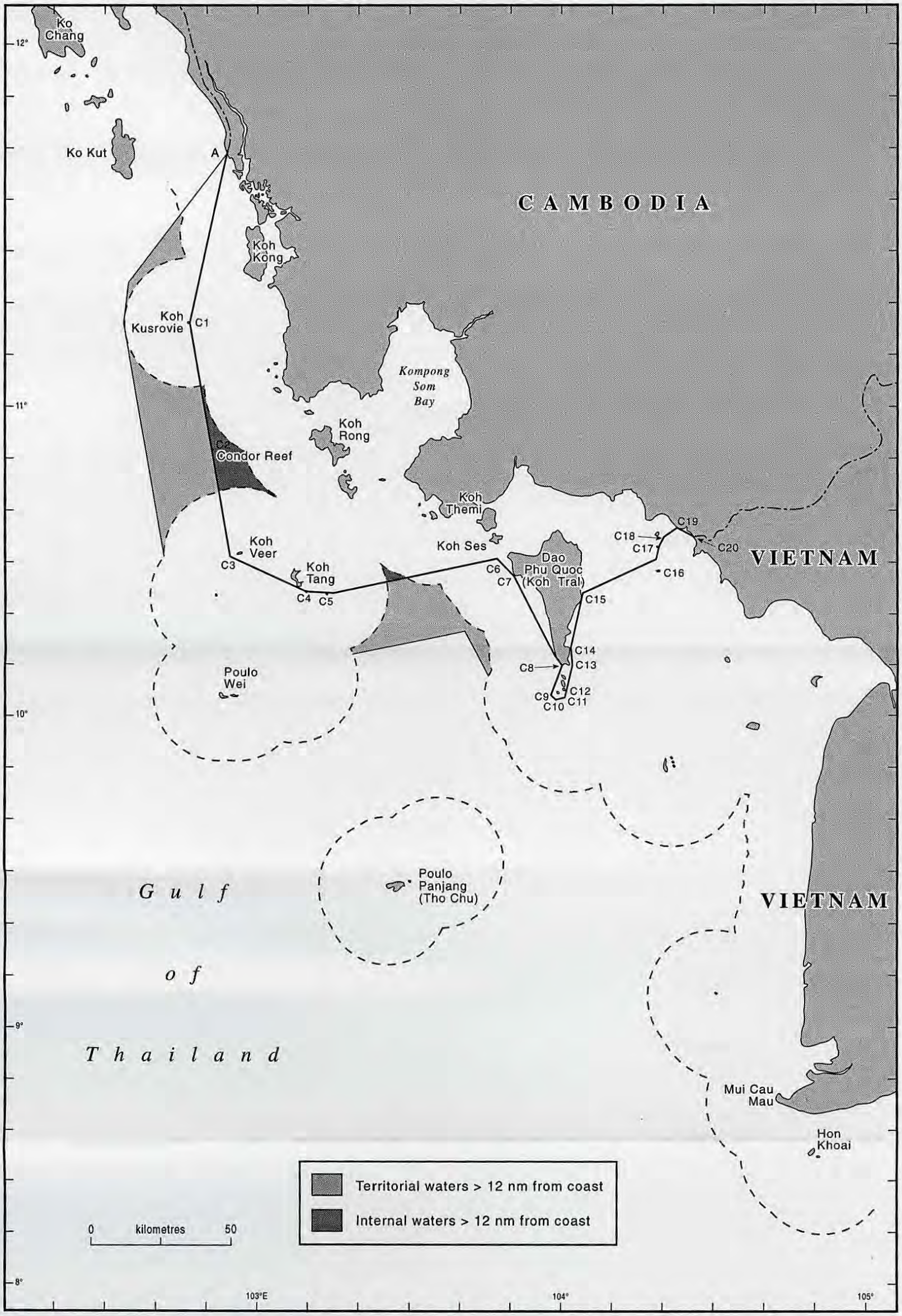


Figure 4.3 *Cambodia's 1972 Straight Baselines Claim*
Source: Author's research.

maximum distance between such islands being 37.8nm (70km).[35] Although the average length of baseline segment claimed in 1972 is comparable to, and indeed somewhat shorter than that claimed in 1957 (10.44nm vs. 11.95nm), the length of the longest segment (33.2nm vs. 22.68nm), the average distances of the islands used as basepoints offshore (24.19nm vs. 6.93nm), and maximum distance of islands from the mainland coast (37.8nm vs. 9.18nm) contrast sharply with that claimed in 1957. This confirms that the straight baselines claimed in 1972 represent a significant extension of Cambodia's claim over those of 1957. The question can therefore be raised as to whether the 1972 extension of Cambodia's straight baseline system seawards can be justified in the context of the international law of the sea.

Table 4.5 ***Cambodia's 1972 Straight Baselines Claim: Segment Lengths***

Segment	Length
A-C1	32.26nm (59.75km)
C1-C2	22.95nm (42.5km)
C2-C3	21.73nm (40.25km)
C3-C4	15.79nm (29.25km)
C4-C5	4.05nm (7.5km)
C5-C6	33.2nm (61.5km)
C6-C7	4.59nm (8.5km)
C7-C8	19.17nm (35.5km)
C8-C9	5.8nm (10.75km)
C9-C10	1.35nm (2.5km)
C10-C11	1.75nm (3.25km)
C11-C12	0.4nm (0.75km)
C12-C13	5.67nm (10.5km)
C13-C14	3.37nm (6.25km)
C14-C15	10.53nm (19.5km)
C15-C16	15.39nm (28.5km)
C16-C17	2.7nm (5km)
C17-C18	1.62nm (3km)
C18-C19	3.1nm (5.75km)
C19-C20	3.37nm (6.25km)
Total	**208.79nm (386.68km)**
Average	**10.44nm (19.33km)**

Source: Author's research.

As all but the starting, terminal and penultimate points defining the straight baselines system are located on islands, it is clear that Cambodia's 1972 claim to straight baselines can only be justified on the basis of there being a fringe of islands offshore,

[35] Measured on British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000.

rather than on the deeply indented nature of the mainland coast. As noted, while the international law of the sea does not specify a maximum baseline segment length, the US Department of State suggests 48nm (88.9km) as the limit.[36] This proposed rule was coupled with the proviso, also absent from the law of the sea, that fringing islands be no more than 24nm (44.45km) apart.[37] Thus, while no baseline segment claimed by Cambodia in 1972 exceeds the US suggested limit of 48nm and the average length of such segments was considerably less, two segments do exceed 24nm in length. These are the first segment, linking the Cambodia-Thailand land boundary terminus on the coast to Koh Kusrovie which is 32.26nm (59.75km) long, and that linking Points C5 and C6 (the Southwest islands and Koh Tray Boy) which is 33.2nm (61.49km) in length. As the first segment does not link fringing islands, being the segment connecting the fringe back to the mainland coast, the 24nm limit between fringing islands cannot be considered applicable.

As far as the segment between Points C5 and C6 is concerned, it can be argued that there are several islands and rocks inshore of the claimed straight baseline, for example Koh Ta Kiev, that could have been incorporated into the system and which could be considered part of the fringe of islands fronting the Cambodian coast. In order to conform to these US guidelines then, only a relatively minor alteration in Cambodia's 1972 claim would have been necessary. Again, as mentioned, the US guidelines lack general international recognition and can be considered at the restrictive end of the scale of analysis. In terms of baseline segment length and the distance between the islands used as basepoints for the straight baselines, Cambodia's 1972 claim conforms with the, admittedly rather loose, terms of Article 7 of UNCLOS and, more particularly, given the date of the claim, the relevant provisions of the Geneva Convention on the Territorial Sea and Contiguous Zone of 1958.

Concerning the distance of the fringing islands offshore and their immediate vicinity to the mainland coast, such that the area within the straight baselines is close enough to the land for internal waters status to be applied, the Geneva and UN Conventions provide no guidance as to the maximum distance offshore that fringing islands may legitimately be. It is clear, however, that Cambodia's 1972 claim, with an average of 22.85nm (42.32km) and maximum of 37.8nm (70km) conforms to the US

36 US Department of State, 1987: 14.
37 US Department of State, 1987: 17.

guidelines of a maximum separation between the mainland coast and fringe of 48nm.[38] Furthermore, when areas of "additional" internal and territorial waters beyond 12nm from 'normal' baselines are considered it seems clear that a strong case can be made that the distance between the fringe and the mainland was taken into account by Cambodia and that the waters enclosed by the straight baselines claimed are sufficiently proximate to the mainland to be deemed suitable for the application of the regime of internal waters.

Of the total area, 2,375nm^2 (8,145km^2), claimed as internal waters, 81nm^2 (278km^2) or 3.4% was beyond 12nm from the nearest coastal point and, even more convincingly, the entirety of the area claimed as internal waters under Cambodia's 1972 claim to straight baselines lies comfortably within two territorial sea breadths (24nm) of the nearest 'normal' baselines. Moreover, of the "additional" territorial sea claimed by the 1972 straight baselines of 2,044nm^2 (7,010km^2), 522nm^2 (1,790km^2) or 25.5% was beyond 12nm from the nearest coastal points (Figure 4.3). In sum therefore, the total "additional" waters claimed beyond 12nm from the coast was 603nm^2 (2,068km^2), representing 13.6% of the total area, 4,419nm^2 (23,300km^2), of internal and territorial waters claimed as a consequence of the 1972 straight baselines.[39]

It has already been established how fallible the concept of the general direction of the coast is when attempts are made to apply it in practice (see Section 3.3.3). Thus, it could certainly be argued that the configuration of the 1972 straight baselines both does and does not reflect the general direction of the coast. Nevertheless, a subjective view is that the baselines do, broadly speaking at least, conform to the general direction of the coast.[40]

Having made these generally positive observations, it cannot be maintained that Cambodia's 1972 straight baselines claim was above reproach. One aspect of the claim which is clearly at odds with the international law of the sea is the use of Condor Reef

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38 US Department of State, 1987: 14.

39 All additional waters areas were calculated using a planimetre and British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000. For the purposes of this calculation, the limit of Cambodia's claim to territorial sea with respect to Thailand was taken to be the line bisecting the first segments of the two states' straight baselines offshore the terminus of their land boundary on the coast. Similarly, the calculation was limited vis-à-vis Vietnam by an equidistance line constructed between Cambodia's 1972 baselines claim and Vietnam's islands south of the Brevié Line but outside the 1972 baselines.

40 Kittichaisaree (1987: 14) for one disagrees. In his analysis of Cambodia's 1972 straight baselines claim he notes that *"The sections which pass through Kusrovie islet/rock and Pring Island depart appreciably from the general direction of the coast, and the islets/islands in question are not in the immediate vicinity of the coast."*

(*Recife Condor*) as a basepoint. According to the relevant British Admiralty *Pilot* this feature, lying just over 17nm (32km) offshore, *"dries to 0.3m (1ft)"* and does not host any navigational light or similar structure. It is therefore clearly a low-tide elevation rather than a rock or island.[41] As such, it is an inappropriate point for use in the construction of straight baselines.[42]

A further area of concern is that, in common with the 1957 claim, Phnom Penh's 1972 claim enclosed the entirety of the Cambodian coastal front with straight baselines. Thus, it can be argued that in certain areas, notably along the relatively smooth western and eastern shores of Phu Quoc and on the mainland between the penultimate turning point in the system and its terminus at the intersection of the Cambodia-Vietnam land boundary on the coast, the 'normal' baseline would have been more appropriately applied rather than straight baselines. The latter section of mainland coast between Points C19 and C20 comprises a smooth coastline where it would be extremely difficult to justify straight baselines on the basis of a deeply indented or cut into coastline. These straight baselines segments were, no doubt, designated in order to complete an unbroken system of straight baselines across the mainland coastal front. It should be noted, however, that the net effect on claims to maritime jurisdiction of these baseline segments is minimal, passing as they do across the front of uncomplicated coasts and in close proximity to them.

4.2.4 Cambodia's 1982 Straight Baselines Claim

A decade later, by means of a Council of State Decree dated 31 July 1982, Cambodia once again comprehensively revised its claimed straight baseline system (Appendix 2). In the 1982 legislation Cambodia's baselines were defined as being *"straight baselines, linking the points of the coast and the furthest points of Kampuchea's [Cambodia's]*

41 Hydrographer of the Navy, 1978: 108. Incidentally, as it lies beyond 12nm from nearest coastal point, it is unable to generate a territorial sea or contiguous zone claim in its own right.

42 Article 7(4) of UNCLOS provides that *"Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of baselines to and from such elevations has received general international recognition."* As no lighthouse exists on the feature and there is no evidence of international acceptance of it being used as a basepoint for the construction of a straight baseline system it must be concluded that the use of Condor Reef in Cambodia's 1972 straight baseline claim is in error. This problem could have been corrected by simply excluding Condor Reef from the system. Such a modification, providing for a straight baseline directly between Koh Kusrovie and the islet west of Koh Prins, would have represented a minimal alteration to the alignment of the baseline system. However, it would have resulted in a longer segment of 44.55nm (82.5km) between Koh Kusrovie and Koh Prins as compared to the

furthest islands." Just as happened in 1972, Cambodia's legislators opted to push their country's claims further offshore by utilising islands further seawards from the Cambodian mainland as basepoints. Indeed, Cambodia adopted an arguably extreme position by using its islands furthest offshore as the anchoring points for its straight baseline system. In addition to pushing the straight baseline system offshore, this also had the effect of considerably simplifying Cambodia's claim, such that it comprised just five points (one of which to be floating and to be determined through agreement with Vietnam) linked by four lines. The motivation behind this change in the Cambodian claim may lie in the additional waters claimed, the perception that an enhanced negotiating position with regard to Thailand would be secured and in order to facilitate the conclusion of the Historic Waters Agreement with Vietnam (see Section 6.3).

Thus, from the low-water mark where the Thai-Cambodian land boundary reaches the sea (Point A), Cambodia's 1982 straight baselines, which remain in force, proceed in a generally southeasterly direction in straight lines via *"Kack Kusrovie"* [sic.] (C1), *"Kack Voar"* [sic., Ilot Veer or Veer island] (C2), to a point on one of the Poulo Wei group of islands (C3). The baselines then extend, from a different point on the same island in the Poulo Wei group,[43] in the direction of Vietnam's Poulo Panjang (Tho Chu) group of islands, terminating at *"Point O out at sea on the southwest limit of the historic waters of the PRK."* Cambodia's straight baseline system is completed by the latter agreement (see Section 7.2 and Figures 4.1 and 4.4). The locations of the turning points of Cambodia's 1982 straight baselines claim are summarised in Table 4.6.

On 7 July 1982, just over three weeks before Cambodia's revision of its straight baselines, Cambodia and Vietnam reached an agreement on an area of historic waters in the vicinity of their undefined lateral maritime boundary (see Appendix 3). Although the significance of this agreement will be discussed in relation to Cambodian-Vietnamese agreements and disputes (see Sections 7.2 and 8), in the context of a discussion of Cambodian baselines it is important to note that the Cambodia-Vietnam joint Historic Waters Agreement has the effect of unifying the two countries straight baseline systems.

22.95nm (42.5km) and 21.73nm (40.25km) segments between Koh Kusrovie and Condor Reef and Condor Reef and Koh Prins respectively.

[43] The 'normal' baseline presumably linking the two straight baseline termini.

The meeting point "O" of the two straight baseline systems is defined in Article 3 of the agreement as being *"situated on the high seas on the straight baseline between Tho Chu [Poulo Panjang] archipelago and Poulo Wai [sic., Wei] Islands."* Thus, although the precise intersection of the two baseline systems is left indeterminate, or 'floating', along a straight baseline linking the two groups of islands, the effect is that, in keeping with Cambodia's earlier claims to straight baselines, the entirety of Cambodia's mainland coast with respect to its northern lateral and opposite delimitations in the central Gulf of Thailand, that is with respect to delimiting a boundary with Thailand, is fronted with a system of straight baselines.

Table 4.6 ***Cambodia's 1982 Straight Baselines Claim: Locations of Turning Points***

Point	**Location**	**Coordinates**		**Distance of Island Offshore**
		Latitude	*Longitude*	
A	Cambodia-Thailand land boundary terminus	11° 38' 8" N.	102° 54' 3" E.	–
C1	Koh Kusrovie	11° 06' 8" N.	102° 47' 3" E.	16.3nm (30.25km)
C2	Koh Veer (Voar)	10° 14' 0" N.	102° 52' 5" E.	39.69nm (73.5km)
C3	Koh Wei (Wai)	09° 55' 5" N.	102° 53' 2" E.	53.05nm (98.25km)
O	Floating point	Undetermined[44]		–
Average				**36.35nm (67.3km)**

Source: Council of State Decree (31/7/82) and author's research.

Indeed, by virtue of the 1982 historic waters agreement linking Cambodia and Vietnam's straight baseline systems, the whole of the mainland coast of Indochina is enclosed in straight baselines stretching from the Thai-Cambodian boundary on the Gulf of Thailand to the final point in the Vietnamese straight baseline system on the Gulf of Tonkin. At the time of writing, the precise location of Point "O" has yet to be determined by mutual consent as specified by Article 3 of Cambodia and Vietnam's treaty on the historic waters area (however, see Section 7.2 and Section 8). Nevertheless, as the length of the southwestern limit of the historic waters area between

[44] The Thailand-Vietnam maritime boundary agreement of 9 August 1997 states that Point O, is equidistant between Vietnam's Tho Chu (Poulo Panjang) islands and Cambodia's Poulo Wai (Wei) islands at 09° 35' 00".4159 N., 103° 10' 15".9808 E.. The Cambodian government has, however, reserved its position in relation to this agreement and it is by no means clear that the location of Point O has in fact been determined (see Section 7.4).

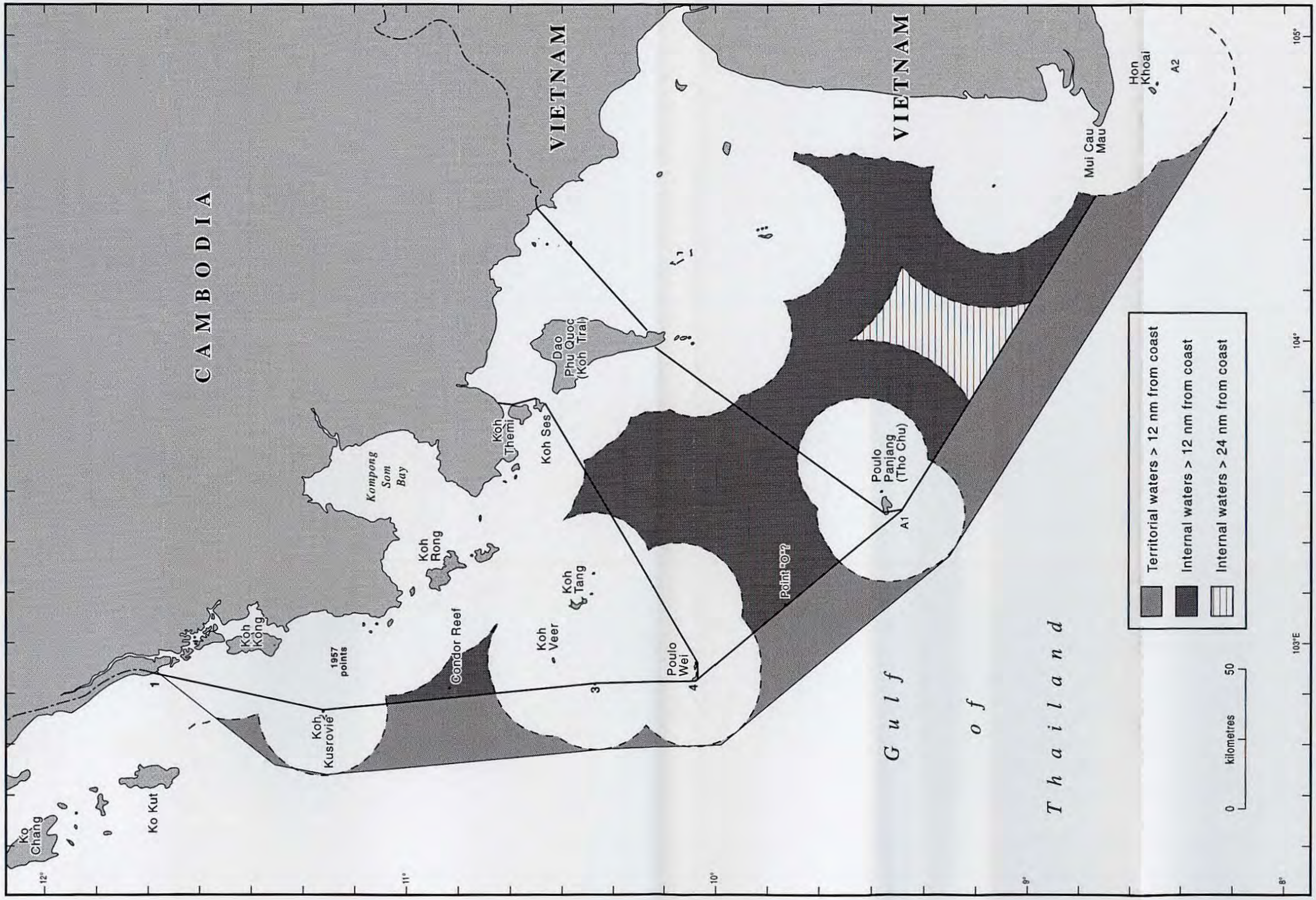


Figure 4.4 *Cambodia's 1982 Straight Baselines Claim and Vietnam's Straight Baselines Claim in the Gulf of Thailand*
Source: Author's research.

the Poulo Wei and Panjang (Tho Chu) island groups is approximately 50nm (92.5km) it would not be unreasonable to speculate that, were equidistance to be used as a basis for the determination of the location of Point "O" (which is by no means certain, see Section 7.3.5 and 7.3.6), each state's baseline segment anchored by Point "O" at one end would be approximately 25nm (46km).[45]

The average length of the baseline segments making up Cambodia's 1982 straight baselines claim, excluding the final segment of indeterminate length linking Poulo Wei to the yet to be fixed Point "O", is 34.06nm (63.09km) with the longest segment between Koh Kusrovie and Ilot Veer, being 51.84nm (96km) in length (see Table 4.7).[46] The average distance between the islands fringing the coast used as basepoints and the nearest point on the mainland is 36.35nm (67.3km) with the maximum distance between such an island and the coast being 53.05nm (98.25km) (see Table 4.6).[47] As the islands used as basepoints are themselves relatively small in size, the distances between the islands in the fringe are virtually identical to the lengths of the straight baseline segments.

Table 4.7 ***Cambodia's 1982 Straight Baselines Claim: Segment Lengths***

Segment	Length
A-C1	32.26nm (59.75km)
C1-C2	51.84nm (96km)
C2-C3	18.09nm (33.5km)
C3-0	Undetermined[48]
Total	**102.19nm (189.25km)**
Average	**34.06nm (63.09km)**

Source: Author's research.

The straight baselines established by Cambodia in 1982 therefore represent a major departure from the position held ten years previously. In terms of sovereignty claims,

45 It is by no means clear, however, that equidistance will be used as the basis for determining the final position of Point "O" or, indeed, the Cambodia-Vietnam maritime boundary seaward of the historic waters area (see Sections 7.2 and 8).

46 Were equidistance to be used to determine the location of Point O, however, the distance from C3-O would be approximately 25nm (46km). If this (hypothetical) straight baseline segment were included in the analysis, the total length of Cambodia's 1982 claim would rise to 148.19nm (214.25km) but the average segment length would fall to 37.05nm (53.56km) (see Table ?). Measured on British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000.

47 Measured on British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000.

48 Were equidistance to be used to determine the location of Point O, however, the distance from C3-O would be approximately 25nm (46km). If this (hypothetical) straight baseline segment were included in the analysis, the total length of Cambodia's 1982 claim would rise to 148.19nm (214.25km) but the average segment length would fall to 37.05nm (53.56km).

whereas the 1972 straight baselines claim explicitly sought to bolster Cambodia's claim to Phu Quoc island by enclosing it within straight baselines and by using points on the island as basepoints in its claim, the 1982 straight baselines legislation, while well seaward of the island in question, stops short of enclosing it. This apparent shift in Cambodia's position reflects its agreement with Vietnam, incorporated into Article 3 of their Agreement on Historic Waters signed earlier in the same month as the 1982 straight baselines claim, to regard the Brevié Line as the line designating jurisdiction over islands – thus confirming Phu Quoc as Vietnamese territory.

Similarly, while both the 1957 and 1972 Cambodian claims to straight baselines mention the use of the Poulo Wei and Panjang (Tho Chu) island groups as basepoints for the purposes of maritime claims in their own right, the 1982 claim, while incorporating the Poulo Wei islands into the straight baseline system, exclude Poulo Panjang. Once again, this change in Phnom Penh's stance relates to the Historic Waters Agreement with Vietnam and acceptance of the Brevié Line as the determining line for sovereignty over islands. Poulo Panjang falls to the south and east of the Brevié Line and thus under Vietnamese sovereignty.

The other significant change enacted under the 1982 claim as compared with those of 1957 and 1972 was, of course, the introduction of a 'floating' basepoint and integration of Cambodia's straight baselines claim with that of Vietnam. Previously, Cambodia had claimed straight baselines stretching between the termini of its land boundaries on the coast.

Cambodia's straight baseline claim of 1982 gave rise to international protests.[49] While it may be generally accepted that the Cambodian coastline is indeed highly indented and, furthermore, is fringed by islands in the immediate vicinity of certain sections of that coast, thus offering a justification for the declaration of straight baselines, this merely provides a justification for the linking of large islands lying just offshore, such as Koh Rong, to the mainland coast with straight baselines or the closing of the mouth of Kompong Som Bay with straight baselines linking the string of islands and rocks which fringe the bay's entrance. In contrast, Cambodia's 1982 (and current) claim to straight baselines does not use those islands close inshore which are most

[49] Cambodia's straight baselines claim of 1982 also gave rise to considerable criticism in academic circles. For example, Prescott (1985a: 212-213) describes the system in question as depending upon *"a remarkably liberal interpretation of the concepts of fringing islands and enclosed waters linked closely to the land domain."* More recently Valencia and Van Dyke (1994: 222) have echoed Prescott's sentiments.

obviously fringing. Instead, what may be termed 'isolated' features of Koh Kusrovie, Ilot Veer and the Poulo Wei island group are used as basepoints or turning points in the 1982 straight baselines claim.

Proceeding broadly northwest to southeast from a first point on the mainland at the coastal terminus of the Thai-Cambodian land boundary, these insular formations used as basepoints lie progressively further and further offshore with the last point (excluding the as yet undefined joint Cambodian-Vietnamese floating "Point O" on the limits of the two countries joint Historic Waters area) on the Poulo Wei group being almost 100km[50] from the nearest point on the Cambodian mainland coastline. Thus it could be argued that:

- the basepoints used for Cambodia's 1982 straight baseline claim do not constitute fringing islands;
- the islands used as basepoints are too far offshore for the sea area so enclosed to be considered closely enough linked to the land domain to be considered as suitable to fall under the regime of internal waters;
- the distance between the basepoints used is inadmissibly high; and,
- as a result of successive basepoints being further and further offshore, as a whole the baseline system trends southeastwards in direction – at variance with the general direction of Cambodia's mainland coastline.[51]

The United States maintains a policy which seeks to protect international freedom of navigation and thus makes a point of objecting to what it views as excessive claims.[52] The diplomatic actions of the United States have thus developed into something of an international benchmark in terms of identifying excessive maritime claims. The United States therefore officially protested against the Cambodian claim in an *Assertion of Right* in 1986.[53] At the time of the Cambodian claim, Thailand, the state most directly affected by Cambodia's straight baseline claims, held the position that the government

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50 98.25km (53.05nm) as measured on British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000.

51 Indeed, Cambodia's 1982 claim to straight baselines has been described by some commentators as *"an extreme departure from the general direction of the coast"* (Reisman and Westerman, 1992: 172). Ominously for Cambodia, Reisman and Westerman conclude that as these *"impermissible seaward"* baselines have the potential to significantly influence any boundary with Thailand, and in view of the findings of the International Court of Justice in the Libya-Malta case in 1985:

> *...it is highly unlikely that the putative Cambodian claim will be given full weight either in negotiations between Thailand and Cambodia on the delimitation of a common shelf/EEZ boundary or in any case brought before an international tribunal.*

52 Roach and Smith, 1996: 3-13.

in power in Phnom Penh was illegitimate. Bangkok, therefore, refused to recognise the validity of any agreement or declaration emanating from Cambodia, considering such claims as illegal and as effectively null and void, including Cambodia's maritime claims of 1982.

As with its 1957 and 1972 predecessors, Cambodia's baseline claim of 1982 can be justified on the basis of the existence of a fringe of islands along the Cambodian mainland coast. It has been estimated that in total there are 51 islands, islets and rocks within the area claimed as internal waters under the 1982 legislation.[54] From this statistic alone it does not seem unreasonable to contend that a fringe of islands exists along the Cambodian coast.

As noted, the islands constituting the fringe claimed by Cambodia and thus used to anchor the baseline system are, firstly, 32.26nm (59.75km) from the terminus of the Cambodia-Thailand land boundary on the coast and then 51.84nm (96km) and 18.09nm (33.5km) apart. These figures clearly exceed the maximum distance between fringing islands as suggested by the US Department of State of 24nm (44.45km), thus providing grounds to criticise Cambodia's claims as excessive.[55] Furthermore, segment C1-C2 (Koh Kusrovie to Ilot Veer), at just under 52nm in length, exceeds the US guidelines maximum suggested length for an individual baseline segment of 48nm. Nevertheless, it should be stressed once again that the US guidelines lack general international acceptance and, significantly, the distances between the Cambodian islands concerned and corresponding lengths of baseline segments are by no means remarkable or excessive when placed in the context of international state practice with regard to straight baseline claims. This is illustrated by Appendix 4 which provides a summary of the length of the longest baseline segment for 37 straight baseline claims around the world in addition to the four Gulf of Thailand states. This information is drawn from the US Department of State's valuable *Limits in the Seas* series. As there are currently 55 states claiming straight baseline systems worldwide,[56] the findings from the analysis of this data must be viewed as a reasonably representative of global state practice. The average length of the longest segment in the baseline claims surveyed was 64.8nm. The

53 Roach and Smith, 1996: 77.
54 Prescott, 1998: 27.
55 US Department of State, 1987: 17.
56 Excluding dependent territories such as the Falkland Islands and excluding claims to bay-closing lines.

longest segment in Cambodia's 1982 claim, at 51.8nm, is comfortably below this average.

It is worth recalling here that neither the Geneva or UN Conventions specify any maximum baseline segment length. Furthermore, the UN's own committee of experts did *not* define an upper limit for either the distance between islands making up a fringe or the length of individual straight baseline segments. Indeed, on the subject of island fringes, the UN report only rather laconically observes that a fringe of islands should consist of more than one island![57] As far as the existence of a fringe, distance between fringing islands and length of baselines are concerned, Cambodia's 1982 claim to straight baselines, therefore, seems to conform not only to the letter of the best available (albeit extremely general) UN guidelines on the topic but also to emerging international custom as represented by state practice.

Similarly, the distances of the islands forming the Cambodian fringe from the nearest point on the mainland coast – 16.3nm (30.25km) for Koh Kusrovie, 39.69nm (73.5km) for Ilot Veer and 53.05nm (98.25km) for Poulo Wei – might also be regarded as being excessive, particularly for the most seaward point, Poulo Wei. As outlined in Section 3.3.3, the US guidelines provide that islands forming part of a fringe should be no more than 48nm (88.9km) offshore.[58] If adhered to, this stricture means that the entirety of the waters enclosed by straight baselines lies within two territorial sea breadths of either the mainland coast or of the fringing islands. Having highlighted this it is also worth recalling that the UN study, while not offering a maximum distance that a fringe could be offshore, was rather more cautious concerning the allied concept of "immediate vicinity", suggesting that while a distance of 24nm was probably generally accepted (i.e. within the territorial sea of the mainland or fringe), 48nm might be less so.[59]

Thus, as far as Cambodia's 1982 claim is concerned, the validity of Poulo Wei, situated 53.05nm (98.25km) offshore, as a basepoint for straight baselines is most open to question. This is on the grounds that Poulo Wei is too far offshore and the area enclosed within the straight baseline extending to it is not close enough to the land to be accorded the status of internal waters.

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57 United Nations, 1989a: 20.
58 US Department of State, 1987: 22.
59 United Nations, 1989a: 21.

In the author's view, perhaps the best measure of the overall 'reasonableness' of a straight baseline system rests in an analysis of the area of maritime space within the confines of straight baselines converted to internal waters, that is, beyond 12nm (i.e. a 24nm separation between mainland and fringe) and 24nm (i.e. a 48nm separation between mainland and fringe) from any 'normal' baseline. This can be expressed as a percentage of the internal waters claimed as a whole. In light of the US guidelines that a distance of up to 48nm between mainland and fringe of islands represents immediate vicinity, the percentage beyond 24nm from the coast can be usefully measured as a more liberal gauge compared to the more conservative interlocking territorial seas limit of 24nm. Similarly, the area of "additional" territorial waters, that is territorial waters claimed seaward of the straight baselines but beyond 12nm from the nearest 'normal' baseline, can be measured and assessed. The lower the percentage of additional areas claimed beyond 12nm (and in the case of internal waters 24nm from the coast), the less excessive or contrary to the spirit of Article 7 the straight baseline claim can be viewed.

In the case of Cambodia's 1982 straight baseline claim the total area of internal waters claimed was of the order of 3,009nm^2 (10,320km^2). Of this area only approximately 201nm^2 (688km^2) or 6.7% of the total was beyond 12nm from the coast and the entirety of the area claimed as internal waters was within 24nm of the nearest coast. As far as the territorial waters claims from the 1982 baselines were concerned, the total area claimed amounts to around 1,508nm^2 (5,173km^2) of which 630nm^2 (2,162km^2) or around 42% of the total could be classified as "additional" territorial waters beyond 12nm from a 'normal' baseline (Figure 4.4).

Overall then, of the combined internal waters and territorial waters claimed as a result of the application of Cambodia's 1982 straight baseline claim of 4,517nm^2 (15,493km^2), 831nm^2 (2,850km^2) or 18.4% of the total could be said to constitute "additional" areas beyond 12nm from the nearest coastal point. Using these measurements as a benchmark, and in particular the fact that over 93% of the internal waters claimed are within a territorial sea breadth of the coast and all within 48nm, it is difficult to argue that the area enclosed by the 1982 straight baselines is not close enough to the mainland coast to be considered in its *"immediate vicinity"*, neither, in this author's view, is the claim generally too unreasonable, particularly when set in the context of state practice around the world (see Table 4.5 and Appendix 4).

As far as the question of Cambodia's 1982 baselines conforming to the general direction of the coast is concerned, as previously mentioned, the concept of general

direction, such as it is, is so nebulous and uncertain when it comes to be applied as to be practically useless (see Section 3.3.3). Nevertheless, the Cambodian claim of 1982 differs significantly from those of 1972 and 1957 in that it does not describe baselines between both of Cambodia's land boundary intersections with the coast. Instead, the baselines depart from the mainland at the termini of the Cambodia-Thailand land boundary on the Gulf of Thailand, before progressing further and further offshore and ultimately joining up with the Vietnamese straight baseline system at Point "O" (see Section 7.2). This has the effect of giving the Cambodian baselines the appearance of steadily diverging offshore away from the general direction of the Cambodian mainland coastline (see Figure 4.1). The problems inherent in the practical application of the concept have, however already been outlined (see Section 3.3.3). Furthermore, the US guidelines foresaw the possibility of fringes of islands gradually working their way further and further offshore as an exceptional circumstance that *"would not be precluded"* from the US rule.[60]

One further major criticism of Cambodia's, and indeed Vietnam's, 1982 claim to straight baselines has been raised – the two countries' creation of a 'floating' basepoint unifying their straight baseline systems in the shape of Point "O". The US Department of State has commented on Point "O" in the following terms:

> *...point O is neither a high-tide elevation nor a low-tide elevation with a permanent structure; therefore, a basepoint at point O appears to be in violation of both the conventions cited above [the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone and UNCLOS].*[61]

Prescott has, however, pointed out that while this sort of arrangement is certainly unusual, it is by no means unique. Furthermore, and perhaps significantly, the US authorities have not censured the use of floating basepoints to integrate abutting straight baseline systems, for instance, in the cases of Denmark and Germany, Norway and Sweden and Finland and Sweden.[62] Admittedly Point O is much further offshore the

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60 It should be noted that this was envisaged in relation to a fringe consisting of *"...a number of islands that are not far separated."* As the islands Cambodia has claimed as a fringe are generally in excess of 24nm from one another, they presumably would not be considered close enough together to take advantage of this exception to the rule in the State Department's eyes.

61 US Department of State, 1983: 7.

62 Indeed, in relation to the Denmark-Germany floating basepoint the US Department of State merely observes that this point *"is not a standard insular or low-tide basepoint"*, while for the Norway-Sweden and Finland-Sweden points the descriptions of *"highly unusual"* and *"unusual"* represent the degree of criticism the US Department of State was prepared to offer (US Department of State, 1972a, 1972b and 1972c quoted in Prescott, 1998: 26-27).

mainland coast that the three other examples of state practice mentioned.[63] However, the US protest criticises Point O because of its floating nature, divorced from any insular feature, rather than the distance that it is removed from the coast. The US treatment of Cambodia and Vietnam's floating point therefore appears to be at odds with Washington's reaction to the use of the same technique by several northern European states. This apparent inconsistency on the part of the United States authorities does not make the use of floating basepoints necessarily correct, but it does go a long way to undermining the strength of the US protest.

It is therefore clear that the validity of Cambodia's 1982 straight baseline claim, and indeed its earlier such claims, is dependent upon the interpretation of Article 7 of UNCLOS. When measured against the text of Article 7 itself, vague as it is, it is difficult to fault Cambodia's straight baseline claim substantially. Furthermore, it can be maintained that such a claim is unremarkable in the context of general international state practice and thus emerging custom. Nevertheless, the use of the most seaward offshore features as basepoints, despite their relatively isolated nature and distance from one another, coupled with the apparent orientation of the system progressing further and further offshore and the oddity of a floating basepoint with Vietnam does, in this author's view, breach the spirit and intent of Article 7. It is, however, unsurprising that states, given the loose terminology of Article 7, have sought to maximise their claims to maritime space.

Despite this criticism of Cambodia's straight baselines, two points are worthy of consideration when considering Cambodia's claims in the Gulf of Thailand:

- the baselines on which Cambodia's continental shelf claims to extended jurisdiction were based; and,
- the claims of islands used as basepoints in their own right.

Firstly, it is important to realise that Cambodia made its currently held claim to continental shelf by means of a Kret dated 1 July 1972, that is, a decade *prior* to the latest straight baseline claim. The Cambodian claim to continental shelf therefore

63 Point O, if determined on the basis of equidistance, lies approximately 59nm (110km) offshore as measured on British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000. In contrast, the Denmark-Germany, Norway-Sweden and Finland-Sweden floating points all lie less than 12nm (c.22km) offshore.

appears to have been based on its earlier and far more conservative straight baseline claim promulgated in 1957 (Figure 4.1 and 4.2).[64]

Cambodia's claim to continental shelf was *not*, therefore, extended to accord with the straight baseline system when it was revised on 31 July 1982. As a result, Cambodia's claim to continental shelf is in fact based on a straight baseline system which, it can be more convincingly argued, conforms with the provisions of Article 7 of the UN Convention on the Law of the Sea.

Secondly, even if Cambodia's straight baseline system claim of 1982 were to be abandoned or discounted in the course of negotiations, this would not disqualify the islands used as basepoints or turning points in that system from generating maritime claims in their own right. Under Article 121(2) (see Section 3.5) of the UN Convention which deals with the regime of islands:

> *...the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.*

Islands are therefore entitled to the full suite of claims to maritime zones including, in particular, the most valuable categories from the perspective of potential area of jurisdiction generated – continental shelf and EEZ. The question of the zone generative capacity and rights of Cambodia's offshore insular features will be discussed in detail in Section 8.

An argument can therefore be advanced that Cambodia's current straight baselines claim conforms with the letter of Article 7 of UNCLOS, if not its spirit. However, as the islands used as basepoints in the claim can generate maritime claims on Cambodia's behalf in their own right, and as Cambodia's continental shelf claim is based on earlier and more conservative baseline claims it can also be argued that the allegedly excessive aspects of the 1982 claim have little material impact on the question of maritime boundary delimitation with Cambodia's neighbours. With this in mind, it would seem to cost Cambodia little to pull back its claim at least to that of 1972.[65] The

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64 However, as the straight baselines Cambodia claimed in 1972 post-dated Phnom Penh's continental shelf claim of the same year by only a month it would be surprising if the 1972 straight baselines were not at least borne in mind in the drafting of the continental shelf claim. Even if this was the case, however, it is clear that Cambodia's 1972 straight baselines claim is significantly more conservative than that of 1982.

65 In relation to the maritime areas offshore the Cambodian mainland coast - excluding Phu Quoc island in light of the Cambodia-Vietnam agreement regarding islands. Similarly, the 1972 claim's illegal use of Condor Reef as a basepoint would ideally be amended.

key disadvantage of such an action from the Cambodian perspective, however, is that the exclusion of Poulo Wei from the straight baselines and thus the failure to unify the Cambodian and Vietnamese straight baseline systems would serve to undermine the validity of the joint Historic Waters area with Vietnam, which lies entirely landward of the two states' baselines and thus in their claimed internal waters, to which both countries apparently remain committed.[66]

One suggested option for Cambodia to consider would be to amend the 1982 claim to include an additional basepoint. This would serve to safeguard the joint Historic Waters area and would have minimal impact on its claims to extended maritime jurisdiction. It would also address some of the criticisms that can be levelled at the 1982 claim. The incorporation of the islet west of Koh Prins between Koh Kusrovie and Ilot Veer would serve to break up the longest straight baseline segment of the 1982 claim between Kusrovie and Ilot Veer of 51.84nm (96km) into two segments from Kusrovie to Prins and Prins to Veer of 44.55nm (82.5km) and 7.83nm (14.5km) respectively.[67] Such an amendment would not, however, have a major impact. The area of internal waters and territorial sea claimed from this configuration of baselines as opposed to those of 1982 would be reduced by 80nm^2 (275km^2) and 17nm^2 (57km^2) respectively. The area of internal waters beyond 12nm from the coast would also be reduced by 30nm^2 (103km^2) and additional territorial sea beyond 12nm by an area almost identical to the reduction of the overall territorial sea claim. The proportions of "additional" waters beyond 12nm from the coast of the overall claims to internal and territorial waters would therefore fall to 5.8% (from 6.7%) and 41% (from 42%) respectively.[68]

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66 It should be noted that the current Cambodian premier, Hun Sen, is the signatory of the Historic Waters Agreement with Vietnam. For its part, Hanoi has offered no indication that it considers the agreement anything other than valid.

67 Prescott (1998: 27) notes the reduction in the claim to additional waters beyond 12nm from the coast as a result of including Koh Prins as a basepoint in the straight baseline system, finding that *"None of the area enclosed by Cambodia's straight baselines would lie outside the territorial waters and the contiguous zone drawn from normal baselines..."* and that this *"confirms that the enclosed waters are sufficiently closely linked to the land domain to be subject to the regime of internal waters."* However, it should be pointed out that the entirety of the area enclosed by Cambodia's 1982 straight baselines claim falls within 24nm (i.e. the combined breadth of the territorial sea and contiguous zone) of the coast even in the absence of this amendment.

4.3 Malaysia's Straight Baseline Claims in the Gulf of Thailand

Any discussion of Malaysia's straight baseline system requires a certain amount of educated guesswork. Indeed, Malaysia has not in fact formally claimed or defined a straight baseline system along its coast. However, other Malaysian legislation and official documents *infer* that such a straight baseline system has been constructed.[69]

The first indication of a Malaysian claim to straight baselines came by Ordinance No.731 of 2 August 1969.[70] This was issued as a prelude to Malaysia's continental shelf boundary agreement with Indonesia of the same year. It was intended to put Malaysia on an equal footing with Indonesia, which had already established an archipelagic baseline system, by establishing straight baselines for Malaysia for the purposes of boundary delimitation.[71] No coordinates for or map of the straight baseline claim were provided at that time. However, the Office of the Geographer of the US Department of State when reproducing the Malaysia-Indonesia continental shelf agreement of 7 November 1969 in its *Limits in the Seas* series, referred to, *"Malaysia's recently constructed baselines."*[72]

Subsequently, in its analysis of the Indonesia-Malaysia territorial sea boundary of 10 March 1971, the Office of the Geographer noted that, *"Malaysia appears to have a system of straight baselines."*[73] The same report went on to state that although Malaysia had never officially announced any straight baselines, from an analysis of both the Malaysia-Indonesia continental shelf and territorial sea boundary agreements, *"it is obvious that Malaysia employed some system of straight baselines from which to measure the extent of its claimed territorial sea"* and that the same system was used by Malaysia *"to acquire an 'equitable' share of the continental shelf of the Strait of Malacca."*[74] Furthermore, in its *Fisheries Act* of 1985 (see Section 7.9) Malaysia defines its internal waters as *"any areas...that are on the landward side of the baselines*

68 These figures were calculated using a planimetre and a copy of British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000.

69 Inquiries to the Malaysian Ministry of Foreign Affairs in December 1998 indicated that no baselines map or list of coordinates had been issued. Confirmed by Haller-Trost (personal communication, 11/6/99).

70 Copy on file with the author.

71 US Department of State, 1985: 111.

72 US Department of State, 1970: 2.

73 US Department of State, 1973: 3

74 US Department of State, 1973: 3

Figure 4.5 *Excerpt from the 'Malaysian Map' or Peta Baru*

Source: Director of National Mapping, Malaysia, 1979

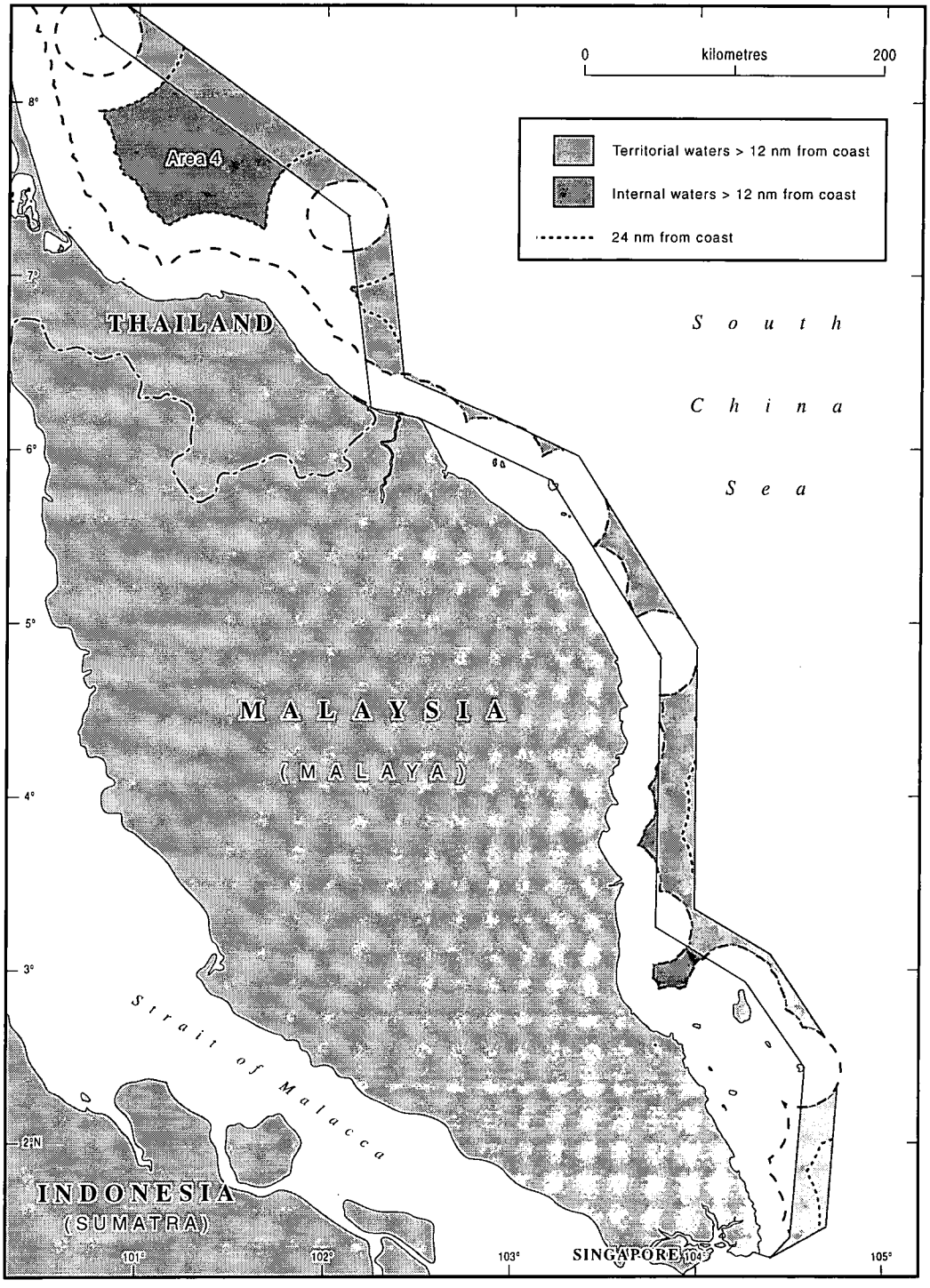


Figure 4.6 *Straight Baselines Off Eastern Peninsula Malaysia*
Source: Author's research.

from which the breadth of the territorial sea of Malaysia is measured" thus strengthening the implication that straight baselines had been claimed.[75]

The actual position of Malaysia's straight baseline system can be deduced from two maps issued by the Malaysian Directorate of National Mapping on 21 December 1979 in order to illustrate Malaysia's agreed maritime boundaries and the limits of Malaysia's unilateral territorial sea and continental shelf claims. Together these were called the *Peta Menunjukkan Sempadan Perairan dan Pelantar Benua Malaysia* or *"Map Showing the Territorial Waters and Continental Shelf Boundaries of Malaysia."*[76] One sheet covered Sarawak and Sabah while the other, relevant to claims in the Gulf of Thailand, dealt with peninsula Malaysia. An excerpt from the latter chart is included here as Figure 4.5. Although no baselines are shown on either map and the shading representing Malaysian territorial waters extends right up to the coast with no distinction for internal waters, where there are no agreed boundaries, the outer limit of the Malaysian territorial sea claim is marked, significantly, with straight lines.[77] Such a configuration could only occur by virtue of the outer limit of the Malaysian claim being constructed from a system of straight baselines.

It follows, therefore, that by drawing lines parallel to the outer limit of the Malaysian territorial sea claim but 12nm landward of that line, Malaysia's straight baseline system can be (re)constructed and the relevant turning points identified and mapped (see Figure 4.6). When this exercise is undertaken it can be determined that for the portion of the Malaysian coast relevant to the Gulf of Thailand, the east coast of peninsula Malaysia, Malaysia's inferred baselines connect points on the mainland coast as well as the outermost of the islands fringing portions of that coast.[78]

From the terminus of the Malaysia-Thailand land boundary on the coast,[79] it can be inferred that Malaysia's straight baselines claim proceeds to a point on the coast near Kuala Besar then to a point on the coast in the vicinity of Kampung Sabak (see Figures 4.5 and 4.6). From this point Malaysia's straight baselines extend in a southeasterly direction, beyond the confines of the Gulf of Thailand proper, to the fringing islands of Pulau Perehentian Besar, the northern cape of Pulau Redang, Pulau Lima, Pulau Yu

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75 Haller-Trost, 1996: 328.

76 Published by the Malaysian Directorate of National Mapping (Haller-Trost, 1998: 1) and referred to hereinafter as the 'Malaysian Map' or by its Malaysian shorthand *Peta Baru*.

77 Haller-Trost, 1996: 317.

78 Prescott, 1985a: 214.

Besar, Pulau Tenggol, Pulau Berhala (Pulau Varella), the northern cape of Pulau Tioman and a point on the eastern coast of Pulau Aur before terminating at what appears to be another 'floating' point 12nm landward of the territorial waters limit located on the Malaysia-Indonesia continental shelf boundary. The locations of the turning points in this system are summarised in Table 4.8 and illustrated on Figure 4.6.

Strictly speaking, the Gulf of Thailand has been defined as being limited by a line joining Vietnam's Mui Cau Mao Point and a point on the Malaysian coast near Kota Bharu. Therefore, only the first and part of the second straight baseline segments extending along the Malaysian coast from the boundary with Thailand lie within the Gulf of Thailand proper. These segments are 8.2nm (15.1km) and 6.4nm (11.8km) long respectively.[80] Nevertheless, as the delimitation between Malaysia and Vietnam extending beyond the strict limits of the Gulf falls within the confines of this study, it is appropriate to examine Malaysia's claimed baselines along the whole of the eastern coast of the peninsula. The lengths of the remaining nine segments on fronting the east coast of peninsula Malaysia are summarised in Table 4.9. The total length of Malaysia's straight baselines along this portion of its coastline is approximately 356.8nm (660.7km) giving an average baseline segment length of 32.4nm (60.1km) with the longest segment being 92.33nm (171km) in length.

79 This point coincides with turning point 47 of Malaysia's maritime claims as expressed in the Malaysian Map of 1979 and with the first point of the Malaysia-Thailand territorial sea boundary of the same year - 6°27.5'N, 102°10'E (see Section 6.2.2).

80 Measured on British Admiralty Chart 3961, 1993 edition at a scale of 1:240,000.

Table 4.8 ***Malaysia's Straight Baselines Claim Off Eastern Peninsula Malaysia: Locations of Turning Points***

Point	Location	Coordinates		Distance of Island/Point Offshore
		Latitude	*Longitude*	
A	Malaysia-Thailand land boundary terminus	6° 14' 30" N.	102° 05' 36" E.[81]	–
M1	Point on the coast near Kuala Besar	5° 13' 15" N.	102° 13' 40" E.	–
M2	Point on the coast in the vicinity of Kampung Sabak	5° 10' 30"N.	102° 20' 20" E.	–
M3	Pulau Perehentian Besar	5° 55' 30" N.	102° 45' 45" E.	8.64nm (16km)
M4	Northern cape of Pulau Redang	5° 49' 00" N.	103° 00' 45" E.	12.55nm (23.25km)
M5	Pulau Lima	5° 47' 30" N.	103° 02' 50" E.	14.85nm (27.5km)
M6	Pulau Yu Besar	5° 38' 40" N.	103° 09' 05" E.	12.01nm (22.25km)
M7	Pulau Tenggol	4° 48' 30" N.	103° 41' 10" E.	13.63nm (25.25km)
M8	Pulau Berhala (Pulau Varella)	3° 14' 45" N.	103° 40' 00" E.	12.42nm (23km)
M9	Northern cape of Pulau Tioman[82]	2° 56' 05" N.	104°11' 55" E.	27.27nm (50.5km)
M10	Point on the eastern coast of Pulau Aur	2° 27' 00" N.	104° 32' 55" E.	32.4nm (60km)
M11	Floating point 12nm landward of territorial waters limit located on Malaysia-Indonesia continental shelf boundary	2° 22' 15" N.	104° 22' 05" E.	9.72nm (18km)
Average				**15.94nm (29.5km)**

Source: *Peta Baru* (1979), Haller-Trost (1998) and author's research.

[81] These coordinates is consistent with those provided in the Malaysia-Thailand treaty on their territorial waters boundary (see Section 6.2.2).

[82] The north cape of Pulau Tioman is located at 2° 53' 45" N., 104°10' 30" E, as measured on British Admiralty Chart 3543, 1965 edition at a scale of 1:500,000.

Table 4.9 *Malaysia's Straight Baselines Claim Off Eastern Peninsula Malaysia: Segment Lengths*

Segment	Length
A-M1	8.23nm (15.1km)
M1-M2	6.4nm (11.8km)
M2-M3	29.16nm (54km)
M3-M4	15.66nm (29km)
M4-M5	2.56nm (4.75km)
M5-M6	10.53nm (19.5km)
M6-M7	57.37nm (106.25km)
M7-M8	90.17nm (167km)
M8-M9	35.91nm (66.5km)
M9-M10	34.42nm (63.75km)
M10-M11	62.64nm (116km)
Total	**353.05 (653.85km)**
Average	**32.1nm (59.44km)**

Source: *Peta* Baru (1979) and author's research.

While not overly long, the baseline segments fronting the Malaysian coast within the Gulf of Thailand proper nevertheless seem to breach the provisions of Article 7 of UNCLOS. As there are no fringing islands off the Malaysian coast within the strict definition of the Gulf of Thailand,[83] straight baselines can only be justified on the basis of the coastline being deeply indented or cut into (see Section 2.3.3).[84] It is hard, if not impossible, to maintain that the coastline fronted by the two baseline segments immediately south of the boundary with Thailand is deeply indented (see Figure 4.5). An alternative justification for straight baselines might be on the grounds of the presence of a delta and a highly unstable coast. A delta certainly exists at the mouth of the Sungei Kelantan and the *"barrier spit"* coastline in this area, dominated by the progradation of the spit at Tumpat (see Figure 6.1), is clearly unstable. It is equally plain, however, that the straight baselines Malaysia has constructed in this area are not confined to the delta of the Sungei Kelantan or, indeed, that of the Sungei Golok at the Malaysia-Thailand land boundary on the coast.[85] In other words, therefore, the

83 There are, however, a number of islands, close in-shore, which are associated with the fan-shaped delta at the Sungei Kelanatan river mouth near Tumpat.

84 UNCLOS Article 7(2) provides that *"Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low water line and notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention."*

85 Bird, 1985: 115; Bird and Schwartz, 1985: 792-793. Bird (1985: 115) includes a diagram based on earlier work by Koopmans (1972) which well illustrates the active characteristics of the Sungei Kelantan delta and the Tumpat spit (Pantai Laut) in particular. Between 1944 and 1982 the spit grew and migrated westwards until it enclosed the whole of the Bay of Tumpat, cutting it

Malaysian straight baselines are not claimed on the basis of the existence of a delta or deltas and the instability of the coast. Furthermore, Article 7(2)'s provisions concerning deltas and unstable coastline have to be read in conjunction with rather than as an alternative to paragraph 1 of Article 7 stipulating that there must exist either a fringe of islands or that the coastline in question be deeply indented or cut into (see below).

As a consequence of the generally smooth nature of the coastline concerned, the indentations closed by the baselines are shallow and thus the area of internal waters enclosed is limited, amounting to approximately 6.8nm^2 (23.2km^2), the entirety of which is comfortably within 12nm of the mainland coast.[86] Similarly, of the 216.7nm^2 (743.3km^2) of territorial waters claimed by Malaysia from the straight baselines within the Gulf, only 11.8nm^2 (40.5km^2) or 5.45% lies beyond 12nm from the mainland coast.[87] Despite the minimal impact of the Malaysian straight baselines within the Gulf of Thailand on claims to maritime jurisdiction, it would seem correct to conclude that the normal baseline would have been appropriate for the coastline in question.

The influence of the Malaysian straight baselines on claims to maritime jurisdiction further south, where fringing islands are involved, is, however, more profound. In her comprehensive study of Malaysia's maritime and territorial claims, Haller-Trost makes several observations concerning the straight baselines fringing peninsula Malaysia's eastern coast.[88] As well as stating that the baselines in question follow the general direction of the coast, Haller-Trost argues that the maritime space landward of the straight baselines is sufficiently close to the land domain, and that these waters are *"mostly less than 13 fm, and numerous shoals, often with less than 5 fm clearance are scattered between the mainland coast and the baselines."*[89] Haller-Trost goes on to describe the coastline fronted by the straight baselines in question as being *"considerably unstable, especially near the various river mouths"* as a consequence of *"currents impinging on the shore"* such that *"the shoreline changes continually"* and that these factors serve to justify the application of straight baselines.[90] Haller-Trost supplements the argument that the Malaysian straight baselines in question are *"legally*

off from the open sea. This barrier spit was subsequently breached and large portions of it transported westwards along the coast towards Thailand. However, the process is repeating itself and the 1987 edition (with minor corrections to 1998) of Chart 3961 shows a renewed spit extending west from the delta (see Figure 6.1).

86 Measured on British Admiralty chart 3961, 1987 edition at a scale of 1:240,000.

87 Measured on British Admiralty chart 3961, 1987 edition at a scale of 1:240,000.

88 Haller-Trost, 1998.

89 Haller-Trost, 1998: 96.

90 Haller-Trost, 1998: 96.

justifiable" on the basis outlined above by stating that this is reinforced by the fact that *"a baseline, which frequently 'jumps' from the coast to offshore islands and back to the coast, would create a territorial sea delimitation which, in practice, will prove difficult to be enforced."*[91] Such an alignment of straight baselines is presumably what Haller-Trost anticipates were a less liberal interpretation of Article 7 to be applied to the coastline in question than that used by the Malaysian authorities in constructing their straight baselines. Furthermore, the author states that all the baseline coordinates lie *"less than 24nm from the main coast"* and that although certain baseline segments are up to 94nm in length that this is nevertheless acceptable.[92] This view of Malaysia's straight baselines along the eastern coast of peninsula Malaysia as being in accordance with international law is to some extent supported by Valencia.[93]

While Haller-Trost's contention that the baseline system accords with the general direction of the coast can be maintained, particularly in light of the problems encountered in the practical application of the concept of general direction (see Section 3.3.3), clearly this represents only one of the requirements laid down in Article 7 and thus in isolation is insufficient to justify the drawing of straight baselines. Several of the author's other comments are also open to question – particularly when set against the comparatively restrictive US guidelines on the drawing of straight baselines.

With regard to baseline length, of the 11 baseline segments under consideration, three are in excess of the US-suggested limit of 48nm with the longest being almost double that length.[94] Clearly Haller-Trost interprets the provisions of Article 7 liberally, suggesting a maximum baseline segment length of 100nm.[95] Even so, it could just as

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91 Haller-Trost, 1998: 97.

92 Haller-Trost, 1998: 97. Prescott (1985b) has merely commented that *"some sections"* of the inferred baselines cannot be justified according to the UN Convention's provisions.

93 Valencia (1991: 20) comments explicitly that *"the inferred Malaysian baselines along the east coast of the Malay Peninsula are in conformance with the Convention."* He does, however. note that this is based on the assumption that the northern terminus of the straight baselines would be the headland east of Kota Baru and that an extension of the straight baselines further northwest to the Thai-Malaysian land boundary terminus on the coast (as seems to be the case) would not be justified. Valencia also undermines his argument somewhat by justifying Malaysia's baselines through comparison with those of Vietnam: *"Given that its own baselines are not in conformance with the convention, Vietnam should not object to the baselines Malaysia appears to have used off the east coast of its Peninsula."* While state practice is an important yardstick for the validity or otherwise of straight baseline claims, Valencia's argument here does seem to be a case of 'two wrongs making a right'.

94 US Department of State, 1987: 14.

95 Haller-Trost, 1998: 89. The author bases this recommendation on a misreading of Article 47 of UNCLOS which states, according to Haller-Trost, that *"archipelagic baselines shall not exceed 100nm."* In fact Article 47 provides that no archipelagic baseline segment should exceed 125nm in length and that no more than 3% of the total number of segments should exceed 100nm in length. Haller-Trost also suggests that, based on Article 76, *"where states intend to claim a*

easily be argued that several of Malaysia's claimed straight baselines along this section of its coastline are excessively long. Nevertheless, it is well to recall that Article 7 itself does not define a maximum baseline segment length. As was the case for Cambodia's 1982 claim, the longest segment in the Malaysian system (57.4nm) is less than the average of the longest segments of straight baselines claims around the world summarised in Appendix 4 (64.8nm). This indicates that the Malaysian claim is arguably in keeping with international practice.

The US guidelines also provide that fringing islands should be no more than 24nm from one another.[96] Of the eight straight baseline segments off eastern peninsula Malaysia joining fringing islands, five exceed this limit while the average distance between fringing islands is almost 40nm. Furthermore, one of the Malaysian basepoints inferred from the territorial waters limits included in the 1979 'Malaysian Map' does not appear to be located on an island at all. At the southern end of the peninsula Malaysia, the Malaysian claimed territorial sea limit terminates at a point on the continental shelf boundary between Malaysia and Indonesia.[97] The point 12nm landward of that location on the Malaysia-Indonesia maritime boundary, that is the basepoint from which the Malaysian territorial sea boundary must have been constructed, does not, however, appear to be located on land and therefore represents a 'floating' point.[98] Such a basepoints seemingly not anchored to the land and not serving to unite two neighbouring baseline systems (as is the case for Point "O" between Cambodia and Vietnam), must be viewed as being at odds with the law of the sea.

Haller-Trost's justification of these straight baselines on the basis of the instability of peninsula Malaysia's eastern coast seems superficially attractive. Indeed, it has been noted that over 90% of the eastern coast of peninsula Malaysia consists of sandy beaches and, quite apart from normal seasonal variations, the coastline is subject to longer-term progradation or retrogradation, this being most evident at river deltas – thus supporting the contention that the coastline is highly unstable.[99] However, the United Nations Group of Technical Experts on Baselines pointed that the second

continental shelf of more than 200nm" individual baseline segments should not exceed 60nm in length (Haller-Trost, 1998: 89).

96 US Department of State, 1987: 17.

97 United States, 1970.

98 Measured on British Admiralty Chart 3543, 1965 edition at a scale of 1:500,000.

99 Bird, 1985: 115; Bird and Schwartz, 1985: 789-795. Bird goes on to note that the *"...deltaic coastlines at the mouths of the Endau, the Terengganu, and the Kelantan rivers have prograded by the advance of mainly swampy fringes, with some sandy shores, but there have also been episodes of recession."*

paragraph of Article 7, dealing with the presence of deltas and highly unstable coastlines, *"is subordinate to paragraph 1, and is not an alternative to it"* and stressed the word "and" used in the phrase *"delta and other natural conditions."*[100] Thus, for paragraph 2 of Article 7 to apply, the conditions laid out in paragraph one must be fulfilled. Furthermore, paragraph 2 only applies where there is a delta rather than any other situation where the coastline is highly unstable, because Article 7(2) does not apply where there is the presence of a delta or other natural conditions causing the coastline to be unstable. For the east coast of peninsula Malaysia, therefore, Article 7(2) applies only if that coastline is either deeply indented or cut into coastline; or a fringe of islands exists along it in its immediate vicinity. In addition, even if Article 7(1) is fulfilled, Article 7(2) is applicable only to those restricted parts of the coastline, where deltas exist and this paragraph cannot therefore provide the foundation for a claim to straight baselines along the entirety of the coastline as has been claimed in this case.

In any case, it is unclear that the eastern coast of peninsula Malaysia is indeed *"considerably unstable"* as Haller-Trost suggests.[101] While, as noted, the literature does provide some support for the argument that the coastline in question is less than stable, commentators are not unanimous on this issue. For instance, although Bird and Schwartz in their survey of the world's coastlines note that the east coast of Malaysia is *"subjected to northeast monsoon storms and swells from the South China Sea"*, maintain that the coastline of peninsula Malaysia as a whole *"has been stable since [the] Late Tertiary"* period.[102]

As far as the question of whether the fringing islands utilised in the portion of Malaysia's straight baseline system under review are sufficiently close to the coast to be considered in its *"immediate vicinity"*[103] and such that the waters enclosed by the baselines are *"sufficiently closely linked to the land domain to be subject to the regime of internal waters"*[104], the following observations may be offered. The US guidelines suggest that fringing islands should be, at maximum, no more than 48nm offshore.[105] Haller-Trost states that straight baseline turning points concerned are, in fact, all within 24nm of the mainland coast *and "thereby comply to the test of coalescing territorial*

100 United Nations, 1989a: 21-23.
101 Haller-Trost, 1998: 96.
102 Bird and Schwartz, 1985: 789.
103 UNCLOS, Article 7(1).
104 UNCLOS, Article 7(3).
105 US Department of State, 1987: 22.

seas."[106] When plotted on appropriate charts,[107] however, it becomes clear that two of the points – those on Pulau Tioman Pulau Aur – are over 24nm from the mainland coast (see Table 4.8). All the islands used as basepoints for Malaysia's straight baseline system off peninsula Malaysia do, however, fall within 48nm of the coast with the average distance offshore of basepoints located on fringing islands being just under 19nm – within the limitations set by the US recommendations.

If the "additional" waters test previously described is applied to the eastern coast of peninsula Malaysia, the total area of internal waters claimed within the straight baseline amounts to 5,502.7nm^2 (18,87.51km^2). Of this area, of the order of 330.26nm^2 (1,132.76km^2), or just over 6% of the total, lies beyond 12nm from the nearest normal baseline and therefore constitutes "additional" waters which would fall outside Malaysia's territorial sea in the absence of the straight baseline claim. None, however, lies beyond 24nm from the nearest mainland point.[108] As far as territorial waters are concerned, the total claimed seaward of the baselines claimed amounts to 4,291.76nm^2 (14,720.16km^2) of which 2,030.7nm^2 (6,965.02km^2), or 47%, lies beyond 12nm from the nearest coastline. Furthermore, of the order of 147.38nm^2 (505.51km^2), of the Malaysian territorial sea claim for this part of its coastline, 3.4% of the total, lies beyond 24nm from the coast (see Figure 4.6).[109]

Haller-Trost also refers to the shallow nature of the waters enclosed by the straight baselines off eastern peninsula Malaysia and the presence of numerous shoals between the baselines and the mainland as factors supporting the construction of the straight baseline system. Article 7 makes no mention of depth as a criterion justifying the application of straight baselines and technically, therefore, this consideration must be viewed as being irrelevant. Nevertheless, the author's meaning is clear – the shallow, islet-strewn character of the waters enclosed supports the contention that these areas are of a profoundly inshore nature and therefore close enough to the land rather than sea domain to be considered suitable for conversion to internal waters status. The presence of numerous shoals, which may qualify as low-tide elevations or even insular features (see Section 3.5), is potentially more relevant. Shoals qualifying as low-tide elevations and which are within 12nm of the nearest island or mainland coast, can themselves be

106 Haller-Trost, 1998: 96.

107 British Admiralty Chart 3543, 1965 edition at a scale of 1:500,000.

108 Calculated using a planimetre and British Admiralty Chart 3542, 1960 edition at a scale of 1:500,000 and Chart 3543, 1965 edition at a scale of 1:500,000.

used to generate a claim to territorial sea. It may well be, therefore, that a number of such features exist but are not clearly marked on the scale of charts used for the measurement of "additional" waters claimed, leading to an overestimation of the proportion of "additional" waters claimed beyond 12nm from the coast.[110]

Overall, it seems difficult to sustain either that the coast of peninsula Malaysia is deeply indented or that the islands used as basepoints for the straight baseline system, or enclosed by that system, comprehensively fringe or mask the coast in its immediate vicinity. It could also be argued that the sea area enclosed by the straight baseline system is not sufficiently linked to the land domain to be considered suitable to be categorised as internal waters – at least according to the US rules. Having noted these issues of concern, however, it is worth considering that Malaysia's apparent straight baseline claims are not out of character in terms of general state practice or as far as the Gulf of Thailand specifically is concerned.[111]

International reaction to Malaysia's straight baseline claim off the coast of peninsula Malaysia has been mixed. For instance, the baselines received a degree of international recognition in that they were used as the basis for Malaysia's continental shelf claims vis-à-vis Indonesia resulting in their 1969 boundary agreement. Indeed, Malaysia's straight baselines are believed to have been established precisely in order to counter Indonesia's archipelagic baselines claim with continental shelf delimitation in mind. This fact may go a long way to explaining why Malaysia chose to enclose its eastern peninsula Malaysia coast with straight baselines - this may have been seen as an effective means to counter balance Indonesia's straight (archipelagic) baselines along the whole of its coast.[112] The straight baselines located in the vicinity of the Thai-Malaysian land boundary terminus on the Gulf of Thailand were, however, discounted for the purpose of constructing the Thai-Malaysian territorial sea and (partial) continental shelf agreements off this coastline (see Section 7.1.3). Malaysia's straight baselines claim have not therefore posed a major impediment to the conclusion of

109 Calculated using a planimetre and British Admiralty Chart 3542, 1960 edition at a scale of 1:500,000 and Chart 3543, 1965 edition at a scale of 1:500,000.

110 Having made this observation, it should be noted that charts at a scale of 1:500,000 were used for determining "additional" waters areas which is considered an appropriately detailed scale for the task. Furthermore, the charts are specifically deigned as aides to navigation and could be legitimately expected to illustrate the presence of all known low-tide elevations and other similar potential hazards to navigation.

111 For instance, the longest straight baseline segment along Malaysia's eastern peninsula coast is approximately 90nm long (see Appendix 4).

112 Haller-Trost, 1996: 322.

maritime boundary agreements. Similarly, Malaysia's straight baselines do not appear to have been relevant in the construction of Malaysia's continental shelf claim vis-à-vis Vietnam in the central Gulf of Thailand, a part of which became the northern boundary of the Malay-Vietnamese Defined Area.[113] It is also clear that there has been a distinct lack of formal protests against Malaysia's straight baseline system, but this may well be more attributable to the fact that Malaysia has not formally admitted to the existence of the baselines in question, let alone their precise location!

Nevertheless, Malaysia's straight baselines along its eastern peninsula coast remain significant. This is because even though maritime boundary agreements have been concluded with Thailand and Indonesia and joint development agreements with both Thailand and Vietnam, the continental shelf agreement with Thailand is only partial, while both joint development agreements merely defer maritime boundary delimitation to a later date. In due course it is anticipated that both the Thai-Malaysian Joint Development Area and the Malay-Vietnamese Defined Area will be divided between the parties at which time baseline considerations will once again come to the fore.[114]

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113 The northern limit of the Defined Area is described by three points, from west to east - A, F and E (see Section 7.3 and Figure 1.1). Point A is equidistant from the Malaysian island of Redang and the Thai island of Ko Losin, ignoring Vietnamese features. Point F is equidistant between Redang and the Vietnamese mainland, thus ignoring Vietnamese islands. Point E is equidistant from Indonesia, Malaysia and Vietnam; the Malaysian island of Tenggol and the Vietnamese rocks offshore Hon Khoai being the relevant points (Charney and Alexander, 1998: 2,337). Thus, although both Redang and Tenggol islands are included in Malaysia's straight baseline system, the system itself had no apparent impact on the extent of Malaysia's continental shelf claim in this area.

114 This is perhaps particularly true in relation to Thailand. Whereas when the territorial sea and partial continental shelf agreements were concluded with Thailand in 1979 Malaysia's straight baselines were apparently discounted, the situation has since progressed. In 1979, Thailand's claimed straight baselines were remote from the area subject to delimitation with Malaysia. The normal baseline was therefore used by both sides. In 1992, however, Thailand claimed an extension to its straight baseline system extending down the western coast of the Gulf via Ko Losin to terminate at the Thai-Malaysian land boundary terminus on the coast (Area 4) (see Section 6.2.3). It remains to be seen whether this development impacts on future Thai-Malaysian negotiations concerning the division of the Joint Development Area. At the time of writing this certainly seems to be a distant prospect.

4.4 Thailand's Straight Baseline Claims in the Gulf of Thailand

4.4.1 Introduction

There are three distinct phases evident in the development of Thailand's straight baseline system. Firstly, the declaration of the Bight of Thailand as a historic bay in 1959. Secondly, the designation of two groups of straight baselines in the Gulf of Thailand in 1970 and finally, the promulgation of fresh legislation relating to straight baselines in the Gulf in 1992.

4.4.2 Thailand's Historic Bay Claim

In 1959 Thailand issued a decree, published in the Royal Gazette of 22 September, which extended its provincial boundaries closing the northernmost extension of the Gulf of Thailand - the Bight of Thailand - with a bay-closing line:

> *The Council of Ministers deems it proper to give notification reaffirming that the Bight of Thailand...is the historical gulf and that the waters to the north of the said base line are territorial waters of Thailand. Thailand has so held since time immemorial.*

Thailand has therefore closed the Bight of Thailand as a historic bay (see Section 2.3.5) (Figure 4.7).[115] As part of the Thai 1959 legislation the area to the north of the bay closing line was defined as Thailand's *"territorial waters."*[116] In fact, the area to the north of the line should be considered to be Thailand's *internal* waters.[117] Indeed, Thailand's territorial waters should extend seawards from the straight baseline closing the bay.

Even so, this distinction makes little material difference and Thailand's historic waters claim to the Bight of Thailand has not elicited any known international protests.[118] Indeed, even the United States has proved silent in relation to Thailand's

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115 Nixon (1981: 16) notes that although no motive was given for the historic bay claim, Thailand's interests *"probably involve both coastal fishing and security."*

116 US Department of State, 1971a: 3; United Nations, 1989b: 306.

117 While the US Department of State study cites the Thai Decree as claiming the waters landward of the closing line as being Thailand's *"territorial waters"*, the United Nations study and Scovazzi *et al.* (1989: 60) quote the decree as claiming the waters north of the closing line as *"internal waters."* It is therefore possible that the Thai authorities have amended the decree in order to correct this apparent error in its wording when first issued.

118 According to Ake-uru (1987: 420-21) of the Thai Foreign Ministry, Thailand's declaration of the Bight of Thailand as a historic bay didn't meet with any protests because prior to declaring it Thailand had *"sought out ideas in the first Conference on the Law of the Sea at Geneva in 1958."*

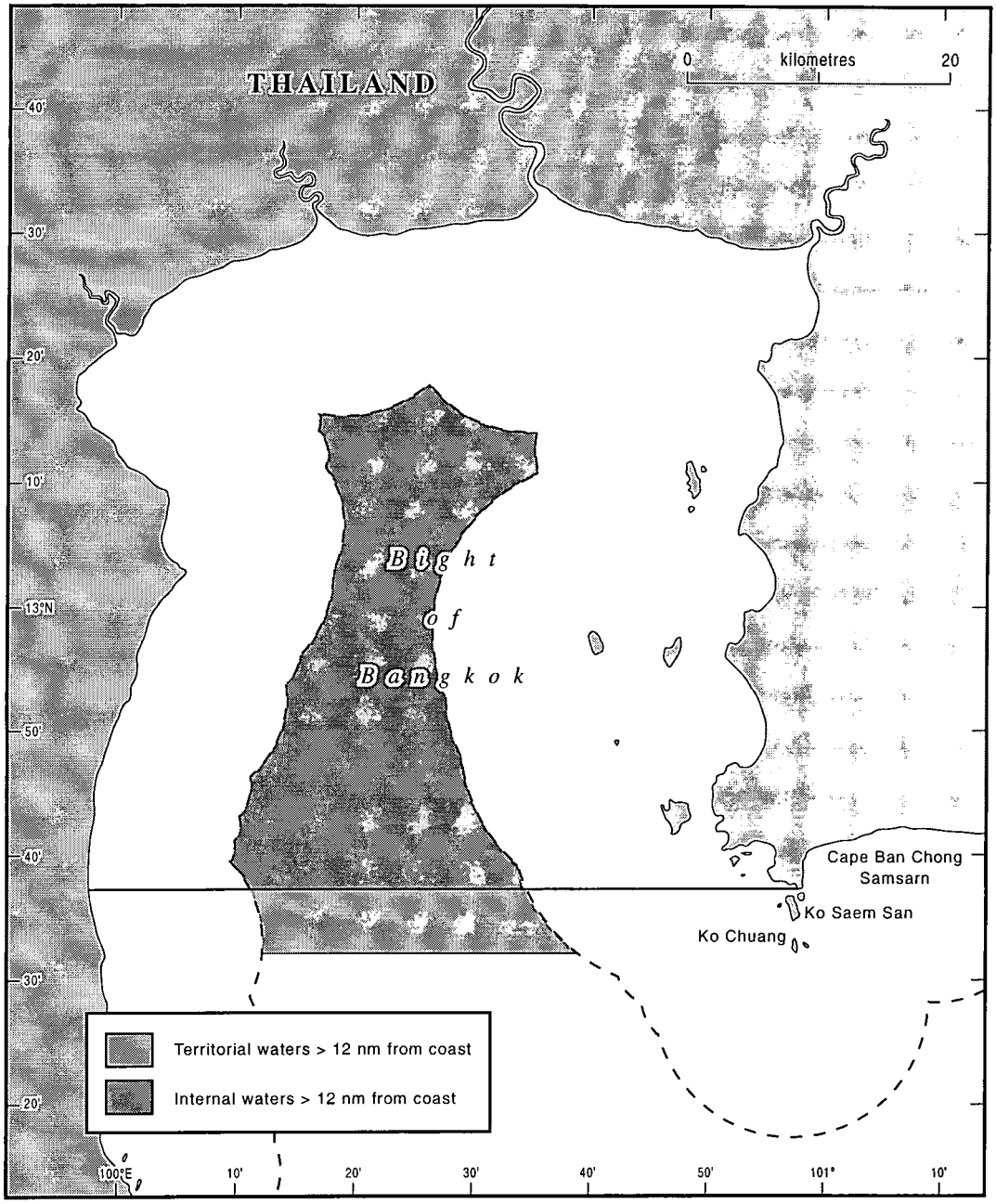


Figure 4.7 *The Bight of Thailand Historic Bay Closing Line*
Source: Author's research.

historic claim to the Bight of Thailand. This places Thailand's claim in a rather select minority - of 18 claims to historic bays or waters, the United States has seen fit to issue protests or assertions concerning 15 of them.[119] In fact, the waters of the Bight of Thailand have been described as being *"eminently suitable"* for inclusion in a historic bay claim.[120] This is because the area enclosed is surrounded by Thai territory on three sides, has historically been used by Thai fishermen and for approaching the port serving the Thai capital, Bangkok. In addition, the bay closing line, situated as it is in the extreme north of the Gulf of Thailand, has no influence Thailand's maritime boundary claims vis-à-vis its maritime neighbours.

The Bight of Thailand certainly would not qualify as a juridical bay in the absence of the historic claim. The bay closing line itself is 59.15nm (109.55km) in length - almost two and a half times the maximum length of closing line laid down under Article 10 of UNCLOS for non-historic bays (see Section 2.3.5).[121] The Bight of Thailand would, however, comfortably meet the semi-circle test outlined in Article 10.[122] The closing line stretches from a point on the Bahn Chong Samsarn peninsula to a point at the same latitude[123] on the west coast of the Gulf of Thailand. The total maritime area enclosed within the historic bay is 2,833.7nm^2 (9,719km^2). Of this area, 672.5nm^2 (2,306.7km^2) or 23.7% lies beyond 12nm from the coast and therefore represents "additional" waters that Thailand would not otherwise exert jurisdiction over in the absence of the historic bay claim. In addition, of the 849.5nm^2 (2,913.7km^2) of territorial waters claimable from the Bight of Thailand closing line, 348.1nm^2 (1,193.8km^2) or 41% - lies beyond 12nm from the nearest Thai normal baseline and therefore also constitutes a Thai jurisdictional 'gain' as a consequence of the 1959 claim (Figure 4.7).[124]

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119 The 18 claims are those of Argentina, Australia, Cambodia, Canada, the Dominican Republic, Egypt, El Salvador, Honduras, India, Italy, Kenya, Libya, Panama, the (former) Soviet Union, Sri Lanka, Thailand, Uruguay and Vietnam. It should be noted that Cambodia and Vietnam made a joint claim to part of the Gulf of Thailand (see Section 7.2), that India and Sri Lanka also made their claims by means of an agreement with one another and the El Salvador and Honduras's claims both relate to the same body of water - the Gulf of Fonseca. The latter pair of claims, the consequence of a decision of the Central American Court of Justice whereby the Gulf of Fonseca was recognised as a historic bay co-owned by El Salvador, Honduras and Nicaragua, are the only other historic claims along with Thailand's which have not been subject to a US protest or assertion (Roach and Smith, 1996: 33-34; Scovazzi *et al.*, 1989: 28-29).

120 Prescott, 1998: 19.

121 US Department of State, 1971a: 4; Scovazzi *et al.*, 1989: 60-61.

122 Calculated on British Admiralty Chart 3984, 1958 edition (updated), at a scale of 1:500,000.

123 12° 35' 45" N.

124 Calculated using a planimetre and British Admiralty Chart 3984, 1958 edition (updated), at a scale of 1:500,000

4.4.3 Thailand's 1970 Straight Baselines Claim: Areas 1 and 2

On 11 June 1970 Thailand claimed a system of straight baselines for three sectors of its coastline, two of which, Areas 1 and 2, lie in the Gulf of Thailand (see Figure 1.1).[125] The 1970 legislation established the straight baseline, *"asserting the water areas within the said baselines to be the internal waters of Thailand"*, and that, *"Thailand has adhered to these claims since time immemorial."* Elsewhere along Thailand's coasts 'normal' baselines along the low-water line apply. It was on the basis of the 1970 straight baseline system that Thailand's maritime jurisdictional claims were promulgated. Both of these distinct straight baseline systems connect fringing islands to points on Thailand's mainland coast.

Area 1

Area 1 consists of seven segments joining eight points and encloses the islands located offshore the Thai coast immediately to the north of the terminus of the Thai-Cambodian land boundary on the coast of the Gulf of Thailand. Starting from a mainland point on the Laem Ling peninsula in the north the straight baselines proceed southwards via three islets (Ko Chang Noi, Hin Rap and Hin Luk Bat) situated to the west of the major island of Ko Chang to Ko Rang. From Ko Rang the baselines extend to the islet of Hin Bang Bao just west of Ko Kut, then on to the southern tip of Ko Kut itself before returning to the mainland at a point coinciding with the terminus of the Thai-Cambodia land boundary on the coast (see Figure 4.8 and Table 4.10).

[125] The other area of straight baselines declared by Thailand in 1970 related to peninsula Thailand's western coast on the Andaman Sea and is therefore beyond the scope of this study. The announcement of the Prime Minister's Office concerning straight baselines and internal waters of Thailand was published in the Official Gazette, Special Volume 87, Chapter 52, 12 June 1970.

Table 4.10 ***Thailand's Straight Baselines Area 1: Locations of Turning Points***

Point	Location	Coordinates		Distance of Island Offshore
		Latitude	*Longitude*	
1	Laem Ling (on mainland coast)	12° 12.3' N.	102° 16.7'E.	–
2	Ko Chang Noi	12° 09.6' N.	102° 14.9' E.	2.97nm (5.5km)
3	Hin Rap	12° 03.1' N.	102° 14.5' E.	8.64nm (16km)
4	Hin Luk Bat	11° 56.7' N.	102° 17.2' E.	13.9nm (25.75km)
5	Ko Rang	11° 46.6' N.	102° 23.2' E.	17.14nm (31.75km)
6	Hin Bang Bao	11° 35.8' N.	102° 32.0' E.	21.87nm (40.5km)
7	Ko Kut	11° 33.6' N.	102° 35.7' E.	15.52nm (28.75km)
8	Thai-Cambodian land boundary terminus	–	–	–
Average				**13.34nm (24.71km)**

Source: US Department of State (1971a) and author's research.

The straight baselines of Area 1 enclose a complex and numerous group of islands and rocks in the immediate vicinity of and masking approximately three-quarters of the Thai mainland coast.[126] The straight baselines claimed as Area 1 total 66nm (122.23km)[127] giving an average length of segment of 9.43nm (17.46km). The longest segment of baseline claimed is 19.65nm (36.39km) in length (see Table 4.11).

Table 4.11 ***Thailand's Straight Baselines Area 1: Segment Lengths***

Segment	Length
1-2	3.3nm
2-3	6.25nm
3-4	6.95nm
4-5	11.75nm
5-6	13.85nm
6-7	4.25nm
7-8	19.65nm
Total	**66nm**
Average	**9.43nm**

Source: US Department of State (1971a) and author's research.

Thus even the longest baseline segment easily conforms to the US State Department's stipulation that no single baseline segment be in excess of 48nm in length.[128] Furthermore, the distance of the fringing islands offshore (a maximum of 21.87nm (40.5km) and 13.34nm (24.71km) on average) and their location in the immediate

126 US Department of State, 1971a: 8.
127 Figure taken from the US Department of State, 1971a: 4.
128 US Department of State, 1987a: 14.

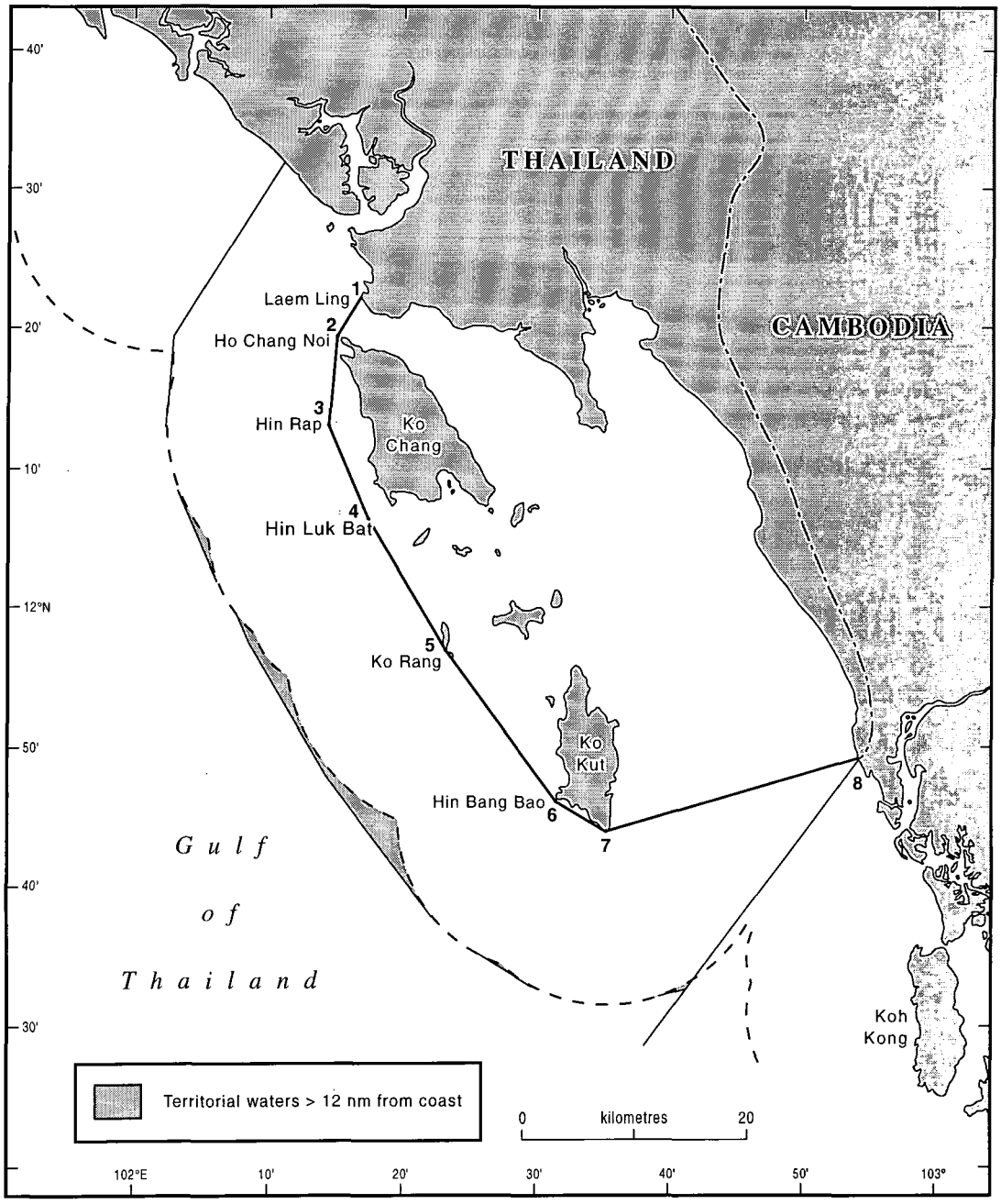


Figure 4.8: *Thailand's Area 1 Straight Baselines Claim*
Source: Author's research.

vicinity of the mainland coast indicates the suitability of the enclosed waters for internal waters status. This is coupled with the fact that none of the fringing islands is more than 24nm from its neighbour or over 48nm from the mainland, as suggested by the US guidelines, and goes a long way towards sustaining the legitimacy of this claim.

Similarly, the entirety of the 845.57nm^2 (2,900.19km^2) area enclosed by the straight baselines of Area 1 lies within 12nm of the nearest 'normal' baseline, and of the 782nm^2 (2,684km^2) of territorial sea claimed seawards from the straight baselines, almost all of this area would have been territorial sea in any case, even in the absence of the straight baselines (Figure 4.8).[129]

It is therefore clear that a strong argument can be marshalled that this set of straight baselines is in full accordance with Article 7 of the 1982 Law of the Sea Convention, although the US Department of State Geographer's analysis of this system of baselines noted that the *"land/water ratio is comparatively high, 1:5."*[130] Furthermore, although Cambodia has not apparently issued a formal protest or rejection of Thailand's Area 1 straight baseline claim this is implicit in its actions. In 1972, two years after Thailand established its straight baselines in the area in question, Cambodia issued a maritime claim which not only ignores Thailand's Area 1 straight baselines but cuts through the area claimed by Thailand as internal waters (see Figure 1.1 and Section 7.2.5).

Area 2

Area 2 consists of 15 segments joining 16 points, all but the first and final of which are located on islands along the western coast of the Gulf of Thailand fringing the Thai mainland coast. From the mainland point of Laem Yai the baselines proceed to the islands of Ko Ran Khai, Ko Ran Pet, Ko Khai, Ko Chorakhe, Hin Lak Ngam and the northern point of Ko Tao to Hin Bai. These islands can be considered the northern group within the system. The southern group of islands linked by straight baselines consists of, south of Hin Bai, Kong Thansadet, just offshore the major island of Ko Phangan, a point on the eastern coast of Ko Phangan itself, then Ko Kong Ok just to the north of another large island, Ko Samui, Ko Kong Ok, adjacent to the eastern coast of

[129] Calculated using a planimetre and British Admiralty Chart 3984, 1958 edition (updated), at a scale of 1:500,000.

[130] US Department of State, 1971a: 8. It is worth pointing out, however, that Article 7 makes no mention of a particular land:water ratio as being a condition for the establishment of straight baselines.

Ko Samui then to a point on the eastern coast of Ko Samui itself. The southern group is completed by the small islets of Hin Ang Wan and Ko Rap before the baselines terminate on the Thai mainland at Laem Kho Khao (see Figure 4.9 and Table 4.12).

Table 4.12 ***Thailand's Straight Baselines Area 2: Locations of Turning Points***

Point	Location	Coordinates		Distance of Island Offshore
		Latitude	*Longitude*	
1	Laem Yai (on mainland coast)	10° 53.7' N.	99° 31.4' E.	–
2	Ko Ran Khai	10° 47.8' N.	99° 32.6' E.	4.59nm (8.5km)
3	Ko Ran Pet	10° 46.5' N.	99° 32.2 E.	5.4nm (10km)
4	Ko Khai	10° 41.8' N.	99° 24.8' E.	1.48nm (2.75km)
5	Ko Chorakhe	10° 33.6' N.	99° 23.2' E.	5.4nm (10km)
6	Hin Lak Ngam	10° 30.0' N.	99° 25.6' E.	8.77nm (16.25km)
7	Ko Tao	10° 07.5' N.	99° 50.7' E.	33.88nm (62.75km)
8	Hin Bai	09° 56.6' N.	99° 59.7' E.	38.2nm (70.75km)
9	Ko Kong Thansadet	09° 45.8' N.	100° 04.7' E.	29.97nm (55.5km)
10	Ko Phangan	09° 44.0' N.	100° 05.2' E.	24.97nm (46.25km)
11	Ko Kong Ok	09° 36.1' N.	100° 05.8' E.	22.68nm (42km)
12	Ko Mat Lang	09° 32.0' N.	100° 05.3' E.	19.3nm (35.75km)
13	Ko Samui	09° 28.3' N.	100° 04.7' E.	8.37nm (15.5km)
14	Hin Ang Wang	09° 23.4' N.	100° 01.8' E.	11.61nm (21.5km)
15	Ko Rap	09° 17.9' N.	99° 57.8' E.	6.2nm (11.5km)
16	Laem Na Tham (on mainland coast)	09° 12.4 N.	99° 53.2' E.	–
Average				**15.77nm (29.21km)**

Source: US Department of State (1971a) and author's research.

Area 2's straight baselines total 126.05nm (233.44km) in length and enclose islands fringing the western shore of the Gulf of Thailand. The longest segment is 33.75nm (62.5km), the shortest, 1.20nm (2.22km) and the average, 8.4nm (15.56km) (see Table 4.13).[131] While even the longest of the baseline segments under consideration accords with the US-promoted limit for an individual baseline segment of 48nm, one part of the system fails the requirement of there being no more than 24nm between fringing islands[132]; the distance between Hin Lak Ngam and Ko Tao, coinciding with the longest baseline segment, is 33.75nm. The distance between the fringing islands acting as basepoints for the remaining 14 baseline segments is under 24nm.

131 Figure taken from the US Department of State, 1971a: 5-6 6 and confirmed on British Admiralty Chart 3983, 1958 edition, at a scale of 1:500,000.

132 US Department of State, 1987a: 17.

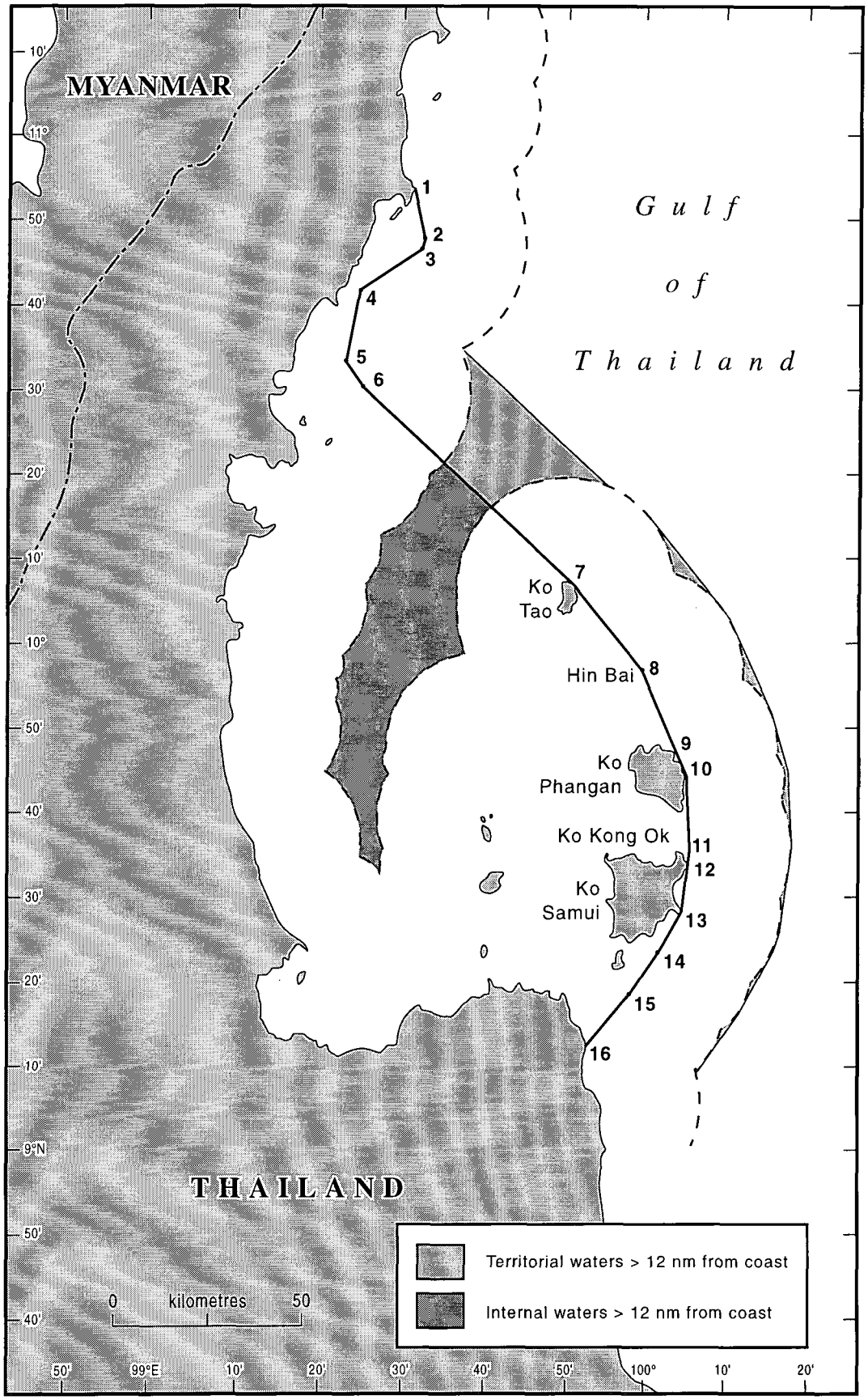


Figure 4.9: *Thailand's Area 2 Straight Baselines Claim*
Source: Author's research.

Table 4.13 *Thailand's Straight Baselines Area 2: Segment Lengths*

Segment	Length
1-2	5.9nm
2-3	1.2nm
3-4	8.7nm
4-5	8.35nm
5-6	4.25nm
6-7	33.75nm
7-8	14nm
8-9	11.95nm
9-10	1.85nm
10-11	8.25nm
11-12	4.25nm
12-13	4.2nm
13-14	5.45nm
14-15	6.5nm
15-16	7.45nm
Total	**126.05nm**
Average	**8.4nm**

Source: US Department of State (1971a) and author's research.

Furthermore, the average distance offshore of the fringing islands used to construct Thailand's Area 2 straight baseline claim, at 15.77nm (29.21km), falls within the 24nm limit which both the United Nations experts study and the US guidelines agreed was generally internationally accepted. However, four islands – Ko Tao, Hin Bai, Ko Kong Thansadet and Ko Phangan – are located further than 24nm from the nearest point on the Thai mainland coast. None are, however, located beyond 48nm from the mainland which the US guidelines presented as the maximum acceptable separation between mainland and island fringe.[133]

As mentioned, the areas of "additional" internal and territorial waters gained by the introduction of the straight baseline system can be used as an index of the system's overall 'reasonableness'. In the case of Area 2, of the total area of internal waters claimed, 3,079.45nm^2 (10,562km^2), 952.42nm^2 (3,266.67km^2) or 31% of the total lie beyond 12nm from the nearest coastal low-water line. The entirety of the area concerned does, however, fall within 48nm of the nearest coastal point. Further, of the 1,693.11nm^2 (5,807.13km^2) of territorial sea claimed seawards from the straight baselines, 398.46nm^2 (1,366.67km^2) or 23.5%, located in the vicinity of the longest

[133] It is, however, understood that while the US State Department suggested 48nm as an upper limit for the separation between island fringe and mainland in its 1987 report, the US authorities have

baseline segment, lies beyond 12nm from the nearest coastal point and therefore represents a 'gain' for Thailand. It follows that 76.5% of the territorial sea claimed from Area 2's straight baselines would be territorial sea regardless of the existence of those baselines (Figure 4.9).[134]

The islands enclosed within Area 2 can also be considered as falling into two distinct categories.[135] The southern half (south of Point 9 of Area 2) of the straight baseline system encompasses large, closely grouped islands clearly masking the mainland coast. In contrast, in the northern half of Area 2, the islands are not only small but also distant from one another and do not appreciably mask the mainland coastline.[136] Thus, although the southern group of islands enclosed by Area 2 *"could be considered as fringing islands"*, according to the US State Department Office of the Geographer's analysis, in the northern section of Area 2, *"the land/water ratio would be judged excessively high."*[137]

Despite the reservations of the Geographer, it should be noted that Thailand's straight baseline claims of 1970 have not elicited any known international protests, in particular from Bangkok's Gulf of Thailand neighbours or from the United States. The latter, as a consequence of its policy as a key maritime power to preserve freedom of navigation, is in the habit of making such challenges to what it views as excessive maritime claims, so that the absence of a protest from Washington could be interpreted as significant.

subsequently tended towards the stricter 24nm rule (Dr Robert W. Smith, personal communication).

134 Calculated using a planimetre and British Admiralty Chart 3983, 1958 edition, at a scale of 1:500,000.

135 United States, 1971a: 8.

136 Not that masking of the mainland coast is mentioned as a requirement in Article 7 of UNCLOS. However, the United States has promoted the idea that fringing islands *"must mask and be sufficiently close to the mainland to justify being treated as a seaward extension of the coast"* and has suggested that such islands should mask 50% of the mainland coast (US Department of State, 1987a: 25-30) (see Section 2.3.3).

137 US Department of State, 1971a: 5. Once again this statement is made despite the fact that Article 7 makes no mention of a particular land:water ratio as being a condition for the establishment of straight baselines (see Section 2.3.3). Kittichaisaree (1987: 18) concurs with the US State

4.4.4 Thailand's 1992 Straight Baselines Claim: Area 4

In a further Announcement of the Office of the Prime Minister concerning straight baselines and internal waters of Thailand, dated 17 August 1992,[138] Thailand proclaimed straight baselines in an additional sector in the Gulf of Thailand, Area 4. The new sector effectively extends the straight baseline system of Area 2 in the western Gulf southwards via the Thai insular features of Koh Kra and Koh Losin to the intersection of the Thai-Malaysia land boundary with the coast (see Figures 1.1 and 4.6 and Table 4.14). Area 4 is fundamentally different in character from the straight baselines declared by Thailand in 1970.

Table 4.14 ***Thailand's Straight Baselines Area 4: Locations of Turning Points***

Point	Location	Coordinates		Distance of Island Offshore
		Latitude	*Longitude*	
1	Ko Kong Ok	9° 36' 06" N.	100° 05' 48" E.	22.68nm (42km)
2	Ko Kra	8° 23' 49" N.	100° 44' 13" E.	27.5nm (51km)
3	Ko Losin	7° 19' 54"	101° 59' 54" E.	37.26nm (69km)
4	Thai-Malaysian land boundary terminus	06° 14' 30" N.	102° 05' 36" E.	–
Average				**29.15nm (54km)**

Source: Thai announcement of the Prime Minister (17/8/92) and author's research.

The three baseline segments defined by Thailand's 1992 claim are approximately 79nm (146km), 95nm (176km) and 63nm (118km) long respectively[139] giving an average segment length of 79.1nm (146.5km) (see Table 4.15). Thus, all three segments contravene the US guidelines for maximum segment length and distance between fringing islands of 48nm (88.9km) and 24nm (44.45km) respectively.[140] Furthermore, the two intermediary basepoints utilised in Area 4, Ko Kra and Ko Losin, are mere isolated rocks[141] (see Section 3.5), distant not only from one another but also from the Thai mainland coast, being 27.5nm (51km) and 38.6nm (71.5km) distant from the

Department's view, noting the high water to land ratio and the *"considerable divergence"* from the general direction of the coast caused by the inclusion of Tao island in the system.

138 *UN Law of the Sea Bulletin*, No.25: 82-84.

139 The three segments being Ko Kong Ok - Ko Kra, Ko Kra - Ko Losin, and Ko Losin - Thai-Malaysian land boundary terminus on the coast. The figures mentioned were calculated using British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000.

140 US Department of State, 1987a: 14 and 17.

141 Ko Kra is the more substantial of the two, being 161m (530ft) in elevation but both are small features with no human habitation and whose only man-made structures are light beacons. Ko Losin has been described as *"1½m (5ft) high and steep-to all round"* (Hydrographer of the Navy, 1982: 85-87).

nearest coastal point respectively.[142] As such, these insular features offer minimal masking to the mainland coast which itself is difficult to characterise as being deeply indented. By virtue of their significant distance offshore, it also seems unreasonable to argue that the sea area enclosed by Area 4's straight baseline system is sufficiently closely linked to the land to be considered subject to the regime of internal waters.

Table 4.15 ***Thailand's Straight Baselines Area 4: Segment Lengths***

Segment	Length
1-2	78.97nm (146.25km)
2-3	94.89nm (175.75km)
3-4	63.45nm (117.5km)
Total	**237.31nm (439.5km)**
Average	**79.1nm (146.5km)**

Source: Author's research.

This is illustrated by turning to the test of assessing the proportion of "additional" waters claimed by Thailand as a consequence of this straight baseline claim. Of the 7,824.48nm^2 (26,836.9km^2) area of waters enclosed within Area 4, 4,336.4nm^2 (14,873.27km^2) or 55% of the total is located beyond 12nm from the nearest coastal point.[143] Furthermore, significant maritime areas, amounting to 1,549.41nm^2 (5,314.27km^2) or 19.8% of the total, claimed as internal waters within Area 4 lie beyond 24nm from Thailand's mainland or island coasts.[144] Concerning the 2,794.91nm^2 (9,586.15km^2) area of "additional" territorial sea claimed seaward from Area 4's straight baselines, fully 2,086.4nm^2 (7,156.06km^2) or 75% lies beyond Thailand's territorial sea claim in the absence of the straight baselines claim (Figure 4.6).[145] These figures hardly indicate the existence of a fringe of islands in close proximity to the mainland coast or that the area enclosed by Area 4's straight baselines is sufficiently closely linked to the land to be converted to internal waters status. This claim contrasts sharply, and unfavourably, with other straight baseline claims within the Gulf of Thailand.

On the face of it, it is something of a mystery why Thailand chose to adopt such a seemingly excessive additional claim to straight baselines which are seemingly so

142 Measured on British Admiralty Charts 3542, 1960 edition at a scale of 1:500,000 and 3961, 1987 edition at a scale of 1:240,000, respectively.

143 Calculated using a planimetre and British Admiralty Chart 3983, 1963 edition at a scale of 1:500,000 and Chart 3542, 1960 edition at a scale of 1:500,000.

144 Calculated using a planimetre and British Admiralty Chart 3983, 1963 edition at a scale of 1:500,000 and Chart 3542, 1960 edition at a scale of 1:500,000.

difficult to sustain under the provisions of Article 7. Clearly, the declaration of Area 4 has had no apparent effect on the extent of Thailand's claims to continental shelf or EEZ jurisdiction in the Gulf of Thailand.

It may well be that the claim was made in order to counter Cambodia's (and Vietnam's) similarly 'maximalist' straight baseline systems and in order to provide a strong bargaining position in anticipation of maritime boundary negotiations with countries situated on the opposite side of the Gulf of Thailand. Indeed, their existence may well have proved a factor in Thailand's remarkably successful negotiation of its continental shelf boundary with Vietnam in 1997 (see Section 7.4). This tendency towards extreme claims, designed to protect the claimant state's position prior to delimitation, was also abundantly evident in relation to the Gulf of Thailand states' other straight baseline claims and, indeed, their continental shelf claims (see Section 5.3).

Thailand's 1992 declaration of additional straight baselines is, however, analogous to Cambodia and Vietnam's 1982 baseline claim. Despite the fact that all three countries made significant amendments to their straight baseline claims, they have in fact based their continental shelf claims of the early 1970s on their straight baselines at that time and have not sought to advance them since that time. As with the case of Cambodia, even though Thailand's straight baseline claims have been amended, there has been no alteration to its continental shelf claim dating from 1973. The status of Ko Kra and Ko Losin and their capacity to generate maritime jurisdictional claims in their own right will be considered in Section 8.

As yet, Thailand's claimed straight baselines enclosing Area 4 have not prompted a protest from the United States.[146] However, Germany, acting on behalf of the European Union did protest against them on 23 December 1994, pointing out that the 'normal' baseline was the low-water line but that Thailand *"has used straight*

145 Calculated using a planimetre and British Admiralty Chart 3983, 1963 edition at a scale of 1:500,000 and Chart 3542, 1960 edition at a scale of 1:500,000.

146 According to the Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affairs at the US Department of State, no protest had been made at the time of the author's enquiry but Thailand's claim had been noted and would be the subject of a protest in due course (personal communication with Dr Robert W. Smith, 14/1/99). Nevertheless, it may be observed that the seven years which have passed without a protest over Thailand's Area 4 claim is in sharp contrast to the alacrity with which the United States issued protests over the baseline claims of the other Gulf of Thailand states - Cambodia (four years) and Vietnam (less than one month) - which at that time may be viewed as having been ideologically opposed to the United States (unlike Thailand). The apparent reluctance of the US authorities to issue a protest over the maritime claims of an important ally, promotes the impression of selectivity in the application of protests and, if true, serves to undermines their value.

baselines along its entire coastline in area 4, even where the coastline is not deeply indented and cut into or if there is not a fringe of islands along the coast in its immediate vicinity." The German *note verbale* went on to state that even though the UN Convention on the Law of the Sea does not set a maximum length for straight baseline segments *"the segments determined by Thailand are excessively long."*[147]

4.5 Vietnam's Straight Baseline Claims in the Gulf of Thailand

Vietnam issued a *Statement on the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone and the Continental Shelf* on 12 May 1977 in which straight baselines were claimed from which the limits of all these maritime zones would be measured (see Appendix 5). It was not until over five years later, however, on 12 November 1982, that the 1977 legislation on baselines was implemented.

The *Declaration on Baseline of Territorial Waters* of November 1982 provided details of the Vietnamese claimed straight baseline system together with an annex of geographic coordinates of the straight baseline turning points.[148] The western end of the straight baseline system in the Gulf of Thailand , Point "O", is defined as being:

> *On the southwestern demarcation line of historic waters of the S.R.V. [Vietnam] and the P.R. of Kampuchea [Cambodia].*

No coordinates were specified for Point "O".

The Vietnamese claim therefore conforms with the 7 July 1982 *Agreement on Historic Waters of Vietnam and Kampuchea [Cambodia]* and with Cambodia's 1982 straight baseline system, the eastern end of which is also defined as: *"Point "O" out at sea on the southwest limit of the historic waters of the PRK."* As detailed in Section 4.2.4, the straight baseline systems of Cambodia and Vietnam meet at an as yet undefined point out to sea on a straight line joining the Cambodian islands of the Poulo Wei group and the Vietnamese Poulo Panjang group of islands which also forms the seaward limit of the two countries joint Historic Waters area (however, see Section 7.4).

The system of straight baselines articulated in 1982 connects a series of isolated islands, considerably offshore and in so doing, encloses the entire Vietnamese coast

147 United Nations *Law of the Sea Bulletin*, No.28 (1995): 31.
148 Copy on file with the author.

relevant to the Gulf of Thailand (see Figure 4.1 and Table 4.16). If accepted by the international community, this Vietnamese claim would represent a significant enhancement of Vietnam's maritime claims in terms of area.

Table 4.16 *Vietnam's Straight Baselines: Locations of Turning Points*

Point	Location	Coordinates		Distance of Point Offshore
		Latitude	*Longitude*	
O	Floating point	Undetermined		
A1	Hon Nhan island, Tho Chu (Panjang) archipelago	9° 15.0' N. 103°	27.0' E.	80.7nm
A2	Hon Da island, southeast of Hon Khoai island	8° 22.8' N.	104° 52.4' E.	11nm
A3	Tai Lon islet, Con Dao islet	8° 37.8' N.	106°37.5' E.	50.5nm
A4	Bong Lai islet, Con Dao islet	8° 38.9' N.	106° 40.3' E.	51.1nm
A5	Bay Canh islet, Con Dao islet	8° 39.7' N.	106° 42.1' E.	51.5nm
A6	Hon Hai islet, Phu Qui island group	9° 58.0' N.	109° 5.0' E.	74.2nm
A7	Hon Doi islet	12° 39.0' N.	109° 28.0' E.	–
A8	Dai Lanh Point	12° 53.8' N.	109° 27.2' E.	–
A9	Ong Can islet	13° 54.0' N.	109° 21.0' E.	7.6nm
A10	Ly Son islet	15° 23.1' N.	109° 09.0' E.	14.1nm
A11	Con Co island	17° 10.0' N.	107° 20.6' E.	13.9nm
Average				**39.4nm**

Source: US Department of State (1983).

Overall, the Vietnamese claim consists of 10 segments and 11 basepoints with a combined length of 846nm.[149] The longest distance between basepoints is 161.8nm and the shortest 2nm, with an average of 84.6nm. The island basepoints (9 of the 11 defined) average 39.4nm from the nearest points on the mainland coastline with a maximum of 80.7nm offshore. The internal waters claimed amount to approximately 27,000nm^2 (93,000km^2) (see Table 4.1).[150]

149 US Department of State, 1983: 5.
150 US Department of State, 1983: 5.

Table 4.17 *Vietnam's Straight Baselines: Segment Lengths*

Segment	Length
1-2	99.2nm
2-3	105.2nm
3-4	3nm
4-5	2nm
5-6	161.3nm
6-7	161.8nm
7-8	14.8nm
8-9	60.2nm
9-10	89.5nm
10-11	149nm
Total	**846nm**
Average	**84.6nm**

Source: US Department of State (1983).

In fact, apart from sections of its northeastern coast, Vietnam's coastline, excluding the Mekong River delta, describes a relatively smooth 'S' shape devoid of major indentations. Furthermore, even if the Mekong River delta qualifies as a deeply indented coastline, the selection of islands scores of nautical miles seaward of the delta as basepoints, clearly means that the baselines claimed have not been claimed on that basis – a situation analogous to that discussed in reference to Malaysia's claim to straight baselines (see Section 4.3). The islands selected as basepoints for Vietnam's straight baseline claim are predominantly small and scattered resulting in what might be termed excessively long straight baselines segments. Indeed, no less than seven of the baseline segments defined exceed the US State Department's recommendation of an upper limit for individual baseline segment length of 48nm. Additionally, it can be argued that the islands used as basepoints are too far seaward to be realistically termed in the *"immediate vicinity"* of the coast, and the sea area enclosed is too far offshore and too expansive to be genuinely considered as capable of qualifying as internal waters. Furthermore, while, in general, the Vietnamese straight baseline system seems to reflect the general direction of the mainland coast, certain segments, for example A9-A10, appreciably do not.[151]

It is perhaps unsurprising, then, that the US government protested against Vietnam's straight baseline claims in an *aide-memoire* of 6 December 1982 delivered by the US Mission to the United Nations at New York:

[151] US Department of State, 1983: 11.

> *As to the claimed system of straight baselines, the Government of the United States of America wishes to remind the government of the Socialist Republic of Vietnam that, under customary and conventional international law, a coastal state may employ the method of straight baselines only in localities where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity. In so doing the baselines established by the coastal state must not depart to any appreciable extent from the general direction of the coast. It is the view of the Government of the United States of America that the baselines claimed by the Government of the Socialist Republic of Vietnam do not meet these criteria and that there is no basis in international law for the system of straight baselines provided in the declaration of November 12, 1982.*[152]

Thailand similarly issued a protest note, addressed to the United Nations Secretary General, in relation to Vietnam's straight baseline system (and by implication Cambodia's, as the two countries' straight baselines link up on the limits of the joint Historic Waters area). The Thai note, dated 9 December 1985, stated that between points 0 and A7, Vietnam's claimed straight baselines were *"at variance with the well-established rules of international law"*, referring to both the 1958 and 1982 Conventions, and concluded that: *"the Government of Thailand reserves all its rights under international law in relation to the sea areas in question and the airspace above them."*[153] The French government similarly protested over some sectors of Vietnam's straight baselines claim stating that they were *"at variance with well-established rules of international law."*[154]

Furthermore, in its analysis of Vietnam's straight baseline claims in its *Limits in the Seas* series, the US Department of State's Office of the Geographer concluded that:

> *Several of the island basepoints used by Vietnam are at a considerable distance from the mainland. This is particularly true of the Tho Chu Archipelago, the Con Dao group and the Phu Quy group (Catwick Islands), all of which are at least 50nm from the mainland and neighbouring island groups [, and the main segments of which are 99-160nm long].*[155]

Despite this, on 15 November 1982, an article entitled *The Base Line of Vietnam's Territorial Waters* was published in *Nhan Dan*, the official daily publication of the Vietnamese Communist Party, which is therefore viewed as being authoritative. The *Nhan Dan* article stated that:

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152 Roach and Smith, 1996: 102.
153 Law of the Sea Bulletin, No.7, April 1986: 111.
154 Quoted in Park, 1987: 445.
155 Roach and Smith, 1996: 102.

> *[a]lthough some base points are about 50-70 nautical miles from shore and more than 100 nautical miles from each other, our stipulations on the baseline of [the] territorial waters do not conflict with the stipulations of international law and customs thus far.*[156]

In support of the Vietnamese position, the article went on to refer to three other examples of state practice relating to particularly long straight baseline claims significantly far offshore – Burma, Malaysia and Thailand (see Appendix 4).

With specific reference to the Gulf of Thailand, only two of the straight baseline segments defined in 1982 are relevant. These link Point "O" on the limit of the Historic Waters area claimed jointly with Cambodia to Point A1 located on Hon Nhan island of the Tho Chu (Poulo Panjang) island group and from Point A1 to A2, the latter being defined as Hon Da island southeast of Hon Khoai island. As the latter point lies south and east of Point Ca Mau, the baseline segment A1-A2 extends beyond the strict definition of the Gulf of Thailand (see Figure 4.1).[157]

As noted in Section 4.2.4, the precise location of Point "O" has yet to be determined. However, were this point to be determined on the basis of equidistance, each state's baseline segment leading up to Point "O" would be approximately 25nm (46km) long. Vietnam's baseline segment A1-A2 is, however, considerably longer at 99.2nm (167km),[158] and therefore exceeds the US guideline for maximum segment length of 48nm (88.9km).[159] Furthermore, several of the turning points designated by Vietnam for its straight baseline system are at a considerable distance from the mainland coast. Within the Gulf of Thailand, Point A1 is 80.7nm offshore and Point O, if determined on the basis of equidistance, would be approximately 90nm (166.5km) offshore. Overall, the turning points which make up the Vietnamese straight baseline

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156 Quoted in US Department of State, 1983: 11

157 Segment A2-A3 is potentially relevant to Vietnam's delimitation with Malaysia. However, Vietnam's claim vis-à-vis Malaysia is based on the Saigon government's 1971 continental shelf claim (see Section 5.3.4) - promulgated long before (reunified) Vietnam's straight baseline claim. As a result, the southern limit of the Malay-Vietnamese Defined Area is defined by two points equidistant between the Vietnamese and Malaysian mainlands (Points C and D of the Defined Area) and a point equidistant between Indonesian, Malaysian and Vietnamese islands (Point E) (Charney and Alexander, 1998: 2,337). Vietnam's straight baselines (including segment A2-A3) may, of course, eventually come into play when the issue of dividing the Defined Area resurfaces, the joint development agreement ultimately only delaying the question of eventual delimitation.

158 Measured on British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000; US Department of State, 1983: 6.

159 US Department of State, 1987: 14.

system are, on average, 39.4nm (73km) offshore (see Table 4.16).[160] It may be recalled that the US Department of State guidelines recommended that at a maximum fringing islands be no more than 48nm offshore while the UN study on baselines points the reader towards a limit of 24nm as being that which has gained wide international acceptance. Clearly, certain sections of the Vietnamese claim are in breach of these suggested limits, including within the Gulf of Thailand.

Concerning the proximity to the coast of the waters of the Gulf of Thailand enclosed by Vietnam's straight baseline claim to the coast and their suitability for the application of internal waters, an examination of the "additional waters" claimed as a result of the baselines is revealing. The area landward of A1-A2 limited by the mouth of the Gulf of Thailand and the eastern border of Historic Waters area amounts to 5,805nm^2 (19,910km^2) of which 1,843nm^2 (6,320km^2) or 31.7% of the total lies beyond 12nm from the nearest coastal point. However, only 4.75% (276nm^2/947km^2) lies beyond 24nm from the coast.[161] Additionally, it is worth noting that there is a relatively small, 5.1nm^2 (17.5km^2),[162] pocket of maritime space to the east of Phu Quoc which is beyond 12nm from the coast but is otherwise wholly surrounded by Vietnamese territorial seas (see Figure 4.2). This is perhaps analogous to the theoretical situation described in the United Nations report on straight baselines of a coastline suitable for the application of straight baselines (see Figure 3.1).[163] This could be used as at least partial justification for Vietnam's straight baselines claim.

Of the 948nm^2 (3,251km^2) of territorial sea claimed from Vietnam's straight baselines within the Gulf of Thailand (including off the Historic Waters area assuming Point "O" equidistant between Poulo Wei and Panjang island groups), fully 830nm^2 (2,846km^2) – 87.6% – lies beyond 12nm from the nearest normal baseline (Figure 4.1).[164] It is therefore fair to conclude that Vietnam's straight baselines within the

160 The figures included in Table 4.16 are taken from the US Department of State's 1983 study of Vietnam's straight baseline system. This paper provides the distance of each point offshore, rather than that of each fringing island. However, as the islands concerned are predominantly small in size, the distances listed in the table closely approximate the distances the islands themselves are offshore.

161 Calculated using a planimetre and British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000.

162 Measured with a planimetre on British Admiralty Chart 3879, 1957 edition at a scale of 1:240,000.

163 United Nations, 1989: 18-19.

164 Calculated using a planimetre and British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000.

confines of the Gulf of Thailand were in The Geographer's mind when the concluding statement of his analysis of Vietnam's straight baselines claim as a whole:

> *In several significant respects, geographic components of the straight baselines claimed by Vietnam do not appear to follow the convention signed by Vietnam or those conventions referenced in the article published in the official daily of the Communist Party of Vietnam.*[165]

4.6 Conclusions

It therefore seems quite clear that if a strict interpretation of Article 7 of UNCLOS, analogous to that embodied in the US Department of State's guidelines, were to be brought to bear on the straight baseline claims of the Gulf of Thailand states, with the exception of Thailand's Area 1 claim, *all* the current straight baseline claims within the Gulf would be found wanting in one way or another.

For *Cambodia*, the 1982 straight baseline claim has question marks hanging over it because, when the US rules are applied, certain segments (specifically that between Koh Kusrovie and Ilot Veer) are over-long. Moreover, the 'fringing' islands linked by the straight baselines are too far apart from one another and located too far offshore to be considered in the *"immediate vicinity"* of the mainland coast and for the waters enclosed within them to be viewed as being suitable for internal waters status. In addition, there are queries over the 1982 baseline system's alignment according with the general direction of the coast and the issue of the unorthodox termination of the straight baselines system at an as yet unspecified[166] 'floating' basepoint significantly far offshore which serves to link the Cambodian straight baselines system to that of Vietnam.

Nevertheless, only one segment of Cambodia's baseline claim exceeds the US-suggested limit on individual segment length of 48nm,[167] and then by only just under 4nm (see Table 4.7). Furthermore, while the Cambodian islands linked by straight baselines are relatively distant from one another, the existence of a fringe of islands off the Cambodian mainland coast is difficult to contest. A strong argument can therefore be marshalled to support the construction of straight baselines along this coast and in

165 US Department of State, 1983: 11.
166 However, see Section 7.2.
167 US Department of State, 1987a: 17.

favour of the suitability of the waters enclosed by the baselines for internal waters status. The latter point is bolstered by the fact that of the area enclosed within Cambodia's straight baselines only 6.7% lies beyond 12nm from the nearest coastal point and therefore constitutes waters Cambodia would not otherwise have claimed as territorial waters in the absence of straight baselines (see Table 4.20). Moreover, none of the area claimed by Cambodia as internal waters in 1982 lies beyond 24nm from the nearest island or mainland coastal point. This is perhaps significant in light of the US Department of State's recommendation that the maximum separation between fringing islands and the mainland coast be set at 48nm (that is, two territorial sea breadths from each side).[168] Although one of Cambodia's fringing islands, Poulo Wei does exceed this limit, lying just over 53nm offshore, none of the waters landward of that island group are actually beyond two territorial sea breadths from the nearest coast by virtue of the number and scattered configuration of the islands and islets lying off the Cambodian mainland coast (see Table 4.6).

As far as the floating Point "O" is concerned, although unorthodox, as noted, it is not unique. While rare, analogous arrangements do exist around the world and have met with the approval of the international community.

With regard to *Malaysia's* claims, there are clearly concerns on a number of issues both within the Gulf of Thailand proper and along the eastern seaboard of peninsula Malaysia as a whole. Nevertheless, it should be recalled that the locations of Malaysia's straight baselines have been extrapolated from the territorial sea limits illustrated on the *Peta Baru*. There is therefore some additional scope for error in the calculations made. Within the strict definition of the Gulf of Thailand, the Malaysian straight baselines joint points on the mainland coast rather than fringing islands. Although these straight baselines could be construed as being conservative in nature in that they conform closely to the alignment of that coastline such that minimal "additional" waters are accorded to Malaysia as a result of the baselines claim, such baselines can only be justified on the basis of the deeply indented nature of the coastline in question and this is manifestly not the case. It can therefore be concluded that it is inappropriate for Malaysia to construct straight baselines along this portion of its coastline.

168 US Department of State, 1987a: 22.

Along the eastern coast of peninsula Malaysia south of the formal limits of the Gulf of Thailand, there are also problems associated with Malaysia's claimed straight baselines. In terms of segment length, three of the nine segments concerned exceed the United States guideline that no individual segment should be longer than 48nm (see Table 4.9).[169] Indeed, the longest segment claimed by Malaysia along this coastline comprehensively breaches the United States suggested limit, being approximately 90nm in length. It can therefore be argued that several of the Malaysian-claimed straight baseline segments are excessively long.

Similar criticisms can be raised concerning the distance between fringing islands linked by Malaysia's straight baselines. The United States guidelines suggest that these be no more than 24nm apart.[170] The five Malaysian baseline segments along the southern portion of peninsula Malaysia which link fringing islands exceed this proposed limit (see Table 4.9).

In terms of the proximity of Malaysia's claimed fringing islands to the mainland coast such that they fall within its *"immediate vicinity"* and such that the waters enclosed are intimately enough associated with the land to be considered to be suitable for an internal waters claim, in fact, all the islands fall within 48nm of the mainland coast (see Table 4.8). This is consistent with the United States suggested maximum separation between fringing islands and mainland coast.[171] Additionally, the entirety of the internal waters claimed by Malaysia falls within 24nm of the nearest coastline. Moreover, only approximately 6% of the maritime area within Malaysia's straight baselines along this part of its coast lie beyond 12nm from the nearest 'normal' baseline and therefore represent areas which would not otherwise constitute Malaysian territorial waters in the absence of the straight baseline claim. This figure is comparable to that for Cambodia's 1982 straight baseline claim (see Table 4.20).

A further uncertainty concerning the Malaysian straight baseline system relates to two apparently 'floating' points. As already outlined, one lies to the north of Pulau Tioman and the other at the terminus of this part of Malaysia's straight baseline system at the southern tip of peninsula Malaysia. These points do not link into neighbouring

169 US Department of State, 1987a: 17.
170 US Department of State, 1987a: 17.
171 US Department of State, 1987a: 22.

straight baseline systems and must be considered inconsistent with Article 7 of UNCLOS.[172]

Mixed conclusions may be drawn about *Thailand's* claims to straight baselines in the Gulf of Thailand. As already mentioned, Thailand's Area 1 straight baselines are above reproach – the longest segment in the group is under 20nm in length, while the average baseline segment length is under 10nm (see Table 4.11), as compared with the US suggestion that no individual segment exceed 48nm in length.[173] It follows that none of the fringing islands linked by Area 1's straight baselines are further than 24nm from one another as urged by the US proposed rules.[174] Further, the maximum distance of one of the fringing islands included in the system offshore is just under 22nm (see Table 4.10), let alone the 48nm maximum separation between fringing islands and mainland laid down in the US guidelines.[175] This puts Area 1 well within the confines of the relatively strict interpretation of Article 7 laid down by the US Department of State's guidelines.

Thailand's Area 2 straight baselines claim pose more of a problem. Although the average segment length is low, at 8.4nm, the maximum is rather longer at 33.75nm (see Table 4.13). While this falls within the US guidelines 48nm individual segment length limit,[176] it does mean that the fringing islands concerned are more than the recommended 24nm from one another.[177] All the islands linked by Area 2's straight baselines are, however, within 48nm of the mainland coast.

A further point of concern relates to the appropriateness of the waters enclosed by Area 2 for internal waters status. The entirety of the area so enclosed lies within 24nm of the nearest coastal point. Similarly, none of the fringing islands linked by straight baselines are more than 48nm offshore. This is consistent with interlocking double territorial sea breadths, suggested by the US guidelines as the maximum acceptable distance between fringing islands and the mainland coast.[178] However, 31% of the internal waters claimed by Thailand within Area 2 lie beyond 12nm from the

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172 It should be stressed, however, that there is some potential inaccuracy inherent in inferring the positions of Malaysia's straight baseline system from the *Peta Baru*.. Even if these points do prove to be erroneously positioned offshore, this could be easily corrected and the Malaysian territorial waters limit adjusted accordingly.

173 US Department of State, 1987a: 17.

174 US Department of State, 1987a: 17.

175 US Department of State, 1987a: 22.

176 US Department of State, 1987a: 17.

177 US Department of State, 1987a: 22.

178 US Department of State, 1987a: 22.

coast and therefore constitute "additional" waters gained by Thailand which would not otherwise form part of the Thai territorial sea in the absence of the straight baseline claim. This compares unfavourably with both the Cambodian straight baselines claim of 1982 and the Malaysian straight baselines along the eastern coast of peninsula Malaysia where only of the order of 6-7% of the claimed internal waters constitute additionally claimed waters. Nevertheless, Thailand can certainly credibly claim that a fringe of islands exists along the portion of coastline covered by Area 2 and that the area of "additional" waters is tucked in to the landward or behind the front of the group of fringing islands – arguably precisely the kind of complex geographical configuration of maritime space which the United Nation's report on baselines indicates as being suitable for the application of straight baselines.[179] Furthermore, Bangkok can point to the fact that Thailand's establishment of the Area 1 and 2 groups of straight baselines has elicited no known international protests.

Thailand's 1992 straight baselines extension within the Gulf of Thailand, termed Area 4, is still more problematic. All three of the baseline segments designated exceed the US-suggested limit of 48nm,[180] the average being over 79nm and the longest segment just under 95nm (see Table 4.15). This can certainly be viewed as being excessive, particularly when the recommended separation between fringing islands is no more than 24nm is borne in mind.[181] The actual distance between Ko Kra and Ko Losin coincides with the longest baseline segment in the Area 4 claim – 94.89nm.

While the fringing islands used to construct the Area 4 straight baselines claim fall within 48nm of the coast (see Table 4.14), the percentage of "additional" waters claimed as a result is telling. Fully 55% of the waters claimed as internal waters by Thailand as a result of the Area 4 claim, lie beyond 12nm from the coast and therefore represent a gain to Thailand in that they would not form part of the Thai territorial sea in the absence of the straight baseline claim (see Table 4.20). Furthermore, just under 20% of the claimed internal waters within the confines of Area 4 lie beyond 24nm from the nearest island or mainland coastal point. It is therefore difficult to argue that the waters within Area 4's straight baselines are sufficiently closely linked to the land to be considered suitable of internal waters status.

179 United Nations, 1989a: 17.
180 US Department of State, 1987a: 17.
181 US Department of State, 1987a: 17.

Vietnam's straight baselines claim within the Gulf of Thailand really consists of one segment of indeterminate length from the yet to be defined Point "O" to a point in the Tho Chu (Poulo Panjang) group and a segment just under 100nm in length which extends from there to Hon Da island in the vicinity of Cap Cau Mau at the entrance to the Gulf of Thailand proper (see Table 4.17). There are therefore good grounds to criticise Vietnam's straight baselines claim within the Gulf for the excessively long nature of the latter baseline segment and the overly wide separation between the fringing islands of the Tho Chu group and Hon Da. The US-recommended maximum distances for these two factors being 48nm and 24nm respectively.[182]

In addition, the Tho Chu island group lies approximately 80.7nm offshore at their closest point to the coast (see Table 4.16). This is clearly significantly beyond the 48nm separation between fringing islands and the mainland coast suggested by the US Department of State's guidelines.[183] The flaws in Vietnam's claims to straight baselines within the Gulf of Thailand are reinforced when the "additional" waters claimed as a consequence are taken into account.

Of the area within the Vietnamese claimed straight baselines within the Gulf, almost one third (31.7%) lies beyond 12nm from the nearest coastal point and therefore amount to "additional" waters not forming part of the Vietnamese territorial sea in the absence of a straight baseline claim (see Table 4.20). Furthermore, just under 5% of the claimed internal waters lie beyond 24nm from the nearest 'normal' baseline point. The proportions of claimed internal waters beyond 12nm and 24nm from the coast respectively for Vietnam's straight baselines in the Gulf are, in fact, less extravagant than for Thailand's Area 4 claim by virtue of the number and positioning of Vietnamese islands inshore of the straight baselines. Nevertheless, it suggests that the waters claimed by Vietnam within the Gulf of Thailand are not suitable for internal waters status. Even so, Vietnam could be expected to argue that the waters between the historic waters area and Cap Cau Mau represent something of a 'maritime cul-de-sac', vital to Vietnam and therefore appropriate for enclosure with straight baselines by the coastal state. However, such an argument is highly unlikely to gain much favour with the international community. Regardless, it is difficult to envisage Vietnam, or for that matter Cambodia, rolling back their straight baselines systems while their joint Historic

182 US Department of State, 1987a: 17.
183 US Department of State, 1987a: 22.

Waters Agreement remains in force and the parties remain politically committed to it (see Section 7.2).[184]

As previously noted, the straight baseline claims of the Gulf of Thailand littoral states mean that approximately 26,066nm^2 of the Gulf is claimed as internal waters. Coupled with Thailand's claim to the Bight of Thailand as a historic bay (2,834nm^2) and Cambodia and Vietnam's joint Historic Waters Area (2,711nm^2), the total area of the Gulf claimed landward of straight baselines or closing lines amounts to 31,611nm^2 or just over 11% of its total area.[185] This figure in itself seems excessive. It is difficult to credit that over one tenth of the Gulf of Thailand is suitable for the regime of internal waters. The littoral states claims are, however, dissimilar to one another. A comparison between the claims in terms of segment length, the distance offshore of fringing islands and the areas and proportions of "additional" waters bears this out.

As far as straight baseline segment lengths are concerned, as Table 4.18 demonstrates, Malaysia's claim along eastern peninsula Malaysia, Thailand's Area 4 and Vietnam's claim within the Gulf, all include segments over 90nm in length. These claims can therefore be viewed as being similarly excessive when set against a strict interpretation of Article 7 of UNCLOS's provisions such as the US State Department's guidelines. Of other current claims, Cambodia's 1982 straight baseline claim and Thailand's Area 2 and Area 1 claims include segments of approximately 52nm, 34nm and 20nm respectively. Only the latter two claims, Thai Areas 1 and 2 therefore conform to the US guidelines proposed maximum straight baseline segment length of 48nm.[186] Furthermore, only Thai Area 1 accords with the stricture from the same guidelines that fringing islands be no more than 24nm distant from one another.[187]

184 It is worth noting that the Cambodian Premier at the time of writing (mid-1999), Hun Sen, was signatory to the Historic Waters Agreement.

185 Prescott gives the total area of the Gulf of Thailand as 283,700km^2 which is equivalent to 82,715nm^2 (Prescott, 1998: 11).

186 US Department of State, 1987a: 17.

187 US Department of State, 1987a: 17.

Table 4.18 *Straight Baseline Segment Lengths in the Gulf of Thailand*

State	Claim	Longest Segment	Average
Cambodia	1957	22.68nm	11.95nm
	1972	33.2nm	10.44nm
	1982	51.84nm	34.06nm
Malaysia	within Gulf	8.2nm	–
	east coast	90.17nm	32.1nm
Thailand	Area 1	19.65nm	9.43nm
	Area 2	33.75nm	8.4nm
	Area 4	94.89nm	79.1nm
Vietnam	within Gulf	99.2nm	–
	overall	161.8nm	84.6nm

Source: Author's research.

With regard to the distances of so-called fringing islands from the mainland coast, Table 4.19 illustrates the position in the Gulf of Thailand. Bearing in mind the US Department of State guideline that such islands be not more than 48nm offshore,[188] it is clear that while on average this is the case for all the straight baseline claims in the Gulf of Thailand, both the Cambodian and Vietnamese claims fail this test, including islands over 53nm and 80nm offshore respectively.

However, it is worth recalling that the United Nations study on straight baselines noted that while it was *"generally agreed"* that a 24nm distance between fringing islands and the mainland coast was acceptable, the proposed general rule of 48nm was *"not necessarily widely agreed upon."*[189] Were the stricter, 24nm rule to be applied, it is clear from Table 4.19 that of current claims in the Gulf only Thailand's Area 1 claim would still prove faultless. Cambodia's 1957 claim would also have qualified under this test but has, of course, been superseded not once, but twice by later claims.

Interestingly, when the average distance of fringing islands from the mainland coast is examined with the 24nm rule in mind, Cambodia's 1982 claim, Thailand's Area 4 claim and Vietnam's claims, whether within the Gulf of Thailand or as a whole, are all found wanting. The failure of these claims to fulfil the conditions of this stricter test on average, let alone with regard to individual fringing islands is significant.

188 US Department of State, 1987a: 22.
189 United Nations, 1989: 21.

Table 4.19 *Distances Offshore of Fringing Islands in the Gulf of Thailand*

State	Claim	Distance of Island Furthest Offshore	Average Distance of Fringing Islands Offshore
Cambodia	1957	9.18nm	3.74nm
	1972	37.8nm	17.94nm
	1982	53.05nm	36.35nm
Malaysia	within Gulf	–	–
	east coast	32.4nm	16.21nm
Thailand	Area 1	21.87nm	13.34nm
	Area 2	38.2nm	15.77nm
	Area 4	37.26nm	29.15nm
Vietnam	within Gulf	80.7nm	80.7
	overall	80.7nm	39.4nm

Source: Author's research.

When "additional" waters claimed as a consequence of the straight baseline claims are examined, that is, waters which in the absence of the straight baseline claims would not in any case form part of the claimant state's territorial waters, a distinction can be drawn between additional internal waters and additional territorial waters. Article 7(3) of UNCLOS states that *"the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters."* Furthermore, where fringing islands are being used to justify the adoption of straight baselines it is stated, in Article 7(2), that such islands must be in the *"immediate vicinity"* of the coast. These two provisions can be viewed as being interrelated.

As already mentioned, the upper limit proposed for *"immediate vicinity"* between a fringe of islands and the mainland coast is 48nm – double the breadth of the territorial sea – 24nm from both the fringe and the mainland.[190] The more conservative interpretation of immediate vicinity is based on interlocking territorial seas, 12nm from each coastline and thus a 24nm separation between fringing islands and the mainland. Although it has proved impossible to develop a mathematical formula to test the phrase *"sufficiently closely linked to the land domain to be subject to the regime of internal waters"*[191], it follows from the proposed rules concerning the necessary proximity between fringing islands and the mainland coast that claimed internal waters landward to fringing islands but beyond 24nm from the nearest coastal point should be considered inappropriate for internal waters status. Furthermore, if the more restrictive rule based on coalescing territorial seas is taken as a benchmark, it could be argued that claimed

190 US Department of State, 1987a: 22.
191 United Nations, 1989: 25.

internal waters within a straight baseline system constructed on the basis of fringing islands yet beyond 12nm from the nearest 'normal' baseline are also not sufficiently closely linked to the land domain to be considered as internal waters. Certainly, the area and proportion of claimed internal waters beyond 12nm and 24nm from the coast gives an excellent indication of the overall reasonableness of the claim in question.

Within the Gulf of Thailand, two straight baseline claims include claimed internal waters beyond 24nm from the nearest coast. The first of these is Thailand's Area 4 claim where almost 20% of the internal waters within the straight baselines are over 24nm from the coast. The other is Vietnam's claim within the Gulf of Thailand where just under 5% of the claimed internal waters fall beyond 24nm from the nearest island or mainland the coast (see Table 4.20). Both of these claims must therefore be viewed with considerable caution.

This assessment is confirmed when claimed internal waters areas beyond 12nm from the coast are taken into account. Fully 55% of the maritime space within the limit's of Thailand's Area 4 lie beyond 12nm from the nearest coastal points and 31.7% of Vietnam's claimed internal waters within the Gulf of Thailand similarly constitute "additional" waters. It is notable that with the exception of Thai Area 1, all the straight baseline claims within the Gulf of Thailand include claims to internal waters beyond 12nm from the coast – 6% for Cambodia's 1982 claim, 6.7% for Malaysia's claim along the eastern coast of peninsula Malaysia and a substantial 31% for Thailand's Area 2 claim (see Table 4.20). The suitability of the waters enclosed within these straight baselines for the regime of internal waters is therefore open to question, but to differing degrees.

Turning to claimed additional territorial waters, that is, territorial waters claimed seaward of the straight baselines which do not fall within 12nm of the nearest 'normal' baseline and therefore would not form part of the claimant state's territorial waters in the absence the straight baselines claim, the excessive nature of Thai Area 4 and Vietnam's straight baseline claim within the Gulf of Thailand is re-emphasised. Threequarters of the territorial sea claim from the former's and 87.6% of the latter's straight baselines are over 12nm from the coast and therefore consist of "additional" territorial waters. In contrast, Cambodia's and Malaysia's claims are comparable, 42% and 47% of the territorial waters seaward of their baselines being "additional" waters respectively. The figure for Thai Area 2, at 23.5%, is significantly lower (see Table 4.20). This is because of the number and configuration of the fringing islands

concerned. While the islands making up the fringe linked by Area 2's straight baselines are numerous and, in the southern half of the claim at least, positioned in close proximity to one another (see Figure 4.8), this is far less the case for Cambodia's 1982 claim or Malaysia's claim along the eastern seaboard of peninsula Malaysia (see Figure 4.6). This is acutely demonstrated by the fact that the average straight baseline segment length, which largely equates to the distance between fringing islands, for Cambodia and Malaysia's claims is 34nm and 32nm respectively, for Thailand's Area 2 claim it is a mere 8.4nm (see Table 4.18). Perhaps significantly, Thai Area 1's territorial waters claim seaward of its straight baselines almost all falls within 12nm of the coast such that there are negligible "additional" waters.

When claims to "additional" waters, both within the straight baselines and seaward of them, are totalled, the claims can be evaluated in terms of their apparent reasonableness or extravagance as follows. According to these criteria there is no question as to which claim is the 'best'. Thailand's Area 1 claim is clearly the most conservative with the "additional" waters claimed as a result of it being negligible. The next most reasonable claim assessed on this basis is Cambodia's 1982 claim to straight baselines. This is rather surprising given the international protests that have been levelled against this claim. However, of the total claim to internal waters and territorial waters resulting from the Cambodian claim, 18.4% constitute "additional" waters. In contrast, 28.3% of the internal and territorial waters associated with Thai Area 2, which has not elicited known international protests, are also 12nm from the nearest coastal points and therefore count as internal waters. In fact, Malaysia's claimed straight baselines along eastern its peninsula coast are marginally more reasonable than Thai Area 2's in that only 24.1% of the waters associated with that claim constitute "additional" waters.

Vietnam's claims within the Gulf of Thailand include additional waters accounting for 35% of the overall claim to internal and territorial waters. However, the most extreme claim, as with the least, has been claimed by Thailand. According to this analysis, over 60% of the internal waters and territorial waters claimed within and beyond Thailand's Area 4 group of straight baselines lie beyond 12nm from the nearest 'normal' baseline and therefore consist of "additional" waters.

Overall, it can be concluded that of all the claims within the Gulf of Thailand, only Thailand's Area 1 straight baseline claim conforms to a strict interpretation of Article 7 of UNCLOS. The remaining claims are not, however, equally flawed.

Thailand's Area 4 claim in particular stands out as being excessive when measured against virtually any test based on Article 7, be it with regard to individual segment length, distance between fringing islands or proportion of "additional" waters claimed. Vietnam's claims within the Gulf of Thailand are, however, similarly, if not quite as extremely, excessive as those of Thailand's Area 4.

The relative merits of Cambodia's 1982 claim, Malaysia's claim along the coast of eastern peninsula Malaysia and Thailand's Area 2 group of straight baselines are rather more difficult to disentangle. In terms of segment lengths, Thai Area 2 is clearly more conservative than either the Cambodian or Malaysian claims, although all three breach the recommended limit on separation between fringing islands of 24nm. The Cambodian claim also suffers from the drawback of including a fringing island and 'floating' basepoint positioned significantly further offshore than the other two claims. Nevertheless, when the overall reasonableness of the claims is compared on the basis of the proportion of "additional" waters included in each claim, it is the Cambodian claim that proves the least excessive with Thai Area 2 including, in percentage terms, five times as much "additional" waters.

In conclusion then, the Gulf of Thailand states have without doubt sought to bend the terms of Article 7 of UNCLOS to their advantage in order to enclose the maximum area of the Gulf possible within straight baselines. This is no doubt with a view to enhancing their respective positions in relation to maritime boundary delimitation by means of advancing their baselines offshore. Ironically, these mutually competitive policies has led each country to adopt what might be termed excessive or aggressive claims in turn in what may be viewed as attempts not to get 'left behind'. Each Gulf of Thailand coastal state has therefore sought to counter its neighbours straight baseline claims with its own leading to a series of excessive claims. As a result, with the notable exception of Thailand's Area 1, all the straight baseline systems claimed within the Gulf of Thailand are open to, admittedly varying degrees of, criticism.

Table 4.20 *Summary of Additional Waters Claimed as a Result of Straight Baseline Claims in the Gulf of Thailand*

State	Claim	Internal Waters					Territorial Waters			Total Claim		
		Total	*Additional*	*%*	*>24nm*	*%*	*Total*	*Additional*	*%*	*Total*	*Additional*	*%*
Cambodia	1957	1,286nm^2	–	0%	–	–	–	–	–	–	–	–
	1972	2,375nm^2	81nm^2	3.4%	–	–	2,044nm^2	522nm^2	25.5%	4,419nm^2	603nm^2	13.6%
	1982	3,009nm^2	201nm^2	6.7%	–	–	1,508nm^2	630nm^2	42%	4,517nm^2	831nm^2	18.4%
Malaysia	within Gulf	6.8nm^2	–	0%	–	–	216.7nm^2	11.8nm^2	5.45%	223.5nm^2	11.8nm^2	5.3%
	east coast	5,502.7nm^2	330.3nm^2	6%	–	–	4,291.8nm^2	2,030.7nm^2	47%	9,794.5nm^2	2,361nm^2	24.1%
Thailand	Area 1	845.6nm^2	–	0%	–	–	782nm^2	–	0%	1,627.6nm^2	–	0%
	Area 2	3,079.5nm^2	952.4nm^2	31%	–	–	1,693.1nm^2	398.46nm^2	23.5%	4,772.6nm^2	1,350.9nm^2	28.3%
	Area 4	7,824.5nm^2	4,336.4nm^2	55%	1,549nm^2	19.8%	2,794.9nm^2	2,086.4nm^2	75%	10,619.4nm^2	6,422.8nm^2	60.5%
Vietnam	within Gulf	5,805nm^2	1,843nm^2	31.7%	276nm^2	4.75%	948nm^2	830nm^2	87.6%	7,648nm^2	2,673nm^2	35%

Source: Author's research.

Chapter 5

Claims to Maritime Jurisdiction in the Gulf of Thailand

5.1 Introduction

The previous chapter dealt with the fundamental issue of the baselines claimed by the Gulf of Thailand coastal states. This chapter will focus attention on the claims to maritime jurisdiction relating to areas seaward of these baselines. Accordingly, it will explore the claims Cambodia, Malaysia, Thailand and Vietnam have made with regard to territorial sea, contiguous zone, continental shelf, exclusive fishing zones and exclusive economic zones. These claims are summarised in Table 5.1.

Table 5.1 ***Maritime Claims in the Gulf of Thailand***

Country	Historic Waters	Territorial Sea	Contiguous Zone	Continental Shelf	EEZ
Cambodia	✔	✔	✔	✔	✔
Malaysia	✘	✔	✘	✔	✔
Thailand	✔	✔	✘	✔	✔
Vietnam	✔	✔	✔	✔	✔

Source: Author's research.

Particular attention will be devoted to the claims established to continental shelf rights as these are the most complex claims to extended maritime jurisdiction that have been made by the interested states, encompassing, as they do, extensive areas of the Gulf of Thailand.[1] The nature of the littoral states' claims to continental shelf gave rise to significant areas of overlap between competing claims which have been subject to subsequent delimitation or other agreement as detailed in Chapter 6 or which persist undelimited and are subject to dispute between the Gulf of Thailand states. The latter issues are considered in Chapter 7.

It should also be noted that of the Gulf of Thailand coastal states, only Malaysia has made no claim to a regime of historic waters (albeit with Cambodia and Vietnam making a joint claim). These claims will not, however, be considered in this chapter. Thailand's claim to a historic bay in the Bight of Thailand is reviewed along with its

[1] The Gulf of Thailand states' EEZ claims for the most part do not specify precise limits, unlike their claims to continental shelf.

other straight baseline claims in Section 4.4 while Cambodia and Vietnam's 1982 *Agreement on Historic Waters* is dealt with in detail in Section 6.3.

5.2 Territorial Sea and Contiguous Zone

5.2.1 Cambodia

France, as the colonial power, did not claim a specific territorial sea on behalf of its possessions in Indochina prior to Cambodia achieving independence in 1949. The French authorities did, however, make some provision for the protection and regulation of fisheries off Cambodia's coasts in 1936 to a distance of 20km (10.8nm) from the coast, within what would subsequently become part of the latter's territorial sea claim (see Section 5.4).

Independent Cambodia's first claim to a territorial sea and contiguous zone was embodied in *Kret* No.622 of 30 December 1957. At that time Cambodia reportedly claimed a 5nm-breadth territorial sea and a contiguous zone of 7nm beyond the territorial sea.[2] Having become a party to the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone in 1964, Cambodia, by a *Declaration* by the Royal Government dated 27 September 1969, duly claimed a 12nm territorial sea.[3] Cambodia has been consistent in this claim in its subsequent legislation – a position in full accordance with the 1958 Convention and subsequent developments in the law of the sea including the 1982 UN Convention (see Section 3.4.3). The 12nm territorial sea claim was thus repeated in *Kret* No.518/72-PRK of 12 August 1972, a Ministry of Foreign Affairs Statement dated 15 January 1978, and most recently in the 31 July 1982 *Council of State Decree on Territorial Waters* (Appendix 2).

In the 1978 and 1982 legislation Cambodia also laid claim to a 12nm-breadth contiguous zone beyond and adjacent to its territorial sea. Within the contiguous zone the 1982 decree states, in Article 4, that Cambodia, *"exercises necessary control in order to oversee its security and to prevent and check violations of it customs, fiscal,*

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2 Ranariddh, 1976: 329. Efforts to obtain a copy of Cambodia's 1957 *Kret* proved unsuccessful. However, Ranariddh indicated in 1976 that the document in question was not in the public domain.

3 Siddayao, 1978: 56. Ranariddh (1976: 241) noted that Cambodia's 1969 Declaration made no reference to a contiguous zone and that it could be presumed that this had been *"reabsorbed"* by Cambodia as part of its extended territorial sea.

health and emigration and immigration laws." These provisions conform to international legal norms (see Section 3.4.4).

In relation to Cambodia's lateral territorial sea boundary with Thailand, the *Kret* of 12 August 1972 specifically states that the limit of Cambodia's territorial sea *"follows the division of maritime waters determined by the historic frontier stipulated in the Treaty of 23 March 1907 and confirmed by the map annexed thereto"* (see Figure 1.1). This statement was subsequently repeated (with the exception of reference to the map) in Article 3 of the July 1982 decree and remains Cambodia's formal position on the territorial sea boundary vis-à-vis Thailand. Cambodia's territorial sea boundary claim based on the 1907 Franco-Siamese treaty will be considered along with the similarly based continental shelf claim (Section 5.5.1) in Section 7.2.

A territorial sea and contiguous zone delimitation between Cambodia and Vietnam is also required and has not, as of mid-1999, been concluded.[4] This delimitation will relate to waters seaward of the two states' integrated system of straight baselines taking "Point O", the location of which has yet to be determined, as its starting point (see Sections 4.2 and 4.5). By virtue of Cambodia and Vietnam's joint claim to historic waters (see Section 6.3), a delimitation of jointly claimed historic waters will also be necessary *landward* of their straight baselines. These issues will also be explored in Section 7.3.

5.2.2 Malaysia

On gaining independence in 1957,[5] Malaysia inherited a 3nm claim to territorial sea which the United Kingdom, as the colonial power, had established by the *Territorial Waters Act* of 19 October 1927.

Malaysia became party to the 1958 Geneva *Convention on the Territorial Sea and Contiguous Zone* on 10 September 1964. Accordingly, the 3nm territorial sea claim

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4 This is the only delimitation within the Gulf of Thailand where the states concerned both claim contiguous zones as well as territorial seas. Neither Malaysia nor Thailand claim contiguous zones. Thus there is no call for a Malay-Thai contiguous zone boundary. As Cambodia claims a contiguous zone but Thailand does not, presumably the Cambodian contiguous zone will extend beyond the limit of the yet to be delimited Thai-Cambodian territorial sea boundary and will, in all probability, be defined by the limits set down in the yet to be delimited Thai-Cambodian continental shelf and/or EEZ boundary. It is worth noting that contiguous zone delimitations, though rare, are not unheard of, though they are generally delimited in conjunction with the territorial sea. A good example of this is the *Convention between France and Spain on Delimitation of the Territorial Sea and Contiguous Zone in the Bay of Biscay* (Charney and Alexander, 1993: 1,719-1,734).

5 Malaysia gained its independence from the United Kingdom on 31 August 1957.

was superseded by one to a 12nm territorial sea by means of *Emergency (Essential Powers) Ordinance* No.7 of 2 August 1969.[6]

The precise limits of Malaysia's claimed territorial sea are illustrated on the two maps *Peta Menunjukkan Sempadan Perairan dan Pelantar Benua Malaysia*[7] issued by the Malaysian Directorate of National Mapping in December 1979, previously referred to in Section 4.3.[8] An excerpt from the chart relevant to Malaysia's claims in the Gulf of Thailand is included as Figure 4.5.

Malaysia has made no claim to a contiguous zone beyond its territorial sea but has concluded an agreement with Thailand relating to the two states' territorial seas within the Gulf of Thailand. The location of the Thai-Malaysian territorial sea boundary coincides with that outlined in Malaysia's *Peta Baru*, as might be expected given the territorial sea delimitation was apparently agreed upon seven years prior to the publication of the *Peta Baru* (see Section 6.2.2). This is the sole territorial sea delimitation involving Malaysia within the Gulf of Thailand. Curiously, however, the boundary line agreed with Thailand appears to extend *beyond* 12nm from the coasts of either state (see Section 6.2.2).

5.2.3 Thailand

Thailand, alone among the Gulf of Thailand states, was not subject to European colonisation and its claims to maritime jurisdiction therefore developed, at least to some extent, independently. As early as the reign of Rama III (1824-51) therefore, relevant laws began to be issued generally relating to taxation on fishing activities both in rivers and at sea.[9] Gradually, however, as European influence in Southeast Asia grew and Thailand (Siam) came under pressure from colonial powers in the form of Britain (from the south and west) and France (from the east), it was recognised that Thailand needed to revise its legislation and bring it into line with Western norms. As a result, in 1899 Thailand sent a delegation to attend the First Hague Conference on international law

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6 The legislation in question was promulgated under special emergency powers as a consequence of the prevailing political unrest in Malaysia at the time (Haller-Trost, 1996: 320). Copy on file with the author.

7 *"Map Showing the Territorial Waters and Continental Shelf Boundaries of Malaysia."* This document will be referred to simply as the 'Malaysian Map' or by the Malaysian shorthand of *"Peta Baru"* ['new map'].

8 The timing of the publication of the *Peta Baru* had little to do with developments in the Gulf of Thailand. Instead, its publication was prompted by the imminent conclusion of a maritime boundary treaty with Indonesia in the wake of the end of the conflict between the two sates known as the *konfrontasi* (Haller-Trost, 1996: 320-321).

9 Tangsubkul, 1982: 20-21.

codification. With regard to law of the sea issues, Thailand moved to adopt British practice. Article 5 of the *Thai Vessels Act* of 1938 gave a definition of *"Thai Waters"* (Nan Nam Thai) as being every water zone found under the sovereignty of Siam.[10] Although Thailand did not formally specify the width of its territorial sea until 1966, since approximately 1910 Tangsubkul notes that in practice Thailand *"followed the Anglo-Saxon concept of three nautical miles."*[11]

Thailand established the breadth of its territorial sea by means of a *Royal Proclamation* dated 6 October 1966 as *"twelve nautical miles from a baseline used for measuring the breadth of the territorial sea."* Thailand has not subsequently altered or amended this claim which in any case conforms with accepted norms of international law (see Section 3.4.3).

As noted, however, Thailand has concluded a territorial sea delimitation treaty with Malaysia within the Gulf of Thailand although this delimitation does seem to exceed 12nm in length (see Section 6.2.2). No agreement relating to the territorial sea (or indeed continental shelf or EEZ) has been concluded between Thailand and Cambodia whose claims diverge to a considerable extent (see Section 7.2). Thailand has not seen fit to claim a contiguous zone beyond its territorial sea.

5.2.4 Vietnam

As mentioned in relation to Cambodia, in the nineteenth and early twentieth centuries, France made no formal claim to a territorial sea off what was then French Indochina. Instead, legislation was promulgated in 1936 in order to manage and protect fisheries in what was to become Cambodia and Vietnam's territorial sea (see Section 5.4).

South Vietnam claimed a 3nm-breadth territorial sea through a Declaration dated 27 April 1965.[12] It was subsequently reported in mid-1974 that the Saigon authorities had extended South Vietnam's territorial sea claim to 50nm.[13] However, this development was short-lived as Saigon fell to the Vietnamese communists in the following year.

Reunified Vietnam's *Statement on the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone and the Continental Shelf* of 12 May 1977 (Appendix 5) defines Vietnam's territorial sea as having:

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10 Tangsubkul, 1982: 21.
11 Tangsubkul, 1982: 21.
12 Siddayao, 1978: 52.
13 Siddayao (1978: 52-54) citing *Petroleum News*, 31/5/74 as the source of this report.

> *...a breadth of 12 nautical miles measured from a baseline which links the furthest seaward points of the coast and the outermost points of Vietnamese offshore islands.*[14]

The waters within the straight baselines were defined as constituting Vietnamese internal waters. Vietnam's contiguous zone was defined in the same statement as:

> *...a 12 nautical mile maritime zone adjacent to and beyond the Vietnamese territorial sea, with which it forms a zone of 24 nautical miles from the baseline used to measure the breadth of the territorial sea.*

The statement went on to define Vietnamese control over the contiguous zone as being exercised for its security, customs, fiscal, sanitary and emigration and immigration interests.

Vietnam has not concluded any delimitation agreements in respect to either territorial sea or contiguous zone. Its potential delimitation with Cambodia represents the only candidate for a territorial sea and/or contiguous zone boundary for Vietnam within the Gulf of Thailand.[15] As noted, a delimitation within the Cambodian-Vietnamese joint historic waters area has also yet to be effected (see Section 7.3.5).

5.2.5 Summary

All four littoral states on the Gulf of Thailand claim 12nm territorial seas in accordance with Article 3 of the 1982 UN Convention on the Law of the Sea. However, only Cambodia and Vietnam have also claimed contiguous zones extending a further 12nm offshore. These claims are in accordance with Article 33 of UNCLOS dealing with the contiguous zone. Among the Gulf of Thailand littoral states, Malaysia previously held a claim to a different breadth of territorial sea, 3nm, which Kuala Lumpur inherited from the United Kingdom as the former colonial power while South Vietnam briefly claimed a 50nm territorial sea before being reunified with victorious North Vietnam.[16]

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14 This effectively reaffirmed North Vietnam's 1964 claim to a 12nm territorial sea (Siddayao, 1978: 54).

15 Vietnam's other obvious potential territorial sea boundary is that with China. This delimitation is, however, complicated by historic claims and at the time of writing was yet to be agreed. Vietnam is also party to the Spratly islands dispute in the South China Sea the eventual resolution of which could conceivably give rise to the need for further territorial sea boundaries involving Vietnam.

16 As noted, Cambodia and Vietnam did inherit fisheries legislation from France relating to areas within 12nm of the coast (see Section 5.4).

However, despite the fact that both Malaysia and Thailand claim 12nm-breadth territorial seas, it is apparent that their agreed territorial sea delimitation extends beyond 12nm from their respective baselines (see Section 6.2.2). Aside from this problem, it is clear that it is the baselines from which the territorial sea (and other maritime zones) are measured, rather than the claimed breadth of territorial sea itself which have been the cause of controversy between the states concerned.

Three potential territorial sea boundaries exist in the Gulf of Thailand. As mentioned, one, that between Malaysia and Thailand, has been delimited by agreement between the parties (see Section 6.2.2). The others, between Cambodia and Thailand and Cambodia and Vietnam remain undelimited and to be resolved (see Sections 7.2 and 7.3). In addition, one potential contiguous zone boundary exists within the Gulf, that between Cambodia and Vietnam.[17]

5.3 Continental Shelf

5.3.1 Cambodia

Cambodia's first explicit claim to continental shelf was embodied in Article 4 of its *Kret* No.622 of 30 December 1957 which defined the outer limit of Cambodia's continental shelf as coinciding with the 50 metre depth isobath.[18] Such a definition of continental shelf rights on the basis of bathymetry was in keeping with general international thinking and practice at the time, but swiftly became outmoded and was superseded by later legislation. On 27 September 1969 Cambodia declared its full sovereignty over its continental shelf and, therefore, control and jurisdiction over the natural resources of its shelf, but did not specify any limits to that area.[19]

In 1969, a Committee of Experts was formed to study the delimitation of Cambodia's continental shelf.[20] The Committee's prime concern was delimitation with Thailand. The Committee was apparently working on the basis of previous studies carried out by the Merchant Marine Service and by Cambodia's Continental Shelf Sub-Committee. The Committee of Experts commissioned a further study by a French

17 Were Malaysia and Thailand to declare contiguous zones, which they certainly would be entitled to claim, there would then be the need for contiguous zone boundaries between Malaysia and Thailand and Cambodia and Thailand within the Gulf of Thailand.

18 Ranariddh, 1976: 358.

19 Siddayao, 1978: 47 and 66.

expert, M. Legoux, who submitted his report to the Committee on 5 November 1969. On 26 November 1969, the Committee presented its report to the Royal Government in which it outlined various alternatives for addressing the delimitation of Cambodia's continental shelf.[21]

With respect to the delimitation with Thailand, the Committee was primarily concerned with two issues: the weight or effect to be given to the various Cambodian islands and rocks in the delimitation process; and the manner in which the Thai island of Koh Kut should be treated in the lateral section of the boundary. The Committee came up with four different proposals.

The first proposal called for the lateral delimitation with Thailand to coincide with the bi-sector of the angle formed by the respective Thai and Cambodian baselines running from the terminal point on the land boundary.[22] Thailand adopted straight baselines in this area in 1970, the relevant segment of which stretched from the eastern tip of Koh Kut to the Thai-Cambodian land boundary's intersection with the coast (see Section 4.4 and Figure 4.8). It must be recalled that at the time that these deliberations were taking place Cambodia was operating under its 1957 straight baseline system (see Section 4.2.2 and Figure 4.1). Terming this the least favourable result, the Committee then proposed the construction of an equidistance line between Koh Prins and Poulo Wai on the Cambodian side and Koh Pennan, Koh Samuie, Ban Lem and Cap Patani on the Thai side to complete the delimitation. According to this option the Thai islets of Ko Kra and Ko Losin were therefore discounted.

The second proposal was based on a line extending from the terminal point of the land boundary, described as a *"perpendicular"* line using the first segment of Cambodia's claimed straight baselines as its baseline and terminating at a point "PP" defined as being equidistant from the Cambodian and Thai baselines. This resulted in a slightly more favourable delimitation than the first alternative, which had essentially split the difference between the two parties' respective baselines. In both the first and second alternatives, the question of Cambodian sovereignty over Poulo Panjang (Tho Chu) and Koh Tral (Phu Quoc) islands was reserved.

The third alternative was identical to the second except that it proceeded on the hypothesis that Poulo Panjang was under Cambodian sovereignty.

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20 Ranariddh, 1976: 367.

21 Ranariddh, 1976: 369-72.

22 This is, in fact, the rationale on which Thailand itself based its lateral continental shelf claim vis-à-vis Cambodia (see Section 5.3.3).

The fourth alternative was ultimately embodied in *Kret* No.77-70-CE of 6 February 1970.[23] This recommendation was based on a line drawn on the basis of Cambodian 1957 straight baselines[24] and thence equidistant between the two countries, using the islands of Poulo Wai and Panjang as basepoints on the Cambodian side (see Figure 5.1). In contrast to Cambodia's subsequent 1972 claim, that of 1970 describes an arc around the southern tip of Ko Kut island and, by terminating at Point PP, falls both south of the lateral claim and east of the interpretation of equidistance used to construct the opposite claim vis-à-vis Thailand constructed in 1972. This *Kret* formed the basis for Cambodia's first offshore concessions. On 21 February exploration rights to Cambodia's entire continental shelf, were formally awarded to the French Elf-ERAP group.[25]

Cambodia's 1970 claim was, however, swiftly superseded by *Kret* No.439/72-PKR of 1 July 1972, which modified and extended the continental shelf limits claimed by Cambodia in 1970. The 1972 *Kret* divided Cambodian claimed continental shelf into two sectors (Appendix 6):

Article 1 of the *Kret* covers the lateral limit between Cambodia and Thailand based on an interpretation of the Franco-Siamese Treaty of 23 March 1907 and should therefore be considered in conjunction with *Kret* No.518/72-PRK of 12 August 1972 relating to the territorial sea as mentioned in Section 5.2.1. The *Kret* of 1 July 1972 stipulates that, in application of the 1907 treaty and a subsequent verbal agreement of 8 February 1908, the delimitation between Cambodian and Thai continental shelves follows:

> *...a straight line joining the frontier point "A" on the coast with the highest summit on the Island of Koh Kut and thence [still in a straight line] up to Point "P".*[26]

Article 2 of the *Kret* relates to the median line boundary in the central part of the Gulf of Thailand. From Point "P", the limit of the Cambodian claim turns abruptly southwards and is constructed broadly on the basis of equidistance between opposite Cambodian

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23 Ranariddh, 1976: 369.

24 Although curiously also described as being *"perpendicular"* to the relevant part of Cambodia's straight baselines in relation to the lateral delimitation with Thailand.

25 A subsidiary of the Elf-ERAP group, Elf du Cambodge, was formed to operate Elf's offshore Cambodia concession. In 1972 Elf du Cambodge relinquished 39,100km^2 of its original concession which was an enormous 80,000km^2 in area. Details of hydrocarbon activities in this period are drawn from an internal memorandum of an international oil company (whose name has been withheld by request) entitled *Collected Notes on Cambodia's Offshore Boundaries* (1995). The author is indebted to said oil company for permission to cite this document.

26 Defined in the list of coordinates attached to the Kret as 11°32'N. 101°20'E.

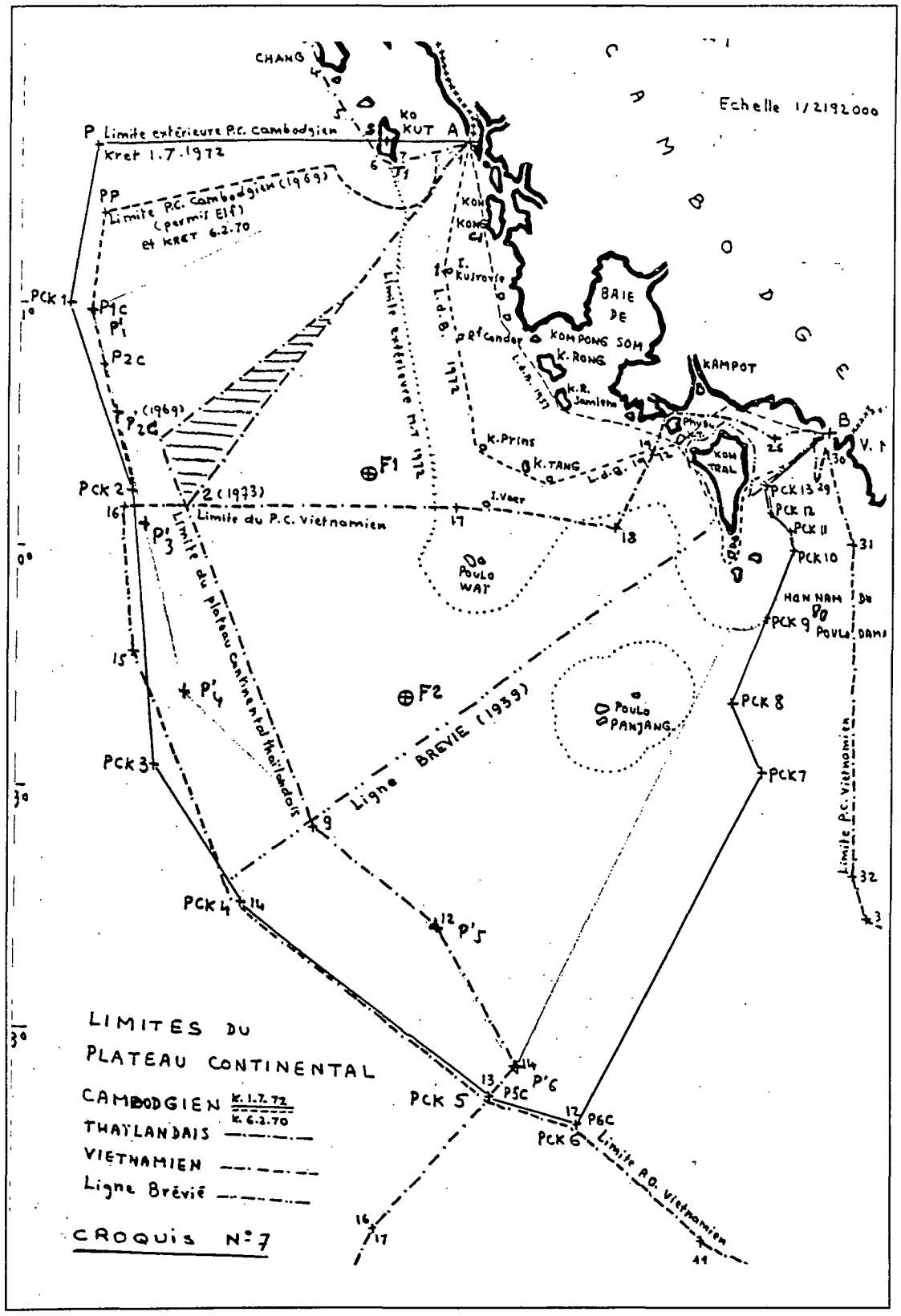


Figure 5.1 *Cambodia's Continental Shelf Claims*
Source: Ranariddh, 1976.

and Thai mainland and island coasts. Cambodia's claimed straight baseline system was apparently not used in the construction of this line. Point Pck 1 is defined in the *Kret* as being equidistant between the Cambodian island or rock Kusrovie and the islands or islets of Koh Charn and Hin Bai on the Thai side of the Gulf.[27] However, while Pck 3 appears to be almost precisely equidistant between the Poulo Wei islands and Laem Talum Phuk on the Thai mainland coast, Pcks 2, 4 and 5 do *not* appear to be precisely equidistant between the Cambodian claimed Poulo Wei and Panjang island groups and the Thai mainland. For instance, Pck 2 is located approximately 4nm (7.5km) nearer to Poulo Wei than to Ko Phangan; Pck 4 is 2.8nm (5.25km) closer to the nearest islet of the Poulo Panjang group than the nearest point on the Thai mainland coastline north of Laem Khao Phra; and, Pck 5 is similarly 2.8 and 2.0nm (5.25 and 3.75km) nearer to the Poulo Panjang group than Laem Khao Phra and the Malaysian mainland coastline in the vicinity of Kota Bharu respectively. [28] It therefore seems clear that while the line P-Pck 6 is broadly speaking a median line, it is somewhat simplified and generally falls marginally short, to Cambodia's disadvantage, of an equidistance line giving full effect to Cambodian claimed islands on one side and the Thai mainland and islands in close proximity to it on the other.

At Point 6, equidistant between the Poulo Panjang (Tho Chu) islands, the Malaysian mainland coast at Kota Bharu and Cape Ca Mau at the southern tip of mainland Vietnam, the Cambodian claim turns sharply to the north and becomes a dividing line between the then Cambodian-claimed islands of Poulo Panjang (Tho Chu) and Koh Tral (Phu Quoc) and the Vietnamese mainland and islands. For example, Pck 7 appears to be equidistant between the main island of the Poulo Panjang group and the Vietnamese mainland. Closer inshore (Pck 7-Pck 12) the basis of the alignment of the Cambodian claim line becomes more difficult to distinguish but it is clear that it is broadly an equidistance line between Vietnam's Poulo Damia and Pirate islands and the Cambodian claimed island of Phu Quoc (Koh Tral). The final segment of the claim, Pck 13-B, terminating at the Cambodian-Vietnamese land boundary on the coast appears to be broadly equidistant between the two states' mainland coasts, ignoring islands close inshore (see Figure 1.1).

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27 However, when this point was plotted on British Admiralty Chart 2414 at 1:1,500,000 scale, while it proved to be equidistant between Koh Kusrovie and Koh Charn (Ko Chan on the chart), it was approximately 2nm (3.75km) short of being equidistant with Hin Bai islet.

Subsequently, in June 1973 Marine Associates of Hong Kong acquired exploration rights to offshore acreage totalling 6,564 square miles (17,000km^2). Part of the Marine Associates concession had previously been relinquished by Elf du Cambodge but also included areas between Cambodia's 1970 and 1972 continental shelf claims. As a result the Marine Associates block formed a long, narrow frame around the eastern northern and northwestern sides of the remaining Elf concession area (see Figure 5.2) As a consequence of overlappping maritime claims in the Gulf of Thailand, approximately 4,402 square miles (11,400km^2) or 67% of the Marine Associates block lay in waters claimed by Thailand and Vietnam.[29]

The 31 July 1982 *Council of State Decree*, in Article 6, stated that Cambodia's continental shelf extends *"beyond the territorial waters throughout the natural prolongation of its land territory to a distance of 200 nautical miles from the baseline used to measure the width of the territorial waters of the PRK."* No precise limits were included in the 1982 legislation which at the time of writing was the most recent concerning Cambodia's maritime claims. As far as continental shelf is concerned, therefore, it can be concluded that the *Kret* of 1 July 1972 constitutes the basis of Cambodia's present claim.

The total area of Cambodia's claims to extended maritime jurisdiction, including both territorial sea and continental shelf claims, seaward of its 1957 straight baselines was of the order of 25,304nm^2 (86,790km^2) (Figure 5.3).[30] However, even though Cambodia's 1972 continental shelf claim has to date not been superseded by more recent legislation, it can be inferred that the resolution of the Cambodian-Vietnamese islands dispute[31] (see Section 6.3), coupled with the extension of Cambodia's straight

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28 The basepoints used to construct this equidistance line were recovered through plotting and analysis using the relevant coordinates on British Admiralty Chart 2414, 1967 edition, at 1:1,500,000 scale.

29 *Collected Notes on Cambodia's Offshore Boundaries*, 1995. Oil exploration offshore Cambodia was brought to an abrupt halt with the Khmer Rouge take over of the country in 1975.

30 Calculated using DELMAR and British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000. The latter was used in to approximate the normal baseline along the mainland coast such that coordinates appropriate for input into DELMAR could be ascertained. Excludes Phu Quoc island, whose area was calculated using a planimeter and British Admiralty Chart 3985 , 1987 edition, at 1:500,000 scale. The area of relatively small islands, including the Poulo Wei and Panjang groups, which fall within the limits of the Cambodian claim are included. However, their area is considered sufficiently small not to have much distorting effect on the overall calculation of the extent of Cambodia's continental shelf claim.

31 Cambodia and Vietnam's accord over island sovereignty, leaving the Poulo Wei group to Cambodia but confirming Vietnamese sovereignty over Phu Quoc (Koh Tral) and the Tho Chu (Poulo Panjang) island group, undermines the basis of both Cambodia's and South Vietnam's claims to continental shelf dating from 1972 and 1971 respectively. This is because both claims were made on the understanding that all three island groups belonged to the claimant state.

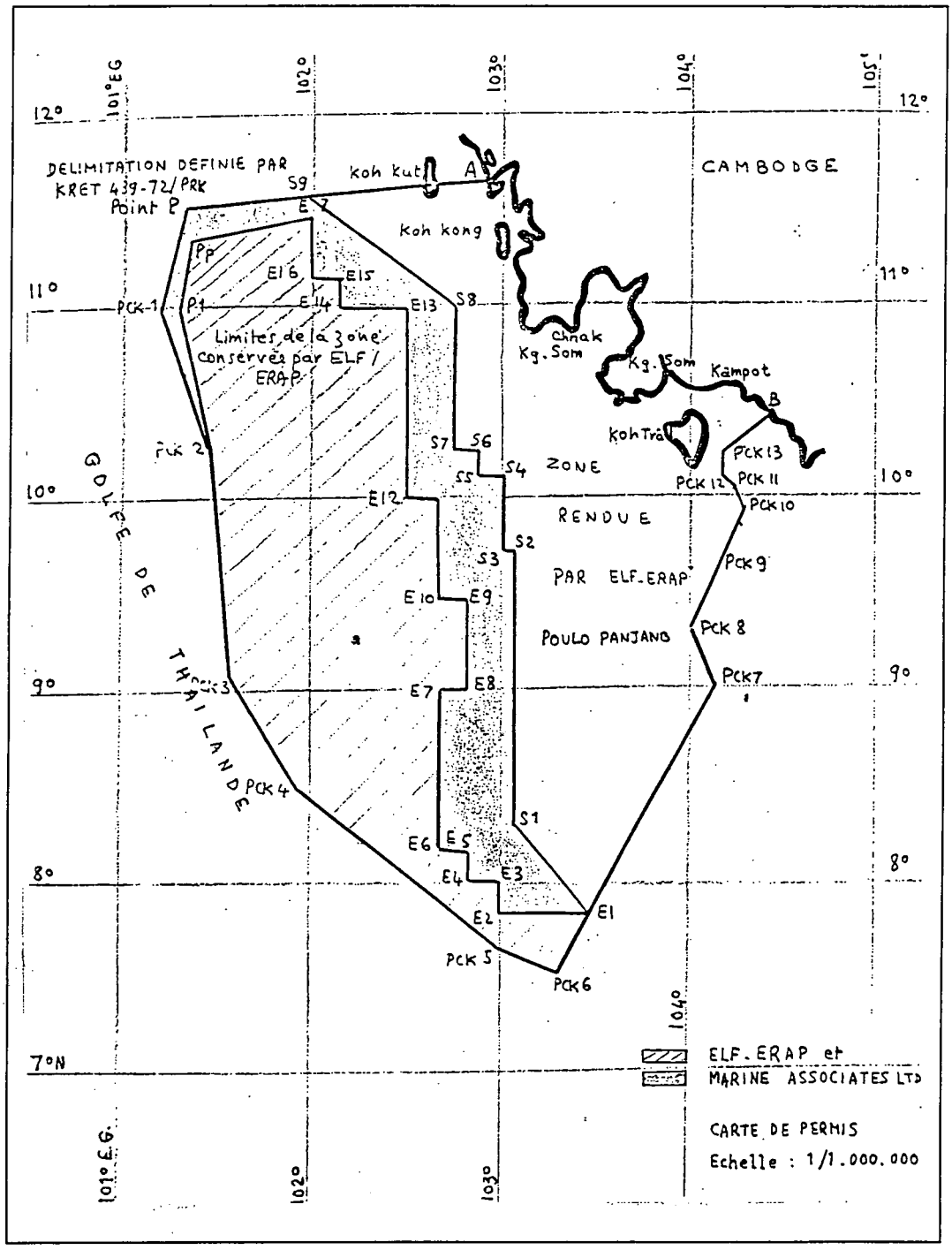


Figure 5.2 *The Elf-ERAP and Marine Associates Oil Exploration Concessions*
Source: Ranariddh, 1976.

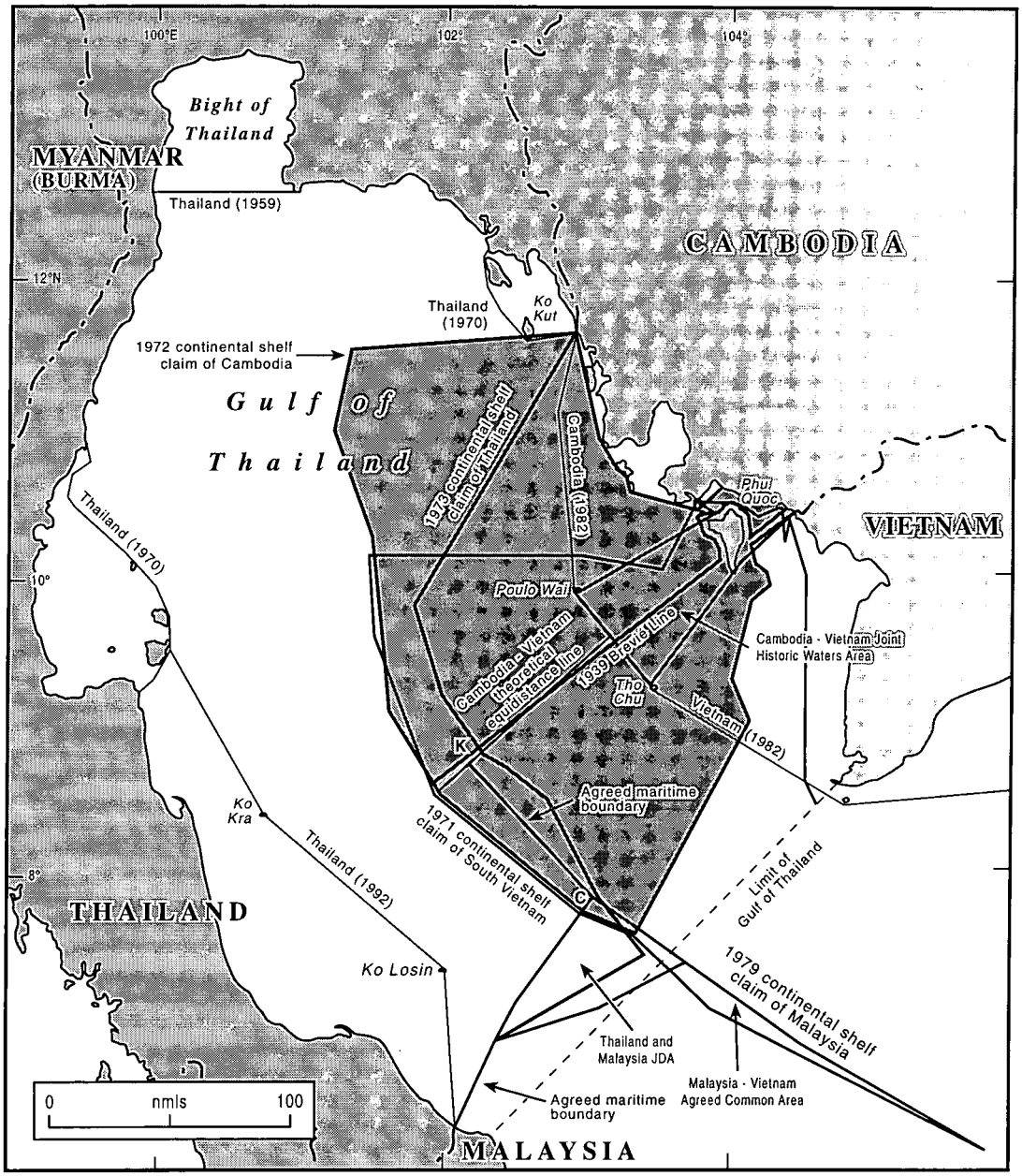


Figure 5.3 *Cambodia's Continental Shelf Claims in the Gulf of Thailand, 1972*
Source: Author's research.

baselines system offshore later in 1972 and then once again in 1982 (see Section 4.2), have served to significantly reduce the extent of Cambodia's claims. The merits of Cambodia's claims to continental shelf in relation to the other Gulf of Thailand littoral states are discussed in Chapter 7.

5.3.2 Malaysia

Malaysia laid claim to its continental shelf to a depth of 200 metres or to the depth of exploitation, that is, in conformity with the definition laid down in the 1958 Conventions (see Section 2.4.6), by the *Continental Shelf Act* No.57 of 28 May 1966.[32] Malaysia's continental shelf claims were not, however, revealed until the Directorate of National Mapping published the *Peta Baru* ['new map'] on 21 December 1979, as referred to in Section 4.3 (see Appendix 7 and Figure 4.5).[33]

The Malaysian continental shelf claim off the east coast of peninsula Malaysia in both its lateral sector (relating to delimitation with Thailand – turning points 43-47) and opposite sector (vis-à-vis Vietnam – turning points 41-43) is broadly based upon equidistance with the Thai and Vietnamese mainland coasts. Islands substantially offshore, particularly Thailand's islet Ko Losin and Vietnam's[34] Tho Chu (Poulo Panjang) island group have been discounted for the purposes of the Malaysian claim.

The Malaysian claimed lateral boundary, vis-à-vis Thailand, therefore, departs from the terminus of the Thai-Malaysia land boundary on the Gulf of Thailand coast northeastwards, with turning points governed by basepoints on the Thai and Malaysian mainland coasts, before turning abruptly southeastwards on reaching a point equidistant between the Thai, Malaysian and Vietnamese mainland coasts in the central Gulf. The first three turning points of the Thai-Malay land boundary, Nos.47, 46 and 45, proceeding progressively offshore are coincident not only with Points 17, 16 and 15 of the Thai continental shelf claim of 1973 (see below), but also with Points (i), (ii) and (iii) of the Malaysia-Thailand Memorandum of Understanding on the continental shelf (see Section 6.2.3). The latter point – Malaysian turning point 45, Thai Point No.15 and

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32 Copy on file with the author.

33 The charts include a table of the turning points of the Malaysian continentals shelf claim and their geographic coordinates (Appendix 7). According to this table, the coordinates mentioned were *"based on [British] Admiralty Chart Nos. 771, 793, 1353, 1358, 2414 and 2660A."* No mention was made of the type of line to be described between the turning points. However, since the charts mentioned are on the Mercator projection and the only straight lines which are geodesics on such a chart are the meridians and the equator, it can be deduced that the lines joining the turning points described are loxodrome or rhumb lines (see Section 7.9).

34 Previously also claimed by Cambodia (see Sections 5.3.1 and 6.3).

Point (iii) of the MoU – is also consistent with Point A of the Thai-Malaysian joint development are (JDA). Furthermore, Malaysian turning points 44 and 43 are, respectively, identical to Thai-Malaysian JDA Points B and C (see Section 6.2.4). Malaysian turning point 43, representing the northwesterly extent of Malaysia's continental shelf claim in the Gulf of Thailand, is equidistant between the Thai mainland at Laem Khao Phra and the Malaysian mainland at Kuala Besar.[35] The location of point 43 therefore discounts the presence of Thailand's islet Ko Losin (as does point 44). In addition, Point 43 ignores the presence of Vietnamese islands on the opposite side of the Gulf of Thailand.

From Malaysian turning point 43, the continental shelf limit then constitutes an equidistance line between opposite mainland coasts trending southeastwards via turning point 42 until it meets up with the final point (Point 20) of the 7 November 1969 continental shelf boundary agreement between peninsula Malaysia and Indonesia which is coincident with Malaysian turning point 41.[36] Point 42 is equidistant between the Malaysian island of Redang and the Vietnamese mainland coast, ignoring Vietnamese islands.[37] Point 41 represents a tri-point equidistant from Malaysian, Indonesian and Vietnamese mainland coasts.[38] Both Malaysian turning points 41 and 42 coincide with the points defining the Malaysian-Vietnamese joint Defined Area, being identical to Points E and F of that agreement (see Figure 1.1 and Section 6.2.4).

It is therefore clear that although Malaysia's December 1979 definition of its continental shelf claim, post-dating Malaysia's territorial sea and partial continental shelf treaties with Thailand (see Section 6.2.2 and 6.2.3), is consistent with these agreements and also encompasses the entirety of the JDA. Malaysia's policy of ignoring Thailand's Ko Losin islet, coupled with Bangkok's insistence on it as a valid basepoint led to the overlap in continental shelf claims with Thailand which became the JDA. Similarly, Malaysia's (and Thailand's) selective application of equidistance in relation to Vietnamese islands and Hanoi's opposing view (i.e. giving its islands on the eastern side of the Gulf full weight in its own claims) have resulted in the overlap between Vietnam's continental shelf claim and the Thai-Malaysian JDA. Similarly, to the southeast, the same factors have resulted in an overlap between the claims of Malaysia

35 Measured on British Admiralty Charts 3961, 1987 edition at 1:240,000 scale, and 2414, 1967 edition at 1:1,500,000 scale.

36 US Department of State, 1970a: 1; Charney and Alexander, 1998: 2,335-2,344.

37 Measured on British Admiralty Chart 2414, 1967 edition at 1:1,500,000 scale. See also, Valencia (1991: 20 and 26).

and Vietnam – an overlap ultimately designated a joint development zone as the Thai-Vietnamese Defined Area (see Sections 5.3.4, 6.4 and 7.?).[39]

The total area, in terms of both territorial waters and continental shelf, claimed by Malaysia within the Gulf of Thailand proper amounts to approximately 3,210nm^2 (11,010km^2) (Figure 5.4).[40]

5.3.3 Thailand

Prior to a formal declaration concerning its claim to continental shelf in the Gulf of Thailand, Thailand implied a claim by issuing an invitation to international oil companies to explore for and exploit oil and gas in offshore areas in the Gulf. Following the drafting of Thailand's *Petroleum Act* and *Petroleum Income Tax* in 1967, bids were invited to explore for and produce oil and gas from 21 June the same year.[41]

In conjunction with this, a series of informal maps were issued to accompany each offer of acreage in 1967, 1971 and 1972. The limits of Thai waters illustrated on each of these maps differ from one another (see Figure 5.5) and, perhaps significantly, from Thailand's eventual, formal claim of 1973.[42] Interestingly, in relation to the lateral delimitation with Cambodia, all three of the pre-1973 limits appear consistent with interpretations of equidistance rather than a bisector of baselines (see below) and therefore fall well to the west of the eventual Thai claim. In contrast, in the central Gulf of Thailand, the limits of the acreage designated as belonging to Thailand lie predominantly on the Cambodian side of the official continental shelf claim expressed in 1973. Finally, in relation to Malaysia, two of the three pre-1973 limits extend generally to the east of Bangkok's eventual claim to Malaysia's disadvantage.

It therefore seems that Thailand, in the development of its thinking on the limits of continental shelf claims, eventually opted to moderate its claims with regard to the central and southern parts of the Gulf of Thailand but adopted a rather more forward

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38 Measured on British Admiralty Chart 2414, 1967 edition at 1:1,500,000 scale.

39 Accordingly, Malaysia's interpretation of its continental shelf limits, expressed in the *Peta Baru*, drew protests from some of Malaysia's maritime neighbours, including Vietnam, Indonesia, Singapore, the Philippines and Brunei (Hamzah, 1987: 359).

40 Calculated using DELMAR and British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000. The latter was used in order to approximate the normal baseline along the mainland coast such that coordinates appropriate for input into DELMAR could be ascertained. The limit of the Gulf of Thailand was taken to be a line joining Vietnam's Mui Cau Mau and the Malaysian coast at Kota Bahru (Prescott, 1998: 10).

41 *Collected Notes on Cambodia's Offshore Boundaries*; Siddayao, 1978: 77.

42 The author is indebted to a major international oil company (whose name has been withheld by request) for supplying the information on which the map of these limits was based.

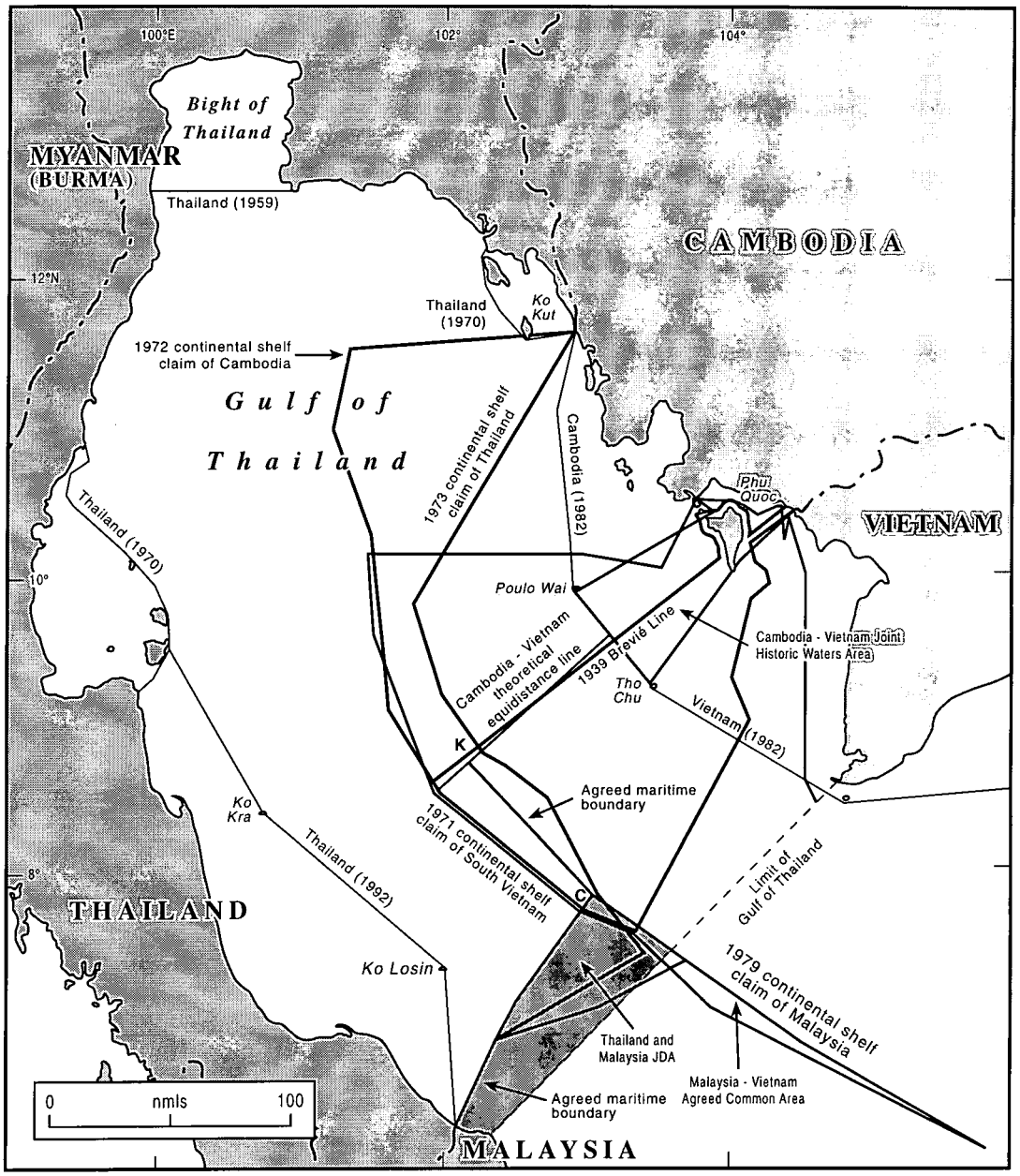


Figure 5.4 *Malaysia's Continental Shelf Claim in the Gulf of Thailand, 1979*
Source: Author's research.

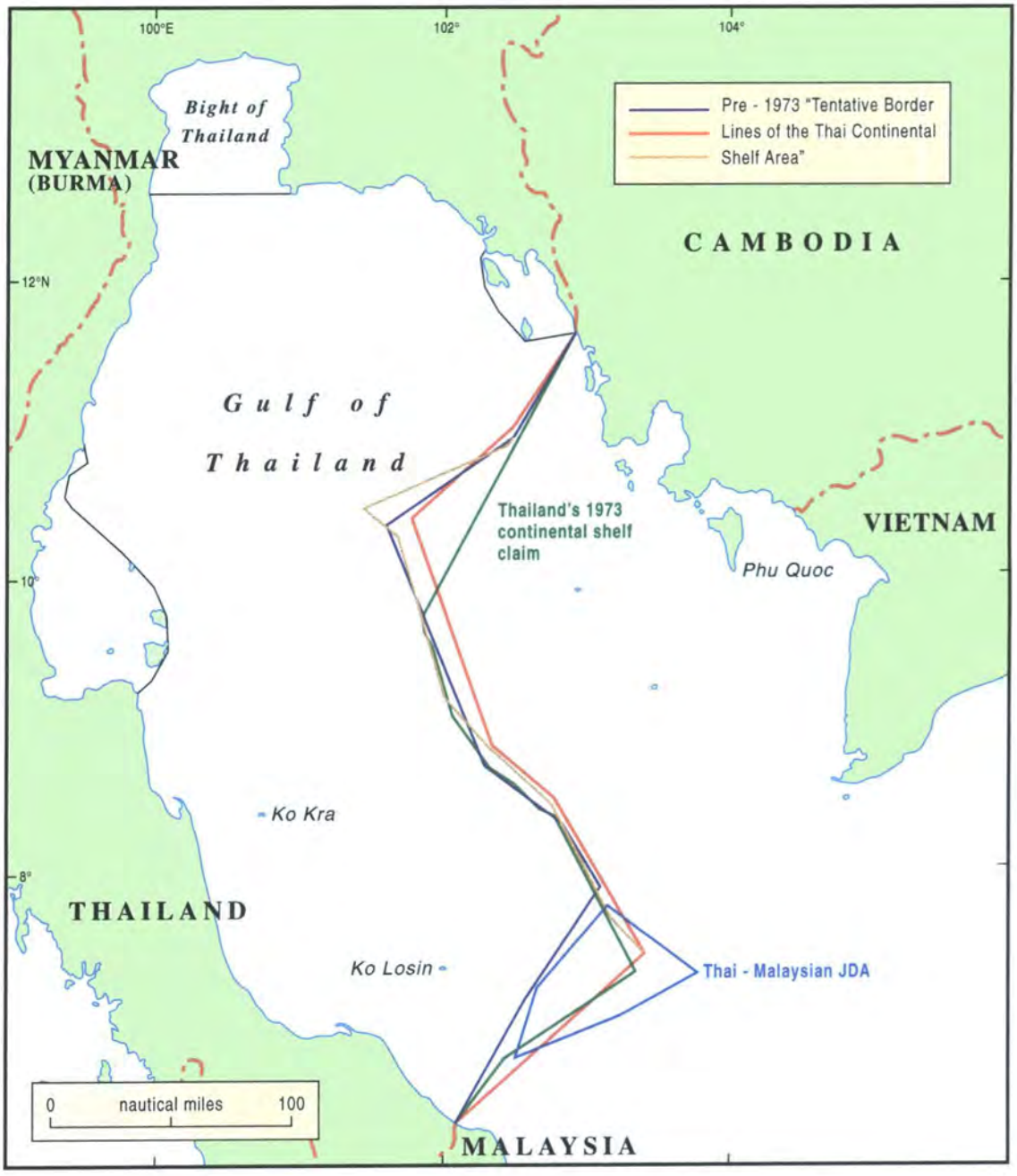


Figure 5.5 *Pre-1973 "Tentative Border Lines of the Thai Continental Shelf Area"*

Source: Various Thai Government concession maps.

stance in relation to its adjacent delimitation with Cambodia. The latter decision may well, it can reasonably be suggested, have been a response to Cambodia's own liberal lateral claim vis-à-vis Thailand – involving a line extending almost due west from the terminus of the Thai-Cambodian land boundary on the coast (see Sections 5.2.1 and 7.2).

Thailand made its formal claim to continental shelf by the 18 May 1973 *Proclamation on Demarcation of the Continental Shelf of Thailand in the Gulf of Thailand.*[43] This document included a list of coordinates and sketch map of the claim (see Appendix 8).[44] Thailand's proclamation stated that the claim to continental shelf was made to further *"exploring and exploiting natural resources in the Gulf of Thailand."* The claim was further justified as being *"demarcated on the basis of the right accorded to the generally accepted principles of international law and the Convention on the Continental Shelf done at Geneva on 29 April 1958 and ratified by Thailand on 2nd July 1968."* Future agreement with neighbouring states, it was stated, would be on the basis of the relevant provisions of the Geneva Convention on the Territorial Sea and Contiguous Zone. Since 1973 Thailand has not advanced or modified its claim to continental shelf in the Gulf of Thailand.

Point 1 of the Thai claim coincides with the terminus of the land boundary between Cambodia and Thailand. The entire lateral or adjacent boundary between Cambodia and Thailand claimed by the Thais is made up of a straight line from the land boundary terminus to Point 2 in the central Gulf. The long straight line adjacent boundary claimed by Thailand between Points 1 and 2 in relation to Cambodia in 1973 is consistent with a bisector of the angle between the straight baseline segments of the two states' respective straight baseline systems immediately offshore. As such, this therefore represents a much simplified form of equidistance.[45] The suggestion that this part of the Thai claim to continental shelf was based on an extension of the azimuth of

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43 According to Ake-uru (1987: 416), of the Thai Ministry of Foreign Affairs, this claim was made *"in response"* to those previously made be Cambodia and South Vietnam.

44 It should be noted that the Thai claim did not include detailed chart, spheroid or datum information and, similarly, did not specify the types of line used to link the turning points specified.

45 Kittichaisaree's (1987: 65) claim that Thailand's claim lines *"are pure median or equidistance lines"* therefore seems something of an overstatement. However, his subsequent comment that Thailand 1973 declaration represented a *"maximum claim"* is apt.

the final section of the land boundary before it reached the coast offshore seems erroneous.[46]

The two straight baseline claims involved are Thailand's Area 1 declared by Bangkok in 1970 and the relatively conservative straight baselines declared by Cambodia in 1957 (see Sections 4.2.2 and 4.4.3). As detailed in the previous section, Cambodia subsequently developed its straight baseline system. However, Thailand since 1973 has not modified its continental shelf claim in recognition of the revised Cambodian baseline system (which, in any case, it has protested against, see Section 4.2.4).[47]

The remainder of the 1973 Thai claim in the Central Gulf of Thailand relevant to Cambodia and Vietnam consists of a north-south median line through 13 points, apparently equidistant, between the opposite mainland coasts of Cambodia and Thailand but ignoring both its own Area 2 straight baseline claim,[48] Cambodia's straight baseline claim and Cambodian islands.

From Point 14 the Thai claimed continental shelf boundary turns abruptly southwest to terminate at Point 18 at the intersection of the Thai-Malaysia land boundary on the coast. It is important to note that in 1973 in this lateral boundary section of the claim between Thailand and Malaysia, Thailand did not base its claim on giving full weight to the offshore insular feature Ko Losin. It can be reasonably concluded that in subsequent negotiations with Malaysia, Thailand altered its policy and pressed for Ko Losin to be treated as a valid basepoint for the determination of a bilateral continental shelf boundary on the basis of equidistance. This can be deduced because the effect of using Ko Losin as a basepoint is to push the Thai claim to the south and east at Malaysia's expense, and it was precisely Malaysia's rejection of this position that led to the overlap in claims which was eventually designated as the Thai-Malaysian Joint Development Area (JDA) (see Section 6.2.4).

As has been mentioned, closer inshore the Thai and Malay continental shelf claims coincide (see Section 5.2.2). It is understood that this situation is the result of agreement, at least in principle, on the alignment of the maritime boundary between the

46 Suggested by Prescott (1981: 28 and 1985b: 85) and in an internal memorandum of an international oil company (whose name has been withheld by request) entitled *Collected Notes on Cambodia's Offshore Boundaries*. The author is indebted to said oil company for permission to cite this document.

47 Similarly, just as Thailand has not adjusted its continental shelf claim in response to revisions (i.e. advances) in Cambodia's claimed straight baseline system, so too the more recent creation of Thai baseline Area 4 has not led to any alteration in the Thai continental shelf claim line.

two countries prior to the two states' promulgation of their continental shelf claims (see Section 6.2).[49]

The total area of continental shelf and territorial sea claimed by Thailand in 1973, seaward of its 1959 and 1970 straight baseline claims and including that part of the Thai-Malaysian JDA claimed at that juncture amounts to approximately 51,027nm^2 (175,019km^2) (Figure 5.6).[50]

Thailand's claims to continental shelf rights have not subsequently been altered. However, in January 1997, it was reported that the Thai cabinet had decided to extend Thailand's claim, resulting in further overlaps in its claims with both Cambodia and Vietnam.[51] The report, citing a *"high level source"* at Thailand's Government House, went on to state that when the Thai Prime Minister returned to Bangkok from a visit abroad at the end of the month, he was summoned for an audience with the King who was concerned over the potential negative impact such action could have on Thailand's relations with its neighbours.[52] As a result, the cabinet's decision was apparently reversed.

5.3.4 Vietnam

On 7 December 1967, the Chairman of the National Leadership Committee of South Vietnam issued a proclamation stating as follows:

> *...affirming that the subsoil and seabed of the continental shelf adjacent to the Republic of Viet-Nam territorial waters, together with all natural resources contained therein and thereon, are considered as part of the national territory and therefore come under the exclusive jurisdiction and direct control of the Government of the Republic of Viet-Nam.*[53]

This act was, followed by *Petroleum Law* No.011/70 of 1 December 1970 which defined Vietnam's continental shelf according to both the 200 metre depth and

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48 Confirmed by Kittichaisaree, 1987: 65.

49 Kittichaisaree, 1987: 100.

50 Calculated using DELMAR and British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000. The latter was used to approximate the normal baseline along the mainland coast such that coordinates appropriate for input into DELMAR could be ascertained. The area of Area 4, only claimed in 1992, is therefore included in this calculation.

51 The report was carried by Thai newspaper *Naeo Na* on 28/1/97 (BBC SWB FE/2835) and in the *Bangkok Post* on 29/1/97.

52 *Naeo Na*, 28/1/97 (BBC SWB FE/2835).

53 Mentioned in South Vietnam's *Proclamation by the Government of the Republic of Viet-Nam on its National Natural Resources in the Sea-Bed and the Ocean Floor, and the Sub-Soil Thereof Adjacent to the Territory of the Republic of Viet-Nam* (see Appendix ?).

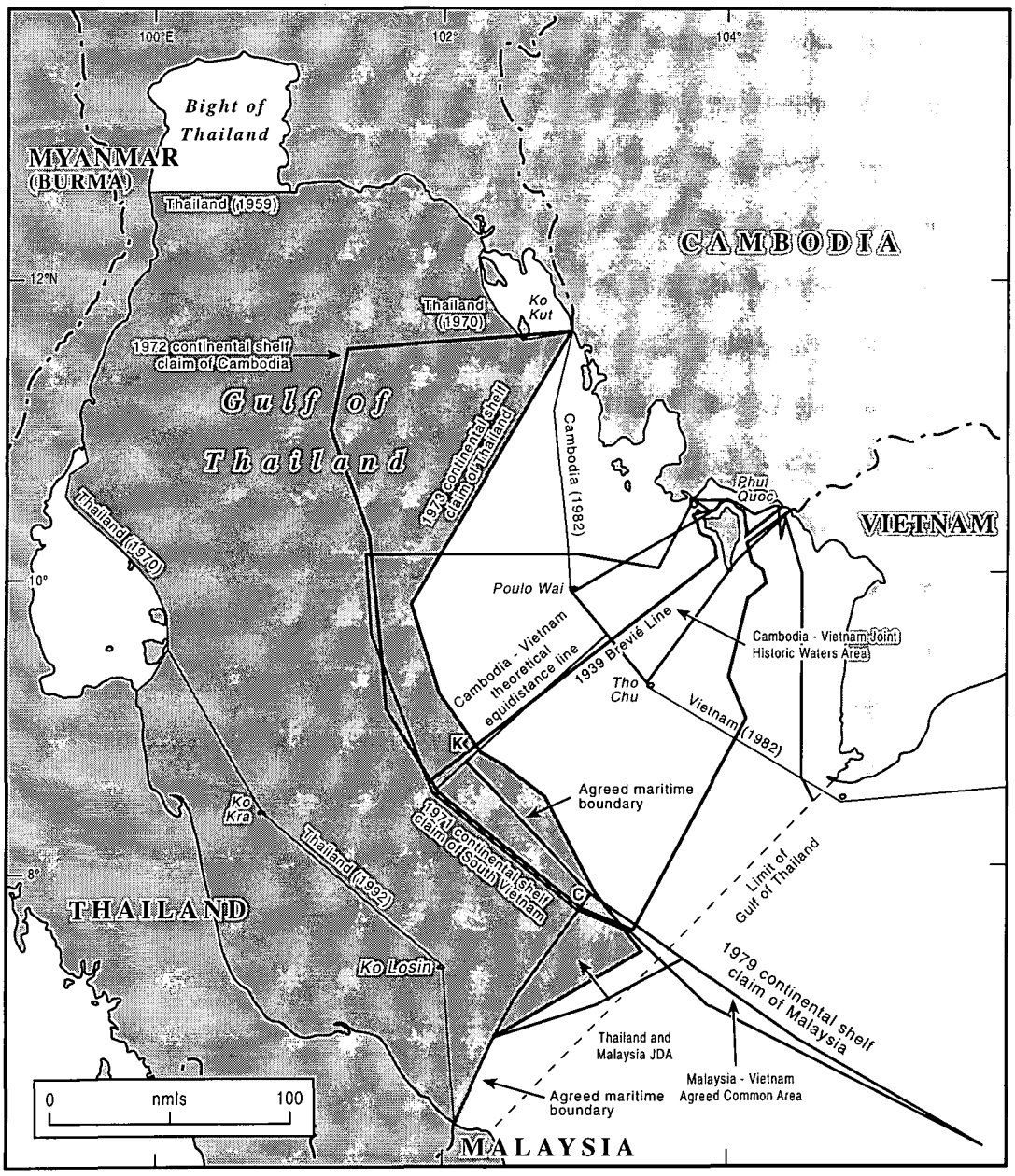


Figure 5.6 *Thailand's Continental Shelf Claim in the Gulf of Thailand, 1973*
Source: Author's research.

exploitability criteria.[54] Subsequently, on 6 June 1971, South Vietnam made a claim to continental shelf including parts of the Gulf of Thailand. The total area so claimed was bounded by 33 straight-line segments (Appendix 9). Although the basis for this claim was not specified, within the Gulf of Thailand it is apparent that it is based on the principle of equidistance.[55]

The 1971 Vietnamese continental shelf claim was, it is important to note, also made at a time when Vietnam and Cambodia disputed sovereignty over three key island groups in the Gulf of Thailand – Poulo Wei, Tho Chu (Poulo Panjang) and Phu Quoc (Koh Tral). The Vietnamese claim of the time was therefore based on Vietnamese sovereignty over all three groups of islands.

South Vietnam's 1971 claim enters the Gulf of Thailand between Points 11 and 12, the latter lying within the area that was in due course to be designated as the Thai-Malaysian JDA. Points 12-16 of the claim are comparable to Cambodia's continental shelf claim in the central Gulf of Thailand.[56] This is unsurprising as the two claims were based on sovereignty over the same offshore features. Thus, the Vietnamese claim was based on equidistance giving considerable weight to Vietnamese (or Cambodian!) offshore features while discounting the Thai islet of Ko Kra and Ko Losin. At Point 16 the Vietnamese claim turns due east. Cambodia's Veer island is ignored but the line between Points 17 and 18 roughly equates to a median line between Poulo Wei on the Vietnamese-claimed side and Koh Prins and Koh Tang on the Cambodian side.[57] From Point 18, the claim line turns sharply north-northeastwards to describe a line around the shores of Koh Themi (Points 19-22).

Unusually, the continental shelf line is continued (Points 22-30) close inshore between Phu Quoc (Koh Tral) island and the Cambodian mainland, its alignment approximating equidistance. This claim serves to leave the Pirate island group on the Vietnamese side of the line.[58] The Vietnamese claim line then proceeds through uncontested Vietnamese waters to exit the Gulf of Thailand in the vicinity of Mui Cau Mau (see Figure 1.1).

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54 Kittichaisaree, 1987: 68.

55 Analysis based on claimed coordinates plotted on British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000.

56 Or, perhaps more appropriately given that the South Vietnamese claim predates that of Cambodia, the latter bears comparison to the former.

57 Siddayao (1978: 79) has reported that in its lateral boundary with Cambodia and Thailand, Vietnam *"advocated the mid-channel between Pulau Wai and Koh Tang."*

In fact, although the question of sovereignty over the islands disputed with Cambodia was subsequently resolved (see Section 6.3) the 1971 claim was never apparently amended or rescinded. A likely explanation for this lies in South Vietnam's military defeat and the reunification of the country. Nevertheless, the South Vietnamese 1971 claim to continental shelf was used as the southern limit of the zone of overlapping claims between Vietnam and Thailand divided by mutual agreement in mid-1997 (see Section 6.5). This provides a strong indication of Hanoi's adoption and acceptance of Saigon's claim as that of reunified Vietnam.[59] The resolution of the islands dispute and the fact that Vietnam's straight baselines terminate at a 'floating' point on the seaward limit of the joint Cambodia-Vietnam Historic Waters Area and therefore are not relevant to the entirety of Vietnam's 1971 continental shelf claim is significant. This does suggest that the 1971 claim has been superseded or invalidated, at least in part, by subsequent legislation.

Subsequently, in the late 1970s Vietnam explicitly adopted the principle of natural prolongation as the basis for determining the limits of its continental shelf claim – something emphasised in the 12 May 1977 statement which, in Article 4, offers a definition of Vietnam's continental shelf as comprising:

> *...the seabed and subsoil of the submarine areas that extend beyond the Vietnamese territorial sea throughout the natural prolongation of the Vietnamese land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baseline used to measure the breadth of the Vietnamese territorial sea where the outer edge of the continental margin does not extend up to that distance.*

The 1977 statement did not provide any coordinates for a Vietnamese continental shelf claim nor was any accompanying map illustrating the extent of the claim issued. No sets of coordinates or precise maps have subsequently been issued.[60] The total area of

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58 Point 29, in the vicinity of the terminus of the Cambodia-Vietnam land boundary on the coast, appears to be an aberration causing a violent alteration in the course of the line. An error in the list of coordinates seems the most likely explanation.

59 Hanoi's post-1975 adoption of Saigon's 1971 continental shelf claim is also confirmed by Thao (1997: 75-77) review of the negotiations that led to the conclusion of the Thai-Vietnamese maritime boundary (see Section 6.5).

60 It was further reported that in the context of opposite delimitations, particularly that with Indonesia between Vietnam's baselines and Indonesia's archipelagic baselines enclosing the Natuna Islands group, that Vietnam favoured determining the boundary by means of the 'Thalweg Principle' (Buchholz, 1987: 42; Johnston and Valencia, 1991: 128). In essence, application of this principle, traditionally only applied in river boundary situations as it refers to a division along the deepest part of the deepest navigable channel, would result in a delimitation along the deepest part of the trough in the continental shelf between the two countries. As this

territorial sea and continental shelf claimed by South Vietnam within the Gulf of Thailand under the 1971 claim amounts to approximately 22,988nm^2 (78,848km^2) (Figure 5.7).[61] However, the resolution of the Cambodian-Vietnamese islands dispute (see Section 6.3), coupled with Hanoi's subsequent claims to a straight baseline system extending into the Gulf of Thailand but not in such a manner as to sustain the entirety of the 1972 claim represent important developments. It can be inferred from these factors that the extent of Vietnam's claim to continental shelf within the Gulf of Thailand has been significantly reduced, even though the 1971 claim has to date not been officially rescinded.

5.3.5 Summary

With one notable exception, the continental shelf claims of the littoral states to parts of the Gulf of Thailand are based on equidistance, albeit applying differing interpretations of this method of delimitation.

Each claimant state has, unsurprisingly, sought to interpret equidistance to its maximum advantage.[62] The key variables resulting in the overlapping claims to jurisdiction have been the use and abuse of islands, both in terms of disputed ownership over them and their uncertain status under the UN Convention, and of straight baseline

trough lies just to the north of the Natuna islands, such a delimitation would be highly favourable to Vietnam.

Subsequently, Vietnam appears to have retreated from this position in favour of a so-called 'harmonised line' as the southern extent of the Vietnamese-Indonesian overlapping claims area. The harmonised line represents a compromise proposal running north of the thalweg-inspired line but south of both the 1971 claim and an equidistance line between Vietnamese and Indonesian baselines. It also lies to the south of the northernmost extent of the continental shelf boundaries agreed between Indonesia and Malaysia in 1969. Vietnam has in fact offered to split equally the overlapping claims zone or develop it jointly with Indonesia (Johnston and Valencia, 1991: 128-129).

61 Calculated using DELMAR and British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000. The latter was used to approximate the normal baseline along the mainland coast such that coordinates appropriate for input into DELMAR could be ascertained. The limit of the Gulf of Thailand was taken to be a line joining Vietnam's Mui Cau Mau and the Malaysian coast at Kota Bahru (Prescott, 1998: 10). Vietnam's continental shelf was taken to extend up to the mainland coast rather than the inshore limits Vietnam designated. Excludes Phu Quoc island, the area of which was calculated using a planimeter and British Admiralty Chart 3985, 1987 edition, at 1:500,000 scale. The area of relatively small islands, including the Poulo Wei and Panjang groups, which fall within the limits of the Vietnamese claim are included. However, their area is considered sufficiently small not to have an overly distorting effect on the overall calculation of the extent of Vietnam's continental shelf claim within the Gulf of Thailand.

62 As a result, Johnston and Valencia (1991: 143) have described all the jurisdictional claims in the Gulf of Thailand as *"weak."* Kittichaisaree (1987: 65) notes that Cambodia, Thailand and South Vietnam all made maximalist claims on the basis of the same rationale – pending determination of what rules of international law would justify another boundary line at their expense.

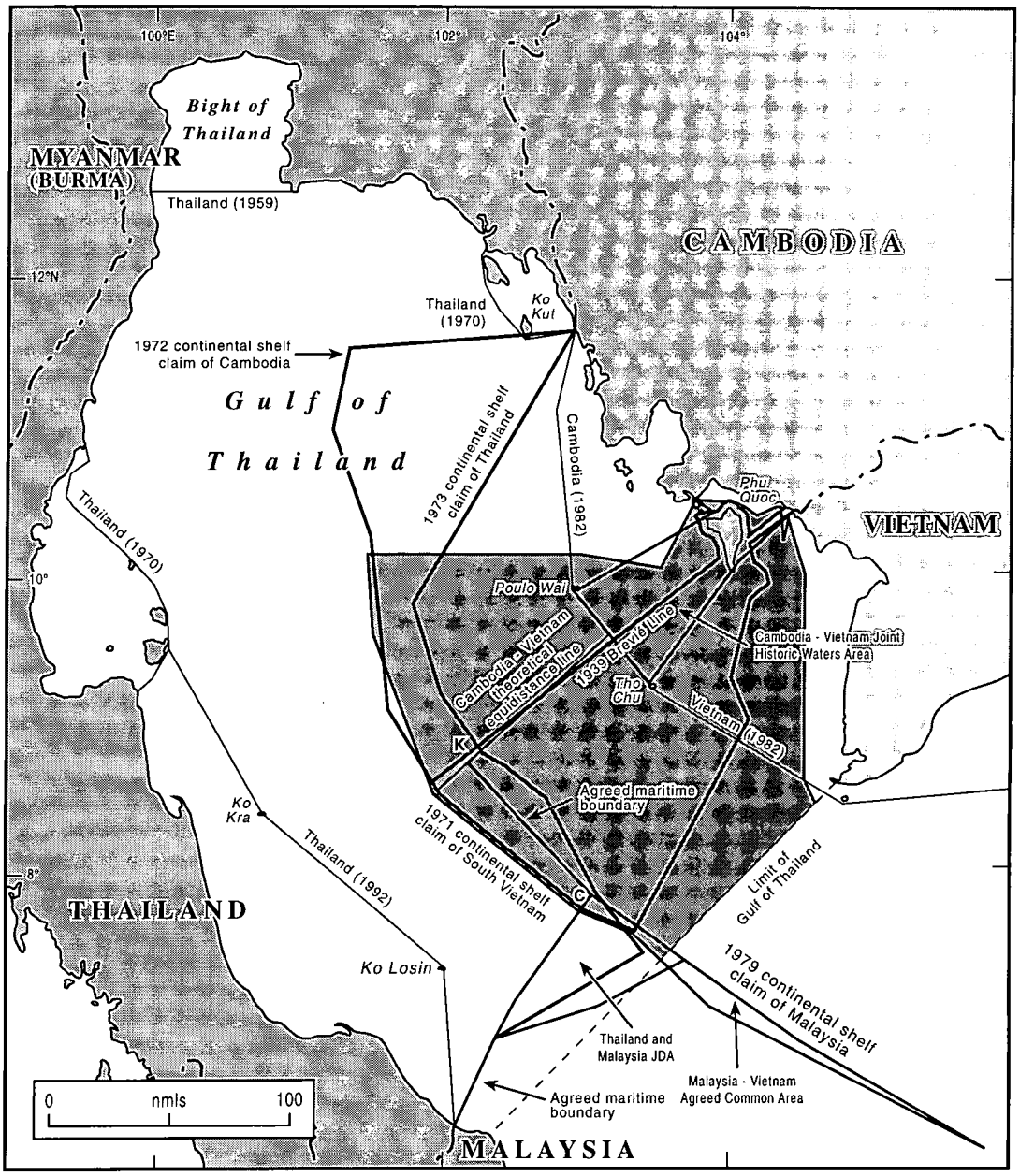


Figure 5.7 *South Vietnam's Continental Shelf Claim in the Gulf of Thailand, 1971*

Source: Author's research.

systems as the basis for claims and their acceptance as valid, or otherwise, on the part of one or more of the other Gulf of Thailand littoral states.

Thus, in *Cambodia's* case, the islands of Koh Kusrovie, Koh Veer, the Poulo Wei group and Poulo Panjang group were used as the basis of the 1972 continental shelf claim, even though sovereignty over the latter two groups of islands was at the time disputed by Vietnam. Insular features on the opposite side of the Gulf, belonging to Thailand, namely, Ko Kra and Ko Losin, were discounted for the purposes of the 1972 claim. The consequence of this selective use of islands as basepoints was to shift the claimed equidistance line significantly westwards in the central Gulf of Thailand, chiefly at Thailand's expense, and in relation to the disputed islands with Vietnam, substantially to the south and east (Figure 1.1). In its lateral claim with regard to Thailand, however, Cambodia comprehensively abandoned equidistance as a delimitation method, instead preferring a claim apparently based on historical factors which is highly favourable to Phnom Penh. It can be concluded from the analysis of the littoral states' claims that this represents the sole departure from the use of equidistance as a basis for claims to continental shelf throughout the Gulf of Thailand.[63]

As noted, *Malaysia* has based its claim to continental shelf on equidistance but discounting opposing states' island-based claims. Thus, Malaysia does not recognise Ko Losin as a basepoint – resulting in the overlap in adjacent claims with Thailand. Similarly, in the opposite maritime boundary situation, vis-à-vis Cambodia and Vietnam, Malaysia does not recognise the Poulo Panjang island group as basepoints and, furthermore, does not recognise the validity of Vietnam's straight baseline system or the islands it encloses as valid basepoints, while at the same time giving full weight to Malaysian islands such as Poulo Redang.

The consequence of this selective recognition of baseline systems, and of the islands used as basepoints in straight baseline claims, is an overlap of continental shelf claims between Malaysia, Cambodia and Vietnam in the central Gulf of Thailand (Figure 1.1).

Thailand also interpreted equidistance to its advantage for the purposes of its 1973 continental shelf claim, and, in fact, in a rather contradictory manner when Bangkok's opposite and adjacent claims are compared. With regard to its lateral delimitation with Cambodia, Thailand has opted for a much simplified form of

63 Vietnam's thalweg or *"harmonised"* line claims vis-à-vis Indonesia being located outside the Gulf of Thailand.

equidistance – a bisector of the first legs of the Thai and Cambodian straight baselines - projecting from the coast in a straight line and thus ignoring the potential impact that several Cambodian islands and straight baseline segments further offshore would have had on a strict equidistance line. In its opposite continental shelf claim vis-à-vis Cambodia and Vietnam, Thailand has discounted not only Cambodian islands significantly offshore such as Koh Kusrovie, Koh Veer and the Poulo Wei and Panjang groups (but not those islands lying very close to the mainland coast), but has also discounted its own insular features beyond its 1970 straight baseline system – Ko Kra and Ko Losin. As a consequence of the fact that the Cambodian islands discounted are substantially further offshore than the Thai features,[64] also ignored for the purposes of the opposite continental shelf claim, the equidistance line claimed by Thailand is shifted eastwards at Cambodia's expense and to Bangkok's advantage.

With regard to its adjacent continental shelf claim relating to Malaysia, however, Thailand has pursued a policy at variance with its claims concerning its opposite delimitation in the Gulf with Cambodia and Vietnam. Whereas in the opposite boundary situation Thailand has discounted the islet Ko Losin in order to further Thailand's claims in the central Gulf, in the adjacent boundary claim with Malaysia, Ko Losin *was* used as a basepoint,[65] pushing Thailand's equidistance based claim southwards and resulting in a roughly wedge-shaped overlapping area with Malaysia, which based its own claims in this situation on an equidistance line discounting *all* islands significantly offshore. Although the parties were able to narrow the area of overlap somewhat, negotiations reached deadlock, and the remaining zone of overlap subsequently became the Thai-Malaysian joint development area (JDA) (see Section 6.2.4).

The inconsistency with which Thailand has used islands as basepoints between its opposite and adjacent continental shelf boundary claims vividly illustrates the way in which the Gulf of Thailand littoral states have selectively and at times inconsistently

64 For instance Cambodia's Poulo Wei islands are 53nm (98.25km) offshore while the Poulo Panjang (Tho Chu) group (also claimed by Cambodia at the time the continental shelf claims under discussion were made) is 80.7nm (149km) (Measured on British Admiralty Chart2414, 1967 edition at a scale of 1:1,500,000). In contrast, Thailand's Ko Kra and Ko Losin islets are respectively 27.5nm (51km) and 37.3nm (69km) offshore (Measured on British Admiralty Charts 3542, 1960 edition at a scale of 1:500,000 and 3961, 1987 edition at a scale of 1:240,000, respectively).

65 Albeit at the time of negotiations with Malaysia rather than as part of Thailand's 1973 continental shelf claim.

manipulated equidistance principles and law of the sea rules to their maximum advantage.

For its part, *Vietnam* has utilised equidistance to its advantage for portions of its claim line – giving weight to its own offshore features while at the same time discounting opposing islands, particularly those belonging to Thailand on the western side of the Gulf such as Ko Kra and Ko Losin. A critical factor which must be recalled in relation to Vietnam's original 1971 continental shelf claim, however, is that it was promulgated when Cambodia and Vietnam disputed ownership over several key islands including the Poulo Wei and Panjang groups which are potentially highly significant from a maritime delimitation perspective. The overall effect, however, is a series of overlaps with Cambodia, Thailand and Malaysia.

These differing interpretations of maritime boundary delimitation methodologies, primarily of equidistance and predominantly the consequence of the divergent approaches to the use of island basepoints, have resulted in substantial overlaps in continental shelf claims to the Gulf of Thailand, such that by the mid-1970s of the order of 24,179nm^2 (82,931km^2) of the Gulf of Thailand was subject to competing claims (see Figure 5.8). As the total area of the Gulf of Thailand has been estimated at 153,187nm^2 (283,700km^2),[66] it is apparent that overlapping claims account for just over 29% of this total.[67] Moreover, primarily as a result of sovereignty disputes over islands, multiple overlapping claims to the same maritime space were made. Thus, approximately 3,649nm^2 (12,519km^2), or 4.4%, of the Gulf of Thailand was subject to the claims of three states (Figure 5.9).[68] Furthermore, all four littoral states claimed an 87nm^2 (300km^2) area – a quadruple overlap of claims amounting to approximately 0.1% of the total area of the Gulf (see Figure 5.10).[69]

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66 Prescott, 1998: 10.

67 Calculated using DELMAR and British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000. The latter was used in order to approximate, where appropriate, the normal baseline along the mainland coast such that coordinates appropriate for input into DELMAR could be ascertained. The limit of the Gulf of Thailand was taken to be a line joining Vietnam's Mui Cau Mau and the Malaysian coast at Kota Bahru (Prescott, 1998: 10). As a result, part of the overlap between Vietnam's claim and the Thai-Malaysian JDA is excluded from this calculation. Vietnam's continental shelf was taken to extend up to the mainland coast rather than the inshore limits Vietnam designated. Excludes Phu Quoc island, the area of which was calculated using a planimeter and British Admiralty Chart 3985, 1987 edition, at 1:500,000 scale. The area of relatively small islands, including the Poulo Wei and Panjang groups, which fall within the limits of the Vietnamese claim are included. However, their area is considered sufficiently small not to have an overly distorting effect on the overall calculation of the extent of Vietnam's continental shelf claim within the Gulf of Thailand.

68 Calculated using DELMAR.

69 Calculated using DELMAR.

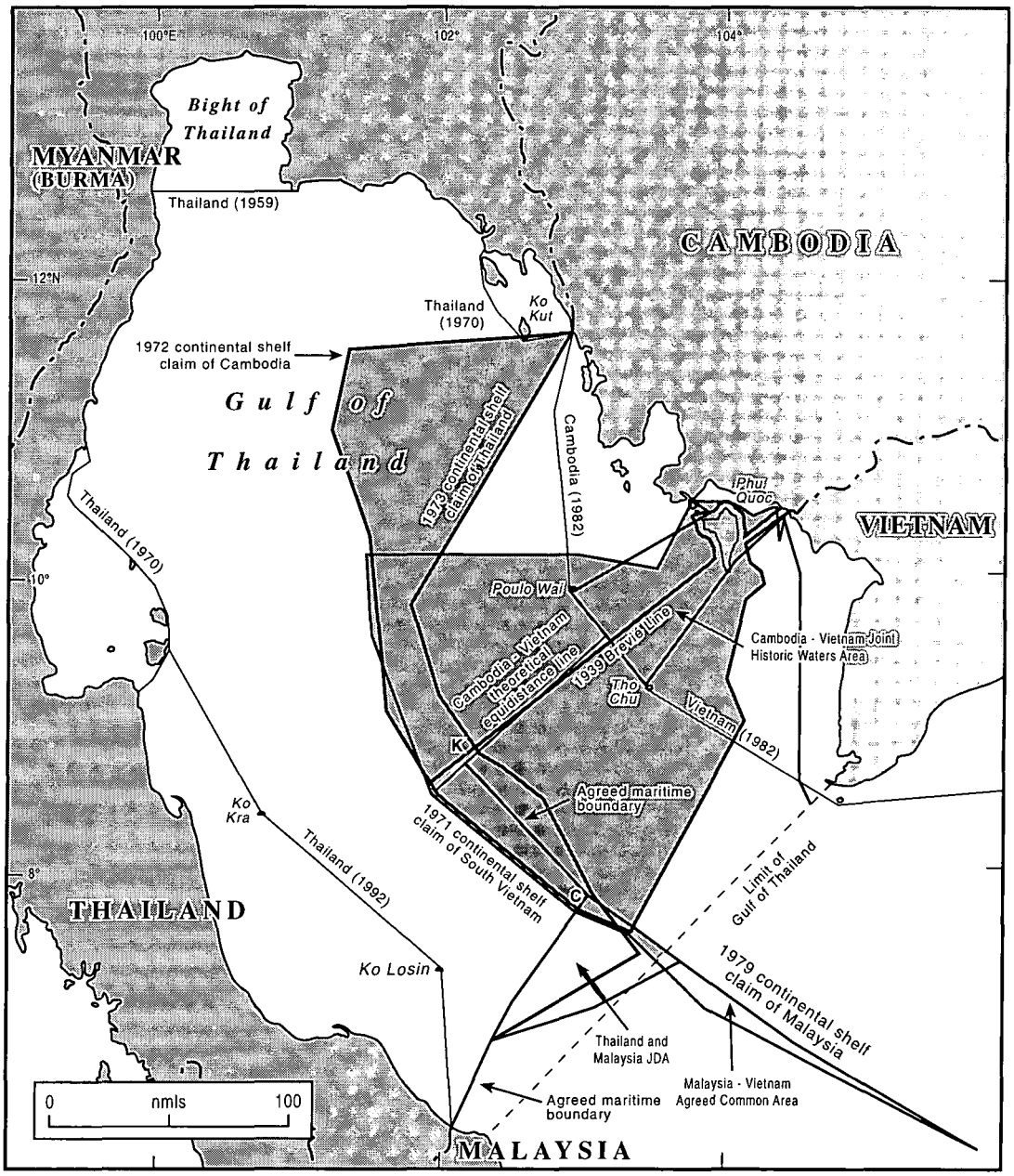


Figure 5.8 *Competing Claims to Continental Shelf in the Gulf of Thailand in the 1970s*

Source: Author's research.

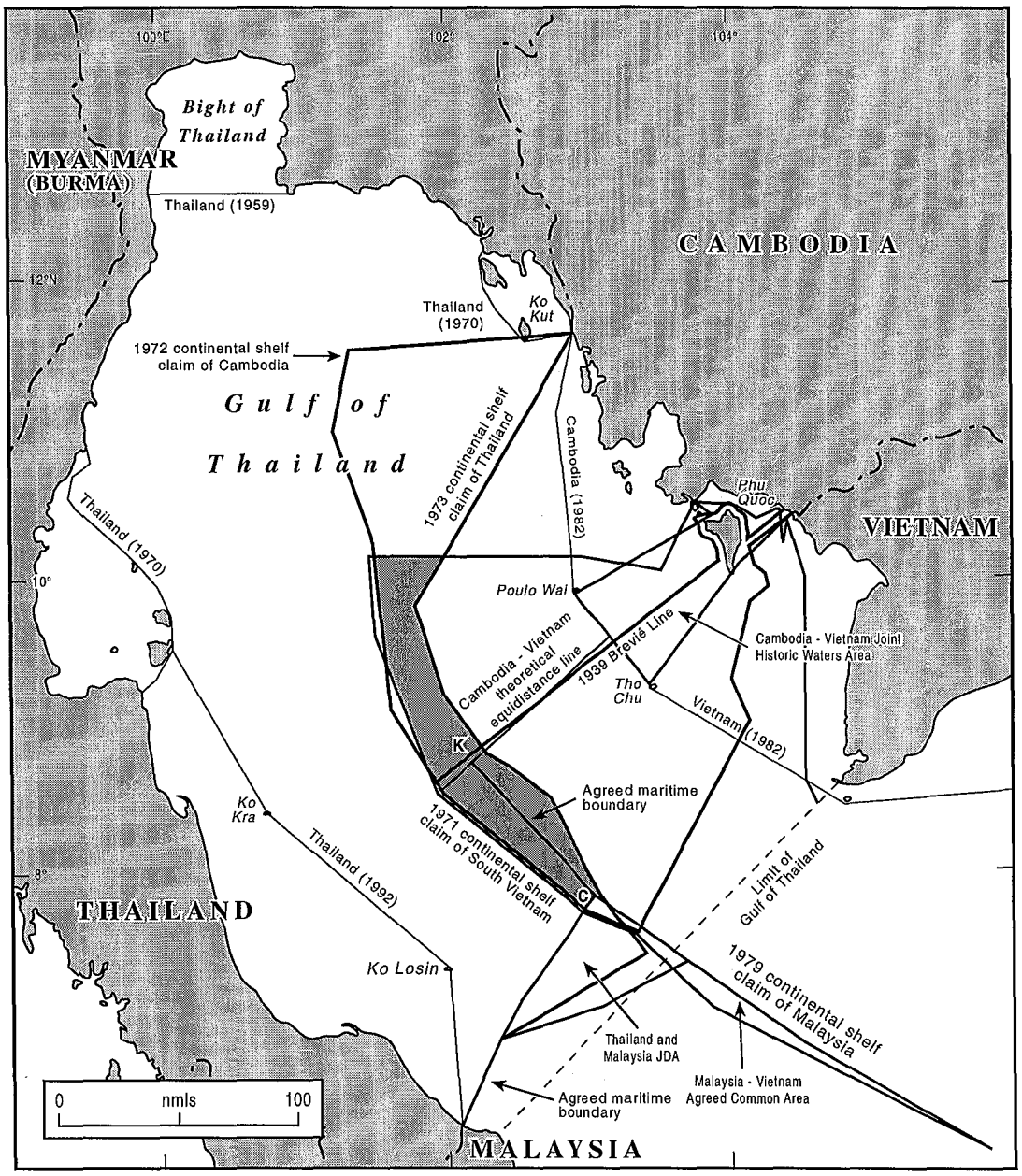


Figure 5.9 *Area of Triple Overlap*
Source: Author's research.

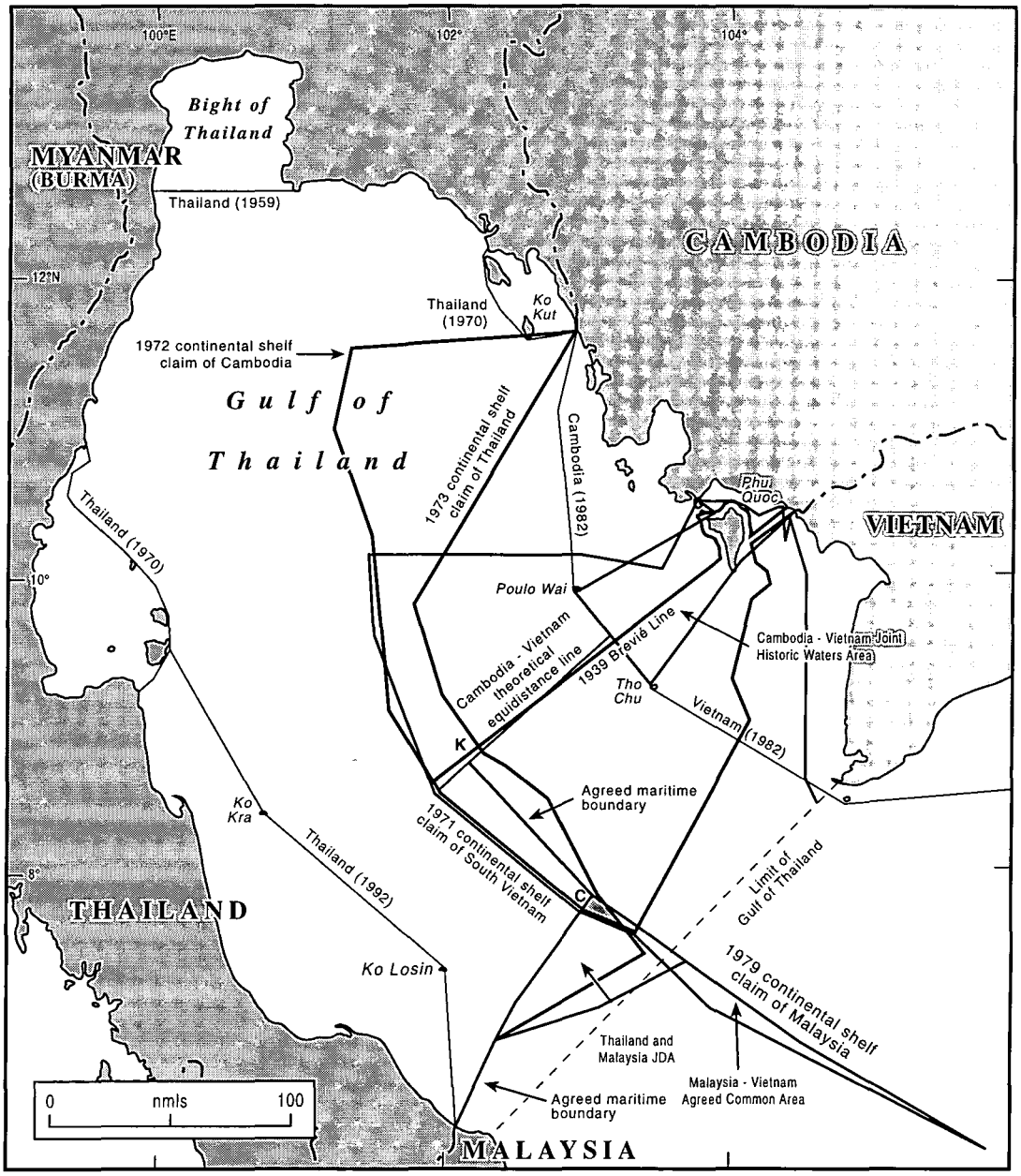


Figure 5.10: *Area of Quadruple Overlap*
Source: Author's research.

As a result of the resolution of Cambodia and Vietnam's dispute over island sovereignty and the conclusion of the Malaysia-Thailand and Thai-Vietnamese maritime boundary agreements it can, however, be concluded that the area of the Gulf of Thailand subject to overlapping claims has fallen dramatically to approximately 7,755nm^2 (26,597km^2) or 9.4% of the total (see Figure 5.11).[70] The question of a quadruple overlap of maritime claims has therefore been eliminated, but there is still some concern over the presence of trilateral disputes within the Gulf of Thailand (see Section 7.6). The merits of these conflicting claims will be assessed in detail in chapters 6 and 7.

5.4 Exclusive Fishing Zone

As previously mentioned, in the colonial era Great Britain made a claim to a 3nm-breadth territorial sea on behalf of Malaysia and from the early years of the 20th century Thailand independently adopted this rule (see Section 5.2). In contrast, France made no such formal claim to a territorial sea of specified breadth on behalf of Cambodia and Vietnam, which formed part of French Indochina,.

Nevertheless, in the mid-1930s the Governor-General of French Indochina was concerned over the unregulated exploitation of the fisheries resources off the coasts of the territories for which he was responsible.[71] As a result of his actions a French *Presidential Decree* was issued on 22 September 1936. This decree set the sea territory of French Indochina at two *"myriametres"*, equivalent to 20km (10.8nm).[72] The method by which the limits of this zone were to be delimited was not, however, specified. Within the zone claimed foreign fishing vessels were prohibited from fishing. The decree applied to the coasts of both Cambodia and Vietnam and remained in force post-independence.[73]

Subsequently, prior to the concept of the exclusive economic zone gaining international currency, South Vietnam, built on its colonial inheritance in the field of

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70 Calculated using DELMAR. Assumes the Cambodia-Vietnam boundary comprises an equidistance line seaward of the two states' historic waters area. The area of the Cambodia-Vietnam historic waters area (c.2,711nm^2 or 9,299km^2) is also excluded as is that portion of the overlap between Vietnam's claim and the Thai-Malaysian JDA beyond the strict limits of the Gulf of Thailand. Were the area of the former to be included, the total area of the Gulf subject to competing claims would amount to around 10,466nm^2 (35,896km^2) or 12.7% of the total are of the Gulf.

71 Ranariddh, 1976: 327.

72 Ranariddh, 1976: 328. One *"myriametre"* equals 10,000 metres.

73 Ranariddh, 1976: 328.

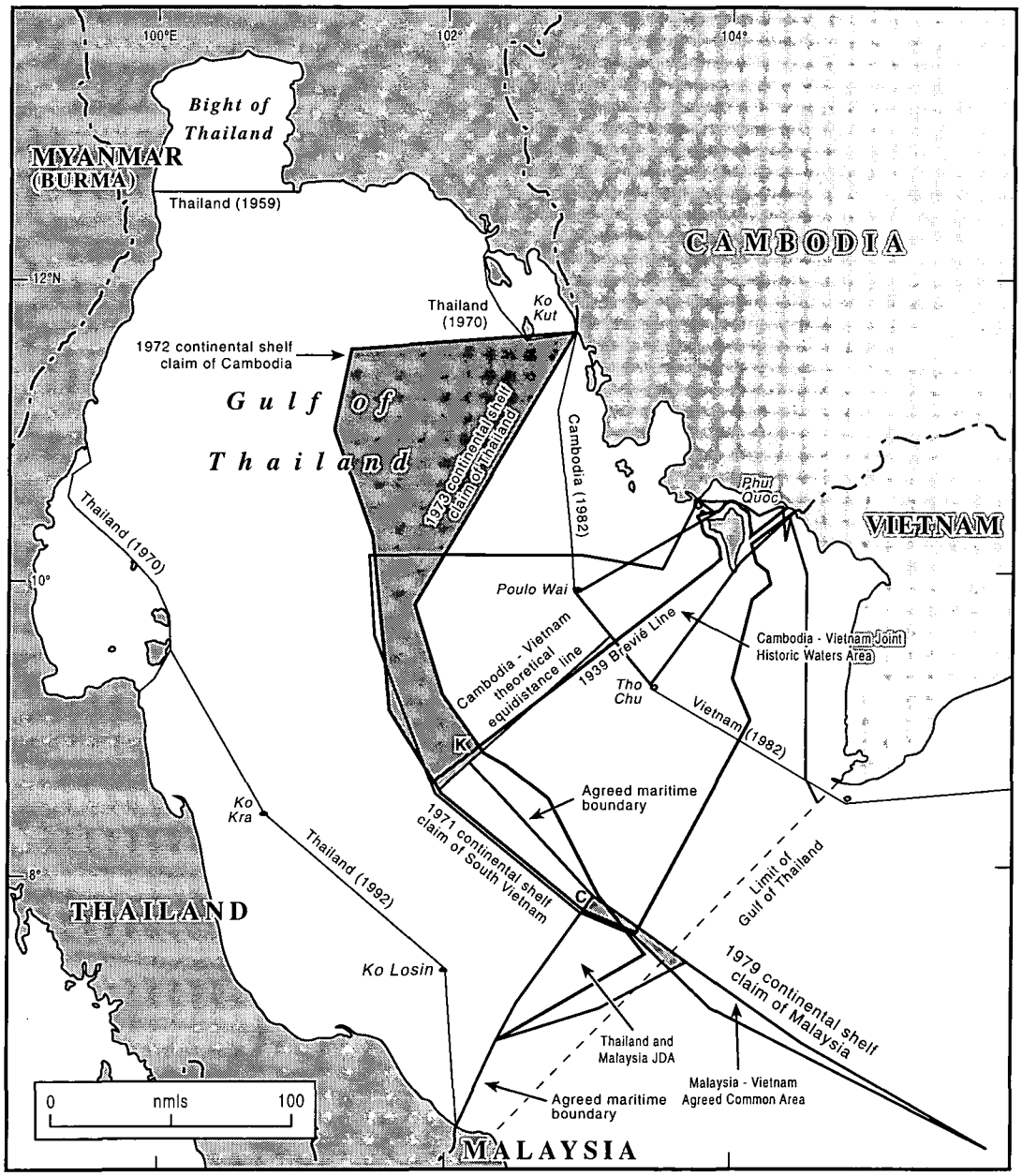


Figure 5.11: *Area of Overlapping Claims in the Gulf of Thailand in the 1990s*
Source: Author's research.

fisheries legislation and claimed an exclusive fishing zone (EFZ). By *Decree-Law* No.056/TT/SLU, dated 26 December 1972, the Saigon authorities claimed a *"50-mile fishing zone starting from the territorial waters."*[74] Two years later, Cambodia was poised to follow suit. A *Presidential Decree* dated 14 December 1974, was presented to the Cambodian Council of Ministers by the Agriculture Minister. This legislation was designed to claim an exclusive fishing zone with a breadth of 50nm measured from the outer limits of the territorial sea. However, the Decree was not enacted before the fall of Phnom Penh to the Khmer Rouge in April 1975.[75]

Although these exclusive fishing zones have not been specifically rescinded by either country and, in the case of Vietnam, was presumably inherited by the Hanoi government on the reunification of the country, these claims are of little contemporary relevance as they have been effectively superseded by Cambodia and Vietnam's EEZ claims.

5.5 Exclusive Economic Zone

5.5.1 Cambodia

Cambodia first made a claim to an exclusive economic zone of up to 200nm in a *Ministry of Foreign Affairs Statement* of 15 January 1978. This claim was repeated and updated in Article 5 of the 31 July 1982 *Council of State Decree on Territorial Waters* (Appendix 2) such that:

> *The exclusive economic zone of the PRK is a maritime zone located beyond its territorial waters and adjacent to the latter. This zone extends to 200 nautical miles measured from the baseline used to measure the width of the territorial waters of the PRK.*

No precise limits to Cambodia's EEZ were released at the time the claim was made. As of mid-1999 this situation remains unchanged.

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74 Referred to in South Vietnam's *Proclamation by the Government of the Republic of Viet-Nam on its National Natural Resources in the Sea-Bed and the Ocean Floor, and the Sub-Soil Thereof Adjacent to the Territory of the Republic of Viet-Nam* (see Appendix ?). Ranariddh (1976: 337) has noted that the breadth of the Vietnamese zone was to be measured from the limit of the territorial waters claim.

5.5.2 Malaysia

Malaysia made a claim to a 200nm exclusive economic zone by its *Exclusive Economic Zone Bill* (Act No.311) of 1984,[76] which states in Part II (Article 3) that:

> *(1)The exclusive economic zone of Malaysia, as proclaimed by the Yang di-Pertuan Agong vide P.U. (A) 115/80, is an area beyond and adjacent to the territorial sea of Malaysia and, subject to subsections (2) and (4), extends to a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea is measured.*
> *(2)Where there is an agreement in force on the matter between Malaysia and a State with an opposite or adjacent coast, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.*
> *(3)The Yang di-Pertuan Agong may cause the limits of the exclusive economic zone to be published in maps and charts from time to time.*
> *(4)Where, having regard to international law, State practise or an agreement referred to in subsection (2), the Yang di-Pertuan Agong considers it necessary to do, he may order published in the Gazette alter the limits of the exclusive economic zone determined in accordance with subsection (1).*

Despite the provisions of subsection (3) Malaysia has not, thus far, issued a map, chart or list of geographic coordinates to illustrate the precise limits of Kuala Lumpur's EEZ claim. Hamzah has, however, noted that Malaysia's continental shelf map (the *Peta Baru* of 1979) is the *"nearest we have"* to such a map and that when published *"the map of the EEZ can be expected to overlap, more or less, with this 'Peta Baru'."*[77]

5.5.3 Thailand

Thailand established its claim to EEZ by a *Royal Proclamation* of 23 February 1981.[78] The decision to proclaim an EEZ was reportedly taken *"much earlier."*[79] The reasons for this delay lie in Thailand's opposition, as a distant-water fishing nation, to the EEZ

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75 Ranariddh, 1976: 331-332.

76 For a copy, see Hamzah (1988: 26-52).

77 Hamzah, 1988: 10. It is notable here that Hamzah suggests that the EEZ claim may not necessarily coincide with the continental shelf claim. The exceptions mentioned by Hamzah were the northern part of the Straits of Malacca, an area off eastern Sabah (presumably coinciding with the disputed area with Indonesia related to Poulo Sipadan and Ligitan) and *"the disputed area near the Gulf of Thailand."* This last comment may refer to the Thai-Malaysian JDA or Defined Area between Malaysia and Vietnam. It is not clear, however, why Malaysia, when specifying the extent of its EEZ claim, would exclude these areas or, indeed, seek to claim EEZ rights beyond the limits of Malaysia's earlier claim to continental shelf. According to Kittichaisaree (1990a: 318), however, even through Malaysia has not yet defined the outer limits of its EEZ claim *"in practice Malaysia officially assumes that the coordinates of its continental shelf claim also coincide with those of its EEZ claim."*

78 B.E. 2514 according to the Thai calendar which takes its start date from the death of Buddha.

concept in principle and because prior to the EEZ declaration Thailand was able to reject accusations of illegal fishing by its neighbours on the grounds that Thailand did not recognise the legal validity of their EEZs.[80]

Although it was stated that Thailand's EEZ was defined as the area beyond and adjacent to the territorial sea extending to 200nm *"measured from the Baselines used for measuring the breadth of the territorial sea"* no precise limits were defined.[81] Indeed, the only comment about the limits of the EEZ vis-à-vis other states was the general statement that in cases where the EEZ,

> *...is adjacent or opposite to the exclusive economic zone of another coastal State...Thailand is prepared to enter into negotiations with the coastal State concerned with a view to delimiting their respective exclusive economic zones.*

As previously noted, however, Thailand's 1973 claim to continental shelf *did* include a list of geographical coordinates defining the extent of its claim (see Section 5.3.3). From these coordinates it is clear that the Thai continental shelf claim at that time fell short of the equidistance line using Ko Losin as a basepoint which was used to define the eastern limit of the Thai-Malaysian joint development zone (JDA) (see Figure 1.1). This can, in all probability, be attributed to a post-1973 hardening in the Thai negotiating stance vis-à-vis Malaysia, with Thai insistence on the validity of Ko Losin as a basepoint and Malay resistance to this position eventually leading to the overlap in claims and ultimately the creation of the JDA in February 1979 (see Section 6.2.4).

Subsequently, in December 1979, Malaysia issued its *Peta Baru* illustrating the extent of Malaysia's claimed continental shelf. This map showed the whole of the Thai-Malaysian JDA within Malaysia's claim, as might be expected given the 'sovereignty neutral' characteristics of the Thai-Malaysian Memorandum of Understanding concerning the JDA whereby neither party relinquished its existing sovereignty claims

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79 McDorman, 1986: 191.

80 McDorman, 1986: 191. At the Third UN Conference on the Law of the Sea, Thailand argued strongly that acceptance of the EEZ concept should be conditional on the *"equitable sharing"* of the living resources of areas newly falling within EEZs, particularly for those countries which had *"traditionally and actually"* exercised exploitation rights there in the past (Kittichaisaree, 1987: 125, 1990: 316-317).

81 Kittichaisaree (1987: 125) has suggested that Thailand's claim of a 200nm EEZ was designed to put Thailand in a strong bargaining position in that overlapping claims would be inevitable and *"Thailand envisaged that some concessions or compromise would have to be reached to the benefit of Thailand before the boundaries of the area with its neighbours were to be finally settled."* The wording of the Thai declaration is, however, unremarkable and not readily distinguishable in the nature of its provisions than many other EEZ claims. The declaration certainly does not explicitly indicate that Thailand intended to claim an EEZ limit described by 200nm arcs from its baselines as Kittichaisaree seems to imply.

(see Section 6.2.4). This action therefore left Malaysia formally claiming the whole of the JDA while Thailand's 1973 continental shelf claim only covered part of the same area.

In order to redress this imbalance between the Thai and Malaysian claims in this area, on 16 February 1988[82] it was *"deemed appropriate"* by the Thai authorities to issue a further *Proclamation* relating to Thailand's EEZ in the Gulf of Thailand adjacent to that of Malaysia.[83] This Proclamation ensures that Thailand's claimed EEZ encompasses the whole of the Thai-Malaysian JDA and therefore balances Malaysia's *Peta Baru.* The Thai Proclamation includes a list of eight geographical coordinates. Point 1 coincides with the terminus of the Thai-Malaysian land boundary on the coast. Point 2 matches the seaward point given in the Thai-Malaysian territorial sea treaty (see Section 6.2.2) and therefore also Point i) of their Memorandum of Understanding (MoU) on the continental shelf (see Section 6.2.3). Points 3 and 4 and consistent with Points ii) and iii) of the same MoU with the latter point also matching the coordinates of Point A of the Thai-Malaysian JDA (see Section 6.2.4). Points 5-8 of the 1988 Proclamation coincide with Points G, F, E and D respectively of the JDA which constitute the eastern limit of the joint development area. Thailand only made the extent of its EEZ claim explicit with regard to the lateral delimitation with Malaysia and has remained silent concerning the limits of its EEZ claims elsewhere in the Gulf of Thailand.[84]

5.5.4 Vietnam

Vietnam's Statement of 12 May 1977 provides, in Article 3, a definition of Vietnam's EEZ as being:

> *...adjacent to the Vietnamese territorial sea and forms with it a 200 nautical mile zone from the baseline used to measure the breadth of Vietnam's territorial sea.*

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82 B.E. 2531.

83 Thailand's action was also prompted by concerns over conflicts with Malaysia over fisheries rights (Kittichaisaree, 1990a: 318) (see Section 7.8).

84 However, Kittischaisaree (1990: 318) has stated that prior to the 1988 Proclamation *"it had been tacitly understood among the public that the coordinates of the Thai continental shelf also represented the Thai EEZ boundary."* Similarly, referring to all the littoral states' claims, McDorman (1990: 44) has observed that it had been *"generally assumed"* that EEZ claims *"parallel"* earlier claims to continental shelf *"where the outer limits for each state's claim has been determined by the application of the equidistance principle."* According to Haller-Trost (1991: 218), Malaysia subsequently protested the Thai EEZ extension.

No coordinates or map have subsequently been issued to define the limits of Vietnam's exclusive economic zone claim.

Summary

All four of the Gulf of Thailand littoral states have claimed exclusive economic zones (EEZs) using very similar terminology in line with the terms laid down in Part V of the UN Convention on the Law of the Sea of 1982 (see Section 2.4.7). None of the states concerned has, however, specified the precise limits of its claimed EEZs in full.

The likely explanation for this reticence is the fact that all four states have in any case made claims to continental shelf within the Gulf of Thailand and established the limits of these claims through geographic coordinates and illustrative maps. These claims to extended maritime jurisdiction which predate the EEZ claims, and, indeed, the adoption of the concept of the EEZ in 1982, serve the coastal states purposes well enough and there was therefore little perceived need at the time the EEZ claims were promulgated to establish specific EEZ claim limits.

This suspicion is to some extent borne out by the exception to the general rule for EEZ claims in the Gulf of Thailand – Thailand's EEZ claim relating to Malaysia. As previously noted, in 1988 Thailand defined the extent of its EEZ claim in relation to its adjacent maritime boundary delimitation with Malaysia. The significance of this supplementary decree was that it served to establish a Thai EEZ claim encompassing the entirety of the Thai-Malaysian JDA, only part of which fell within the scope of Thailand's 1973 continental shelf claim. Thailand did not, however, specify the limits of its EEZ claim elsewhere within the Gulf of Thailand, for instance in relation to its delimitations with Cambodia and Vietnam. Thus, it was only in relation to a delimitation scenario where Thailand wanted to establish an EEZ claim *beyond* its existing continental shelf claim that the precise limits of its EEZ claim were defined.

This experience supports the view that the Gulf of Thailand states regard their continental shelf claims dating from the 1970s as representing the outer limits of their extended maritime space, be it to continental shelf or EEZ. Nevertheless, it must be acknowledged that states can, as Thailand has demonstrated in relation to its delimitation with Malaysia, advance a claim to an EEZ beyond a previously established

claim to continental shelf. This must, however, be regarded as something of a rare occurrence.[85]

In the context of the Gulf of Thailand, the possibility of Thailand claiming the whole of the area of the Thai-Malaysian JDA aside, the claiming of EEZ rights beyond existing continental shelf claims must be considered unlikely. This analysis is further supported by the fact that the continental shelf claims made by the littoral states in the 1970s were themselves constructed in such a manner as to give the claimant states the maximum possible advantage. It is therefore difficult to envisage EEZ claims being made beyond these already maximalist claim lines. Having made this observation, however, it should be noted that the straight baseline claims of Cambodia, Thailand and Vietnam have all undergone major revisions since these three states made their continental shelf claims. It is therefore conceivable that any contemporary expression of an EEZ claim could take these developments into account leading to an EEZ claim beyond the existing continental shelf limit. On balance, however, it is this author's view that the Gulf of Thailand states' claimed EEZs are generally likely to conform to the limits of their previously declared continental shelf claims.

[85] A recent example of a water column boundary differing from a defined continental shelf limit is the boundary defined by the Australia-Indonesia treaty of 14 March 1997 (see Commonwealth of Australia, 1997).

Chapter 6

Maritime Boundary Agreements in the Gulf of Thailand

6.1 Introduction

The preceding chapter dealt with the Gulf of Thailand littoral states' claims to maritime space and in particular their overlapping jurisdictional claims. This chapter will analyse existing maritime boundary agreements concluded between the Gulf of Thailand states. Such agreements have proved to be either in the form of a definitive maritime boundary or that of joint zone arrangements of an interim nature designed to shelve or postpone disputes over conflicting claims until a later date whilst allowing mutually beneficial resource exploitation activities to proceed.

6.2 Malaysia – Thailand Agreements

6.2.1 Overview

Malaysia and Thailand concluded a treaty on the delimitation of their territorial seas on 24 October 1979. On the same date, a Memorandum of Understanding (MoU) was signed between the two sides. This MoU provided for a partial delimitation of the parties' continental shelf boundary extending seawards from the terminus of the territorial sea boundary in the Gulf of Thailand. A partial delimitation only was achieved because of disagreements and overlapping continental shelf claims beyond a point approximately 29nm offshore.[1]

The Thai-Malaysian overlapping claims area was, however, subject to another MoU which predates the territorial sea and continental shelf agreements in the Gulf by just over eight months, having been concluded on 21 February 1979. This related to the establishment of a Joint Authority to manage the exploitation of seabed resources in a defined joint development area (JDA), corresponding to the area of the parties'

[1] Kittichaisaree, 1987: 100-101. However, the two sides were eventually able to agree to a partial continental shelf delimitation. The actual distance measured on British Admiralty Chart 3961, 1987 edition at 1:240,000 scale was 38.1nm from the terminus of the Thai-Malaysian land boundary on the coast (see Section 6.2.2).

overlapping continental shelf claims beyond 38nm offshore. A further agreement concerning the constitution and other matters relating to the establishment of the Joint Authority was finally concluded on 30 May 1990, over 11 years after the first MoU was signed.

Although the agreements relating to Thailand's and Malaysia's territorial sea and continental shelf boundaries in the Gulf of Thailand were signed *after* the MoU establishing a joint development area in the Gulf, these accords will be considered as they progress offshore rather than chronologically. This approach not only seems logical but is supported by the fact that it is understood that Malaysia and Thailand in fact reached agreement in principle on their maritime boundaries as far offshore as 38nm as early as 1972.[2] Furthermore, although the impasse in negotiations caused by overlapping claims further than 38nm offshore eventually resulted in the adoption of a joint zone formula, and this was embodied in an MoU eight months before the delimitation agreements relating to areas further inshore, the Joint Authority charged with governing the Thai-Malaysian joint development area began to be implemented only with the additional agreement of 1990.

6.2.2 Malaysia – Thailand: Territorial Sea Treaty

The *Treaty between the Kingdom of Thailand and [the Republic of] Malaysia Relating to the Delimitation of the Territorial Seas of the Two Countries* of 24 October 1979 defines territorial sea boundaries between the two countries on both sides of Malaysian peninsula in both the Straits of Malacca and Gulf of Thailand (see Appendix 10).[3] The agreement relating to the two countries' territorial sea boundary in the Straits of Malacca is beyond the scope of this study. In the Gulf of Thailand, however, the treaty provides, in Article II(1), for a *"straight line"* boundary from a point with coordinates 6° 14'.5N, 102° 05'.6 E to a point with coordinates 6° 27'.5 N, 102° 10'.0 E. Although no definition is given as to what is meant by a *"straight line"* between the two points, the text of the treaty states that the coordinates and points referred to were derived from British Admiralty Chart 3961, a copy of which was annexed to the original treaty

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2 Kittichaisaree (1987: 100) states that: *"In 1972, Thai and Malaysian negotiators were able to agree on a lateral continental shelf boundary in the south-western part of the Gulf of Thailand up to approximately 29nm offshore."* No mention of a territorial sea boundary was made. The author writes with authority, given his senior position with the Thai Ministry of Foreign Affairs.

3 The treaty entered into force on 15 July 1982 following the exchange of instruments of ratification.

(Article II(2)).[4] As far as straight lines are concerned, therefore, it can be inferred from the text of the treaty and from the fact that a copy of Chart 3961 was annexed to the agreement, that the lines linking the points referred to in the treaty are loxodrome (or rhumb) lines.

However, a significant caveat concerning the precise location of the boundary is provided in Article III(1) whereby it is specified that *"the actual location at sea of the points mentioned...shall be determined by a method to be mutually agreed upon by the competent authorities of the two Parties."* Such competent authorities are specifically defined as being the Director of National Mapping and the Director of the Hydrographic Department, or persons authorised by them, for Malaysia and Thailand respectively. This provision was apparently included because of the problems experienced by the parties in the precise fixing of locations elsewhere, particularly in the Straits of Malacca.[5] Politically the two sides wanted to conclude an agreement. As a result, technical difficulties were left to one side to be resolved at an unspecified later date (see Section 7.9).

Article V of the treaty also provides that in the event of a dispute arising concerning the interpretation or implementation of the treaty, any such dispute *"shall be settled peacefully by consultation or negotiation."*

According to the treaty text, coupled with the parties' territorial sea legislation (see Sections 5.2.2 and 5.2.3), therefore, the boundary delimited by the Thai-Malaysian treaty of 24 October 1979 is designed as a straight line to a point 12nm offshore from the terminus of the two states' land boundary on the coast of the Gulf of Thailand. The latter point also coincides with the first point, Point i), of the partial continental shelf boundary located further offshore which was delimited by agreement between the parties on the same date (see Section 6.2.3).

No straight baselines were relevant to this delimitation, because at the time the treaty was concluded Thailand's straight baseline 'Area 4', which ends at the Thai-Malaysian land boundary terminus on the coast, had not been declared and both Thailand's other straight baselines and Malaysia's straight baselines were ignored (see Section 5.2, Figure 5.1).[6] Similarly, although both states boast a wealth of islands off

4 British Admiralty Chart 3961, at a scale of 1:240,000. The latest (1987) edition of this chart indicates that it is based on Indian Datum (1975).

5 Charney and Alexander, 1993: 1,101.

6 Analysis based on plotting coordinates from agreement on British Admiralty Chart 3961, 1987 edition at a scale of 1:240,000.

their Gulf of Thailand coasts, none is close to the delimitation area and none therefore had a influence on the alignment of the boundary.[7] These factors, coupled with the relatively smooth nature of the coastline concerned, resulted in what is believed to have been a fairly straightforward delimitation process.[8] Thus, although the text of the treaty does not explicitly state that a particular method of delimitation was employed, the straight line boundary which was adopted, in effect amounts to a simplified equidistance line.[9]

Two anomalies

When the coordinates outlined in the treaty are plotted on the latest edition of British Admiralty Chart 3961,[10] however, two problems become apparent.[11] These relate to the terminus of the land boundary on the coast (and thus the starting point for the territorial sea boundary) and the length of the boundary extending offshore.

The alignment of the modern Malaysia-Thailand land boundary across peninsula Malaysia is based on a treaty dated 10 March 1909 between Siam (Thailand) and the United Kingdom (the colonial power controlling Malaysia at that time)[12], or, more precisely, a *Boundary Protocol* which was annexed to the treaty (Appendix 11). In relation to the easternmost part of the boundary, that abutting the Gulf of Thailand and thus of direct relevance to the present discussion, the Boundary Protocol states that from the source of the main stream of the Sungei Golok in the interior:

> *Thence the frontier follows the thalweg of the main stream of the Sungei Golok to the sea at a place called Kuala Tabar* (see Appendix 11).

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7 As mentioned in Section 4.3, the islands associated with the mouth of the river at Kuala Besar can be considered to be part of the mainland coast. This observation is based on analysis of the relevant coordinates plotted on British Admiralty Chart 3961, 1987 edition at 1:240,000 scale.

8 The relevant report in Charney and Alexander's *Maritime Boundaries* (1993: 1,091-1,097) indicates that negotiations relating to the continental shelf were more complex and time-consuming (see Section 6.2.3) but that once those deliberations were complete *"it was relatively easy"* for the parties to conclude both the territorial sea and (partial) continental shelf delimitations.

9 According to the report in Charney and Alexander (1993: 1,093), *"Clearly...the delimitation method is equidistance."*

10 The edition of Chart 3961 used was published in 1987 with minor corrections as recently as 1998. This was, of course, not the same edition as that used at the time of delimitation and possible changes to the coastline cannot be ruled out (see below).

11 These have been identified in most detail by Prescott (1998: 34), but are also alluded to in the report on this boundary included in Charney and Alexander (1993: 1,091-1,098) and discussed by Haller-Trost (1998: 72-73).

12 For an overview of the development of this boundary see Prescott, 1975: 418-427.

However, when the coordinates provided by the October 1972 treaty establishing the starting point for the Thai-Malaysian territorial sea boundary are plotted on Chart 3961, it appears that this point is *not* located on the thalweg[13] of the Golok river where the river meets the sea as might have been expected from reference to the 1909 Boundary Protocol. Instead, the starting point for the territorial sea boundary is located slightly inshore of the mouth of the river in the estuary. Consequently, the territorial sea boundary described by the 1972 treaty appears to pass over a narrow strip of land territory (formed by the spit at the mouth of the river) before reaching the Gulf of Thailand. If this is indeed the case, this would cut off part of a spit on the northern bank of the mouth of the Golok river and thus, according to the 1909 Protocol, part of Thai territory since it is on the northern side of the Golok thalweg line, leaving it on the *Malaysian* side of the territorial sea boundary line (see the extract of British Admiralty Chart 3961 included here as Figure 6.1).

The other anomaly concerns the length of the territorial sea boundary line itself.[14] Both Malaysia and Thailand have claimed 12nm-breadth territorial seas (see Section 6.2). Nevertheless, the distance between the points identified by coordinates in the 1972 treaty is 13.48nm – thus clearly exceeding Article 3 of UNCLOS's 12nm territorial sea breadth limit and both states' own claims.[15]

Possible explanations

Possible explanations for these anomalies generally relate to the instability of the coastline in question and the meandering nature of the Golok river leading to shifts in the location of the river's thalweg and mouth on the coast.[16] The eastern coast of peninsula Malaysia, including the Thai-Malaysian border area, is characterised by sandy beaches and a *"barrier-beach"* or *"beach ridge"* complex known locally as

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13 The International Hydrographic Organization (1993: 27) has defined the term thalweg as follows: *"The line of maximum depth along a river channel. It may also refer to the line of maximum depth along a river valley or in a lake."*

14 Prescott, 1998: 34.

15 The distance of the terminus of the Thai-Malaysian territorial sea boundary offshore from its landward starting point was measured on British Admiralty Chart 3961, 1987 edition, at a scale of 1:240,000. It is also worth noting that as the delimitation is not strictly equidistant, the point in question (and the line as a whole) is somewhat closer to the nearest points on the Thai coast than Malaysia's. Thus the seaward point of the territorial sea boundary is 13.48nm from the coastal starting point of the boundary (which is also the nearest Malaysian point) but is 12.96nm from the nearest Thai coastal point at Tak Bai.

16 Prescott (1998: 34), Charney and Alexander (1993: 1,091-1,098) and Haller-Trost (1998: 72) all agree on this point.

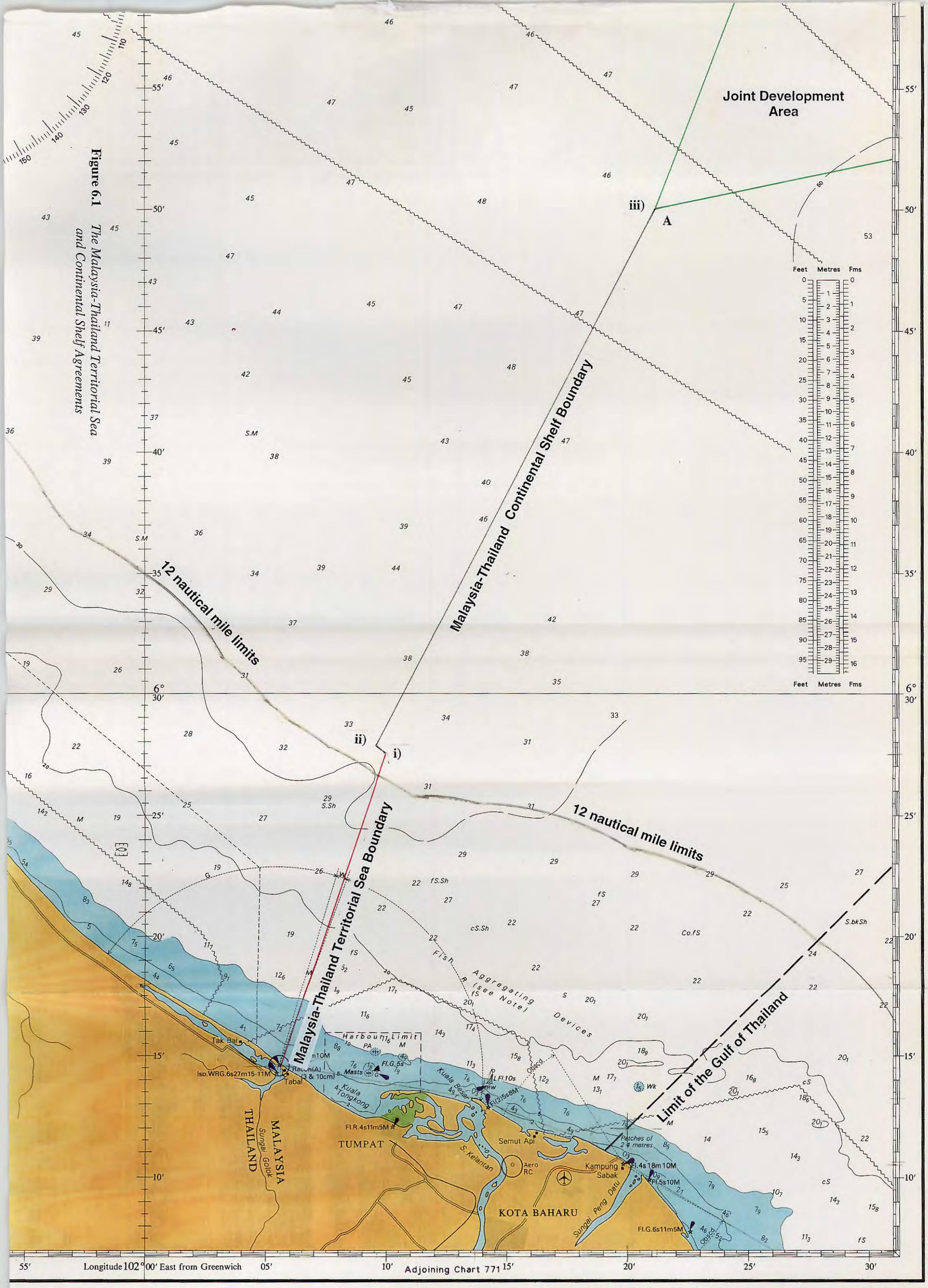


Figure 6.1 *The Malaysia-Thailand Territorial Sea and Continental Shelf Agreements*

(974·4 × 639·8mm)

permatang.[17] This coastline is subject to northeastern monsoon storms and swells emanating from the South China Sea and is therefore susceptible to erosion.[18] Coupled with these forces is the deposition of sediment from the Golok river system, with the development of a spit at the mouth of the river being a telling sign (see Figure 6.2). Thus, in its lower reaches the Golok river meanders across an undulating coastal plain of sandy beaches and *permatang*, its course becoming braided and changing frequently under the influence of annual storms and floods.[19] Additionally, the sediments carried by the river are redistributed along the coast by the forces of the ocean environment. These factors conspire to make the coastline in question unstable.

This is clearly demonstrated by a dispute which arose between Malaysia and Thailand in 1958-60. Lee Yong Leng reports that the Thai-Malaysian international boundary ran through an opening between two spits at the Golok river mouth.[20] In 1958 the extension of the spits closed this opening and thus denied local Malaysian fishermen access to the Gulf of Thailand save through the Thai side of the river. As a result, the Malaysian fishermen were cut off from their fishing grounds unless they were willing to pay the Thai Immigration Department stamp fees and comply with Thai regulations. The dispute was only resolved when, fortuitously, flood waters broke through the spit in 1960 and reopened Malaysia's access to the sea from its side of the river.[21] Changes in the vicinity of the Golok river mouth in the 1955-71 period are illustrated in Figure 6.2.

The first point of the territorial sea boundary

The instability of the coastline and river outlined above provides a sound explanation for the first of the anomalies identified – the location of the first point of the territorial sea agreement within the estuary of the river. Kittichaisaree acknowledges this, stating that *"sand dunes have been continuously forming at the mouth of the Golok River"* and,

17 Bird and Schwartz, 1985: 771-795; Lee Yong Leng, 1982: 22; Bird, 1985: 114. Bird notes that 7.7% of the east coast of Malaysia is composed of steep sectors without beaches with the remaining 657km consisting of beaches.

18 Bird and Schwartz, 1985: 789.

19 Lee Yong Leng (1982: 22-23) notes that while it was agreed that the thalweg would form the boundary in 1909, it has moved back and forth over time and no detailed surveys of its position were made in order to establish it as a precise boundary. As a result of this uncertainty the Kelantan State government on the Malaysian side of the boundary adopted the *"midstream"* as the boundary, but this too changes over time. An example of the resulting problems cited was when a meander of the Golok encroached on Thai territory leading the Kelantan authorities to inadvertently designate Thai territory for the planting of rubber. The Malaysian side later accepted the old course of the Golok as the boundary and apologised to the Thais for the unintentional encroachment.

20 Lee Yong Leng, 1982: 23.

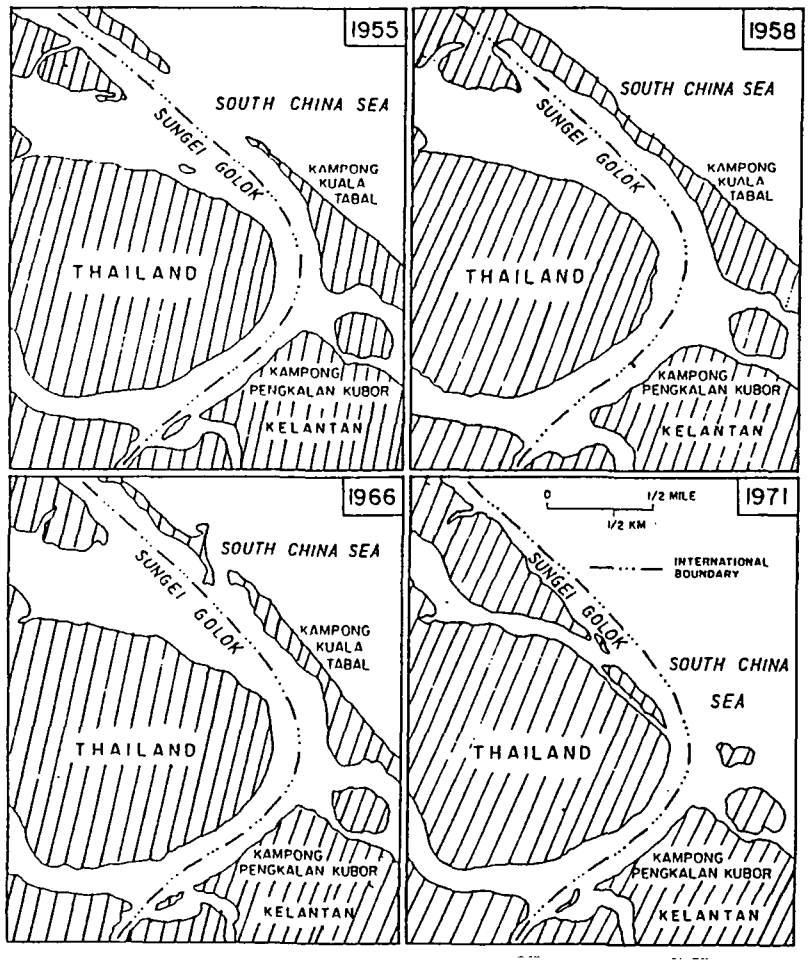


Figure 6.2 *Changes at the Golok River Mouth*
Source: Lee Yong Leng, 1982.

as a result, the initial point of the boundary *"might not be the thalweg at the river mouth as intended."*[22] This theory was largely confirmed by Admiral Thanom Charoenlaph, formerly Chief Hydrographer of the Royal Thai Navy, who stated that, when the treaty was negotiated, the first point of the territorial sea boundary between Malaysia and Thailand was indeed *"the deepest point of the Golok River at that time."*[23] It seems clear that this has not remained the case.

Kittichaisaree goes on to suggest the construction of a dam on the river to control currents and thus resolve this problem.[24] Prescott derides this plan on the grounds of expense, lack of guaranteed success and the possibility of unforeseen erosion/deposition elsewhere along the coast as a result of such construction.[25] Instead, Prescott proposes a considerably less expensive, not to say risk-free, approach based on analogous Mexican-United States experience in the Gulf of Mexico. Here the parties

21 Lee Yong Leng, 1982: 23.
22 Kittichaisaree, 1987: 49.
23 Interview with Admiral Thanom Charoenlaph (Rtd.), Bangkok, 18 December 1998.
24 Kittichaisaree, 1987: 49.
25 Prescott, 1998: 35.

were faced with a similarly errant river, the Rio Grande. The innovative solution applied in the Mexico-United States treaty of 1970, establishing their territorial sea boundaries, was for the first point of the boundary to remain the midpoint of the mouth of the river, moving as and when the river itself moved. From this migratory point the boundary proceeds in a straight line to a fixed point approximately 2,000 feet offshore which acts as a hinge about which the landwards portion of the territorial sea boundary shifts.[26] This type of approach to the problem of delimiting a boundary seaward of an ambulatory river mouth, which avoids the necessity of major engineering works aimed at stabilising the coast concerned (itself something far from being a sure-fire success), strikes this author as being both a cost-effective and elegant solution.

Length of the territorial sea boundary line

The instability of the coastline in the vicinity of the Thai-Malaysian land boundary terminus on the coast provides a rather less convincing rationale for the second anomaly identified, however. This is the oddity of the Thai-Malaysian territorial sea boundary being almost one and half nautical miles longer (13.48nm) than the international standard of 12nm which is also the breadth of territorial sea claimed by the two states involved (see Sections 5.2.2 and 5.2.3). The force of monsoon storms and swells from the South China Sea tend to move sediments deposited by rivers such as the Golok along the coast in what is termed *"littoral drift"* generating features such as spits, rather than allowing for the extensive progradation of the coast seawards which could account for the 1.48nm discrepancy detected in the length of the boundary line.[27] Bird has noted that alongside long-term progradation of beaches and the creation of new beach ridges along the coast, the erosional forces described also lead to retrogradation where beach-ridge plains previously formed are *"trimmed back."*[28] This process appears to be happening in relation to the coastline in the vicinity of the Thai-Malaysian border on the Gulf of Thailand with spits being repeatedly developed, then breached and eroded away without a significant advance in the coastline offshore.

Instead, the extended territorial sea boundary appears to have resulted from a technical problem relating to the method of delimitation chosen. Admiral Charoenlaph, who was involved in the negotiations with Malaysia which resulted in the delimitation

26 Charney and Alexander, 1993: 439.

27 Bird and Schwartz (1985: 789) state that littoral drift along the eastern coast of peninsula Malaysia *"can be significant."*

in question, suggested that the problem was the consequence of applying, or perhaps to this author's mind misapplying, the arcs of circle method of generating a delimitation line.[29] As this method is a technically precise one, it remains something of a mystery as to why the two states should have adopted a territorial sea boundary so demonstrably at odds with their own maritime legislation and the relevant provision of UNCLOS.[30] It is to be hoped that this clear, albeit relatively minor, breach of the international law of the sea is in due course corrected, most obviously by amending the Thai-Malaysian continental shelf agreement such that it applies to the offending 1.48nm of territorial sea boundary beyond 12nm. Such an action could be combined with an amendment to the territorial sea boundary to take into account the unstable nature of the coastline in question, perhaps with the 'floating point and hinge' method suggested by Prescott.

6.2.3 Malaysia – Thailand: Continental Shelf Memorandum of Understanding

The *Memorandum of Understanding between Malaysia and the Kingdom of Thailand on the Delimitation of the Continental Shelf Boundary between the Two Countries in the Gulf of Thailand* was signed on 24 October 1979 simultaneously with the treaty establishing territorial sea boundaries (Section 6.1.2).[31] The MoU defines a partial continental shelf boundary in the Gulf of Thailand between the countries concerned which is 25.1nm (46.5km) in length (see Appendix 12).[32] The coordinates provided for the first point of the continental shelf boundary (point i)) coincide with those for the terminal point of the Thai-Malaysian territorial sea agreement in the Gulf of Thailand,[33] while the coordinates for the final point of the delimitation (point ii)) correspond to those of point A of the Thai-Malaysian JDA (see Section 6.2.4 and Figure 6.1). In addition to being signed and ratified on the same dates, the treaty on territorial sea and the MoU on the continental shelf between the two countries bear several similarities to one another in terms of their provisions.

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28 Bird, 1985: 115.

29 Interview with Admiral Thanom Charoenlaph (Rtd.), Bangkok, 18 December 1998.

30 Article 3 of UNCLOS stipulates that every state has the right to establish the breadth of its territorial sea *"up to a limit not exceeding 12 nautical miles"* (see Section 2.4.3).

31 The MoU on the continental shelf boundary entered into force on 15 July 1982 following the exchange of instruments of ratification - the same date that the territorial sea treaty also entered into force.

32 Measured on British Admiralty chart 3961, 1987 edition, at a scale of 1:240,000.

33 6° 27'.5 N, 102° 10'.0 E

The partial continental shelf boundary consists of three points, i)-iii), linked by what are described in the text of the MoU as *"straight lines."* As is the case with the territorial sea boundary described in Section 6.2.4, no further definition of what is meant by the term *"straight"* in this context is supplied in the text of the accord. Once again, however, the MoU includes provisions which parallel those in the territorial sea treaty of the same date. Article II(2) of the MoU corresponds verbatim to Article III(1) of the territorial sea treaty, providing that the actual location of the points laid out in the MoU will be determined by mutual agreement between the competent authorities of the parties.[34] Article V of the MoU also essentially equates to the same article in the territorial sea treaty, providing that in the event of any dispute over the interpretation or implementation of the provisions of the MoU they will be settled *"peacefully by consultation or negotiation"* between the parties.

The continental shelf MoU does include two provisions which differ significantly from the territorial sea treaty. Article II of the MoU contains an explicit statement that the governments concerned *"shall continue negotiations to complete the delimitation of the continental shelf boundary"* between them in the Gulf of Thailand. This is a clear recognition of the partial nature of the delimitation covered by the MoU and the interim or temporary nature of the joint development area agreed between the two countries further offshore (see Section 6.2.4). Article II also serves to emphasise that neither state has been willing to compromise in principle over its sovereign rights to the continental shelf seawards of the terminus of the continental shelf boundary delimited under the MoU, the joint development area agreement notwithstanding. Indeed, the very use of the term *"Memorandum of Understanding"* in this context indicates unfinished business and incomplete delimitation of the continental shelf between the two states.

Article IV of the MoU contains provisions designed to address the possibility of the discovery of an oil or gas deposit straddling the boundary line. In such an eventuality, the two sides undertake to consult one another with the aim of reaching an agreement whereby *"all expenses incurred and benefits derived [from the deposit] shall be equitably shared."* This is a fairly standard provision included in most continental

34 The same *"competent authorities"* defined in the Malaysia-Thailand territorial sea treaty were included in the MoU on the continental shelf: the Director of National Mapping and the Director of the Hydrographic Department, or persons authorised by them, on behalf of Malaysia and Thailand respectively.

shelf agreements, particularly since the concept of unitisation was developed in the North Sea.[35]

The boundary delimited by the Thai-Malaysian MoU of 24 October 1979 is effectively a straight line continuation of the territorial sea boundary of the same date, with a slight deviation between Points i) and ii) which are in close proximity to one another (Figure 6.1). As was the case for the territorial sea boundary detailed in Section 6.2.2, and for the same reasons, no straight baselines were relevant to the delimitation (see Section 4.3 and 4.4). Similarly, no islands influenced the course of the boundary.

Although the MoU does not mention that a particular delimitation methodology was applied, the lack of straight baseline or island considerations and the generally uncomplex nature of the coastline relevant to the delimitation, made the adoption of a simplified equidistance line a straightforward decision.[36] Indeed, because of their reasonably uncomplicated nature, the alignment of Thai-Malaysian maritime boundaries in the Gulf of Thailand as far offshore as around 38nm distance from the coast was apparently agreed in principle as early as 1972.[37] Further offshore a dispute, particularly over the role of islands, caused an impasse in continental shelf negotiations and an overlap of claims, eventually leading to the creation of a Thai-Malaysian Joint Development Area (JDA) (see Section 6.2.4).

It is worth noting that the coordinates of Points i)-iii) in the MoU conform to those of Thailand's 1973 *Continental Shelf Declaration* of 18 May 1973 (Appendix 8) and also match the coordinates of the turning points of Malaysia's continental shelf claim as expressed in the Malaysian *Peta Baru* of 1979 (Appendix 7) (see Section 5.2.2 and 5.3.2). Thus, the coordinates of Points i), ii) and iii) are identical to those of Thai Declaration Points 17, 16 and 15 and Malaysian Turning Points 47, 46 and 45 respectively. If Kittichaisaree's contention is correct that the Thai-Malaysian boundaries as far offshore as the terminus of the boundary delimited by the MoU under discussion were in fact agreed upon in principle as early as 1972, then it may very well be that subsequent state claims – the Thai Declaration and the Malaysian *Peta Baru* – simply conformed to the understandings reached during those earlier negotiations.

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35 Robson, 1995: 6-7 and 9-11.

36 It should be noted here that although the line in question broadly represents an equidistance line and has been described as such (e.g. it is described as a *"simple equidistant lateral line"* in Charney and Alexander (1993: 1,101)), it is in fact slightly closer to the Thai than to the Malaysian coast is plotted on British Admiralty Chart 3961, 1987 edition at a scale of 1:240,000.

The diversion in the boundary line between points i) and ii)

This does not, however, explain why Points i) and ii), only approximately 750 metres apart,[38] are so close together. No obvious reason for this slight zigzag in the boundary is readily apparent. The MoU provides, in Article I(2), that the coordinates of Point ii) were determined *"by reference to"* a point with coordinates 6° 16'.6 N, 102° 03'.8 E (see Figure 6.1), this being referred to as the *"former position of Kuala Tabar"* under the UK-Siam Boundary Protocol of 1909 (see Appendix 11).

However, although the Boundary Protocol does refer to the Golok river meeting the sea *"at a place called Kuala Tabar"*, no coordinates were mentioned (see Appendix 11). It is also worth recalling that the 1909 Protocol defined the eastern terminus of the boundary to be the thalweg of the Golok river rather than at Kuala Tabar itself (see Section 6.2.2). At first glance it is, therefore, difficult to see how the former position of Kuala Tabar relates to Point ii), 13.5nm offshore.[39] Furthermore, although both the Thai Continental Shelf Declaration and the Malaysian *Peta Baru* coordinates match those of Points i)-iii), no explanation for the diversion between Points i) and ii) is provided in either of these documents. This slight diversion in the boundary alignment is therefore something of a mystery and has not been dealt with in detail in the relevant literature.[40]

In fact, the phrase the *"former position of Kuala Tabar"* under the 1909 Boundary Protocol, used to establish the position of Point ii) in the continental shelf MoU is crucial. As previously demonstrated with regard to the Thai-Malaysian territorial waters boundary, the coastline in the vicinity of the two states border is unstable and the position of the mouth of the Golok River on the Gulf of Thailand has changed frequently over the years (see Section 6.2.2). Furthermore, according to Admiral Thanom Charoenlaph, the former position of the mouth of the Golok River was *"a little to the northwest"* of its location when the Thai-Malaysian agreements on territorial waters and continental shelf were negotiated.[41] It is therefore likely that when the *"former position of Kuala Tabar"* is mentioned, what was really meant was the former position of the mouth of the Golok River in the vicinity of Kuala Tabar. The

37 Kittichaisaree, 1987: 100.

38 Prescott, 1998: 36.

39 The assertion in the report on this boundary included in Charney and Alexander (1993: 1,099-1,123) that: *"For the location of Point ii, the parties agreed on a point formerly used in the Boundary Protocol annexed to the Treaty between Siam and Great Britain of 10 March 1909. As a result, the boundary line has a tiny zigzag"* fails to make a connection between the location of Kuala Tabar on land and Point ii) offshore and is therefore rather unhelpful, if not misleading.

40 Prescott, 1998: 36.

41 Interview with Admiral Thanom Charoenlaph (Rtd.), Bangkok, 18 December 1998.

'kink' in the continental shelf delimitation between Points i) and ii) is therefore believed to reflect the fact that the old position of the mouth of the Golok River on the Gulf of Thailand was northwest of its location at the time the boundary was negotiated. The alteration in the boundary line compensates Malaysia for accepting the modern location of the river mouth on the coast as the starting point of the territorial sea boundary somewhat to the southeast of its former location.

6.2.4 Malaysia – Thailand: Joint Development Area

Beyond what was to become designated Point iii) of the continental shelf MoU, situated at 38.1nm offshore, delimitation negotiations between Malaysia and Thailand in the 1970s reached a stalemate. The key reason for this deadlock was a dispute, which remains unresolved in mid-1999, concerning the status of an offshore insular feature, Ko Losin, and its potential impact on claims to maritime jurisdiction. The position of Point iii) is, however, not consistent with a tripoint between the mainland coasts of the two states and Ko Losin. Instead, it is located approximately 2nm (3.6km) nearer to Ko Losin than to the mainland coasts of Malaysia and Thailand.[42] This indicates that the two sides were able to narrow their area of overlapping claims in the course of their continental shelf delimitation negotiations, albeit marginally. It is, however, noteworthy that Thailand's 1973 continental shelf claim cuts through the area that eventually became the joint zone rather than forming its eastern limit. It seems clear that once negotiations were initiated Thailand extended its claim to give full weight to Ko Losin which it had not done in 1973, and that in due course Malaysia accepted this extended claim as the basis for the eastern limit of the joint area.

Ko Losin is located 39nm offshore and is described in the British Admiralty's *Pilot* for the area as being *"1½ m (5 ft) high and steep-to all round"* with a light-beacon sited on it.[43] Thailand claims that Ko Losin is a fully-fledged island capable of being used as a basepoint for its claims to continental shelf and EEZ. In contrast, Malaysia maintains that this small and isolated feature is no more than a 'rock' as defined under Article 121(3) of the UN Convention on the Law of the Sea (see Section 3.5). As such Thailand would be able to claim no more than 12nm-breadth territorial sea and contiguous zones from Ko Losin and the islet would be an inappropriate basepoint for Thailand's continental shelf and EEZ claims.

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42 As measured on British Admiralty Chart 3961, 1987 edition at a scale of 1:240,000.

43 Hydrographer of the Navy, 1978: 85.

There is no doubt that Ko Losin, a tiny, barren, unpopulated feature, is little more than a danger to navigation (hence the light-beacon) and can legitimately be defined as a rock within the meaning and spirit of Article 121(3). Nevertheless, the uncertainties over how a rock is to be distinguished from an island proper, as highlighted in Section 3.5, obfuscated the issue and led to deadlock in continental shelf delimitation negotiation between Malaysia and Thailand.

Beyond 38nm from the coast, neither side proved willing to compromise on this issue in principle, resulting in overlapping continental shelf claims (see Figures 5.1 and 6.1) and stymied negotiations. Eventually, however, the two governments showed considerable flexibility in their approach to the dispute, while still reserving their original positions by agreeing to establish a jointly administered zone, encompassing the overlapping claims area.[44] The purpose of the joint development area (JDA) so created is the joint exploration for and shared exploitation of seabed resources, particularly hydrocarbons, within the designated zone.

The report on this agreement included in Charney and Alexander's *Maritime Boundaries* also suggests that another factor which made agreement on delimitation in the overlapping claims area problematic was the fact that Thailand had already awarded hydrocarbon concessions to oil companies in the area that was to become the JDA.[45] This may have been a complicating additional factor in negotiations (see below), but the contention over the role of Ko Losin in the delimitation was clearly the driving force behind the dispute. Indeed, it could be argued that the prospective nature of the seabed involved was a major factor in encouraging the parties to embark down the joint zone route in order to gain access to those resources and effectively shelve the sovereignty dispute.[46] Conversely, the hydrocarbon resource potential of the overlapping claims area was a major factor in discouraging either side from wholly relinquishing its claim or defining a single compromise line for fear of subsequently discovering that the most or even all the oil and gas was located on the 'wrong' side of the line.[47]

As a result, on 21 February 1979 the two sides signed a *Memorandum of Understanding between the Kingdom of Thailand and [the Republic of] Malaysia on the*

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44 It should be noted that the terminology of the agreement is at pains to stress that the issue of delimitation is by no means over or even 'shelved' and that both governments remain committed to continuing the search for delimitation agreement.

45 Charney and Alexander, 1993: 1,100-1,101.

46 Stormont and Townsend-Gault (1995: 65) note that decreased production from Thailand's giant Erawan gas field in the central Gulf of Thailand may have been the *"determining factor"* in *"forcing"* Thailand to proceed with joint development with Malaysia.

Establishment of a Joint Authority for the Exploitation of the Resources of the Sea-Bed in a Defined Area of the Continental Shelf of the Two Countries in the Gulf of Thailand (Appendix 13). It should be noted that the conclusion of this accord opened the way for the agreements on the territorial sea and continental shelf outlined in Sections 6.1.2 and 6.1.3 to be implemented.

In Article I of the MoU establishing the joint development area, the parties agreed that an area of overlapping claims existed and defined it by seven points joined by *"straight lines."* Coordinates were provided for each of the points designated A to G and the resulting wedge-shaped pentagon was plotted on the relevant part of British Admiralty Chart 2414 (1967 edition) annexed to the MoU. As in case for the agreements relating to the territorial sea and continental shelf between the two countries, no definition was provided for the term *"straight lines."* Chart 2414 is a nautical chart on the Mercator projection at a scale of 1:1,500,000 showing the entirety of the Gulf of Thailand. Straight lines drawn on this chart are loxodrome or rhumb lines rather than geodesic lines which represent the shortest path between two points on the earth's surface (see Section 7.9). Using the coordinates provided by MoU as a basis, the area of the Thai-Malaysian joint development area was calculated to be 2,110nm^2 (7,238km^2) (Figure 6.3).[48]

Article II of the MoU commits the two states to continue efforts to resolve the question of the remaining continental delimitation between them in the Gulf of Thailand (i.e. in the overlapping claims area that became the joint zone). This is to be achieved through negotiations, or any other mutually agreed methodology, in accordance with international law and *"the spirit of friendship and in the interest of mutual security."* This mirrors Article II of the MoU on the continental shelf (see Section 6.2.3, Appendix 12) and illustrates that neither side has been willing to relinquish fully its jurisdictional claims to the overlapping claims area, regardless of the agreement to shelve the dispute and establish a joint development area.

Article III consists of six paragraphs and sets out the fundamental elements it was envisaged would govern the joint zone. Article III(1) establishes the Malaysia-Thailand Joint Authority *"for the purpose of the exploration and exploitation of the non-living natural resources of the sea-bed and subsoil in the overlapping area for a period of fifty years"* starting from when the MoU enters into force. According to this

47 Ong, 1995: 79

48 Calculated using DELMAR.

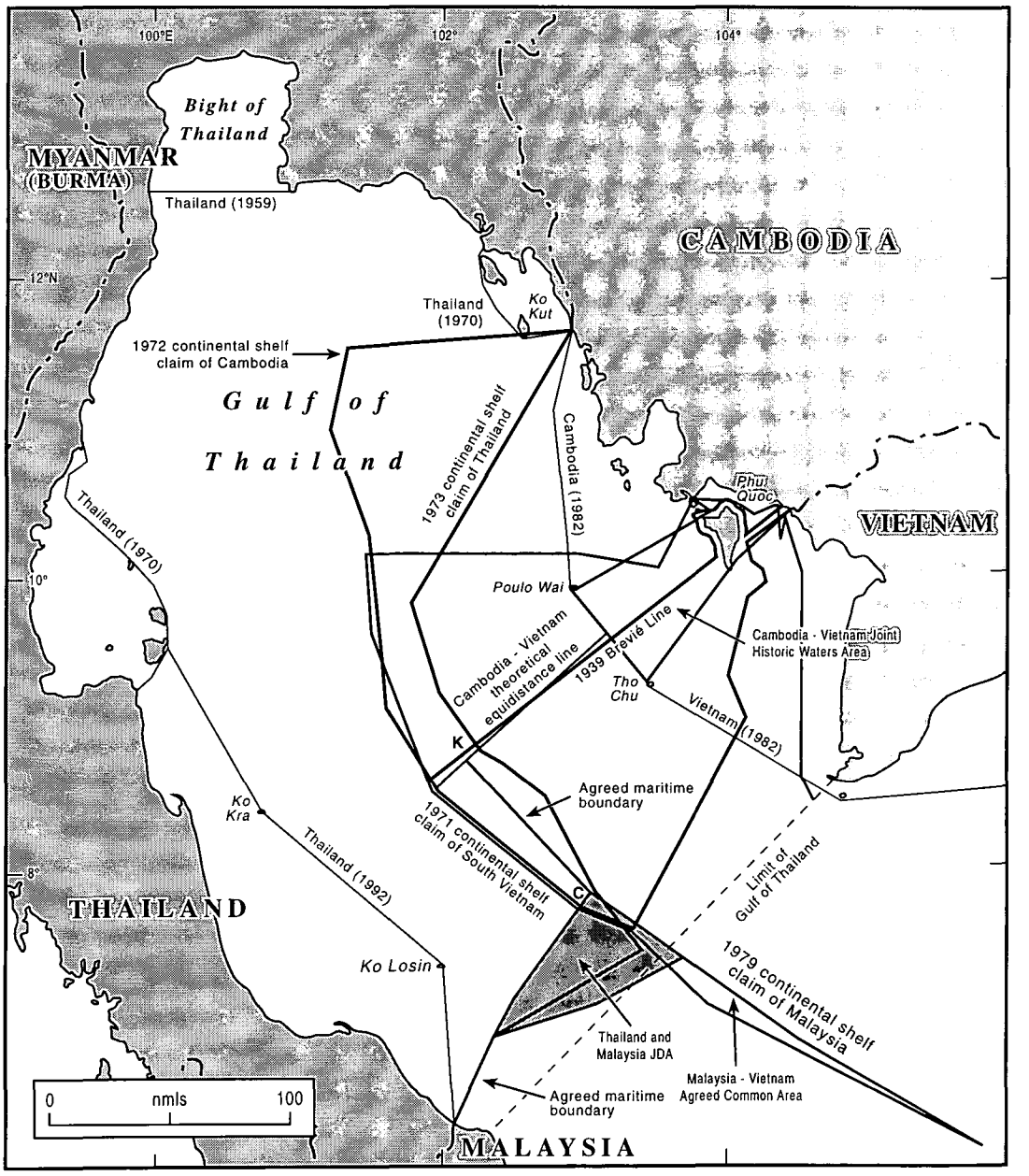


Figure 6.3 *The Thai-Malaysian Joint Development Area (JDA)*
Source: Author's research.

article the Joint Authority so established will assume *"all rights and responsibilities"* of the two parties to the above end and, significantly, responsibility for *"the development, control and administration"* of the joint development area (Article III(2)). A proviso that the Joint Authority's powers would have no bearing on pre-existing concessions granted in the area was also included. This was probably included at the insistence of Thailand in light of the licences already issued by Bangkok in the area prior to the conclusion of the agreement and subsequently was to prove a major factor in the problems encountered in the two sides' attempts to implement the MoU.

Article III(3) includes a rather skeletal outline of the composition of the Joint Authority – simply providing that there be two joint chairmen, one from each country, and an equal number of members from each country. It further provides that all costs and benefits resulting from Joint Authority-inspired activities in the joint development area would be equally borne and shared by the parties (Article III(5)). The remainder of the article comprises a fairly standard statement that if a hydrocarbon deposit were to be discovered straddling the limits of the joint zone, the Joint Authority and the other party or parties concerned would consult with one another with a view to reaching an agreement whereby the straddling field could be effectively exploited with all expenses and benefits being equitably shared.

Article IV provides that in terms of issues such as fishing, navigation, hydrographic and oceanographic surveys, the prevention of marine pollution and *"other similar matters"*, both Malaysia and Thailand's rights and regulatory powers *"shall extend to the joint development area"* (Article IV(1)). The goal of a *"combined and coordinated security arrangement"* within the joint zone was also raised here (Article IV(2)). No limit to each state's jurisdiction over these issues was mentioned, presumably because overlapping jurisdictions were envisaged with each state's authority extending throughout the joint development area.

In contrast, Article V, relating to criminal jurisdiction, serves to divide the joint zone into Thai and Malaysian sectors. An additional point was designated, Point X, midway along the line joining Points C and D (the seaward limit of the zone), and a line connecting Points A and X constructed. This arrangement divides the joint development area roughly into two,[49] Thailand having criminal jurisdiction to the north

[49] As the zone is not symmetrical but is rather an uneven polygon, the two criminal jurisdiction sectors are unequal in area. Malaysia's zone is approximately 1,038nm^2 (3,560km^2) and Thailand's 1,069nm^2 (3,666km^2) in area. Calculated using DELMAR.

of the line linking A and X and Malaysia to the south of it. Article V also made it plain, however, that such criminal jurisdiction zones:

> *...shall not in any way be construed as indicating the boundary line of the continental shelf between the two countries in the joint development area...nor shall such definition in any way prejudice the sovereign rights of either Party in the joint development area.*

Thus, the limited nature of the joint development arrangement in terms of its implications for the sovereign rights of the parties was reemphasised.

Article VI states that if a continental shelf delimitation is achieved prior to the end of the 50-year period provided for in Article III, the Joint Authority will be wound up and its liabilities/assets split equally between the two parties. On the other hand, if no resolution of the continental shelf question in the overlapping claims area is reached by the expiry of the 50-year life of the agreement, *"the existing arrangement shall continue."* Finally, Articles VII and VIII which conclude the MoU, provide that any dispute over the MoU's terms or their implementation *"shall be settled peacefully by consultation or negotiation"* between the two sides (Article VII), and that the MoU comes into force upon the exchange of instruments of ratification. The joint development MoU was duly ratified and the Joint Authority established on 24 October 1979 – the same day that the treaty on the territorial sea and MoU on the continental shelf between the two states were also signed (see Sections 6.2.2 and 6.2.3).

The Thai-Malaysian MoU of 21 February 1972 is a relatively concise document, comprising just eight articles, which essentially serves to lay out the basic principles for joint development (see Appendix 13). Even the choice of terminology used to refer to the accord – a *"Memorandum of Understanding"* rather than a formal *"treaty"* as was the case for the territorial sea delimitation signed in the same year – is revealing. Reference to an MoU as opposed to a treaty implies that the something less than a fully-fledged agreement has been concluded. This is despite the fact that the MoU has all the characteristics one might expect of a binding bilateral treaty.[50] This has been taken to

[50] Ian Townsend-Gault (1990a: 102), who makes this observation, notes that the MoU was executed in duplicate, was signed by both parties and is subject to ratification by them, thus bearing *"all the hallmarks"* of a binding international agreement. He goes on to define an MoU as *"usually the preferred means of expressing something less than a full agreement, but something rather more than a mere agreement to agree. A statement of principles which govern an undertaking, in other words."*

reflect less than whole-hearted commitment to the agreement on the part of the governments concerned.[51]

In fact, it took just over 11 years before Malaysia and Thailand reached a further agreement designed to put the institutional mechanisms in place and address the many technicalities of putting the MoU into practice. This was achieved on 30 May 1990 with the conclusion of the *Agreement between the Government of Malaysia and the Government of the Kingdom of Thailand on the Constitution and Other Matters Relating to the Establishment of the Malaysia-Thailand Joint Authority.*

The 1990 Agreement makes no changes to the fundamental elements of joint development as laid out in the 1972 MoU. For example, the scope of the area to be subject to joint development, the overall purpose of the arrangement, the principle of the equitable sharing of costs and proceeds from joint activities and the peaceful resolution of any disputes arising all survive intact. What the 1990 Agreement does achieve is to add substance to the MoU's framework, laying out detailed rules and regulations concerning key practical issues. It is therefore a much weightier document than its MoU predecessor, consisting of 22 articles divided into seven distinct chapters (Appendix 14). The issues dealt with in the 1990 Agreement include: the legal status and organisation of the Joint Authority (Chapter I); its powers and functions (Chapter II);[52] financial matters (Chapter III); regulations governing the Joint Authority's relations with other organisations (Chapter IV); and, issues such as customs and excise and taxation (Chapter VI).

One intriguing difference in emphasis between the joint development MoU and the 1990 Agreement that has been observed[53] relates to a comparison of the texts of two parallel articles, one from each agreement. Under Article III(2) of the former, the Joint Authority is tasked with assuming:

> *...all rights and responsibilities on behalf of both Parties for the exploration and exploitation of the non-living natural resources of the sea-bed and subsoil in the overlapping claims area...and also for the* ***development, control and administration*** *of the joint development area* [emphasis added].

In subtle contrast, in the corresponding article in the 1990 Agreement, Article 7(1), it is merely stated that the Joint Authority:

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51 Townsend-Gault, 1990a: 104.

52 Including, in Article 8, a commitment to the use of production sharing contracts.

53 Ong, 1990: 57-60; 1995: 87-88.

> *...shall* ***control*** *all exploration and exploitation of the non-living natural resources in the Joint Development Area and shall be responsible for the formulation of policies for the same* [emphasis added].

Ong has interpreted the substitution of the word *"control"* for the phrase *"development, control and administration"* as evidence of a desire on the part of the governments concerned to limit strictly the autonomy of the Joint Authority, despite specifically giving it juridic personality, and thus decision-making and administrative powers, in Article 1 of the 1990 Agreement. According to Ong, the change in wording by the states concerned is designed to *"retain some higher authority which would enable them to be the final arbiters of any policy-making dilemma with respect to the whole scenario of joint development in the area."*[54]

As noted, it took over 11 years to transform the Thai-Malaysian MoU on joint development into a fully-fledged agreement enabling exploration and exploitation operations in the joint zone to proceed.[55] Why was this the case? In fact there were multiple, interrelated, reasons for the delay. Arguably, the key reason for the slow progress on the implementation of the framework of provisions laid out in the MoU was lack of political will. This factor has been described as *"the single most important ingredient"* in realising and sustaining joint development agreements.[56]

The decision to embark on joint development in principle, as provided for in the February 1972 MoU, was itself a significant step.[57] This represented the maximum limit of the two states' willingness to compromise and cooperate over the sovereignty issue at that time. Such a bold initiative was therefore undertaken despite the reservations of sections of the governments and societies concerned and a backlash was, perhaps, inevitable.

In the Thai-Malaysian case, the inspiration and enthusiasm for joint development which led to the conclusion of the MoU emanated primarily from the Prime Ministers of the two countries.[58] It is hardly surprising that changes in government and the resulting

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54 Ong, 1990: 59.

55 Some commentators (e.g. Dzurek, 1998: 126) put the delay between signing the MoU on joint development and implementation at in excess of 13 years. This is probably due to the fact that agreement on exploration between the JDA's Joint Authority and international oil companies was not achieved until 21 April 1994 (*Business Times*, Bangkok, 24/4/94).

56 Stormont and Townsend-Gault, 1995: 61. The same could probably be said of achieving success in any negotiation or agreement.

57 Townsend-Gault, 1990a: 104.

58 The MoU was signed by Thai Prime Minister General Kriangsak Chomanan and his Malaysian counterpart, Datuk Hussein Onn (Valencia, 1985a: 40, 1986: 668; Townsend-Gault, 1990a: 104).

removal of the individuals responsible for initiating the joint development project, significantly undercut the level of support for the scheme on the part of the governments concerned. The joint development MoU was therefore regarded as a priority of the previous regime and therefore liable to criticism and a waning in official commitment by its successor. This was particularly true of Thailand where there were protests that Bangkok should have negotiated more successfully and secured a greater share of the overlapping claims area – a sentiment emphasised the fact that the *"lion's share"* of the gas reserves discovered in the JDA are on the Thai side of an equidistance line.[59] This view was further reinforced by a Thai perception that with its burgeoning population and industrial base the country needed the resources of the overlapping claims area more than did Malaysia, there being only limited industrial development and a relatively small population, and consequentially limited energy requirements, in the northern Malay provinces in the vicinity of the border with Thailand.[60] According to Valencia:

> *...the major factor in the delay seems to be Thai governmental instability and the unwillingness of the politicians to risk their political future by being involved in a scheme that may fall out of favour with the next change of minister or government.*[61]

Political backing for the joint development arrangement was also adversely affected by the impact of issues unrelated to continental shelf delimitation on bilateral relations. The most significant of these was the dispute over fishing rights. Since the introduction of the EEZ, Thailand's position on the Gulf of Thailand has been that of a 'zone-locked' state. That is, in order to reach maritime areas beyond the Gulf of Thailand, Thailand's shipping must traverse the EEZs of a combination of Cambodia, Malaysia and Vietnam. The movement of Thai fishing fleets through the Malaysian EEZ gave rise to Malay concerns that whilst apparently engaging in their right of transit through their EEZ, Thai fishermen were in fact continuing to conduct fishing operations en route, thus poaching Malaysia's resources. This led to a series of confrontations and acrimonious incidents between Malaysian coastguards and Thai fishermen (see Section 7.8). Malaysian accusations of poaching were countered by Thai protestations of innocence and counter-accusations of the harassment and victimisation of its fishermen, who were perceived as simply engaging in their internationally recognised right of passage through another

59 Valencia, 1985a: 40; Stormont and Townsend-Gault, 1995: 64-65.
60 Valencia, 1985a: 40; Stormont and Townsend-Gault, 1995: 65.
61 Valencia, 1985a: 40.

state's EEZ. These events inevitably had a negative impact on bilateral relations and hardly created the political climate conducive to carrying the joint development scheme to fruition.

A further difficulty arose in relation to dealing with concessions previously granted by the parties within the zone defined as the joint development area. Texas Pacific Oil Company, holding a concession from Thailand had already made a gas discovery in the overlapping claims area. When this zone was transformed into the joint development area, Thailand allowed Texas Pacific to retain its concession with Malaysia's consent. However, Texas Pacific and the Thai authorities soon became embroiled in a commercial dispute leading to a Thai desire to terminate the oil company's involvement in the joint zone. For its part the oil company refused to recognise the legitimacy of the newly created Joint Authority. This state of affairs led to complications and delay as far as implementing the joint development MoU was concerned.[62]

Concerns also emerged over the involvement of another Thai concessionaire, Triton Oil Company, in the joint development area. Again, the problems revolved around a dispute between the Thai government and the oil company, undermining moves towards implementation of the joint development agreement. As previously mentioned, when the dimensions of the joint zone were being negotiated, it became apparent that Thailand had extended its claim to the south and east since it had formally issued its continental shelf limits in 1973, so as to base its claim on equidistance, including Ko Losin as a basepoint (see Sections 5.3.3 and 5.5.3). A Malaysian gas discovery, Pilong 1 was therefore also included within the area of overlapping claims and thus, with Malaysian consent, within the joint development area. Triton invoked a clause in its contract stipulating that the limit of its concession coincided Thailand's international boundary. As a result of the Thai claim line moving, Triton argued, so too did its concession limit to include Pilong 1.[63] Thailand initially agreed to this position but this apparently caused dissension within the Thai government and the Thai authorities subsequently backtracked.[64] As a result Malaysian sources reported in 1985

62 Valencia, 1985a: 39, 1986: 668; Townsend-Gault, 1989a: 106-107; and Townsend-Gault, 1989b: 183.

63 Valencia, 1985a: 39-40.

64 Valencia, 1986: 677.

that the delay in implementation of the joint development MoU was the consequence of Thai disputes with oil companies with interests in the joint development area.[65]

Yet another major issue that had to be addressed was the need to reconcile the two countries' differing approaches to managing the exploration and exploitation of resources on the continental shelf. Malaysia has applied the production-sharing contract approach while Thailand has adopted the more traditional concession-based system.[66] Thailand was apparently willing to conform to a Malaysian desire to use a production-sharing system within the joint development area. However, one of Thailand's concerned concessionaires, Triton, objected and Thailand was faced with the choice of either reneging on its agreement in principle with Malaysia to apply production-sharing to the joint zone or with revoking Triton's concession. The latter move was viewed as having the potential to seriously undermine the confidence of the international oil industry in Thailand. This situation has been described as *"a major bone of contention"* between the two states at least since 1985 and resulted in paralysis as far as progress towards implementation of the joint development MoU was concerned until 1989.[67]

Eventually a compromise deal was worked out. The joint operating agreement setting out the oil and gas resource development regime to be applied within the joint zone provides for production-sharing involving Malaysia's national oil company, Petronas, and Triton. This resolved the Thai government's dilemma by both addressing Malaysia's desire to see a production-sharing arrangement and by preserving Triton's interests in the joint zone.

Ultimately, the desire for access to the resources outweighed all the obstacles outlined above.[68] Now that production from fields within the JDA is underway the joint development agreement can be viewed as being far less vulnerable to challenge as the benefits of the cooperation are readily apparent and underpin it. Indeed, since the JDA

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65 *Energy Asia*, 10 May 1985 quoted in Valencia, 1986: 678.

66 Production-sharing contracts represent an alternative to the concession-based system whereby rights over resources remain vested in the state concerned, or at least a state-led entity such as a national oil company with the foreign oil company acting as contractor. In contrast, the concession-based system involves a contract between the, usually international, oil company and the state concerned. The distinction between the two approaches has, over time become somewhat *"blurred"* (Townsend-Gault, 1990a: 105-106).

67 Ong, 1990: 60.

68 This was particularly true for Thailand with its burgeoning energy requirements. For example, Thailand's energy needs leaps by 11% in the 1995-96 period alone (*Offshore*, December 1996: 8). Despite boasting one of the fastest growing economies in the world in the 1980s and early 1990s, by 1997 the Thai economy was experiencing severe recession as a result of the economic crisis gripping Asia with an estimated GDP growth rate of -0.4% in 1997 (CIA Factbook, 1999).

finally swung into operation in earnest with the signing of production-sharing contracts with three contractors on 21 April 1994,[69] exploration has proceeded apace yielding several discoveries.[70] These developments culminated on 22 April 1998 with the conclusion of two major gas supply agreements designed to give Malaysia and Thailand access to the estimated 10 trillion cubic feet of gas reserves within the JDA.[71] The significance of these events, reported to be set to trigger a total initial investment of US$2.42 billion in the two countries, was emphasised by the stock placed on them by the two countries' leaders. Thai Prime Minister Chuan Leekpan saying that the gas deals would restore stability and economic prosperity while his Malaysian counterpart, Mahathir Mohamad, stated that they would *"revitalise"* both countries.[72]

It should be noted, however, that the joint development area is itself not free from dispute by a third party. The seaward part of the joint zone is also subject to a claim on the part of Vietnam. This claim covers approximately 256nm^2 (879km^2) (see Figure 1.1 and Section 7.6).[73]

6.3 Cambodia – Vietnam: Joint Historic Waters

On 7 July 1982 Cambodia and Vietnam signed an *Agreement on Historic Waters of Vietnam and Kampuchea* which laid claim to a roughly oblong-shaped area of historic waters projecting into the Gulf of Thailand offshore the two states' border provinces on the coast (Figure 4.1). The agreement is short, consisting of only three articles, but encompasses a claim to 2,802nm^2 (9,609km^2) of the Gulf as *"historic waters."*[74] Article 1 of the Cambodian-Vietnamese agreement defines the limits of the claimed area of historic waters in detail. Accordingly, the joint historic waters claim is bounded by:

Valencia (1985a: 40) indicates that an expected shortfall in gas supplies from the Erawan field in the Gulf of Thailand put pressure on the Thai authorities to press ahead with joint development.

69 *Business Times*, Bangkok, 24/4/94.

70 *Offshore*, December 1995: 12 April 1996: 20, September 1996: 22, January 1997: 18, March 1997: 14, May 1997: 14, September 1997: 126, October 1997: 18 and January 1998: 16.

71 *Bangkok* Post, 21/4/98; The *Nation*, 21/4/98.

72 *Bangkok Post*, 23/4/98.

73 Calculated using DELMAR and British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000.

74 Calculated using a planimetre and British Admiralty Chart 3879, 1957 edition at a scale of 1:2400,000.

> *...the coast of Kien Giang Province, Phu Quoc Island, and the Tho Chu [Poulo Panjang] archipelago of the Socialist Republic of Vietnam on the one side, and the coast of Kampot Province and the Poulo Wai [Wei] group of islands of the People's Republic of Kampuchea on the other* (Appendix 3, Figure 4.1).[75]

The maritime space within the limits specified is, therefore, jointly claimed and presumably has the same status as the maritime areas within historic bays (see Section 2.3.5). The agreement does not, however, define a bilateral maritime boundary. Article 2 holds open the door to future negotiations on determining such a maritime boundary *"at a suitable time."* At the time of writing no such agreement has apparently been concluded (see Sections 6.4 and 7.3).

Pending settlement of the maritime boundary between them, Article 3 of the agreement includes statements concerning the two countries' baselines and the issue of sovereignty over islands within the zone established and lists a number agreements concerning activities within the joint historic waters area. As discussed in Sections 4.2.4 and 4.5, Cambodia and Vietnam have integrated their straight baseline systems. The two baseline systems meet at "Point O" on the southwestern limit of the historic waters area. Article 3 of the historic waters agreement confirms this by providing that "Point O" *"on the straight baseline linking the Tho Chu archipelago and Poulo Wei Island"*, is to be determined by mutual agreement. At the time of writing the precise position of "Point O" has not been agreed (however, see Sections 6.4 and 7.3).

A further important agreement between the parties included in Article 3 is that the two sides would *"continue to regard the Brevié Line drawn in 1939 as the dividing line for the islands in this zone."* The remainder of Article 3 relates to activities within the zone. Accordingly, Cambodia and Vietnam commit themselves to conducting joint surveillance and patrolling in the historic waters area; agree that local fishermen could continue their operations in the zone created *"according to the habits that have existed so far"*; and conclude that the exploitation of natural resources within the joint zone would also be decided *"by common agreement."*[76]

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75 It should be noted that in common with to other maritime boundary agreements in the Gulf of Thailand, no mention is made in the text of the Historic Waters Agreement concerning what datum the coordinates listed therein relate to (see Section 7.9).

76 Amer (1997a: 89) has noted that what the Cambodian News Agency (SPK) transmitted on 8 July 1982 as the *"full text"* of the Historic Waters Agreement omitted the sentence *Patrolling and surveillance in these historical waters will be jointly conducted by the two sides."* This phrase was, however, included in the version published by the Vietnamese News Agency. Whether the Cambodian omission was intentional or simply by chance is open to question.

As the vast majority of claims to the regime of historic waters concern bays surrounded by the declaring state on three sides and thus very closely linked to that state, the Cambodia-Vietnam claim, encompassing an area reaching from the mainland coast seawards to be bounded by offshore islands, is, to say the least, highly unusual.

As outlined in Section 2.3.5, key requirements for a valid claim to historic waters include: open assertion of the claim, effective and long-standing exercise of jurisdiction and the acquiescence to the claim by other states. Instead, the 1982 Cambodia-Vietnam agreement justifies the historic waters claim because it:

> *...encompasses waters which by their special geographical conditions and their great importance for the national defence and economy of both countries have long belonged to Vietnam and Kampuchea [Cambodia]* (Appendix 3).

Despite this statement, other states have taken exception to the Cambodian-Vietnamese agreement and have exhibited stiff resistance to its acceptance.

Thailand protested against the agreement in a note to the UN Secretary General of 9 December 1985, stating that:

> *Regarding the claims to the so-called 'historic waters', which purport to appropriate and subject certain sea areas in the Gulf of Thailand and in the Gulf of Tonkin (Gulf of Bac Bo) to the régime of internal waters, the Government of Thailand is of the view that such claims cannot be justified on the basis of the applicable principles and rules of international law.*[77]

Singapore protested in comparable terms in a note dated 5 December 1986.[78] Similarly, in a note to the UN Secretary General, dated 17 June 1987, the United States government protested against the Cambodian-Vietnamese agreement, saying that notwithstanding the above statement *"the claim was first made internationally no earlier than July 7, 1982, less than five years ago"*, and:

> *The brief period of time since the claim's promulgation is insufficient to meet the second criterion for establishing a claim to historic waters [effective exercise of authority], and there is no evidence of effective exercise of authority over the claimed waters by either country before or after the date of the agreement. Moreover, without commenting on the substantive merits or lack thereof attaching to the "special geographical conditions" of the waters in question and their "important significance towards each country's defence and economy", such considerations do not fulfil any of the stated customary international legal prerequisites of a valid claim to historic waters.*

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77 *Law of the Sea Bulletin*, No.7, April 1986: 111

78 United Nations, 1989c:84.

> *Finally, the United States has not acquiesced in this claim, nor can the community of States be said to have done so. Given the nature of the claim first promulgated in 1982, such a brief period of time would not permit sufficient acquiescence to mature.*[79]

It is difficult to find fault with the United States authorities' analysis. The claim is unique and must be considered extremely hard to justify in the context of customary international law relating to historic waters (see Section 2.3.5).

The historic waters claim that most closely resembles that made by Cambodia and Thailand is India and Sri Lanka's claim to Palk Bay and Palk Strait. On 26-28 June 1974 the two states concerned agreed on a boundary delimitation through their claimed historic waters in the strait and bay.[80] This body of water measures approximately 74nm north-south and 76nm east-west and, despite the presence of numerous islands, parts of it would fall beyond 12nm-breadth territorial seas claimed from the baselines of the two states.[81] The Palk Strait and Bay area is comparable to the Cambodia-Vietnam claim in that two states are involved and the maritime area claimed as historic waters lies between the mainland and island coasts of the two states, with multiple entry points to the wider ocean, rather than being a 'classic' bay indented into a coastline and surrounded by the territory of one state.

In contrast to the Cambodia-Vietnam case, the claim to historic waters status for Palk Strait and Bay is backed by considerable evidence. The issue was subject to legal proceedings before the Appellate Criminal Division of the Indian High Court in Madras in 1903-04 when both India and Sri Lanka (Ceylon) formed part of the British Empire. The court ruled that Palk Bay was:

> *...landlocked by His Majesty's dominions for eight-ninths of its circumference...[and] effectively occupied for centuries by the inhabitants of the adjacent districts of India and Ceylon respectively...[w]e do not think that Palk's Bay can be regarded as being in any sense the open sea and therefore outside the territorial jurisdiction of his Majesty.*[82]

This led the author of the relevant report in Charney and Alexander to conclude that there *"seem to be strong reasons for considering these areas historic waters."* [83] This

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79 *Law of the Sea Bulletin*, No.10, November 1987: 23
80 Charney and Alexander, 1993: 1,409-1,417.
81 United States, 1975: 3.
82 United States, 1975: 3-4.
83 Charney and Alexander, 1993: 1,410.

evidence did not, however, prevent the United States from protesting this claim in a note directed to the Indian Ministry of External Affairs dated 13 May 1983.[84]

Cambodia and Vietnam's claim only emerged relatively recently, in 1982, which clearly undermines its validity. While it is possible that the parties to the agreement could claim that they have consistently and effectively exercised jurisdiction over the area claimed, the fact that the outer limits of the historic waters area are of the order of 60nm (110km) offshore throws such arguments open to question.[85] Additionally, the Cambodia-Vietnam claim to historic waters can demonstrably be shown to have not been acquiesced to by the international community, as the protests outlined above prove. Furthermore, a significant proportion, approximately 42%, of the joint historic waters area lies beyond 12nm from the nearest coastline of wither state undermining the argument that the historic waters can be readily considered as suitable for the regime of internal waters.[86]

Quite apart from the extent and peculiar nature of the area of joint historic waters claimed, and the straight baseline issue associated with the limits of the zone (see Section 4.2.4 and 4.5), the primary significance of the agreement lies in the resolution of what had been a contentious dispute over island sovereignty. As outlined in Sections 5.3.1 and 5.3.3, both Cambodia's and Vietnam's claims to continental shelf as expressed in declarations dating from the 1970s were based on exclusive sovereignty over Phu Quoc island and the Poulo Wei and Tho Chu (Poulo Panjang) island groups. Ownership of Koh Ses island and Koh Thmei island was also subject to dispute between the two states.

The historic waters agreement applies the 1939 Brevié Line as the dividing line for jurisdiction over islands within the zone. This was consistent with the occupation of the disputed islands by the two sides.[87] Interestingly, the agreement states that the Brevié Line would *"continue"* to serve as the dividing line for sovereignty over islands – emphasising the importance of historical considerations in terms of establishing title

84 Roach and Smith, 1996: 43.

85 Measured on British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000.

86 The area of historic waters beyond 12nm from the coast was calculated to be 1,188nm^2 (4,075km^2) as compared with a total area of the historic waters area of 2,802nm^2 (9,609km^2). These measurements were made using a planimetre and a copy of british Admiralty Chart 3879, 1957 edition at a scale of 1:24,000. Depond Reef was used as a basepoint for measuring territorial sea claims.

87 Charney and Alexander, 1998: 2,358.

to territory.[88] It should be noted, however, that the parties did not adopt the Brevié Line as a maritime boundary delimitation between them although it is understood that Cambodia may, understandably, favour this option (see Section 7.3).

The final provisions of the agreement, concerning joint surveillance, fishing and resource exploitation within the zone, bear some similarities to the other joint zone agreements wholly or partially within the Gulf of Thailand. These are the Joint Development Area established between Malaysia and Thailand (see Section 6.2.4), and the joint "Defined Area" set up by Malaysia and Vietnam (see Section 6.4). The main differences between these joint zones and the Cambodian-Vietnamese joint area are firstly, that the former do not purport to claim extensive offshore areas as historic waters. Unlike the other joint zones, although the Cambodian-Vietnamese zone is composed of areas of overlapping claims, it is not defined by such claims. The limits of the zone bear no relation to the limits of the earlier continental shelf claims of the parties.[89] Furthermore, the Cambodian-Vietnamese zone is multi-fuctional rather than uni-functional in nature, dealing with both fisheries and seabed resources and encompassing non-economic provisions such as joint patrolling and surveillance related to military and strategic issues.

There has been some question as to whether the historic waters agreement remains in force. This stems from the view that Vietnam's invasion of Cambodia was illegal and thus the PRK government in Phnom Penh was also illegitimate. As such, any action undertaken or agreement entered into by these authorities could be viewed as being legally null and void.[90] Prior to the UN's intervention in Cambodia, opposition parties tended to denounce the PRK-Vietnam agreements.[91] For example, it was reported in September 1992 that the Khmer Rouge had demanded that Cambodian territory *"annexed"* as a result of the agreements be returned as a precondition for the implementation of the 1991 Paris peace accords for Cambodia.[92] However, with the emergence of a coalition government between the former ruling communists and the main pro-Royalist party, FUNCINPEC, there was every indication that undertakings

88 According to the report in Charney and Alexander (1998: 2,357-2,365), *"it would appear that the international law doctrine of uti possidetis determined the division of the land territory"*.

89 Charney and Alexander, 1998: 2,359.

90 The government installed in Phnom Penh with Vietnamese assistance was only recognised by the Soviet bloc states and India rather than the international community in general. Its actions therefore had no legal effect on the latter states (Kittichaisaree, 1987: 43).

91 Johnston and Valencia, 1991: 141.

92 Chanda, N. (1992) 'Land erosion', *FEER* (3 September).

entered into by the Cambodian government in the 1979-1992 period would be upheld.[93] Discussions with senior Cambodian officials also indicated that this is the case and that the agreement remains valid.[94] As far as the Historic Waters Agreement is concerned, it is perhaps significant the it was signed by Hun Sen – Cambodia's post-1992 Second Prime Minister who remains firmly in power. Furthermore, in the course of his visit to Hanoi on 1 June 1998, Cambodian First Prime Minister Ung Huot and Vietnamese Prime Minister Phan Van Khai *"asserted the determination to continue to abide by the agreements and treaties on land and sea borders signed by the two countries in 1982, 1983 and 1985."*[95] In any case, under the law of treaties the post-1992 Cambodian government is the legal successor state to the government that signed the agreement and therefore inherits that agreement.

6.4 Malaysia – Vietnam: Joint "Defined Area" Agreement

A *Memorandum of Understanding between Malaysia and the Socialist Republic of Vietnam for the Exploration and Exploitation of Petroleum in a Defined Area of the Continental Shelf Involving the Two Countries* was signed on 5 June 1992 and entered into force on 4 June 1993 (Appendix 15). Article 1(1) specifies that *"as a result of overlapping claims"* between the two states a *"Defined Area"* exists off the northeastern coast of peninsula Malaysia and the southwestern coast of Vietnam (see Figure 6.4).[96] This zone was defined by a list of six points the locations of which were described by geographic coordinates which were said to be linked by *"straight lines."* These coordinates were referenced to the 1967 edition of British Admiralty Chart 2414, but no further technical information, for example, concerning datum used or what was meant by the term *"straight line"*, was provided.

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93 St John (1998: 29) notes that while the agreements were indeed criticised by opposition politicians, *"they were tacitly recognised by the Royal Government of Cambodia installed in mid-1993."* Similarly, Dzurek (1994: 160) found that Cambodia and Vietnam's successor regimes *"seem to maintain"* the positions established by their predecessors.

94 Interview with Cambodian government officials, July 1995. Names withheld by request.

95 Voice of Vietnam, Hanoi, 1/6/98 (SWB/3243). A spokeswoman for the Vietnamese Ministry of Foreign Affairs reinforced this by subsequently stating that: *"Regarding the sea border, agreements on historical water territories signed since 1982 are continuing to be respected by both sides"* (Voice of Vietnam, Hanoi, 18/6/98 (SWB FE/3258)).

96 The "Defined Area" is often also referred to as the Malaysia-Vietnam "Commercial Area" or "Commercial Zone."

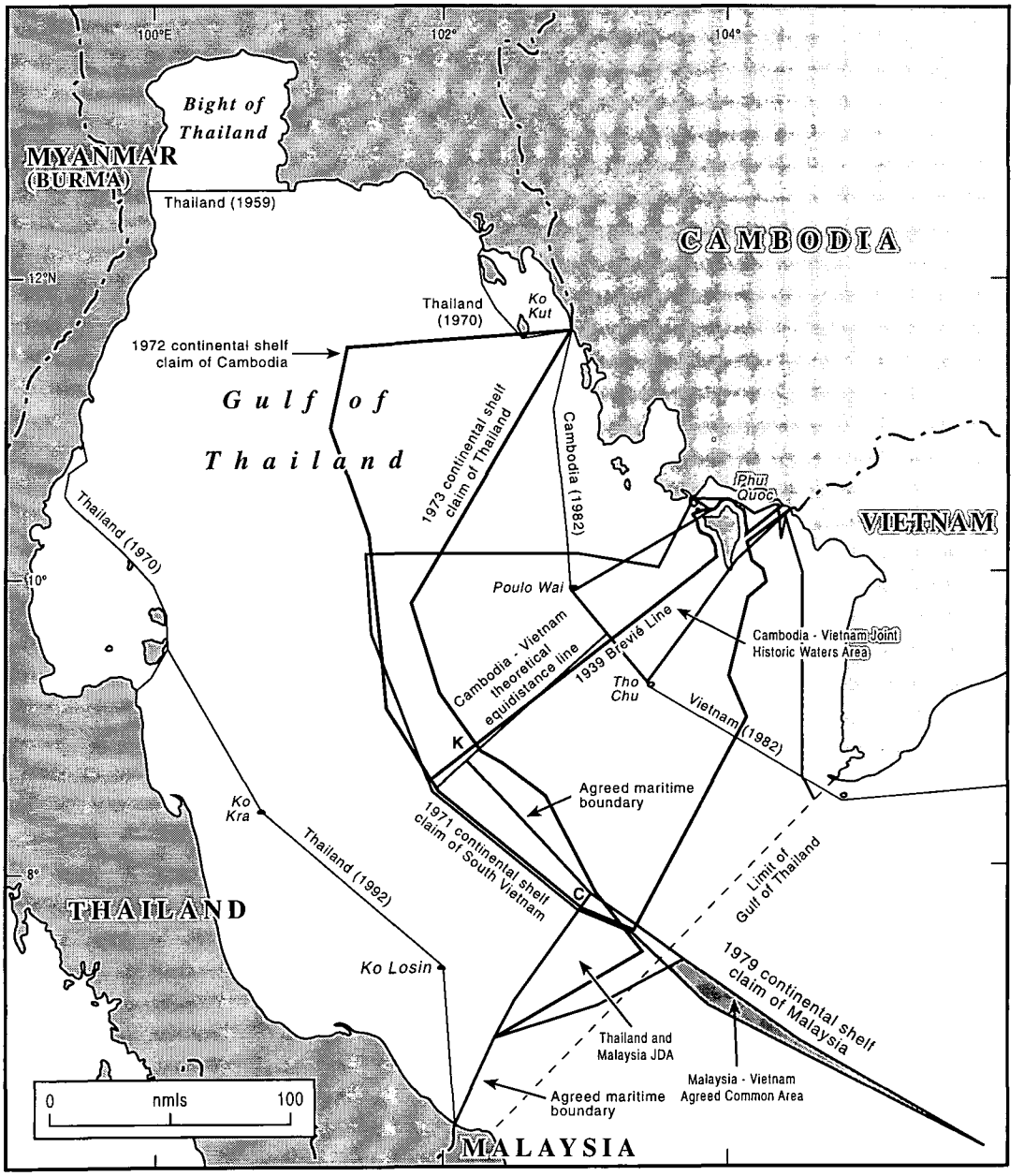


Figure 6.4: *The Malaysia-Vietnam "Defined Area"*
Source: Author's research.

The omission of such technical information from the MoU seems to store up issues that will certainly have to be addressed in the future (see Section 7.9). This is confirmed by the second paragraph of the article which states that the *"actual locations"* of the points mentioned are to be determined by mutual agreement between the *"competent authorities"* of the two states at an unspecified time in the future. The competent authorities designated in the MoU are the Directorate of National Mapping for Malaysia and the Department of Geo-Cartography and the Navy Geo-Cartography Section for Vietnam.

In Article 2(1) of the MoU the parties specifically agreed to *"explore and exploit petroleum"* in the Defined Area *"pending delimitation of the boundary lines"* in that zone. Where a hydrocarbon field is found to straddle the limits of the Defined Area it is simply provided that both parties shall develop the resources concerned on mutually acceptable terms (Article 2(2)). The now familiar provision that all costs incurred and benefits derived are to be borne and shared equally by the parties is also included here (Article 2(3)).

Article 3 of the MoU serves to nominate the two states' national oil companies – Petronas for Malaysia and PetroVietnam for Vietnam – as the two governments' agents to undertake exploration and exploitation of petroleum in the defined Area. The article goes on to task them with entering into commercial arrangement to achieve this objective at an early stage. The two governments have, however, sought to retain firm control over arrangements in the joint zone by insisting that the terms and conditions of any such commercial agreements shall be subject to their approval.

The following article, Article 4, contains without prejudice clauses, designed not to jeopardise either state's position concerning their sovereignty claims to the whole of the defined Area. A similar provision stresses that the MoU does not apply to any entity not a party to it. The duration of the MoU was, according to Article 5, to be determined through an exchange of diplomatic notes. This duly took place on 4 June 1993 with the duration of the arrangement set at 40 years, subject to review if necessary.[97] Article 6 provides that in the eventuality of a dispute arising concerning the interpretation or implementation of the MoU, this would be settled *"peacefully by consultation or negotiation"* between the two sides. The entering into force of the MoU, governed by

97 *Bernama News*, 4/6/93 (SWB FE/W0286).

Article 7, is recorded as taking place when specified by an exchange of diplomatic notes between the parties. As mentioned, this took place on 4 June 1993.[98]

The Malaysia-Vietnam MoU, therefore, bears many similarities to earlier agreements concluded between the Gulf of Thailand littoral states. In particular, the points mentioned in the accord are referred to British Admiralty Chart 2414 and their precise location left to be determined by the parties' competent authorities at some future date. The MoU does not prejudice either state's claim to jurisdiction over the whole of the joint area defined, the delimitation of a boundary is still regarded as the long-term objective of the two states and the resolution of disputes is to be peaceful and by means of consultations or negotiations.

The Defined Area created by the 1990 MoU consists of a long but narrow strip of maritime space extending from the northeastern corner of the Thai-Malaysian joint development area in a southeasterly direction beyond the limits of the Gulf of Thailand and into the southwestern South China Sea. The Defined Area corresponds to the two states' overlapping claims to continental shelf. This overlap is, as noted in Sections 5.3.2 and 5.3.4, caused by the two sides' differing use of island basepoints rather than straight baseline considerations which apparently played no part in determining the dimensions of the dispute.

Malaysia constructed its claim giving full weight to its island basepoints but discounting the Vietnamese island of Hon Da as a legitimate basepoint. In contrast, Vietnam ignored all island basepoints and constructed a claim line based exclusively on mainland coasts. Points C and D, which provide the southern limits of the Defined Area are based on (South) Vietnam's 1971 continental shelf claim and represent points equidistant from the two states' mainland coasts with all potentially relevant islands ignored for delimitation purposes. Points A, F and E form the northern limit of the zone and are derived from Malaysia's continental shelf claim of 1979.[99] Point F is equidistant between Malaysia's Redang island and the Vietnamese mainland coast. Point E consists of a tripoint between relevant coastal points, islands included, in Malaysia, Indonesia and Vietnam and also represents the final point of the Indonesia-Malaysia continental shelf boundary off eastern peninsula Malaysia concluded in

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98 The final article of the MoU, Article 8, merely provides definitions of certain terms used (see Appendix 15).

99 As expressed in the *Peta Menunjukkan Sempadan Perairan dan Pelantar Benua Malaysia* or *"Map Showing the Territorial Waters and Continental Shelf Boundaries of Malaysia"*

1969.[100] Points A-C lie are consistent with the eastern limits of the Thai-Malaysian JDA. The Defined Area is about 150nm in length and is approximately 12nm-wide at its broadest point. It has an area of 585nm^2 (2,007km^2) (Figure 6.4).[101]

The Malaysian-Vietnamese MoU concerning their overlapping claims area is a brief document that provides little in terms of institution-building or an organisational framework for joint development. Indeed, the two governments specifically delegate their rights as far as petroleum exploration and development are concerned to their respective national oil companies, albeit while retaining the final say with regard to any agreements those companies might reach. This represents a marked contrast to the Thai-Malaysian joint development area where implementation of joint development could only proceed in the wake of detailed agreements on all manner of institutional, organisational and procedural issues (see Section 6.2.4). The Malaysian-Vietnamese agreement represents a far more simplistic approach to joint development which is unifunctional and sharply focused on facilitating petroleum exploration and exploitation at the earliest opportunity and with the minimum of governmental participation or interference. This approach can be viewed as something of a reaction to the long delays which prevented the implementation of the Thai-Malaysian JDA (see Section 6.2.4). As oil and gas discoveries have subsequently been made within the Defined Area this approach may be deemed a success. In November 1996 it was reported that the joint zone was destined to become a *"sizeable source"* of oil with the combined potential of known structures put at 200 million bbl of oil with several other prospects yet to be explored.[102] Further discoveries were reported in September 1997 and in January and September 1998. This led Malaysia's state-owned oil company Petronas and PetroVietnam to sign a 'pre-unitisation agreement' relating to the extension of a discovery in the "Defined Area" into exclusively Vietnamese waters.[103]

The concise nature of the Malaysian-Vietnamese MoU should not be regarded as unusual. After all, the agreement was styled a Memorandum of Understanding rather than a fully-fledged treaty. Furthermore, the MoU's very brevity serves to emphasise the interim nature of the joint development arrangement which does not prejudice either state's sovereignty claim to the whole of the Defined Area.

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100 United States, 1970: 1; Charney and Alexander, 1998: 2,335-2,344.
101 Calculated using DELMAR.
102 *Offshore*, November 1996: 40.
103 *Offshore*, September 1998: 14-16.

The primary motivation behind the conclusion of the joint development agreement between the two states was clearly their mutual desire to gain access to the hydrocarbon resources perceived (and now proven) to be present within the overlapping claims area. A further incentive encouraging Malaysia and Vietnam to enter into a joint development arrangement may have been the success of other joint development projects, particularly in the region such as the Australian-Indonesian Zone of Cooperation[104] and even within the Gulf of Thailand itself, with the conclusion of the Thai-Malaysian agreement on implementing their joint development MoU on joint development (see Section 6.2.4). External political reasons have also been suggested to explain both the successful realisation of the MoU between the parties and the timing of it. At the time of the accord's negotiation and conclusion Vietnam was in the process of applying for membership in the Association of South East Asian Nations (ASEAN). The peaceful settlement, or rather shelving, of a contentious maritime boundary dispute with a key ASEAN member such as Malaysia, it can be argued, did Vietnam's ASEAN candidature no harm whatsoever. A rather more sinister explanation for the MoU's completion relates to the fact that both states are involved in wider maritime and island disputes in the South China Sea. It has been argued that the joint development agreement amounted to Malaysia and Vietnam showing a united front to the main protagonist in the South China Sea maritime disputes, the People's Republic of China, at a time of heightened tensions in the region.[105]

6.5 Thailand – Vietnam: Maritime Boundary Agreement

The *Agreement between the Government of the Kingdom of Thailand and the Government of the Socialist Republic of Vietnam on the Delimitation of the Maritime Boundaries between the Two Countries in the Gulf of Thailand* was signed on 9 August 1997 and subsequently ratified on 28 February 1998 (Appendix 16).[106]

104 See, for example, Burmester, 1990: 128-140; Robson, 1995: 13-; Bundy, 1995: 33-36; Stormont and Townsend-Gault, 1995: 65-67; Ong, 1995: 85-89; and, Miyoshi, 1999: 17-21.

105 Charney and Alexander, 1998: 2,336.

106 *Bangkok Post*, 29/5/98. Voice of Vietnam (Hanoi, 15/2/98 (SWB FE/3153) reported that instruments of ratification would be exchanged during Thai Foreign Minister Surin Phitsuwan's visit to Vietnam on 27-28 February 1998. It was subsequently reported in *The Nation* on 3 March that the exchange had been made and the agreement had gone in to affect *"last weekend"* (28 February-1 March 1998). As the Thai Foreign Minister left Hanoi on 28 February (Voice of

The agreement marks the end of a dispute resolution process initiated in January 1978 by a visit of the Vietnamese Foreign Minister to Bangkok which resulted in a Joint Statement[107] in which it was agreed that the dispute should be settled *"on the basis of equitable principles."*[108] Progress in negotiations was interrupted by political differences, particularly in relation to Vietnam's intervention in Cambodia from 1979. However, negotiations resumed in late 1990 and in October 1991, at the first meeting of the Thai-Vietnamese Joint Committee on Economic, Scientific and Technological Cooperation, the two sides adopted a Protocol on maritime boundary delimitation as follows:[109]

> *a) both sides should cooperate in defining the limits of the maritime zones claimed by the two countries;*
> *b) both sides should try to delimit the maritime boundary in the overlapping area between the two countries; and*
> *c) such delimitation should not include the overlapping zones which are also claimed by any third country.*
>
> *Both sides also agreed that, pending such delimitation, no development activities or concessions in the area of overlap should be assigned or awarded to any operator. The two sides informed each other that there are no development activities or concessions in the area claimed by Vietnam which overlaps the Joint Development Area between Thailand and Malaysia.*
>
> *In this context the Thai side proposed that failing the attempt in 'b' the two sides might consider implementing the Thai concept of [a] joint development area.*

In total it took Thailand and Vietnam nine meetings over a period of five years to achieve agreement.[110] Thao also notes that a change of government in Thailand was an important factor, together with progress on fisheries and marine security issues.[111]

Article 1 of the treaty defines the maritime boundary between the two parties in the relevant part of their overlapping continental shelf claims as being a *"straight line"*

Vietnam, Hanoi, 28/2/98 (SWB FE/3166)) it can be deduced that the ratification took place on that day.

107 Dated 12/1/78.

108 Prescott, 1981: 28; McDorman, 1985: 296. Exploratory talks were apparently held as early as 1972 but proved fruitless (*The Nation*, 3/3/98).

109 Thao, 1997: 75-76.

110 For a review of this negotiating process see Thao (1997: 74-78).

111 Thao (1997: 76-77) states that after the election of the new Thai Prime Minister, ties between Thailand and Vietnam were *"boosted to a new level"* and that the fourth meeting of the two sides' Joint Committee on Economic, Scientific and Technological Cooperation coupled with the third meeting of their Joint Committee on Fisheries and Order at Sea *"did much to improve relations"* between them.

joining Point C[112] and Point K[113] (Figure 6.5) Point C is identified as coinciding with the northernmost point of the pre-existing Thai-Malaysian joint development area and Point 43 of Malaysia's continental shelf claim of 1979. Point K, rather more contentiously, is defined as being:

> *...situated on the maritime boundary between the Socialist Republic of Vietnam and the Kingdom of Cambodia, which is a straight line equidistant from the Tho Chu islands and Pulo Wai [sic.] drawn from Point O Latitude N 09° 35' 00".4159 and Longitude 103° 10' 15".9808.*

Article 1 goes on to relate the coordinates mentioned to British Admiralty Chart No.2414 and, in contrast to other Gulf of Thailand maritime agreements, specifies a particular geodetic datum – *"Ellipsoid Everest-1830-Indian Datum."* Despite this, rather uncharacteristic specificity, at least in the context of the Gulf of Thailand, it is nonetheless noted that the actual locations of Points C and K are, at an unspecified time in the future, to be determined by hydrographic experts appointed by the two governments. It is also stated that the delimitation line constitutes the boundary between *both* the continental shelf and the EEZ of each state. It therefore represents an example of what is often termed a 'single' maritime boundary. As the latter includes the continental shelf and both states have claimed EEZs, this represents something of an overclarification.[114]

Article 2 provides that the parties shall enter into negotiations with Malaysia *"in order to settle the tripartite overlapping continental shelf claim area...within the Thai-Malaysian Joint Development Area."* This makes it readily apparent that the agreement covers only a partial delimitation between the two states' maritime interests and represents an admission on Thailand's part of the existence of Vietnamese claims to part of the Thai-Malaysian joint zone. Recognition of the existence of such claims does not, however, equate to an acceptance of their validity. Article 2, therefore, opens the way to trilateral negotiations to resolve this problem of what might be termed an overlap of overlapping claims (see Section 7.6).

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112 Latitude N 07° 49' 00".0000, Longitude E 103° 02' 30".0000.

113 Latitude N 08° 46' 54".7754, Longitude E 102° 12' 11".5342

114 Prescott (1998: 42) refers to this distinction between the continental shelf and EEZ as something *"which a non-legal person would regard as a tautology."* However, the reason behind the inclusion of both terms may lie in the fact that both countries have outlined the extent of their continental shelf claims but have not done the same in relation to their EEZs (see Sections 5.3 and 5.5).

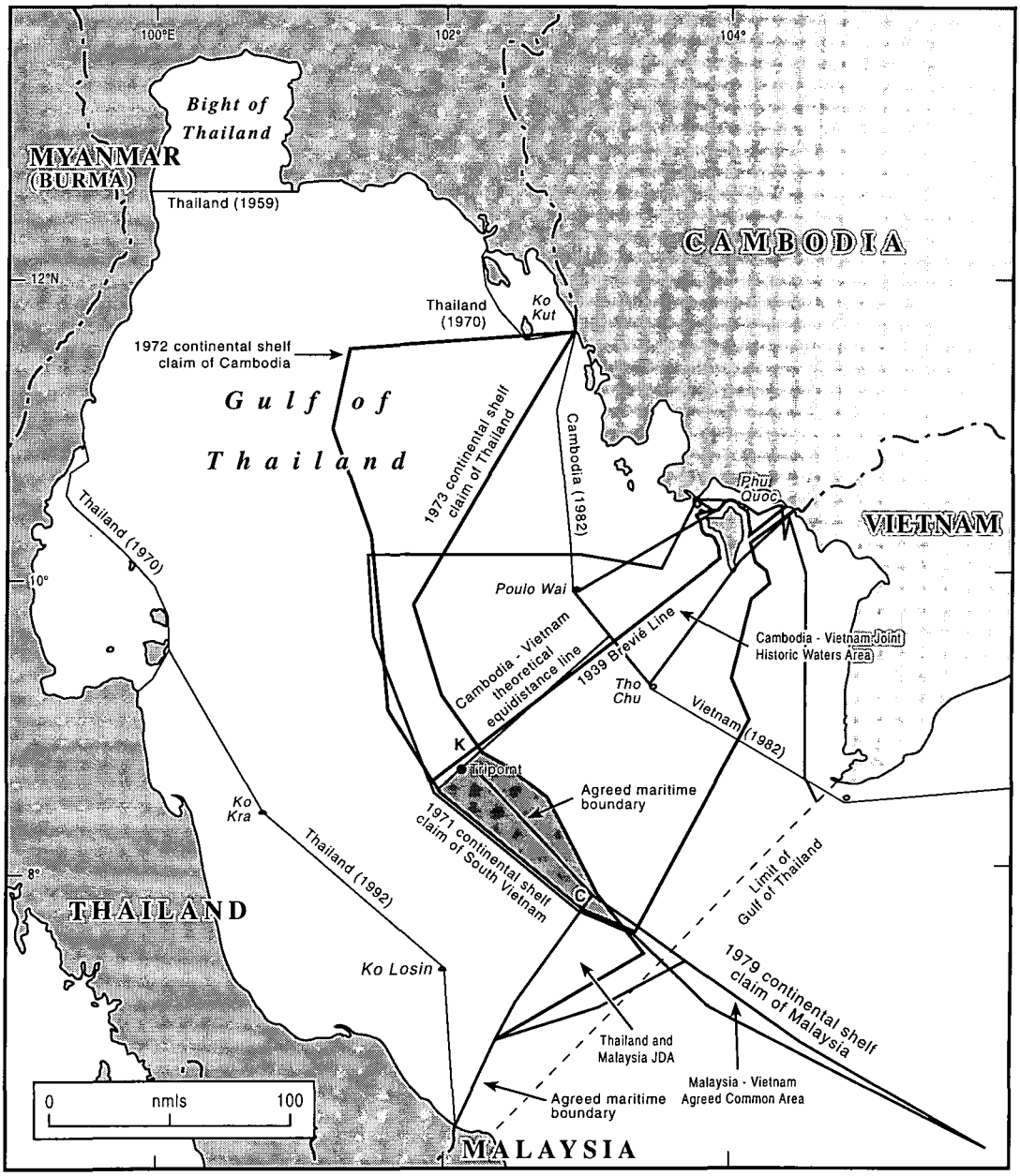


Figure 6.5 *The Thai-Vietnamese Overlapping Claims Area and Maritime Boundary Agreement*

Source: Author's research.

Article 3 merely states that each side shall respect the other's jurisdiction and sovereignty over the continental shelf and EEZ on their respective sides of the boundary line. This seems something of a statement of the obvious, given that the objective of concluding international boundary agreements is, logically, to determine the limits of state jurisdiction. Nevertheless, this statement does serve to reinforce the principle purpose of the accord. The following article includes what, from assessing earlier Gulf of Thailand maritime agreements, is by now a familiar commitment to the reaching of agreement jointly on the exploitation of an oil or gas deposit extending across the boundary line. Proceeds from such an arrangement are to be equitably shared. Similarly, the penultimate article of the agreement provides for the peaceful settlement of any disagreement arising out of the interpretation or implementation of the treaty through consultation or negotiation between the two governments – a passage virtually identical to others in agreements elsewhere in the Gulf of Thailand. The final article, Article 6, simply determines that entry into force of the agreement is to take place upon the exchange of instruments of ratification or approval between the two states. As mentioned, this took place on 28 February 1998.

On the face of it, the Thai-Vietnamese treaty deals with a reasonably straightforward maritime boundary, consisting of a single straight line 75.75nm (140.25km) in length linking two mid-Gulf points.[115] There are, however, several aspects of the agreement which deserve closer examination.

In common with other maritime agreements concluded by the Gulf of Thailand littoral states, the Thai-Vietnamese accord is uncertain in its dealings with technical details. Once again the terminology *"straight line"* is used to describe the delimitation line without further comment or explanation. It is therefore unclear whether the line defined is a loxodrome (or rhumb) line or a geodesic line. As a straight line was plotted on an extract of a Mercator projection chart annexed to the text of the agreement, it could be concluded that the line is a loxodrome but this is nowhere explicitly stated. This issue may seem of limited importance, given that the difference in the areas accorded to each side by using the different types of line is relatively small. However, the central Gulf of Thailand, given existing oil and gas discoveries, must be considered as highly prospective for hydrocarbon exploration. Uncertainty over seemingly

[115] Measured on British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000.

insignificant offshore areas raises the possibility of dispute over millions of dollars' worth of seabed resources.

By far the most significant cause for concern in relation to the Thai-Vietnamese agreement is its implications for Cambodia. This arises principally because of the extension of the boundary in a northwesterly direction to terminate at what the treaty purports to be the tripoint between Thailand, Vietnam and Cambodia. As Prescott points out, the justification contained in the Thai-Vietnamese agreement for the positioning of Point K – that it is located on the pre-existing Cambodia-Vietnam lateral maritime boundary – *"might come as a surprise to the Cambodian authorities."* [116] This is so because so little evidence has come to light of the actual existence of any such agreement between Cambodia and Vietnam, either as to the location of Point O, the meeting point of the two states' straight baseline systems on the seaward limit of their joint historic waters area, or concerning any maritime boundary between them, equidistance-based or otherwise.[117] Indeed, aside from the reference to it in the treaty itself, the only other mention of a Cambodian-Vietnamese boundary agreement which has been located is in an article written by Nguyen Hong Thao, Deputy Director of the Marine Affairs Department, of the Continental Shelf Committee of the Government of Vietnam.[118] In this article Nguyen states that Point K is located *"on the working arrangement line between Vietnam and Cambodia, agreed in 1991 as being equidistant from Tho Chu islands and Poulo Wai."* While Dr Nguyen is certainly in a position to know, it seems odd, to say the least, that other reports of this agreement have failed to emerge in the seven years since its alleged conclusion. Even if Cambodia and Vietnam did indeed agree to use an equidistance line as some form of *de facto* working jurisdiction line, it is certainly questionable whether both governments view such a seemingly informal arrangement to be of such a binding nature as to represent the definitive maritime boundary between them beyond their joint historic waters area. Thai Foreign Minister Surin did, however, suggest that the working arrangement line between Cambodia and Thailand had been agreed between them in 1982. It is therefore possible that the two states undertook preliminary discussions on delimitation at the time their Historic Waters Agreement was concluded and that these, presumably non-binding,

116 Prescott, 1998: 41.

117 Inquiries with Thai authorities revealed that Bangkok relied wholly on Vietnamese assurances that such an agreement existed (Interview with Admiral Thanom Charoenlaph (Rtd.), Bangkok, 18 December 1998).

118 Nguyen Hong Thao, 1997: 74-78.

provisional arrangements or suggestions have been used by Vietnam as a *de facto* boundary and justification for delimitation of the Thai-Vietnamese boundary up to the equidistance line.[119]

Where a tripoint has not been agreed, the common practice among states dictates that the parties to a bilateral agreement terminate their delimitation comfortably short of where a theoretical tripoint is deemed to be. There is, then, a tendency to await the convening of trilateral negotiations to confirm the location of the tripoint and link together bilateral boundary agreements between the states concerned. Numerous examples of this trend exist around the world, however, situations where such trilateral negotiations have actually taken place are rather more rare. Examples of the latter case include Poland, Sweden and the (former) Soviet Union in the Baltic Sea;[120] between India, Indonesia and Thailand in the Andaman Sea[121] and between Indonesia, Malaysia and Thailand in the Straits of Malacca.[122] It is notable that Thailand, a party to the agreement with Vietnam under discussion here, was also a signatory of two trilateral maritime boundary agreements designed to complete necessarily partial bilateral agreements concluded at an earlier date. This experience makes the Thai-Vietnamese decision to determine bilaterally the tripoint with Cambodia all the more surprising.

The apparently bilateral fixing of the tripoint between Cambodia, Thailand and Vietnam by the latter two parties would therefore seem to run contrary to well established international practice and to infringe Cambodia's rights in principle. This potential cause of dispute is exacerbated by the actual location of the putative "tripoint" as determined by the Thai-Vietnamese treaty. Point K is, in fact, not strictly equidistant from the nearest coastal points of the three states – Cambodia's Poulo Wai islands, Thailand's Ko Kra islet and Vietnam's Tho Chu islands. Instead, Point K is actually located approximately 7nm northeast of where strict equidistance from the three islands

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119 Personal communication with Daniel J. Dzurek, 11/5/99.

120 *Agreement between the Government of the Kingdom of Sweden, the Government of the People's Republic of Poland and the Government of the USSR Concerning the Junction Point of the Maritime Boundaries in the Baltic*, 30 June 1989 (Charney and Alexander, 1993: 2,097-2,104).

121 *Agreement between the Government of the Republic of India, the Government of the Republic of Indonesia and the Government of the Kingdom of Thailand Concerning the Determination of the Trijunction Point and the Delimitation of the Related Boundaries of the Three Countries in the Andaman Sea*, 22 June 1978 (Charney and Alexander, 1993: 1,379-1,388).

122 *Agreement between the Governments of the Republic of Indonesia, the Government of Malaysia and the Government of the Kingdom of Thailand Relating to the Delimitation of the Continental Shelf Boundaries in the Northern Part of the Strait of Malacca*, 21 December 1971 (Charney and Alexander, 1993: 1,413-1,454).

mentioned would place the tripoint.[123] As Cambodia was not a party to the Thai-Vietnamese agreement, and thus to the determination of Point K as the Cambodia-Thailand-Vietnam tripoint, and as questions remain over the existence of and/or binding nature of the Cambodia-Vietnam agreement mentioned in Article 1 of the former treaty, it was perhaps unsurprising that on 17 February 1998 Cambodia issued a formal protest note delivered to the Embassies of both Thailand and Vietnam in Phnom Penh.

Firstly, the Cambodian protest note refers to the Cambodia-Vietnam lateral boundary agreement mentioned in the Thailand-Vietnam treaty as the *"so-called"* maritime boundary between Cambodia and Vietnam which *"Cambodia has never agreed to"* and which *"constitutes a violation of Cambodia's sovereignty"* and of her EEZ and continental shelf rights in the area concerned. Secondly, the protest note makes it explicit that *"all provisions"* of the Thai-Vietnamese agreement are *"without prejudice with respect to Cambodia"* and are neither binding upon that country or affect its rights and legitimate interests in the area in question. Thirdly, the Cambodian note refers to general international law and specifically UNCLOS as the appropriate background against which agreements on continental shelf and EEZ boundary delimitation are to be concluded, with the emphasis being on *"all states concerned"* achieving an *"equitable solution."* Fourthly, the protest note states that Cambodia *"totally reserves her position"* in relation to any maritime boundary delimitation that has or may be made in the part of the Gulf of Thailand in question without the agreement of the Cambodian government. The note concludes with what is termed a reiteration of Cambodia's *"readiness and determination to work in a positive, productive and friendly way with its neighbours in order to reach a provisional arrangement of a practical nature or a final agreement"* on the issue under consideration as soon as possible – thus leaving the possibility of applying a joint zone solution to the problem open (see Appendix 17).

Speaking on 7 May 1998, at the end of a two-day visit to Bangkok, Cambodian Second Prime Minister Hun Sen stated that Thailand and Vietnam had *"colluded"* in signing a secret agreement on maritime boundary delimitation which had resulted in a loss to Cambodia of *"several square kilometres"* on maritime territory. He went on to state that he would get this portion of Cambodia's maritime territory back *"at all costs"*, but would do so through negotiations rather than military means. Hun Sen also

[123] Prescott, 1998: 43 and measured on British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000.

anticipated that tripartite Cambodia-Thailand-Vietnam negotiations would soon be forthcoming and raised the possibility of applying joint development principles to the problem based on the Thai-Malaysian model.[124] On the following day Thai Foreign Minister Surin Pitsuwan responded by stating that Thailand was prepared to discuss Cambodia's concerns. However, Thailand's position was that the Thai-Vietnamese delimitation was based on a *"working arrangement"* line agreed between Cambodia and Vietnam in 1982 and that Hun Sen had himself signed that document in his capacity as Foreign Minister at that time: *"Therefore, Cambodia should hold talks with Vietnam concerning the line. If Vietnam determines that the issue should be discussed, we are ready to have a triangular meeting and reconsider the delineation with Vietnam."*[125] In response, a spokesman for the Vietnamese Foreign Ministry stated that the Thai-Vietnamese agreement was *"totally in compliance with international law"* including the UN Convention on the Law of the Sea and that the maritime areas dealt with in the agreement *"are those belonging to Vietnam and Thailand."*[126] Cambodian First Prime Minister Ung Huot[127] was duly despatched to Hanoi for talks on this issue on 1-2 June 1998.[128] The outcome of these talks was, however, not made public although the First Prime Minister did state that he was confident that the border problem with Vietnam would be resolved before the year 2000.[129]

A related issue with the potential to cause dispute between Cambodia and Vietnam is Vietnam's apparently unilateral determination of the position of Point O on the limits of the two states' joint historic waters area (see Figure 4.1). The 1982 Cambodia-Vietnam Historic Waters Agreement explicitly states in Article 3 that Point O, on the straight baseline linking the Tho Chu archipelago and Poulo Wai islands *"will be determined by mutual agreement"* at an unspecified time in the future (see Section 6.3 and Appendix 3). Once again, evidence as to whether such an agreement has in fact

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124 National Radio of Cambodia, Phnom Penh, 11/5/98 (FBIS-EIS-98-131); Kyodo news agency, Tokyo, 12/5/98 (FBIS-EAS-98-132); *Reaksmei Kampuchea*, Phnom Penh, 11-12/5/98 (FBIS-EAS-98-135). Hun Sen also responded to apparent calls for him to retake Kampuchea Krom (southern Vietnam) and *"the five provinces in Surin"* (in Thailand) by force by saying on national radio that he could not do so and *"if we send troops to retake the territory, we may ever lose Phnom Penh."*

125 *Bangkok Post*, 8/5/98; *The Nation*, 8/5/98.

126 Voice of Vietnam, Hanoi, 12/598 (SWB FE/3228).

127 Ung Huot replaced Prince Ranariddh as First Prime Minister after the Hun Sen-led coup in Cambodia in July 1996.

128 Cambodian Radio, 31/5/98 (SWB FE/3241); Vietnamese Radio, 1-2/6/98; Voice of Vietnam, 1/6/98 (SWB FE/3242-3245).

129 Ung Huot did not, however, indicate whether he was referring to land or maritime boundary problems (National Voice of Cambodia, Phnom Penh, 25/6/98 (SWB FE/3264)).

been concluded is sparse. The Thai-Vietnamese treaty refers to Point O as a fixed location[130] and gives its position. Nguyen also supports this by implication. However, no copy of the text of such agreement seems to have entered the public domain and no other reports supporting the contention that the two states have reached agreement on the location of Point O are evident.

The location of Point O naturally determines the starting point for the Cambodia-Vietnam maritime boundary beyond, i.e. seaward of the joint historic waters area. The Thai-Vietnamese agreement indicates that this boundary has actually been defined by the parties concerned on the basis of equidistance (Article 1(3) of the treaty; Nguyen's *"working arrangement"* line). This contention again lacks corroborative evidence in that no independent report on the public record seems to exist that such an agreement has actually been seen. It is worth noting here that it is understood that although Vietnam favours the location for Point "O" and the alignment of the Cambodian-Vietnamese delimitation as suggested in the Thai-Vietnamese agreement, Cambodia has traditionally favoured the application of the colonial-era Brevié Line, drawn in 1939 as a dividing line determining jurisdiction over islands, as the maritime boundary (see Section 7.5). The effect of giving the Brevié Line the status of an international maritime boundary in the portion of the delimitation seaward of the joint historic waters area would be to shift the Cambodia-Vietnam lateral boundary marginally to the west of an equidistance line between them in the central Gulf of Thailand (i.e. at the seaward terminus of the boundary). Closer to the joint historic waters area, the Brevié Line lies somewhat to the east of a Cambodian-Vietnamese equidistance line-based delimitation. Ironically, therefore, if Cambodia retains its claim to the Brevié Line as the basis of a maritime boundary between the two states, the 'tripoint' defined by the Thai-Vietnam accord in fact lies beyond waters claimed by Cambodia (see Figure 6.5). It should be noted, however, that it is far from clear whether Cambodia currently uses the Brevié Line as the basis for its maritime boundary claims with respect to Vietnam (see Section 7.3).

All this begs the question, however, of why the tripoint outlined in the Thai-Vietnamese agreement is located where it is, i.e. not in a position in accordance with strict equidistance, and why the Thai-Vietnamese boundary is aligned as it is. An examination of the division of the overlapping claims area according to the Thai-

130 *"Latitude N 09°35'00".4259 and Longitude E 103°10'15".9808"* (see Appendix 16).

Vietnamese agreement is revealing in this regard. Of the total area, 1,718nm^2 (5,893km^2), of the Thai-Vietnamese overlapping claims, Thailand secured 1,145nm^2 (3,928km^2) (66.6%) while Vietnam secured 573nm^2 (1,965km^2) (33.3%).[131] As Prescott wryly observes: *"it is hard to escape the conclusion that Thailand negotiated very successfully."* It therefore appears that Thailand and Vietnam agreed to an uneven division of their overlapping claims area with two-thirds being allotted to Thailand and one-third to Vietnam. As the two states appear to have regarded Point C, the northwestern corner of the Thai-Malaysian joint development area, as a natural terminus for one end of the boundary line, the one-third:two-thirds split of the overlapping claims area was apparently achieved by shifting the alignment of the delimitation line, with Point C acting as a fixed point or hinge. The location of Point K therefore appears to have been determined by shifting the 'tripoint' northwards along a Cambodia-Vietnam equidistance line until the required proportions of disputed maritime space were left on either side of the line – thus explaining the position of Point K approximately 7nm northeast of the location of a tripoint according to strict equidistance.

The reasoning behind this unequal division of the Thai-Vietnamese overlapping claims area is unclear. The treaty itself, in common with many maritime boundary agreements, offers no explanation for the alignment of the boundary line constructed. Although not mentioned in the text of the agreement, the key determining factors are understood to have been the role of the two states' islands rather than their claimed straight baselines.[132] In the absence of a clear rationale for the course of the boundary in the text of the treaty itself, it is impossible to offer a definitive explanation for its alignment. This is particularly true in this case where equidistance has been abandoned as a method of delimitation in favour of a single straight line delimitation the eastern end of which (Point C) is fixed with the western end (Point K) adjusted to take into account factors agreed in the course of negotiations but not specified in the treaty text.

Nevertheless, for the purposes of the current analysis, the delimitation in question has the distinct advantage that, at approximately 76nm in length, it concerns a relatively small part of the Gulf of Thailand. In consequence, only one island or island group on each side of the line is directly relevant to the delimitation – Ko Losin on the Thai side and the Tho Chu (Poulo Panjang) group on the Vietnamese side – simplifying matters considerably. It will be recalled that (South) Vietnam's claim line in this area,

131 Calculated using DELMAR.

132 Nguyen, 1997: 75-77.

which defined the southern limit of the zone of overlapping claims, applied equidistance giving full effect to its islands, including the Tho Chu group, but ignoring Thailand's feature Ko Losin (see Section 6.3.4). Thailand, in contrast, used equidistance as a basis for its claim which formed the northern limit of the zone of overlapping claims, ignoring both Ko Losin and the Tho Chu group of islands which were considerably further offshore than Ko Losin (see Section 5.3.3).

In the event, it is understood that Thailand conceded that Ko Losin be accorded no effect on the delimitation line in exchange for a substantially reduced effect for the Tho Chu group.[133] As Prescott points out, if the Tho Chu group were given full effect and Ko Losin ignored, Vietnam would have acquired the entirety of the overlapping claims area. Even though Ko Losin was apparently ignored for the purposes of delimitation, Vietnam only secured 33.3% of the zone of overlapping claims, meaning that the Tho Chu group were discounted by 66.6%.[134]

On the face of it Vietnam was successful in that it secured at least some consideration for the Tho Chu group on the delimitation while simultaneously persuading Thailand to entirely discount Ko Losin. However, the insular features concerned are by no means identical in character.

As previously noted in reference to the Thai-Malaysian JDA, Ko Losin is a small, isolated, barren and uninhabited rocky feature described by the British Admiralty *Pilot* for the area as being *"1½ m (5 ft) high and steep-to all round."*[135] There is precious little to suggest that Ko Losin has or could sustain human habitation or an economic life of its own and the feature is therefore a *"rock"* within the meaning of UNCLOS Article 121(3). As such, Thailand would only be able to claim a 12nm territorial sea from Ko Losin rather than extensive continental shelf or EEZ rights.

In contrast, Tho Chu island, the principle island of the group of the same name, is large enough to support a settled population. As the Admiralty *Pilot* notes:

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133 Interview with Admiral Thanom Charoenlaph (Rtd.), Bangkok, 18 December 1998. Admiral Charoenlaph, as well as being a former Chief Hydrographer to the Royal Thai Navy, at the time of the interview held a position as Special Advisor on maritime boundary issues to the Ministry of Foreign Affairs of the Royal Thai Government. From the Vietnamese perspective Nguyen (1997: 75-77) reveals that Thailand held the view that Tho Chu produced an *"excessive distortion"* and initially suggested using Thailand's 1973 claim line as the basis for negotiations. This was apparently the source of much *"legal wrangling."* Subsequently, however, Thailand was to concede first one-quarter and then one-third effect for Tho Chu.

134 Prescott, 1998: 44. Prescott actually gives the proportion of the overlapping area falling to Vietnam as 33% giving a discount on Tho Chu of 67%. This finding is consistent with Nguyen's (1997: 76) report that Thailand was willing to consider according Tho Chu a one-third effect in delimitation.

135 Hydrographer of the Navy, 1978: 85.

> *Poulo Panjang is of a nearly uniform elevation of 167m (548ft), and has the appearance of a table-land from all directions. On the W side of the island,* ***which is inhabited****, there is a bay which affords shelter and good anchorage during the NE monsoon...*[emphasis added].[136]

The fact that Tho Chu is inhabited obviously indicates that the island can *"sustain human habitation"* and also lends credence to the contention that it also has an *"economic life of its own"* – the conditions laid out in UNCLOS Article 121(3) to test whether a particular feature is a *"rock"* or not (i.e. if it cannot fulfil either requirement the feature is a rock).[137] This is significant since it can therefore be argued that, unlike Ko Losin, Tho Chu is a fully-fledged island meaning that the sovereign is entitled to claim title to continental shelf and EEZ.

For the purposes of delimitation, therefore, Ko Losin and Tho Chu are simply not comparable features. Thus, it is entirely appropriate that Ko Losin is wholly discounted and that Tho Chu island influences the delimitation equation, particularly as UNCLOS Article 121(2) specifically states that, save if defined as a *"rock"*:

> *...the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention* ***applicable to other land territory*** [emphasis added].

Nevertheless, it is clear that Thailand gained the advantage in negotiations, securing a significant reduction in the weight accorded to the Tho Chu islands and, crucially, the majority of the overlapping claims area at stake. It is difficult to explain this apparent generosity on the part of Vietnam and it is as well to be cautious when ascribing motives to states for their actions in the absence of confirmation. However, such confirmation has rarely been forthcoming and, bearing in mind the necessarily tenuous nature of such observations, it is worth outlining several factors which may go some way to explaining why Thailand apparently negotiated so successfully.

One reason why Vietnam may have been prepared to accept a smaller portion of the disputed area than Thailand may lie in external political factors which outweighed

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136 Hydrographer of the Navy, 1978: 108.

137 In addition, Chanda (1986: 13) has noted that when Khmer Rouge forces occupied Tho Chu on 10 May 1975, they *"evacuated at gunpoint five hundred Vietnamese inhabitants, who were never heard of again."* It was also reported in 1992 that the Vietnamese army's newspaper *Quan Doi Nhan Dan* had in August of that year carried a small article concerning families settling on Tho Chu with Vietnamese government assistance – a move clearly designed to bolster Vietnam's sovereignty claim and the full insular status of the feature (*FEER*, 3/9/92). Furthermore, Nguyen (1997: 74) put the population of the island at 500-600 in 1997.

the apparent concessions Vietnam made. Several factors could have led the Vietnamese government to give a high priority to the conclusion of a maritime boundary agreement with Thailand. As in the case of the Malaysian-Vietnamese joint development agreement (see Section 6.3), it can be argued that the peaceful resolution of a maritime boundary dispute with a fellow ASEAN member had major political advantages for Vietnam. The agreement served to bolster Vietnam's standing within ASEAN and that organisation's internal unity, particularly vis-à-vis the sovereignty and jurisdictional disputes in the South China Sea. Vietnam may very well have perceived the latter disputes, notably over the Paracel and Spratly islands, as being more extensive, complex and ultimately more important that those in the Gulf of Thailand, and that the need to present a united ASEAN front in the face of an alleged Chinese threat was worth the price of conceding a certain amount of its Gulf of Thailand claim to Thailand. The agreement with Thailand also casts Vietnam in the role of a state prepared to resolve peacefully maritime boundary disputes – something that can only enhance Vietnam's standing in the international community as a whole and specifically in relation to the other maritime disputes in which Hanoi is embroiled.

This argument is obliquely supported by Nguyen Hong Thao's observations in relation to the Thai-Vietnamese boundary agreement. Dr Nguyen emphasises that the agreement is the first to be concluded in South East Asia since the ratification of UNCLOS in 1994 as well as being *"the first agreement on the delimitation of all the maritime zones belonging to the coastal states concerned in the region"* and *"the first agreement ending a marine dispute in all aspects in the Gulf of Thailand."*[138] The triumphal tones of Dr Nguyen's presentation of the agreement are illustrative of the political stock Vietnam appears to have set on the conclusion of the treaty with Thailand.[139] Dr Nguyen goes on to contrast, somewhat mischievously, the *"relatively short"* five year negotiating process that delivered the agreement with the extended time it took Malaysia and Thailand to implement their joint development MoU (see Section 6.2.4). The article also refers to the accord as Vietnam's *"first agreement on maritime delimitation concluded with a neighbouring country."* This statement seems at odds

138 Nguyen, 1997: 77-78. As the Thai-Vietnamese boundary is one between opposite coasts more than 48nm apart it therefore does not involve delimitations between the two states' territorial seas or contiguous zones. By *"all maritime zones"* Dr Nguyen probably means the delimitation covers both continental shelf and EEZ.

139 See also, Valencia and Van Dyke,(1994: 242-243) who outline Vietnam's desire to enhance its standing as a member of the international community and assert that Vietnam's *"main strategy"*

with the author's earlier contention that Cambodia and Vietnam had agreed on the course of their lateral maritime boundary seaward of the joint historic waters area as early as 1991. The concluding paragraph of Dr Nguyen's article provides a clear indication of the Vietnamese view of the significance of the Thai-Vietnamese treaty:

> *The Thai–Vietnamese agreement on maritime boundary delimitation creates good conditions for future cooperation between the two nations. It also contributes to the strength, security and stability of maritime activities in the Gulf of Thailand and to peace, prosperity and the furthering of mutual interests and development within ASEAN. It also constitutes a precious gift to ASEAN on its 30th anniversary.*[140]

The concerns outlined above over the location of the Cambodia-Thailand-Vietnam tripoint, of Point "O" and in relation to the alignment of the Cambodia-Vietnam boundary beyond their joint historic waters area could, of course, be resolved through Cambodia's unequivocal acceptance of the provisions of the Thai-Vietnamese treaty which relate to it and/or hard evidence of the existence of the Cambodia-Vietnam maritime boundary agreement emerging. However, despite the statement contained in the text of the treaty that the Thai-Vietnamese agreement was determined without prejudice to the rights of third parties, Cambodia's rights do seem to have been infringed upon and for Cambodia to accept Point K as the location of the Cambodia-Thailand-Vietnam tripoint would mean Cambodia accepting a starting point for its delimitation with Thailand which is highly advantageous to the latter. Cambodia's February 1998 protest note makes it clear that Cambodia rejects the assertion that it had previously agreed on a maritime boundary delimitation with Vietnam in the relevant part of the Gulf of Thailand, makes it clear that Phnom Penh considers the Thai-Vietnamese agreement to constitute a violation of its sovereignty and offshore rights and reserves its position with regard to delimitation in the area. It is therefore abundantly clear that a maritime boundary dispute between the three states exists (see Section 7.4).

is to *"attempt to enmesh its interests and policies within the much larger regional network of interlocking economic and political activity."*

6.6 Conclusions

Considerable progress has therefore already been achieved in terms of the conclusion of agreements related to maritime jurisdiction in the Gulf of Thailand. Indeed, all four littoral states are signatories to at least one such accord with a neighbouring state and this indicates that tangible progress has been made towards resolving, or at least defusing, several contentious maritime boundary disputes. Nevertheless, the delimitation picture in the Gulf of Thailand remains profoundly incomplete. The remaining unsettled delimitations include substantial areas of overlapping claims to maritime jurisdiction, most notably that between Cambodia and Thailand. These undelimited boundaries issues and boundary disputes will be examined in detail in Chapter 7.

Furthermore, as highlighted by the foregoing analysis of existing agreements, the agreements themselves throw up uncertainties and problems which the coastal states have to face, even if not immediately. Issues such as the instability of the coastline in the vicinity of the Thai-Malaysian boundary at the Golok River's mouth on the coast and its effects on the location of the first point in the two states' territorial sea boundary; the seemingly overly long nature of that boundary; the question of establishing a position for the Cambodia-Thailand-Vietnam tripoint which is acceptable to *all* the parties; and, technical uncertainties over the actual locations of geographic coordinates and the meaning of 'straight' lines as mentioned in the various agreements all fall into this category. In addition, several of the agreements outlined in this chapter merely put the question of delimitation to one side for a specified period in order that resource exploitation and management may proceed through the mechanism of a joint development zone. It should be recognised that such practical resource-oriented arrangements are fundamentally interim in nature and thus designed to be of temporary duration. It is therefore highly likely that in due course the states concerned will seek to conclude a definitive delimitation of the maritime space concerned. Finally, it is also worth acknowledging that the maritime boundary and joint zone agreements that have been concluded within the Gulf of Thailand are themselves not necessarily free from dispute. These issues will be addressed in the following chapter.

[140] Nuguyen, 1997: 78.

Chapter 7

Undelimited Maritime Boundaries and Boundary Disputes in the Gulf of Thailand

7.1 Introduction

The preceding chapter clearly demonstrates that maritime boundary delimitation in the Gulf of Thailand is far from complete. Only three maritime boundary delimitation agreements have been concluded in the Gulf; the Thai-Malaysian territorial sea treaty and two partial delimitations between Thailand and Malaysia and Thailand and Vietnam. In addition, three joint zone agreements have been entered into between Malaysia and Thailand, Malaysia and Vietnam, and Cambodia and Vietnam. The existing maritime boundary agreements are themselves not free from controversy (see Chapter 6) and, in due course, the various joint zones established in the Gulf of Thailand will need to be divided between the coastal states. Furthermore, extensive areas of the Gulf are subject to overlapping claims to jurisdiction, most notably between Cambodia and Thailand, which have not been subject to any delimitation or joint zone arrangements.

The objectives of this chapter are to elucidate the background to undelimited boundary situations in the Gulf of Thailand; to detail their scope; to provide a critique of the parties' claims; to review progress in negotiations between the interested parties (in so far as information on such sensitive discussions is available); and finally to offer some insights as to possible options for dispute resolution together with an assessment of the likelihood of such options being taken up.

It is well worth pointing out that maritime boundary delimitation negotiations are, in the mid to late-1990s, occurring in a profoundly different political context from that experienced by the Gulf of Thailand littoral states from the end of World War II until that time. The region, particularly Indochina, has been beset by conflict and ideological schisms which have to a significant extent undermined efforts towards resolving maritime boundary conflicts. No fewer than three Indochinese wars were fought in the period 1945-79, while from 1979-93 the 'Cambodian Question' bedevilled

relations between western-leaning Malaysia and Thailand on the one hand and communist-oriented Cambodia and Vietnam on the other. This impasse finally broke down with the end of the Cold War and the UN's intervention in Cambodia in 1991-1993. The four Gulf of Thailand coastal states are now all fully accepted members of the international community and are also all members of the Association of Southeast Asian Nations (ASEAN). The general political climate in which maritime boundary delimitation negotiations can proceed must therefore be considered to be more favourable than at any previous point in modern times.

7.2 Cambodia – Thailand

7.2.1 Introduction

No maritime boundary has been agreed between Cambodia and Thailand in respect of territorial sea, continental shelf or exclusive economic zone (EEZ). Negotiations have been stymied by ideological divides and political instability.

7.2.2 Historical Background

The alignment of the modern land boundary between Cambodia and Thailand is the consequence of treaties concluded between France (on behalf of Cambodia) and Siam (Thailand) in the latter half of the nineteenth and early twentieth centuries.[1] These agreements, briefly reviewed below, are crucial to the issue of maritime boundary delimitation in that they determine where the land boundary between Cambodia and Thailand intersects with the coast and, therefore, the starting point for any maritime boundary. Additionally, the treaties in question define sovereignty over islands of potential significance to maritime boundary delimitation.

In July 1862 France effectively confirmed its dominance over Vietnam when the government of Annam (Vietnam) sued for peace and signed the *Treaty of Saigon*. In the wake of the signing of this treaty, France also held that it had inherited Annam's rights and interests in Cambodia, which at the time was a weak buffer state commonly subject to influence and intervention from both Annam and Siam.[2] In August 1863 French

1 Prescott, 1975: 438-465.

2 Prescott, 1975: 428; Prescott *et al.*, 1977: 58; and St John, 1998: 9. By the 1862 treaty France secured a foothold at the mouth of the Mekong when Annam ceded the provinces of Bien Hao,

officials secured the Cambodian king's signature to a secret treaty one of the principal provisions of which was that Cambodia became a French protectorate.[3] However, only four months later, in December 1863, the Cambodian ruler signed another secret agreement, this time with Siam (Thailand), containing similar undertakings to those concluded with the French in that Cambodia was acknowledged as a tributary state of Siam (Thailand).[4] In due course France became aware of the Siamese-Cambodian agreement and in July 1867 France and Siam eventually resolved this conflicting situation through an agreement whereby Siam recognised France's protection of Cambodia and relinquished any rights to tribute from Cambodia it may have had in return for French recognition of Siamese sovereignty over what had been the Cambodian provinces of Angkor (Siem Reap) and Battambang.[5]

France made further territorial advances at the expense of Siamese interests, particularly in Laos which were confirmed by a Franco-Siamese treaty in 1893 and two in 1904.[6] From the point of view of maritime boundary delimitation, the treaty of June 1904 was potentially significant. By this treaty, France acquired approximately 2,500 square miles (6,473km^2) of territory at the southern terminus of the Siamese-Cambodian boundary on the coast.[7] The territory ceded by Siam (Thailand) included a large part of the Cardamones mountain range and the coastal plain in the vicinity of Trat. This served to extend Cambodia's coastline considerably, giving the French authorities in

Gia Dinh and My Tho. By the same treaty Annam renounced any claims to sovereignty over Cambodia but Admiral Pierre de la Grandière, Governor of Cochin-China, and his administration argued that France was heir to these rights, and despatched a junior officer to Cambodia to collect information and sign a treaty safeguarding French interests. These efforts led to the August 1863 treaty between France and the Cambodian sovereign being signed.

3 Article 1 of the treaty provided for French protection over Cambodia while Article 4 gave France exclusive influence over Cambodia's foreign relations. The limits of Cambodia's territory were not, however, specified (Prescott, 1975: 428).

4 Prescott, 1975: 430; Prescott *et al.*, 1977: 58; and St John, 1998: 9. When the August 1863 was forwarded to Paris for ratification delays ensued as Emperor Napoleon III was concerned over *"uncertain overseas commitments"* and the possibility of offending Britain. This delay undermined the Cambodian king's confidence in the agreement such that he sought to *"offset the possible wrath of Thailand"* by signing another secret treaty with that country (Prescott, 1975: 428-430).

5 The French authorities only became aware of the Siamese-Cambodian accord after it was published in the *Straits Times* newspaper in August 1864 (St John, 1998: 9). In April 1865 France and Siam reached agreement that Siam would recognise France's protectorate over Cambodia and regard the December 1863 treaty as null and void in return for French recognition of Thailand's existing frontiers and recognition of Cambodia as free and independent and thus not subject to the suzerainty of any state. These arrangements provoked considerable criticism in France over the extent of territorial concessions to Siam (St John, 1998: 11) and the *"quasi-condominium"* status accorded to Cambodia (Prescott, 1975: 430). As a result the 1865 treaty was not ratified by Paris, necessitating the negotiations leading to the July 1867 agreement (Prescott, 1975: 430; St John, 1998: 9-11).

6 Prescott, 1975: 430-435; Prescott *et al.*, 1977: 58; and St John, 1998: 12-18.

Cambodia control over coastline on the Gulf of Thailand between Laem [point] Ling and Laem Samit including the port of Trat, Ko Chang island and all the islands lying between Ko Chang and Laem Samit (see Figure 7.1).[8] Unfortunately for Cambodia, at least from the perspective of its maritime rights, the Franco-Siamese treaty of 23 March 1907[9] partially reversed the provisions of the June 1904 agreement (see Appendix 18). This agreement is particularly significant as it marks the last major alteration in the delimitation of the land boundary between Cambodia and Siam (Thailand).[10] By the March 1907 agreement France retroceded part of the Cardamones and the lowlands around Trat, amounting to 650 square miles (1,683km^2), to Siam (Thailand) as well as the headwaters of the Nam Huang (Dan Sai) on the Laos border.[11] In return, Cambodia regained the provinces of Battambang, Sisophon and Siem Reap. Overall, the agreement was highly favourable to Cambodia – in exchange for approximately 950 square miles (2,460km^2) of territory Cambodia gained 12,400 square miles (32,104km^2).[12] Of particular significance for Cambodians was the return of Ankor and Battambang, predominantly Cambodian populated and regarded as the *"cradle of the Khmer people."*[13] The 1907 treaty also included provision for the demarcation of the boundary which was duly conducted by a joint commission and completed without serious problems within a year.[14]

Nevertheless, the treaty of 23 March 1907 severely compromised Cambodia's maritime rights in that not only did it curtail Cambodia's coastline on the Gulf of Thailand but also confirmed several islands, particularly Ko Chang and Ko Kut, as belonging to Siam (Thailand). In the vicinity of the coast, the 1907 boundary line follows western edge of the Cardamones range to terminate on the coast just north of Pyam, opposite Ko Kut.[15] The effect of this delimitation is to provide Thailand with sovereignty over a narrow coastal strip which fringes Cambodian territory further inland

7 Prescott, 1975: 434.

8 Prescott, 1975: 434.

9 Coupled with a subsequent *"verbal understanding"* of 8 February 1909 (Siddayao, 1978: 77).

10 Boundary changes favourable to Thailand were effected in 1941 but these were reversed after the end of World War II (see below).

11 Prescott, 1975: 435.

12 Prescott *et al.*, 1977: 58.

13 St John, 1998: 11. St John (1998: 16) further noted that *"For Cambodians, no settlement [with Thailand] could be complete which left Angkor and Battambang, the provinces they felt were the most Cambodian of all Cambodian provinces, in the hands of the Siamese."*

14 Prescott, 1975: 435; and, Prescott *et al.*, 1977: 58-59. The dispute over the Temple of Preah Vihear did, however, subsequently arise (see Section 7.2.3).

and thus deprives it of a coastal front.[16] Furthermore, the 1907 treaty provided that France ceded to Siam *"all the islands situated to the south of Cape Lemling as far as and including Koh-Kut"* (see Appendix 18). Cambodia therefore lost the coastline fronting a considerable portion of its land territory as well as significant islands offshore including Koh Kut which, lying as it does directly offshore the terminus of the two states' land boundary on the coast, has a significant potential influence on the course of any maritime boundary in this vicinity. This has constricted Cambodia's coastal front and has had a significant, negative, bearing on its claims to maritime jurisdiction.

The only other major change in the course of the Thai-Cambodian boundary was an ephemeral one which took place in the 1940s. The rise of Japan as a power in Southeast Asia in the late 1930s and early 1940s emboldened Thailand to seek the return of territories previously lost to France. French attempts to secure a non-aggression pact with Thailand in exchange for amendments along their Mekong border were overtaken by Germany's occupation of France.[17] Exploiting the changing balance of power in the region, Thailand increased its demands to include the retrocession of Battambang, Siem Reap and Sisophon, and hostilities broke out between Thai and French forces in the autumn of 1940. While the land campaign was apparently a low-key affair,[18] French naval forces did score a notable, if Phyrrhic, victory over a numerically superior Thai flotilla in the vicinity of Ko Chang.[19] Japan moved quickly to the aid of its Thai allies and moved to 'arbitrate' in the dispute. As a result of this intervention a treaty was signed on 9 May 1941 which returned to Thailand most of the territory France had gained under the accords of 1904 and 1907 (see Figure 7.2).[20] These Thai gains were, however, reversed in the wake of Japan's defeat under the terms of the *Treaty of Washington* of 17 November 1946 which served to annul the May 1941 agreement.[21]

15 The United States Department of State study on the boundary indicates that this part of its course *"follows the watershed of the coastal range of the Cardamomes"* for a distance of 103 miles from the vicinity of Koh Kong peninsula on the coast (US Department of State, 1966: 5).

16 The boundary in vicinity of the coast did, however, represent an ethnolinguistic divide with Thai inhabiting areas to the west of the coastal range and Khmers to the east (US Department of State, 1966: 4).

17 Prescott, 1975: 435-436; and, St John, 1998: 19.

18 Prescott (1975: 436) describes the fighting as *"desultory"* while St John (1998: 19) terms it *"sluggish."*

19 St John, 1998: 19.

20 Prescott, 1975: 436; and, St John, 1998: 19-21.

21 Prescott, 1975: 436; and, St John, 1998: 40.

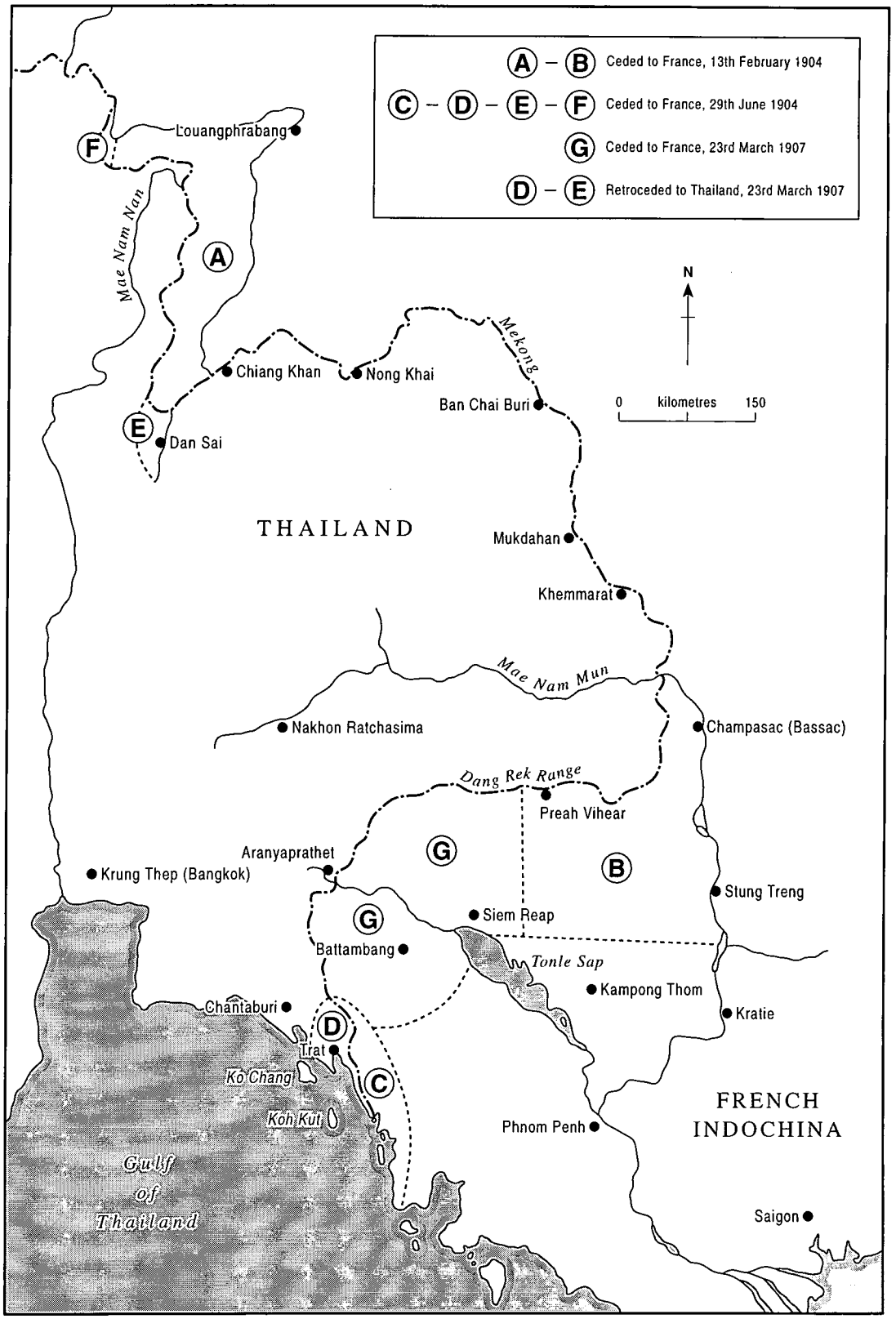


Figure 7.1 *Franco-Siamese Boundary Treaties*
Source: Adapted from Prescott, 1975.

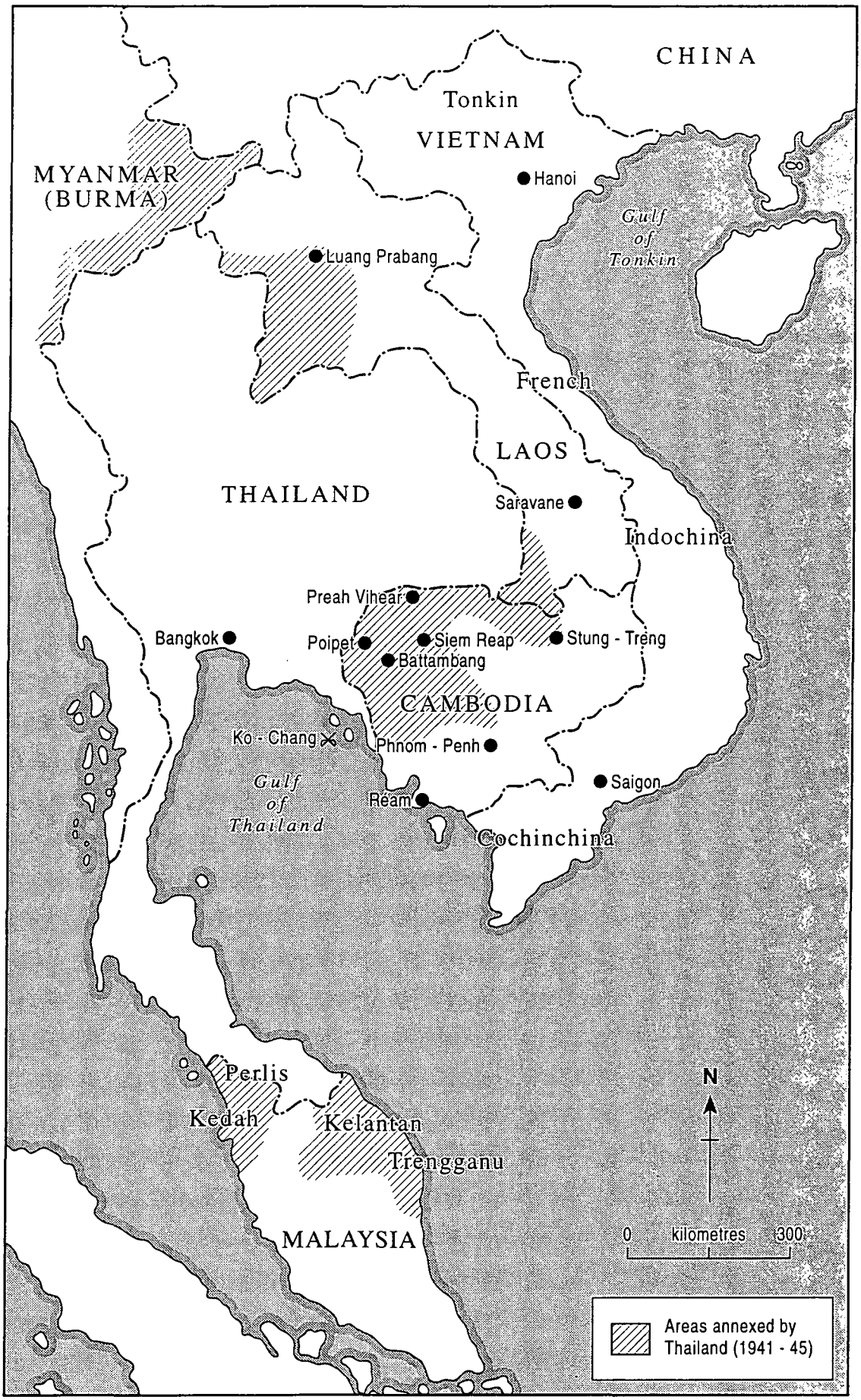


Figure 7.2: *Areas Annexed by Thailand, 1941*
Source: St John. 1998.

7.2.3 Sovereignty Issues

The key instrument governing the disposition of territories between Cambodia and Thailand is therefore the Franco-Siamese treaty of 23 March 1907. The international boundary so defined was demarcated by the end of 1908. Despite this, two significant sovereignty questions subsequently arose – possession of the ancient temple ruins at Preah Vihear[22] and sovereignty over Koh Kut.[23]

The dispute over Preah Vihear, described as one of the most impressive temple sites in Southeast Asia, emerged in 1949.[24] Following the failure of negotiations on the issue in the 1954-1958 period, Cambodia referred the dispute to the International Court of Justice (ICJ) in October 1959. In June 1962 the ICJ duly ruled that the temple complex belonged to Cambodia.[25] While Thailand formally accepted the Judgment of the Court and withdrew from Preah Vihear, the Thai authorities condemned the Court's ruling as a *miscarriage of justice"*[26] and subsequent Cambodian attempts in the early 1960s to gain formal Thai acceptance of the 1904 and 1907 treaties and withdrawal of its reservations over the ICJ decision met with mixed success. Although Thailand accepted that the 1904 and 1907 treaties established the Thai-Cambodian boundary, Bangkok rejected the Dangrek map (on which the Preah Vihear case turned) and other French maps in the same series depicting the boundary as inaccurate and invalid, on the grounds that they had not been approved by the mixed commissions established by the treaties, and maintained its reservations concerning the award of the temple to Cambodia.[27] St John notes that there have also been occasional indications, for instance the publication of maps showing Preah Vihear as part of Thai territory, that Thailand may harbour irredentist ambitions concerning the temple.[28]

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22 Known as Khao Phra Viharn in Thailand (St John, 1998: 40).

23 St John, 1998: 43.

24 St John, 1998: 40.

25 See, for example, Smith (1965: 144-151).

26 Quoted in Smith, 1965: 149. In the immediate aftermath of the case, some Thai officials even went so far as to threaten that any Cambodian entering Thai territory (i.e. Preah Vihear) would be shot of sight (Smith, 1965: 150). Thailand officially made a reservation and protest concerning the Court's judgment in a note to the UN Secretary-General dated 6 July 1962. This was, in turn, regarded by the Cambodian authorities as a *"future threat and serious manifestation of contempt"* on the part of Thailand towards its treaties and international obligations (Smith, 1965: 151).

27 US Department of State, 1966: 4.

28 St John, 1998: 41-43. In particular, St John (1998: 41) highlights the fact that when the Thai authorities eventually surrendered the temple in 1962, the Thai flag and flagpole were removed from the site and kept in a Thai museum - something which contemporary observers interpreted as indicating that certain members of the Thai government were still *"determined to return the Thai standard to Preah Vihear at a later date."*

While the dispute over Preah Vihear is not directly relevant to maritime boundary delimitation issues between Cambodia and Thailand in the Gulf of Thailand, the fact that Thailand lost is potentially significant. This is because Thailand's failure before the ICJ may be viewed as having a bearing on the means of dispute resolution likely to be favoured by Thailand in other disputes, including that with Cambodia in the Gulf of Thailand. Given Thailand's experience in the Preah Vihear case, it must be considered highly unlikely that Thailand would willingly countenance submitting another boundary dispute to international litigation.[29]

As noted, the March 1907 treaty makes it plain that Koh Kut island is a Siamese (Thai) possession, as are the islands to the north of it (Appendix 18). Nevertheless, in the wake of the Preah Vihear case, Thailand apparently felt the need to reinforce its sovereignty over Koh Kut. This led to Cambodian allegations that Thailand was *"attempting to take over"* the island and a response from Thailand's Foreign Minister that Cambodia was faced with a choice of *"peace or confrontation"* over the issue.[30] Thai and Cambodian forces subsequently clashed on the border in 1965 with UN mediation efforts coming to nothing. According to St John, Koh Kut *"remains an open territorial issue, at least in the minds of some Cambodians."*[31] Such attitudes are exemplified by the comments reportedly made by a senior Cambodian naval officer, Commodore Khieng Savan, Commander of Cambodia's Maritime Crime Suppression Division and Deputy-Commander of the Khmer Royal Navy, as recently as January 1996:

> *Although the Thais have not used their forces to violate our territorial waters, we have lost the island of Kaoh Kok [Koh Kut], located near the border between Koh Kong and the Thai province of Trat, to them. This [island] has always belonged to Cambodia and we want it back, but we do not have enough forces to take it back.*[32]

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29 A view supported by Englefield (1994: 36-37) and Dzurek (1998: 130) among others.

30 St John, 1998: 43.

31 St John, 1998: 43. Buchholz (1987: 41) noted that *"Cambodia...also claims Koh Kut island"* but also stated that *"sovereignty over Koh Kut Island seems unclear even in Cambodia."* It was similarly noted in 1977 that the Khmer Rouge had been carrying out *"land nibbling"* encroachments on Thai territory in the vicinity of the land boundary terminus on the coast *"aimed at gaining control of the small coastal spur which supports Thai claims to disputed waters in the Gulf of Thailand"* (*FEER*, 18//8/77). In contrast, Kittichaisaree (1987: 37) maintains that: *"Cambodia as successor to France, has never disputed Thailand's (or Siam's) sovereignty over Kut Island."*

32 BBC SWB FE/2542, B/3; summarised in *Boundary and Security Bulletin*, 4, 1 (Spring 1996): 36-37.

With regard to claims to maritime jurisdiction, Koh Kut, situated directly offshore the terminus of Thailand and Cambodia's land boundary on the coast, would be of great value to Cambodia were Phnom Penh to regain sovereignty over it. This must, of course, be regarded as extremely unlikely but given the islands potential value to Cambodia's offshore claims it is, perhaps, unsurprising that a Cambodian desire for sovereignty over the island is occasionally articulated – just as there are infrequent irredentist rumblings from the Thai side of the border concerning the fate of Preah Vihear.

Cambodian claims to Koh Kut also reflect deep-seated Cambodian distrust of its neighbours and a hankering for a return of Cambodia's 'lost territories'. As Figure 7.3 illustrates, modern Cambodia is a fraction of the size of the area under the influence of the Khmer Empire at its height. This has led Cambodia to adopt an extremely defensive and inflexible view in relation to issues of boundaries and territory:

> *...the fear of national extinction at the hands of more powerful neighbours prompted the Khmers to approach questions of territorial sovereignty with an uncompromising rigidity.*[33]

Although the Khmer Rouge regime was particularly aggressive on this issue, *"irredentist rhetoric"* has *"frequently coloured official Cambodian statements"*[34] and *"even the supple Sihanouk made the non-negotiability of Kampuchea's borders a major object of his diplomacy in the 1960s."*[35] Apparent Cambodian claims to Koh Kut should therefore be assessed against this context. There is, however, no indication that Cambodia maintains a realistic official claim to sovereignty over Koh Kut and none has been advanced in the course of maritime boundary negotiations with Thailand.[36]

33 Elliott, 1981: 5.
34 St John, 1998: 43.
35 Elliott, 1981: 5.
36 Any such claim could be considered likely to provoke a swift termination in negotiations by the Thais.

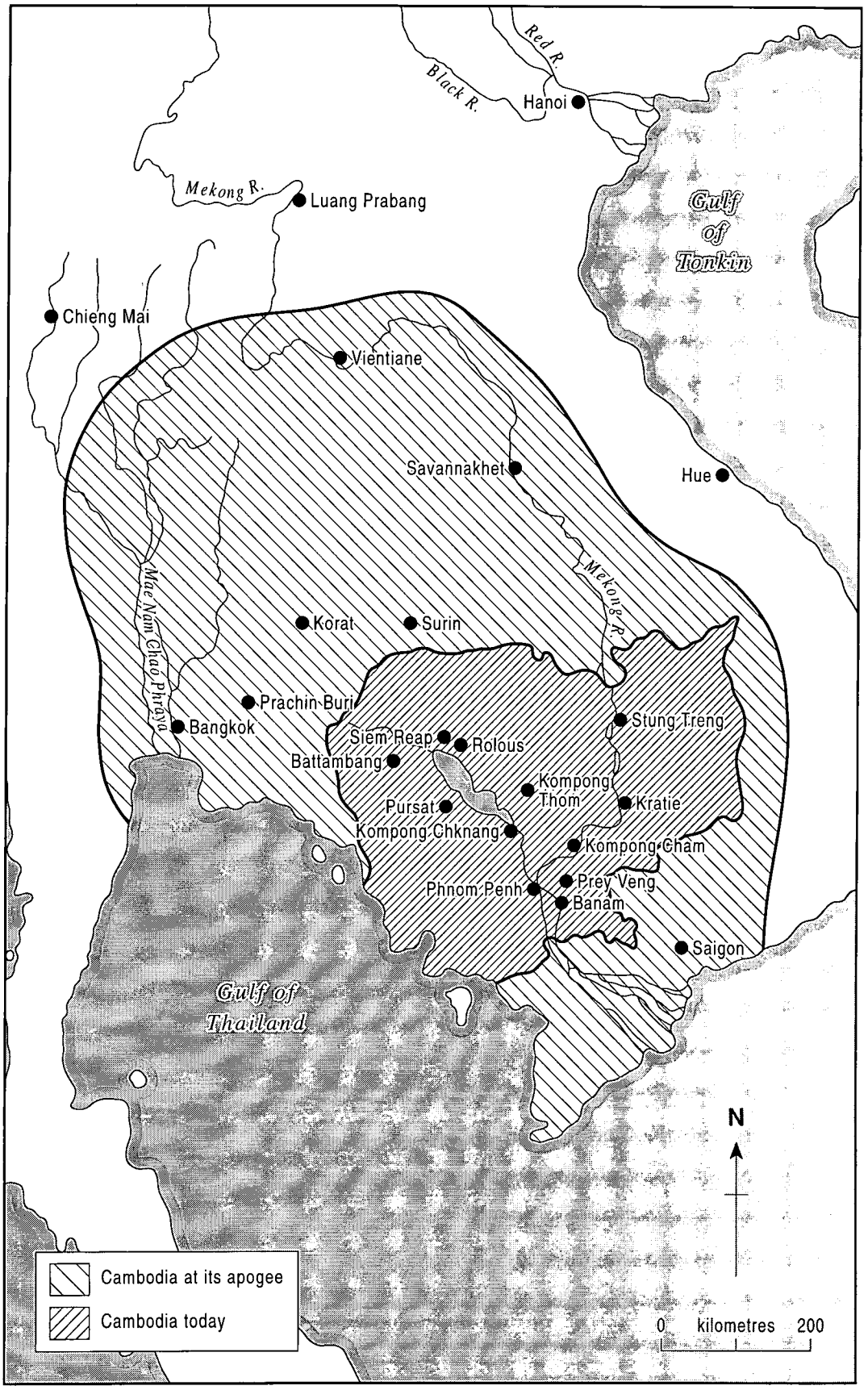


Figure 7.3: *Shrinking Cambodia*
Source: St John, 1998.

7.2.4 Scope of Dispute

Cambodia's and Thailand's claims, dating from 1972 and 1973 respectively, resulted in an overlapping claims area in the Gulf of Thailand measuring 9,336nm^2 (30,020km^2) (see Figure 7.4).[37] The resolution of Cambodia's and Vietnam's dispute over islands has, however, significantly reduced the area disputed by Thailand and Cambodia (see Section 7.3). Nevertheless, these two states maintain the largest overlapping claims area remaining within the Gulf of Thailand, covering an area of 7,550nm^2 (25,895km^2) of maritime space (see Figure 7.5).[38]

This dispute exists because the two states have applied differing methods to construct their claims between adjacent coasts. Additionally, with respect to their delimitation between opposite coasts, although both Cambodia and Thailand have used the same method, equidistance, as the basis of their claims, they have used different basepoints and thus have dissimilar interpretations of equidistance(see Sections 5.2 and 5.3).

In relation to its territorial sea boundary with Thailand, Cambodia's claim is based on a rather unusual, to say the least, interpretation of historic evidence, primarily the 1907 Franco-Siamese boundary treaty. It will be recalled that Cambodia's *Kret* No.518/72-PRK of 12 August 1972 states that Cambodia's territorial sea *"follows the division of maritime waters determined by the historic frontier stipulated in the Treaty of 23 March 1907 and confirmed by the map annexed thereto"* (see Section 5.2.1). As this phrase was repeated almost verbatim in Cambodia's July 1982 decree, it can be considered to constitute Phnom Penh's current claim.[39]

The March 1907 treaty, as previously mentioned, relates to the allocation of certain islands and territories and is predominantly concerned with the land boundary. Nevertheless, it was used as the basis for projecting a straight line claim almost due west from the terminus of the Thai-Cambodian land boundary on the Gulf of Thailand. The key phrase in the 1907 Treaty referred to the use of the summit of Koh Kut island as a reference point for the position of the terminus of the land boundary on the coast as follows:

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37 Calculated using DELMAR.

38 Calculated using DELMAR. The southeastern limit of the area of overlap was taken to be a theoretical equidistance line between Cambodia and Vietnam. Were the seaward extension of the Brevié Line used as this limit instead, the area of overlap would be reduced by approximately 54nm^2 (185km^2).

39 Article 3 of Cambodia's July 1982 legislation omitted reference to the map annexed to the 1907 treaty.

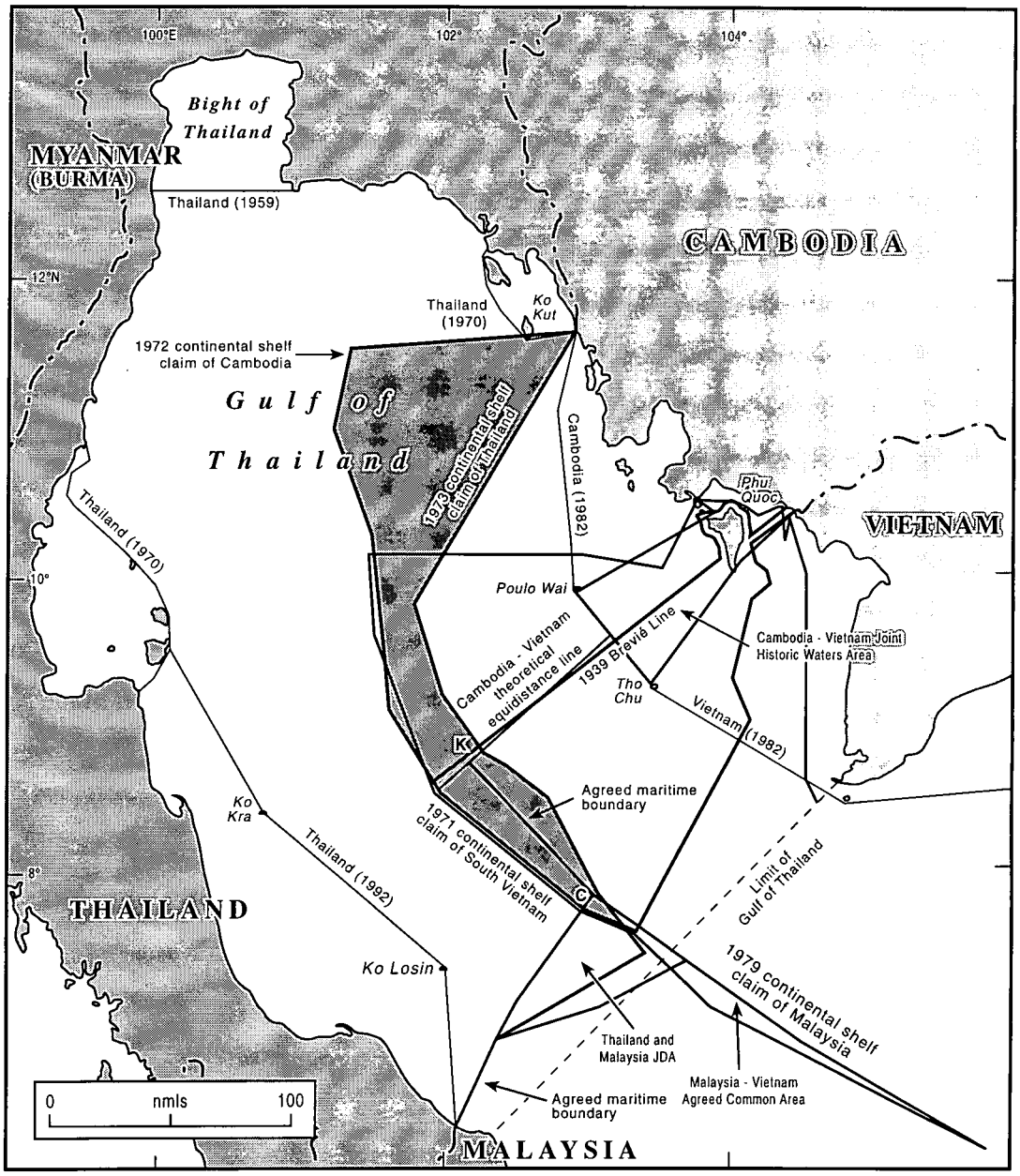


Figure 7.4: *Thai-Cambodian Overlapping Claims in the 1970s*
Source: Author's research.

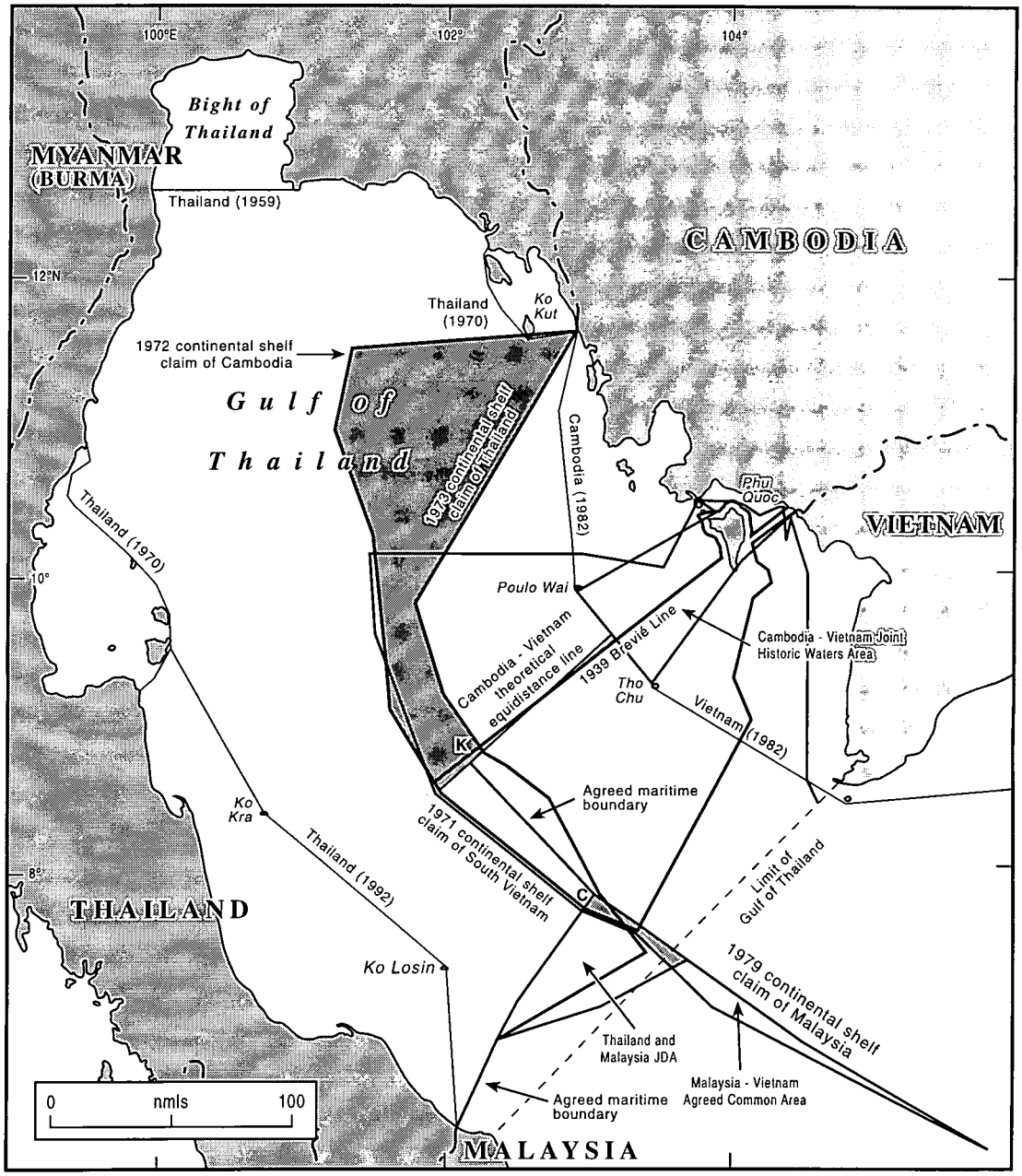


Figure 7.5: *Thai-Cambodian Overlapping Claims in the 1990s*
Source: Author's research.

> *...the boundary between French Indo-China and Siam leaves the sea at the point opposite the highest point on Ko Kut island* (Appendix 18).

The map annexed to the treaty illustrated this, shows a solid line connecting the highest point on Koh Kut to the first point of the international boundary between the two states on the mainland coast (see Figure 7.6). Cambodia has interpreted the above statement, coupled with the accompanying map, as justification for Cambodia to project a maritime boundary in a straight line from the land boundary terminus on the coast offshore in the direction of the highest point on Koh Kut island. As far as the continental shelf claim between adjacent coasts is concerned, beyond the terminus of Cambodia's 12nm territorial sea claim, the claim follows the same straight line towards the central Gulf of Thailand, passing over Koh Kut through the island's highest point. Cambodia's lateral claim terminates at 'Point P', equidistant between the Cambodian and Thai opposite mainland coasts (see Section 5.3.1).[40]

For its part, Thailand maintains a continental shelf claim in its lateral boundary situation with Cambodia at variance with strict equidistance.[41] The boundary claim departs from the terminus of the Thai-Cambodian land boundary on the Gulf of Thailand and projects in a straight line towards the central Gulf until a point equidistant from the straight baselines enclosing Thailand's Area 2 and basepoints on islands in the immediate vicinity of the Cambodian mainland coast, such as Koh Rong, is reached. This long straight line claim to continental shelf is consistent with a bisector line between the two countries' straight baseline systems (see Section 5.3.3). Thailand's claim is therefore based on equidistance in a general sense, particularly close inshore, but is by no means strictly equidistant between Thai and Cambodian adjacent coasts and, significantly, islands.

As far as their delimitation between their opposite coastlines is concerned, both Cambodia and Thailand have based their claims on equidistance. The significant overlap between their claims in the central Gulf of Thailand is the consequence of the selective use of island basepoints in constructing each sides claim lines. Cambodia has

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40 The text of *Kret* No.439/72-PRK (Appendix 6) actually indicates that the continental shelf proceeds in *"a straight line joining the frontier point "A" on the coast with the highest summit on the Island of Koh Kut and thence [still in a straight line] up to Point "P"* in the central Gulf of Thailand.

41 It is worth noting that Thailand defined a continental shelf claim extending directly offshore from the terminus of the Thai-Cambodian land boundary on the coast. Technically, the first 12nm of this claim should have constituted a claim to territorial sea (see Section 5.2.3).

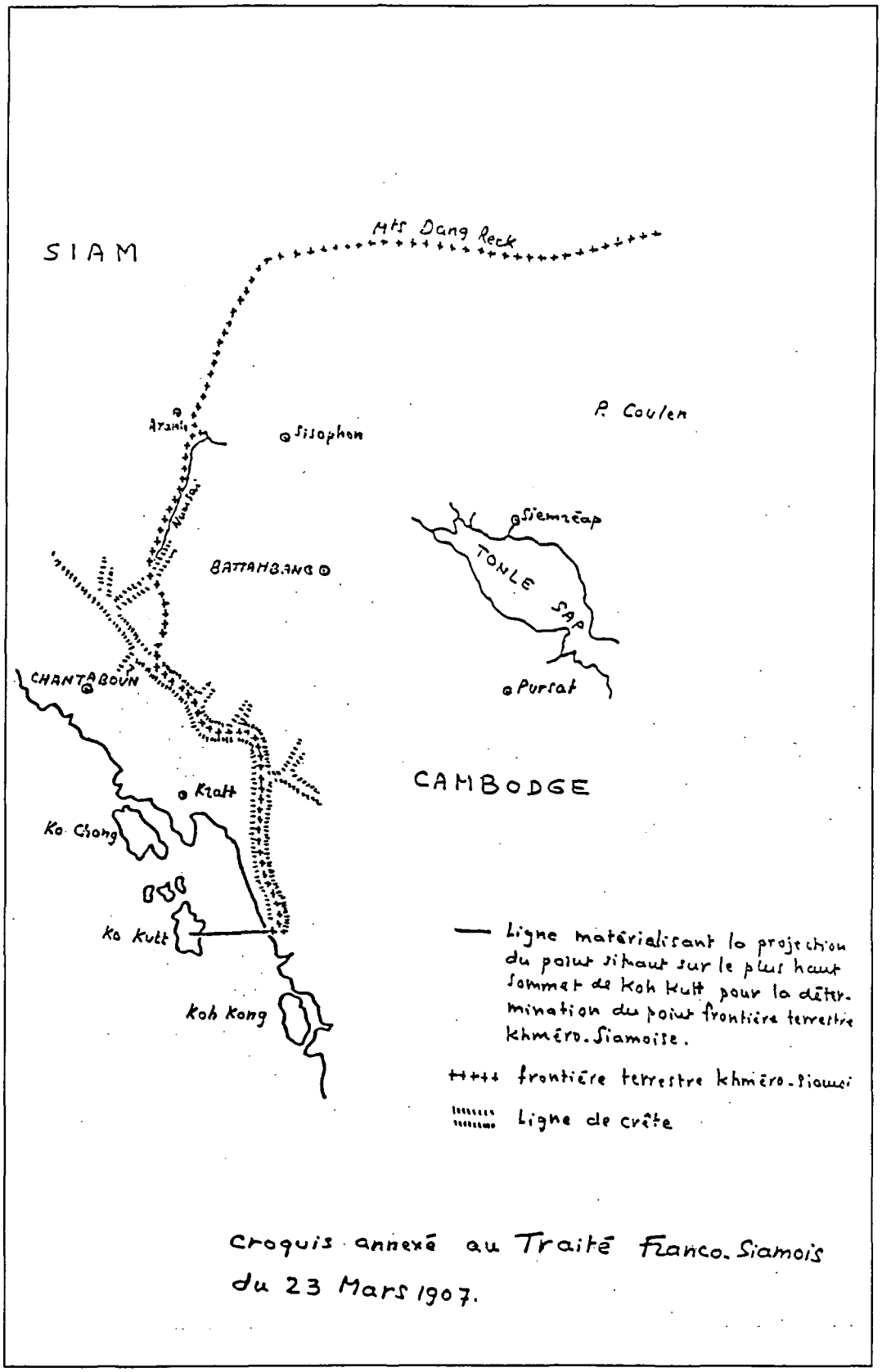


Figure 7.6 *Map Attached to Franco-Siamese Treaty, 23 March 1907*

Source: Ranariddh, 1976 (approximate scale 1cm:30km (16nm)).

used features such as Poulo Wei, Koh Veer and Koh Prins in making its claim while entirely discounting the Thai islets of Ko Kra and Ko Losin. In contrast, Thailand has discounted Cambodia's straight baseline claims and all island basepoints significantly offshore, including its own features Ko Kra and Ko Losin, in defining the limits of its claim. As the Cambodian islands mentioned are well offshore, the resulting equidistance line between the Thai and Cambodian mainlands (including islands in close vicinity thereto) is to Thailand's advantage when compared to the Cambodian claim, thus generating the overlapping zone (see Section 5.3).

7.2.5 Delimitation between Adjacent Coasts

Cambodia's territorial sea claim and the 1907 Franco-Siamese treaty

As previously noted, Cambodia's boundary claims to both territorial sea and continental shelf with regard to its lateral delimitation with Thailand are inspired by a controversial reading of the Franco-Siamese treaty of 23 March 1907. In the course of negotiations Thailand can be expected to find substantive grounds for criticism of Cambodia's interpretation of the aforementioned treaty, and its resulting adoption of maritime boundary claim lines on that basis.

Cambodia's contention that its territorial sea claim follows the *"division of waters determined by the historic frontier"* laid down in the March 1907 treaty is simply not supportable.[42] Firstly, and crucially, while the treaty in question did deal with sovereignty over islands, including Koh Kut, it is manifestly clear that it is primarily concerned with the land boundary. The fact that the 1907 treaty did not deal with the issue of maritime boundary delimitation is betrayed by the wording of the treaty which states that the boundary being delimited *"leaves the sea"* at the point opposite the highest point on Ko Kut island and from this point it *"follows a northeasterly direction to the crest of Pnom-Krevanah."* In other words, the boundary line proceeds *inland* rather than offshore. Furthermore, no mention is made of the apportionment of maritime rights between the parties, as surely would have been the case had the treaty been intended to effect such a division.

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42 Ranariddh (1976: 408) notes that this represents *"une solution sans base juridique solide"* [a solution without any judicial basis].

Indeed, even if the treaty had purported to distribute maritime space between its parties, the line linking the summit of Koh Kut to the mainland coast could not have formed a maritime delimitation line. This is the case because not only does it describe a path over land territory from the highest point on Koh Kut to the island's coast but also, at the time of its signature, claims to maritime jurisdiction seldom exceeded 3nm from the coast, which represented the customary rule (see Section 2.2). As the distance between the eastern coast of Koh Kut and the first point of the land boundary on the mainland coast is approximately 18nm (33.4km), the 1907 treaty could not have legitimately delimited a maritime boundary in the central part of the strait between Koh Kut and the mainland coast (let alone the maritime area to the west of the island) as this area, beyond 3nm from the coast, represented part of the high seas in 1907.[43]

The reference to Koh Kut in the treaty text as the boundary leaving the sea opposite the island's highest peak, merely represents a means to aid the fixing of the location of the land boundary terminus on the coast from which point the land boundary proceeds inland. This is supported by a close examination of the map annexed to the treaty which was mentioned in Cambodia's *Kret* No.518/72-PRK of 12 August 1972 as confirming the supposed historic division of waters between Siam and French Indochina. The map in question (see Figure 7.6) does show a line linking the highest summit on Koh Kut to the terminus of the land boundary on the coast of the Gulf of Thailand. However, the symbols used to illustrate this line, thin dashes, are clearly distinct from those used to depict the international boundary on land. This can be interpreted as support for the idea that the line linking the highest point of Koh Kut to the first point of the land boundary on the coast was intended by the treaty-makers as no more than a direction line designed to illustrate the location of the intersection of the land boundary with the coast.

Having made these observations, it is well to note that, up to the midpoint in the channel between the mainland and Koh Kut,[44] the alignment of the first part of the territorial sea delimitation claimed by Cambodia immediately offshore the two states' mainland coasts is, in fact, closer to a theoretical delimitation line constructed according

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43 This analysis is based on the well established doctrine of inter-temporal law (see Shaw, 1991: 294-295). As Max Huber, Arbitrator in the *Island of Palmas* case stated:

> *...a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled.*

44 The midpoint in the channel separating the mainland from Koh Kut is located approximately 9nm offshore.

to strict equidistance (ignoring straight baselines) than the alignment claimed by Thailand (see Figure 7.7).[45] However, Cambodia's lateral territorial sea claim is not only exclusively north of a strict equidistance line between the two states' mainland coasts to Thailand's disadvantage, but also wholly discounts the presence of Koh Kut island. As a result, the Cambodian territorial sea claim extends approximately 3nm beyond the midpoint between Koh Kut and the mainland coast.[46] As such, Cambodia's claim cuts through Thailand's Area 1 straight baseline claim, leaving areas Thailand considers part of its internal waters on the Cambodian side of the line. Indeed, even a claim based on equidistance between the mainland coasts of the two states and Koh Kut would have been viewed as unacceptable by Thailand as such a line ignores the straight baselines of Area 1 which Thailand regards as legitimate and which have not met with approbation from the international community.

It is therefore clear that Cambodia's territorial sea claim with respect to Thailand is based on historical arguments. It may be recalled that while it can be concluded from Article 15 of UNCLOS that for the delimitation of the territorial sea there is a clear presumption in the law of the sea in favour of equidistance, Article 15 does provide that equidistance need not apply under exceptional circumstances, namely the presence of *"historic title"* or *"other special circumstances"* (see Section 3.1.1). It is precisely this 'loophole' in Article 15 which may be used to justify Cambodia's claim to a territorial sea boundary with Thailand as Cambodia's claim is based specifically on *"the **historic** frontier stipulated in the Treaty of 23 March 1907"* (emphasis added) (Appendix 18).

Although terms such as *"historic title"* and *"other special circumstances"* are not defined in the UN Convention, it is clear that it is up to the state claiming the exception to the general rule to provide the burden of proof demonstrating its case. For example, the claimant state must show that historically it has exercised sufficient influence and control over the area in question to the exclusion of all others, thus justifying a departure from the principle of equidistance (see Section 3.6.4).

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45 Prescott (1998: 47-48) tentatively suggests that as far as the median line between Koh Kut and the mainland the equidistance line based on all territory may lie *"very close"* to the line linking the boundary terminus on the coast and the highest point on Koh Kut but that this could not be confirmed for lack of calculations based on a large scale chart. These lines are illustrated in Figure 7.10 which is based on cartographic work using British Admiralty Chart 3967, 1957 edition at a scale of 1:240,000 as a base.

46 Measured on British Admiralty Chart 3967, 1957 edition at a scale of 1:240,000.

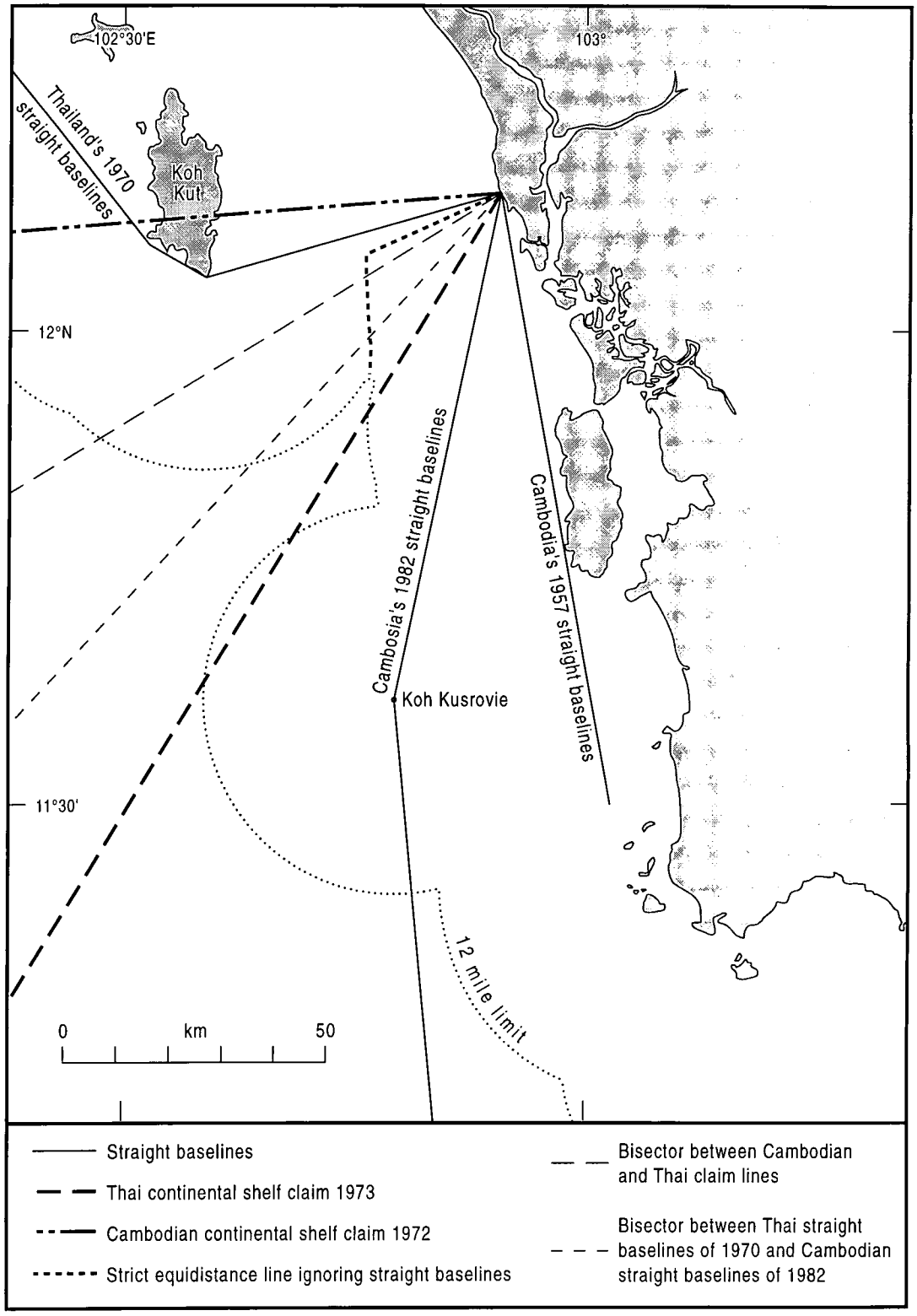


Figure 7.7 *The Thai-Cambodian Delimitation between Adjacent Coasts*
Source: Author's research.

Unfortunately for Cambodia there is little evidence to support any such contention.[47] Certainly, Cambodia has never publicly articulated in any detail its case for claiming a maritime boundary line vis-à-vis Thailand contrary to equidistance on the grounds of historic rights. Kittichaisaree has theorised that Cambodia could advance arguments based on the fact that it was deprived of the 50km-long and 5km wide strip of coastal territory north of the land boundary terminus on the coast which it had acquired in 1904 as a consequence of the 1907 treaty. This, coupled with the fact that the Klong Yai Bay between Koh Kut and the northern Thai islands has been *"frequented for decades by Cambodian fishermen"*, could form the basis for claiming special circumstances justifying Cambodia's claim.[48] However, Kittichaisaree goes on to state that such arguments can be refuted by Thailand. Indeed, Thailand's traditional use of the waters of Klong Yai Bay is demonstrated by the fact that the whole bay has been claimed as part of Thai internal waters following Thailand's Area 1 straight baseline claim (see Section 4.4.3).[49] Cambodia's justification of its lateral boundary claims vis-à-vis Thailand on the basis of historical arguments, particularly with regard to the territorial sea, must therefore be regarded as weak and susceptible to serious challenge by the Thai authorities.

Cambodia's continental shelf claim between adjacent coasts

Beyond the territorial sea, Cambodia has made a claim to continental shelf (see Section 5.3.1). As previously outlined, the limits of this claim with regard to Thailand between the two states' opposite coasts represent a continuation of the territorial sea claim, proceeding in a straight line offshore.[50] The alignment of this claim is consistent with

47 For example, while it may well be possible for Cambodia to argue that its fishing communities have traditionally used the waters in question, it must be deemed unlikely that they did so exclusively or that the Cambodian authorities were able to exert long-standing administration and control over the maritime areas immediately offshore the Thai-Cambodian land boundary terminus on the coast. The latter point seems particularly likely to be the case when Cambodia's troubled political history is taken into account. Furthermore, there is no evidence that the colonial French authorities in Indochina regarded the waters in question as exclusively their preserve. Indeed, although the French authorities did establish an exclusive fishing zone off the territories under their control in the mid-1930s, this zone was 20km (10.8nm) in breadth. As a result, measured from Cambodian territory as provided for under the Franco-Siamese treaty of March 1907, Cambodia's exclusive fishing zone would not have extended as far offshore as Koh Kut (see Section 5.4).

48 Kittichasaree, 1987: 52-53.

49 Kittichaisaree, 1987: 53-54.

50 As previously mentioned, the Cambodian continental shelf claim embodied in *Kret* No.439/72-PRK actually states that the claim proceeds from *"the frontier point "A" on the coast"* in a straight line offshore. Technically, the first 12nm of this claim should have constituted a claim to territorial sea rather than continental shelf. In fact, within two months of Cambodia promulgating

the directional line linking the summit of Koh Kut to the first point of the land frontier but projected seawards. The continental shelf claim therefore stretches from the terminus of the territorial sea claim, 12nm offshore the two states' mainland coasts, up to and apparently directly over Koh Kut, and then seaward to the central part of the Gulf of Thailand (see Figures 1.1 and 7.7).

Cambodia's adjacent continental shelf boundary claim line is therefore clearly not based on equidistance, since Thailand's coastline in the northern Gulf, and indeed the island of Koh Kut itself and the Thai islands in Area 1 of the Thai straight baseline claim of 1970 (as well as the straight baselines themselves), are discounted. Moreover, in a similar fashion to the Cambodian territorial sea claim, Cambodia's lateral continental shelf claim does not simply discount Thailand's Area 1 straight baseline claim but actually cuts through it. The consequence of this is that Cambodia claims areas which Thailand has itself claimed as internal waters (see Figure 7.7).

Indeed, Koh Kut is accorded no maritime jurisdiction at all south of the Cambodian claim line – thus the Cambodian claim apparently comes right up to the coast of the southern third of the island itself. It should be noted, however, that even though the claim line as laid down in Cambodia's *Kret* No.439/72-PRK does traverse Koh Kut, the 1972 continental shelf claim in fact only refers to maritime space – the *"plateau continental"* – rather than to any part of the territory of the island itself. Cambodia's claim cannot therefore be considered as extending to that part of Koh Kut standing above the high-water mark.

That the Thai island of Koh Kut is apparently allocated no territorial waters around its southern coast, such that the Cambodian claim extends right up to Thai land territory, must be viewed as being an extremely difficult position for Cambodia to defend in negotiations with Thailand. Certainly, in this author's view, were this claim to be put before an international legal tribunal it would be, treated with derision as lacking legal credibility.[51] It can be anticipated that in the context of bilateral negotiations, Thailand will press Cambodia strongly on the maritime rights to be accorded to Koh Kut. Furthermore, even if the questions of Koh Kut, Thailand's

its claim to continental shelf, the Phnom Penh authorities issued a further *Kret*, No.518/72-PRK making a claim to territorial sea along the same alignment as that claimed for the 12nm section continental shelf immediately offshore (see Sections 5.2.1 and 5.3.1). The latter decree presumably superseded the earlier *Kret*.

51 The March 1907 treaty explicitly states that Koh Kut belongs to Siam (Thailand). Koh Kut is a substantial, populated island. However, even if it were a mere rock under UNCLOS Article

straight baseline claims, and the other Thai islands forming part of Area 1 are set to one side, the fact that Cambodia's claim discounts the Thailand's northern and eastern mainland coasts is highly likely to prove a point of contention.

The Cambodian claim's departure from equidistance, discounting parts of Thailand's mainland coast, certain islands and straight baselines is, however, more defensible from a Cambodian perspective than its claim to territorial sea. In contrast to the legal position concerning the territorial sea, with regard to continental shelf there is no presumption in favour equidistance. The basis for a continental shelf or EEZ boundary is therefore simply that it be based on 'equitable principles' (see Sections 3.1.2 and 3.3) Cambodia can, therefore, construct a defence of its lateral continental shelf claim in the Gulf of Thailand on the basis that the alignment claimed constitutes an equitable division of the maritime space in question.

The central pillar of any such argument is likely to be the inequitable nature of a delimitation utilising equidistance as a consequence of Cambodia's geographically disadvantaged status (see Section 7.2.7).

Thailand's lateral boundary claims

Thailand's lateral maritime boundary claim in its delimitation with Cambodia between their adjacent coasts consists of a single straight line, approximately 130nm (240km) in length,[52] extending from the terminus of the two states' land boundary on the coast to a point in the central Gulf of Thailand. This claim was formulated, rather unconventionally, on the basis of a bisector of the landwardmost segments of the Cambodian straight baselines established in 1957 and Thai Area 1's of 1970 (see Figures 1.1 and 7.7). As such, it may be subject to criticism from the Cambodian authorities on a number of grounds.

Firstly, Cambodia revised its legislation relating to straight baselines in 1972 and then again in 1982 resulting in a progression of Cambodian baselines further offshore the mainland coast (see Section 4.2.1). Despite the fact that Cambodia claimed revised straight baselines (including an initial leg from the land boundary terminus further seaward than had been the case in 1957), a year prior to Thailand's continental shelf claim being issued, these baselines were ignored for the purposes of constructing the

121(3) (which it is not),Thailand would still be entitled to claim a 12nm-breadth territorial sea from it.

52 Measured on British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000.

Thai claim line. Instead, Thailand used the first segment of Cambodia's earlier, and more conservative, baseline claim in order to calculate the angle of the bisector line. Furthermore, Thailand did not subsequently alter its continental shelf claim in response to the further development of the Cambodian straight baseline system in 1982.

Cambodia is therefore likely to argue that the Thai claim wrongly discounts its current straight straight baselines and to seek redress. Having made this observation, it is worth acknowledging that Cambodia's straight baseline claims are themselves not without their critics, particularly those established in 1982 (see Section 4.2). Thailand is thus likely to counter Cambodian accusations that its straight baselines have not been taken into account with arguments questioning the validity of these baselines in international law.

Furthermore, even if Cambodia's straight baselines are set aside, it is clear that Thailand's bisector line also entirely discounts the presence of the Cambodian islands, which act as basepoints for its straight baseline system, as basepoints in their own right – Koh Kusrovie, Veer island and the Poulo Wei group. Indeed, the Thai claim line passes within 12nm of Koh Kusrovie. As this feature is clearly not a low-tide elevation (see below) Cambodia is able to, at the least, claim a territorial sea from it. Thailand therefore claims continental shelf rights over maritime areas which Cambodia considers part of its territorial sea.

While these islands are not relevant to supporting Cambodia's lateral boundary claims since these are fundamentally based on historic arguments, were a compromise to be sought, Cambodia is highly likely to argue that the discounting of its insular features as well as its baselines is inequitable. Thailand is, however, likely to counter this on the grounds that beyond the territorial sea there is in fact no presumption in international law explicitly in favour of equidistance. Moreover, even were an equidistance line to be taken as a starting point, it has been well established that with regard to delimitations between adjacent coasts, the presence of islands can have a *"disproportionately distorting"* effect and lead to inequitable results (see Section 3.4.4).

The use of the first segments of the Thai and Cambodian straight baseline systems of 1970 and 1957 respectively in *isolation* is also distinctly to Thailand's advantage. This is so because the first segment of Thailand's Area 1 straight baseline claim seaward of the terminus of the land boundary on the coast proceeds in a west-southwesterly direction. In contrast, the first leg of Cambodia's 1957 straight baselines claim follows a south-southeasterly bearing. It could therefore be argued that while the

Cambodian baseline segment accords with the general direction of the coast, the Thai segment in question, linking as it does Koh Kut island to the mainland coast, clearly does not (see Figures 4.1, 4.13 and 7.7). The consequence of this approach is that the Thai claim not only discounts other straight baseline segments claimed by Cambodia in 1957 which are located further to the south but also takes no account of the Cambodian mainland itself, particularly between Point Yai Sen and Point Samit.

As noted in Section 2.3.3, the US State Department's guidelines on straight baselines suggest that the directional trend of a fringe of islands should not depart from the general direction of the coast by more than 20°. However, in circumstances where the baseline segment is linking the fringe of islands to the mainland coast it is provided that the 20° angle may be exceeded.[53] The Thai baseline segment between Koh Kut and the mainland coast seems to fit this scenario. Thailand's use of this exceptional baseline alignment to push its lateral maritime claims southwards at Cambodia's expense is, however, likely to be challenged by Cambodia. It is worth noting here that Cambodian complaints over the Thai claim between the two states' adjacent coasts discounting the Cambodian mainland coast are likely to be mirrored by almost identical Thai arguments concerning the Cambodian lateral claim's treatment of the northern and eastern Thai mainland coast. In this regard at least it appears that the two sides' claims are in principal as bad as each another.

7.2.6 Delimitation between Opposite Coasts

As already outlined, both Cambodia and Thailand have relied on equidistance to construct their continental shelf claim lines between opposite coasts. The application of this method to cases of delimitation between opposite coasts has certainly found support both before international legal tribunals such as the ICJ and in state practice (see Section 3.4.4). Overlapping claims between Cambodia and Thailand have, however, been caused by the discounting of straight baseline claims and the selective use of island basepoints by the claimant states.

53 US Department of State, 1987: 21.

Baselines

It is unclear whether Cambodia's claim discounts Thailand's Area 2 straight baselines claim as the Cambodian claim line falls slightly short of a strict equidistance line between its islands and the Thai coast on the western shore of the Gulf of Thailand. For its part, Thailand's claim line appears to ignore the straight baselines Cambodia claimed in 1972 and has not been rolled back in response to Cambodia's 1982 extension in its straight baselines system offshore.[54] Thailand can, however, also argue that even if Thailand's 1973 claim was also not altered in light of Cambodia's 1972 and 1982 advancements in its straight baselines system offshore, the same is also true of Cambodia's claim with regard to Thailand's 1992 extension to its straight baselines system – Area 4 (see Section 4.2.4).

The question of islands

The islands which form the basepoints of the Cambodian straight baseline claim of 1982, Koh Kusrovie, Koh Veer and the Poulo Wei group, are disregarded by Thailand as basepoints for delimitation in their own right.[55] In turn, Cambodia's claim line ignores the Thai features Ko Kra and Ko Losin. This apparently identical treatment of islands is not, however, equal. This is so firstly, because several of Cambodia's islands are substantially further offshore than are Thailand's (see Table 7.1) such that were all islands to be discounted for boundary delimitation purposes, this would be distinctly to Thailand's advantage.

Table 7.1 ***Distances of Islands Offshore***

	Island	Distance Offshore
Cambodian Islands		
	Koh Kusrovie	16.3nm (30.25km)
	Poulo Veer	39.69nm (73.5km)
	Poulo Wei	53.05nm (98.25km)
Thai Islands		
	Ko Kra	27.5nm (51km)
	Ko Losin	37.26nm (69km)

Source: Author's research.

54 Kittichaisaree (1987: 65) notes that Thailand has not used its own Area 2 straight baselines in the construction of its claim lines.

55 Thailand's attitude in this regard is summarised by Kittichaisaree (1987: 65): *"Thailand would prefer the equitable principles to be determinative in the Gulf of Thailand so that the 'natural prolongation' of land territory as propounded by the International Court of Justice in 1969 could properly be attributed despite any purely accidental geographical feature or circumstance."*

Secondly, as mentioned in relation to the maritime boundary agreement concluded between Thailand and Vietnam (see Section 6.5), the islands on the eastern and western sides of the Gulf of Thailand are not equivalent. Ko Kra and Ko Losin on the Thai side and Poulo Wei in particular on the Cambodian side, are by no means comparable features geographically or legally.

Both Ko Kra and Ko Losin are small, isolated, barren and uninhabited rocky features.[56] The relevant passages relating to the two features in the British Admiralty's *China Sea Pilot* bear this interpretation out. Ko Kra is deemed such a minor feature that the only information recorded in the *Pilot* concerning it are its height, location and the fact that a navigation light is exhibited from it.[57] Similarly, Ko Losin is described as being *"1½ m (5 ft) high and steep-to all round"* together with details as to its location and the fact that it hosts another light beacon.[58] Strong arguments can be marshalled to the effect that Ko Kra and Ko Losin are unable to support human habitation or an economic life of their own and should therefore be considered to be *"rocks"* as set out in UNCLOS Article 121(3). As such Thailand would be restricted to claiming a maximum 12nm territorial sea from these features and it would be correct to discount them for the purposes of delimiting a continental shelf boundary between Thailand and Cambodia.

In contrast, it can be argued that Cambodia's insular features on the eastern side of the Gulf of Thailand are fully-fledged islands rather than mere rocks. While the *China Sea Pilot* describes Koh (Kaoh) Kusrovie as a *"rock"*,[59] a recent visitor to the feature noted the existence of a hut and shrine on the islet together with vegetation leading him to state that in his opinion there was *"no doubt"* that Koh Kusrovie is an island rather than a rock under Article 121 of UNCLOS.[60] Apart from its location, Poulo (Ilot) Veer's entry in the *Pilot* merely provides that the feature is *"37m (120ft) high and steep-to."* However, the recent visitor to the area mentioned above also observed that Ilot Veer was long, narrow, completely covered in vegetation and *"clearly*

56 See British Admiralty Charts 3983, 1963 edition at a scale of 1:500,000 and 3542, 1960 edition at a scale of 1:500,000.

57 Hydrographer of the Navy, 1978: 87.

58 Hydrographer of the Navy, 1978: 85.

59 Hydrographer of the Navy, 1978: 108.

60 The individual concerned visited the Cambodian offshore area in mid-1998 and is an experienced western international boundary consultant. Interview conducted in December 1998 and identity of interviewee withheld by request.

an island" within the meaning of the international law of the sea.[61] The *Pilot* is rather more forthcoming with regard to Poulo Wei:

> *Poulo Wai [Wei]...consists of two wooded islands. The W island is 91m (299ft) high at its SE end and rocks extend from its N and NE extremities. There is a sandy bay on its NE side.*
>
> *A light is exhibited from the E point of the island.*
>
> *The E island, 61m (200ft) high at its N end, is separated from the W island by a channel 7 cables wide, with depths of over 18m (60ft) in the fairway. There are fresh water wells on the E island.*
>
> *Good anchorage can be obtained off the NW side of the E island of Poulo Wai, but the best anchorage is off the sandy bay on the NE side of the W island.*

Once again it is worth mentioning the first-hand experience of the recent visitor to Cambodia's islands referred to above, which indicates that Poulo Wei is indeed a fully-fledged island rather than a rock in relation to Article 121 of UNCLOS. The individual in question also stated that Poulo Wei was, at the time of his visit in mid-1998, host to a detachment of Cambodian soldiers (as was Koh Tang).[62]

The fact that Poulo Wei has been inhabited in the past and is currently occupied clearly supports the contention that it can *"sustain human habitation"* even if it is still ambiguous as to whether it has an *"economic life of its own."* As such Poulo Wei can be considered to be a fully-fledged island rather than a *"rock"* capable of being used as a basepoint for claims to continental shelf and EEZ rights.

Despite the valuable eye-witness account mentioned above, Cambodia's case concerning the insular status of its islands is somewhat stronger with regard to Poulo Wei than either Ilot Veer or Koh Kusrovie. While the latter features are clearly islands rather than low-tide elevations, it is somewhat less clear that they can support habitation or an economic life of their own. This goes to the heart of the longstanding debate over whether particular features are to be properly defined as 'full' islands or rocks (see Section 3.5). Nevertheless, Cambodia is likely to stand by its claim to these features as fully-fledged islands – a stance in keeping with that of many states elsewhere in the world. Thailand, in contrast, is likely to argue strongly that these features be discounted on this basis. However, Poulo Wei is substantially larger than either Koh Kusrovie or

61 Interview conducted in December 1998 and identity of interviewee withheld by request.

62 Interview conducted in December 1998, and identity of interviewee withheld by request.

Ilot Veer,[63] has a history of supporting human habitation and currently does so, albeit in the form of a number of Cambodian military personnel.

Furthermore, Thailand has already agreed to a role in maritime boundary delimitation for a similar island in the Gulf – Tho Chu (Poulo Panjang). As detailed in Section 6.5, Tho Chu *did* influence the alignment of the Thai-Vietnamese maritime boundary agreed in August 1997. Although Tho Chu is somewhat larger than Poulo Wei,[64] it is over 27nm (50km) further offshore. The fact that Tho Chu has been accorded weight in delimitation must be viewed as strengthening Cambodia's contention that Poulo Wei should be treated likewise.

Finally, and tellingly, should Thailand push for Cambodia's islands to be discounted for the purposes of delimitation between the two states, Cambodia is likely to raise the issue of Thailand's treatment of insular features elsewhere. As detailed in Section 6.2.4, in the course of negotiating its joint development agreement with Malaysia, Thailand accorded Ko Losin full weight in determining the southern limit of its claims in the area in question. This claim line, giving Ko Losin full effect, in due course became the southeastern limit of the Thai-Malaysian JDA. With reference to Cambodia, however, Thailand's claim line wholly discounts the *very same feature* in order to justify the discounting of Cambodia's own islands to Thailand's overall advantage. This can only be described as a manifestly inconsistent position. This demonstrates how Thailand, by no means alone among the Gulf of Thailand coastal states, has interpreted the law of the sea to its maximum advantage according to the circumstances. Furthermore, it provides Cambodia with a powerful argument that Thailand's 1973 continental shelf claim is contrary to Thailand's own previous practice and is merely intended to discount inequitably Cambodia's islands.

7.2.7 Factors Applicable to the Delimitation as a Whole

A number of other relevant factors may well also come under consideration in any negotiations (or other form of peaceful dispute settlement procedure) between Cambodia and Thailand. Likely to be salient among these additional considerations relevant to the delimitation as a whole are the inter-related questions of the relative (and relevant) coastal lengths of the parties, the concept of proportionality and the issue of whether either state is geographically disadvantaged.

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63 See British Admiralty Chart 3985, 1987 edition, at a scale of 1:500,000.

Relative coastal lengths and proportionality

Thailand, possessing as it does a considerably longer coastline than that of Cambodia (1,450km:280km according to Snidvongs[65]) is highly likely to deploy arguments based on this fact. In effect, in recognition of its substantially longer coastline, Thailand may contend that it should be accorded a greater, perhaps *correspondingly* greater share of the maritime area to be delimited between the two states. The latter argument is based upon the concept of proportionality.

As outlined in Section 3.4.5, major disparities between the relevant coastal lengths of the parties to a dispute has been acknowledged as a relevant factor in international jurisprudence, notably in the Libya-Malta case where the ICJ adjusted the median line between the coasts of the two states in order to take account of this circumstance. However, attempts to apply proportionality directly tend to encounter significant problems.

In any case it is, in fact, unclear whether Thailand does possess a significantly longer coastline *relevant* to the delimitation.[66] With regard to Cambodia and Thailand, it is clear that large sections of Thailand's northern coastline are not relevant to the delimitation and relate instead to maritime areas which are exclusively composed of Thai waters to which Cambodia has advanced no competing claim. Prescott has noted that if, for example, an equidistance line based on all territory including islands is considered, it appears that *"the relevant [coastal] segments have similar lengths"*,[67] thus significantly undermining any Thai argument advanced the basis of the possession of a longer coastline.

With regard to proportionality, any Thai attempt to introduce this as a directly relevant factor to be considered in delimitation negotiations is likely to be robustly resisted by Cambodia. In this the Cambodian authorities are likely to highlight the flaws that have become apparent when attempts have been made to apply proportionality in practice (for example, the problem of scale, see Section 3.4.5). Additionally, Cambodia

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65 Snidvongs, 1998: 11.

66 The question of determining which parts of the parties' coastlines are relevant to a particular delimitation is itself often problematic - running into similar practical difficulties as those which have bedevilled attempts to apply proportionality considerations.

67 Prescott, 1998: 53. Prescott found that the lateral section of the boundary was almost exclusively based on a small portion of the coastline of Koh Kut on the Thai side and the small island of Koh Kusrovie on the Cambodian side. The delimitation between opposite coasts was, in turn, determined by Ko Phangan and Ko Kra on the Thai side and Koh Kusrovie and Poulo Wei for Cambodia. The distance between these islands was found to be 92nm and 73nm respectively (Prescott, 1998: 53).

can point to the fact that the ICJ has repeatedly rejected the use of proportionality as a relevant circumstance and has instead treated it with distinct caution, relegating it to the status of a general test of the equitability of a delimitation (see Section 3.4.5).

Are Cambodia and/or Thailand geographically disadvantaged?

Thailand is likely to argue that the configuration of its coastline in comparison to Cambodia's, means that the application of strict equidistance to determine the course of the maritime boundary between them would be inequitable. In particular, the Thai authorities can point to the generally concave nature of Thailand's coastline on the Gulf of Thailand as a source of such geographical disadvantage.[68] Pursuing this theme, Thailand could further contend that the (arguably) convex configuration of Cambodia's mainland coastline and islands serves to 'cut off' or encroach upon maritime areas which Thailand properly regards as properly appertaining to it.

Contrary to this interpretation of the macro-geographical situation in the Gulf of Thailand, Cambodia can counter-argue that it is in fact Cambodia rather than Thailand that is geographically disadvantaged.[69] Indeed, Cambodia is unquestionably doubly disadvantaged by the presence not only of Thailand but also a third state, Vietnam, to the south. The existence of Thai and Vietnamese territories, most especially the Thai island of Koh Kut and Vietnamese island of Phu Quoc directly offshore the termini of Cambodia's land boundaries with these two states on the coast, would be nothing short of calamitous for Cambodian maritime jurisdictional claims should strict equidistance be utilised as the method of delimitation between adjacent coasts. Such a delimitation would result in a pronounced 'cut off' effect whereby maritime areas constituting what Phnom Penh considers the rightful natural prolongation of its territory would be denied

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68 In the course of the Third UN Conference on the Law of the Sea, Thailand attempted to join the group of landlocked and geographically disadvantaged states, primarily with a view to bolstering its negotiating position concerning gaining access to its neighbouring states fishery resources. However, *"Thailand was not accepted as a member of this group, and its claim of being a geographically disadvantaged state has not been recognized"* (McDorman, 1985: 294-295, 1986: 186-187). See also, Ake-uru (1987: 420). It is also worth noting that of the Gulf of Thailand states only Cambodia lacks a coastline on another sea.

69 Prescott (1998: 46) advances the view that Cambodia is geographically disadvantaged in making maritime claims in comparison to its neighbours, Thailand and Vietnam. He demonstrates this (without suggesting that a direct link be made) by noting that while the land territories of Thailand and Vietnam are respectively 2.8 and 1.8 times the size of Cambodia's, their potential maritime claims are fully 5.8 and 13 times that of Cambodia. Similarly, in what could be construed as an economic argument as well, Johnston and Valencia (1991: 143), when suggesting equidistance as the basis for delimitation, state that this could be *"tempered by equitable considerations in light of Cambodia's disadvantaged and impoverished situation."*

to Cambodia.[70] From Cambodia's perspective, therefore, Cambodia is severely geographically disadvantaged and a lateral delimitation based on strict equidistance would be clearly inequitable. Cambodia's situation in the Gulf of Thailand can therefore be considered to be analogous to West Germany's in the *North Sea Continental Shelf* cases (see Sections 3.4.3 and 3.4.5) and provides a strong justification for a departure from equidistance in Cambodia's claims between adjacent coasts – if, perhaps, not to the extent that Cambodia claimed with regard to Thailand in 1972.[71]

Both Cambodia and Thailand thus consider themselves to be geographically disadvantaged. In a sense this is true for both states in that neither, because of its position within a semi-enclosed sea and the proximity of its maritime neighbours, is able to extend its maritime claims to a distance of 200nm from its baselines. Thailand's possible claim to such status on the basis of its coastal configuration is diluted by the same factor that undermines arguments concerning the length of its coastline in comparison to Cambodia's. Only part of Thailand's coastline is relevant to delimitation with Cambodia and the two broadly opposite facing coastlines concerned appear to be similar in their configuration as well as their length.

In contrast, Cambodia's argument concerning the inequitable nature of applying strict equidistance to its maritime boundaries between adjacent coasts where islands belonging to other states lie directly offshore its mainland coast is compelling.

Other factors

As outlined in Section 3.3, there is effectively no limit to the potentially relevant circumstances which states may raise in the course of efforts to resolve their maritime boundary disputes in accordance with the international law of the sea. The factors outlined above, predominantly based on the physical geography of the coastlines concerned, are likely to represent the principal factors considered in relation to the Thai-Cambodian maritime boundary dispute. Nevertheless, a number of other non-coastal geography-related factors have proved significant in other delimitations.

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70 It is worth recalling here that under the Franco-Siamese treaty of 1907, Cambodia lost not only Koh Kut and the islands to the north of it as far as Cape Lemling but also a long narrow strip of land territory which consisted of the coastline fronting a significant par of the Cambodian mainland, effectively amputating Cambodia's maritime rights. As outlined in Section 3.4.3, however, factors such as natural prolongation, and the geology and geomorphology of the seabed are, since the ICJ's judgment in the *Libya-Malta* case, not considered relevant within 200nm of the coast and are not, therefore likely to accorded weight in future delimitations within the Gulf of Thailand.

Among these are issues related to the conduct of the parties, economic and environmental factors and political issues. Despite Cambodia's claims based on historic arguments, there does not appear to be any form of traditional or 'working arrangement' dividing line respected by the two sides which could conceivably form the basis of a maritime boundary (see Section 3.6.4). As far as economic and environmental considerations are concerned, it is often unclear when these factors have influenced a delimitation (see Section 3.6.3). However, even though international tribunals have rejected an economic disparity between states as a relevant circumstance in delimitation, economic and environmental factors are by no means excluded from negotiated agreements. It is therefore likely that Cambodia, as the less developed state, will raise the issue of its economically disadvantaged status in comparison to Thailand. Whether this argument is given any weight is, of course, likely to be dependent on the political climate between the two states. Maritime boundary delimitation is an inherently political exercise (see 3.6.1). Ultimately, the existence of the political will to address the problem will be fundamental to the peaceful resolution of the Thai-Cambodian maritime boundary dispute.

7.2.8 Progress in Negotiations

In 1970, before either Cambodia and Thailand declared the limits of their continental shelf claims, the two states did, reportedly, initiate talks on maritime boundary issues. These discussions apparently broke down over the problem of the proper interpretation of the Franco-Siamese treaty of March 1907.[72] From the early 1970s to the 1990s, however, negotiations between the two states towards the resolution of their overlapping claims dispute were stymied by political factors. The possibility of engaging in bilateral negotiations on maritime jurisdictional issues in the immediate aftermath of the two states articulating their claims to continental shelf rights in the Gulf of Thailand was undermined by Cambodia's embroilment in the Vietnam-American War (the Second Indochina War), the Cambodian government's increasing preoccupation with domestic conflicts and its waning hold on power culminating in the Khmer Rouge's triumphant entry into Phnom Penh on 17 April 1975.[73]

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71 Dzurek (1998: 124) supports this in his observation that *"Because coastal geography restricts its potential shelf area, Cambodia has more to gain than Thailand from an equitable settlement."*

72 *Bangkok Post*, 15/12/94.

73 Shelton Woods, 1997: 418-420.

Relations between Cambodia's Khmer Rouge government and its neighbours, including Thailand, were far from cordial and Bangkok correspondingly adopted a confrontational posture. Thailand's stance remained largely unchanged in the wake of Vietnam's December 1978 invasion of Cambodia. Although the Vietnamese action removed the hostile Khmer Rouge administration from Phnom Penh, Vietnam helped to establish the People's Republic of Kampuchea (PRK) in Cambodia. This was regarded by Thailand as a Vietnamese puppet regime and Bangkok refused to recognise its legitimacy. As a result of this political and ideological divide, discussions related to issues such as maritime boundaries remained firmly off the agenda.

As far as oil exploration activities are concerned, prior to the either state making the limits of its continental shelf claims explicit, Thailand had in 1971 granted several concessions to major international oil companies in the central Gulf of Thailand. Once it became clear that these areas formed part of the Thai-Cambodian overlapping claims area, Thailand suspended the concessionaires' work commitments.[74] Although no exploration has been undertaken in the disputed area since the early 1970s, in May 1982 Cambodia issued a protest over the issue of concessions by Thailand to areas claimed as Cambodian, stating rather ominously that:

> *...any foreign company which searches for oil on the Kampuchean [Cambodian] continental shelf without Kampuchea's permission will be responsible for all consequences which may arise from their illegal actions.*[75]

Far from uniquely, the demise of the Soviet Union and a dissolving of Cold War tensions had a profound influence on the region, including Thai-Cambodian relations. Concerted pressure from ASEAN, China, Russia and the UN pushed the multiple factions involved in the 'Cambodian Question' towards peace talks. These negotiations ultimately yielded the Paris Peace Agreements of 1991 which, in turn, led to the deployment of the UN's Transitional Authority in Cambodia (UNTAC). UNTAC was tasked with ensuring free and fair elections in 1993.[76] The resulting government was composed of the incumbent former-communist administration, the CPP[77] and the

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74 Chandler, 1991: 6, 1993: 18.

75 *Bangkok Post*, 30/3/82, cited in Johnston and Valencia, 1991: 138. McDorman (1985: 296) also notes that Cambodia issued a protest over Thai activities in the overlapping claims area in mid-1983.

76 For a detailed survey of UNTAC's activities and performance see Findlay (1995). For details on UNTAC, the election process and events in its aftermath up to 1998 see Brown and Zlasoff (1998).

77 The Cambodian People's Party.

principal winner in the elections, King Sihanouk's FUNCINPEC.[78] Hun Sen, leader of the PRK in the wake of the Vietnamese invasion of Cambodia, and Prince Norodom Ranariddh, son of King Sihanouk, took the roles of Co-Prime Ministers.[79]

These events led to a warming in Cambodia's relations with the west in general and set the scene for a rapprochement with its western-leaning neighbours such as Thailand. Cambodia's reintegration into the international community also led to renewed international commercial interest in the country, particularly from oil companies, despite lingering concerns over the country's political stability and endemic corruption. It is important to realise that Cambodian contacts with Thailand in the 1990s concerning their overlapping claims area in the Gulf of Thailand have been largely driven by Cambodia's own desire to gain access to the seabed resources believed to be at stake, coupled with international oil companies' shared desire to exploit these reserves. This section will therefore, necessarily, trace developments in oil exploration efforts in the vicinity of the disputed area in conjunction with formal boundary negotiations.

Indeed, initial contacts between the Thai and Cambodian authorities concerning the overlapping claims area were conducted through the medium of an international oil company which had been mandated to represent the Cambodian government.[80] Exploratory discussions are understood to have taken place between representatives of the oil company and Thai petroleum officials in July 1991. Even at this early stage it is understood that Cambodia proposed the establishment of a joint development arrangement in the overlapping claims area.

Subsequently, Cambodia formally awarded its first oil exploration block to a foreign oil firm in almost 20 years in October 1991.[81] By early 1992 five offshore oil concessions in exclusively Cambodian waters had been taken up by international oil companies.[82] In February-March 1992 these developments were followed by another

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78 The National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (the acronym FUNCINPEC being derived from the French title of the party).

79 Shelton Woods, 1997: 418-420. Prince Ranariddh took the position of First Prime Minister and Hun Sen as Second Prime Minister.

80 Interview with oil company executive, July 1995. Identity withheld by request.

81 This was awarded to Enterprise Oil of the UK (*Offshore*, January 1993; November 1994).

82 Four groups were involved in Cambodia at this stage: Enterprise Oil of the UK together with Compagnie Europeene des Petroles (CEP) of France won two offshore blocks; Japan Petroleum Exploration (Japex) in cooperation with Nissho Iwai won one offshore block; Premier Consolidated Pacific (UK), Repsol (Spain) and Ampol Exploration and Santos (Australia) secured one offshore block; and Hungary-based Nawa Oil won one onshore and one offshore block (*FEER*, 9/7/92).

meeting in Bangkok, this time between representatives of the Cambodian Ministry of Industry and their Thai counterparts.[83] Preliminary discussions were then undertaken on the possibility of establishing a joint commission for the overlapping claims area with a view to relaunching hydrocarbon exploration activities in the disputed area at the earliest opportunity and for the benefit of both states.[84] At this stage the two sides agreed in principle to resolve the dispute.[85]

In the 1992-1994 period Cambodia appears to have been largely preoccupied with the progress of the various oil companies operating in its uncontested aquatory and negotiations with Thailand did not progress. A number of test wells were drilled in Cambodian waters in 1994 with initial indications being described as *"unusually positive"* and Cambodia was being touted as having strong potential as a future oil and gas producer.[86] However, developments in the Thai sector of the Gulf of Thailand served to refocus attention on the Thai-Cambodian overlapping claims area. In February 1994 it was reported that a large gas annulation had been discovered on the border between exclusively Thai-claimed waters and the overlapping claims area and that the accumulation *"extends into the overlapping zone."*[87] The overlapping claims area, encompassing the entire northern extension and eastern margin of the Pattani Trough which hosts major proven hydrocarbon reserves in uncontested Thai waters,[88] has been variously described by oil industry sources as *"some of the best undrilled acreage in Southeast Asia"*[89] and as having *"more promise than any other area in the Gulf."*[90] Although estimates of the potential oil and gas reserves lying within the overlapping claims area vary wildly, oil industry sources indicated in early 1995 that the disputed zone could yield *"anything from three to eight trillion cubic feet of gas and oil"* and that a field yielding two trillion cubic feet of gas would net US$2.8 billion.[91] On this basis the portion of the Pattani Trough in the overlapping claims area could yield

83 Chandler, 1993: 20.

84 Interviews conducted with Cambodian government officials, Phnom Penh, March and July 1995. Identities withheld by request.

85 Dzurek, 1998: 127. Dzurek also notes that Thailand's August 1992 extension of its straight baseline claims (Area 4) may represent *"a gambit to offset the Cambodian and Vietnamese baselines in anticipated negotiations."*

86 Four exploration wells were drilled offshore, three of which reportedly tested positively for oil, gas or condensate (*Offshore*, November 1994: 42). Enterprise Oil was sufficiently encouraged to commit itself to an extensive 3D seismic survey as a result.

87 *Offshore*, February 1994.

88 Praing, 1997: 2.

89 *Offshore*, August 1993.

90 *Offshore*, February 1994.

91 Interview with Triton Oil analysts, cited in *Phnom Penh Post*, Vol.4, No.2, 27/1/95.

Cambodia and Thailand a total of the order of US$3.5 billion each at US$150-200 million per year in revenues.[92]

These considerations probably lie behind Cambodian Foreign Minister Ung Huot's December 1994 comments in the course of a visit to Bangkok that while Cambodia recognised that it would take time to *"sort out"* issues relating to overlapping claims in the Gulf of Thailand, Cambodia also *"firmly believes that this should not delay arrangements for the joint exploitation of the Gulf...If our neighbours were to agree, Cambodia is prepared to commence the earliest possible negotiations on joint development."*[93] In the following month Cambodia renewed its push for a joint development solution to its dispute with Thailand. Speaking on 19 January 1995 Cambodian Minister for Industry, Mines and Energy, Pou Sothirak, stated that the two Cambodian prime ministers had reached consensus to approach Thailand in order to *"get together 50/50"* to exploit the resources of the overlapping zone and that *"we are thinking of moving very fast"* to realise the proposed joint project.[94]

On 27-28 April 1995 Cambodia and Thailand held consultations on their overlapping continental shelf claims in Bangkok. This meeting was described in their joint press release as *"the first formal occasion for the two sides to discuss the question of overlapping continental shelves after a long lapse of almost 25 years."*[95] According to the same document the two sides held an *"extensive and in-depth exchange of views"* found discussion *"meaningful and constructive"* and were *"highly encouraged"* by progress made.

It is clear that each side, as might be expected, maintained its existing claims as its opening position.[96] Cambodia reiterated its desire for the swift establishment of a joint development zone but elaborated on this topic to indicate that any agreement on joint development should be 'sovereignty neutral' and that a 'clean slate' approach be adopted as far as previously granted concessions within the overlapping claims area were concerned. Cambodian Industry, Mines and Energy Minister Pou Sothirak, one of the leaders of the Cambodian team, stated that a joint development agreement should be sovereignty neutral in the sense that *"no acts taking place under such a treaty can*

92 Interview with Triton Oil analysts, cited in *Phnom Penh Post*, Vol.4, No.2, 27/1/95.

93 *Bangkok Post*, 15/12/94.

94 *Phnom Penh Post*, Vol.4, No.2, 27/1/95.

95 Joint press release retrieved from http://www.nectec.or.th

96 For example, Cambodian Industry, Mines and Energy Minister Pou Sothirak, one of the leaders of the Cambodian team, stated at the time that *"Questions of Cambodia's sovereignty over the*

prejudice the claimed rights and interests of either Cambodia or Thailand in the future."[97] Despite Thai Deputy Foreign Minister Dr Surin Pitsuwan's comment that *"we believe that eventually we will have to jointly develop overlapping claims, but the basis for each country's claims still needs to be clarified"*, it is understood that while Thailand did not rule out the possibility of joint development, it favoured the establishment of a delimitation line.[98]

At the April 1995 meeting the two sides did agree to hold further meetings and to use the UN Convention on the Law of the Sea as the framework for their negotiations despite the fact that while both states have signed the Convention, at the time of writing, neither has ratified it (see Section 2.5).[99] Additionally, Cambodia and Thailand agreed to establish a Joint Technical Working Group to assist in the resolution of their maritime boundary disputes.[100] Finally, *"while recognising the complexities and difficulties"* involved, the two states reaffirmed their *"mutual desire to achieve an equitable solution...with all speed."*[101]

In the first meeting of the Cambodia-Thailand Joint Technical Working Group, which took place on 18-19 July 1995 in Bangkok, the two states articulated their positions in detail, each seeking to justify its own claim lines while undermining the validity of the other's. It is understood that issues such as the status and interpretation of the Franco-Siamese treaty of March 1907, the role of islands, the geographical configuration of the parties' coastlines and the question of the application of proportionality considerations were all touched upon. Each side was apparently robust in its defence of its claims.[102]

Having rehearsed the pros and cons of the existing continental shelf claims dating from the early 1970s, Cambodia once again pressed strongly for the adoption of a joint development arrangement encompassing the whole of the overlapping claims area as an equitable means of resolving the dispute. Nady Tan, Secretary-General of the

continental shelf in the overlapping area are non-negotiable and the delimitation lines declared represent the position of the Cambodian government" (*The Nation*, 29/4/95).

97 Quoted in *The Nation*, 29/4/95. The 'clean slate' approach also mentioned by Minister Sothirak is an idea likely to be inspired by the international oil companies operating in exclusively Cambodian waters but with an interest in the overlapping claims area where only Thailand of the two claimants has previously granted concessions.

98 *Bangkok Post*, 29/4/95, 18/7/95.

99 *Bangkok Post*, 18/7/95.

100 *Bangkok Post*, 29/4/95.

101 Joint press release retrieved from http://www.nectec.or.th

102 These comments are based on interviews with Cambodian government officials in July 1995. Identities withheld by request.

Cambodian Government and leader of the Cambodian delegation to the July talks stressed the benefits of joint development as a 'win-win' solution, citing one of the teachings of Buddha in support of Cambodia's case: *"Victory creates hatred, defeat creates suffering and humiliation. Those who are wise strive for neither victory or defeat."* Nady Tan went on to observe that the 25 year impasse over the overlapping claims area had existed *"as a result of both sides' preoccupation with boundary claims rather than joint development"*, that delimitation negotiations could go on *"indefinitely"* and that the joint development option *"offers a very practical, fair and equitable way to overcome that impasse."*[103]

Over and above a frank exchange of views, the outcome of the July 1995 meeting was that both sides maintained their original positions but reiterated their joint objective of achieving an equitable solution as quickly as possible.[104] In their joint press statement issued after the meeting it was indicated that although Cambodia and Thailand *"held different views on the priority to be adopted in the process of resolving their overlapping continental shelves, neither of them ruled out at this stage any available option, be it joint development or a delimitation solution."*[105] It is therefore clear that in contrast to Cambodia, Thailand still favoured the delimitation of a single line as the maritime boundary. Nevertheless, Thailand conceded to Cambodia's desire that an early agreement on joint development be given *"special consideration."*[106] However, in October 1995 Thailand proposed the delimitation of a boundary line and indicated that negotiations towards the conclusion of a joint development arrangement would take a long time.[107]

At this point progress in negotiations appears to have stalled. Prior to a visit to Thailand in April 1996, Cambodian Foreign Minister Ung Huot once again endorsed Cambodia's position in favour of joint development as a solution, saying that *"Cambodia hopes the overlapping boundaries with Thailand could be resolved rapidly, at least not take the 14 years it took Thailand and Malaysia to resolve their problems"* (see Section 6.2.4).[108] However, in October of the same year, in an interview with a Thai newspaper, Sakthip Krairiksh, on his return home after completing his posting as

103 *Bangkok Post*, 29/7/95, 4/10/96.

104 Director-General of the Department of Treaties and Legal Affairs at the Thai Foreign Ministry, Krit Garnjana-goonchorn, noted encouragingly that *"We have discussed in depth Cambodia's proposal. We're definitely getting somewhere"* (*Bangkok Post*, 29/7/95).

105 Joint statement quoted in *Bangkok Post*, 29/7/95.

106 *Bangkok Post*, 29/7/95.

107 Dzurek, 1998: 128.

the Thai Ambassador to Phnom Penh, indicated that Thailand remained firm in its claims in the Gulf of Thailand and its desire to see the delimitation of a boundary rather than a joint zone. The former Ambassador, having taken up the post of Deputy Permanent Secretary for Foreign Affairs noted that bilateral talks had made no headway and stated that *"We [i.e. Thailand] simply cannot accept that the offshore area is not ours."* This bears out Dzurek's comment that during 1996 Cambodia *"appeared to grow more desperate for a resolution."*[109]

This trend continued into 1997. Although reports of exploratory drilling in the disputed area by the Thais were discounted by the Cambodians, renewed calls were made to allow foreign companies to conduct survey work with a view to future joint development.[110] The deadlock in negotiations with Thailand over the overlapping claims area was exacerbated from a Cambodian perspective by developments in its own offshore sector. Although a number of wells were drilled in exclusively Cambodian waters in 1996, the Cambodian aquatory failed to live up to its early promise.[111] Accordingly, in March 1997 it was reported that Cambodia was losing operators because its *"disappointing offshore province [was] proving to be of less and less interest."*[112]

The issue of overlapping claims was reportedly on the agenda during Thai Prime Minister Chavalit's June 1997 visit to Cambodia but the coup which took place the following month and as a result of which Hun Sen seized control in Phnom Penh at Prince Ranariddh's expense, is likely to have undermined efforts to resolve the maritime boundaries dispute.[113]

In January 1998, however, it was reported that Cambodia had granted conditional licences to five international oil and gas companies for drilling rights in four concessions designated within the overlapping claims area.[114] This may be interpreted as a move to try and 'kick-start' the stalled negotiation process and a means by which

108 Quoted in Dzurek, 1998: 128.

109 Dzurek, 1998: 128.

110 Dzurek, 1998: 128.

111 For example, Enterprise Oil drilled 'wildcat' wells 'Da-1' and 'Preah Khan-1' in July 1996 while Campex drilled 'Poulo Wai-1' in October 1996 (*Offshore*, July 1996: 20; October 1996: 22).

112 It was reported that Enterprise Oil and Cambodia Petroleum Exploration had encountered nothing but dry holes and that Premier was also pulling out leaving only Idemitsu to carry on (*Offshore*, March 1997: 10). The latter drilled a wildcat called 'Koah Pring-1' but this also proved to be disappointing and was plugged and abandoned (*Offshore*, August 1998: 18).

113 Dzurek, 1998: 128.

114 The five companies involved were BHP (Australia), Conoco (US), Enterprise Oil (UK), Inpex and Idemitsu (both Japan) (*Offshore*, January 1998: 12).

Cambodia can balance the fact that Thailand issued licences relating to the disputed area in the early 1970s. It remains to be seen whether this tactic will prove successful.[115]

While *"a border agreement on overlapping areas along the Cambodian-Thai maritime border"* was listed as one seven points that the two states needed to address as a result of bilateral meetings in Phnom Penh on 27-30 April 1998, at the time of writing no further progress appears to have on the overlapping claims dispute.[116] A major reason for this is the fluid post-coup political situation in Cambodia. The largely successful conduct of elections in Cambodia in 1998 has, however, led to the realisation of a degree of stability in Cambodia and thus the hope that negotiations concerning overlapping maritime claims can be revitalised with a view to at long last making some substantive progress. A potentially positive sign in this regard is the Cambodian Council of Minister's 1 March 1999 decision to establish joint committees in relation to its borders with Laos, Thailand and Vietnam.[117]

7.2.9 Prospects

As of mid-1999, negotiations between Cambodia and Thailand on maritime boundary issues apparently remain deadlocked with the positions of the two sides essentially where they were when formal discussions were initiated in 1995. While instability in Cambodia has hampered progress, this situation does seem to be the result of the two sides' different approaches to the dispute – Cambodia consistently promoting joint development and Thailand favouring delimitation – coupled with their intransigent maintenance of these positions. In addition, the high level of expectation that both sides appear to harbour in relation to the potential oil and gas resources of the overlapping claims area, while on the one hand providing a key reason for negotiations to proceed, may also contribute to stalemate with neither side willing to compromise with so much at stake.

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115 It is understood that a side benefit of the granting of these licences is that it provides the Cambodian government with a fund, contributed to by the licencees, for technical assistance in its negotiations with Thailand (Interview with oil company executive, January 1998. Identity withheld by request). As a result of this it was reported in October 1998 that Cambodia had indeed brought in technical experts to assist them. As Minister without portfolio Sok An said: *"We've brought in some experts to study the geographical situation of the islands...to determine their value and role and to be aware about international law in determining the sea border"* (*Bangkok Post*, 21/10/98).

116 *National Voice of Cambodia*, Phnom Penh, 1/5/98 (BBC SWB FE/3216, B/4, 2/5/98).

117 National Voice of Cambodia, Phnom Penh, 1/3/99 (SWB FE/3473).

Turned on its head, however, the fact that the parties claims are so far apart does, at least in theory, provide significant scope for compromise.[118] It can be argued that the impetus to resolve the dispute is clearly present in the shape of a mutually acknowledged desire to gain access to the oil and gas resources believed to exist in the overlapping claims area. Both states are anxious to unlock these potential riches – Cambodia as a developing state in sore need of the massive financial windfall oil revenues would represent; and Thailand as a rapidly industrialising state with escalating energy demands. In addition, it may be observed that the conclusion of the Thai-Vietnamese maritime boundary agreement (see Section 6.5) has eliminated one major maritime boundary concern from the Thai agenda. It would seem logical for Thailand to now turn its attention to resolving it dispute with Cambodia – the largest overlapping claims area in the Gulf and the only one dispute in the Gulf involving Thailand on which Bangkok lacks any form of agreement. Once again it may be useful to consider the delimitation in two sections – that between adjacent coasts and that between opposite coasts.

Delimitation between adjacent coasts

The first important factor to acknowledge here is that both Cambodia's and Thailand's lateral maritime boundary claims offshore their common land boundary are constructed on the basis of rather unconventional methodologies which are open to serious challenge. In light of the discussion outlined above (see Section 7.2.5) it is inconceivable that Cambodia's historic claim line could be deemed acceptable by Thailand. This is particularly true in relation to the territorial sea boundary in the vicinity of Koh Kut. Similarly, Thailand's bisector claim is likely to prove anathema to the Cambodian side. Thus, it can be reasonably assumed that neither claim line is likely to form the final boundary between the parties and a compromise between these two extremes is the likely outcome.[119] Several options present themselves as potential methods of delimitation between the Cambodian and Thai mainland adjacent coasts, notably equidistance, bisector lines, and lines perpendicular to the general direction of the coast.

Applying *equidistance* as the basis for delimitation immediately begs the question of what basepoints should be used. Prescott has calculated that while an

[118] Prescott, 1998: 52.

[119] An assumption also made by Prescott (1998: 48).

equidistance line based on the two states' mainland coasts, ignoring all islands would favour Cambodia and one based on all territory including islands would favour Thailand (with an equidistance line using straight baselines lying in between), in the lateral section of the delimitation these lines in fact lie not more than 8nm apart.[120]

Taking a strict equidistance line between all territories as a starting point, Thailand would no doubt seek to depress such a line southwards on the grounds of the invalid nature of Cambodia's straight baseline claims, that Cambodian islands should be accorded no, or at least reduced, effect. Thailand would also be likely to deploy arguments based on its claimed geographical disadvantage were strict equidistance to be used, its longer coastline, and the concept of proportionality.

Cambodia is, however, likely to counter these arguments with contentions of its own. For example, even if Koh Kusrovie is a significantly smaller feature than Koh Kut, it would still be entitled to a territorial sea even were it a mere rock (an interpretation Cambodia is likely to contest). Furthermore, in Phnom Penh's view it is clearly Cambodia rather than Thailand which is geographically disadvantaged and the application of strict equidistance would merely serve to inequitably amputate Cambodia's maritime rights. This provides grounds for the alignment of the equidistance line to be modified northwards to Cambodia's advantage.

With regard to delimitation of the territorial sea in particular, where equidistance is the favoured means of delimitation in the law of the sea (see Section 3.1.1), given the controversial nature of the two states baseline claims (see Sections 4.2 and 4.4), an equidistance line between all features may ultimately prove to be an equitable dividing line.[121] Concerning the lateral boundary beyond the territorial sea, it is clear that the parties are finely balanced with each state apparently convinced that it has a case for the line to be adjusted in its favour. In this situation it can be argued that a strict equidistance line at least provides an unambiguous solution. As noted in Section 7.2.7, however, Cambodian arguments that it is geographically disadvantaged by the presence of Thai islands directly offshore its land territory are compelling, and an adjustment of a strict equidistance line between all features or the use of a equidistance line between mainland coasts would therefore prove to be a more equitable solution.

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120 Prescott, 1998: 48.

121 Prescott (1985b: 86) has noted that while Cambodian arguments based on its geographically disadvantaged status *"might carry some weight"* with the Thai authorities it is likely that for security reasons Thailand *"will insist on an equidistance boundary"* for the territorial sea.

Alternatively, the methodology used by Thailand to construct its continental shelf claim between adjacent coasts – a *bisector* line – could be applied. As noted, Thailand's claimed bisector between the first segments of its Area 1 straight baselines and Cambodia's 1957 straight baselines is extremely unlikely to be acceptable to Cambodia. Instead, a bisector line could be drawn between the two states' current baseline claims – that is, between the first offshore legs of Thailand's Area 1 and Cambodia's straight baseline claim of 1982 (see Figure 7.8).[122] Another option would be for the parties to simply 'split the difference' between their claims. As both the Cambodian and Thai claims between their adjacent coasts describe straight lines from the terminus of their land boundary on the coast towards the central Gulf of Thailand, a bisector line between these two claim lines could be readily calculated (see Figure 7.8).

A further delimitation method that has been used between adjacent coasts a line *perpendicular to the general direction of the coast* (see Section 3.2.3). There are, however, problems associated with the practical application of this method (see Section 3.2.3). With regard to the Thai-Cambodian case, these drawbacks are illustrated on Figure 7.9. Both of the lines shown are perpendicular to two different but still conceivably valid interpretations of the general directions of the coast. The difference in area between them extending as far offshore as Cambodia's 1972 continental shelf claim line is 515nm^2 (1,767km^2).[123] There does not appear to be a reliable and uncontroversial means by which the general direction of the coast can be determined as, in a similar fashion to questions of relevant coasts and proportionality, the problem to a large extent turns on what scale of analysis is used. Nevertheless, a delimitation based on a line perpendicular to the general direction of the coast does provide a useful appreciation of the wider macrogeographical context of the parties' coastlines and avoids reliance on equidistance with all its pitfalls related to the role of baselines and islands.

Additionally, Prescott, working on the basis that the minimum demand of Cambodia is likely to be some discount on the weight accorded to Koh Kut in the delimitation, while the minimum Thai demand is anticipated to be for Koh Kut to be provided with territorial waters, has suggested a hypothetical Thai-Cambodian lateral

122 The first segment of Cambodia's 1982 straight baseline claim coincides with that of its 1972 claim (see Section 4.2.4).

123 Calculated using a planimetre and British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000.

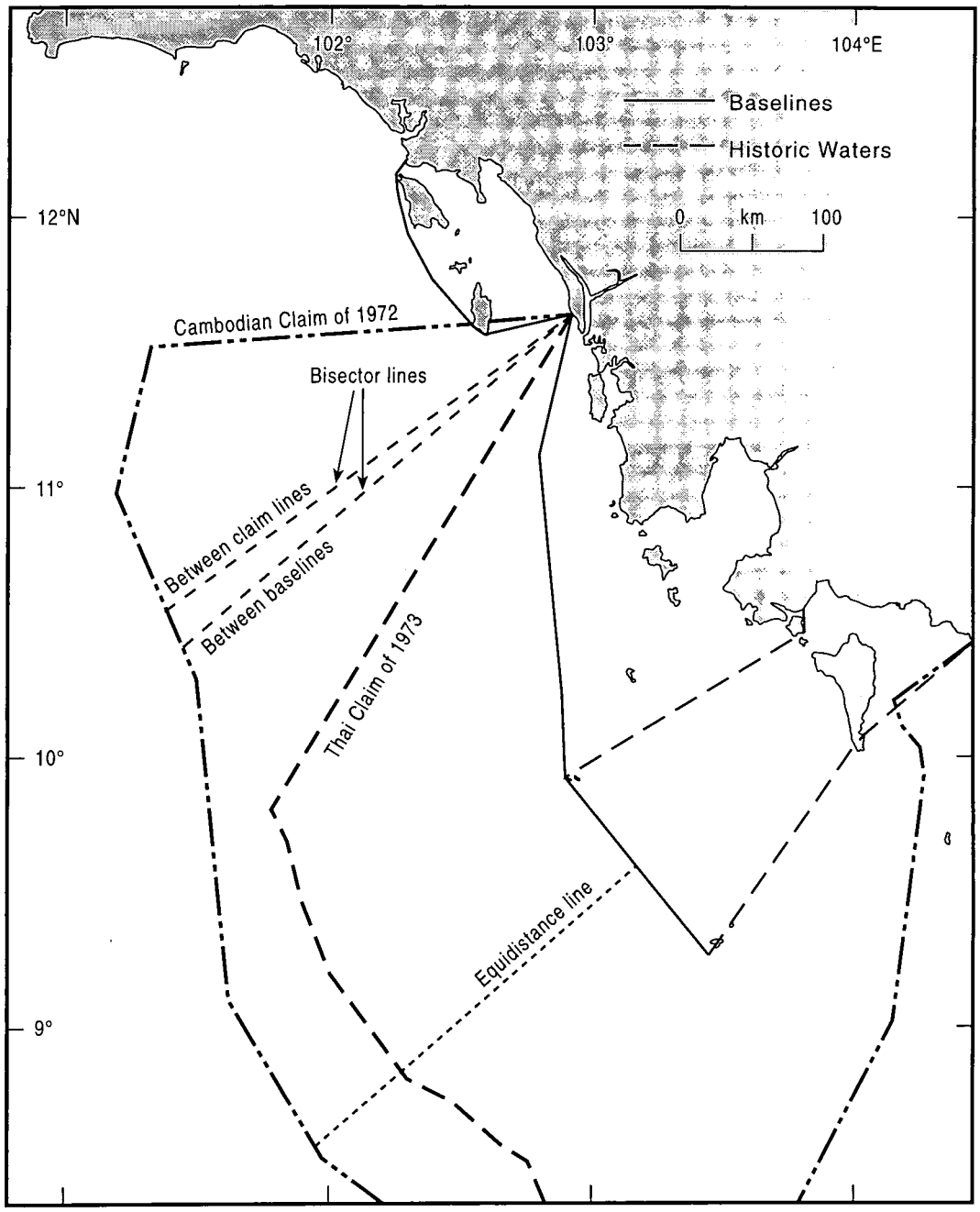


Figure 7.8: *Bisectors between Straight Baselines and Claim Lines*
Source: Author's research.

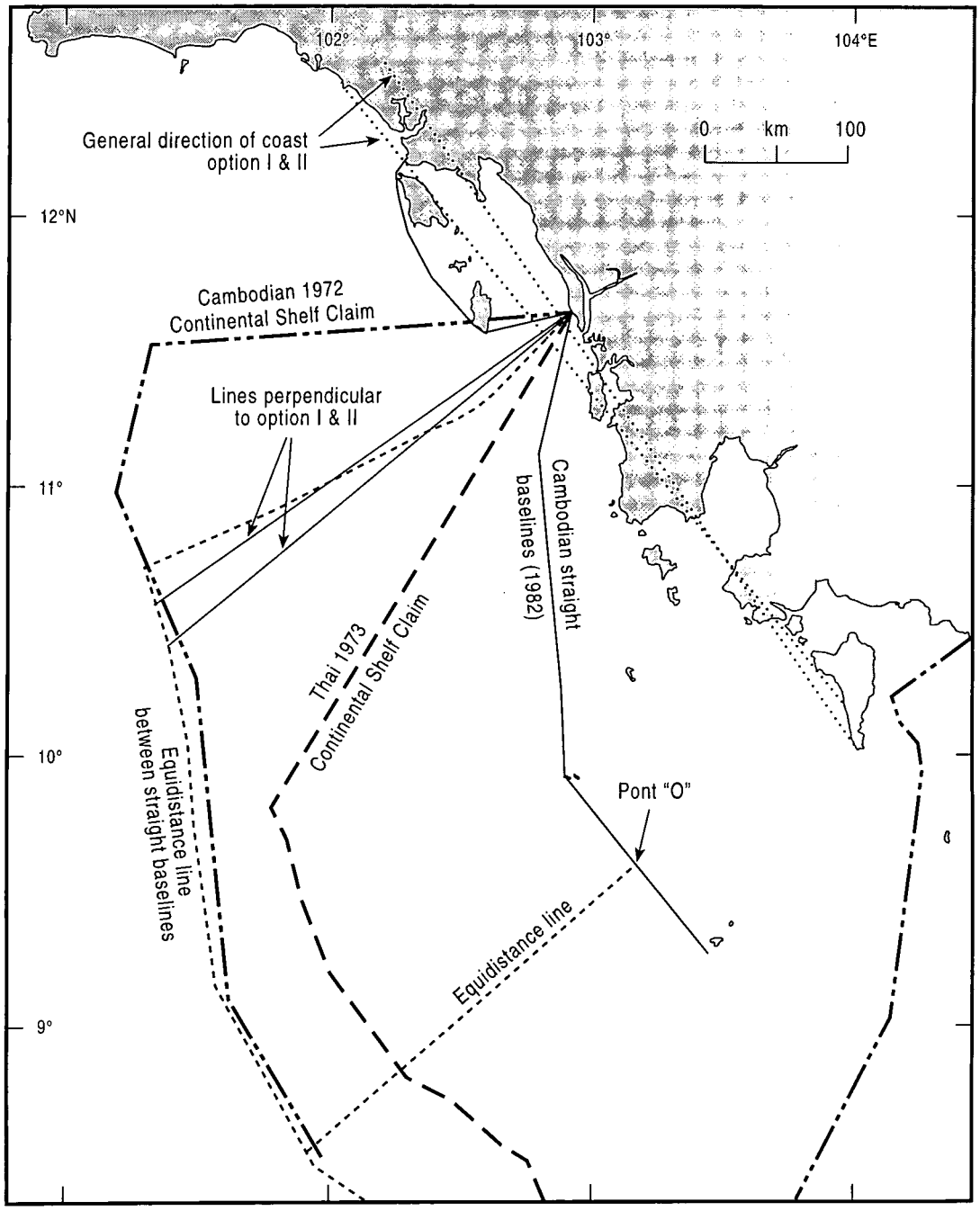


Figure 7.9 *Lines Perpendicular to the Coast*
Source: Author's research.

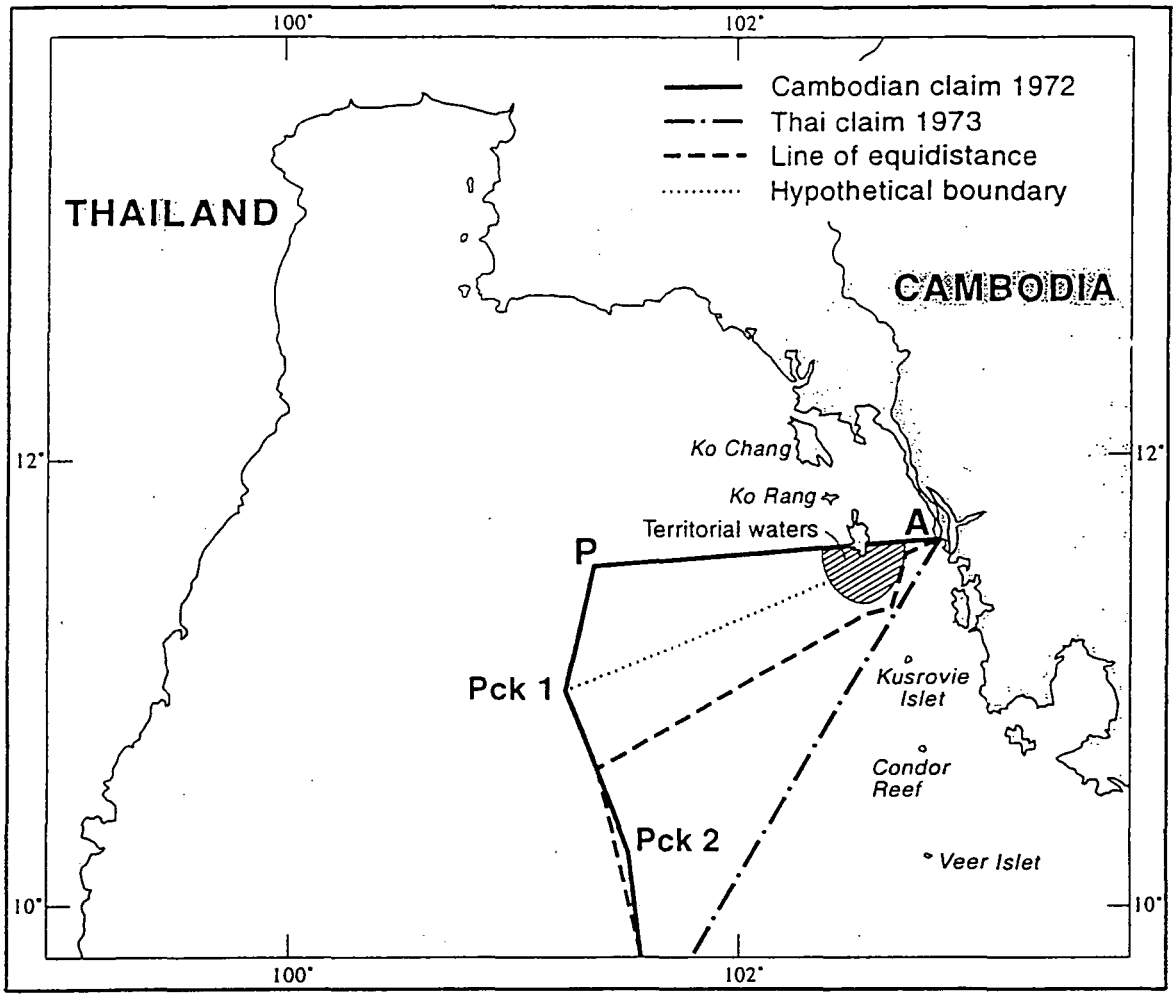


Figure 7.10: *Prescott's Hypothetical Boundary*
Source: Prescott, 1998.

boundary delimitation.[124] Prescott suggests that Thailand might be persuaded to accept a modification in Cambodia's 1972 claim such that instead of joining Point A (the terminus of the land boundary on the coast) and Point P, the Cambodian claim would instead proceed from Point A to Point Pck1, located to the south of Point P (see Figure 7.10). Were this to be adopted, the potential delimitation line would not intersect Koh Kut itself but would need to be modified in such a way as to provide Koh Kut with a territorial sea and therefore meet Thailand's minimum requirements. Such a line would leave Thailand with 49% of the area between Cambodia's 1972 claim line and a line of equidistance giving full effect to Koh Kut.[125] In fact this proposal is very similar to the northern limit of the continental shelf claim Cambodia made in February 1970 (see Section 5.3.1 and Figure 1.1).

124 Prescott, 1998: 49-50.

125 J.R.V. Prescott, personal communication, 21/5/98. The text of Prescott's 1998 monograph incorrectly asserts that this hypothetical line represents a 49% discount for Koh Kut.

In this context it is worth recalling that the Thai-Cambodian dispute has been strongly driven by the parties' interest in potential hydrocarbon reserves believed to lie in the overlapping claims area. However, as the most prospective areas are understood to lie in the central part of the Gulf, there seems scope for compromise at least with regard to the inshore part of the lateral boundary as the maritime areas at stake are perceived by the two states to be of less importance than those further offshore. Compromise concerning the highly prospective central potion of the Gulf is, however, likely to be more problematic for the claimant states.

Delimitation between opposite coasts

Both Cambodia and Thailand have themselves utilised equidistance as the basis of their own claims between their opposite coasts. These claims cover a band of maritime space varying in width from 13.8nm (25.5km) in the north to 24.3nm (45km) in the south.[126] It is therefore reasonable to suggest that this method will form the basis of any agreed delimitation between them in the central Gulf of Thailand. The key challenge will therefore be reconciling the two states' differing interpretations of equidistance.

Clearly there are well nigh limitless variations on equidistance that can be plotted. Figure 7.11 serves to illustrate three of these. This map shows a strict equidistance line between all territories, including islands on the Cambodian side but ignoring the Thai features of Ko Kra and Ko Losin which can legitimately be considered to be mere rocks for the purposes of delimitation. It is notable that sections of this line extend to the west of Cambodia's 1972 claim line into undisputed Thai waters. The map in question also shows a strict equidistance line between the Thai mainland and islands (including Koh Kut but not Ko Kra or Ko Losin) and the Cambodian mainland coast (and islands in close proximity to it), ignoring Koh Kusrovie, Ilot Veer and Poulo Wei. The line between these two 'full effect' and 'no-effect' equidistance lines represents a 'half-effect' line for Koh Kusrovie, Ilot Veer and Poulo Wei. It is quite conceivable that such a half-effect line will eventually be adopted as a definitive maritime boundary delimitation between the parties' mainland coasts.

However, as already mentioned, the central part of the Gulf of Thailand is regarded as having significant potential as a source of oil and gas deposits. This fact has tended to limit the perceived scope for compromise. Furthermore, it is understood that

126 Measured on British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000.

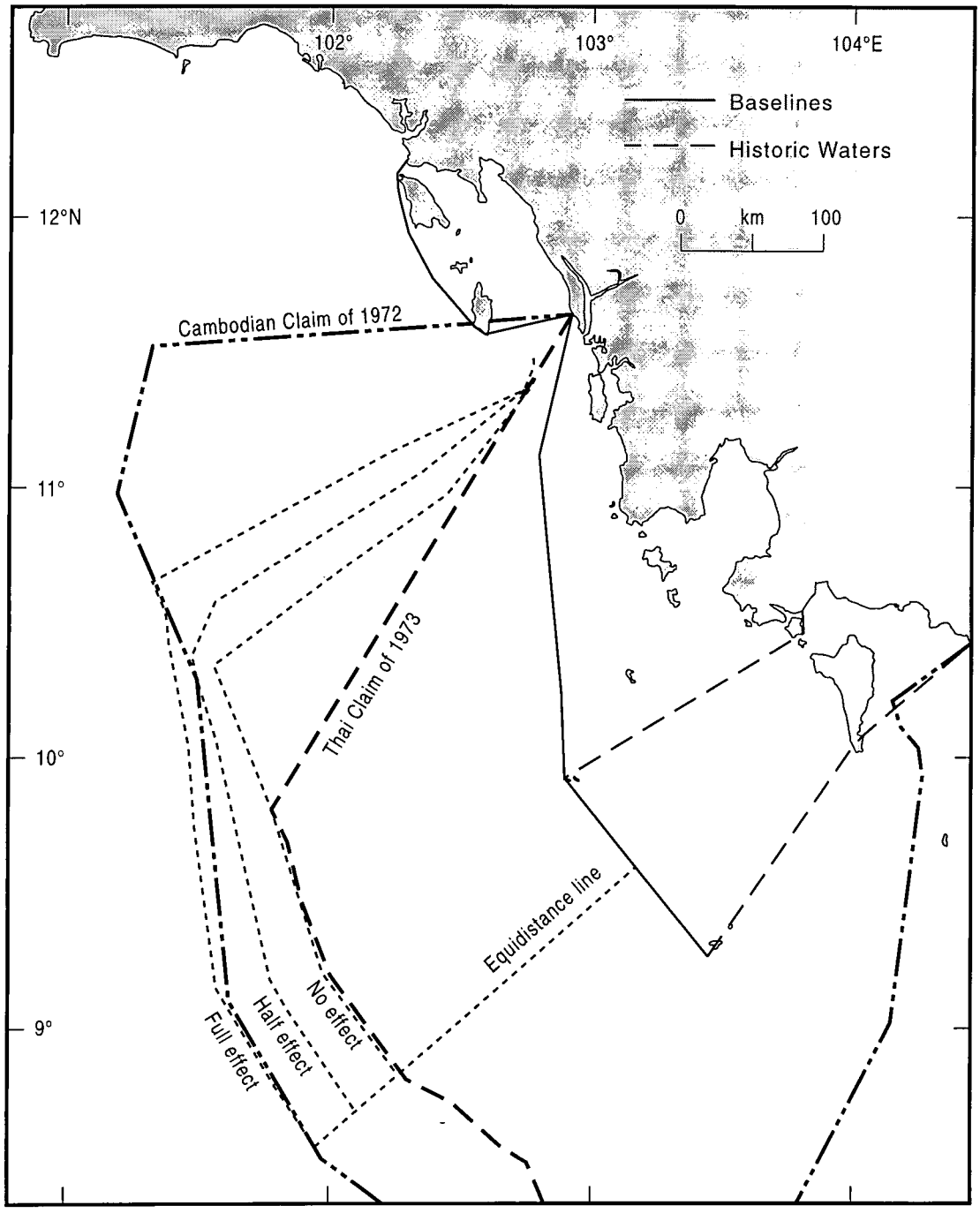


Figure 7.11: *Hypothetical Equidistance Lines*
Source: Author's research.

the most prospective potentially oil and gas-bearing structures are located on the eastern margins of the Pattani Trough which extends into the overlapping claims area from exclusively Thai waters. It is quite possible, therefore, that the main oil and gas deposits within the disputed area are unevenly distributed and predominantly located on its western side. This perception may go a long way to explaining Thailand's enthusiasm for a delimitation solution, which could (presuming such a line represents a compromise between the parties claims) potentially leave the lion's share of the hydrocarbon reserves of the overlapping claims area in Thai waters, and Cambodia's consistent push for a joint development arrangement encompassing the whole of the contested area.

Summary

Cambodia has demonstrated itself to be resistant to Thai suggestions that their overlapping claims area be divided by a delimitation line and has been an unwavering enthusiast of a joint development solution. Thailand has in turn proved itself to be reluctant to accept the existing limits of the overlapping claims area as the basis for a joint development zone. The key bone of contention in this regard is likely to be the fact the Cambodian claim wholly discounts Koh Kut, even in relation to territorial sea rights. Another factor that may lie behind Thailand's insistence on delimitation over joint development is its past experience of the latter option in partnership with Malaysia (see Section 6.2.4). The fact that it took in excess of a decade to iron out problems and actually implement this agreement may well be acting as a significant disincentive, dissuading the Thai authorities from adopting the same type of dispute resolution mechanism again. Furthermore, Thailand successfully resisted Vietnam's suggestion of applying joint development to their overlapping claims area, instead persuading the Vietnamese to accept a delimitation line the alignment of which must be considered to be favourable to Thailand (see Section 6.5). This may also encourage Thailand to resist Cambodia's joint development overtures.

Can Cambodia's distaste for delimitation and Thailand's antipathy towards joint development in the Thai-Cambodian context be overcome and a compromise between these two differing approaches be reached? It is conceivable that a 'package' deal could be worked out involving both delimitation and joint development.

As far as Thailand's aversion to joint development is concerned, the fact that, despite the long delays, the Thai-Malaysian JDA is functioning successfully (see Section 6.2.4) and that the much simpler and more swiftly realised Malaysia-Vietnam "Defined

Area" has also enjoyed similar success (see Section 6.4) must be deemed to be encouraging developments. Were Cambodia to adjust its claim such that Koh Kut was accorded a 12nm territorial sea, the possibility of the remainder of the overlapping claims area becoming a joint development zone would certainly be enhanced. However, this amendment to Cambodia's claims alone is probably unlikely to prove enough to entice the Thai's down the joint development road. It is probable that before joint development is seriously contemplated by Bangkok, Thailand may press for further adjustments to the Cambodian claim such that it represents what the Thais may regard as a 'realistic' zone of overlap. While Cambodia can certainly argue that the overlapping claims area has been treated by both sides as such for over 20 years,[127] it may be necessary to narrow the gap between the parties. This could be achieved through delimitation of the Thai-Cambodian boundary between adjacent coasts.

Were Cambodia to abandon its claim based on the Franco-Siamese treaty of 1907 altogether and Thailand correspondingly abandon its lateral bisector line claim, it is abundantly clear that they would have multiple options at their disposal as far as delimitation of their maritime boundary between adjacent coasts is concerned. Even if the eventual lateral delimitation line was one of the options favourable to Cambodia, this would still probably represent a major concession on Cambodia's part in terms of maritime area and therefore might still prove attractive to the Thais in that this would place the whole northern extension of the Pattani Trough in Thai waters. To compensate for accepting a delimitation solution in relation to the area between adjacent coasts, Cambodia could then argue that the whole of the overlapping claims area between opposite coasts should become a joint development zone. The latter would be likely to be attractive to Cambodia in that the most prospective parts of the overlapping claims area, the eastern margins of the Pattani Trough, would fall within the joint zone even though they are likely to be located on the Thai side of that zone.[128] While the potential agreement outlined above is necessarily hypothetical, the combination of partial delimitation and limited joint development does demonstrate the sort of trade off likely in boundary delimitation negotiations and could prove the basis for an equitable resolution of the Thai-Cambodian maritime boundary dispute.

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127 Praing, 1997: 3.

128 While there is a perception that the most prospective areas lie on the western side of the overlapping zone in the central Gulf of Thailand, based primarily on the existence of proven reserves in exclusively Thai waters nearby, there are certainly no guarantees that this will prove

Ultimately, however, division or joint development of the Thai-Cambodian overlapping claims area will rest on the political will of the parties to reach a settlement. In this there are suspicions that Thailand may be playing on the fact that as well as being by far the more experienced partner in the negotiations, Thailand is also an established oil and gas producer, whereas Cambodia is desperate to gain access to the resources thought to exist in the overlapping claims area in order to bolster its parlous economic situation.[129] However, even though the Thai economy has slowed significantly in the wake of 1998's financial crisis in the Far East, Thailand is on the verge of becoming an industrialised nation and has soaring energy demands to cope with. Indeed, Thailand is already importing gas from Burma and is seriously contemplating doing so from Indonesia's giant Natuna gasfield.[130] Furthermore, urgent Thai energy requirements were noted as one of the factors that persuaded Thailand to embark on joint development with Malaysia (see Section 6.2.4). The same scenario may eventually work in Cambodia's favour further north in the Gulf of Thailand.

Finally, it should be noted that if Cambodia and Thailand do eventually opt for a boundary delimitation rather than joint development, they will be faced with the problem of relating the end point of any agreed boundary with the Thai-Vietnamese boundary agreement of August 1997 (see Sections 6.5 and 7.4).

7.3 Cambodia – Vietnam

7.3.1 Introduction

No maritime boundary has been agreed between Cambodia and Vietnam in respect to territorial sea, continental shelf or exclusive economic zone (EEZ). In the vicinity of the terminus of their land boundary on the coast the two states are blessed with a complex coastal geography, characterised by a highly indented coastline and numerous islands,

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the case and it is quite possible that the eastern side of the overlapping zone, i.e. nearer to Cambodia, may prove more productive.

129 For example, prior to Thailand and Cambodia's negotiations in April 1995, it was reported that discussions were likely to be difficult because of strained political relations between the two countries *"and the fact that Thailand does not share Cambodia's urgency to exploit the resources"* (*Bangkok Post*, 25/4/95).

130 For example, growth in Thai energy needs in the 1995-96 period alone was put at 11%. Along with imports from Burma and perhaps from Indonesia, it has also been reported that Thailand is expected to plug its *"gas gulf"* with gas supplies from the Thai-Malaysian JDA, the area

large and small, which complicates boundary delimitation. The area to be delimited includes waters in close proximity to the two states' coasts and is therefore vital to their national security. In addition, the area concerned is a significant source of fisheries resources[131] and it is as well to remember that abundant oil and gas reserves have been located and exploited elsewhere in the region, particularly in the central Gulf of Thailand. It is unknown whether the maritime zone between Cambodia and Vietnam will yield such resources but the potential, particularly further offshore, remains to be explored.

7.3.2 Historical Background

A key element to the Cambodia-Vietnam dispute over maritime rights relates to contested sovereignty over several islands off the two states' mainland coasts. The history of Cambodia and Vietnam's (formerly Annam) territorial relations is complex. The following section is therefore necessarily extensive. For convenience a chronological approach has been adopted.

The pre-colonial period

An appreciation of the history of relations between Cambodia and Vietnam is fundamental to an understanding of the conduct of border and sovereignty issues between them. From its rebirth as an independent state in 939AD, following a millennium as a Chinese province, Vietnam began its legendary *Nam Tien* or *"march to the south."*[132] The direction of this Vietnamese expansion was constrained by the presence of China to the north, the mountains of Annam to the west and the South China Sea to the east.[133] Having disposed of the Kingdom of Champa, from approximately the sixteenth century onward (Figure 7.12), Vietnam's territorial gains were made at the expense of the declining Khmer Empire which at its apogee covered a significantly greater area than that of modern-day Cambodia (see Figure 7.3).

Thus by the time the French arrived in the region in the nineteenth century, the Vietnamese had ejected the Cambodians from the Mekong delta region, referred to as *Kampuchea Krom* by the Cambodians. Additionally, Cambodia was by that point

formerly disputed with Vietnam and the Cambodian-Thai overlap area as well as potentially from Cambodia and Vietnam themselves (*Offshore*, December 1996: 8).

131 Johnston and Valencia, 1991: 141.

132 Chanda, 1986: 49; St John, 1998: 4.

133 Chanda, 1986: 49.

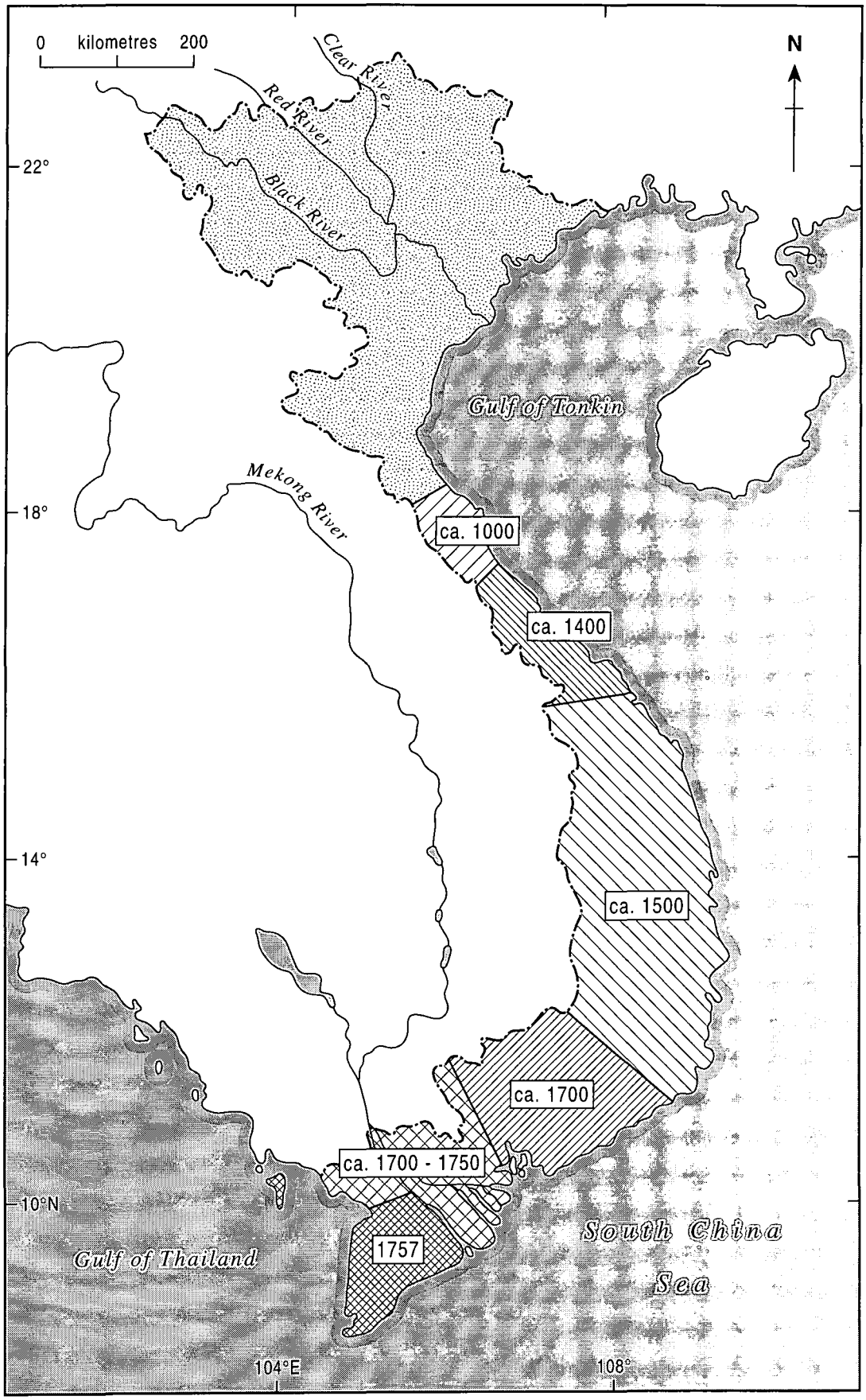


Figure 7.12: *Vietnam's "March South"*
Source: St John, 1998.

reduced to being a buffer state over which Vietnam and Thailand competed for influence. These territorial losses, coupled with vigorous attempts to 'Vietnamise' the 'barbaric' Khmers on the part of the Vietnamese, particularly in the nineteenth century, and the violent quelling of several revolts against Vietnamese rule unsurprisingly generated intense feelings of racial hostility and prejudice among Cambodians against the Vietnamese.[134] Such feelings were reciprocated by the Vietnamese who perceived their country as a 'Middle Kingdom' surrounded by barbarians, including the Cambodians.[135]

Cambodian perceptions of the Vietnamese as their *"hereditary foe"*[136] and as the *"swallowers of Khmer soil"*[137] should, therefore, not be underestimated and have had a profound impact on Cambodian-Vietnamese relations post-independence. Indeed, Chanda has observed that *"Cambodian rulers – from King Ang Duong (1848-60) to Pol Pot – never ceased to complain about the loss of territory to the Vietnamese."*[138] As noted in Section 7.2.3, this historical inheritance has led Cambodia to approach questions of borders, territory and sovereignty as issues of national survival and to adopt extremely defensive postures. This is particularly true with regard to Cambodia's relations with Vietnam.

Colonial period

While French intervention in Indochina arguably saved Cambodia from partition between Thailand and Vietnam, the borders established by the French authorities in the region were by no means favourable to Cambodia. As Cochin China (i.e. southern Vietnam including the Mekong delta) was a full French colony, rather than simply having protectorate status like Cambodia, the French authorities made certain that their boundary delimitations favoured the former.[139] According to Heder:

> *...the French arbitrarily annexed to what is now Vietnam large tracts of land that, at the time of their conquest of the region, were inhabited primarily by Khmers or similar ethnic groups and were either under the administrative influence of or owed some form of fealty to the Khmer court.*[140]

134 Chanda, 1986: 51-53.
135 Chanda, 1986: 53.
136 St John, 1998: 22.
137 Chanda, 1986: 53.
138 Chanda, 1986: 56.
139 Chanda, 1986: 54.
140 Heder, 1981: 23.

Accordingly, in discussing the section of the boundary stretching across the low alluvial plain closest to the coast, Prescott notes that the boundary was agreed between the King of Cambodia and the Governor of Cochin China in 1873 and that, despite the fact that the borderland was mainly inhabited by Cambodians, this delimitation, *"in common with all the others, favoured France at Cambodia's expense."*[141]

With regard to islands in the vicinity of Cambodia's and Vietnam's land boundary terminus on the coast such as Phu Quoc (Koh Tral in Cambodian), however, there are clear indications that in the early years of French penetration into Indochina these were under Cambodian jurisdiction. This is borne out by the fact that in 1856, the French attempted to obtain Phu Quoc from the government of the Khmer Kingdom (Cambodia) rather than the authorities of Annam (Vietnam). This led the US State Department to conclude that: *"Historical evidence strongly indicates that Cambodia had sovereignty over these islands and others in the Gulf of Thailand."*[142]

Following the establishment of the French colony of Cochin China (Vietnam) and protectorate over Cambodia, however, it appears that at least some of the islands concerned were in fact administered as part of Cochin China's Ha-tien Province. Indeed, in 1913, the French administrators of Ha-tien Province and the neighbouring Cambodian Province of Kampot received applications for mining rights on some of the islands offshore their two administrative areas. The two provincial administrations proved unable to resolve the question of ownership over the islands themselves and referred the problem to the Governor-General of Indo-China.[143]

The Brevié Line

Governor-General Jules Brevié eventually issued a decision on the islands question on 31 January 1939 (Appendix 19). His memorandum acknowledged that possession of certain islands was disputed between Cambodia and Vietnam but that those islands *"scattered along the Cambodian coast"* in particularly close vicinity to that coast *"logically and geographically requires that these islands be under the Administration of Cambodia."*

Concerning the other islands, the Governor-General divided the islands between the two administrations such that:

141 Prescott, 1977: 64. See also, Prescott (1975: 463-480; and 1977: 66-67).
142 United States, 1976: 11.
143 United States, 1976: 11.

> *All the islands located north of the line perpendicular to the coast starting from the border between Cambodia and Cochin China and making an 140 grad angle with the north meridian, in accordance with the attached chart, will from now on be administered by Cambodia.*
>
> *All the islands south of this line, including the island of Phu Quoc, will continue to be administered by Cochin China...the demarcation line thus made will make a line around the north of the island Phu Quoc, passing three kilometres from the extreme ends of the north shore of this island* (see Figure 7.13).

The precise meaning of the phrase *"the line perpendicular to the coast...making a 140 grad angle with the north meridian"* subsequently caused confusion. Misunderstandings seem to have derived from the fact that the French 'grad' is equivalent to 1/400th of a circle in contrast to the international degree which is equivalent to 1/360th of a circle. Furthermore, under the grad system angles are measured counter-clockwise unlike the degrees which are traditionally measured in a clockwise manner. Thus, a 140 grad angle is equivalent to an international bearing of 234° or 126° measured counter-clockwise from the north meridian.

Confusion between the two methods of defining a line of bearing may explain why Cambodia initially accepted the Brevié Line but subsequently extended its claim to include the southern Pirate islands (Quan-Dao Hai Tac, see Figure 7.13). This claim may well have arisen from a misinterpretation of the Governor-General's decision, taking it to mean a line 140° rather than 140 grad counter-clockwise from the north meridian. Such a line, 14° divergent from the true Brevié Line passes south of the southern Pirate islands, therefore wrongly placing them on the Cambodian side of the line.[144]

It should be noted that in conclusion the Governor-General was at pains to point out that:

> *It is understood that the above pertains only to the administration and policing of those islands, and that the issue of the islands' territorial jurisdiction remains entirely reserved.*

This subsequently gave rise to contention between the independent Cambodian and Vietnamese authorities as to whether the Brevié Line represented a line of mere administrative convenience or did indeed serve to allocate sovereignty over islands.[145]

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144 United States, 1976: 12.

145 Kittichaisaree, 1987: 41. See also, Chhak, 1966: 158-159.

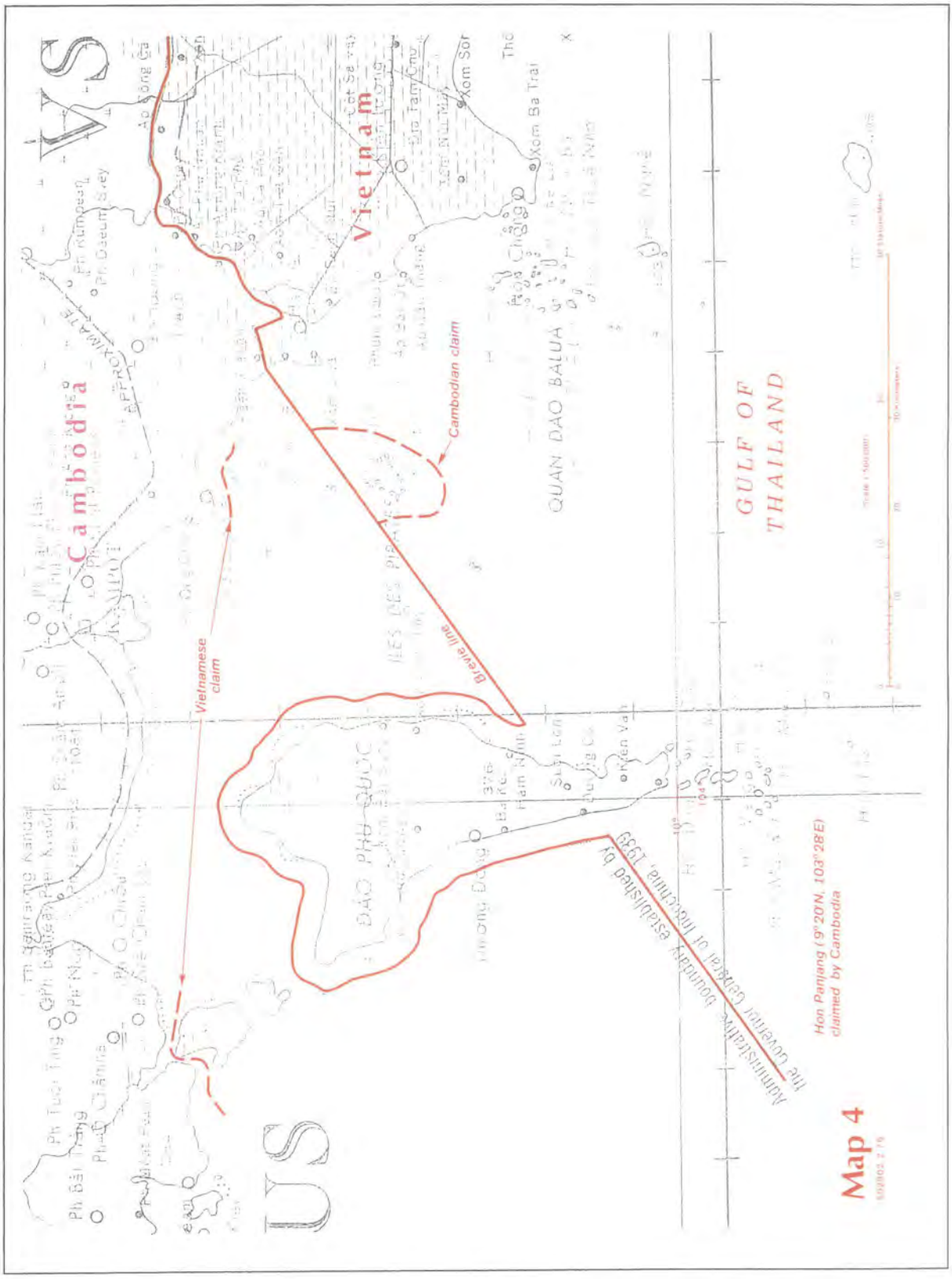


Figure 7.13: *The Brevié Line*
Source: US Department of State, 1976.

Post-Colonial Claims

Following the end of World War II, France embarked on a campaign to reassert its control over its colonial territories in Indochina. Indigenous resistance to the return of French colonialism sparked what has been termed the First Indochina War from 1945-1954. The involvement of the United States in what it perceived to be a battle against communist expansion led to the Second Indochina War of 1959-1975. Boundary and territorial issues between Cambodia and Vietnam were therefore at least to some extent submerged beneath the joint struggle to rid the region of first French colonialism and later American intervention.

Nevertheless, national interests were never wholly absent from the dealings of the various resistance factions with one another.[146] For example, in September 1945 Cambodia, in its first dealings with Ho Chi Minh's new government in Hanoi, demanded the return of Vietnam's two southernmost provinces – amounting to Kampuchea Krom – as a precondition for talks. This demand was vigorously rejected by the Vietnamese side.[147] Similarly, when in 1949 Cochin China was incorporated into a united Vietnam by France, the Cambodian authorities protested.[148] Cambodia's desire for the return of Kampuchea Krom, therefore, became a distinctive feature of its immediately post-independence dealings with Vietnam.

This stance was adopted by Prince Norodom Sihanouk, Cambodia's first post-independence leader, in the 1953-1970 period. The Sihanouk government initially held that Cambodia retained sovereignty over Kampuchea Krom and demanded its return. Over time, however, Phnom Penh was forced to acknowledge that the return of its 'lost territories' in southern Vietnam would be well nigh impossible. As an alternative, Sihanouk developed a strategy whereby Cambodia would accept the *"unjust and illegal"* boundaries drawn up by the French in return for Vietnamese compliance to two key principles.[149] Firstly, that the boundaries were *"non-negotiable"* and secondly that Cambodia alone would be in a position to propose minor adjustments to those border alignments. The first principle was designed to definitively put an end to what Cambodia viewed as Vietnam's progressive annexation of Cambodian territory, while the second was intended to ensure that Cambodia would receive some compensation for

146 Chanda (1986: 57) notes that *"Even the growth of the supposedly internationalist Communist movement in Cambodia was not immune from the racial prejudices."*

147 St John, 1998: 23-25.

148 Chanda, 1986: 56.

149 Heder, 1981: 23.

what it viewed as the major concession of giving up its claim to Kampuchea Krom.[150] Tellingly, Heder states that *"it cannot be emphasised too greatly that by the mid-1960s this posture had become defined, both in Kampuchea's diplomacy and in terms of popular domestic political perceptions, as a minimal position."*[151]

The Vietnamese approach, whether that of Saigon or Hanoi, was, however, very different and thoroughly incompatible with Sihanouk's approach. In contrast to Cambodia, which viewed itself as the sole aggrieved party, Vietnam regarded its colonially inherited border with Cambodia as disadvantageous to both sides because of colonial quirks and irrationalities in its course. As a consequence of this *"the Vietnamese negotiating stance...always stressed the possibility of mutual benefit through territorial exchanges that would eliminate these quirks."*[152]

To complicate the picture, on 9 March 1960 South Vietnam reportedly sent an official note to Cambodia *"reasserting"* Vietnamese sovereignty over certain islands in the Gulf of Thailand on the basis of claimed Vietnamese colonisation and administration.[153] The islands claimed were Baie (Koh Ta Kiev), Milieu (Koh Thmei), Eau (Koh Ses) and Pic (Koh Tonsay) which lie northwest of Phu Quoc island, and the northern Pirate islands which lie to the north of the Brevié Line in the vicinity of the two states' land boundary terminus on the coast (see Figure 7.13).[154] Cambodia apparently rejected the Vietnamese claim as contrary to fact.[155] The Vietnamese claim coincided with the construction of Cambodia's new port at Sihanoukville. Cambodia feared Vietnamese attempts to subjugate Cambodia. According to Sihanouk, *"the loss of the islands and territorial waters surrounding them would lead to a stifling of the port of [Sihanoukville]...and very soon to the end of our independence."*[156]

Having found the South Vietnamese authorities to be intransigent on border and territorial issues, Sihanouk used North Vietnam's desire for Cambodia to adopt a more

150 Heder, 1981: 23-24.
151 Heder, 1981: 24.
152 Heder, 1981: 25.
153 Chhak, 1966: 151. The US Department of State (1976: 11) notes that the dispute emerged in 1958. On 23 March the Vietnamese representative at the Second United Nations Conference on the Law of the Sea stated during the Conference that Vietnam reserved *"all its rights"* over the *"Phu-Du Archipelago"* including Phu Quoc (United Nations, 1960: 43).
154 US Department of State, 1976: 11.
155 US Department of State, 1976: 11. Although the US report does not explicitly say so it seems fair to conclude that when *"Vietnam"* is used in this context, it is the government of South Vietnam which is being referred to. For a detailed refutation of South Vietnam's claims see Chhak (1966: 151-157).
156 Quoted in Smith, 1965: 159. See also, Farrell, 1992.

anti-South Vietnam and anti-US stance as a lever to try to secure boundary concessions. Sihanouk later explained this policy in the following terms:

> *The reason I decided to cooperate with the Vietnamese was to put Communist Vietnam in Kampuchea's debt in such a way that it would never again dare raise a hand, so to speak, against our country and our people, its benefactors.*[157]

Cambodia duly broke off diplomatic relations with both South Vietnam and the USA in 1963 and 1965 respectively and engaged in negotiations with the Vietnamese communist National Liberation Front (NLF).[158] Sihanouk's strategy was not immediately rewarded. When the Cambodians demanded adjustments to the land boundary in their favour and asserted sovereignty over several islands on the southern (i.e. Vietnamese) side of the Brevié Line, the NLF rejected these claims out of hand.[159]

Subsequently, however, Cambodia was able to exert more pressure on the North Vietnamese, threatening to make the presence of their forces in neutral Cambodia, vital to the communist war effort against South Vietnam, conditional on the achievement of some form of border settlement.[160] A solution to the problem was found in May 1967 when Sihanouk demanded and received a unilateral declaration of respect for Cambodia's *"existing borders"* from the NLF. This was endorsed by the Democratic Republic of Vietnam (i.e. North Vietnam) in June of the same year.[161] Sihanouk portrayed these developments as a triumph for Cambodia. He argued that the statements amounted to Vietnamese acceptance of Cambodia's position on the boundary question such that the principle of non-negotiability of the border had been established.[162] Further, Vietnam's unilateral statement and the lack of a parallel one on the part of Cambodia was viewed as ensuring that Cambodia had the sole right to interpret any ambiguities in the course of the colonial boundary. Sihanouk also interpreted the term *"existing borders"* to mean the border alignment Cambodia had proposed to Vietnam in the past but which had been rejected by the Vietnamese.[163]

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157 Chanda, 1986: 61. See also Ton, 1989: 143.

158 For example, Burchett (1981: 139) reports that in a June 1994 letter to Nguyen Huu Tho, President of the NLF, Prince Sihanouk laid out Cambodia's negotiating position: *"We give up all territorial claims in exchange for an unambiguous recognition of the existing borders and of our sovereignty over the coastal islands illegally claimed by the Saigon administration..."*

159 Burchett, 1981: 140; Heder, 1981: 25. Van Ginneken (1983: 140) identifies the islands south of the Brevié Line demanded by Cambodia as the Tho Chu group and Hai Tac (Pirate Islands).

160 St John, 1998: 25.

161 Heder, 1981: 25-26; St John, 1998: 25.

162 According to Van Ginneken (1983: 141), Sihanouk claimed that the Vietnamese had promised him that ambiguities in the existing borders would be interpreted to Cambodia's advantage.

163 Heder, 1981: 26.

So far as islands and maritime boundary questions were concerned it is clear that the Vietnamese side saw their statements as constituting acceptance of the Brevié Line as the maritime boundary between the two states, not merely as the dividing line indicating sovereignty over islands.[164] Phan Hien, Vietnamese Vice-Foreign Minister, when challenged in 1977 as to whether Vietnam had recognised the Brevié Line replied:

> *Yes, we did, but at the time we agreed to the Brevié Line, we were not aware of problems of territorial waters, of continental shelf, etc. – those new phenomena.*[165]

For its part, the Sihanouk government ordered maps to be drawn up showing Cambodia's interpretation of the land boundary between the two states but leaving off offshore islands and the Brevié Line. This move was apparently designed to hold open the possibility of Cambodia making a renewed claim to islands south of the Brevié Line in the future.[166]

The Vietnamese authorities made no public objections to Cambodia's claims. While it is highly likely that they did not concur with Sihanouk's interpretations of their statements, it is probable that the North Vietnamese side recognised that protests would only serve to jeopardise Cambodian acquiescence to their use of technically neutral Cambodia's territory in order to prosecute their campaign against South Vietnam.[167]

In 1968 the Khmer Rouge began their armed struggle for control of Cambodia and in March 1970 Sihanouk was removed from office in a *coup d'état* and replaced by General Lon Nol. These events forestalled any further substantive discussions of boundary questions until both the Vietnamese and Cambodian communists emerged as victors in 1975. However, during this period both Cambodia and South Vietnam made claims to specific areas of continental shelf in the Gulf of Thailand.

Claims to maritime jurisdiction and islands

As previously mentioned, on 9 June 1971 the South Vietnamese government unilaterally defined the limits of the continental shelf appertaining to Vietnam (see Section 5.3.4). This claim to maritime jurisdiction also included claims to sovereignty not only to Phu Quoc but to the Phu-Du group (principally Koh Thmei and Koh Ses) to the northwest

164 Heder 1981: 26; Chanda, 1986: 33.
165 Interview with Nayan Chanda in June 1977, quoted in Chanda (1986: 33).
166 Heder, 1981: 26.
167 Heder, 1981: 27; Chanda, 1986: 33; St John, 1998: 25.

and all the other islands in the eastern half of the Gulf of Thailand south of latitude 10° north. Among the latter islands were the Poulo Wai group and Poulo Panjang (Thu Chu) groups of islands considerably further offshore than Phu Quoc and therefore of great significance in relation to claims to maritime jurisdiction, particularly vis-à-vis the opposite Gulf of Thailand states, Thailand and Malaysia.

On 1 July 1972 Cambodia followed suit, unilaterally defining the boundary of Cambodia's continental shelf by *Kret* No.439/72 (see Section 5.3.1). This claim to maritime space was also promulgated on the basis of sovereignty over the Phu-Du group, Phu Quoc and associated islets and the vital Poulo Wai and Poulo Panjang groups towards the centre of the Gulf of Thailand.

Furthermore, within a week of Vietnam announcing its claim to an EEZ on 12 May 1977, Radio Phnom Penh broadcast listing no less than 44 islands *"in our territorial sea."*[168] Significantly, Phu Quoc was not included in the list.[169] The Cambodian radio station subsequently repeated the Cambodian governments claims to islands and warned that Cambodia, *"will not tolerate any aggression or encroachment by any enemy from near or distant lands against our territorial waters and islands."*[170]

In addition to issuing these formal claims to maritime jurisdiction, the Cambodian Lon Nol and the South Vietnamese (Saigon) governments became embroiled in a dispute over offshore oil exploration. Despite reports in October 1972 that Cambodia and South Vietnam would soon be actively engaged in maritime boundary negotiations and in early 1973 that such a boundary between them was *"more or less agreed upon"* relations deteriorated over the oil exploration issue in late 1974.[171] In February 1974 it had been reported that the South Vietnamese Petroleum Board had made a proposal to the Cambodian Directorate of Mines which would have resulted in a roughly equal division of the area of overlap with Cambodian sovereignty over Poulo Wei and Vietnamese ownership of Phu Quoc and Tho Chu being confirmed. This proposal was apparently *"informally rejected."*[172]

In September 1974, however, an Elf-Esso joint venture, holding an exploration licence issued by Cambodia drilled a 'wildcat' well southwest of Poulo Wei at a point just to the north of the Brevié Line. Following vigorous protests from Saigon, including

168 *FEER*, 18/8/77.
169 Prescott, 1981: 29.
170 *FEER*, 18/8/77.
171 Siddayao, 1978: 82.
172 Siddayao, 1978: 82.

a threat to dismantle the offending drilling rig by force if necessary, the Cambodian's intensified naval patrolling in the area and deployed a 300-strong battalion of marines to a nearby naval base.[173] With the safety of their crew in jeopardy, however, the oil companies involved took the decision to suspend exploration activities.[174] This incident appeared to run counter to South Vietnam's earlier willingness to relinquish its claim to the Poulo Wei group and maritime areas north of the Brevié Line. The fact that when the oil dispute was made public, the Khmer Rouge made an explicit claim to Poulo Wei and the site where the drilling took place while their Vietnamese counterparts took no position *"implied to the Kampucheans that the Vietnamese might be planning to take advantage of the ambiguities of the situation to make claims on territory to the north of the Brevié Line."*[175] This serves as a striking illustration of the depth of the suspicion and latent animosity that existed between the Khmer Rouge and Vietnamese communists, despite their shared ideological background.

The conflict over islands

No sooner had the Second Indochina War come to a close, with the Khmer Rouge and Viet Minh triumphant in Cambodia and Vietnam respectively, than *"the hitherto submerged antagonisms between the three parties – China, Vietnam and Kampuchea – came to the surface"*[176] leading to renewed armed conflict and the Third Indochina War.[177] Clashes between Cambodian and Vietnamese forces occurred in the immediate aftermath of the Khmer Rouge's capture of Phnom Penh in April 1975.[178] While the skirmishes along the land boundary were minor,[179] those offshore were more significant.

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173 Siddayao, 1978: 82-83.

174 Johnston and Valencia. 1991: 136.

175 Heder, 1981: 28

176 Elliott, 1981: 1. Prior to the revolutionary victories of 1975 Chanda (1986: 5) refers to tension between the Khmer Rouge and Viet Minh as a *"largely invisible feud."*

177 For a detailed survey of the conflict see Elliott (1988) and Chanda (1986). See also, Evans and Rowley (1984); Sager (1991); Chandler (1991); and, Hood (1992).

178 Friction between the two sides had, in fact, already been growing in the early 1970s as a result of Khmer Rouge attempts to exert control over Vietnamese-controlled areas on Cambodian territory (Heder, 1981: 27).

179 According to Heder (1981: 27-28) these largely involved skirmishes between local security forces stemming from Vietnamese forces not evacuating territory considered by the Cambodians to be theirs as a result of the Vietnamese statements of 1967. He does, however, acknowledge that the Cambodians did not make a concerted attempt to evict the Vietnamese and that some of the Cambodian crossings into Vietnam proper which also caused clashes were *"probably inadvertent."* In contrast, St John (1998: 25) states that Khmer Rouge troops invaded Vietnam on 1 May 1975, the day after the fall of Saigon, with the intention of reoccupying Kampuchea Krom, but that the Vietnamese successfully repelled these attacks. See also Kiernan (1980).

The possibility of conflict in the maritime arena were enhanced as a result of mutual suspicions leading to more intensive patrolling by their naval forces. The Cambodians were distrustful of the Vietnamese in the wake of the 1974 drilling incident, while the Vietnamese were in turn on guard because of Prince Sihanouk's ambiguous policy concerning the Brevié Line and offshore islands.[180] In early May 1975 Cambodian and Vietnamese patrol boats exchanged fire off the coast of Phu Quoc island.[181] The Cambodians followed this up by shelling the Vietnamese patrol boats' bases on Phu Quoc[182] and launching a seaborne assault against Vietnamese positions on the island on 4 May.[183] Six days later, Khmer Rouge forces occupied Tho Chu (Poulo Panjang) and *"evacuated at gunpoint five hundred Vietnamese inhabitants, who were never heard of again."*[184] Then, on 12 May, the Cambodians captured an American container ship, the *Mayaguez*, off Koh Tang.[185]

Both the Americans and Vietnamese swiftly took punitive action against the Khmer Rouge. The Americans forced the Cambodians to release both its captured ship and crew while the Vietnamese launched an air and sea assault that resulted in the recapture of Tho Chu.[186] Chanda contends that it is conceivable that Cambodia's brief offensive against Vietnamese islands in 1975 was the consequence of overzealous commanders interpreting their orders to defend Cambodian territory so as to include such aggressive actions.[187] However, he suggests that it is more likely that the attacks were the result of a *"high-level directive"* and that the Khmer Rouge may have

180 Heder, 1981: 28.

181 Heder (1981: 28-29) speculates that the Vietnamese patrol boats may *"very possibly"* have been operating beyond the 3km-breadth administrative waters accorded to Phu Quoc under the Brevié Line - something the Vietnamese had *"never been happy about."*

182 Heder, 1981: 29.

183 Chanda, 1986: 12-13. However, Burchett (1981: 145) cites the Vietnamese commander of Phu Quoc as saying that his troops had made a demonstration of force after which the Cambodian's left with no shots being fired.

184 Chanda, 1986: 13; Van Ginneken, 1983: 134; *Petroleum Economist*, November 1992. Burchett (1981: 145) puts the number of disappeared residents at 515 and speculates that they were probably killed and thrown overboard from the boats taking them away from the island.

185 Van Ginneken (1983: 133), citing Chhak (1966), notes that Koh Tang had previously been claimed by Vietnam.

186 According to Chanda (1986: 9-10), US forces launched a rescue mission against Koh Tang on 15 May, not realising that the crew of the *Mayaguez* had already been taken to the mainland and then released. The resulting firefight left 15 Americans dead together with an unknown number of Cambodians. The US Marine rescue team was itself pinned down by unexpectedly stiff Khmer Rouge resistance but Americans were able to deploy such overwhelming force that the Cambodians were forced to give in (Chanda, 1986: 9-10; Sager, 1991: 124). Van Ginneken (1983: 133) describes the US action as a final military retaliation and expression of their *"impotent rage"* in the face of defeat. According to Heder (1981: 29), the Khmer Rouge forces on Tho Chu were *"pushed into the sea...by the end of May."*

187 Chanda, 1986: 13.

considered *"actual occupation was the strongest argument in any territorial dispute"* thinking that in the wake of the fall of Saigon and disorder in southern Vietnam that *"the time was ripe to make good the claim by physical occupation."*[188]

Vietnam's swift and effective response to Cambodia's actions caused an almost immediate backtracking in Phnom Penh's position. On 2 June, Vietnamese Politburo member Nguyen Van Linh met Pol Pot in the Cambodian capital who, in Chanda's words, *"pleaded guilty."*[189] Pol Pot stated that encroachments on Vietnamese territory had occurred but that the resulting *"painful, bloody clashes"* were simply due to soldiers' *"ignorance of local geography."*[190] The Vietnamese side clearly did not set much store by Cambodian professions that mistakes had been made and launched further attacks resulting in the capture of Poulo Wei – an action ironically coinciding with a visit by Pol Pot and two other senior Khmer Rouge leaders to Hanoi.[191] In August 1975 Vietnam acknowledged that the Poulo Wei group constituted Cambodian territory and handed them back to the Cambodians in what appears to have been a gesture of good faith.[192] The border issue then reportedly remained relatively quiescent until mid-1976.[193]

The May 1976 technical negotiations

In April 1976 Cambodia and Vietnam agreed to hold a high-level summit scheduled for June of the same year to discuss outstanding problems between the two states. These talks were prefaced by technical discussions which took place in Phnom Penh in May 1976.[194] At the technical meeting the two sides agreed in principle that the colonial-era land boundary remained valid. However, the Vietnamese side apparently either made no mention of their statements of 1967 or took the position that they had been misinterpreted by Sihanouk and proposed *mutual* readjustments to the border.[195]

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188 Chanda, 1986: 13. Burchett (1981, 143-144), drawing on Prince Sihanouk's *Chroniques de Guerre et d'Espoir* [Chronicles of War and of Hope], notes Pol Pot and the Khmer Rouge leadership's *"insane illusions"* over the Khmer Rouge being *"the real architects of the American defeat, not only in Cambodia but in the whole of Indochiina!"* encouraging them to think an invasion of the islands and Kampuchea Krom to be feasible.

189 Chanda, 1986: 14.

190 Chanda, 1986: 14.

191 Heder, 1981: 29; Chanda, 1986: 14. According to Chanda, at the meeting in Hanoi the Cambodians wanted to discuss a settlement to the border issue on the basis of the 1967 Vietnamese statements but the Vietnamese side refused to discuss the problem.

192 Heder, 1981: 29; Chanda, 1986: 15.

193 Heder, 1981: 29.

194 Chanda, 1986: 32-33.

195 Heder, 1981: 30.

The Vietnamese position therefore contradicted Prince Sihanouk's understanding of the concessions he had wrung from Vietnam in 1967. As previously mentioned, these concessions – the inviolability of the border in principle and the unilateral right of Cambodia to propose minor readjustments to it – were regarded as the absolute minimum compensation for Cambodia in exchange for Phnom Penh relinquishing its claim to Kampuchea Krom.[196] Although Sihanouk was no longer in power in Cambodia, the ultranationalist Khmer Rouge were likewise hostage to severe domestic political constraints in their approach to the border question:

> *Moreover, in some ways these constraints operated more strongly than in the past because the Pol Pot government claimed to be, and perceived itself as, a regime of national liberation that was more capable of protecting Kampuchea's national interests than its predecessors. Thus...the position adopted on the frontier issue was a key barometer, both at the elite and the mass levels, of its fidelity to Kampuchean nationalism and therefore is related to its national legitimacy.*[197]

The Cambodian side therefore clung to Sihanouk's 1967 formula.[198] Cambodia continued to renounce its former claims to its 'lost territories', rejecting any calls for mutual renegotiation of the border line. Furthermore, the Cambodians raised objections to what they viewed as *de facto* Vietnamese aggression through Vietnamese occupation of areas which Prince Sihanouk's government had designated on its maps as Cambodian, and demanded Vietnamese withdrawals from these zones as a confidence-building measure before further talks.[199] Perhaps unsurprisingly the Vietnamese rejected Cambodian calls for withdrawals as a precondition for talks, instead viewing them as a possibility in the aftermath of talks and a mutually beneficial settlement of the border question potentially involving two-way territorial exchanges.[200]

The technical meeting's dealings on the question of islands and the maritime boundary generated further significant divergences in the parties' views. The Cambodians made what they perceived to be a major concession by abandoning any claims to islands south of the Brevié Line as had been Prince Sihanouk's cherished ambition, and accepting the Brevié Line as the dividing line not only for islands but also

196 Heder, 1981: 30.
197 Heder, 1981: 24.
198 Indeed, it has been noted that Khmer Rouge policy on boundary negotiations with Vietnam *"shows a striking continuity with that initiated by Prince Sihanouk"* (*FEER*, 18/8/77).
199 Heder, 1981: 30.
200 Heder, 1981: 30.

as the maritime boundary.[201] This was clearly a position that could be justified on the basis of Vietnam's 1967 statements as this *"was evidently in line with the Vietnamese understanding of the import of those statements at the time."*[202] Vietnam rejected Cambodia's proposal and instead proposed a readjustment to the Brevié Line in the vicinity of Phu Quoc so as to give Vietnamese vessels better access to the island. Thus, Cambodia's minimal position was undermined and instead of gaining some compensation for giving up its historic claims to islands south of the Brevié Line, Cambodia was asked to give up waters to the north of that line. It is worth quoting Heder at some length on this issue:

> *The Kampucheans saw the Vietnamese proposals at the technical conference as an attempt to undermine the principle of the non-negotiability of the borders, to deny the existence of the recompensory elements that Sihanouk had linked to his renunciation of historical claims to Kampuchea Krom, to take advantage of the Kampuchean renunciation of historical claims on islands south of the Brevié Line and on Phu Quoc by annexing territorial waters north of it, and to rely on their military presence in a number of Kampuchean zones in order to negotiate, in a big power way, from a position of strength. Acceptance of the Vietnamese proposals would have made the Kampuchean regime vulnerable to charges of lack of fidelity to and inability to protect Kampuchea's national interests.*[203]

As a result of these major differences, the Cambodian delegation announced the suspension of the technical talks which resulted in the cancellation of the summit meeting planned for June. Cambodia stated that the talks had broken down because of Vietnamese attempts to redraw the *"frontier of Kampuchea-Vietnam, particularly the maritime frontier, introducing plans of annexation of a big part of the seas of Kampuchea"* and accused Vietnam of completely rejecting the maritime boundary delimitation agreed upon in the mid-1960s.[204] Subsequently, a senior Vietnamese diplomat, commented that: *"We don't accept the Brevié Line as an international boundary"* and that the 3km zone of Vietnamese waters around Phu Quoc was *"insufficient for the defence of the island."*[205]

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201 Heder, 1981: 30-31. Heder states that the Brevié Line was accepted by Cambodia as the border delineating sovereignty over islands and *"territorial waters."* It is unclear whether the author meant the latter term in its law of the sea meaning. It is likely that Cambodia was adopting the Brevié Line as the maritime boundary for the continental shelf as well as territorial waters.

202 Heder, 1981: 31.

203 Heder, 1981: 31.

204 Chanda, N. (1978) 'All at sea over the deeper issue', *FEER* (3 February).

The slide towards war

Cambodia's suspension of the negotiations was designed to demonstrate to Hanoi the unacceptability of its stance and Phnom Penh's own commitment to its position. Unfortunately, this did not induce any shift in Vietnam's stance. Initially, tensions along the border were low and any incidents were handled by bilateral liaison committees. However, as frustrations over the deadlock in negotiations mounted, so tensions escalated.[206] Khmer Rouge statements on the border issue dating from this period were characterised by ultranationalist sentiments, for example, *"enemies of all stripes, near and far, big and small have always nurtured criminal ambitions of swallowing our territory and subjugating our people."*[207] Similarly, according to Phnom Penh the conflict with Vietnam did not constitute *"an ordinary border dispute"* but was the consequence of Hanoi's attempts *"to turn Cambodia into its satellite in an Indochinese federation and spread its influence and power over Southeast Asian countries in the future."*[208] In response to Cambodia increasing its patrols in areas Phnom Penh believed the Vietnamese were illegally occupying, Vietnam sent more reinforcements to the border.[209] The military situation on the border continued to escalate in 1977 and Cambodia officially broke off diplomatic relations with Vietnam at the end of the year. Fighting along the border continued intermittently in 1978 until ultimately Vietnam invaded Cambodia and deposed the Khmer Rouge in December 1978.[210]

In analysing the Third Indochina War, it is worth highlighting not only the historical antipathy, what Chanda terms their *"scarred historical memory"*,[211] between Cambodians and Vietnamese as a factor, but also that between Vietnamese and Chinese. However, ethnic and racial tensions and border issues alone did not foment the war. Chanda contends that although *"a certain tension"* was inevitable as a result of the traditional distrust that obtained between the parties and that a *"re-emergence of irredentism and a contest over resources, so long frozen by colonial rule and foreign*

205 *FEER*, 3/2/78.
206 St John, 1998: 27-29.
207 Nations, R. (1977) 'Inside the bitter border', *FEER* (18 August).
208 Chanda (1978) 'Peace prospects grow dim', *FEER* (3 February).
209 Heder, 1981: 31-34.
210 St John, 1998: 29.
211 Chanda, 1986: 407.

intervention" was also natural, these factors did not make war inevitable.[212] Instead, ideological and superpower rivalries were crucial:

> *The superpowers played a critical, if indirect role in the escalation of the conflict. Vietnam's friendship treaty with the Soviet Union preceded its invasion of China's ally Kampuchea by one month, and China's attack on Vietnam followed shortly after signing the normalisation pact with the United States.*[213]

While the Cambodians viewed their relations with Vietnam in terms of national survival – a factor heavily played on by the Khmer Rouge to bolster their legitimacy – the Vietnamese saw the Cambodian problem as secondary to the threat of China. Hanoi feared that China, its own traditional enemy, was threatening Vietnam with a pincer movement from the north and southwest and pursuing a greater-Han hegemonic strategy.[214] The Vietnamese also considered that, as the prime victors in the conflict against the French and Americans in the first two Indochina wars, they had a right to act as senior partner in a 'special relationship' with both Cambodia and Laos – an idea that was anathema to the Cambodians who saw Vietnamese ambitions to take a regional lead in the context of the two states' troubled history and as equating to Vietnamese hegemony.[215] Cambodia therefore regarded its links with China as a means to counteract the perceived Vietnamese threat and to safeguard Cambodian independence and territorial integrity.[216] China in turn appears to have viewed Vietnam as a Soviet satellite and part of a Soviet policy to contain China in a ring of anti-Chinese states, therefore regarding Vietnam as the *"Cuba of Southeast Asia."*[217] Elliott notes an *"ironic parallelism"* in that:

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212 Chanda, 1986: 407.

213 Elliott, 1981: 2-3.

214 Chanda (1986: 5-6) summarises the Cambodian view as being that the conflict represented a *"preventative war of survival against a historic enemy predestined to 'swallow' Cambodia"* while to the Vietnamese Cambodia was being used by its *"millenary enemy"*, China, in an attempt to subjugate it.

215 Pao-Min (1985: 58) terms Vietnam's desire for a special relationship as part of Hanoi's *"thinly veiled paternalism"* towards Cambodia. Van Ginneken (1983: 148) highlights Cambodia's *"hyper-sensitivity"* over border issues and notes that talk of an 'Indochinese Federation' *"revived the age-old fear"* that Cambodia would gradually cease to be an independent entity and become a mini-state comparable to Andorra, Monoco or Lichtenstein.

216 When in power in the 1960s Prince Sihanouk had also actively pursued this policy. Regarding Cambodia as a *"kitten"* compared to the Vietnamese *"lion"* he noted that *"over the head of the lion, the Cambodian kitten will have its eyes fixed on the Chinese dragon"* (Ton, 1989: 143).

217 Elliott, 1981: 2-5. See also Pao-Min, 1985.

> *In the ascending hierarchy of size and power, each actor regarded its own relations with the lesser power as reasonable and innocuous, and ascribed the source of conflict to the threatening behaviour of the greater power. Only Kampuchea, at the bottom of the ladder, had no such bifarious view.*[218]

It is precisely the latter point that Elliott highlights, Cambodia's *"single-minded obsession with Vietnam"*, as providing the key explanation for Cambodia's actions in the build up to the Third Indochina War.[219] It is also important to acknowledge that the Khmer Rouge-North Vietnamese alliance prior to 1975 was one based on the necessity to unite against common foes but was an uneasy one, not least because of serious ideological rifts between the two sides.[220] The disintegration of the Cambodian-Vietnamese alliance and genesis of the Third Indochina War is therefore unsurprising when all the historical, ethnic and racial and ideological factors, set in the context of Cold War rivalries, are taken into account.

Agreements between the People's Republic of Kampuchea and Vietnam

The establishment of the People's Republic of Kampuchea (PRK) in the wake of the Vietnamese invasion of Cambodia unsurprisingly led to significantly more cordial relations between the two states. Several agreements related to land and maritime boundary issues were signed between Vietnam and the PRK during the 1980s. Among these, the most significant as far as maritime boundary delimitation is concerned was the *Agreement on Historic Waters of Vietnam and Kampuchea* signed on 7 July 1982. This agreement is dealt with in detail in Section 6.3.

The other agreements concluded between Cambodia and Vietnam in this period referred primarily to the two sides' land boundary. On 20 July 1983 a treaty on the settlement of border problems and an agreement relating to border regulations was

218 Elliott, 1981: 4.

219 Elliott, 1981: 4.

220 Chanda, 1986: 62-64. For example, when, in late 1972, the Vietnamese tried to induce the Khmer Rouge to enter into negotiations with the Lon Nol government in parallel with the US-Vietnam Paris peace talks, they were accused of not wanting the Cambodian resistance to succeed on its own but be subject to Vietnam. According to the Khmer Rouge's *Black Book*, by 1966 *"there was a fundamental contradiction between the Cambodian revolution and the Vietnamese revolution. The Vietnamese wanted to put the Cambodian revolution under their thumb"* (Chanda, 1986: 62). See Democratic Kampuchea's 1978 publication *Black Paper*. The Khmer Rouge refusal to contemplate negotiations with the Lon Nol regime had dire consequences for Cambodia. Following the Paris talks with the Vietnamese, the US had a free hand in Cambodia and in February-August 1973 proceeded to drop 257,465 tons of bombs on Cambodian territory - 50% more than the tonnage dropped on Japan in World War II (Chanda, 1986: 68). The Khmer Rouge blamed the Vietnamese for this, terming their signing of a separate peace with the Americans as a *"betrayal"* (Chanda, 1986: 68).

signed, according to which both sides agreed to regard their international boundary as the *"present line"* between them as defined on a 1:100,000-scale map published by the geographic service of Indochina in or about 1954.[221] Cambodia and Vietnam undertook to delimit their land and sea borders in a spirit of *"equality and mutual respect"* in the interests of the special relations between them and in conformity with international law and practice.[222]

The other boundary-related agreement reached between Cambodia and Vietnam in the 1980s was the *Treaty on the Delimitation of the Vietnam-Kampuchea Frontier* signed on 27 December 1985.[223] Under the terms of this treaty the parties agreed to respect the *"present demarcation line"* specified as *"the line that was in existence at the time"* of independence.[224] The 1:100,000-scale map mentioned in the 1983 accord was also cited in the 1985 treaty as the basis for delimitation.

As noted in relation to the joint Historic Waters Agreement, there is some uncertainty as to the continued validity of agreements concluded between the PRK and Vietnam. It is, however, likely that these agreements do remain in force (see Section 6.3).

7.3.3 Scope of the dispute

As a result of conflicting claims to sovereignty over islands, which still existed in the early 1970s, the Cambodian and Vietnamese unilateral continental shelf designations overlapped to a significant degree encompassing an area of approximately 18,068nm^2 (61,973km^2) (see Figure 7.14).[225] To date neither of these maritime jurisdictional claims has been officially retracted. Nevertheless, as has been demonstrated, the dispute over island sovereignty has been resolved, thus implicitly undermining the validity of large parts of both Cambodia and Vietnam's continental shelf claims which were based on each state's position that it owned all contested islands.

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221 Amer, 1997a: 81.

222 Amer, 1997a: 81.

223 Ratified by Vietnam on 30/1/86 and by Cambodia on 7/2/86 (Amer, 1997a: 81).

224 Amer, 1997a: 82.

225 Calculated using DELMAR and British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000. The latter was used in order to approximate the normal baseline along the mainland coast such that coordinates appropriate for input into DELMAR could be ascertained. Excludes Phu Quoc island, the area of which was calculated using a planimeter and British Admiralty Chart 3985 , 1987 edition, at 1:500,000 scale. The area of relatively small islands which fall within the limits of the overlapping claims area are included. However, their area is considered sufficiently small not to have a significantly distorting effect on the overall calculation of the extent of the overlapping claims area.

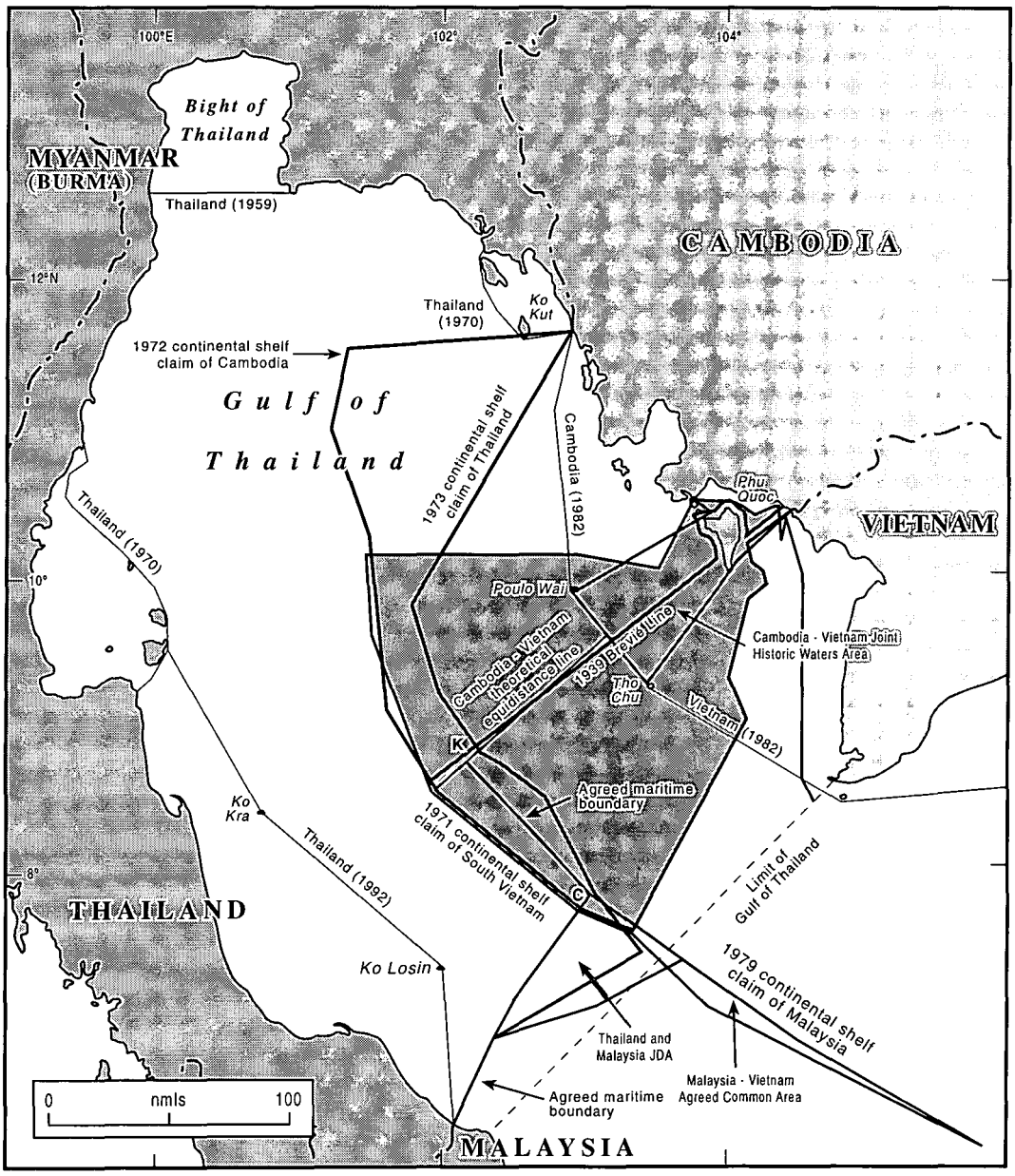


Figure 7.14: *Overlapping Claims between Cambodia and Vietnam in the 1970s*
Source: Author's research.

Within their straight baseline systems the two states, by means of their Historic Waters Agreement, have defined the extent of their disputed waters. This joint claim encompasses an area of 2,802nm^2 (9,609km^2) of the Gulf of Thailand (see Section 7.3).[226] Beyond their straight baselines, the area of overlap appears to be confined to the difference between an equidistance line between Cambodia's Poulo Wei islands and Vietnam's Tho Chu (Poulo Panjang) islands on the one hand and an extension of the Brevié Line offshore on the other.

Approximately midway between the limit of the joint historic waters area and the limits of Cambodia and Vietnam's claims in the central Gulf of Thailand the equidistance line and Brevié Line cross. Thus, immediately seaward of the straight baseline linking Poulo Wei to Tho Chu, the Brevié Line is located to the southeast of the equidistance line. Further offshore, however, the Brevié Line lies to the northwest of the equidistance line. Were Cambodia to claim the Brevié Line in preference to the equidistance line, therefore, it would gain approximately 100nm^2 (344km^2) of maritime space in the vicinity of the historic waters area but lose approximately 57nm^2 (195km^2) further offshore (see figure 7.15).[227]

7.3.4 Progress in Negotiations

Relations between the new Royal Government of Cambodia, installed in Phnom Penh in mid-1993 following UN-sponsored elections, and Vietnam in the 1990s have been dominated by two issues – border questions and concerns over the treatment of ethnic Vietnamese in Cambodia. Discussions on border problems have, however, been largely concentrated on concerns over the land rather than maritime boundary between the two states.

A number of high-level meetings have been held in the post-1993 period, all of which have stressed the two states' maintenance of friendly, cooperative relations and the need to solve any bilateral problems, including border issues, peacefully through negotiations. Additionally, discussions have been undertaken between expert groups established by both parties to specifically deal with border questions[228] and through the

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226 Measured with a planimetre on a copy of British Admiralty Chart 3879, 1957 edition at a scale of 1:240,000.

227 Calculated using DELMAR and British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000.

228 The first meeting of the working groups on border issues took place in ho Chi Minh City on 20-23 May 1996 (Amer, 1997a: 86).

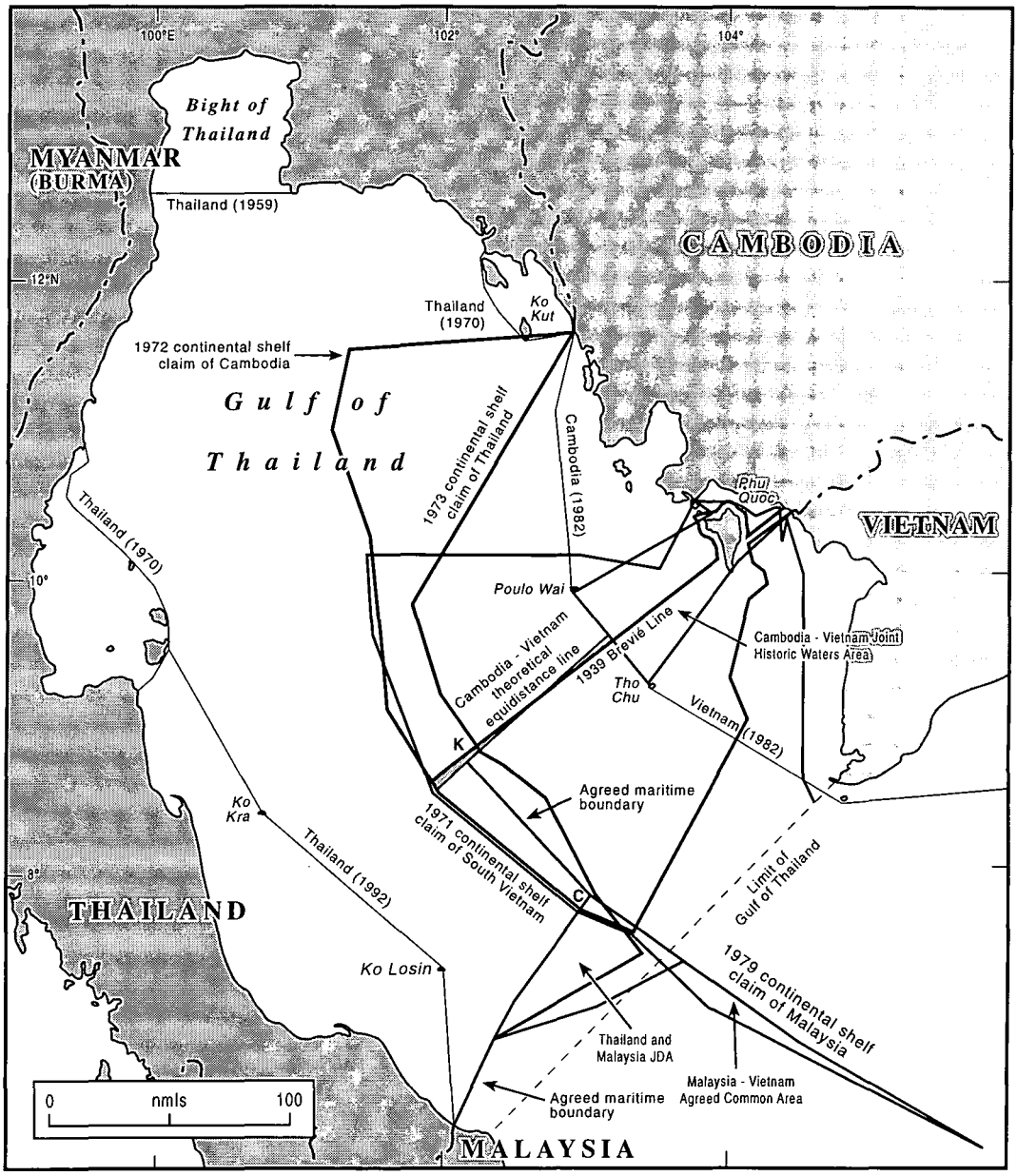


Figure 7.15: *Overlapping Claims between Cambodia and Vietnam in the 1990s*
Source: Author's research.

Vietnam-Cambodia Joint Commission for Scientific and Technical Cooperation.[229] These discussions led to agreement on a mechanism for solving border problems whereby any incident would be addressed at the local level first.[230]

Despite these positive developments, tensions have been engendered in relations as a result of numerous accusations of Vietnamese violations of the common land boundary. In a message to the people of Cambodia broadcast on 31 October 1993, King Sihanouk stated that the issue of Cambodia's territorial integrity was one of the key issues facing the country and accused Vietnam of *"slicing and annexing"* Cambodia's *"land, sea and continental shelf."*[231] In May 1994 Cambodian head of state King Sihanouk stated that Vietnam had been *"nibbling away"* at Cambodian territory by moving border demarcation markers.[232] Similarly, Cambodian First Prime Minister Norodom Ranariddh has made repeated allegations, particularly in the first half of 1996, accusing Vietnam of the *"annexation"* of Cambodian territory and even going so far as to threaten the use of force to redress the situation.[233] For their part the Vietnamese authorities have consistently denied that their forces have undertaken any incursions into Cambodian territory and have called for peaceful negotiations to resolve outstanding problems.

It is highly probable that the causes of these accusations lie within Cambodian domestic politics rather than being the result of Vietnamese actions on the border. This is supported by the fact that the two sides have agreed in principle that the colonial French boundary line should be adopted as the basis for their delimitation. It is therefore fair to say that, from a technical point of view, Cambodia and Vietnam are faced with questions of demarcation rather than delimitation.[234] While Vietnam has spoken with one voice, Cambodia's co-premiers have provided conflicting assessments of the border problem, King Sihanouk's statements concerning Vietnam have often proved to be ambivalent and the opposition Khmer Rouge have advanced virulently anti-Vietnamese policies.[235]

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229 Meetings of the Joint Commission took place in Hanoi on 8-10 September 1995 and in Phnom Penh on 26-28 February 1997 (Amer, 1997a: 83 and 87).

230 Amer, 1997a: 83; *Bangkok Post*, 11/4/96; *The Nation*, 11/4/96.

231 Voice of the Great National Front of Cambodia, 8/11/93 (SWB FE/1844).

232 Amer, 1997a: 82.

233 The *Nation*, 16/3/96; *Bangkok Post*, 17/3/96; Amer, 1997a: 83-86. For example, on 24 January 1996 Prince Ranariddh claimed that whereas in the past the Khmer Empire had been immense nowadays Cambodia had shrunk to a *"barely visible dot on the world map"* (*Boundary and Security Bulletin*, 4, 1(Spring): 37-38).

234 Amer, 1997a: 88; St John, 1998: 30.

235 St John, 1998: 30.

It seems clear that anti-Vietnamese sentiment remains a powerful weapon in Cambodia's domestic political arena. Parallels may therefore be drawn between the 1990s and Cambodia's past dealings with Vietnam. The same constraints that obtained in the post-independence Sihanouk and Khmer Rouge eras are still in evidence today and there is clearly the possibility of the border question being used as a 'political football' on Cambodia's domestic political scene. With regard to the offshore area, the events outlined above have resulted in a fixation with the land boundary and have therefore retarded progress towards maritime boundary delimitation.

Some hope for the future does, however arise from events in June 1998. Following Cambodian First Prime Minister Ung Huot's visit to Hanoi on 1-2 June to discuss Cambodia's protests over the conclusion of the Thai-Vietnamese maritime boundary treaty (see Section 6.5), it was reported that Cambodia and Vietnam held the first meeting of their newly established joint border commission on 17 June 1998.[236] Although disputed offshore areas were not on the agenda of this initial meeting, which was devoted to issues of principle, it is encouraging that bilateral negotiations, possibly including maritime boundary concerns in the future, have been resumed.[237] Furthermore, on 1 March 1999 a meeting of Cambodia's Council of Ministers decided to establish joint committees devoted to Cambodia's borders with each of Laos, Thailand and Vietnam.[238]

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236 *Bangkok Post*, 18/6/98.

237 Cambodian-Vietnamese relations were put under renewed strain in July-September 1998, however, after several attacks on ethnic Vietnamese in Cambodia resulting in at least seven deaths and the vandalisation of the Cambodia-Vietnam friendship monument. The Vietnamese Foreign Ministry released a strongly-worded statement in response to these incidents on 7 September 1998:

> *The Vietnamese government and people vehemently protest these barbarous acts taken by a number of extremist elements which seriously violate human rights, and further complicate the situation in Cambodia, undermine the friendship between the neighbours of Vietnam and Cambodia, and poison the atmosphere of peace, cooperation and development in Southeast Asia* (VNA news agency, Hanoi, 9/9/98 (SWB FE/3327)).

238 National Voice of Cambodia, Phnom Penh, 1/3/99 (SEB FE/3473). The border joint committees appear to be 'joint' in the sense that they are interdepartmental. for instance, the Cambodia-Vietnam border joint committee consists of the government advisor in charge of border issues plus representatives from the armed forces, Ministry of Foreign Affairs and International Cooperation, Governors of the relevant border provinces, the Geography Department of the Urbanisation and Construction Ministry, the Interior Ministry's Land Borders Department, the Border Defence Department of the Chief of Staff's office, the Interior Ministry's Maritime Border Department and the Justice Ministry.

7.3.5 Delimitation Within the Joint Historic Waters Area

Unlike unsettled delimitations elsewhere in the Gulf of Thailand, instead of the disputed area being defined by the competing overlapping claims of the parties, in the case of Cambodia and Vietnam's historic waters claim, the parties have jointly defined the extent of the zone disputed between them that ultimately requires division. This is not least because their original continental shelf claims of the early 1970s have been rendered redundant as a realistic indication of the extent of their overlapping claims as a consequence of the resolution of the two states' dispute over island sovereignty.

It is also worth emphasising that the delimitation called for between Cambodia and Vietnam in the area in question is for a historic waters boundary. As mentioned in Section 6.3, as most claims to historic waters are made by one state alone, historic waters boundaries are extremely rare. As a result the international law of the sea and customary law based on state practice is largely underdeveloped and gives minimal hints as to the appropriate rules to apply in such circumstances. Perhaps the best case comparable to the Cambodia-Vietnam situation is that between India and Sri Lanka through the Palk Strait and Bay. Here a historic waters boundary was delimited which employed *"elements of equidistance."*[239] However, it is well to note that the geographical circumstances are different. Whereas in the India-Sri Lanka case the delimitation was exclusively between opposite coasts, the delimitation between Cambodia and Vietnam within the confines of their joint historic waters area involves situations of both oppositeness and adjacency. With regard to delimitations between areas of historical waters, it is therefore probable that the parties should simply be guided by equitable principles (see Section 3.1.2).

As previously mentioned, Article 2 of the Cambodia-Vietnam Agreement on Historic Waters states that:

> *The two sides will hold at a suitable time negotiations in the spirit of equality, friendship, and respect for each other's independence, sovereignty, territorial integrity, and the legitimate interests of each side in order to delimit the maritime frontier between the two countries...*

On this basis Cambodia is likely to construct its arguments primarily on the basis of its position as a geographically disadvantaged state. Cambodia can contend that the presence of the Vietnamese island of Phu Quoc directly offshore and fronting

239 Charney and Alexander, 1993: 1,412.

approximately 26nm (48km) of its mainland coast[240] provides a severe impediment to its potential maritime claims were strict equidistance to be applied as a delimitation method. Accordingly, Cambodia can argue that any such delimitation would be highly inequitable and would be to Cambodia's detriment.

Vietnam would be likely to counter such arguments on the grounds that there is no question of the substantial island of Phu Quoc being anything other than a fully fledged island under the definition provided by Article 121 of UNCLOS (see Section 3.5). As such Phu Quoc is entitled to the same maritime jurisdictional rights accorded to other land territory. In the context of a historical waters delimitation, therefore, Vietnam could argue that there is no justification for giving Phu Quoc a reduced weight in delimitation.

Cambodia could, however, also advance the claim that the Brevié Line should constitute the maritime boundary through the historic waters area. Cambodia can strongly argue that the Brevié Line has been established over a considerable period of time since its formulation in 1939 and that during that time it has been respected by both sides as the proper limits of their jurisdiction. Furthermore, Cambodia can point to past Vietnamese actions, crucially the statements made by the NLF and North Vietnamese government in 1967, which can be viewed as proof of Vietnam's acceptance of the Brevié Line as the maritime boundary between the two states and not merely as the line distinguishing sovereignty over islands. Additionally, Cambodia could support its case by reference to state practice and, in particular, highlight the fact that Vietnam itself maintains a historic maritime boundary claim which is arguably analogous to a Cambodian claim to the Brevié Line as a maritime boundary – that is Vietnam's claim vis-à-vis China in the Gulf of Tonkin.[241] While no two boundary delimitations are identical it does appear manifestly inconsistent for Vietnam to recognise the dividing line between islands as the maritime boundary with China but reject it in relation to Cambodia - after all, *both* lines were of French colonial inspiration.

Were Cambodia to make such claims, Vietnam would in all probability raise the fact that Governor-General Brevié himself stated that *"the issue of the islands' territorial jurisdiction remains entirely reserved"* (Appendix 19). Moreover, Vietnam

240 Measured on British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000.

241 In 1974 Vietnam advanced the claim that the Sino-French Convention on the delimitation of the frontier between China and Tonkin (Vietnam) of 1887 defined both land and maritime boundaries such that the sea boundary line between the parties should be longitude 108° 3' 13" E. (Prescott, 1985a: 225; Johnston and Valencia, 1991: 146).

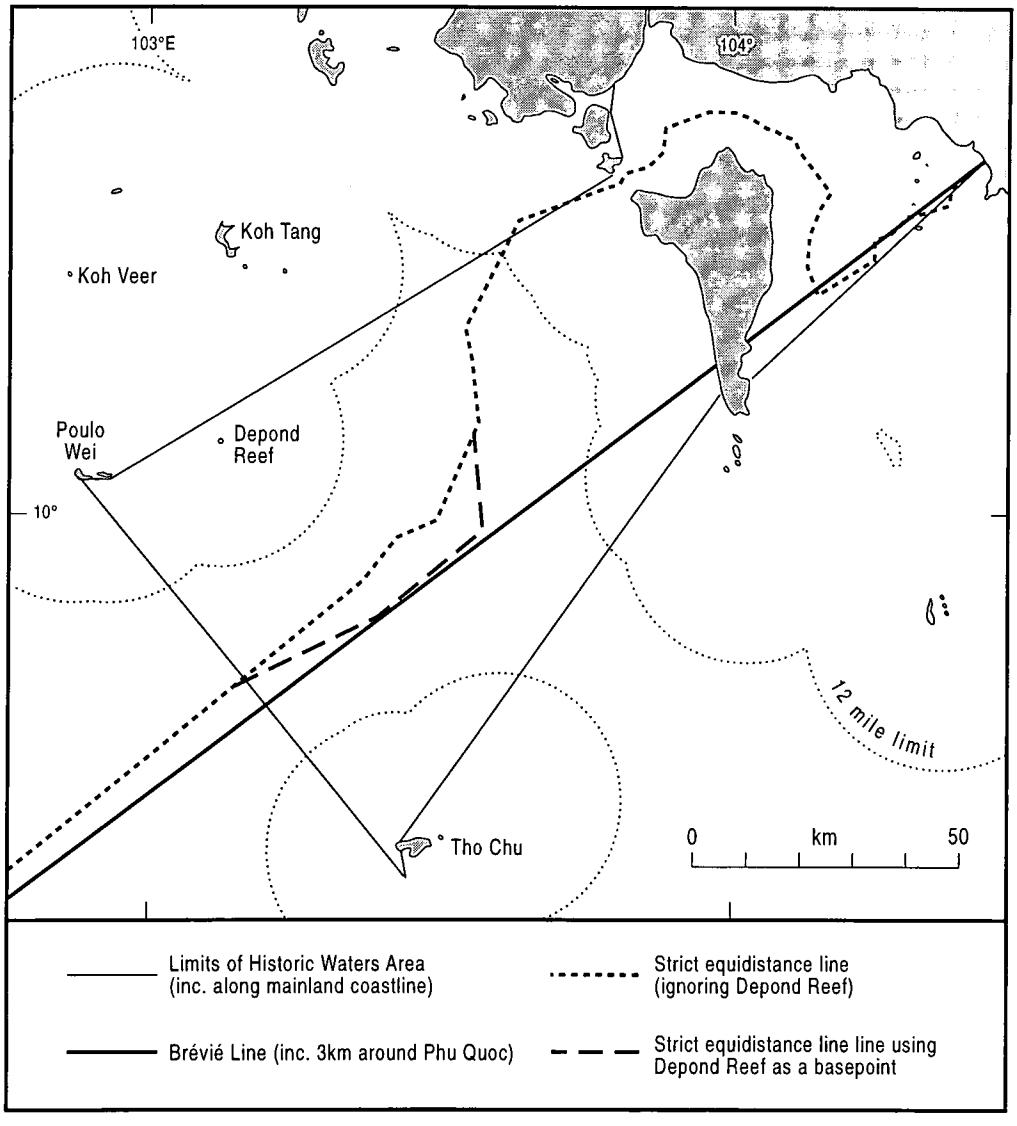


Figure 7.16: *Hypothetical Delimitations in the Joint Historic Waters Area*
Source: Author's research.

would be likely to argue that the 1967 statements have no legal meaning having been signed under duress and that they have in any case been superseded by the 1982 Historic Waters Agreement which specifically provides for delimitation in the future, thus making it clear that no maritime boundary existed at the time of the conclusion of the agreement.

For its part, Vietnam is likely to favour an equidistance-based solution as this would clearly be significantly more favourable to it than one utilising the Brevié Line (see Figure 7.16). Such an approach would most probably be contested by Cambodia for the reasons outlined above.

The area lying between the Brevié Line and a strict equidistance line running through the historic waters area is 768nm^2 (2,635km^2), equivalent to 27.4% of the joint area.[242] Were the Brevié Line confirmed as the maritime boundary Cambodia would gain 69.9% of the joint historic waters area with Vietnam receiving the remaining 30.1%.[243] If a strict equidistance line were applied, Cambodia's share of the zone would fall dramatically to approximately 42.5% to Vietnam's 57.5%.[244]

Several potential delimitations are therefore immediately available to the parties:

- Firstly, the parties could accept the Brevié Line as the maritime boundary between them within the historic waters area. This would be advantageous to Cambodia inshore where the potential influence of Phu Quoc island is greatest were equidistance to be used as the method of delimitation. Such a delimitation would not, however, address Vietnam's concerns over access to and security for Phu Quoc which under this scenario would be accorded Vietnamese waters of only 3km breadth around it.
- Secondly, the Brevié Line could be used as the basis for delimitation but modified to ameliorate Vietnam's most pressing problems with such a boundary. Thus, the Vietnamese zone around Phu Quoc could conceivably be extended to 12nm (equivalent to territorial sea breadth by way of example). In the channel between Phu Quoc and the Cambodian mainland coast, which is less than 24nm broad, an equidistance line could be employed but on the western side of Phu Quoc Vietnam

242 Measured using a planimetre and British Admiralty Chart 3879, 1957 edition at a scale of 1:240,000.

243 Of the total area of the historic waters of 2,802nm^2 (9609km^2), Cambodia would gain1,958nm^2 (6,716km^2) to Vietnam's 844nm^2 (2,893km^2).

244 Cambodia would gain 1,190nm^2 (4,081km^2) while Vietnam would receive 1,612nm (5528km^2).

would acquire the historic waters within 12nm of the island's coast and to the south of the Brevié Line. An arrangement along these lines would be somewhat more favourable to Vietnam in that its immediate concerns over Phu Quoc would be dealt with, but the lion's share of the historic waters area seaward of the island would be allocated to Cambodia.

- Alternatively, a delimitation could be constructed on the basis of equidistance. Clearly there are many potential variations to such an equidistance line. Figure 7.17 shows a strict equidistance line between all features but both using Depond Reef and discounting it in order to demonstrate just one potential variation.[245] As noted, a delimitation based on strict equidistance would be highly favourable to Vietnam with Phu Quoc having a significant impact on the division of the historic waters area between the parties.

It is also possible that Cambodia and Vietnam could opt to forego delimitation and retain their joint historic waters area. This arrangement is already well established and has many of the attributes associated with joint development areas elsewhere. Its joint development and management provisions could perhaps be enhanced by mutual agreement, removing the need for the delimitation of a maritime boundary. The advantages of continuing and developing the joint historic waters area should not, therefore, be underestimated.[246]

7.3.6 Delimitation Beyond the Joint Historic Waters Area

As is the case for delimitation within the historic waters area, the delimitation of the lateral boundary between Cambodia and Vietnam seaward of the historic waters area, encompassing territorial sea and continental shelf or EEZ rights, is likely to be based either on historical grounds or equidistance. Were Cambodia to argue for the adoption

245 It is worth noting that Depond Reef is a low-tide elevation whose charted position is almost exactly 12nm from the nearest feature in the Poulo Wei island group (British Admiralty Chart 3879). However, its position is approximate and it would only be a valid basepoint for territorial sea delimitation purposes if it lies within 12nm of the nearest island or mainland coast (Hydrographer, 1978: 108). If equidistance were adopted as the method of delimitation, Depond Reef would in all probability be disregarded in the construction of an equidistance line. However, the delimitation Cambodia and Vietnam are dealing with in this case is one relating to historical waters rather than territorial sea, continental shelf or EEZ so it is not impossible that Depond Reef could be used as a basepoint.

246 In this context, one of the delimitation line options discussed - and particularly the Brevié Line in light of the reasons for its establishment - could be used as the dividing line for criminal jurisdiction in a similar fashion to that running through the Thai-Malaysian JDA.

(or reconfirmation) of the Brevié Line as the maritime boundary between the parties within the historic waters area it is quite possible that it might maintain that the same line should form the maritime boundary seaward of that zone also. Alternatively, equidistance could be used to determine the boundary line. As there is a territorial sea delimitation involved, equidistance could be viewed as being particularly suitable (see Section 3.1.1). Additionally, comparable islands and/or baselines provide the key basepoints for a delimitation based on equidistance which as a result could be viewed as providing an equitable solution.

It is clear from Vietnam's maritime boundary agreement with Thailand of 7 August 1997 that Vietnam considers that the lateral maritime boundary between Cambodia and Vietnam, as well as the location of Point "O" on the limit of the historic waters area, has already been established, at least as a *"working arrangement"* line, on the basis of equidistance.[247] Cambodia has protested over this, stating that it has *"never agreed to"* such a boundary which *"constitutes a violation of Cambodia's sovereignty."* These issues are dealt with in detail in Section 6.5.

Adoption of the Brevié Line as the maritime boundary between the two states seaward of the historic waters area would be of net benefit to Cambodia in comparison with a strict equidistance line (see Section 7.3.3). The opposite, of course, holds true for Vietnam. One complicating factor that should be considered, however, is that the most prospective areas in the Gulf of Thailand as far as oil and gas resources are concerned are those in the central part of the Gulf. It may therefore be advantageous to acquire the maximum maritime space in this key area, which is precisely where Cambodia would lose out, albeit marginally relative to its overall claim, if it adopted the Brevié Line over a strict equidistance line.

7.3.7 Prospects

It is clear that Cambodia and Vietnam's longstanding dispute relating to sovereignty over islands has been resolved. Indeed, the two states most recent maritime boundary agreement, the Historic Waters Agreement of July 1982, definitively allocated ownership of islands on the basis of the Brevié Line. The resolution of the dispute over islands coupled with the Historic Waters Agreement has had a profound knock-on effect on the parties' maritime boundary dispute. The area of overlapping claims between the

247 Thao, 1997: 77; *The Nation* (Internet version), 9/5/98 (FBIS-EAS-98-128).

two states has been significantly limited, despite the fact that the Cambodian and Vietnamese continental shelf claims dating from the early 1970s have never been officially withdrawn or modified. This is the case because neither the Cambodian nor Vietnamese continental shelf claims, based on their respective sovereignty over all the contested islands, can realistically be maintained.

The differences between the two states have therefore been narrowed to a considerable degree. As Figure 7.5 and 7.15 demonstrate, the maritime space at stake – that between the Brevié Line and an equidistance line – is minimal in comparison to the area of overlapping claims contested between Cambodia and Thailand. Viewed from a non-partisan standpoint, therefore, it seems entirely reasonable to suggest that the outstanding differences between the two sides' positions can be bridged. This could perhaps be achieved by means of a modified version of either the Brevié Line or equidistance or a combination of the two as suggested in Section 7.3.5.

However, as is the case with all maritime boundary negotiations, the critical factor is political will. As the tortuous history of Cambodia-Vietnam relations attests and as progress (or lack of it) in negotiations in the 1990s more recently has demonstrated, it would be unwise to underestimate the sensitive nature of border issues to the two states. Moreover, the potential for disagreements over land boundary issues to disrupt efforts towards maritime boundary delimitation remains strong. In the absence of a definitive delimitation agreement, however, Cambodia and Vietnam may very well be content with the status quo.

7.4 Cambodia – Thailand – Vietnam

A dispute emerged in 1997 over the location of the Cambodia-Thailand-Vietnam tripoint, the location of which Thailand and Vietnam appear to have bilaterally determined as part of their maritime boundary treaty of 9 August that year. Cambodia issued a protest note in February 1998, reserving its position on this issue. The implications of the Thai-Vietnamese treaty and the tripoint dispute are considered in some detail in Section 6.5. This section will therefore be devoted to examining some of the possible means by which this problem may be resolved.

It will be recalled that the terminal point, Point K, of the Thai-Vietnamese maritime boundary is located approximately 7nm northeast of the Cambodia-Thailand-Vietnam tripoint as determined by strict equidistance. Several possible ways of overcoming this problem exist:

- The most obvious method of resolving the problem would be for Cambodia to simply accept Point K as the tripoint. However, as Cambodia was not party to the Thai-Vietnamese treaty, it is by no means obliged to do so and such a tripoint would provide a terminal point for the undelimited Cambodia-Thailand maritime boundary at a considerable disadvantage to Cambodia.
- Cambodia could accept equidistance as the basis for its lateral maritime boundary with Vietnam, as the latter appears to believe that this is already the case at least in terms of there being a 'working arrangement' based on equidistance. If this were so, then the Thai-Cambodian maritime boundary, could be constructed such that it terminates on a Cambodia-Vietnam lateral equidistance line. As a result, the final point of the future Thai-Cambodian boundary need not necessarily coincide with Point K. Instead, the final point of the Thai-Cambodian delimitation and Point K could be joined by a 'step' of boundary line equidistant between Cambodia and Vietnam, thus eliminating the need for a tripoint.
- Alternatively, if Cambodia and Vietnam ultimately agree on the use of the Brevié Line as the maritime boundary between them, as outlined in Section 7.3.3, Point K would fall short of Cambodian waters. A trilateral negotiation would then be required to join Point K to the Brevié Line – a negotiation which would also encourage Thailand and Cambodia to clarify the extent of their claims in the central Gulf of Thailand either through delimitation or the establishment of some form of joint development zone (see Section 7.2).

7.5 Malaysia – Thailand

7.5.1 Problems Relating to Existing Boundaries

Two problems have been identified concerning the Thai-Malaysian territorial sea boundary agreement of October 1979. The first of these involves the initial point of the boundary and how this relates to the shifting mouth of the Golok River. The second concerns he fact that the territorial sea boundary appears to extend almost 13.5nm offshore – that is, approximately 1.5nm *beyond* the 12nm-breadth territorial sea claims of the two states. These problems and potential solutions to them are considered in Section 6.2.2.

7.5.2 Dividing the Joint Development Area (JDA)

Despite the long drawn out process of implementing the Thai-Malaysian Memorandum of Understanding (MoU) on joint development, the arrangement now appears to be functioning smoothly, such that oil and gas exploration is proceeding apace and there is every indication that significant production of hydrocarbons will be realised (see Section 6.2.4). There is therefore nothing to suggest that either party is dissatisfied with the status quo. Nevertheless, the MoU, in Article II, was at pains to stress that:

> *Both parties agree to continue to resolve the problem of delimitation of the boundary of the continental shelf in the Gulf of Thailand between the two countries by negotiations or such other peaceful means as agreed to by both Parties, in accordance with the principles of international law and practice...* (see Appendix 13).

It is therefore clear that both Malaysia and Thailand anticipate extending their partial continental shelf delimitation offshore and dividing the JDA between them at an unspecified future date. Such a delimitation is, however, likely to take place only once the hydrocarbon reserves within the joint zone have been fully exploited.

Thai-Malaysian attempts to divide the JDA are also likely to be bedevilled by the same factors which generated the overlapping claims which became the joint zone in the first place. Essentially, these were Thailand's insistence that Ko Losin constituted a valid basepoint for continental shelf rights, and Malaysia's contention that it was a mere rock entitled to no more than territorial sea jurisdiction. These positions are unlikely to have changed. However, an additional, complicating, factor has been introduced by Thailand which was absent from the two states delimitation negotiations in the 1970s.

This is Thailand's 1992 extension of its straight baseline system to incorporate Ko Kra and Ko Losin into Area 4 (see Figure 4.6). These baselines are potentially relevant to any delimitation through the JDA and could be seen as strengthening Thailand's hand in negotiations.

Malaysia would, however, almost certainly argue that Thailand's Area 4 straight baselines profoundly depart from the terms and spirit of Article 7 of UNCLOS and should therefore be ignored (see Section 4.4.4). On the subject of Ko Losin, Malaysia can also highlight inconsistencies in Thailand's treatment of the feature. While maintaining that Ko Losin is a fully-fledged island capable of generating claims to continental shelf in relation to Malaysia, Thailand's 1973 continental shelf claim relating to Cambodia and Vietnam, Ko Losin was ignored as a potential basepoint. Furthermore, in its August 1997 maritime boundary agreement with Vietnam, Thailand apparently agreed to Ko Losin being wholly discounted.

Once the usefulness of the JDA as a source of oil and gas resources has been exhausted, however, most of the urgency will have been removed from the dispute and a compromise solution should be achievable. It is worth noting that a dividing line between the jurisdiction of the two states does exist within the JDA. This relates to criminal jurisdiction and would be an obvious candidate for eventual adoption as the maritime boundary through the JDA. Article V of the Thai-Malaysian MoU, however, emphatically states that this line:

> *...shall not in any way be construed as indicating the boundary line of the continental shelf between the two countries in the joint development area...nor shall such definition in any way prejudice the sovereign rights of either Party in the joint development area* (see Appendix 13).

In any case, the division of the JDA according to the criminal jurisdiction line is uneven, according slightly more of the area to Thailand than to Malaysia.[248] Such a solution would probably prove unacceptable to Malaysia which appears to have a strong case for insisting on a heavily reduced effect for Ko Losin.

7.6 Malaysia/Thailand – Vietnam

As previously noted, the seaward part of the Thai-Malaysian JDA is also subject to a claim by a third state, Vietnam. This claim covers an area of approximately 256nm^2 (879km^2) (see Figure 7.17 and Section 6.2.4).[249] However, Article 2 of the Thai-Vietnamese maritime boundary treaty of 7 August 1997 provides that its parties:

> *...shall enter into negotiation with the Government of Malaysia in order to settle the tripartite overlapping continental shelf claim area of the Kingdom of Thailand, the Socialist Republic of Vietnam and Malaysia, which lies within the Thai-Malaysian Joint Development Area* (see Appendix 16).

The scene was therefore set for trilateral negotiations to proceed with a view to resolving this problem. Indeed, it was subsequently reported that senior officials of the three countries had met in Hanoi on 24-26 February 1998. While this event was considered a significant step forward, the trilateral talks were expected to proceed slowly.[250] Vietnam is likely to argue for a three-way split in the revenues accruing from oil and gas production in the zone of Vietnamese overlap with the JDA. Thailand and Malaysia are, however likely to argue that in light of the reduced effect accorded to the islands on which its claim is based, notably in the Thai-Vietnamese maritime boundary agreement, Vietnam should be accorded a lesser share in the zone. This could be achieved either through a narrowing of the zone of trilateral overlap, or, more elegantly, by simply reducing Vietnam's percentage share in the proceeds from the current area of trilateral overlapping claims. The outcome of these negotiations remains to be seen.

248 Malaysia's zone is approximately 1,038nm^2 (3,560km^2) and Thailand's 1,069nm^2 (3,666km^2) in area. Calculated using DELMAR.

249 Calculated using DELMAR and British Admiralty Chart 2414, 1967 edition at a scale of 1:1,500,000.

250 *The Nation*, 3/3/98.

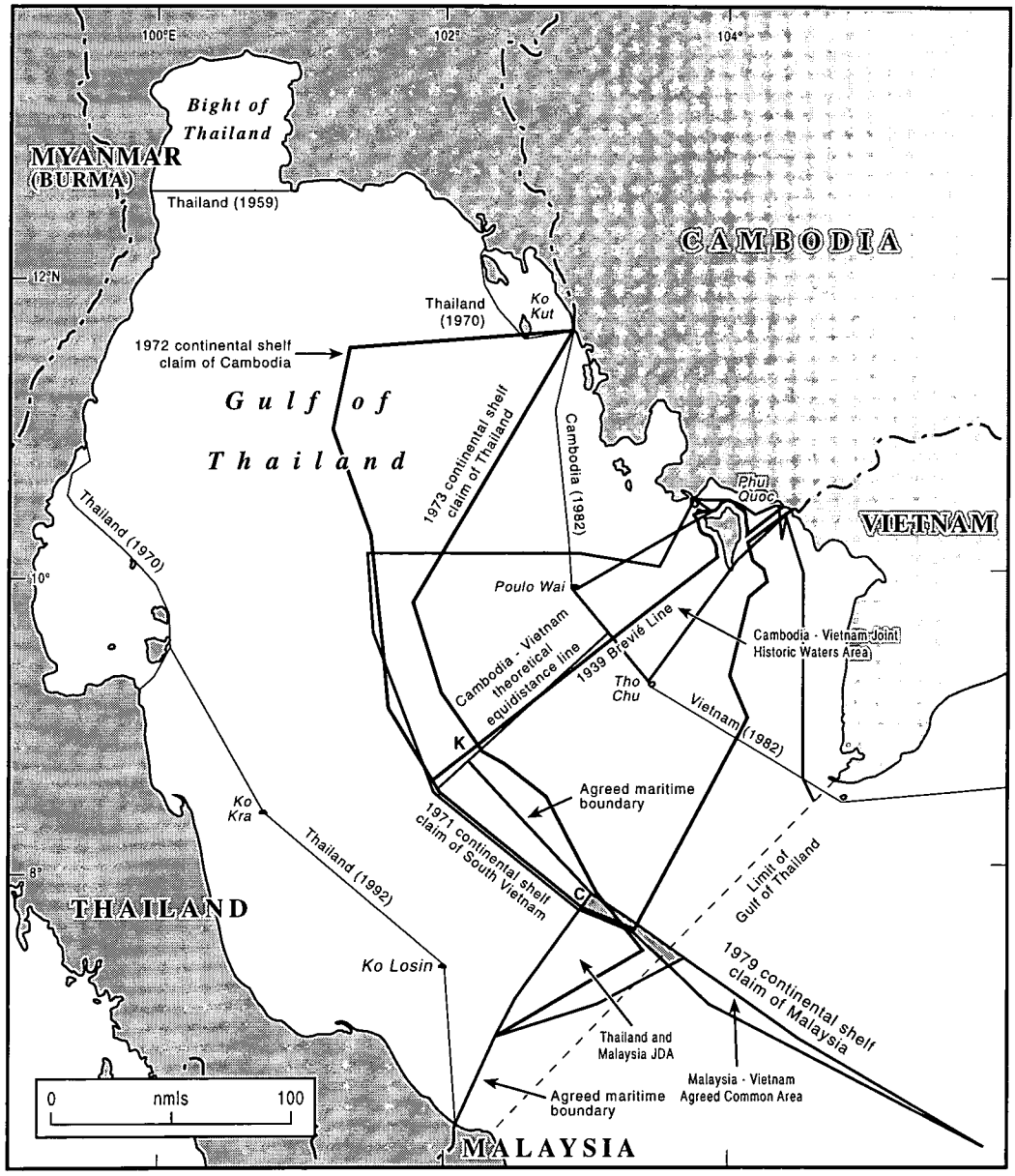


Figure 5.17: *Overlapping Claims between Thailand/Malaysia and Vietnam*
Source: Author's research.

7.7 Malaysia – Vietnam

As noted in Section 6.4, Malaysia and Vietnam have each retained their sovereignty claims to the whole of the "Defined Area" subject to their joint development agreement of 5 June 1992. According to this agreement joint exploration and exploitation is to be undertaken within the "Defined Area" *"pending delimitation of the boundary lines"* (see Appendix 15, Article 2). It is therefore clear that at some stage the two states intend to divide the "Defined Area" between them. In the meantime, however, as is the case for the Thai-Malaysian JDA, the apparent success of the joint development arrangement indicates means that neither party is likely to press for delimitation at an early stage.

The "Defined Area" comprises Malaysia and Vietnam's overlapping continental shelf claims. This overlap was caused by differing interpretations of equidistance with islands being either counted or ignored on either side to maximise each state's claims therefore producing a long, thin zone of overlapping claims (see Section 5.3 and Figure 7.20). It is therefore likely that once the joint development arrangement has run its course and any oil and gas resources contained therein have been exhausted, a compromise solution may be reached. This could be in the form of an equidistance line between mainland coasts, or one between all features. Alternatively, Malaysia and Vietnam could adopt a pragmatic view, in light of the similar arguments relating to islands that both sides are liable to bring to bear in delimitation negotiations, and simply divide the "Defined Area" equally between them by means of an equidistance line between the two claim lines.

7.8 Problems of Ocean Management

While this study is devoted primarily to maritime boundary delimitation, it should be acknowledged that a number of trans-boundary problems and disputes afflict the Gulf of Thailand littoral states. These include disputes over fishing rights, concerns over security of navigation as a result of piracy as well as transboundary environmental issues (see Section 1.3.4). Perhaps the most pressing of these relates to competition over fisheries resources.

Illegal fishing has proved a particularly poisonous issue in relations between the Gulf of Thailand coastal states and has generated a considerable body of literature devoted to the problem.[251] The main problem appears to stem from activities by Thai fishermen but incidents have also occurred between the other Gulf of Thailand states, particularly involving Malaysia and Vietnam. The key causes of fisheries conflicts between Thailand (and to a lesser extent Malaysia) and its maritime neighbours have been identified as being:

- *The development and implementation of the EEZ concept* – This must be viewed as the crucial factor in generating fisheries conflict in the Gulf of Thailand. The declaration of EEZs by Thailand's neighbours placed large maritime areas traditionally fished by Thai fleets out of bounds. It has been estimated that this development has entailed a loss to Thailand of c.300,000km^2 of fishing grounds formerly used by Thai fishermen.[252]
- *Fishing capacity* – Thailand's large fishing fleet, 85% of which based on Thailand's Gulf of Thailand coast, was faced with the fact that Thai waters had been subject to overfishing and had been effectively 'fished out', while those of its neighbours, where Thai fishermen had in any case traditionally fished, were relatively plentiful.[253] In McDorman's words, the temptation for Thai fishermen to stray into Cambodian, Malaysian or Vietnamese waters in these circumstances was *"very great."*[254] As a result it has been estimated that as much as 30-40% of Thailand's marine catch has come from outside Thai waters.[255] As time has progressed it is also clear that Thailand's neighbours have enhanced their own fishing capacities resulting in increased friction with 'poaching' Thai vessels.
- *Maritime boundary disputes* – Uncertainties over the limits of jurisdiction of the Gulf of Thailand states because of overlapping continental shelf claims and reticence concerning the limits of EEZ claims have clearly contributed to disputes over access to fisheries.

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251 See, for example, Ake-uru (1987); Hamzah (1987, 1988 and 1998); Hao (1998); Kittichaisaree (1990a and 1990b); McDorman (1986 and 1990); Menasveta (1998); Navavichit (1998); Torell (1988); and Valencia (1990).

252 McDorman, 1986: 183. In contrast Ake-uru (1987: 418) puts the figure at *"300,000 square miles."*

253 McDorman, 1990: 42. McDorman (1986: 189-190) has also commented that the Thai fishermen's retreat to Thai waters in the Gulf of Thailand *"led immediately to serious overfishing and the grave potential of severely damaging the stocks that were already in a poor state."*

254 McDorman, 1990: 42.

- *Politics* – As McDorman has noted, *"fishery conflicts between Thailand and its Indochinese neighbours were intensified by the broader bilateral animosity"* between the communist regimes of Cambodia and Vietnam and Thailand.[256]
- *Fisheries regulation and enforcement* – In the wake of making EEZ declarations, the Gulf of Thailand states have sought to enact legislation designed to protect and conserve the resources therein. Of particular note here is Malaysia's Fisheries Act of May 1985.[257] This legislation appears to have been framed with Thai fishing activities in mind and its strict enforcement resulted in countless seizures of Thai fishing vessels and arrests of Thai fishermen.[258] The Malaysian Act requires fishing vessels in transit through Malaysian waters to give prior notification to the Malaysian authorities, to stow their gear and to proceed without lingering. Failure to do so automatically gives rise to a presumption that illegal fishing has been undertaken or attempted. Thailand has protested against these provisions as seriously undermining freedom of navigation and as being inconsistent with the relevant provisions of UNCLOS.[259] These incidents have also repeatedly led to violent clashes between Thai fishermen and Malaysian coastguards.[260] In the mid-1980s and 1990s,

255 Ake-uru, 1987: 418; Asian Development Bank (1985: 72) quoted in Torell, 1990: 134-136.

256 McDorman, 1990: 46. An appreciation of the scale of the problem is provided by the fact that in the period 1983-86 alone Vietnam arrested and detained 1,000 Thai fishermen (Valencia and Van Dyke, 1994: 231).

257 For a copy see Hamzah (1988: 53-95).

258 For example, in the period three year period following the enactment of the Malaysian fishery legislation (1985-87), Malaysia arrested 178 Thai vessels (McDorman, 1990: 46).

259 For example, Thailand formally protested the Malaysian Fisheries Act of 1985 in a memorandum dated 15 December 1987 (Kittichaisaree, 1990a: 321). It is also highly likely that the Thai authorities had Malaysia in mind when it issued its Statement of the Ministry of Foreign Affairs to the UN Secretary-General of 3 May 1993 (copy on file with the author). Kittichaisaree (1990a: 321) has described the Malaysian Act's provisions as *"not well-found in international law and...impractical"* and the requirement of prior notice as unreasonable and excessive. In contrast, Hamzah (1988) has offered a robust defence of Malaysia's fisheries legislation, concluding that the core issue is the sovereign right of a nation to explore and exploit, conserve and manage its natural resources: *"Malaysia, as a sovereign nation, cannot be coerced or intimidated to give up its rights to others no matter what the pretext may be"* (Hamzah, 1988: 22). See also, Valencia (1985: 116-120); and Haller-Trost,(1996: 328-332).

260 For example, in one of the worst incidents in recent years, in early November 1995, a clash between a Malaysian patrol boat and a Thai trawler led to two Thai fishermen being shot dead. This provoked a furious response from the Thai fishing community who variously threatened to go on strike and blockade key ports in order to pressure the Thai government to resolve the problem. The incident even led the Director-General of the Thai Fisheries Department, Plodprasob Surassawadee, to threaten to lead a Thai fishing fleet into Malaysian waters in protest (*Bangkok Post*, 29-30/11/95, 27/12/95; *The Nation*, 10/11/95, 28-29/11/95, 1/12/95, 5/12/95, 20/12/95). Such incidents are also not unique to Thai-Malaysian fisheries relations. For instance, it was reported in early June 1995 that a Thai naval vessel had exchanged fire with three armed Vietnamese boats (believed to belong to the Vietnamese navy) which had allegedly attacked several Thai trawlers leaving one Thai and two Vietnamese sailors dead (*Bangkok* Post, 4/6/95; The *Nation*, 2-4/6/95).

therefore, the fisheries issue proved the most significant strain on relations between Malaysia and Thailand. Over time all the Gulf of Thailand states have sought to increase their surveillance and enforcement capabilities, resulting in a heightened level of confrontation between suspected illegal fishermen and the coastal state authorities.[261]

With the notable exception of improved political relations between Cambodia and Vietnam and the other Gulf states, none of the factors contributing to conflict over fisheries in the Gulf of Thailand has been removed or even very significantly reduced. EEZs are now clearly established in international maritime law and Thailand has reluctantly been forced to acknowledge that reality. Thailand has complained bitterly that its acceptance of the EEZ concept was:

> *...conditional upon the equitable sharing of the living resources in the zone between the coastal States and developing countries which had traditionally or habitually exercised in the EEZ areas that had previously been the high seas the right of exploitation of the living resources.*[262]

However, the key provisions of UNCLOS dealing with this issue, contained in Articles 61 and 62, whereby once a state has determined the total allowable catch (TAC) within its waters and its own harvesting capacity, *"where the coastal State does not have the capacity to harvest the entire allowable catch, it shall...give other States access to the surplus of the allowable catch"*[263] have failed to address Thai concerns and requirements. This is because:

> *Even under the strict wording of the LOS Convention, the coastal state has discretion in determining domestic harvesting capacity, resource surpluses, and to whom and upon what terms the surpluses would be distributed to other states.*[264]

In any case, none of the Gulf of Thailand littoral states (including Thailand) has adopted TAC in their fisheries management practices.[265]

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261 For example, in July 1999 Vietnam issued a Decree on the management of fishing activities by foreigners and in the following month established a marine police force to enforce the decree's provisions (VNA news agency, Hanoi, 16/7/99, 31/8/99 (SWB FE/3282 and 3321)).

262 Kittichaisaree, 1990a: 316.

263 UNCLOS, Article 62.

264 McDorman, 1990: 42.

265 Menasveta, 1998: 209.

Additionally, Thailand in particular has failed to address the problem of fishing capacity, described as the *"key to the reduction and elimination of future fishery conflicts in the Gulf of Thailand"*[266] and regulate the Thai fishing industry effectively – a problem that the Thai government has itself recognised.[267] In McDorman's words:

> *A reduced Thai fishing effort, or containment within Thai waters, or access agreements rely upon the Government of Thailand obtaining and exercising a degree of control over the Thai fishing industry that is currently unimaginable.*[268]

Fundamentally, the profitability of illegal fishing activities, despite the escalating risks posed by Thai efforts at regulation and the increasing efforts of the other Gulf of Thailand states to enforce their rights, argues against swift resolution of the problem. Furthermore, extensive areas of overlapping claims to jurisdiction in the Gulf of Thailand persist (see in particular Section 7.2), the littoral states have remained guarded concerning the precise extent of their EEZ claims (see Section 5.4), and tension continues to be generated over Malaysia's enforcement of its controversial fisheries regulations.

Some encouragement can, however, be gleaned from private joint ventures which Thai companies have entered into with their counterparts in other Gulf of Thailand coastal states, giving Thai fishermen legal access to fishery resources in other states EEZs.[269] Furthermore, progress has recently been made on joint management of fish stocks, including joint survey work, and on joint patrolling operations. For instance, Thailand and Vietnam agreed in principle on joint patrols in the overlapping claims area in April 1996.[270] The two states have also established a Thai-Vietnamese Joint Commission on Fisheries and Law and Order at Sea, and in the wake of their August 1997 maritime boundary agreement have agreed to conduct a joint survey of fisheries resources in their formerly disputed area.[271] In addition, the Thai and Vietnamese navies reached agreement in May 1998 on procedures for joint maritime

266 McDorman, 1990: 50.
267 McDorman, 1986: 195; 1990: 51.
268 McDorman, 1990: 51.
269 McDorman, 1990: 47. It should be noted, however, that there has been significant resistance, for example from the Malaysian fishing community, to granting Thailand formal access agreements as a result of *"perceived destructive Thai fishing practices and alleged intimidation of Malaysian fishermen"* (McDorman, 1990: 50).
270 *Bangkok Post*, 29/4/96.
271 *Bangkok Post*, 11/5/97, 22/11/97.

boundary patrols.[272] Similarly, Malaysia and Thailand have in the past established join patrols under the auspices of their Joint General Border Committees[273] and Thailand and Cambodia agreed to undertake joint maritime patrols in July 1998.[274]

7.9 Technical Issues

As has been noted in relation to *all* the maritime boundary agreements discussed in Chapter 6, these agreements are technically vague. Where the term *"straight line"* is used, the agreements in question invariably fail to specify whether a geodesic or loxodrome line is being referred to. A geodesic is one which is the shortest distance between two points on the reference ellipsoid.[275] On a Mercator projection chart the only geodesics which appear as straight lines are the meridians and the equator, all other geodesics appear as curved lines. Except is a meridian or the equator, a straight line on a Mercator chart is a loxodrome or rhumb line – a line of constant compass bearing.[276] While the differences between the two types of line are relatively small, for instance the maximum distance between geodesic and loxodrome lines for the 75nm-long Thai-Vietnamese maritime boundary is approximately 37 metres, it should be recognised that in areas with significant potential as a source of oil and gas resources, such a difference could prove very important.[277]

Furthermore, where geographic coordinates are mentioned, common practice appears to be not to relate these to a specific spheroid and datum. This devalues considerably the positional information included in the various agreements. Instead, there is a tendency to include a blanket statement to the effect that these issues will be determined at some unspecified future time. The following excerpt from the 1979 Thai-Malaysian territorial sea treaty is typical of this: *"the actual location at sea of the points mentioned...shall be determined by a method to be mutually agreed upon by the competent authorities of the two Parties."* There has been no indication that any

272 *Bangkok Post*, 29/5/98.
273 Hamzah, 1987: 366.
274 *Bangkok Post*, 15/7/98.
275 Beazley, 1994a: 4-6.
276 Beazley, 1994a: 4.
277 The author is indebted to Dick Gent, Law of the Sea Division, UKHO, who kindly made the appropriate calculations of the differences between geodetic and loxodrome lines (personal communication, 11/5/99).

technical negotiations between relevant competent authorities have in fact taken place between any of the Gulf of Thailand states.

Alternatively, the Gulf of Thailand states have tended to relate the coordinates listed in their agreements to specific charts. The favoured chart for this purpose has proved to be British Admiralty Chart 2414 at a scale of 1:1,500,000. Unfortunately this chart is most unsuitable as a reference point for coordinates as it includes no datum information! This is partially attributable to the fact that datum information is generally not included on charts of such a small scale. In this particular case, however, the lack of datum information on the chart is the result of the way in which the chart was put together. Chart 2414 is in fact a patchwork of larger scale surveys put together on a grid and *"fitted"* or *"fudged"* together.[278] It therefore lacks a unified datum and the Geodesy Section of the United Kingdom Hydrographic Office (UKHO) has stressed that it would be *"very risky"* to assume that the chart was based on any particular datum.[279] Indeed, a member of the UKHO's Law of the Sea Division has stated that Chart 2414 is in fact really *"no more than a pretty picture"* from the point of view of using it for maritime boundary delimitation purposes.[280]

Ultimately, these technical ambiguities should be relatively easily resolved. Coordination between the Gulf of Thailand states could result in all the littoral states adopting the same definition as to what is meant by the term *"straight line"* and relating their maritime boundary coordinates to a uniform datum.[281] In the meantime, a degree of uncertainty will remain over the precise position of the Gulf states' maritime claims and agreements.

278 Personal correspondence with Geodesy Section, UKHO, 15/10/97 and with Dick Gent, Law of the Sea Division, UKHO, 13/8/98.

279 Personal correspondence with Geodesy Section, UKHO, 15/10/97.

280 Interview with Dick Gent, Law of the Sea Division, UKHO, 23/3/99.

281 For example, WGS-84 which has been adopted by the International Hydrographic Organization as its global referencing system for nautical charts (International Hydrographic Bureau, 1990: 67).

Chapter 8

Conclusions: Maritime Boundary Delimitation in the Gulf of Thailand and Prospects for Dispute Resolution

8.1 Introduction

As outlined in Chapter 1, the core aim of this study has been to examine critically the development and distinctive characteristics of maritime jurisdictional claims and boundary agreements in the Gulf of Thailand. This analysis has been conducted against the backdrop of the international law of the sea, albeit from a geographers perspective. The ultimate objective of the research has been to provide a detailed assessment of the challenges to be overcome to complete the process of maritime boundary delimitation in the Gulf of Thailand, and thus the prospects for the resolution of the remaining undelimited maritime boundaries in the Gulf sub-region.

The need for maritime boundary delimitation in the Gulf of Thailand is readily apparent and becoming increasingly urgent. As Blake has written in reference to land boundaries, *"Boundary demarcation is not the end of the process...but the beginning, and the subsequent quality of boundary management can fundamentally affect relations between states."*[1] If anything, the case for maritime boundary delimitation is even more acute as overlapping claims are frequently extensive and are set in the marine environment which itself poses significant challenges. It is therefore important to view the unilateral claims and actions that have characterised the approaches of the littoral states to the Gulf of Thailand in context. It is undeniable that many marine resources are transnational by nature and in their distribution. Many maritime activities are similarly inherently transboundary in character. Moreover, the ocean environment, as a continuous, fluid system, transmits pollutants and the consequences of states' actions without regard for national jurisdictional limits.[2]

Maritime boundary delimitation can be viewed as an essential precursor to the full realisation of the resource potential of the Gulf of Thailand and its peaceful

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1 Blake, 1998: 55.

2 Valencia and Kent, 1985: 369.

management. With regard to seabed resources which could prove crucial to the well-being and political stability of the economically disadvantaged countries surrounding the Gulf, extensive overlapping claims areas forestall development while maritime boundaries remain unsettled. The rational exploitation and preservation of the important living resources of the Gulf of Thailand, is similarly undermined by failure to address jurisdictional issues in a comprehensive and cooperative manner.

The marine environment and its resources clearly transcend national maritime claims and tend to frustrate exclusively national attempts to address them. Uncertainty over jurisdictional limits inevitably exacerbates these problems, leading to uncoordinated policies which, in turn, can result in destructive competition for resources and ultimately to political tension. The severe overfishing that afflicts the Gulf of Thailand can be viewed as symptomatic of this trend has led to numerous armed clashes, including fatalities, and has soured diplomatic relations (see Section 7.8). The economic, environmental and political impacts of these conflicts may be extremely serious. Maritime boundary delimitation and subsequent transboundary management of resources therefore offers an opportunity to remove a potentially explosive issue from bilateral agendas. In the Gulf of Thailand these problems, particularly relating to fisheries and pollution, are likely to multiply in the future as a function of increasing coastal populations, economic development, escalating resource requirements and the associated pressures that this places on the marine environment. The littoral states' desire to gain access to the Gulf's resources is likewise set to increase. This situation *demands* the delimitation of maritime boundaries as a prelude to collaborative and peaceful management of the littoral states' shared resources, environment and heritage all of which are encapsulated within the Gulf of Thailand.

The following section will provide an overview of the key findings of the research undertaken. The options for maritime boundary dispute resolution will then be examined. The chapter will conclude with an assessment of the key opportunities and constraints facing the Gulf of Thailand coastal states with a view to evaluating the prospects for maritime boundary delimitation in the Gulf of Thailand.

8.2 Overview of Findings

Chapter 1 of this study demonstrates that the Gulf of Thailand is of crucial importance to its coastal states. The presence of proven oil and gas resources together with significant living resources as well as the Gulf's role as a key trade route and in terms of attracting tourists to the region provides the Gulf with a vital role in the littoral states' economies. Chapter 1 also outlines the scope of the challenges facing maritime boundary delimitation in the Gulf, notably the Gulf's restricted geographical space and complex coastal geography, the presence of multiple overlapping claims, uncertainty over the extent or status of several claims and agreements and a political inheritance characterised by antagonism among the coastal states coupled with external intervention.

While only two of the four Gulf of Thailand coastal states, Malaysia and Vietnam, are full parties to the UN Convention on the Law of the Sea (UNCLOS), it can be concluded from the discussion in Chapter 2 that UNCLOS, having largely entered into customary law, will nevertheless provide the legal framework for the conclusion of maritime boundary agreements throughout the Gulf. Chapter 2 details the genesis of UNCLOS and the key concepts of baselines and the zones of maritime jurisdiction that may be claimed from such baselines. While it can be concluded here that the delimitation of maritime areas between two or more states is governed by the principles and rules of public international law, Chapter 2 also demonstrates that the international law of the sea provides only limited guidance as to how maritime boundary delimitation is to be achieved. The primacy of geography, particularly coastal geography, as a factor in the delimitation equation is nonetheless clear.

This statement remains valid with regard to negotiated boundary delimitations as much as for those submitted to third party settlement. Distinctions can, however, be drawn between these forms of dispute settlement. In a resolution by negotiation, states are free to agree to any boundary they want provided that the rights and interests of third states, or of the international community, are not prejudiced. Nevertheless, international law generally provides the context within which negotiations take place.

Where agreement cannot be reached, customary international law – now largely reflected in UNCLOS – will apply. While this does not mean that states are obliged to settle their maritime differences or to submit such differences to adjudication or other

means of third party settlement, international law does provide the relevant framework for analysing the respective merits of each side's position.

Chapter 3 examines the delimitation of maritime boundaries and contrasts the rules for the delimitation of the territorial sea on the one hand and the continental shelf and EEZ on the other. Methods of maritime boundary delimitation are surveyed and assessed as are the relevant circumstances that may be raised in the delimitation process. From this analysis it is clear that there exist a multitude of methods of maritime boundary delimitation. However, the equidistance method, even if not obligatory, has proved far and away the most popular delimitation method. The reasons for this relate to its mathematical precision, lack of ambiguity and its accordance with equity where the parties' coastlines are broadly comparable. Where the coastlines in question are not comparable and a strict equidistance line would result in an inequitable delimitation, the equidistance method has frequently been used as a starting point and then modified. Equidistance has therefore proved an adaptable and flexible method of delimitation, particularly in opposite coast situations.

It is also evident that those tasked with reaching maritime boundary agreements, while they are likely to be guided by the law of the sea, are by no means bound by strict rules. As outlined in Chapter 3, there has been no systematic definition of the criteria which should be used to determine an equitable delimitation. As a result, equitability remains a rather vague and imprecise concept.

Thus, there is ample scope for differing interpretations as to which factors are applicable to a particular case and therefore potential for dispute and deadlock in delimitation negotiations. In a similar fashion, there is much potential conflict in the stances of states as to the emphases to be afforded to the principles or rules that might be applicable to a particular delimitation.

There is, however, a clear distinction between the factors considered before international courts and tribunals and those raised in the course of negotiations. Although in many cases the factors considered under both types of maritime boundary dispute resolution will predominantly overlap, it is well to recall that while courts and tribunals are bound to render a decision on the basis of international law, in the context of negotiations the states concerned are merely required under international law to negotiate in good faith.

In the course of maritime boundary negotiations, however, as long as third party rights are not infringed, states are free to divide their offshore areas as they wish and any

argument can be raised and accorded weight. In certain instances states may therefore give greater weight to factors than an international court or tribunal might, for example the relative levels of economic development of each party, and may even tie the question of maritime boundary delimitation to considerations unrelated to that boundary or, indeed, maritime jurisdiction in general.

Economic factors represent a good example of this contrast in approaches. For instance, in its maritime boundary negotiations with Australia, Papua New Guinea (PNG) was able to secure a delimitation distinctly skewed in its favour, apparently on the grounds of its economically disadvantaged status.[3] Such an argument would cut little ice before the International Court of Justice in the Hague.

As this study is focused on maritime boundary delimitation, it inevitably draws on the relevant law as well as on geographical thought and practice. The research undertaken revealed a certain degree of tension between lawyers and other disciplines, including geography, which make up the multi-disciplinary community of maritime boundary and ocean affairs scholars. This largely stems from legal schools of though emphasising the importance of enhancing the rule of law. In the context of maritime boundary delimitation this translates into an insistence that as rules are developed, boundary delimitation will be strictly governed by them such that they acquire universal binding force.[4] This approach conflicts with more 'functionalist' approaches to ocean boundary making where the emphasis is placed on context and flexibility in approaching particular delimitation problems.[5]

The characterisation of lawyers as blinkered in their pursuit of the rule of law is, of course, largely a fallacy. Indeed, there are encouraging trends regarding the integration of the legal and geographical disciplines. These are evident in the Gulf of Thailand, which has hosted important joint development arrangements. Such joint *"provisional arrangements of a practical nature"* are explicitly encouraged by UNCLOS[6] and have emerged as a functional response to deadlock over maritime

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3 Prescott (1988: 36-37) describes the Australia-PNG agreement in the Torres Strait as *"very generous"* to the latter state, not least because not only did the PNG gain more maritime space than would otherwise have been the case but the Australian government *"even managed to finesse the Australian constitution and cede three islands which had been considered to be part of Australia for 99 years!"* Prescott goes on to note that it is believed that the agreement was approved by both major political parties in Australia *"because of fears that our [Australia's] good name would be blackened in international circles by Papua New Guinea's allegations of Australian greed and unreasonableness."*

4 Johnston, 1992: 444.

5 Johnston, 1992: 444.

6 Articles 74(3) and 83(3).

delimitation yet set firmly within detailed legal frameworks. Law and geography are therefore thoroughly intertwined in the law of the sea and the legal-geographical nexus in maritime boundary delimitation is particularly well established. This ground truth, confirmed by the present study, shows no signs of weakening, even if the two subjects occasionally make for uncomfortable bedfellows.

The conclusion that UNCLOS is a flexible instrument providing few hard-and-fast rules on delimitation is inescapable. This is partly as a consequence of its intended global applicability – an aim that frustrates the development of strict guidelines given the geographical complexity and diversity of the world's coastal and marine areas. There is therefore ample potential for maritime boundary disputes resulting from overlapping claims in the Gulf of Thailand and elsewhere. Indeed, the Gulf of Thailand states provide nothing short of an object lesson in the flexible interpretation of the UN Convention's provisions in order to maximise the maritime areas accruing to the particular claimant state.

This assessment is supported by analysis of the straight baseline claims of the Gulf of Thailand states (Chapter 4) and is reinforced when their claims to extended jurisdiction, particularly to continental shelf and historic waters (Chapter 5) are evaluated. All four Gulf of Thailand littoral states have advanced straight baseline claims encompassing areas totalling just over 11% of the Gulf. With the exception of Thailand's Area 1,[7] *all* the current straight baseline claims made within the Gulf of Thailand are flawed, particularly when tested against a strict interpretation of Article 7 of UNCLOS. The key problems associated with these straight baseline claims in question relate to overly long straight baseline segments, straight baselines along coastlines not deeply indented, 'fringing' islands linked by straight baselines not in the immediate vicinity of the coast, straight baselines departing from the general direction of the coast, and maritime areas claimed as internal waters within straight baseline systems not sufficiently closely linked to the land domain to be justified as such. Resolution of this confusion is, however, complicated by the lack of clear, mathematically precise, rules to apply.

The arguably excessive straight baseline claims made by the Gulf of Thailand states have, however, had a strictly limited impact on the extent of their maritime claims. For example, in the central Gulf of Thailand Cambodia's continental shelf

[7] Even here with the US Department of State finding fault on the grounds that the land:water ratio within the straight baseline system is *"comparatively high"* (US Department of State, 1971a).

claim line falls short of the equidistance line between all features, while Thailand's claim also ignores straight baselines – its own as well as those of neighbouring states.[8] Further south, South Vietnam's continental shelf claim was promulgated well before straight baseline claims were advanced and Malaysia's inferred straight baselines were apparently not used as a basis for its claim as illustrated by the *Peta Baru* (see Chapter 4 and Section 5.3).

Where straight baselines have had a palpable effect on a claim is Thailand's lateral claim in relation to Cambodia. It will be recalled that Thailand employed a bisector line approach in determining the entirety of its claim between adjacent coasts. The bisector chosen was that between the Thai (1970) and Cambodian (1957) straight baseline segments immediately offshore the terminus of their land boundary on the Gulf of Thailand. The Cambodian segment in question clearly accords with the general direction of the coast and trends almost due south (see Figures 4.1 and 4.2). In contrast, the Thai straight baseline segment linking Koh Kut to the last point of the land boundary on the coast is almost perpendicular to the general north-south directional trend of the mainland coast on the eastern side of the Gulf of Thailand (see Figures 4.1 and 7.8). As a result of using these particular straight baseline segments, the Thai lateral territorial sea and continental shelf clam is shifted significantly to the south of a strict equidistance line between all features (see Figures 1.1 and 4.8).

Apart from this isolated, though significant, case, straight baseline claims in the Gulf of Thailand, despite their extensive nature, have been remarkable for their minimal influence on claims to maritime jurisdiction. It seems probable that claims have been advanced in a tit-for-tat manner, designed more to balance the 'other' side's claims and develop a strong bargaining position than to further maritime claims and be used as the basis for delimiting maritime boundaries. Thailand's decision to extend its straight baseline claims considerably through the declaration of its Area 4 claim in 1992 should therefore be viewed as an action likely to have been motivated by a desire to enhance its negotiating position prior to maritime boundary talks with Cambodia and Vietnam. Notably, negotiations with the latter state resulted in a maritime boundary agreement in which it is believed that straight baselines were ignored (see Section 6.5). Straight baselines also apparently played no part in determining the alignment of the other agreed maritime boundaries in the Gulf of Thailand between Malaysia and Thailand (see

[8] In fact, at the time of its 1973 continental shelf claim, of Thailand's maritime neighbours only Cambodia claimed straight baselines.

Section 6.2). This view of straight baselines as more of a negotiating tool than a means of radically extending maritime claims offshore is supported by the fact that revisions to the Gulf of Thailand states' straight baseline claims have not resulted in corresponding alterations to their maritime boundary claims.

Despite the restricted influence of straight baselines on claims to maritime jurisdiction, freedom of navigation and access concerns remain over the straight baseline claims advanced in the Gulf of Thailand because of the large maritime areas that have been arguably unjustifiably appropriated by the coastal states as additional internal and territorial waters. Thailand's Area 4 straight baseline claim exemplifies this trend. The claim encompasses an area of 7,825nm^2 (26,837km^2) 55% of which is located beyond 12nm from the nearest coastal point. Furthermore, significant maritime areas, amounting to 19.8% of the total area within the straight baselines defined by Area 4 lie beyond 24nm from Thailand's mainland or island coasts. Concerning the territorial sea claimed seaward from Area 4's straight baselines, fully 75% lies beyond Thailand's territorial sea claim in the absence of the straight baselines claim (see Section 4.4.4 and Figure 4.6). Thailand's Area 4 claim may be the most extreme example of additional waters claimed, but it is certainly in keeping with other claims within the Gulf of Thailand (see Section 4.6 Table 4.20).

As previously noted, despite the fact that of the four Gulf of Thailand states only Malaysia and Vietnam are full parties to UNCLOS, they have not been slow in advancing claims to extended maritime jurisdiction (Chapter 5). All four Gulf of Thailand littoral states have claimed 12nm-breadth territorial seas while Cambodia and Vietnam have also claimed contiguous zones extending a further 12nm offshore. In principal these claims are in accordance with the relevant provisions of UNCLOS. Generally it is reasonable to conclude that it is the baselines from which the territorial sea (and other maritime zones) are measured, rather than the claimed breadth of territorial sea itself which have been the cause of controversy between the states concerned. However, Cambodia's lateral claim with Thailand is problematic (see below), as is the fact that despite both Malaysia and Thailand claiming 12nm-breadth territorial seas their agreed territorial sea delimitation extends beyond 12nm from their respective baselines (see Section 6.2.2).

With regard to the continental shelf, the Gulf of Thailand states' claims can *all* be considered to some extent compromised by their selective use of islands as basepoints and consequent manipulation of equidistance as a method of delimitation in

order to secure the maximum advantage. Historic claims have also proved influential in generating extensive areas of overlapping claims. Of particular note in this context is Cambodia's lateral claim in relation to Thailand, based on a controversial interpretation of the Franco-Siamese Treaty of 23 March 1907. Cambodia and Vietnam's unique Historic Waters Agreement has also been a source of dispute with other littoral states (see Section 6.3). A gauge of the maximalist nature of the littoral states' claims is provided by the fact that by the end of the 1970s, overlapping claims to maritime jurisdiction in the Gulf of Thailand totalled over 80,000km^2 equivalent to 29% of the Gulf's entire surface area.[9] Additionally some confusion remains because of the Gulf states' general failure to articulate the limits of their EEZ claims.

Turning to maritime boundary agreements concluded in the Gulf of Thailand, considerable progress has been made with one territorial sea boundary, one partial continental shelf boundary, one 'single' maritime boundary and three joint zones being agreed upon between the littoral states (see Chapter 6). The application of joint arrangements as a means to overcome deadlocked negotiations and gain access to resources in disputed overlapping claims zones must be regarded as a particularly positive development. These agreements, coupled with the resolution of Cambodia and Vietnam's dispute over island sovereignty which implicitly undermines the validity of significant parts of their continental shelf claims dating from the early 1970s, has served to cut the area of overlapping claims dramatically to of the order of 9.4% of the Gulf's total surface area (see Section 5.3.5).[10]

However, these agreements have themselves raised uncertainties and possible areas of dispute which will in due course need to be addressed. These include issues such as the instability of the coastline in the vicinity of the Thai-Malaysian boundary at the Golok River's mouth on the coast and its effects on the location of the first point in the two states' territorial sea boundary; the seemingly overly long nature of that boundary; the question of establishing a position for the Cambodia-Thailand-Vietnam tripoint which is acceptable to *all* the parties; and, technical uncertainties over the actual locations of geographic coordinates and the meaning of 'straight' lines as mentioned in the various agreements. These problems and potential solutions to them are outlined in Chapter 6.

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9 Overlapping claims in the 1970s totalled 24,179nm^2 (82,931km^2).

10 Overlapping claims in the 1990s total 7,755nm^2 (26,597km^2).

It is also worth observing that several of the maritime agreements concluded in the Gulf merely put the question of delimitation to one side for a specified period in order that resource exploitation and management may proceed through the mechanism of a joint development zone. Such practical resource-oriented arrangements are fundamentally interim in nature and thus designed to be of temporary duration. It is therefore highly likely that in due course the states concerned will seek to conclude a definitive delimitation of the maritime space concerned.

Chapter 7 reviews the remaining undelimited maritime boundaries in the Gulf of Thailand, details the obstacles that have thus far prevented their resolution and offers some indication of progress in negotiations to resolve the disputes in question. Of particular note here is the Cambodia-Thailand overlapping claims area, the largest in the Gulf of Thailand, measuring c.7,500nm^2. The overlapping claims area, encompassing the entire northern extension and eastern margin of the Pattani Trough which hosts major proven hydrocarbon reserves in uncontested Thai waters. From the early 1970s, when these two states articulated their claims to continental shelf rights in the Gulf of Thailand, to the 1990s negotiations towards the resolution of their overlapping claims dispute were stymied primarily by political factors. Cambodia has consistently pressed for a joint development agreement to be applied to the Thai-Cambodian overlapping claims area while Thailand has favoured delimitation. It remains to be seen whether Cambodia's distaste for delimitation and Thailand's antipathy towards joint development in the Thai-Cambodian context be overcome and a compromise between these two differing approaches be reached. It is, however, conceivable that a 'package' deal could be worked out involving both delimitation and joint development (see Section 7.2.9).

It can be concluded from Chapter 7 that Cambodia and Vietnam's longstanding dispute relating to sovereignty over islands has been resolved. Indeed, the two states most recent maritime boundary agreement, the Historic Waters Agreement of July 1982, definitively allocated ownership of islands on the basis of the Brevié Line. The resolution of the dispute over islands coupled with the Historic Waters Agreement has had a profound knock-on effect on the parties' maritime boundary dispute. The area of overlapping claims between the two states has been significantly limited, despite the fact that the Cambodian and Vietnamese continental shelf claims dating from the early 1970s have never been officially withdrawn or modified. This is the case because neither the Cambodian nor Vietnamese continental shelf claims, based on their

respective sovereignty over all the contested islands, can realistically be maintained (see Section 7.3).

The differences between the two states have therefore been narrowed to a considerable degree and the maritime space at stake – that between the Brevié Line and an equidistance line – is minimal in comparison to the area of overlapping claims contested between Cambodia and Thailand. It therefore seems reasonable to suggest that the outstanding differences between the two sides' positions can be bridged. This could perhaps be achieved by means of a modified version of either the Brevié Line or equidistance or a combination of the two.

However, as the tortuous history of Cambodia-Vietnam relations attests and as progress (or lack of it) in negotiations in the 1990s more recently has demonstrated, it would be unwise to underestimate the sensitive nature of border issues to the two states. Moreover, the potential for disagreements over land boundary issues to disrupt efforts towards maritime boundary delimitation remains strong. In the absence of a definitive delimitation agreement, however, Cambodia and Vietnam may very well be content with the status quo.

With regard to Vietnam's claim to the seaward part of the Thai-Malaysian JDA, it is understood that the three states have reached agreement in principle on the joint development of the tripartite overlapping claims area. If a Malaysia-Thailand-Vietnam joint development area is indeed realised, it will represent the first instance of multilateral joint development in the world.

While this study is devoted primarily to maritime boundary delimitation, it is clear that a number of trans-boundary problems and disputes afflict the Gulf of Thailand littoral states. These include disputes over fishing rights, concerns over security of navigation as a result of piracy as well as transboundary environmental issues. Additionally, *all* the maritime boundary agreements discussed in Chapter 6 are technically vague and in due course this issue will need to be addressed by the coastal states.

Finally, it can be concluded that, in common with maritime boundary disputes worldwide, the elusive factor often termed 'political will' is cited as the key variable which will determine the success or failure of efforts to conclude further delimitation or joint development zone agreements in the Gulf of Thailand.

8.3 Prospects for the Gulf of Thailand

8.3.1 Options for Dispute Resolution in the Gulf of Thailand

The International Context

The international community has, over the years, developed a sophisticated array of mechanisms through which disputes between states may be managed. The Gulf of Thailand states, in common with other members of the international community are bound to settle disputes through peaceful means. Thus, Article 2 of the United Nations Charter requires that:

> *All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.*

The traditional means of dispute resolution between states are outlined in Chapter VI of the United Nations Charter specifically dealing with the pacific settlement of disputes, Article 33(1) of which states that:

> *The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.*[11]

It should be noted that the list of means of dispute resolution open to states contained in Article 33(1) of the UN Charter is not intended to be comprehensive – states retain a free choice as to the method of dispute resolution to be applied. Similarly, the methods of dispute settlement are not listed in any order of priority – states are not bound to pursue these methods in series. Nevertheless, the means of international dispute settlement included in Article 33(1) are without doubt the most frequently used methods and are clearly potentially applicable to the Gulf of Thailand.

UNCLOS also places several important obligations on its parties. UNCLOS encourages cooperation on a wide variety of issues, notably with regard to the conservation of living resources, enforcement of law and order at sea, marine scientific

[11] United Nations, 1992: 3. This legal framework has been subsequently reaffirmed and expanded upon by means of several declarations and resolutions of the UN General Assembly. These documents reinforce the key principles of the peaceful settlement of disputes; the non-use of force in international relations; non-intervention in the internal or external affairs of states; equal rights and the self-determination of peoples; the sovereign equality of states; the sovereignty,

research, and protection and preservation of the marine environment. Indeed, 146 of UNCLOS's 320 Articles (Part XVIII) are devoted to the latter topic and include the obligation for states to protect and preserve the marine environment (Article 192).[12] Furthermore, in the context of the Gulf of Thailand, Article 123, dealing with cooperation of states bordering enclosed and semi-enclosed seas, is potentially significant:

> *States bordering an enclosed or semi-enclosed sea* ***should*** *cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they* ***shall*** *endeavour, directly or through an appropriate regional organization:*
>
> *(a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;*
> *(b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;*
> *(c) to coordinate their scientific research polices and undertake where appropriate joint programmes of scientific research in the area;*
> *(d) to invite, as appropriate, other interested States or international organizations to cooperate with them in the furtherance of the provisions of this article* (Article 123, emphasis added).

The obligation for states to cooperate on ocean resource management issues, and particularly in the context of enclosed and semi-enclosed seas, is therefore quite clear. What is unclear, however, is what is actually *meant* by the term *"cooperation."* These documents, together with Chapter 17 of Agenda 21 arising from the UN Conference on Environment and Development (UNCED) call for cooperation, coordination and for the harmonisation of approaches with respect to a wide variety of ocean management issues. A positive framework has therefore been established for 'regime-building' in the Gulf of Thailand within which maritime boundary delimitation can be pursued.[13] Friction can, however, be detected between traditional concepts of absolute state sovereignty (and the qualified extension of that sovereignty out to sea) with an emphasis on statist entitlements and the requirements of globalisation and global trends in environmental and natural resource security which stress state responsibilities. Unsurprisingly, states have proved reluctant to compromise on their sovereign prerogatives. Nevertheless, it is clear that the elimination of confusion over jurisdictional limits would provide access to potentially significant seabed resources currently 'frozen' under overlapping

independence and territorial integrity of states; and the duty of states to act in good faith (United Nations, 1992: 3-7).

12 Kittichaisaree, 1992: 503-515.

13 Kittichaisaree, 1992.

jurisdictional claims, thus addressing the economic needs of the littoral states, and would represent a major step towards facilitating the integrated and sustainable management of the Gulf of Thailand's living resources and environment.

Traditional Means of Dispute Settlement

Negotiations are the principle means of handling disputes among states, including those related to maritime boundaries. They may therefore also be regarded as the most effective means of dispute settlement. In contrast to other methods, negotiations may be regarded as a universally accepted means of dispute settlement[14] and are an essential prerequisite to the application of any other form of peaceful dispute resolution. In the *North Sea Continental Shelf* cases, for example, the ICJ held that:

> *The Parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement; they are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it.*[15]

Indeed, even if there were no duty for states to negotiate, the nature of international relations means that they almost inevitably would do so. Additionally, exploratory negotiations, often termed 'consultations', can be employed in order to pre-empt disputes and prevent them arising.[16] In the Gulf of Thailand negotiations have resulted in several maritime boundary agreements as well as interim arrangements designed to put disputes to one side in the interests of mutual gain in terms of joint resource management and exploitation (see Chapter 6).

It should also be noted that use of existing diplomatic contacts to conduct negotiations is likely to be cost effective, particularly when compared to other dispute settlement mechanisms (see below). The negotiating machinery is already in place and the participants often have experience of dealing with their counterparts, aiding the negotiation process. The principle advantage afforded by negotiations as a means of international dispute resolution lies in the *flexibility* of the method. Negotiations can be applied to any type of dispute and, significantly, the states concerned retain full control

14 Eyffinger, 1996: 21.
15 *North Sea Continental Shelf* cases, para.85, quoted in United Nations, 1992: 18.
16 Merrills, 1991: 3.

over dispute resolution process.[17] This is inevitably of particular importance where sensitive issues of national interest such as boundaries and sovereignty are involved. Negotiations are therefore likely to be the most promising form of dispute settlement in the Gulf of Thailand.

Where negotiations between the parties to an international dispute fail to yield a settlement, the intervention of a third party may have the effect of preventing a further deterioration in relations, breaking the deadlock and providing a way forward towards the peaceful resolution of the dispute. Such involvement by a third party may be termed an offer of its 'good offices' or *mediation.*[18] It is conceivable that mediation could be employed in the Gulf of Thailand, once negotiations have reached deadlock. Indeed, the good offices of the UN Secretary-General have been employed in the region in the past, albeit not with regard to maritime issues. For example the good offices of the UN Secretary-General were used in relation to disputes between Cambodia and Thailand in 1960, with the process yielding four sets of exchanges of letters between the parties.[19] The possibility of applying mediation to the Gulf of Thailand maritime disputes has been enhanced by the easing of ideologically-based antagonisms in the 1990s and the integration of the Gulf of Thailand states into the Association of South East Asian Nations (ASEAN). ASEAN clearly has the potential to act as a mediator or conduit for other dispute resolution procedures, but hitherto does not seem to have been called upon.

With regard to *inquiry* and *conciliation* as methods of dispute resolution, there has been no indication that such approaches have been considered in the Gulf of Thailand, presumably because negotiations are not considered to have been exhausted.[20]

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17 Merrills, 1991: 1-26.

18 The UN Secretary-General has referred to good offices, the offering of which is a fundamental part of his role, as being *"a flexible term as it may mean very little or very much"* (United Nations, 1992: 35).

19 Sucharitkul, 1991: 20. Sucharitkul (1991: 20-21) describes good offices as the *"most palatable"* or *"least objectionable"* mode of third-part dispute resolution in Thailand's experience but states that as far as Thailand is concerned *"mediation is a method to avoid."* . There is, however, no clear distinction between these terms and in the 1899 and 1907 *Hague Conventions for the Pacific Settlement of International Disputes* the terms good offices was used interchangeably with mediation. However, mediation has been defined as being *"an extension of the function of good offices"* (Eyffinger, 1996: 24) with a mediator going beyond the limited role envisaged by good offices of providing a point of exchange between the parties and becoming involved in the intricacies of the dispute itself

20 Additionally, Thailand has one, disappointing, experience of a conciliation commission which ruled on a dispute with France in 1946. The commission found in favour of France and Thailand felt that it was *"heavily lopsided"* in favour of that country such that *"once bitten, she [Thailand] became shy and more careful of western procedures of pacific settlement of dispute"* (Sucharitkul, 1991: 22-23).

An inquiry consists of an impartial, frequently third-party conducted, fact-finding and investigation procedure, usually applied where a dispute exists over points of fact. Conciliation may be viewed as a more formal type of mediation, incorporating elements of inquiry, and has been defined as involving the setting up of a commission by the two parties (either permanent or *ad hoc*) to examine the evidence and to define terms for a settlement.[21] The Gulf of Thailand coastal states are likely to prove cautious about surrendering control, however slightly, over an issue viewed as vital to the national interest such as boundary delimitation. Nevertheless, these procedures remains options with proven track records. For example, Iceland and Norway established a Conciliation Commission in 1980 tasked with making recommendations on the division of the area of continental shelf between Iceland and Jan Mayen Island. Following detailed investigations, the Commission proposed a joint development zone. This was accepted and incorporated in a treaty signed in 1981 which effectively ended the dispute.[22]

International litigation, in the form of arbitration or judicial settlement, is resorted to when a binding decision is desired to resolve a dispute. The consent of the parties to submit their dispute to international litigation is crucial.[23] In the international context there is no compulsory jurisdiction such that one state could take another to court against it's will. The decision to opt for one of the forms of international litigation is therefore a political one and one that should not be taken lightly as both arbitration and judicial settlement can be expensive, time-consuming and uncertain methods of dispute resolution.[24]

Parties to a dispute have the option of submitting their dispute either to an *ad hoc* arbitration tribunal of their own design or to a standing tribunal. Two standing tribunals are of direct relevance to the resolution of international maritime boundary disputes. These are the International Court of Justice (ICJ) at the Hague in the Netherlands and the International Tribunal on the Law of the Sea (ITLOS) located in Hamburg, Germany.[25]

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21 Merrills, 1991: 59.

22 Charney and Alexander, 1993: 1,755-1766.

23 Consent is often expressed in terms of a special agreement relating to a specific dispute which is frequently known by its French name, *compromis*. Alternatively, consent may be given at large, for example under the terms of a multilateral treaty concerning disputes over the interpretation of that treaty. The dispute resolution mechanisms of UNCLOS fall into this category (Rosenne, 1998: 57).

24 Rosenne, 1998: 59.

25 While the has adjudicated some 22 cases involving boundaries and territory, ITLOS only began work in 1998 and as of mid-1999 had heard only one case which was unrelated to maritime boundary delimitation.

Although there has been some debate as to the ability of the ICJ to judge cases that have a strong political dimension, litigation may be seen as a method of depoliticising a dispute by submitting it to an impartial third-party decision – something that has been described as a means to get governments *"off the hook."*[26] Submitting a case to the ICJ or ITLOS has other advantages. Unlike in arbitration, states do not need to go through the laborious task of establishing a new tribunal whenever a dispute arises as both permanent tribunals have its own supporting Registry and Rules of Court. Though the ICJ has not managed to resolve all the disputes placed before it, international litigation remains a very useful option for states wanting to resolve a dispute.

As already alluded to, the key disadvantages of submitting a dispute to judicial settlement lie in the costs incurred, time taken to go through the process and the possibility that the state concerned will come away with nothing – the latter point being something that the state concerned may find hard to swallow. As far as the costs of a case before the ICJ are concerned, Bowett has estimated as follows: *"By and large, one can expect the total cost for a full case, from application to judgment, to be anything between [US]$3 and $10 million."*[27] Highet has also stated that the *fastest* likely time-frame for the ICJ to consider a case will be of the order of 36 months – three years.[28] It remains to be seen how swiftly ITLOS will work, but it is clear that one of its aims is to operate more swiftly than the ICJ has hitherto done.

Southeast Asia as a whole has traditionally been viewed as being generally luke-warm about the prospects of employing international litigation as a means of dispute resolution.[29] However, Malaysia and Indonesia and Malaysia and Singapore have in recent times submitted cases to the ICJ. Nevertheless, it is unlikely in the extreme that Thailand in particular would contemplate submitting a dispute to any international litigation procedure. Thailand's antipathy towards the process stems primarily from the fact that the ICJ found in favour of Cambodia over Thailand in the *Temple* case – a judgment which Thailand took serious exception to and to which it adhered to only with strong reservations (see Section 7.2.3). Consequently, Thailand's experience of international litigation has been described as a *"bitter disappointment."*[30] The

26 Rosenne, 1998: 59.
27 Bowett, 1997: 7.
28 Highet, 1998.
29 See, for example, Englefield, 1994: 36-37 and Valencia and Van Dyke, 1994: 220.
30 Sucharitkul, 1991: 23.

considerable resource which the process demands, in terms of finance, human resources and time, are likely to argue against its adoption in relation to maritime boundary delimitation in the Gulf of Thailand unless severe and prolonged dispute makes it a more attractive alternative to continued deadlock.

It is also worth noting that UNCLOS includes detailed provisions concerning the settlement of disputes set out in Part XV (Articles 279-299). The first of these articles, Article 279, includes an obligation to settle disputes by peaceful means in accordance with the UN Charter. UNCLOS does not, however, restrict states to the dispute resolution techniques laid down in the Convention but specifically allows states to settle their disputes *"by any peaceful means of their own choice"* (Article 280). UNCLOS also includes an obligation to *"exchange views"* regarding dispute settlement (Article 283) and the possibility of submitting the dispute to conciliation procedures (Article 284 and Annex V).

Where no settlement can apparently be achieved between the parties, UNCLOS further offers dispute resolution through *"compulsory procedures resulting in binding decisions"* (Part XV, Section 2). Article 287 of the Convention allows a choice of method between the International Tribunal on the Law of the Sea (ITLOS)[31], the International Court of Justice (ICJ), an arbitral tribunal[32] or a special arbitral tribunal in relation to specific issues.[33] These compulsory procedures are binding between parties to UNCLOS – ratification of the Convention equating to consent to these provisions.[34] The proliferation in the options available for the pacific settlement of disputes has not received undiluted praise. For example, Thailand's reaction has been described as *"less than enthusiastic"* given that states preference for negotiation or good offices as dispute resolution procedures.[35]

Alternative Means of Dispute Resolution – Joint Development Zones

In addition to the conventional means of dispute resolution outlined in the previous section, alternatives have also emerged including what are termed confidence building

31 Established in 1996-1997 in Hamburg in accordance with Annex VI of the Convention.

32 Constituted in accordance with Annex VII of the Convention, which covers fisheries, protection and preservation of the marine environment, marine scientific research, and navigation including pollution from vessels and dumping.

33 Constituted in accordance with Annex VIII of the Convention.

34 For a detailed analysis of the system for settlement of disputes under UNCLOS, see Adede (1987).

35 Sucharitkul, 1991: 28.

measures such as 'track-two' diplomatic initiatives[36] and other, frequently functionalist oriented, measures designed to defuse or at least partially ameliorate contentious disputes. In relation to maritime jurisdictional disputes the most significant innovative form of dispute resolution, or at least deferral, that has developed over recent years relates to the use of maritime joint development zones.

Joint development arrangements are encouraged under UNCLOS as both Articles 74(3) and 83(3) dealing with the delimitation of the exclusive economic zone and continental shelf respectively state that:

> *Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.*

Joint development zones have been heralded as a means of overcoming seemingly intractable maritime boundary disputes where the parties concerned inflexibly cling to overlapping claims. In this situation, where there appears to be no prospect of agreement on a boundary line in the foreseeable future, it has been argued that joint development agreements seem to offer an ideal way forward. As Richardson noted in his influential article, if the parties agree to such an arrangement:

> *...the focus would be placed where it belonged: on a fair division of the resources at stake, rather than on the determination of an artificial line,* thus, *...eliminating competition over the ownership of resources...especially where the resources are unknown.*[37]

The rationale behind this contention is that such cooperative arrangements are entirely logical – allowing states to retain their claims unaltered in principle and proceed with desired offshore development, for example of oil and gas resources, or fisheries management. Joint development zones have also been welcomed as evidence of the emergence of a more broad-based, functionalist and comprehensive approach to ocean

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36 An excellent example of this process is the *Managing Potential Conflicts in the South China Sea* project which, through a series of non-governmental gatherings attended by government officials, has sought ways to engender cooperation among the South China Sea states. Rather than addressing the contentious issues of jurisdiction and boundaries, the project has instead attempted, with a qualified success, to build consensus on issues of mutual concern such as the environment, ecology and marine research; shipping navigation and communications and living resources management (see the South China Sea Informal Working Group's web-site at: http://www.law.ubc.ca.cntres/scsweb). See also, Evans, 1993.

37 Richardson, 1988: 451-452.

management as opposed to more traditional legalistic and thus confrontational approaches focusing on the definition of a particular dividing line.[38] Additionally, the drawing of a definitive boundary line can be regarded as a 'once and for all' process and can represent something of a lottery with regard to undiscovered resources. With a joint zone, lack of knowledge as to the precise location of resources assumes less importance and no longer acts as a deterrent to resolution. Instead, both sides can be confident that a fair and equitable sharing has been achieved – no 'winners' and 'losers' should therefore emerge from such arrangements.

Conversely, it seems inappropriate to promote joint development arrangements simply because the parties to a dispute have proved unable to resolve their differences over overlapping maritime claims. Furthermore, the practical task of establishing and maintaining such potentially dauntingly complex arrangements should not be underestimated as this requires considerable political commitment from all parties. Joint development zones cannot, therefore, be divorced from the overall political context between the states involved. As Stormont and Townsend-Gault maintain, joint development should not be suggested lightly as:

> *The conclusion of any joint development arrangement, in the absence of the appropriate level of consent between the parties, is merely redrafting the problem and possibly complicating it further.*[39]

Similarly, Jagota has noted that:

> *...sensitive security conditions in the area, incompatible political relations between the disputants, vertical or dependent economic relations, reluctance to transfer technology or to codevelop technology, and other similar inconsistencies may generate resistance to joint development zones, with or without a maritime boundary.*[40]

Nevertheless, it is clear that emerging state practice appears to favour joint development arrangements and that this accords with the evolving general duty of states to facilitate optimum ocean management. As such, joint development arrangements do offer a functional, flexible and equitable way forward for states with seemingly intractable disputes over overlapping maritime claims with their neighbours. Such a practical, problem-solving approach with the emphasis firmly placed on promoting inter-state

38 Ong, 1995: 91; Jagota, 1993: 114.
39 Stormont and Townsend-Gault, 1995: 52.
40 Jagota, 1993: 117.

cooperation and effective ocean resource development and management must be considered welcome and is likely to prove of increasing significance in the future. In total seventeen such zones have come into being around the world to date and are not confined to a particular geographical region although Southeast Asia is well represented (see Figure 8.1).

The Gulf of Thailand itself is host to two fully-fledged joint development agreements between Malaysia and Thailand and Malaysia and Vietnam and a further joint arrangement in the Cambodia-Vietnam Historic Waters Agreement (see Chapter 6). This makes the Gulf one of the leading concentrations of state practice in joint development worldwide. The prospects of further joint development arrangements being realised in the Gulf are, however, undermined by Thailand's reluctance to adopt another joint zone solution, particularly with regard to Cambodia (see Section 7.2.8). It is notable that Thailand resisted a joint zone solution in its delimitation with Vietnam (see Section 6.5). This negative attitude towards joint development probably stems from the difficulties experienced in implementing the Thai-Malaysian joint development area (see Section 6.2.4). The potential benefits of joint development are, however, attractive, as has been demonstrated by successful exploration activities in both the Thai-Malaysian JDA and Malaysia-Vietnam "Defined Area". Indeed, the estimated 10 trillion cubic feet of gas reserves in the Thai-Malaysian JDA have been touted by both governments concerned as providing the foundation for their economic recovery (see Section 6.2.4). It remains to be see whether continuing lack of progress in delimitation negotiations coupled with economic necessity will soften Thailand's stance and encourage further joint development initiatives in the Gulf of Thailand.

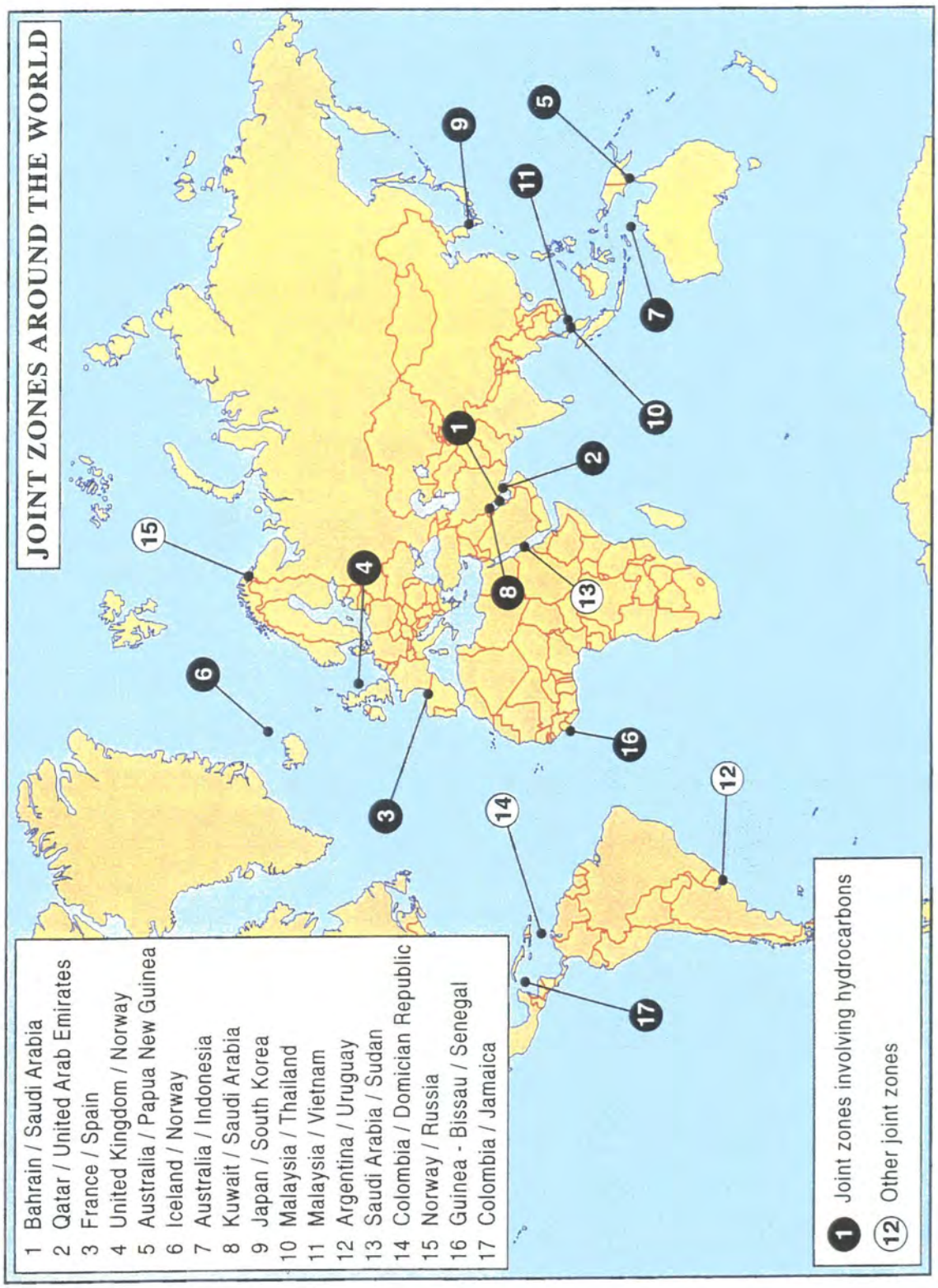


Figure 8.1 *Joint Development Zones Around the World*
Source: Author's research.

8.3.2 *Opportunities and Constraints in the Gulf of Thailand*

The preceding discussion demonstrates that the Gulf of Thailand littoral have a wide variety of means of maritime boundary dispute resolution available to them. In many ways this does not represent the problem. This concluding section will explore what factors serve to promote or frustrate efforts towards maritime boundary dispute resolution in the Gulf of Thailand.

Many of the attributes of the Gulf of Thailand outlined in Chapter 1 which have made the delimitation of maritime boundaries problematic have not been removed. There have, however, been significant, positive developments which provide grounds for optimism.

The *geographical* realities of the Gulf of Thailand remain unaltered. The littoral states have to face the fact that they border a semi-enclosed sea of restricted dimensions. The coastal states are therefore immediately disadvantaged in that the full extent of their maritime rights out to 200nm from the coast are curtailed by the presence of neighbouring states. The complex coastal geography of the Gulf remains a significant challenge. For example, both Cambodia *and* Thailand have grounds for considering themselves geographically disadvantaged – a situation unlikely to promote swift resolution of their overlapping claims.

In particular, islands are likely to prove a major impediment to maritime boundary negotiations. While the resolution of sovereignty disputes over islands disputed in the early 1970s represents a particularly positive development in light of the almost insurmountable difficulties such disputes have caused elsewhere around the world,[41] their role in delimitations is likely to prove contentious. Nevertheless, problems over the weight to be accorded to islands in maritime delimitation have been resolved in the Gulf of Thailand. This was demonstrated by the conversion of overlapping Thai-Malaysian claims caused by a dispute over the role of the Thai islet of Ko Losin into delimitation into a JDA agreement (see Section 6.2.4). Similarly, the successful conclusion of the Thai-Vietnamese maritime boundary treaty in 1997, despite the presence of islands in the area to be delimited, represents an encouraging sign that difficulties relating to islands can be overcome (see Section 6.5).

The geographical challenges which the Gulf of Thailand poses are, without doubt, the key problems which the littoral states have to overcome if delimitation is to

[41] For an overview of the impact of island sovereignty disputes on maritime boundary delimitation see Smith and Thomas, 1998.

be achieved successfully. Nevertheless, if the political will exists, there is ample scope for compromise either on a boundary line or by means of an 'agreement not to agree' in order to allow resource exploitation and management to proceed in the shape of a joint development zone.

If anything, the *national maritime claims* of the Gulf of Thailand coastal states have become more extreme with age. The trend has been towards the progressive advancement of straight baseline claims offshore, as illustrated by Thailand's Area 4 claim of 1992. Despite the fact that these extreme claims largely remain in force and in some cases have been extended, this has not prevented the resolution of maritime boundary disputes in the Gulf of Thailand (see Chapter 6). Indeed, the disparities between the parties' claims can be viewed as offering considerable scope for compromise.

The most important developments which favour boundary delimitation in the late 1990s are, however, *political* in nature. Political will has been identified as the key ingredient in securing a maritime boundary agreements. The end of the Cold War and removal of Cambodia as a serious impediment to regional political relations, has transformed the geopolitical environment. While the Gulf of Thailand states may fall victim to the influences of resurgent nationalism, the prospects for fruitful negotiations must be considered better today than ever before. Indeed, an easing in the ideological divide across the Gulf has already yielded the Malaysia-Vietnam joint zone and Thai-Vietnamese maritime boundary agreement.

As SEAPOL has noted in relation to the Gulf of Thailand region in outlining the rationale for its project on the Gulf:

> *...an area of conflict for many decades. It used to be a barrier to cooperation among some of the four littoral states. Now, with the emergence of a new spirit of cooperation throughout the entire region of Southeast Asia, the objective of regional cooperation in the Gulf of Thailand appears to be closer at hand.*[42]

This assessment is reinforced by the fact that all four Gulf of Thailand coastal states are now full ASEAN members. This must be viewed as another very positive development, even if some commentators have noted that inter-ASEAN relations *"are cordial but competitive and perhaps unstable in the long term."*[43] While long-standing animosities between the states concerned cannot be said to have been overcome, the fact that all four

42 Matics and McDorman, 1994: 5.
43 Valencia and Van Dyke, 1985: 381.

Gulf of Thailand states are ASEAN members suggests that these latent tensions can be managed and overcome. The ASEAN states have a successful history of managing disputes through the application of what has become known as the *"ASEAN way"*. As a result no armed conflict has broken out between ASEAN members since the organisation's inception in 1967.[44] With regard to territorial disputes, the ASEAN way, a term that is commonly used in reference to the region but lacks a precise definition, tends to refer to the establishment of codes of conduct among ASEAN members which set out guidelines and *"unwritten norms"* which are binding on member states.[45] Key elements of the ASEAN way include stressing the virtue of self-restraint, the adoption of the practices of *musyawarah* and *muafakat* (consultation and consensus), the use of third-party mediation to resolve disputes and a commitment to agree to disagree and shelve disputes. [46] The latter point may perhaps be viewed as encouraging maritime joint development. As a result, most disputes have been contained, but few have been settled. Additionally, internal political problems which distracted certain states, notably Cambodia, from devoting attention to maritime boundary issues have also, at least to some extent, been addressed.

The Gulf of Thailand states' economic requirements provide a potentially double-edged sword as far as the prospects for maritime boundary delimitation is concerned. On the one hand, desire to gain access to resources locked in overlapping claim zones at the earliest possible stage may promote agreement and compromise. Conversely, the perceived value of the resources may undermine efforts to reach an agreement as each party may fear losing out in negotiations and adopting maximalist, intransigent bargaining positions. Nevertheless, such economic needs are becoming increasingly pressing in view of rapidly growing populations and resource requirements coupled with the current economic plight of the region. The threat to the Gulf's marine environment will also increasingly generate pressure to resolve jurisdictional disputes in order to facilitate cooperative management and preservation of the Gulf's unique living resources. There has, however, been a noticeable preoccupation among the coastal state authorities with immediately offshore areas which may act as an impediment to dispute resolution.[47] Nevertheless, the factors outlined above will encourage the delimitation of

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44 ASEAN's performance in conflict management has therefore been termed *"impressive"* (Amer, 1997b: 337).

45 Hoang, 1996: 62. See also, Amer (1997b)

46 Hoang, 1996: 63.

47 Kittichaisaree, 1992: 516.

further maritime boundaries in the Gulf of Thailand, as will the growing list of obligations on the littoral states to cooperate in relation to the Gulf's resources and environment. These obligations, even if ill-defined, will tend to create an atmosphere conducive to maritime boundary delimitation. Furthermore, there is a growing realisation among the Gulf of Thailand states that their maritime interests can only be maximised through such cooperation, including maritime boundary delimitation.[48]

Overall, the Gulf of Thailand is one of the world's most important laboratories in which the problems of maritime boundary delimitation in semi-enclosed seas are being examined and slowly resolved. There are no quick solutions. The issues are politically delicate, technically complex and legally challenging, but there are signs of progress and prospects for the future, particularly in the wake of the geopolitical transformation of the region in the 1990s, must be considered to be good. The issues faced by the Gulf of Thailand littoral states in terms of maritime boundary delimitation and the resolution of their maritime disputes deserve to be better known and understood and it is hoped that this thesis makes some small contribution towards this end.

[48] Kittichaisaree, 1992: 501-503.

Appendix 1

Statute of the International Court of Justice, Article 38

1. The Court whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
   a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
   b) International custom, as evidence of a general practice accepted as law;
   c) The general principles of law recognized by civilised nations;
   d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

Source: Reproduced in Brown, 1994, Vol.II: 19.

Appendix 2

Cambodian Council of State Decree on Territorial Waters, 31 July 1982

The chairman of the Council of State, considering that the PRK has full sovereignty and inviolable rights over its territorial waters and its continental shelf;

Considering that the PRK must watch over its sovereignty, security and national defence toward the sea and ensure the best exploitation of natural resources in its territorial waters and continental shelf in order to serve the national defence and reconstruction efforts and the improvement of the people's living standards;

Considering the Constitution of the PRK;
And the Council of Ministers having been informed;
Has decreed the following:

Article 1

The full and entire sovereignty of the PRK extends beyond its territory and internal waters to a maritime zone adjacent to its coasts and its internal waters, designated by the name of the territorial waters of the
PRK.

This sovereignty also extends to the airspace above the territorial waters of the PRK as well as to the seabed and subsoil of these waters.

Article 2

The width of the territorial waters of the PRK is 12 nautical miles (1 nautical mile equalling 1,852 meters) measured from straight baselines, linking the points of the coast and the furtherest points of Kampuchea's [Cambodia's] furtherest islands; these baselines are traced along the low-water mark.

These straight baselines are concretely defined in Annex 1 of this decree.

The internal waters of the PRK are the waters located between the baseline of the territorial waters and the coasts of Kampuchea [Cambodia].

Article 3

The outer limit of the territorial waters of the PRK is a line each point of which is at a distance equal to the width of the territorial waters from the closest point of the baseline. In the maritime zone between Kach Kut Island and the terminus of the land border between Kampuchea [Cambodia] and Thailand, the limit of the territorial water of the PRK follows the dividing line of the maritime waters determined by the historic border stipulated in the Franco-Siamese treaty of 23 March 1907.

Article 4

The contiguous zone of the PRK is a maritime zone located beyond and adjacent to its territorial waters, with a width of 12 nautical miles measured from the outer limit of the territorial waters of the PRK.

In its contiguous zone, the PRK exercises necessary control in order to oversee its security and to prevent and check violations of its customs, fiscal, health and emigration and immigration laws.

Article 5

The exclusive economic zone of the PRK is a maritime zone located beyond its territorial waters and adjacent to the latter. This zone extends to 200 nautical miles measured from the baseline used to measure the width of the territorial waters of the PRK.

The PRK has sovereign rights over the exploration and exploitation and the preservation and management of all organic or inorganic natural resources of the seabed, of its subsoil and of the waters above it and over other activities leading to the exploration and exploitation of its exclusive economic zone.

In its exclusive economic zone, the PRK has exclusive jurisdiction regarding the setting up and use of installations, devices and artificial islands and marine research; and has jurisdiction over the preservation of the marine environment and the control of pollution.

Without prior authorisation or agreement by the PRK. foreign ships are forbidden to fish or exploit any natural resources in any form, or to undertake scientific research in the exclusive economic zone of the PRK. When they have obtained prior authorisation or agreement, they must conform with the laws and regulations of the PRK concerning fishing, the exploitation of other natural resources and scientific research, and with other regulations relating to them decreed by the PRK, and must strictly carry out all obligations provided in the licenses or the contracts.

Article 6

The continental shelf of the PRK comprises the seabed and the subsoil of the submarine areas that extend beyond the territorial waters throughout the natural prolongation of its land territory to a distance of 200 nautical miles from the baseline used to measure the width of the territorial waters of the PRK.

The PRK exercises sovereign rights over its continental shelf for the purposes of exploration, exploitation. preservation and management of its natural resources comprising mineral resources and other inorganic or organic resources belonging to sedentary species living on the continental shelf.

The PRK has the exclusive right to regulate the setting up and use of installations, devices and artificial islands or drilling on its continental shelf for the purposes of exploration, exploitation or any other purpose.

All activities carried out by foreigners on the continental shelf of Kampuchea [Cambodia], for whatever end, must be the object of an authorisation or an agreement by the PRK Government and conform with the laws and regulations of the PRK.

Article 7

The PRK will settle, by means of negotiations with interested states. all problems concerning the maritime zones and continental shelf in a fair and logical manner on the basis of mutual respect for sovereignty. independence and territorial integrity.

Article 8

The PRK will negotiate and agree with the SRV [Vietnam] on the maritime border in the historic waters zone of the two countries fixed in the agreement on the historic waters of the two countries signed on 7 July 1982 in line with the spirit and letter of the Treaty of Peace. Friendship and Cooperation between the two states signed on 18 February 1979.

Article 9

All provisions contrary to this decree are purely and simply abrogated.

Article 10

The minister of national defence, the minister of interior and the ministers concerned are charged each in his proper field, with the implementation of this decree.

ANNEX 1

The Baseline Retained for the Limitation of the Territorial Waters of the PRK

The baseline retained for the limitation of the territorial waters of the PRK is made up of segments of a line passing successively through the following points, the coordinates of which are expressed in degrees, minutes and tenths of a minute. the longitude being counted from the meridian of Greenwich.

Number	Geographical Place	Latitude (North)	Longitude (East)
1	Border point on low-water mark between Thailand and the PRK according to treaty of 23 March 1907	11° 38' 8"	102° 54' 3"
2	Kack Kusrovie	11° 06' 8"	102° 47' 3"
3	Kack Voar	10° 14' 0"	102° 52' 5"
4	Poulo Wai	09° 55' 5"	102° 53' 2"
5	Point 0 out at sea on the southwest limit of the historic waters of the PRK	According to the agreement of 7 July 1982	

Source: Reproduced in Smith, 1986: 91-94.

Appendix 3

Agreement on Historic Waters of Vietnam and Kampuchea 7 July 1982

The Government of the Socialist Republic of Vietnam and the Government of the People's Republic of Kampuchea,

DESIROUS of further consolidating and developing the special Vietnam-Kampuchea relations in the spirit of the Treaty of Peace, Friendship and Cooperation between the Socialist Republic of Vietnam and the People's Republic of Kampuchea signed on February 18, 1979.

CONSIDERING the reality that the maritime zone situated between the coast of Kien Giang Province, Phu Quoc Island, and the Tho Chu archipelago of the Socialist Republic of Vietnam on the one side, and the coast of Kampot Province and the Poulo Wai group of islands of the People's Republic of Kampuchea on the other, encompasses waters which by their special geographical conditions and their great importance for the national defence and the economy of both countries have long belonged to Vietnam and Kampuchea,

HAVE AGREED ON THE FOLLOWING:

Article 1

The waters located between the coast of Kien Giang Province, Phu Quoc Island, and the Tho Chu archipelago of the Socialist Republic of Vietnam on the one side, and the coast of Kampot Province and the Poulo Wai group of islands of the People's Republic of Kampuchea on the other, form the historical waters of the two countries placed under the juridical regime of their internal waters and are delimited (according to the Greenwich east longitude):

To the northwest by a straight line stretching from coordinates 09 degrees 54'2" north latitude – 102 degrees 55'2" east longitude and coordinates 09 degrees 54'5" north latitude – 102 degrees 57'2" east longitude of Poulo Wai Islands (Kampuchea) to coordinates 10 degrees 24'1" north latitude – 103 degrees 48'0" east longitude and 10 degrees 25'6" north latitude – 103 degrees 49'2" east longitude of the Koh Ses Island (Kampuchea) to coordinates 10 degrees 30'0" north latitude – 103 degrees 47'4" east longitude of Koh Thmei Island (Kampuchea) to coordinates 10 degrees 32'4" north latitude – 103 degrees 48'2" east longitude on the coast of Kampot Province (Kampuchea).

To the north by the coast of Kampot Province stretching from coordinates 10 degrees 32'4" Lat. N. – 103 degrees 48'2" Long. E. on the terminus of the land border between Vietnam and Kampuchea on the coast.

To the southeast by a line stretching from the terminus of the land border between Vietnam and Kampuchea on the coast to coordinates 10 degrees 04'42" Lat. N. – 104

degrees 02'3" Long. E. from the An Yet point of Phu Quoc Island (Vietnam) and along the northern coast of this island to the Dat Do point situated at coordinates 10 degrees 02'8" Lat. N. – 103 degrees 59'1" Long. E., and from there to coordinates 09 degrees 10'1" Lat. N. – 103 degrees 26'4" Long. E. of Thu Chu Island (Vietnam) to coordinates 09 degrees 15'0" Lat. N. – 103 degrees 27'0" Long. E. of Hon Nhan Island in the Tho Chu archipelago (Vietnam).

To the southwest by a straight line stretching from coordinates 09 degrees 55'0" Lat. N. – 102 degrees 53'5" Long. E. from Puolo Wai Islands (Kampuchea) to coordinates 09 degrees 15'0" Lat. N. – 103 degrees 27'0" Long. e. of Hon Nhan Island in the Tho Chu archipelago (Vietnam).

Article 2

The two sides will hold at a suitable time negotiations in the spirit of equality, friendship, and respect for each other's independence, sovereignty, territorial integrity, and the legitimate interests of each side in order to delimit the maritime frontier between the two countries in the historical waters mentioned in Article 1.

Article 3

Pending the settlement of the maritime border between the two States in the historical waters mentioned in Article 1:

The meeting point 0 of the two baselines used for measuring the width of the territorial waters of each country situated on the high seas on the straight baseline linking the Tho Chu archipelago and Poulo Wai Islands will be determined by mutual agreement.

The two sides continue to regard the Brévié Line drawn in 1939 as the dividing line for the islands in this zone.

Patrolling and surveillance in these territorial waters will be jointly conducted by the two sides.

The local populations will continue to conduct their fishing operations and the catch of other sea products in this zone according to the habits that have existed so far.

The exploitation of natural resources in this zone will be decided by common agreement.

DONE in Ho Chi Minh City on the 7th of July 1982, in two languages, Vietnamese and Khmer, both being equally valid.

For the Government of the Socialist Republic of Vietnam: Nguyen Co Thach, Minister of Foreign Affairs of the Socialist Republic of Vietnam.

For the Government of the People's Republic of Kampuchea: Hun Sen, Minister of Foreign Affairs of the People's Republic of Kampuchea.

Source: Reproduced in Kittichaisaree, 1987.

Appendix 4

Survey of Longest Baseline Segments

State	Longest segment
Albania[1]	16nm
Burma (Myanmar)[2]	222.3nm
Cambodia[3]	*51.8nm*
Canada	100nm
Chile[4]	65nm
China (PRC)[5]	121.7nm
Colombia[6]	130.5nm
Croatia (former Yugoslavia)[7]	22.5nm
Cuba[8]	69.24nm
Denmark	21.81nm
Faeroes (Denmark)[9]	60.8nm
Djibouti[10]	8.2nm
Dominican Republic[11]	45nm
Ecuador[12]	136nm
Egypt[13]	40.5nm
Finland	8nm (maximum)
France[14]	39nm
Germany[15]	22.8nm
Guinea[16]	120nm
Guinea-Bissau[17]	29nm
Haiti[18]	89nm
Iceland[19]	74.1nm
Iran[20]	113.4nm
Ireland[21]	25.2nm

1 US Department of State, 1994b: 4.
2 US Department of State, 1970g: 4.
3 See Table 4.7.
4 US Department of State, 1978: 4.
5 US Department of State, 1996: 15.
6 US Department of State, 1985: 4.
7 US Department of State, 1970e: 4.
8 US Department of State, 1977: 6.
9 US Department of State, 1970f: 2.
10 US Department of State, 1992: 3.
11 US Department of State, 1970d: 3.
12 US Department of State, 1972d: 5.
13 US Department of State, 1994b: 11.
14 US Department of State, 1972a: 5.
15 US Department of State, 1973c: 4. This was the longest segment in East Germany's claimed straight baselines. The longest segment in West Germany's straight baselines claim was 21.5nm long.
16 US Department of State, 1972b: 2.
17 US Departmant of State, 1970l: 4.
18 US Department of State, 1973a: 3.
19 US Department of State, 1974: 8.
20 US Department of State, 1994a: 5.
21 US Department of State, 1970b: 6.

State	Longest segment
Italy	60nm
Korea (ROC)[22]	60.3nm
Madagascar[23]	123.1nm
Malaysia (east peninsula coast)[24]	90.2nm
Mexico[25]	39.4nm
Mozambique[26]	60.4nm
Norway	43.6nm
Svalbard (Norway)[27]	18.5nm
Oman[28]	23.6nm
Portugal (excluding islands)[29]	31.25nm
Russia (former Soviet Union)[30]	106.3nm
Senegal[31]	22nm
Sweden	30nm
Thailand[32]	*94.9nm*
Turkey[33]	23.5nm (bay), c.20nm
United Kingdom[34]	40.25nm
Vietnam[35]	*161.8nm*
Average	**64.8nm**

Source: Author's research.

22 US Department of State, 1979: 7.
23 US Department of State, 1970h: 5.
24 See Table 4.9.
25 US Department of State, 1970c: 4.
26 US Department of State, 1970k: 5.
27 US Department of State, 1972c: 4.
28 US Department of State, 1992: 4.
29 US Department of State, 1970j: 4.
30 US Department of State, 1987b: 23.
31 US Department of State, 1973b: 5.
32 See Table 4.15.
33 US Department of State, 1971b: 2.
34 US Department of State, 1970i: 4.
35 See Table 4.17.

Appendix 5

Statement of the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone, and the Continental Shelf of Vietnam, 12 May 1977

The statement which is dated May 12, 1977, and has been approved by the Standing Committee of the SRV National Assembly, reads in full as follows:

The Government of the Socialist Republic of Vietnam,

After approval by the Standing Committee of the National Assembly of the Socialist Republic of Vietnam,

Declares that it has defined the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of the Socialist Republic of Vietnam as follows:

1. The territorial sea of the Socialist Republic of Vietnam has a breadth of 12 nautical miles measured from a baseline which links the furthest seaward points of the coast and the outermost points of Vietnamese offshore islands, and which is the low-water line along the coast.

The waters on the landward side of the baseline constitute internal waters of the Socialist Republic of Vietnam.

The Socialist Republic of Vietnam exercises full and complete sovereignty over its territorial sea as well as the superjacent air space and the bed and subsoil of the territorial sea.

2. The contiguous zone of the Socialist Republic of Vietnam is a 12-nautical-mile maritime zone adjacent to and beyond the Vietnamese territorial sea, with which it forms a zone of 24 nautical miles from the baseline used to measure the breadth of the territorial sea.

The Government of the Socialist Republic of Vietnam exercises the necessary control in its contiguous zone in order to see to its security and custom and fiscal interests and to ensure respect for its sanitary, emigration and immigration regulations within the Vietnamese territory or territorial sea.

3. The exclusive economic zone of the Socialist Republic of Vietnam is adjacent to the Vietnamese territorial sea and forms with it a 200-nautical-mile zone from the baseline used to measure the breadth of Vietnam's territorial sea.

The Socialist Republic of Vietnam has sovereign rights for the purpose of exploring, exploiting, conserving and managing all natural resources, whether living or non-living, of the waters, the bed and subsoil of the exclusive economic zone of Vietnam; it has exclusive rights and jurisdiction with regard to the establishment and use of installations and structures, artificial islands; exclusive jurisdiction with regard to other activities for

the economic exploration and exploitation of the exclusive economic zone; exclusive jurisdiction with regard to scientific research in the exclusive economic zone of Vietnam; the Socialist Republic of Vietnam has jurisdiction with regard to the preservation of the marine environment, and activities for pollution control and abatement in the exclusive economic zone of Vietnam.

4. The continental shelf of the Socialist Republic of Vietnam comprises the seabed and subsoil of the submarine areas that extend beyond the Vietnamese territorial sea throughout the natural prolongation of the Vietnamese land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baseline used to measure the breadth of the Vietnamese territorial sea where the outer edge of the continental margin does not extend up to that distance.

The Socialist Republic of Vietnam exercises sovereign rights over the Vietnamese continental shelf in the exploration, exploitation, preservation and management of all natural resources, consisting of mineral and other non-living resources, together with living organisms belonging to sedentary species thereon.

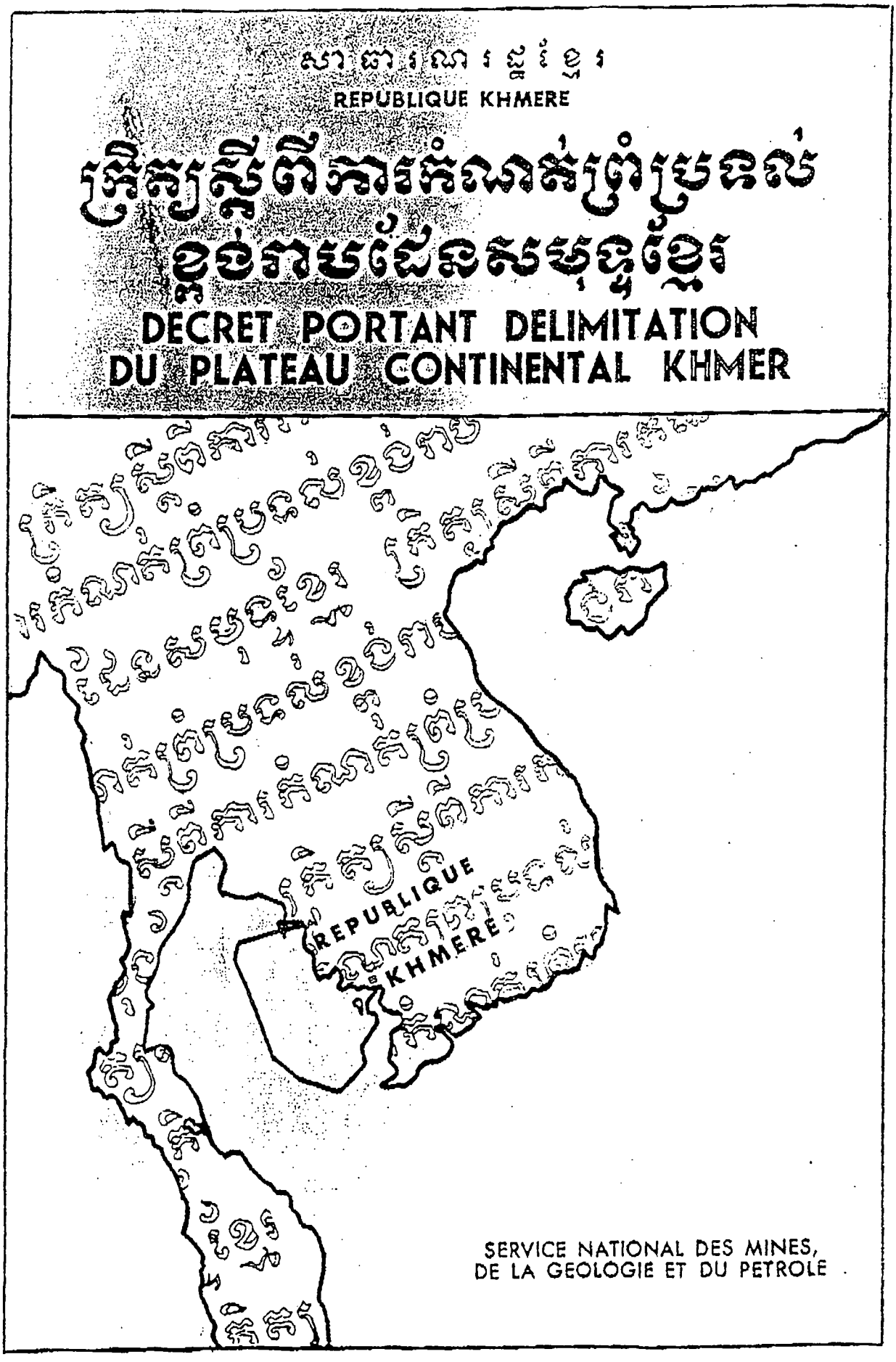
5. The islands and archipelagos, forming an integral part of the Vietnamese territory and beyond the Vietnamese territorial sea mentioned in Paragraph 1, have their own territorial seas, contiguous zones, exclusive economic zones and continental shelves, determined in accordance with the provisions of Paragraphs 1, 2, 3 and 4 of this statement.

6. Proceeding from the principles of this statement, specific questions relating to the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf of the Socialist Republic of Vietnam will be dealt with in detail in further regulations, in accordance with the principle of defending the sovereignty and interests of the Socialist Republic of Vietnam, and in keeping with international law and practices.

7. The Government of the Socialist Republic of Vietnam will settle with the countries concerned, through negotiations on the basis of mutual respect for independence and sovereignty, in accordance with international law and practices, the matters relating to the maritime zones and the continental shelf of each country.

Source: FBIS Daily Report: Asia and Pacific, 24 May 1977.

Appendix 6


សាធារណរដ្ឋខ្មែរ
REPUBLIQUE KHMERE
ក្រឹត្យស្តីពីការកំណត់ព្រំប្រទល់
ខ្ទង់រាបដែនសមុទ្រខ្មែរ
DECRET PORTANT DELIMITATION
DU PLATEAU CONTINENTAL KHMER
REPUBLIQUE
KHMERE
SERVICE NATIONAL DES MINES,
DE LA GEOLOGIE ET DU PETROLE

REPUBLIQUE KHMERE

N°-439-72/PRK

KRET

LE PRESIDENT DE LA REPUBLIQUE KHMERE

Vu la Constitution de la République Khmère;

Vu l'Ordonnance N°-1/71-CE du 18 Octobre 1971 régissant les questions relevant du domaine de la Loi;

Vu l'Ordonnance N°-17/72-CE du 12 Mars 1972 définissant le titre du Chef de l'Etat de la République Khmère;

Vu l'Ordonnance N°-2/72-PRK du 12 Mars 1972 conférant les pouvoirs du Chef du Gouvernement au Président de la République Khmère ;

Vu le Kret N°-187/72-PRK du 21 Mars 1972 modifié par les textes subséquents portant nomination du Cabinet Ministériel;

Le Conseil des Ministres entendu;

ORDONNE:

ARTICLE PREMIER.— En application des clauses de la Convention de Genève du 29 Avril 1958 sur le Plateau Continental à laquelle la République Khmère a adhéré et du Traité Franco-Siamois du 23 Mars 1907 et le Procès-Verbal de délimitation de la frontière du 8 Février 1908, la limite extérieure du Plateau Continental de la République Khmère est fixée comme l'indique la carte N°-1972 de la Marine française à l'échelle 1/1.096.000 annexée au présent Kret avec les coordonnées de ses points repères suivantes:

La délimitation latérale Nord entre les zones du Plateau Continental relevant de la souveraineté respective de la République Khmère et de la Thaïlande est constituée par une ligne droite joignant le point frontière "A" sur la côte au plus haut sommet de l'île de Koh Kut "S" et se prolongeant jusqu'au point P, ces points A et P sont définis ci-après:

. . . 2

	LONGITUDES EST GREENWICH	LATITUDES NORD
POINT A		
Ce point étant le point frontière sur la côte (Traité de Bangkok du 23 Mars 1907). . .	102°54'81	11°38'88
POINT P		
Point équidistant de la base cambodgienne A— Ilôt Kusrovie et de la ligne de base thailandaise opposée	101°20'00	11°32'00

ARTICLE 2.— La délimitation de la ligne médiane (direction Nord-sud) est constituée par une ligne brisée partant du point P et passant successivement sur les points P_{ck1} - P_{ck2} - P_{ck3} - P_{ck4} - P_{ck5} - P_{ck6} - P_{ck7} - P_{ck8} - P_{ck9} - P_{ck10} - P_{ck11} - P_{ck12} - P_{ck13} et B point frontière avec le Sud-Vietnam ci-après définis et reportés sur la carte jointe en annexe :

	LONGITUDES EST GREENWICH	LATITUDES NORD
P_{ck1}	101°13'00	10°59'00
Point équidistant d'une part de l'îlot cambodgien de Kusrovie et d'autre part des points thailandais suivants : îlot Koh Charn et point 8 Area 2 (Hin Bai).		
P_{ck2}	101°29'00	10°16'50
P_{ck3}	101°36'00	9°05'00
P_{ck4}	101°57'50	8°31'00
P_{ck5}	102°59'50	7°42'00
P_{ck6}	103°21'00	7°34'00
P_{ck7}	104°08'00	9°01'00
P_{ck8}	104°01'00	9°18'00
P_{ck9}	104°08'50	9°38'50
P_{ck10}	104°16'50	9°56'00
P_{ck11}	104°15'00	10°01'00
P_{ck12}	104°10'50	10°05'00
P_{ck13}	104°09'00	10°12'00
B point frontière avec Sud-Vietnam . . .	104°26'63	10°25'23

. . . 3

ARTICLE 3.— La carte marine n°· 1972 de la Marine française - Edition 1949 à l'échelle 1/1.096.000· est jointe au présent Kret.

Toute référence au Kret implique en même temps une référence à la carte n°· 1972.

ARTICLE 4.— Toutes dispositions contraires au présent Kret sont purement et simplement abrogées.

ARTICLE 5.— Le Ministre des Affaires Etrangères et le Ministre de l'Industrie, des Ressources minières et des Pêches maritimes sont chargés, chacun en ce qui le concerne, de l'exécution du présent Kret./.

Fait à Phnom-Penh, le 1er Juillet 1972

Signé : **LON NOL**

Présenté à la signature du
PRESIDENT DE LA REPUBLIQUE KHMERE
par
LE MINISTRE DE L'INDUSTRIE, DES RESSOURCES MINIERES ET DES PECHES MARITIMES,

Signé : **CHHANN SOKHUM**

POUR AMPLIATION,
LE SECRETAIRE GENERAL
DU GOUVERNEMENT,

Signé : **OUK SOUN**

Pour Bonaventure
Le 12 1570

DESTINATAIRES :

- Dircabinet du Président de la République Khmère
- Préconseil (SGG) - JOC.
- IGARK - IAPA.
- Tous Municipalités - Khèts et Anouckhèts.
- Tous Ministères - Trésor.
- Cab-DG-IG-Toutes Directions et Inspections-Sce P&M et tous bureaux relevant du Minindustrie.
- Ex. Assemblée Constituante.
- Archives et Bibliothèque Nle.

POUR COPIE CONFORME
P.LE MINISTRE DE L'INDUSTRIE,
DES RESSOURCES MINIERES
ET DES PECHES MARITIMES,
LE DIRECTEUR DU SERVICE NATIONAL
DES MINES, DE LA GEOLOGIE ET DU
PETROLE,

SEAN PENGSE

Source: On file with the author.

Appendix 7

Coordinates of the

Peta Menunjukkan Sempadan Perairan dan Pelantar Benua Malaysia

[Map Showing the Territorial Waters and Continental Shelf Boundaries of Malaysia], 21 December 1979

SEMPADAN PELANTAR BENUA MALAYSIA, DITAKRIFKAN DENGAN KORDINAT-KORDINAT GEOGRAFIS YANG BERPANDUKAN DARIPADA CARTA-CARTA ADMIRALTY NO. 771, 793, 1353, 1358, 2414 DAN 2660A

CONTINENTAL SHELF BOUNDARIES OF MALAYSIA DEFINED BY THE FOLLOWING GEOGRAPHICAL CO-ORDINATES BASED ON ADMIRALTY CHART NOS. 771, 793, 1353, 1358, 2414 AND 2660A.

TITIK *POINT*	KORDINAT *CO-ORDINATES*	
	LINTANG UTARA *LATITUDE NORTH*	BUJUR TIMUR *LONGITUDE EAST*
1	6° 18'·4	99° 27'·5
2	6° 16'·3	99° 19'·3
3	6° 18'·0	99° 06'·7
4	5° 57'·0	98° 01'·5
5	5° 27'·0	98° 17'·5
6	4° 55'·7	98° 41'·5
7	3° 59'·6	99° 43'·6
8	3° 47'·4	99° 55'·0
9	2° 51'·6	101° 00'·2
10	2° 41'·5	101° 12'·1
11	2° 15'·4	101° 46'·5
12	1° 55'·2	102° 13'·4
13	1° 41'·2	102° 35'·0
14	1° 19'·5	103° 03'·9
15	1° 15'·0	103° 22'·8
16	1° 13'·45	103° 26'·8
17	1° 08'·45	103° 32'·05
18	1° 11'·0	103° 34'·2
19	1° 15'·15	103° 34'·95
20	1° 16'·37	103° 37'·38
21	1° 15'·85	103° 36'·1
22	1° 17'·63	104° 07'·5
23	1° 17'·42	104° 02'·9
24	1° 17'·3	104° 04'·6
25	1° 16'·2	104° 07'·1
26	1° 15'·65	104° 09'·47
27	1° 13'·65	104° 12'·67
28	1° 16'·2	104° 16'·15
29	1° 16'·5	104° 19'·8
30	1° 15'·55	104° 28'·45
31	1° 16'·95	104° 29'·33
32	1° 23'·9	104° 29'·5
33	1° 38'·0	104° 53'·0
34	1° 54'·4	105° 05'·2
35	2° 22'·5	105° 01'·2
36	2° 55'·2	104° 51'·5
37	3° 50'·1	104° 46'·5
38	4° 03'·0	104° 51'·9
39	5° 04'·7	105° 28'·8
40	5° 40'·6	105° 47'·1
41	6° 05'·8	105° 49'·2
42	6° 48'·25	104° 30'·0
43	7° 49'·0	103° 02'·5
44	7° 10'·25	102° 29'·0
45	6° 50'·0	102° 21'·2
46	6° 27'·8	102° 09'·6
47	6° 27'·5	102° 10'·0

Source: Malaysian Directorate of National Mapping, 1979.

Appendix 8

Proclamation on Demarcation of the Continental Shelf of Thailand in the Gulf of Thailand, 18 May 1973

His Majesty the King is graciously pleased to proclaim that

For the purpose of exercising the sovereignty rights of Thailand in exploring and exploiting natural resources of the Gulf of Thailand, the continental shelf shall therefore be demarcated according the map and geographical co-ordinates of each point constituting the continental shelf of Thailand annexed to this Proclamation as the continental shelf of Thailand in the Gulf of Thailand.

The continental shelf has been demarcated on the basis of the right according to the generally accepted principles of international law and the Convocation on the Continental Shelf done at Geneva on 29th April 1958 and ratified by Thailand on 2nd July 1968 has been taken into account.

The map and connecting points determining geographical co-ordinates under this Proclamation are to show the general demarcation lines of the continental shelf. As for the sovereignty rights over the territorial sea adjacent to the territorial sea of the neighbouring countries, which will be taken as starting point of the line dividing the continental shelf, it will be according to future agreement on the basis of the provisions of the Convention on the Territorial Sea and the Contiguous Zone done at Geneva on 29th April 1958.

Given the 18th May B.E. 2516, being the 28th year of the present Reign.

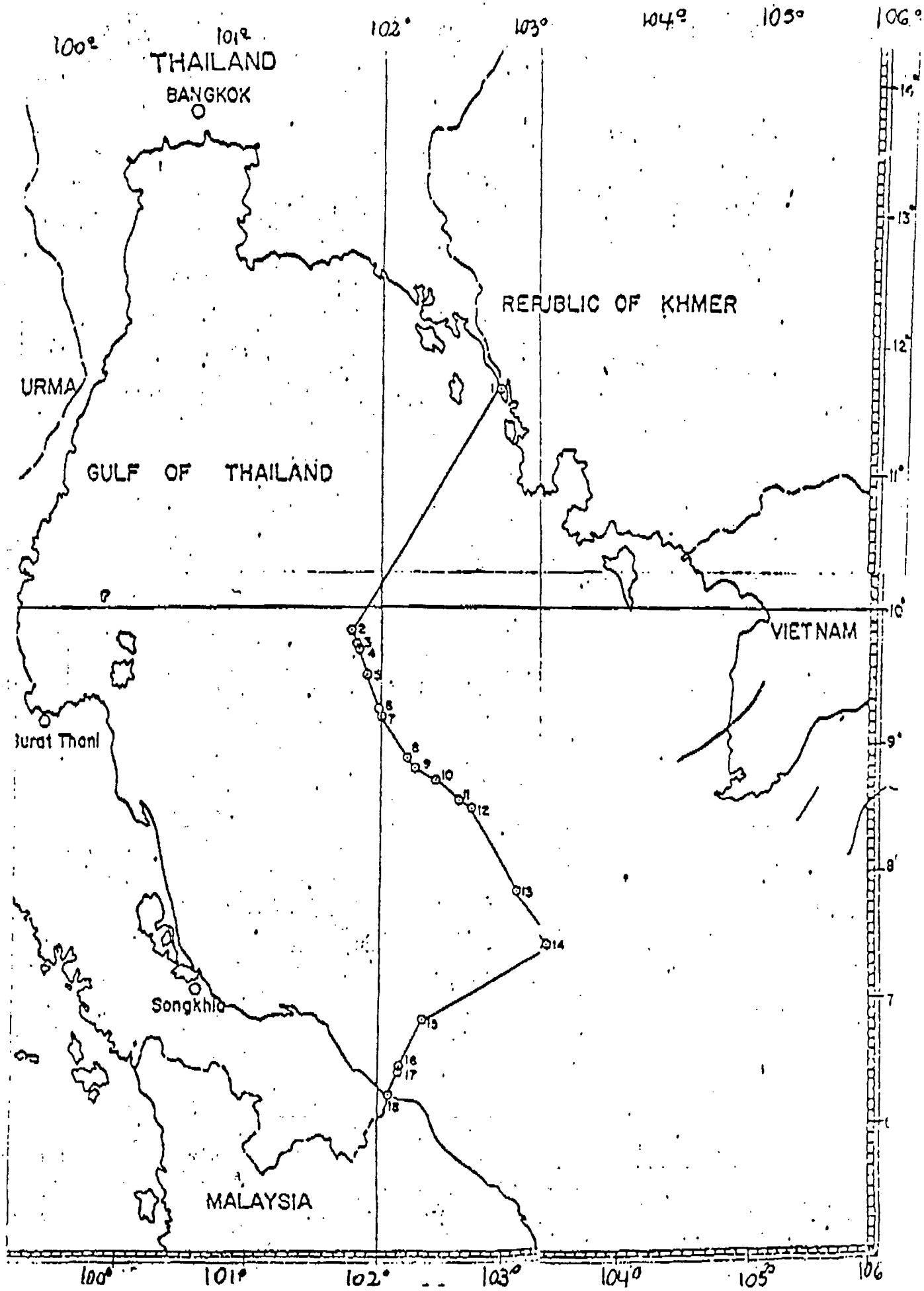
Countersigned by

Field Marshall Thanom Kittikachorn
Prime Minister

Geographical coordinates of the connecting points constituting the continental shelf of Thailand in the Gulf of Thailand

Numerical point	Latitude North	Longitude East
1	11°39'.0	102°55'.0
2	09°48'.5	101°46'.5
3	09°43'.0	101°48'.5
4	09°42'.0	101°49'.0
5	09°28'.5	101°53'.5
6	09°13'.0	101°58'.5
7	09°11'.0	101°59'.0
8	08°52'.0	102°13'.0
9	08°47'.0	102°16'.5
10	08°42'.0	102°26'.5
11	08°33'.0	102°38'.0
12	08°29'.0	102°43'.0
13	07°49'.5	103°05'.5
14	07°25'.0	103°24'.8
15	06°50'.0	102°21'.2
16	06°27'.8	102°09'.6
17	06°27'.5	102°10'.0
(18)	06°14'.5	102°05'.6

Source: On file with the author.


100°
101°
102°
103°
104°
105°
106°
THAILAND
BANGKOK
REPUBLIC OF KHMER
URMA
GULF OF THAILAND
VIETNAM
Surat Thani
Songkhla
MALAYSIA
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

Appendix 9

Coordinates of South Vietnam's 6 June 1971 Continental Shelf Claim

Points	Latitude	Longitude	Points	Latitude	Longitude
1	8°19'N	104°50'E	18	10°03'	103°31'
2	8°33'	105°27'	19	10°22'	103°41'
3	9°00'	105°40'	20	10°29'	103°45'
4	9°25'	106°45'	21	10°31'	103°45'
5	10°09'	107°06'	22	10°31'	103°47'
6	10°32'	108°00'	23	10°30'	103°54'
7	11°00'	108°36'	24	10°30'	103°57'
8	11°00'	110°00'	25	10°29'	104°04'
9	7°05'	110°00'	26	10°24'	104°11'
10	5°20'	107°20'	27	10°28'	104°20'
11	7°03'	103°52'	28	10°28'	104°21'
12	7°34'	103°19'	29	10°14'	104°22'
13	7°42'	102°58'	30	10°23'	104°24'
14	8°31'	101°56'	21	10°00'	104°31'
15	9°36'	101°30'	32	8°36'	104°31'
16	10°09'	101°27'	33	8°26'	104°36'
17	10°09'	102°58'			

Source: On file with the author.

Appendix 10

Treaty between the Kingdom of Thailand and Malaysia Relating to the Delimitation of the Territorial Seas of the Two Countries, 24 October 1979

THE KINGDOM OF THAILAND AND MALAYSIA, DESIRING to strengthen the existing historical bonds of friendship between two countries, NOTING that the coasts of the two countries are adjacent to each other in Northern part of the Straits of Malacca, as well as in the Gulf of Thailand, AND DESIRING to establish the common boundaries of the territorial is of the two Countries, HAVE AGREED AS FOLLOWS:

Article I

(1) The boundary of the Thai and the Malaysian territorial seas in the part of the Straits of Malacca between the islands known as the 'Butang Group' and Pulau Langkawi where overlapping occurs shall be formed by the straight lines drawn from the point situated in mid-channel between Pulau Terutau and Pulau Langkawi referred to in the Boundary Protocol annexed to the Treaty dated March 10th, 1909 respecting the boundaries of the Kingdom of Thailand and Malaysia, whose co-ordinates are hereby agreed to be Latitude 6° 28'.5 N Longitude 99° 39'.2 E, in a north-westerly direction to a point whose co-ordinates are Latitude 6° 30'.2 N Longitude 99° 33'.4 E and from there in a south-westerly direction to a point whose co-ordinates are Latitude 6° 28'.9 N Longitude 99° 30'.7 E and from there in a south-westerly direction again to the point whose co-ordinates are Latitude 6° 18'.4 N Longitude 99° 27'.5 E.

(2) The outer limit of the territorial seas of the islands known as the 'Butang Group' to the south of the said islands shall be formed by the boundary lines joining the points whose co-ordinates are Latitude 6° 18'.4 N Longitude 99° 27'.5 E referred to in paragraph (1) above and from there to the point whose co-ordinates are Latitude 6° 16'.3 N Longitude 99° 19'.3 E and from there to the point whose co-ordinates are Latitude 6° 18'.0 N and Longitude 99° 06'.7 E.

(3) The co-ordinates of the points specified in paragraphs (1) and (2) are geographical co-ordinates derived from the British Admiralty Charts No. 793 and No. 830 and the boundary lines connecting them are indicated on the charts attached as Annexures 'A(1)' and 'A(2)' to this Treaty.

Article II

(1) The boundary of the Thai and the Malaysian territorial seas in the Gulf of Thailand shall be formed by the straight line drawn from a point whose co-ordinates are Latitude 6° 14'.5 N Longitude 102° 05'.6 E to a point whose co-ordinates are Latitude 60° 27'.5 N Longitude 102° 10'.0 E.

(2) The co-ordinates of the points specified in paragraph (1) are geographical co-ordinates derived from the British Admiralty Chart No. 3961 and the boundary line connecting them is indicated on the chart attached as Annexure 'B' to this Treaty.

Article III

(1) The actual location at sea of the points mentioned in Article I and Article II above shall be determined by a method to be mutually agreed upon by the competent authorities of the two Parties.

(2) For the purposes of paragraph (1), 'competent authorities' in relation to the Kingdom of Thailand means the Director of the Hydrographic Department, Thailand, and includes any person authorised by him and in relation to Malaysia, the Director of National Mapping, Malaysia, and includes any person authorised by him.

Article IV

Each Party hereby, undertakes to ensure that all the necessary steps shall be taken at the domestic level to comply with the terms of this Treaty.

Article V

Any dispute between the two Parties arising out of the interpretation or implementation of this Treaty shall be settled peacefully by consultation or negotiation.

Article VI

This Treaty shall be ratified in accordance with the legal requirements of the two Countries.

Article VII

This Treaty shall enter into force on the date of the exchange of the Instruments of Ratification.

DONE IN DUPLICATE AT Kuala Lumpur the Twenty-fourth day of October, Nineteen Hundred and Seventy-nine in the Thai, Malaysian and English Languages. In the event of any conflict' between the texts, the English text shall prevail.

FOR THE KINGDOM OF THAILAND (Signed)	FOR MALAYSIA (Signed)
(GENERAL KRIANGSAK CHOMANAN)	(DATUK HUSSEIN ONN)
Prime Minister	Prime Minister

Source: Reproduced in Charney and Alexander, 1993: 1,096-1,098.

Appendix 11

United Kingdom – Siam Boundary Treaty, 10 March 1909

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and His Majesty the King of Siam, being desirous of settling various questions which have arisen affecting their respective dominions, have decided to conclude a Treaty, and have appointed for this purpose as their Plenipotentiaries:

His Majesty the King of Great Britain, Ralph Paget, Esq., his Envoy Extraordinary and Minister Plenipotentiary, &c.;

His Majesty King of Siam, His Royal Highness Prince Devawongse Varoprakar, Minister for Foreign Affairs, &c.; who, after having communicated to each other their respective full powers, and found them to be in good and due form, have agreed upon and concluded the following Articles:-

Article 1

The Siamese Government transfers to the British Government all rights of suzerainty, protection, administration, and control whatsoever which they possess over the States of Kelantan, Tringganu, Kedah, Perlis, and adjacent islands. The frontiers of these territories are defined by the Boundary Protocol annexed hereto.

Article 2

The transfer provided for in the preceding Article shall take place within thirty days after the ratification of this Treaty.

Article 3

A mixed Commission, composed of Siamese and British officials and officers. shall be appointed within six months after the date of ratification of this Treaty, and shall be charged with the delimitation of the new frontier. The work of the Commission shall be commenced as soon as the season permits, and shall be carried out in accordance with the Boundary Protocol annexed hereto.

Subjects of His Majesty the King of Siam residing within the territory described in Article 1 who desire to preserve their Siamese nationality will, during the period of six months after the ratification of the present Treaty, be allowed to do so if they become domiciled in the Siamese dominions. His Britannic Majesty's Government undertake that they shall be at liberty to retain their immovable property within the territory described in
Article I.

It is understood that in accordance with the usual custom where a change of suzerainty takes place, any Concessions within the territories described in Article 1 hereof to individuals or Companies, granted by or with the approval of the Siamese Government, and recognised by them as still in force on the date of the signature of the Treaty, will be recognised by the Government of His Britannic Majesty.

Article 4

His Britannic Majesty's Government undertake that the Government of the Federated Malay States shall assume the indebtedness to the Siamese Government of the territories described in Article 1.

Article 5

The jurisdiction of the Siamese International Courts, established by Article 8 of the Treaty of the 3rd September, 1883, shall, under the conditions defined in the Jurisdiction Protocol annexed hereto, be extended to all British subjects in Siam registered at the British Consulates before the date of the present Treaty.

This system shall come to an end, and the jurisdiction of the International Courts shall be transferred to the ordinary Siamese Courts after the promulgation and the coming into force of the Siamese codes, namely, the Penal Code, the Civil and Commercial Codes, the Codes of Procedure, and the Law for organisation of Courts.

All other British subjects in Siam, shall be subjected to the jurisdiction of the ordinary Siamese Courts under the conditions defined in the Jurisdiction Protocol.

British subjects shall enjoy throughout the whole extent of Siam the rights and privileges enjoyed by the natives of the country, notably the right of property, the right of residence and travel.

They and their property shall be subject to all taxes and services, but these shall not be other or higher than the taxes and services which are or may be imposed by law on Siamese subjects. It is particularly understood that the limitation in the Agreement of the 20th September, 1900, by which the taxation of land shall not exceed that on similar land in Lower Burmah, is hereby removed.

British subjects in Siam shall be exempt from all military service, either in the army or navy, and from all forced loans or military exactions or contributions.

Article 7

The provisions of all Treaties, Agreements, and Conventions between Great Britain and Siam. not modified by the present Treaty, remain in full force.

Article 8

The present Treaty shall be ratified within four months from its date.
In witness whereof the respective Plenipotentiaries have signed the present Treaty and affixed their seals.

Done at Bangkok, in duplicate, the 10th day of March, in the year 1909.

Ralph Paget.
Devawongse Varoprakar.

Boundary Protocol Annexed to the Treaty, 10 March 1909

[1] The frontiers between the territories of His Majesty the King of Siam and the territory over which his suzerain rights have by the present Treaty been transferred to His Majesty the King of Great Britain and Ireland are as follows:-

Commencing from the most seaward point of the northern bank of the estuary of the Perlis River and thence north to the range of hills which is the watershed between the Perlis River on the one side and the Pujoh River on the other; then following the watershed formed by the said range of hills until it reaches the main watershed or dividing line between those rivers which flow into the Gulf of Siam on the one side and into the Indian Ocean on the other; following this main watershed so as to pass the sources of the Sungei Patani, Sungei Telubin, and Sungei Perak, to a point which is the source of the Sungei Pergau; then leaving the main watershed and going along the watershed separating the waters of the Sungei Pergau from the Sungei Tehibin, to the hill called Bukit Jeli or the source of the main stream of the Sungei Golok. Thence the frontier follows the thalweg of the main stream of the Sungei Golok to the sea at a place called Kuala Tabar.

This line will leave the valleys of the Sungei Patani, Sungei Telubin, and Sungei Tanjung Mas and the valley on the left or west bank of the Golok to Siam and the whole valley of the Perak River and the valley on the right or east bank of the Golok to Great Britain.

Subjects of each of the parties may navigate the whole of the waters of the Sungei Golok and its affluents.

The island known as Pub Langkawi, together with all the islets south of mid-channel between Terutau and Langkawi and all the islands south of Langkawi shall become British. Terutau and the islets to the north of mid-channel shall remain to Siam.

With regard to the islands close to the west coast, those lying to the north of the parallel of latitude where the most seaward point of the north bank of the estuary of the Penis River touches the sea shall remain to Siam, and those lying to the south of that parallel shall become British.

All islands adjacent to the eastern States of Kelantan, and Tringganu, south of a parallel of latitude drawn from the point where the Sungei Golok reaches the coast at a place

called Kuala Tabar shall be transferred to Great Britain, and all islands to the north of that parallel shall remain to Siam.

A rough sketch of the boundary herein described is annexed hereto.

[2] The above-described boundary shall be regarded as final, both by the Government of His Britannic Majesty and that of Siam, and they mutually undertake that, so far as the boundary effects any alteration of the existing boundaries of any State or province, no claim for compensation on the ground of any such alteration made by any State or province so affected shall be entertained or supported by either.

[3] It shall be the duty of the Boundary Commission, provided for in Article 3 of the Treaty of this date, to determine and eventually mark out the frontier above described.

If during the operations of delimitation it should appear desirable to depart from the frontier as laid down herein, such rectification shall not under any circumstances be made to the prejudice of the Siamese Government.

In witness whereof the respective Plenipotentiaries have signed the present Protocol and affixed their seals.

Done at Bangkok, in duplicate, the 10th day of March, 1909.

Ralph Paget.
Devawongse Varoprakar.

Source: Reproduced in Prescott, 1975: 424-427.

Appendix 12

Memorandum of Understanding between Malaysia and the Kingdom of Thailand on the Delimitation of the Continental Shelf Boundary between the Two Countries in the Gulf of Thailand, 24 October 1979

MALAYSIA AND THE KINGDOM OF THAILAND,
DESIRING to strengthen the existing historical bonds of friendship between the two Countries,
AND DESIRING to establish the continental shelf boundary of the two countries in the Gulf of Thailand,
HAVE AGREED AS FOLLOWS:

Article I

(1) The boundary of the continental shelf in the Gulf of Thailand between Malaysia and the Kingdom of Thailand shall consist of straight lines joining in the order specified below the points whose co-ordinates are:

(i) Latitude 6° 27'.5 N
Longitude 102° 10'.0 E
(ii) Latitude 6° 27'.8 N
Longitude 102° 09'.6 E
(iii) Latitude 6° 50'.0 N
Longitude 102° 21'.2 E

(2) The co-ordinates of point (ii) above have been determined by reference to a point whose co-ordinates are Latitude 60 16'.6 N Longitude 1020 03'.8, this point being the former position of Kuala Tabar under the Boundary Protocol annexed to the Treaty between Siam and Great Britain signed at Bangkok on the 10th March 1909.

Article II

(1) The co-ordinates of the points specified in Article I above are geographical co-ordinates derived from the British Admiralty Chart No. 3961 and the boundary lines connecting them are indicated on the chart attached as an Annexure to this Memorandum.

(2) The actual location of these points at sea and of the lines connecting them will be determined by a method to be mutually agreed upon by the competent authorities of the two Countries.

(3) For the purpose of paragraph (2) of this Article, the term "competent authorities" in relation to Malaysia shall mean the Director of National Mapping and include any

person authorised by him, and in relation to the Kingdom of Thailand the Director of the Hydrographic Department and include any person authorised by him.

Article III

The Governments of the two Countries shall continue negotiations to complete delimitation of the continental shelf boundary of the two Countries in the Gulf of Thailand.

Article IV

If any single geological petroleum or natural gas structure or field, or any mineral deposit of whatever character, extends across the boundary lines referred to in Article I, the two Governments shall communicate to each other information in this regard and shall seek to reach agreement as to the manner in which the structure, field or deposit will be most effectively exploited; and all expenses incurred and benefits derived therefrom shall be equitably shared.

Article V

Any difference or dispute arising out of the interpretation or implementation the provisions of this Memorandum shall be settled peacefully by consultation or negotiation between the Parties.

Article VI

This Memorandum shall be ratified in accordance with the constitutional requirements of each Country. It shall enter into force on the date of the exchange of the Instruments of Ratification.

DONE IN DUPLICATE at Kuala Lumpur, the Twenty-fourth day of October, One Thousand Nine Hundred and Seventy-nine in the Malaysian, Thai and English languages. In the event of any conflict between the texts, the English shall prevail.

FOR MALAYSIA
(Datuk Hussein Onn)
Prime Minister

FOR THE KINGDOM OF THAILAND
(General Tun Kriangsak Chomanan)
Prime Minister

Source: Reproduced in Charney and Alexander, 1993: 1,105-1,107.

Appendix 13

Memorandum of Understanding between the Kingdom of Thailand and Malaysia on the Establishment of a Joint Authority for the Exploitation of the Resources of the Sea-Bed in a Defined Area of the Continental Shelf of the Two Countries in the Gulf of Thailand, 21 February 1979

The Kingdom of Thailand and Malaysia,

DESIRING to strengthen further the existing bonds of traditional friendship between the two countries;

RECOGNIZING that, as a result of overlapping claims made by the two countries regarding the boundary line of their continental shelves in the Gulf Thailand, there exists an overlapping area on their adjacent continental shelves;

NOTING that the existing negotiations between the two countries on the delimitation of the boundary of the continental shelf in the Gulf of Thailand may continue for some time;

CONSIDERING that it is in the best interests of the two countries to exploit resources of the sea-bed in the overlapping area as soon as possible; and,

CONVINCED that such activities can be carried out jointly through mutual cooperation.

HAVE AGREED AS FOLLOWS:

Article I

Both Parties agree that as a result of overlapping claims made by the two countries regarding the boundary line of their continental shelves in the Gulf of Thailand, there exists an overlapping area, which is defined as that area bounded by straight lines joining the following coordinated points:-

(A)	N 6° 50'.0	E 102° 21'.2
(B)	N 7° 10'.25	E 102° 29'.0
(C)	N 7° 49'.0	E 103° 02'.5
(D)	N 7° 22'.0	E 103° 42'.5
(E)	N 7° 20'.0	E 103° 39'0
(F)	N 7° 03'.0	E 103° 06'.0
(G)	N 6° 53'.0	E 102° 34'.0

and shown in the relevant part of the British Admiralty Chart No.2414, Edition 1967, annexed hereto.

Article II

Both Parties agree to continue to resolve the problem of the delimitation of the boundary of the continental shelf in the Gulf of Thailand between the two countries by negotiations or such other peaceful means as agreed to by both Parties, in accordance

with the principles of international law and practice especially those agreed to in the Agreed Minutes of the Malaysia-Thailand Officials' Meeting on Delimitation of the Continental Shelf Boundary Between Malaysia and Thailand in the Gulf of Thailand and in the South China Sea, 27 February-1 March 1978, and in the spirit of friendship and in the interest of mutual security.

Article III

(1) There shall be established a Joint Authority to be known as "Malaysia-Thailand Joint Authority" (hereinafter referred to as "the Joint Authority") for the purpose of the exploration and exploitation of the non-living natural resources of the sea-bed and subsoil in the overlapping area for a period of fifty years commencing from the date this Memorandum comes into force.

(2) The Joint Authority shall assume all rights and responsibilities on behalf of both Parties for the exploration and exploitation of the non-living natural resources of the sea-bed and subsoil in the overlapping area (hereinafter referred to as the joint development area) and also for the development, control and administration of the joint development area. The assumption of such rights and responsibilities by the Joint Authority shall in no way affect or curtail the validity of concessions or licences hitherto issued or agreements or arrangements hitherto made by either Party.

(3) The Joint Authority shall consist of:-

(a) two joint-chairmen, one from each country, and
(b) an equal number of members from each country.

(4) Subject to the provisions of this Memorandum, the Joint Authority shall exercise on behalf of both Parties all the powers necessary for, incidental to or connected with the discharge of its functions relating to the exploration and exploitation of the non-living natural resources of the sea-bed and subsoil in the joint development area.

(5) All costs incurred and benefits derived by the Joint Authority from activities carried out in the joint development area shall be equally borne and shared by both Parties.

(6) If any single geological petroleum or natural gas structure or field, or other mineral deposits of whatever character, extends beyond the limit of the joint development area defined in Article 1, the Joint Authority and the Party or Parties concerned shall communicate to each other all information in this regard and shall seek to reach agreement as to the manner in which the structure, field or deposit will be most effectively exploited; and all expenses incurred and benefits derived therefrom shall be equitably shared.

Article IV

(1) The rights conferred or exercised by the national authority of either Party in matters of fishing, navigation, hydrographic and oceanographic surveys, the prevention and control of marine pollution and other similar matters (including all powers of

enforcement in relation thereto) shall extend to the joint development area and such rights shall be recognised and respected by the Joint Authority.

(2) Both Parties shall have a combined and coordinated security arrangement in the joint development area.

Article V

The criminal jurisdiction of Malaysia in the joint development area shall extend over that area bounded by straight lines joining the following coordinated points:-

(A)	N 6° 50'.0	E 102° 21'.2
(X)	N 7° 35'.0	E 103° 23'.0
(D)	N 7° 22'.0	E 103° 42'.5
(E)	N 7° 20'.0	E 103° 39'0
(F)	N 7° 03'.0	E 103° 06'.0
(G)	N 6° 53'.0	E 102° 34'.0

The criminal jurisdiction of the Kingdom of Thailand in the joint development area shall extend over that area bounded by straight lines joining the following coordinated points:-

(A)	N 6° 50'.0	E 102° 21'.2
(B)	N 7° 10'.25	E 102° 29'.0
(C)	N 7° 49'.0	E 103° 02'.5
(X)	N 7° 35'.0	E 103° 23'.0

The areas of criminal jurisdiction of both Parties defined under this Article shall not in any way be construed as indicating the boundary line of the continental shelf between the two countries in the joint development area, which boundary is to be determined as provided for by Article II, nor shall such definition in any way prejudice the sovereign rights of either Party in the joint development area.

Article VI

(1) Notwithstanding Article III, if both parties arrive at a satisfactory solution on the problem of the delimitation of the boundary of the continental shelf before the expiry of the said fifty-year period, the Joint Authority shall be wound up and all assets administered and liabilities incurred by it shall be equally shared and borne by both Parties. A new arrangement may, however, be concluded if both Parties so decide.

(2) If no satisfactory solution is found on the problem of the delimitation of the boundary of the Continental Shelf within the said fifty-year period, the existing arrangement shall continue after the expiry of the said period.

Article VII

Any difference or dispute arising out of the interpretation or implementation of the provisions of this Memorandum shall be settled peacefully by consultation or negotiation between the Parties.

Article VIII

This Memorandum shall come into force on the date of exchange of instruments of ratification.

DONE in duplicate at Chiang Mai, the Twenty-first day of February in the year One thousand Nine hundred and Seventy-nine, in the Thai, Malay and English Languages.

In the event of any conflict among the texts, the English text shall prevail.

For The Kingdom Of Thailand	For Malaysia
(General Kriangsak Chomanan) Prime Minister	(Datuk Hussein Onn) Prime Minister

Source: Reproduced in Charney and Alexander, 1993: 1,107-1,111.

Appendix 14

Agreement between the Government of Malaysia and the Government of the Kingdom of Thailand on the Constitution and Other Matters Relating to the Establishment of the Malaysia-Thailand Joint Authority, 30 May 1990

THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND, hereinafter referred to as 'the Governments,'

DESIRING to implement the Memorandum of Understanding between Malaysia and the Kingdom of Thailand on the Establishment of a Joint Authority for the Exploitation of the Resources of the Sea-bed in a Defined Area of the Continental Shelf of the Two Countries in the Gulf of Thailand dated 21 February 1979, hereinafter referred to as 'the Memorandum of Understanding, 1979,'

HAVE HEREBY AGREED on the establishment of the Malaysia-Thailand Joint Authority, hereinafter referred to as 'the Joint Authority,' which shall operate in accordance with the following provisions:

CHAPTER I
LEGAL STATUS AND ORGANIZATION

Article 1
Juristic Personality and Capacity

(1) The Joint Authority shall have a juristic personality and such capacities as shall be provided for in the Acts of Parliament to be enacted by the Government of Malaysia and the Government of the Kingdom of Thailand, respectively, for the establishment of the Joint Authority, hereinafter referred to as 'the Acts.'

(2) The drafts of the Acts, referred to in paragraph (1) and attached hereto as Appendix A and Appendix B respectively, shall form an integral part of this Agreement.

Article 2
Purpose

(1) The purpose of the Joint Authority shall be the exploration and exploitation of the non-living natural resources of the sea-bed and subsoil, in particular petroleum, in the Joint Development Area as defined in the Memorandum of Understanding, 1979 for the period of validity of the Memorandum of Understanding, 1979.

(2) In this Agreement, 'petroleum' means any mineral oil or relative hydrocarbon and natural gas existing in its natural condition and casinghead petroleum spirit, including bituminous shales and other stratified deposits from which oil can be extracted.

Article 3
Membership

(1) The Joint Authority shall comprise

(a) two Co-Chairmen, one each to be appointed by the respective Governments; and
(b) an equal number of members to be appointed by each Government, provided that the initial number of members, excluding the CoChairmen, to be appointed by each Government shall be six.

(2) The word 'member' shall, for the purposes of this Agreement, and unless he context otherwise requires, include a Co-Chairman.

Article 4
Procedure

(1) The Co-Chairmen shall alternate to perform the functions of a Chairman it meetings of the Joint Authority. In the absence of a Co-Chairman during his chairmanship, the members of the Joint Authority shall elect a Chairman from amongst the members representing the same Government as the corresponding Co-Chairman. When so elected, he shall have all the powers of the Chairman.

(2) The quorum for any meeting of the Joint Authority shall not be less than ten. Decisions shall be taken jointly at a meeting by the Co-Chairmen.

Article 5
Personal Liability

No member of the Joint Authority shall incur any personal liability for any loss or damage caused by any act or omission in the administration of the affairs of the Joint Authority unless such loss or damage is occasioned by a wrongful act, gross negligence or omission on his part.

Article 6
Emoluments

The members of the Joint Authority shall be paid such emoluments and other allowances as the Joint Authority may determine with the approval of the governments.

CHAPTER II

POWERS AND FUNCTIONS

Article 7
Powers and Functions

(1) The Joint Authority shall control all exploration and exploitation of the non-living natural resources in the Joint Development Area and shall be responsible for the formulation of policies for the same.

(2) Without prejudice to the generality of the foregoing, the powers and functions of the Joint Authority shall include the following:

(a) to decide, with the approval of the Governments, on the organisational structure of the Joint Authority;
(b) subject to subparagraph (a), to appoint the chief executive officer and other officers of the Joint Authority, provided that the appointment of the chief executive officer and the deputy chief executive officer shall require the approval of the Governments;
(c) to decide on the terms and conditions of service of the chief executive officer and other officers of the Joint Authority;
(d) to decide on the plan of operation and the working programme for the administration of the Joint Development Area;
(e) to permit operations and to conclude transactions or contracts for or relating to the exploration and exploitation of the non-living natural resources in the Joint Development Area subject to the approval of the Governments;
(f) in respect of any contract referred to in subparagraph (e) for the exploration and exploitation of petroleum
(i) to approve and extend the period of exploration and exploitation;
(ii) to approve the work programmes and budgets of the contractor; and
to approve the production programmes of the contractor, including the production costs, conditions and schedules of the production;
(g) in respect of an operator of any contract referred to in subparagraph (f)
(i) to inspect and audit the operator's books and accounts relating to its operations in the Joint Development Area;
(ii) to take periodic inventories of the properties and assets procured by the operator for petroleum operations; and
(iii) to receive, collate and store all data supplied by the operator relating to its operations in the Joint Development Area;
(h) to approve and award tenders and contracts relating to goods and services required in carrying out petroleum operations in the Joint Development Area;
(i) to appoint committees, sub-committees or independent experts and consultants where necessary for the administration of the Joint Authority;
(j) to regulate any meeting of the Joint Authority, any committee and sub-committee thereof; and
(k) to do any other thing incidental to or necessary for the performance of any of its functions.

Article 8
Production Sharing

(1) For the purpose of paragraph (2)(f) of Article 7, any contract awarded to any person for the exploration and exploitation of petroleum in the Joint Development Area shall, in accordance with subsection (3) of section 14 of the Acts, be a production sharing contract.

(2) A production sharing contract referred to in paragraph (1) shall include, without prejudice to paragraph (3), the terms and conditions specified in subsection (3) of section 14 of the Acts as follows:

(a) the contract shall be valid for a period not exceeding thirty-five years but shall not exceed the period of validity of this Agreement;
(b) payment in the amount of ten per centum of gross production of petroleum by the contractor to the Joint Authority as royalty in the manner and at such times as may be specified in the contract.
(c) fifty per centum of gross production of petroleum shall be applied by the contractor for the purpose of recovery of costs for petroleum operations;
(d) the remaining portion of gross production of petroleum, after deduction for the purpose of subparagraphs (b) and (c), shall be deemed to be profit petroleum and be divided equally between the Joint Authority and the contractor;
(e) all costs of petroleum operations shall be borne by the contractor and shall, subject to subparagraph (c), be recoverable from production;
(f) a minimum amount that the contractor shall extend on petroleum operations under the contract as a minimum commitment as may be agreed to by the Joint Authority and the contractor;
(g) payment of a research cess by the contractor to the Joint Authority in the amount of one half of one per centum of the aggregate of that portion of gross production which is applied for the purpose of recovery of costs under subparagraph (c) and the contractor's share of profit petroleum under subparagraph (d) in the manner and at such times as may be determined by the Joint Authority, provided that such payment shall not be recoverable from production; and
(h) any disputes or differences arising out of or in connection with the contract which cannot be amicably settled shall be referred to arbitration before a panel consisting of three arbitrators, one arbitrator to be appointed by each party, and a third to be jointly appointed by both parties. If the parties are unable to concur on the choice of a third arbitrator within a specified period, the third arbitrator shall be appointed upon application to the United Nations Commission of International Trade Law (UNCITRAL). The arbitration proceedings shall be conducted in accordance with the rules of UNCITRAL. The venue of
arbitration shall be either Bangkok or Kuala Lumpur, or any other place as may be agreed to by the parties.

(3) In addition to the matters specified in paragraph (2), production sharing contract may, at the option of the Joint Authority, include the following:
(a) the period referred to under subparagraph (a) of paragraph (2) shall be applied as follows:

(i) in respect of a contract for petroleum (other than gas), the periods for the purposes of exploration, development and production shall not exceed five years, five years and twenty-five years, respectively; and

(ii) in respect of a contract for gas, the periods for the purposes of exploration, the identification and nomination of the gas market, development and production shall not exceed, in respect of the first three periods, five years each, and in respect of the fourth period, twenty years;

Provided that any period referred to in subparagraphs (a)(i) and (a) (ii) may be varied by the Joint Authority from time to time as may be necessary on condition that where any such variation affects a subsisting contract it shall only be made with the agreement of the contractor;

Provided further that where the first commercial production occurs, in the case of

(A) petroleum (other than gas), before the expiry of the development period, the balance of that development period shall be added to the production period; and

(B) gas, before the expiry of the period for the identification and nomination of the gas market or the development period, the balance of either of those periods shall be added to the production period;

(b) title to any equipment or assets purchased or acquired by the contractor for the purpose of petroleum operations shall pass to the Joint Authority upon such purchase or acquisition;

(c) the Joint Authority shall have title to all original data (raw, processed or interpreted) resulting from petroleum operations, including but not limited to geological, geophysical, core samples, petro-physical, well completion reports, engineering and other data reports and actual samples as the contractor may collect and compile; and

(d) the contractor shall purchase or acquire equipment, facilities, goods, materials, supplies, including services and research facilities, professional or otherwise, from sources in Malaysia or the Kingdom of Thailand where technically and economically feasible.

(4) The Joint Authority may vary any of the amounts referred to in subparagraphs (c), (d) and (g) of paragraph (2) in respect of any contract with the approval of the Governments:

Provided that there shall be no variation of any of these amounts in respect of a subsisting contract without the agreement of the contractor.

(5) For the purpose of this Article-

(a) 'first commercial production' in relation to petroleum (other than gas) means the date that production has continued for a period of twenty-four hours following completion of testing from the first production well, and, in relation to gas, means the date within the first sixty days on which a cumulative 106 Giga Joule (approximately 947 billion BTTJ) of gas is first sold or the sixtieth day after the gas is first sold if the cumulative sale within the first sixty days does not exceed 106 Giga Joule; and

(b) 'gross production' with reference to gas means gross proceeds of sale of gas.

(6) The contractor shall pay export duty on its share of profit oil and petroleum income tax in accordance with Article 16 and Article 17 of this Agreement, respectively.

CHAPTER III

FINANCIAL PROVISIONS

Article 9
Finance

(1) All costs incurred and benefits derived by the Joint Authority from activities carried out in the Joint Development Area shall be equally borne and shared by the Governments.

(2) Until such time as the Joint Authority shall have sufficient income to finance its annual operational expenditure, the Governments shall annually provide the Joint Authority with the agreed amounts of money in equal shares to be paid into the Malaysia-Thailand Joint Authority Fund, hereinafter referred to as 'the Fund.'

(3) Thereupon, as specified in paragraph (2), and unless otherwise decided by the Governments, all such annual government contributions shall cease.

Article 10
Accounts and Records

(1) The Joint Authority shall cause proper accounts and other records of its transactions and affairs to be kept in accordance with generally accepted accounting principles and shall do all things necessary to ensure that all incomes are properly accounted for and that all expenditures out of the Fund including payments of salaries, remuneration and other monetary benefits to members of the Joint Authority and its employees, are properly authorised and that adequate control is maintained over the assets of or in the custody of the Joint Authority.

(2) Either Government may at any time direct any accounts or records to be made available to it and the Joint Authority shall comply with such direction.

Article 11
Budget

The annual budget of the Joint Authority shall be submitted to the Governments well in advance before the financial year of the respective Governments for their approval.

Article 12
Audit

(1) The Joint Authority shall have a financial year beginning on the first day of January.

(2) The accounts of the Joint Authority shall be audited annually by an auditor appointed by the Joint Authority with the approval of the Governments.

(3) The Joint Authority shall, within six months after the end of each financial year, have its accounts audited and transmitted to both Governments together with a copy of any observations made by the auditor on any statement or on the accounts of the Joint Authority and a copy of the annual report dealing with the activities of the Joint Authority in the preceding year.

CHAPTER IV

REGULATIONS AND RELATIONS WITH OTHER ORGANISATIONS

Article 13
Regulations

The Joint Authority may, in accordance with and for the purpose of section 15 of the Acts, submit recommendations on regulations in respect of any matter falling thereunder to the Governments for consideration.

Article 14
Relations with other Organisations

In order to fulfil its purpose, the Joint Authority may cooperate with any government or organisation, and, to this end, may, subject to the approval of the Governments, conclude any agreement or arrangement with such government or organisation.

CHAPTER V
THE ACTS

Article 15
Amendment of the Acts

In order to facilitate the efficient management and operation of this Agreement, the Governments agree that the Acts shall not be amended without prior agreement between the Governments.

CHAPTER VI
CUSTOMS AND EXCISE, AND TAXATION

Article 16
Customs Matters

(1) For the purpose of Part X of the Acts

(a) the rate of export duty payable by the contractor in respect of the contractor's share of profit oil sold outside Malaysia and the Kingdom of Thailand shall be ten per centum subject to the provision of subparagraph (b)(ii);

(b) the Customs and Excise Authorities shall continue to exercise all powers in relation to all matters relating to the regulation of the movement of goods imported into or exported from the Joint Development Area in accordance with the existing legislation of Malaysia or the Kingdom of Thailand, as the case may be, subject to the following:

(i) customs approved goods, equipment and materials for use in the Joint Development Area shall be accorded duty exemption if they are imported by the Joint Authority or any person authorised by it;

Provided that where one of the Governments proposes to impose any duties or taxes on any such customs approved goods, equipment and materials, it may impose such duties or taxes after consultation with the other Government;

(ii) Malaysia and the Kingdom of Thailand shall collect their respective duties and taxes collectible under their respective legislation but shall reduce the applicable rates by fifty per centum;

(iii) any goods entering the Joint Development Area from:

(A) a third country, any licensed warehouse or bonded area of either Malaysia or the Kingdom of Thailand shall be deemed an import; and

(B) Malaysia or the Kingdom of Thailand, shall be deemed an internal movement, provided they are customs approved goods, equipment and materials for use in the Joint Development Area;

(iv) any goods produced in the Joint Development Area entering Malaysia or the Kingdom of Thailand or a third country shall be deemed an export;

(v) any goods which has entered the Joint Development Area under the situation described in subparagraph (b)(iii)(B) and is to be moved into Malaysia or the Kingdom of Thailand shall be subject to the laws of Malaysia or the Kingdom of Thailand, as the case may be;

(vi) any goods falling within the category of goods appearing in both the lists of prohibited goods made in accordance with the laws of Malaysia and the Kingdom of Thailand, respectively, shall not be permitted to be brought into the Joint Development Area:

Provided that where an exception is required in respect of any specific importation, such an exception may be made with the agreement of the competent authorities of the other Country;

(vii) proceeds from any sale of forfeited goods which are the produce of the Joint Development Area shall be equally shared by Malaysia and the Kingdom of Thailand;

(c) the Customs and Excise Authorities shall use common customs forms for the purpose of import,, export and internal movement of goods in the Joint Development Area as specified in subparagraphs (b)(iii) and (iv); and

(d) the Country where the headquarters of the Joint Authority is located shall empower the officers of the Customs and Excise Authority of the other Country to exercise their authority with regard to customs clearance, including the collection of duties and taxes, within the premises of the Joint Customs Office.

(2) Notwithstanding section 18 of the Acts, and insofar as it applies to customs and excise matters, the following arrangements shall apply:

(a) where an act is committed in the Joint Development Area and that act is an offence under the laws of one of the Countries only, such Country whose laws are alleged to have been breached may assume jurisdiction over such alleged offence;

(b) where the act referred to in subparagraph (a) is an offence under the laws of the Countries, the Country which may assume jurisdiction over the act shall be that whose officer first makes an arrest or seizure in respect of the alleged offence; and
(c) where the act referred to in subparagraph (a) is an offence under the laws of the Countries and in respect of which there are simultaneous arrests or seizures by the Customs and Excise Authorities, the jurisdiction over the alleged offence shall be determined through consultation between such Authorities.

(3) For the purpose of this Article-
(a) 'Countries' means Malaysia and the Kingdom of Thailand, and when used in the singular means Malaysia or the Kingdom of Thailand, as the context requires;
(b) 'customs approved goods' means goods in respect of which customs duties are exempted under both the laws of Malaysia and the Kingdom of Thailand relating to customs;
(c) 'Customs and Excise Authority' in relation to Malaysia means the Royal Customs and Excise, Malaysia and in relation to the Kingdom of Thailand means the Customs Department of Thailand, and when used in the plural means both such Authorities;
(d) 'Joint Customs Committee' means the committee comprising officers of the Customs and Excise Authorities established for the purpose of the coordination of the administration of customs and excise laws in the Joint Development Area; and
(e) 'Joint Customs Office' means the office of the Joint Customs Committee established in the headquarters of the Joint Authority for the purpose of the coordination of the administration of the customs and excise laws in the Joint Development Area.

Article 17
Taxation

(1) For the purpose of Part X of the Acts, the Revenue Authorities of the Governments shall, subject to the following, continue to impose and collect taxes in respect of income from the Joint Development Area in accordance with the existing tax legislation of Malaysia and the Kingdom of Thailand, as the case may be:
(a) the taxation of such income of any person who holds the right to explore and exploit any petroleum in the Joint Development Area under a contract awarded by the Joint Authority shall be in accordance with the following rates:

First 8 years of production	0% of taxable income
Next 7 years	10% of taxable income
Subsequent years	20% of taxable income:

Provided that the tax chargeable by each of the Governments shall be reduced by fifty per centum of the amount so chargeable
Provided further that where the tax chargeable for each year by one of the Governments exceeds that chargeable by the other Government, such excess shall be shared equally by the two Governments and shall be effected by the Joint Authority through appropriate adjustments of payments made under paragraph (d) of section 10 of the Act
(b) the taxation of such income of a person who is a Malaysian or Thai national exercising employment in the Joint Development Area or with the Joint Authority shall be based on his residence; and

(c) the taxation of such income of any person other than a person mentioned in subparagraphs (a) and (b) shall be in accordance with the laws and regulations of Malaysia and the Kingdom of Thailand, provided that where the same income is subject to tax in both countries, the tax chargeable in each country shall be reduced by fifty per centum of the amount so chargeable.

(2) The Governments agree that any law for taxation which is in the nature of general sales tax, including any tax imposed on the provision of goods and services in the Joint Development Area, shall not be applicable to the Joint Development Area.

(3) The Joint Authority shall be exempt from taxation in Malaysia and the Kingdom of Thailand.

(4) The Revenue Authorities of the Governments shall continue to communicate with and consult each other in respect of the implementation and administration of any tax law in the Joint Development Area.

CHAPTER VII
MISCELLANEOUS PROVISIONS

Article 18
Entry into Force and Termination

(1) This Agreement shall enter into force upon the exchange of instruments of ratification, and, unless otherwise agreed to by the Governments, shall remain in force for the period of validity of the Memorandum of Understanding, 1979.

(2) Upon termination of this Agreement, the Joint Authority shall be wound up in accordance with a liquidation procedure as may be approved by the Governments.

Article 19
Application

The application and interpretation of the provisions of this Agreement shall be consistent with the spirit and provisions of the Memorandum of Understanding, 1979.

Article 20
Amendment

This Agreement may be amended by a joint decision of the Co-Chairmen with the approval of the Governments.

Article 21
Settlement of Disputes

Any differences or disputes arising out of the interpretation or application of the provisions of this Agreement shall be settled peacefully by consultation or negotiation between the Governments. In the event that no settlement is reached within a period of three months either Government may refer the matter to the Prime Minister of Malaysia and the Prime Minister of the Kingdom of Thailand who shall jointly decide on the mode of settlement for the purpose of the particular matter referred to them.

Article 22

This Agreement is made in duplicate at Kuala Lumpur, Malaysia, on the Thirtieth day of May, in the year One thousand Nine hundred and Ninety, in the English language.

For The Government Of Malaysia	For The Government Of The Kingdom of Thailand
(Dato' Haji Abu Hassan bin Haji Omar) Minister of Foreign Affairs	(Air Chief Marshal Siddhi Savetsila) Minister of Foreign Affairs

Source: Reproduced in Charney and Alexander, 1993: 1,111-1,123.

Appendix 15

MEMORANDUM OF UNDERSTANDING BETWEEN MALAYSIA AND THE SOCIALIST REPUBLIC OF VIETNAM FOR THE EXPLORATION AND EXPLOITATION OF PETROLEUM IN A DEFINED AREA OF THE CONTINENTAL SHELF INVOLVING THE TWO COUNTRIES

Malaysia and the Socialist Republic of Vietnam,

DESIRING to further strengthen the cooperation between the two countries;

RECOGNIZING that as a result of overlapping claims made by the two countries regarding the boundary lines of their continental shelves located off the northeast coast of West Malaysia and off the southwest coast of Vietnam, there exists an overlapping area of their continental shelves;

CONSISTENT with the agreement reached by the leaders of the two countries to cooperate in that part of the overlapping area involving the two countries only;

MINDFUL of the decision by the leaders of the two countries to resolve peacefully the question of all overlapping claims involving multiple parties with the parties concerned at an appropriate time;

CONSIDERING that it is in the best interests of both countries, pending delimitation of their continental shelves located off the northeast coast of West Malaysia and off the southwest coast of Vietnam, to enter into an interim arrangement for the purpose of exploring and exploiting petroleum in the seabed in the overlapping area;

CONVINCED that such activities can be carried out through mutual cooperation;

HAVE AGREED AS FOLLOWS: -

ARTICLE I

(1) Both parties agree that as a result of overlapping claims made by the two countries regarding the boundary lines of their continental shelves located off the northeast coast of West Malaysia and off the southwest coast of Vietnam, there exists an overlapping area (the Defined Area), being that area bounded by straight lines joining the following coordinated points:

A	N 7°	22.0'	E 103°	42.5'
B	N 7°	20.0'	E 103°	39.0'

C	N 7°	18.31'	E 103°	35.71'
D	N 7°	03.0'	E 103°	52.0'
E	N 6°	05.8'	E 105°	49.2'
F	N 6°	48.25'	E 104°	30.0'
A	N 7°	22.0'	E 103°	42.5'

and shown in the relevant part of the British Admiralty Chart No: 2414, Edition 1967, annexed hereto.

(2) The actual location at sea of the points referred to in Clause (1) of this Article shall be determined by a method to be mutually agreed upon by the competent authorities of both parties. The competent authorities in relation to Malaysia means the Directorate of National Mapping Malaysia and includes any person authorised by it and in relation to the Socialist Republic of Vietnam means the Department of Geo-Cartography and the Navy Geo-Cartography Section and includes any person authorised by them.

ARTICLE II

(1) Both parties agree, pending final delimitation of the boundary lines of their continental shelves pertaining to the Defined Area, through mutual cooperation, to explore and exploit petroleum in that area in accordance with the terms of, and for a period of the validity of this Memorandum of Understanding.

(2) Where a petroleum field is located partly in the Defined Area and partly outside that area in the continental shelf of Malaysia or the Socialist Republic of Vietnam, as the case may be, both parties shall arrive at mutually acceptable terms for the exploration and exploitation of petroleum therein.

(3) All costs incurred and benefits derived from the exploration and exploitation of petroleum in the Defined Area shall be borne and shared equally by both parties.

ARTICLE III

For the purpose of this Memorandum of Understanding -

(a) Malaysia and the Socialist Republic of Vietnam agree to nominate PETRONAS and PETROVIETNAM, respectively, to undertake, on their respective behalves, the exploration and exploitation of petroleum in the Defined Area;

(b) Malaysia and the Socialist Republic of Vietnam shall cause PETRONAS and PETROVIETNAM, respectively, to enter into a commercial arrangement as between them for the exploration and exploitation of petroleum in the Defined Area provided that the terms and conditions of that arrangement shall be subject to the approval of the Government of Malaysia and the Government of the Socialist Republic of Vietnam;

(c) both parties agree, taking into account the significant expenditures already incurred in the Defined Area, that every effort shall be made to ensure continued early exploration of petroleum in the Defined Area.

ARTICLE IV

Nothing in this Memorandum of Understanding shall be interpreted so as to in any way -

(a) prejudice the position and claims of either party in relation to and over the Defined Area; and

(b) without prejudice to the provisions of Article III, confer any rights, interests or privileges to any person not being a party hereto in respect of any petroleum resources in the Defined Area.

ARTICLE V

This Memorandum of Understanding shall continue for a period to be specified by an exchange of Diplomatic Note between the two parties.

ARTICLE VI

Any dispute arising out of the interpretation or implementation of the provisions of this Memorandum of Understanding shall be settled peacefully by consultation or negotiation between both parties.

ARTICLE VII

This Memorandum of Understanding shall come into force on the date to be specified by an exchange of Diplomatic Note between the two parties.

ARTICLE VIII

For the purpose of this Memorandum of Understanding -

(a) 'Defined Area" means the area referred to in Article I(1) of this Memorandum of Understanding;

(b) 'petroleum means any mineral oil or relative hydrocarbon and natural gas existing in its natural condition and casinghead petroleum spirit, including bituminous shales and other stratified deposits which oil can be extracted;

(c) 'petroleum field" means an area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same individual geological structural feature, or stratigraphic conditions from which petroleium may be produced commercially;

(d) 'PETRONAS" is the short form of Petroliam Nasional Berhad, a company incorporated under the Malaysia Companies Act 1965; and

(e) 'PETROVIETNAM" is the short form of Vietnam National Oil and Gas Company established by the Decree of No. 250/HDBT of 6 July, 1990.

Done in duplicate at Kuala Lumpur the 5th day of June in the year One Thousand Nine Hundred and Ninety Two in the English language.

For Malaysia

H.E. DATUK AHMAD KAMIL JAAFAR
Secretary-General,
Ministry of Foreign Affairs
Malaysia

For the Socialist
Republic of Vietnam

H.E. VU KHOAN
Vice-Minister of Foreign Affairs
Socialist Republic of Vietnam

Source: On file with the author.

Appendix 16

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE KINGDOM OF THAILAND

AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

ON

THE DELIMITATION OF THE MARITIME BOUNDARY

BETWEEN THE TWO COUNTRIES

IN THE GULF OF THAILAND

THE GOVERNMENT OF THE KINGDOM OF THAILAND AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM, hereinafter referred to as "the Contracting Parties";

DESIRING to strengthen the existing bonds of friendship between the two countries;

DESIRING to establish the maritime boundary between the two countries in the relevant part of their overlapping continental shelf claims in the Gulf of Thailand;

HAVE AGREED as follows:

ARTICLE 1

1. The maritime boundary between the Kingdom of Thailand and the Socialist Republic of Vietnam in the relevant part of their overlapping continental shelf claims in the Gulf of Thailand is a straight line drawn from Point C to Point K defined by latitude and longitude as follows:

Point C: Latitude N 07° 49' 00".0000, Longitude E 103° 02' 30".0000

Point K: Latitude N 08° 46' 54".7754, Longitude E 102° 12' 11".5342.

2. Point C is the northernmost point of the Joint Development Area established by the Memorandum of Understanding between the Kingdom of Thailand and Malaysia on the Establishment of a Joint Authority for the Exploitation of the Resources of the Sea-Bed in a Defined Area of the Continental Shelf of the Two Countries in the Gulf of Thailand, done at Chiangmai on 21 February 1979, and which coincides with Point 43 of Malaysia's continental shelf claim advanced in 1979.

3. Point K is a point situated on the maritime boundary between the Socialist Republic of Vietnam and the Kingdom of Cambodia, which is the straight line equidistant from Tho Chu islands and Pulo Wai drawn from Point O Latitude N 09° 35' 00".4159 and Longitude E 103° 10' 15".9808.

4. The co-ordinates of the points specified in the above Paragraphs are geographical co-ordinates derived from the British Admiralty Chart No. 2414 which is attached as an Annex to this Agreement. The geodetic and computational bases used are the Ellipsoid Everest -1830 - Indian Datum.

5. The maritime boundary referred to in Paragraph 1 above shall constitute the boundary between the continental shelf of the Kingdom of Thailand and the continental shelf of the Socialist Republic of Vietnam, and shall also constitute the boundary between the exclusive economic zone of the Kingdom of Thailand and the exclusive economic zone of the Socialist Republic of Vietnam.

6. The actual location of the above Points C and K at sea and of the straight line connecting them shall, at the request of either Government, be determined by a method to be mutually agreed upon by the hydrographic experts authorized for this purpose by the two Governments.

ARTICLE 2

The Contracting Parties shall enter into negotiation with the Government of Malaysia in order to settle the tripartite overlapping continental shelf claim area of the Kingdom of Thailand, the Socialist Republic of Vietnam, and Malaysia, which lies within the Thai-Malaysian Joint Development Area established by the Memorandum of Understanding between the Kingdom of Thailand and Malaysia on the Establishment of a Joint Authority for the Exploitation of the Resources of the Sea-Bed in a Defined Area of the Continental Shelf of the Two Countries in the Gulf of Thailand, done at Chiangmai on 21 February 1979.

ARTICLE 3

Each Contracting Party shall recognise and acknowledge the jurisdiction and the sovereign rights of the other country over the latter's continental shelf and exclusive economic zone within the maritime boundary established by this Agreement.

ARTICLE 4

If any single geological petroleum or natural gas structure or field, or other mineral deposit of whatever character, extends across the boundary line referred to in Paragraph 1 of Article 1, the Contracting Parties shall communicate to each other all information in this regard and shall seek to reach agreement as to the manner in which the structure, field or deposit will be most effectively exploited and the benefits arising from such exploitation will be equitably shared.

ARTICLE 5

Any dispute between the Contracting Parties relating to the interpretation or implementation of this Agreement shall be settled peacefully by consultation or negotiation.

ARTICLE 6

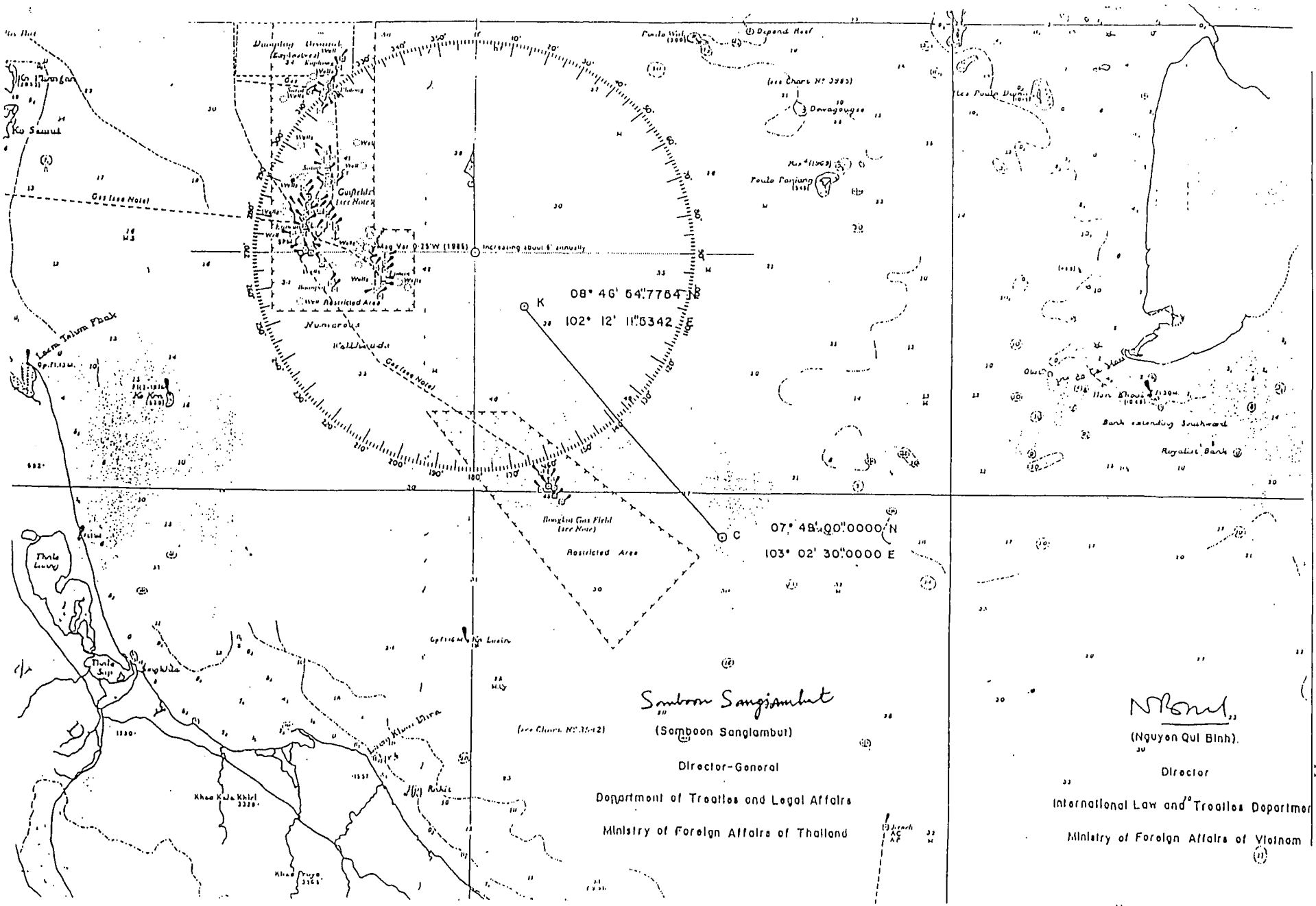
This Agreement shall enter into force on the date of the exchange of the Instruments of Ratification or Approval, as required by the constitutional procedures of each country.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE in duplicate at Bangkok on this 9th Day of August, One Thousand Nine Hundred and Ninety Seven in the Thai, Vietnamese and English languages. In the event of any conflict between the texts, the English text shall prevail.

For the Government of the Kingdom of Thailand	For the Government of the Socialist Republic of Vietnam
(Prachuab Chaiyasan)	(Nguyen Manh Cam)
Minister of Foreign Affairs	Minister of Foreign Affairs

Source: On file with the author.


Ko Samui
Gas Free Note)
Laem Talumphuk
Numerous Wells
Restricted Area
Gas Free Note)
08° 46' 54"7764 N
102° 12' 11"6342 E
K
C
07° 48' 00"0000 N
103° 02' 30"0000 E
Restricted Area
Pulau Panjang
Pulau Dayabongsa
Pulau Dupont Reef
Bank extending Southward
Rayalist Bank
Khao Kuja Khiri
Khao Priya
Somboon Sangjambut
(Somboon Sanglambut)
Director-General
Department of Treaties and Legal Affairs
Ministry of Foreign Affairs of Thailand
(Nguyen Qui Binh)
Director
International Law and Treaties Department
Ministry of Foreign Affairs of Vietnam

Appendix 17

Cambodian Protest Note, 17 February 1998

KINGDOM OF CAMBODIA
NATION-RELIGION-KING

MINISTRY OF FOREIGN AFFAIRS
AND INTERNATIONAL COOPERATION

N° 0201 MFA-IC/LD

The Ministry of Foreign Affairs and International Cooperation presents its compliments to the Royal Embassy of Thailand and to the Embassy of the Socialist Republic of Vietnam in Phnom Penh and, with reference to the Agreement between the Government of the Kingdom of Thailand and the Government of the Socialist Republic of Vietnam on the Delimitation of the Maritime Boundary between the two Countries in the Gulf of Thailand, has the honour to declare the position of the Royal Government of Cambodia as follows:

1 - The said Agreement between Thailand and Vietnam, signed on 9 August 1997 in Bangkok, in Article 1, paragraph 3, which is based on the so-called « maritime boundary » between the Socialist Republic of Vietnam and the Kingdom of Cambodia, and which Cambodia has never agreed to, constitutes a violation of Cambodia's sovereignty and her rights over her exclusive economic zone as well as her continental shelf in this part of the Gulf of Thailand.

2 - All provisions of the said Agreement are without prejudice with respect to Cambodia, and are, under international law, neither binding upon Cambodia nor affect her rights and legitimate interests in the area in question.

3 - The boundary delimitation of the continental shelf and the exclusive economic zone in this part of the Gulf of Thailand shall be determined on the basis of agreement in accordance with both the general principles of international law and the United Nations Convention on the Law of the Sea of 1982, which calls for all states concerned to achieve an equitable solution.

4 - In this connection, Cambodia totally reserves her position in relation to any delimitation of the maritime boundary in this part of the Gulf of Thailand, which has been made or may be made without the agreement of the Royal Government of Cambodia.

5 - In a spirit of goodwill, cooperation and respect of each State's sovereignty, the Royal Government Cambodia wishes to reiterate its readiness and determination to work in a positive, productive and friendly way with its neighbours in order to reach a provisional arrangement of a practical nature or a final agreement on this matter as soon as possible.

The Ministry of Foreign Affairs and International Cooperation avails itself of this opportunity to renew to the Royal Embassy of Thailand and to the Embassy of the Socialist Republic of Vietnam the assurances of its highest consideration.

Phnom Penh, 17 February

ROYAL EMBASSY OF THAILAND
PHNOM PENH

EMBASSY OF
THE SOCIALIST REPUBLIC OF VIETNAM
PHNOM PENH

Source: On file with the author.

Appendix 18

Franco-Siamese Boundary Treaty, 23 March 1907

The President of the French Republic and His Majesty the King of Siam following the delimitation undertaken in execution of the Convention of 13 February 1904, desiring on the one hand to ensure the final settlement of all questions connected with the common boundaries of Indo-China and Siam by a reciprocal and rational system of exchanges, and desiring on the other hand to ease relations between the two countries by the progressive introduction of a uniform legal system and by the extension of the rights of those citizens under French jurisdiction established in Siam, have decided to conclude a new treaty, and have named to this effect their plenipotentiaries as follows:

The President of the French Republic: R. Victor-Emile-Marie-Joseph Collin (de Plancy) Ambassador Extraordinary and Plenipotentiary Minister of the French Republic to Siam, Officer of the Legion of Honour and Public Instruction;

His Majesty the King of Siam: His Royal Highness Prince Devawongse Varoprakar, Knight of the Order of Maha-Chakri, Commanding Officer of the Legion of Honour, etc., Minister of Foreign Affairs;

Who, provided with full authority, which has been found in due and proper form, agreed to the following dispositions:

Article I

The Siamese Government cedes to France the territories of Battambang, Siem-Reap and Sisophon, whose boundaries are defined in Clause I of the Protocol of Delimitation annexed to this Treaty.

Article II

The French Government cedes to Siam the territories of Dan-Sai and Kratt, whose borders are defined in Clauses I and II of the aforementioned Protocol, also all the islands situated to the south of Cape Lemling as far as and including Koh-Kut.

Article III

The exchange of these territories will take place within twenty days after the date of the ratification of the present Treaty.

Article IV

A Mixed Commission composed of French and Siamese officers and officials, will be named by the two contracting Countries, within four months of the ratification of the

present Treaty, and charged with settling the new boundaries. It will commence work as soon as the weather allows and they will follow and conform to the Protocol of Delimitation annexed to the present Treaty.

Article V

[Legal arrangements for aliens]

Article VI

[Rights of French citizens in Siam]

Article VII

[Treaties unaffected by the present Treaty to remain in force]

Article VIII

[French version of the Treaty authoritative]

Article IX

[Ratification]

Done in Bangkok in duplicate on 23 March 1907.

V.Collin (de Plancy)
Devawongse Varoprakar

Annexe 1
Protocol of delimitation

In order to facilitate the work of the Commission referred to in Article IV of the Treaty dated this day, and to avoid all possibility of difficulty in the delimitation, the Government of the French Republic and His Majesty the King of Siam have agreed as follows:

Clause I

The boundary between French Indo-China and Siam leaves the sea at a point situated opposite the highest point of Koh-Kut island. From this point it follows a northeasterly direction to the crest of Pnom-Krevanh. It is formally agreed that in every case the sides of these mountains which belong to the Klong-Kopo basin remain in French Indo-China. The boundary follows the crest of the PnomKrevanh in a northerly direction to Pnom-Thom which is found on the main water parting between the rivers which flow into the Gulf of Siam and those which flow towards the Grand Lac. From Pnom-Thom, the border then follows in a northwesterly direction, then a northerly direction the actual boundary between the Provinces of Battambang on one side and those of Chantaboun

and Kratt on the other side, as far as a point where the boundary cuts the river Nam-Sai. It then follows the course of this river as far as its confluence with the Sisophon river and then the latter to a point situated ten kilometres below the village of Aranh. From this last point it continues in a straight line to a point on the Dang-Reck, halfway between the Chong-Ta-Kob and Chong-Sa-Met passes. It is understood that this line must leave a direct route between Aranh and Chong-Ta-Koh in Siamese territory.

From the point mentioned above, situated on the crest of the Dang-Reck, the boundary follows the line of the water-parting between the basin of the Grand Lac and the Mekong on one side and the Nam-Moun on the other side, and reaches the Mekong below Pak Moun, at the mouth of the Huei-Doue, conforming to the line adopted by the previous delimitation Commission of 18 January 1907.

A rough draft of the boundary described above is annexed to the present Protocol.

Clause II

On the side of Luang-Prabang, the boundary leaves the Mekong at the mouth of the Nam-Huong in the south and follows the thalweg of this river as far as its source, which is situated at Phu-Khao-Mieng. From there the boundary follows the water-parting between the Mekong and the Menam, and meets the Mekong at a point called Keng-Pha-Dai, conforming to the line adopted by the previous Delimitation Commission of 16 January 1906.

Clause III

The Delimitation Commission authorised by Article IV of the Treaty of today's date will determine and trace, on the basis of the terrain, that part of the boundary described in Clause I of the present Protocol. If in the course of these operations the French Government desires to obtain a rectification of the boundary with the aim of substituting natural lines for the conventional lines, this rectification must not be made to the detriment of the Siamese Government.

The respective Plenipotentiaries have signed the present protocol and affixed their seals.

Done in duplicate in Bangkok 23 March 1907.

V.Collin (de Plancy)
Devawongse Varoprakar

Source: Reproduced in Prescott, 1975: 444-446.

Appendix 19

The Brevié Line, 31 January 1939

Directorate of Political Affairs
Number 867/API

Hanoi, 31 January 1939
The Governor General of Indochina
Grand Officer of the Legion d'Honneur

To the Governor of Cochin China
(I Bureau) in Saigon

Subject: Islands in the Gulf of Siam

I have the honor of informing you that I have just reexamined the question of the islands of the Gulf of Siam, the possession of which is disputed between Cambodia and Cochin China.

The situation of this group of islands, scattered along the Cambodian coast and some of which are so near the coast that land filling presently being carried out will seem to fuse them to the Cambodian coast in a relatively near future, logically and geographically requires that these islands be under the jurisdiction of the Administration of Cambodia.

I believe that it is impossible to let the present state of affairs continue as it is, which is forcing the inhabitants of these islands to refer, either at the price of a long crossing, or at the price of a long detour through Cambodian territory, to the Administration of Cochin China.

As a consequence, I have decided that all the islands located north of the line perpendicular to the coast starting from the border between Cambodia and Cochin China and making a 140 grad angle with the north meridian, in accordance with the attached chart, will be from now on administered by Cambodia. The Protectorate will, in particular, take over the police of these islands.

All the islands south of this line, including the islands of Phu-Quoc, will continue to be administered by Cochin China. It is understood that the demarcation line thus made will make a line around the north of the island Phu-Quoc, passing three kilometers from the extreme ends of the north shore of this island.

Administration and police powers on these islands will thus be clearly distributed between Cochin China and Cambodia, so that all the future disputes might be avoided.

It is understood that the above pertains only to the administration and policing of these islands, and that the issue of the islands' territorial jurisdiction remains entirely reserved.

You will please make provisions so that my decision is immediately put into effect.

Please notify me of the receipt of this letter.

Signed: BREVIÉ

Source: Reproduced in Chhak, 1966.

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