

# **Delimitation of Maritime Boundaries Between Neighbouring States**

**A Case of Fiji**

**Eveli Maisema**

**United Nations – The Nippon Foundation of Japan Fellowship Programme 2016**



## **Disclaimer**

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## **ABSTRACT**

The delimitation of maritime boundaries is a crucial component of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) as it provides the fundamental legal principles for the delimitation of maritime boundaries and set the rights and obligations for States over their maritime zones. This has served as useful guidance for coastal States who have been working on

## **ACKNOWLEDGMENT**

First, I would like to take this opportunity to thank the government of Fiji through the Ministry of Lands and Mineral Resources for nominating me and providing recommendations to my application for the UN-Nippon Foundation Fellowship Programme. Thank you UN-Nippon Foundation for the 2016 Award and for giving me an opportunity to further enhance my knowledge and understanding on oceans affairs and the law of the sea. I would also like to acknowledge and thank the endless support of my supervisor Mr. Alan Evans of the National Oceanography Centre here in Southampton, United Kingdom. He has made this project a success by assisting me in [(oF)6(e)4(II)-1o

## **LIST OF ACRONYMS**

**TS:** territorial sea

**EEZ:** Exclusive Economic Zone

**NM:** nautical miles

**CS:** Continental Shelf

**ECS:** Extended Continental Shelf

**UN:** United Nations

**UNCLOS:** United Nations Convention on the Law of the Sea

**LOSC:** Law of the Sea Convention

**CLCS:** Commission on the Limits of the Continental Shelf

**LTE:** Low-tide elevation

**MACC:** Maritime Affairs Coordinating Committee

**ICJ:** International Court of Justice

**ITLOS:** International Tribunal on the Law of the Sea

**Convention:** Law of the Sea Convention

**Commission:** UN-Commission on the Limits of the Shelf

**PCA:** Permanent Court of Arbitration

**SCS:** South China Sea

**SPC:** Secretariat of the Pacific Community

**NOC:** National Oceanography Centre

**DOALOS:** Division for Ocean Affairs and the Law of the Sea

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## Introduction

Maritime delimitation may be defined as the process of establishing lines separating the spatial ambit of coastal jurisdiction over maritime spaces where the legal title overlaps with that of another State.<sup>1</sup> The delimitation of maritime boundaries is a significant requirement for peaceful relations between States. Traditionally, States have been concerned about land boundaries; their interest in maritime boundaries came relatively late when, at the beginning of the 20th century, they discovered the economic potential of the sea in terms of living marine resources as well as hydrocarbons and deep sea minerals.<sup>2</sup>

The 1982 LOSC articulates the rights and responsibilities that coastal States have over their territorial sea out to 12 nautical mile (nm), as well as specific rights within contiguous zone out to 24nm and sovereign rights over the Exclusive Economic Zones (EEZ) out to 200nm and the extended continental shelf.<sup>3</sup> The delimitation principles set out in the LOSC provides the guidelines in defining these maritime zones for coastal States and establishes a comprehensive framework for addressing the issues associated with the uses of the ocean space. On 10 December 1982 the LOSC, commonly known as the Constitution for the Oceans was opened for signature, in which it made a historical landmark in the international legal arena which the Convention was signed by 119 countries on the day it was opened for signature.<sup>4</sup> Fiji is a party to the United Nations Convention on the Law of the Sea (UNCLOS) and was the first country to sign and ratify the treaty in 1982. The 1982 United Nations Conference on the Law of the Sea (UNCLOS) established the Exclusive Economic Zone (EEZ) regime which created a new fisheries regime for coastal States. The EEZ regime under Part V of the 1982 United Nations

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<sup>1</sup> Yoshifumi Tanaka, *Predictability and Flexibility in the Law of Maritime Delimitation* (North America, Portland, USA: Hart Publishing, 2006).

<sup>2</sup> López. J.A, *Maritime Delimitation*, University of Oxford, 2015.

<sup>3</sup> C. H. Schofield, 2010. *The Delimitation of Maritime Boundaries of the Pacific Island States*. Delimitation of Maritime

<sup>4</sup>  
of the Sea.

ference on the Law

Convention on the Law of the Sea (LOS Convention)<sup>5</sup> grants coastal States exclusive rights to fisheries resources as far as 200 nautical miles (nm) from their coastlines.

The International Court of Justice (ICJ) has dealt with disputes over small islands and other territory by examining evidence related to the issues of: (a) discovery, (b) effective occupation, (c) acquiescence, and (d) contiguity.<sup>6</sup>

acquiescence will also be characterized as a claim of prescription or acquisitive prescription.<sup>7</sup>

The Tribunal almost always emphasize recent effective displays of sovereignty as the most important factor, but historical evidence can also be important under special circumstances.

Thus,

In addition, what are the accepted legal and scientific definition of an island, rock and a low tide elevation? In this regard, the paper will provide an overview of the intricate legal and technical analysis of low-tide elevation (LTE), rock and island under the LOSC and using relevant jurisprudence cases.

international law by considering the principles of boundary delimitation used by the ICJ.

The study is divided into two main parts: The first part of the paper is entitled “*General Overview of the Legal Regimes for Maritime Zones*” this part will examine the legal framework of delimitation post 1945. It presents a road map of how the legal principle of maritime delimitation was prepared and describes the historical development of the LOSC in regards to delimitation. In this part, the paper will outline the regime of islands and rocks under article 121 of the Convention and the basis of historic title/claim under international law. It will further

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Figure 1).<sup>9</sup> About 150 of these islands are inhabited.



Figure 1.2: archipelagic

Minerva reefs in the far south. Source: Broder, Sherry, et al. (1982), 'Ocean boundaries in the South Pacific', U. Haw. L. Rev.





*fishing grounds for the Tongan people and have long been regarded as belonging to the Kingdom of Tong*

high tide; or whether alternatively it could be pursued if a man-made island were established. The question is strongly considered before the Court or Tribunal for a disputed feature within an EEZ of another State. The principles of the 1982 LOSC as the main legally binding instrument that provide the rights and obligations of coastal States over their maritime zones.

When scrutinizing the nature of claims done by Tonga in its 2014 submission to the Commission on the Limits of the Continental Shelf (CLCS), it has been discovered that Tonga has drawn

opposing view, *Mare Clausum* (Closed Seas), published in 1635.<sup>21</sup> On one hand Grotius argued

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into possession by



legal history, that in the chronicles of international law had a Convention been signed by 119 countries on the very first day on which it was opened for signature.<sup>34</sup>

Figure 1.4: Above image shows the signing of the Final Act of the United Nations Convention on the Law of the Sea in Montego Bay, Jamaica on 10 December 1982.

Source: [http://www.un.org/depts/los/convention\\_agreements/](http://www.un.org/depts/los/convention_agreements/)

The 1982 United Nations Convention on the Law of the Sea (UNCLOS III) was recognized as a universal legal binding document of the seas that sets out the provisions for all maritime zones. The Convention came into force in 1994 and contains the legal provisions governing maritime

development of maritime zones in accordance with international law, as reflected in the 1982 LOSC, may create overlapping claims requiring maritime boundary delimitation.<sup>37</sup>

Figure 1.5: Image showing different

## 1.2 Territorial Sea

This section of the paper will focus on the delimitation principles of the territorial sea in accordance with the LOSC. The idea of formulating a regime for the territorial sea was discussed in the Geneva Convention where States try to put up provisions to govern the territorial waters of a coastal State. The Convention on the Territorial Sea and Contiguous Zone of 1958 is an international treaty ratified by 52 States, which entered into force on 10 September 1964. In this Convention, the provision for the delimitation of the territorial sea of adjacent or opposite coast was introduced in Article 12.<sup>43</sup> The same principle was reflected in the 1982 LOSC under Article 15 for the delimitation of the territorial sea. The breadth of the territorial sea was agreed in the LOSC under Article 3 in accordance with Article 5 and Article 7 on baselines. In contrast to the first and second Law of the Sea Conferences, which could not reach an agreement on the maximum breadth of the territorial sea, UNCLOS III rather found a solution.<sup>44</sup> In order to generate a territorial sea of a coastal State, it was then decided during the 1982 LOSC that States has the right to establish the breadth of the territorial sea up to a limit not exceeding 12nm.

The normal baseline for calculating the breadth of the territorial sea is the low-water line along the coast as marked on large-



According to Article 15 of the LOSC, it articulates that:

*Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, 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 two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of **historic title** or other special circumstances to delimit the territorial seas of the two States in a way, which is at variance therewith.*

This article provides that failure to make an agreement on the territorial sea delimitation between States of the opposite or adjacent coasts the use of equidistance method, in this case, may apply. The same delimitation principle can also be found in Article 6 of the Convention on the Continental Shelf on the delimitation of opposite coasts:

within the EEZ of another coastal State. In this case, it serves to underscore that State parties are not in a position to act in a direct unilateral delimitation process if there is an existing dispute with neighbouring countries. It should be arranged through proper bilateral negotiations between States thus, failure to make an agreement on delimitation would result in state parties resorting to the dispute settlement mechanisms under the LOSC.

In the case for historic title claim, it signifies that no other State can potentially be entitled to exercise powers over the area to which the title is referred.<sup>49</sup> On the other hand, historic rights have a non-exclusive nature and are reconcilable with a maritime title vested in another State.<sup>50</sup>

ays, i.e., to straits, archipelagos, and generally to all those waters which can be included in the territorial sovereignty of a State within its territorial sea.<sup>51</sup> More to this historic title will be discussed later in this chapter to align the role and nature of historic claim under international law given the contradicting issues of its application to maritime delimitation with States of the adjacent or opposite coast.

### **1.3 Interpretation of Article 74 under the 1982 LOSC**

The provisions for the EEZ was introduced in the 1982 LOSC which States agreed that the breadth of the EEZ shall not extend beyond 200 nautical miles from the baselines from which the territorial sea is measured.<sup>52</sup> For archipelagic States like Fiji, the breadth of the EEZ shall be measured from the archipelagic baselines drawn in accordance with article 47. The norms of the delimitation of the EEZ between neighbouring States are contained in article 74 of the Convention that ascertain ant coasts shall be effected by agreement as referred to in Article 38 of the Statute of the International Court of

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<sup>49</sup> Nugzar Dundua, *Delimitation of Maritime Boundaries between Adjacent States* (United Nations, Division for Oceans Affairs

<sup>53</sup> Thus, Article 38 of that Statute does not provide much assistance; it enjoins the Court to reach decisions by applying international conventions expressly recognized by the contesting states, by international custom, by general principles of law recognized by civilized nations, and by judicial decisions.<sup>54</sup> The applicable article for the delimitation of the controversial Minerva reefs is article 74 of the LOSC, which states that:

- 1. The delimitation of the 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.*
- 2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.*
- 3. 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.*
- 4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement. (Source: 1982 LOSC, Article 74)*

According to Article 74, it provides a reference point to a method for delimitation through the process of an agreement between States concerned through peaceful means. This mechanism was considered insignificant for some States as they lack any form of guidance, leaving it to the court or tribunal to decide what method to employ.<sup>55</sup>

principles of international law. It is a general principle that States are free to conclude any

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agreement as long as it is not in violation of *jus cogens*.<sup>56</sup> Consequently, assuming that Articles 74 and Article 83 do not qualify as the principles, which form the norms of international law that cannot be set aside, States may conclude valid international agreements for delimiting their maritime boundaries even if such agreement are considered prejudiced.<sup>57</sup> Under international law of maritime delimitation, both conventional and customary, base the rights of a coastal State on t the

<sup>58</sup> This means that any State with a sea territory, just for that fact, can expand its sovereign rights ov

unilaterally, but must result from a process between two or more States.<sup>60</sup> With reference to article 74(1) if a coastal State maritime zone are not in contact or overlaps with those of another coastal State boundary then the delimitation may be done unilaterally in accordance with the provisions of

been noted that Tonga did not exercise proper bilateral negotiation with Fiji in which they claim sovereignty over the Minerva reefs despite that the reefs are

and 83, the delimitation of the exclusive economic zone or the continental shelf shall be effected by agreement un











*(Territory, Acquisition)*.<sup>73</sup> In concluding the First Conference, a resolution was adopted on the initiative of India and Panama, requesting arrangements for the study of the juridical regime of historic waters including historic bays, and for the result of these studies to be sent to all Member States of the United Nations.<sup>74</sup> In 1962, following the Second UN Conference on the Law of the Sea, the UN Secretariat produced a memorandum on historic waters, which considered the term as equivalent to historic title. As  
nal waters  
or territorial sea according to whether the sovereignty exercised over them in the course of the development of the historic title was sovereignty as over internal waters or sovereignty as over

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The first reference to historic title in the treaties earlier to the Convention appears in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, Article 12 which dealt with  
shall not  
apply, however, where it is necessary by reason of historic title or other special circumstances to

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This provision was introduced by Norway, reflecting its experience before the International Court of Justice. In the case of maritime boundaries dispute prior to the LOS Convention historic fishing rights played a significant role in the 1951 *Anglo-Norwegian Fisheries*.<sup>0 0 1 154.58 357.55>600446E8</sup>



Minerva reefs, however, it is said that articles 15 would, however, be inappropriate because the article applies only to the *delimitation* of the territorial sea. Therefore, looking at the location of

Commission, it is noted that

More study would need to be done on the Minerva reefs on its legal status, if, the reefs are above water at high tide than the claim by Tonga would refer to a claim over historic fishing waters which is inapplicable with the LOSCthe



According to Article 298 (1) (a) (i) it assert that;

*“disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving **historic bays or titles**, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2; and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission.”*<sup>102</sup>

Having concluded that the exception to jurisdiction in Article 298(1) (a) (i) is limited to disputes involving historic titles and that in the South China Sea case, China does not claim historic title to the waters of South China Sea, but rather a collection of historic rights short of the title.<sup>103</sup> As far as the Tribunal is aware, however, the most understanding conception of Chin SCS, beyond its claim to sovereignty over islands and their adjacent waters, is as a claim to

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### **1.5 Role of Historic Fishing Rights in Boundary Delimitation**

The term historic fishing rights should not be confused with the term historic waters. Historic international law, clearly, effectively, continuously, and over a substantial period of time, exercise sovereign rights with the acqu

<sup>105</sup> The International

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<sup>102</sup> LOSC, Article 298 (1), (a) (i)

<sup>103</sup> South China Sea Arbitration Award, *Philippines v. China*, 2016, p. 97, para 229

<sup>104</sup> *Ibid*, para 97

<sup>105</sup> LJ Bouchez, *The Regime of Bays in International Law* (Leyden: Sythoff, 1964) at 281; United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs,

Court of Justice (ICJ) in the *Fisheries Jurisdiction* case stated that historic waters mean which are treated as internal waters but which would not have that character were it not for the existence of a historic <sup>106</sup> Generally, there are three factors that must be proven in order to successfully establish the title of historic waters over a certain ocean space: the effective exercise of sovereignty, prolonged usage, and the recognition of other States.<sup>107</sup> In comparison, a claim of *historic rights* means that a State is claiming to exercise certain rights, usually fishing rights, in what are usually deemed to be international waters.<sup>108</sup>

Accordingly, historic rights claims do not amount to a sovereignty claim.<sup>109</sup> As the ICJ stated in the *Qatar/Bahrain* case, the historic pearling activities of Bahrain have never led to the

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historic pearling rigTc[ ( ) TJETBT1 0 0 1 42.471 135.62 TmBar ai81(w[(Ga)4(r)-6(e)47 )-e9(fa)-2(c)4(o)-9(g)1



however, have continued to assert historic fishing rights within the EEZ of other States, the most prominent example being China, which has consistently made claims to historic fishing rights within its nine-dashed line in the South China Sea, which overlaps with the EEZs of the Philippines, Viet Nam, Malaysia and Brunei Darussalam.<sup>112</sup> Historic fishing rights may play a role in the delimitation of overlapping EEZ, but only in special circumstances. For instance, in the *Eritrea/Yemen*

traditional fishing regime of free access and enjoyment for the fishermen of both Eritrea and Yemen shall be preserved for the benefit of the lives and livelihood of this p

## 1.6 Interpretation of Island and Rock under Article 121

In this section, the paper will look into how scholars interpret Article 121 of the convention in defining islands and rocks under the LOS Convention. This article is not well spelled out under the LOSC in the scientific and legal status of an island and rock as it needs more study especially article 121 (3) on the definition of rocks. Article 121 has been a major cause of controversial in maritime boundary disputes as States continue to generate territorial sea, exclusive economic zone and continental shelf on a geographical feature that is disputed by another state given its status to have maritime entitlements.

### *Article 121: Regime of Islands*

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.*<sup>117</sup>

nary submission of 2014, it has been noted that they define Minerva reefs as islands, which is still unclear under which analysis it is based on when the

121 if Tonga considers Minerva to be Islands then the question is, can the feature sustain human habitation or economic life?

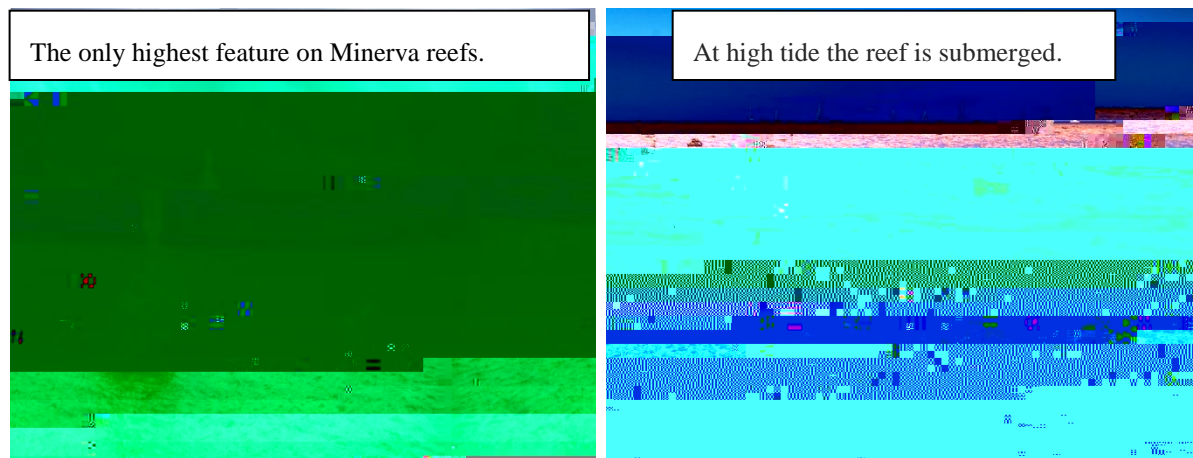


Figure 1.7: Image showing the physical status of the Minerva reefs during high tide.  
Source:<http://smithtribesailing.blogspot.co.uk/2014/02/minerva-reef-23-degrees-south.html?view=classic>.

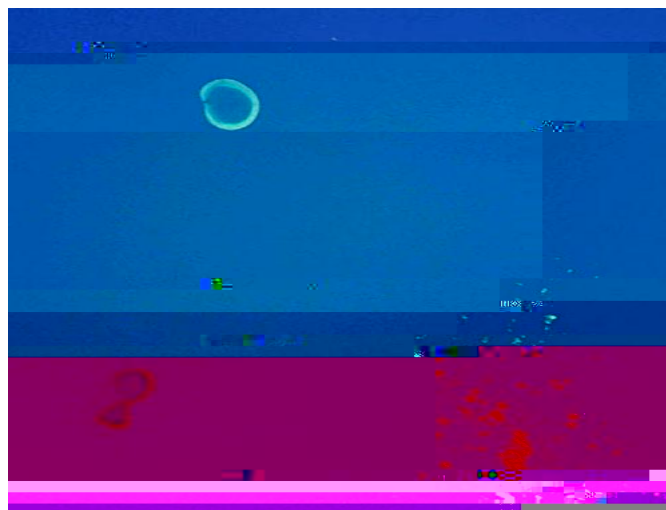


Figure 1.8: Satellite image showing North and South Minerva reefs.  
Source: National Oceanic and Atmospheric Administration (NOAA).

The ability of islands to generate maritime zones and to influence the application of maritime boundaries was a concern in the international legal arena way before a concise provision in the LOSC took observation of a particular categ



"the government of Fiji reiterates its position that as

If a land formation sticks out of the water surface at low tide but, submerged during high tide the  
the  
whatsoever. On the other hand, if a feature is above water during high tide at all time but cannot  
is only entitled  
to a 12nm territorial sea. According to Article 121, if a feature is above water during high tide  
and can sustain human habitation or economic life then it is considered as an island, which is  
entitled to a 200nm EEZ and continental shelf.

According to Article 121 (3), it states that rocks are not entitled to certain zones but does not  
specifically provide that rocks are entitled to a territorial sea or a contiguous zone; one might  
argue that this question of maritime entitlement on rocks was left unresolved. But, it is hard to  
maintain in the face of a complete definition of islands in Article 121 (1) exclusively on the basis  
of elevation.<sup>125</sup>

Does the feature in its natural form have the capability of sustaining human habitation or an  
economic life? If not, it is a rock. This question is not concerned with whether the feature  
actually does sustain human habitation or an economic life. It is concerned with whether,  
objectively, the feature is appropriate, able to, or provides itself to human habitation or economic  
life.<sup>126</sup> That is, the fact that a feature is currently not inhabited does not prove that it is  
uninhabitable. The fact that it has no economic life does not prove that it cannot sustain an  
economic life

Although the legal issue to arise is normally the question of national sovereignty, most disputes  
over these features are triggered by questions regarding their legal effect on national maritime  
zones jurisdiction and the delimitation of international maritime boundaries.<sup>127</sup> To understand the  
role of rocks in maritime delimitation, one must begin by analyzing those parts of the LOS

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<sup>125</sup>Article 13 of the LOSC, articulates on the role of low-tide elevations which includes rocks that only meet the elevation  
requirement. Since the Convention carries two classification system based on elevation, rocks whose elevation is permanently  
above high tide fall within the "Regime of islands. *See*, Jonathan I Charney, *Rocks that cannot sustain Human Habitation*, 1999,  
p. 865.

<sup>126</sup>Permanent Court of Arbitration (PCA), *The South China Sea Arbitration Award, Philippines v. China*, 2016, p. 205, para. 483

<sup>127</sup>Jonathan I Charney, 'Rocks That Cannot Sustain Human Habitation,' *The American Journal of International Law*, Volume 93,  
(1999), p. 863-78.

Convention that concern islands and the rules for identifying the baselines from which the various maritime zones are calculated. The normal baseline is formed by the "low-water line along the coast"<sup>128</sup> and the closing lines of bays and river mouths. Under certain conditions, the coastal State may establish systems of straight baselines or archipelagic baselines to substitute for the normal baseline to locate the limits of the various maritime zones.<sup>129</sup> Article 121(2) of the 1982 LOS Convention clearly provides that islands are entitled to all maritime zones: a territorial sea, a contiguous zone, an exclusive economic zone and a continental shelf.

The title, "Regime of islands," under the Convention indicates that all the features addressed in the article are islands, including rocks in paragraph 3.<sup>130</sup> Since Article 121(2) expressly recognizes the entitlement of islands to all four zones of maritime jurisdiction mentioned above (except as not permitted by Article 121(3), the subsection on rocks), the exemption regarding the entitlement of rocks to certain maritime zones would have been unnecessary if such rocks were not islands.<sup>131</sup> Article 121(3) denies only an exclusive economic zone and a continental shelf to rocks; it, therefore, implies that rocks otherwise qualifying as islands (because they are above water at high tide) are entitled to the remaining maritime jurisdiction a territorial sea and a contiguous zone.<sup>132</sup> Thus, rocks under article 121(3) has certain conditions and legal concept being used which make it more contentious to interpret, such words are; (a) rocks, (b) cannot, (c)

and occasionally also organic matter. They vary in hardness, and include soft materials such as

<sup>134</sup> However, in the conclusion of judgment reached by the International Court of Justice  
in the



## **Chapter Two: Jurisprudence of Maritime Delimitation**

This chapter will outline the jurisprudence cases of maritime delimitation that is kind of relevant to the controversial Minerva reefs and to identify delimitation principles adopted by coastal States and the International Court of Justice. It is necessary to consider an analysis of cases of maritime delimitation, which were decided by the International Court of Justice and Arbitral Tribunals that can assist coastal states to identify delimitation principles that might be of relevant to their current situation in terms of disputed maritime boundary. Some of the questions that are raised in jurisprudence cases are, have courts and tribunals, in interpreting Articles 74(1) and 83(1) of the LOS Convention, followed the growing trend towards the more expected equity approach in maritime delimitation? Or have they shifted direction once again, to the more flexible result-oriented case-

sovereign rights over certain shoals and delimitation of a maritime boundary which was filed by Qatar in the International Court of Justice against Bahrain. The Qatar v. Bahrain was one of the longest-running cases ever brought before the Court. It survived ten years on the docket.<sup>143</sup> The dispute between the two Arab States in the Gulf of Arabia was centered more closely, in the self-conceived interests of the Parties, on the issue of sovereignty over the Hawar Islands than on the delimitation of their maritime boundary.<sup>144</sup>

This section y.

The Court confirmed that an island was capable of generating full maritime rights; regardless of its size.



Figure 2: Map showing maritime claim by Qatar and Bahrain. Source: <http://catnaps.org/islamic/history.html#top>

Further to Justice noted that article 15 of the 1982 LOSC, about the delimitation of the territorial sea, was to be regarded as having a customary law character; the Court went to declare that the most logical and widely practised approach is first to draw conditionally an equidistance line and then to consider whether that line must be adjusted in the light of existence of special circumstances.<sup>154</sup> Amongst the range of factors of delimitation principle exist proportionality, which is used as a criterion of fairness and justice.<sup>155</sup> - both States were parties to the Continental Shelf Convention in which the ICJ held that article 6 contained one overall rule, a combined equidistance-special circumstances rule, which in effect gives particular expression to a general norm that, failing agreement, the boundary between States adjoining on the same continental shelf is to be determined on equitable principles.<sup>156</sup> The International Court of Justice

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<sup>154</sup> *ICJ Reports, 2001, Qatar-Bahrain case, paragraph 176.*

<sup>155</sup> *Ibid.* pp. 3, 52.

<sup>156</sup> Shaw, Malcom N. *“International Law”*, Cambridge University Press, fifth edition, Cambridge, 2003, p. 529.



areas in dispute to Honduras.<sup>161</sup> It follows that the territorial seas attributed to the Honduran islands and the Nicaraguan island of Edinburgh Cay would lead to an overlap in the territorial seas of the Parties. Concerning the delimitation method applicable to the overlapped area, the Court referred to the *Qatar/Bahrain* case, which stated that:

*The most logical and widely practised approach is first to draw provisionally an equidistance line and then to consider whether that line must be adjusted in the light of the existence of special circumstances.*<sup>162</sup>

Like equidistance, the angle bisector method was used in this case and is based on coastal geography. A bisector is "the line formed by bisecting the angle created by the linear approximations of coastlines".<sup>163</sup>

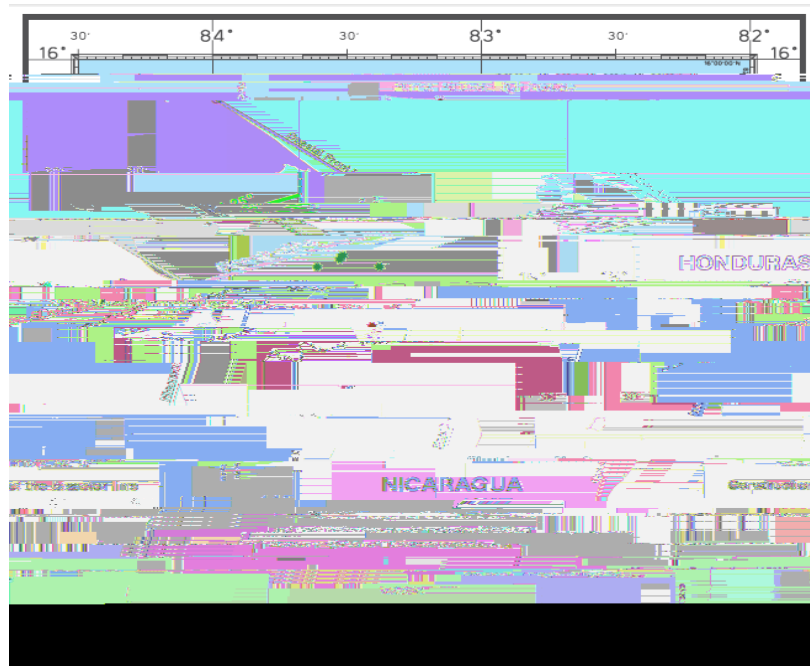


Figure 2.1: Map showing the bisector line drawn between Honduras and Nicaragua. Source: Sketch-map No. 3 annexed to the *Nicaragua/Honduras* Judgment, ICJ Reports 2007, p. 98.

<sup>161</sup> Yoshifumi Tanaka, 'Reflections on Maritime Delimitation in the Nicaragua/Honduras Case,' *Heidelberg Journal of International Law*, p. 906., v. 68,/4 (2008.).

<sup>162</sup> ICJ Reports, *Qatar v. Bahrain*, 2001, para. 176.

<sup>163</sup> ICJ Reports (Merits), 2007, *Case Concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea*, para. 287.



The use of the angle bisector method had a secondary impact with respect to the analysis of the effect of islands, rocks, and low-tide elevations on the delimitation. In applying the two - step equidistance process, the Court, and other boundary tribunals have given full effect to the base points on all features, regardless of size, in the first step of the analysis: the construction of the provisional equidistance line.<sup>166</sup> In the second step of the analysis, the effect of these features on the equidistance line has then been discounted either partially or fully, if necessary, to achieve an equitable result.<sup>167</sup> In contrast, the large-scale geographic angle bisector method presumes a mainland-to-mainland delimitation. Here, the chosen method led the Court to treat the offshore features as an afterthought was to enclave them after the mainland-to-mainland boundary had been decided.<sup>168</sup> Taking into account the position of the Kerkennah Islands, and the low-tide elevations



Figure 2.3: Sketch map showing the enclaved islands to Honduras using the bisector line. Source: *Nicaragua/Honduras* Judgment, ICJ Reports 2007, p. 99.

As illustrated on the above map, the equidistance line became the delimitation line in this area in order to also enlave the islands. One possible technique for this purpose, in the context of a - <sup>170</sup> Enclaving occurs when no effect or partial effect is given to an island. In such case, though, as the maritime jurisdiction of such island cannot be denied, a maritime belt of a certain breadth is drawn around that island by means of a line made of arcs of circles drawn from the most seaward base points.<sup>171</sup>

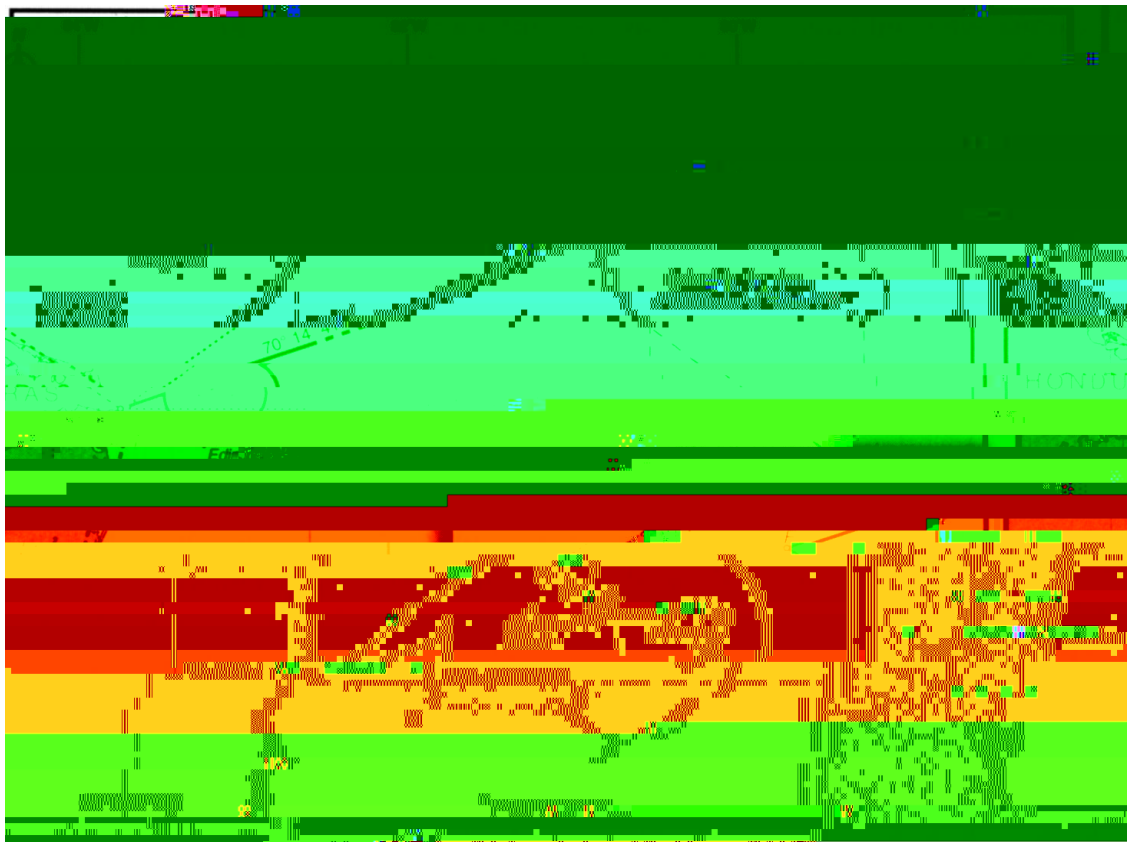


Figure 2.4: Map shows the enclaved islands of Honduras. Source: Lathrop CG, *Nicaragua v. Honduras*, the American Journal of International Law, 2008.

<sup>170</sup> Tanaka, 'Reflections on Maritime Delimitation in the Nicaragua/Honduras Case,' (

<sup>171</sup> Doalos, *Handbook on the Delimitation of Maritime Boundaries*., 2000, p. 59.

maritime belt of the island is partially connected to the maritime area under the sovereignty or jurisdiction of the same State.<sup>172</sup> This method may be used independently or in conjunction with some other method of delimitation. In the case of *Nicaragua v. Honduras*, the method of semi-enclave was used to enclave the islands, this system applies mainly when the islands are situated close to the bisector line drawn without taking account of the islands concerned.<sup>173</sup>

### ***3. Case Concerning Territorial and Maritime Dispute (Nicaragua v. Colombia)***

On November 19, 2012, the International Court of Justice rendered its judgment in a dispute involving territorial and maritime claims raised by Nicaragua against Colombia in the Caribbean Sea.<sup>174</sup> s for a declaration of Nicaraguan sovereignty over seven disputed maritime features and delimitation of a single maritime boundary between the continental shelf and EEZ appertaining to Nicaragua and Colombia. The Court awarded all disputed territory to Colombia and delimited the maritime boundary between the S continental shelf and exclusive economic zones by using a novel mix of weighted base points, geodetic lines, parallels of latitude, and enclaving.<sup>175</sup>

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<sup>172</sup> *Ibid.*

<sup>173</sup> DOALOS, 2000.

<sup>174</sup> Territorial and Maritime Dispute (Nicaragua. v. Colombia) (ICJ, Nov. 19, 2012) [hereinafter Judgment]. Available from; <http://www.icj-cij.org>.

<sup>175</sup> Nienke Grossman, 'Territorial and Maritime Dispute (Nicaragua V. Colombia),' *American Journal of International Law*, v.

Figure 2.5: Map showing the locality of Honduras and Nicaragua in the



Figure 2.6: Map shows the disputed features between Nicaragua and Columbia in the Caribbean Sea. Source: Judgment of the International Court of Justice of November 19, 2012, in the *Territorial and Maritime Dispute* (Nicaragua. v. Colombia.), Sketch-map No. 11, at p. 94.

From the southernmost point of the adjusted line, the delimitation line travels southeast until it reaches the 12-nautical-mile envelope of arcs of the South Cay of Alburquerque Cays. A parallel line connects this area to the 12-nautical-mile envelope of arcs of the East-Southeast Cays at the  
lope of arcs until the East-

Serrana,  
Colombian features on the Nicaraguan side of the delimitation line.<sup>186</sup> It chose not to extend the boundary line to these islands because of their size, remoteness, and distance from the larger

Court ruled that it was entitled only to a 12-nautical-mile territorial sea. By virtue of its small size and remoteness, Serrana was granted only a 12-mile territorial sea.<sup>188</sup>

The Court based its award of title over all disputed territory to Colombia on *effectivités* after considering historical evidence regarding interpretation of the 1928 treaty and 1930 protocol *ve.*<sup>189</sup> After tracing

#### **4. *The South China Sea Arbitration between the Philipines and China (PCA Judgement)***

The issues of the Minerva reefs rises great concern as Tonga has continuously considered the reefs as an island a reef on low tide elevation. The recent Award of the South China Sea (SCS) between the Republic of the Philipines and the Peoples Republic of China provides good decisions on analyzing the legal status of some features that are claimed by China to be islands. The *Philippines v. China* case was brought before the Permanent Court of Arbitration (PCA) in 2013. On July 12, 2016, the PCA published the Award by the tribunal which is said to be final and binding under the provisions of the 1982 LOSC. The case known as the South China Sea Arbitration was an arbitration case brought by the Philippines to the PCA in the Hague, under the provisions of UNCLOS against China relating to certain features in the South China Sea including the legality of China's so-called historic "nine-dash line" claim. Chin - following the surrender of Japan.

The PCA in The Hague backed the Philippines in the case of the disputed waters of the South China Sea, ruling that features claimed by China some of which are exposed only at low tide cannot be used as the basis of







are, accordingly low-tide elevations that do not generate any maritime zone to a territorial sea, exclusive economic zone or continental shelf.<sup>199</sup>

As discussed above it is a high tide feature, therefore, the Tribunal discovered

1982 LOSC.<sup>202</sup> Scarborough Shoal has traditionally been used as a fishing ground by fishermen from different States, but the Tribunal recalls that economic activity in the surrounding waters must have some physical link to the high-tide feature itself before it could begin to constitute the economic life of the feature. There is no evidence that the fishermen working on the reef make use of, or have any connection to, the high-tide rocks at Scarborough Shoal.<sup>203</sup> Nor is there any evidence of economic activity beyond fishing. There is, accordingly, no evidence that Scarborough Shoal could independently sustain an economic life of its own.

Furthermore, with regards to traditional fishing rights, the Tribunal is of the view that Scarborough Shoal has been a traditional fishing ground for fishermen of ma9(that)10( )] TJETBT1c



Figure 2.10: The above image shows that Japan has developed part of the Okinotori reef concrete titanium.

Source:<http://www.japantimes.co.jp/news/2012/04/29/national/u-n-oks-japan-claim-to-expand-shelf/#.WBjHXS2LRdg>.

To stop the features from disappearing due to sea level rise and to use them to extend its EEZ and continental shelf, Japan has constructed concrete titanium on part of the reef to make Okinotori meet the criteria of an "island", but this is unacceptable under international law. The  
bre  
of a rise in the sea level due to global warming, along with securing space for human habitation.

## **Part 2: Analysis of the Claims Made by Fiji and Tonga over the Minerva Reefs**

### **Chapter One: Implications of Tonga's Claim on Fiji's Maritime Boundaries**

What makes the Minerva reefs complicated is not only the controversy regarding the ownership but also the ability for the features to have maritime zones. From a political perspective, the issue is implicative to both Fiji and Tonga in terms of their domestic legitimacy and their bilateral relations in general. For Fiji, the sovereignty claim by Tonga over the Minerva reefs has strong implications as a concern to rights and obligations within their EEZ under the LOSC. Since international credibility is taken into account, the two neighbouring States are adamant and committed in their claims over the reefs. Both Fiji and Tonga claimed the uninhabited Minerva reefs, yet, no formal dispute exists between the two countries regarding these claims, but whether these reefs can or should generate 200nm EEZ and a continental shelf remains an uncertainty. The Tongan situation is particularly complex, because the Tongans have built a lighthouse, and in 1971 the Ocean Life Research Foundation buried part of the submerged reefs with sand in which Tonga claims the reefs to be islands.

Figure 3:

ded Continental Shelf.

Affairs Coordinating Committee (MACC) with the support of the Oceans and Islands Division (SOPAC) of the Secretariat of the Pacific Community (SPC). Source: Maritime Affairs Coordinating Committee (MACC).

In addition, Tonga's historic Proclamation of 1972 may also create difficulties not only for Fiji but also neighboring Pacific countries.

entitled to have maritime zones. Below are some of the pictures taken at the Minerva reefs that give an understanding of its physical status;

Figure 3.1: Image showing that the reef is submerged at high tide.

Source: Al Grant, Auckland, New Zealand, August 14, 2007. Available at <https://plus.google.com/+AlGrantnz/photos>.

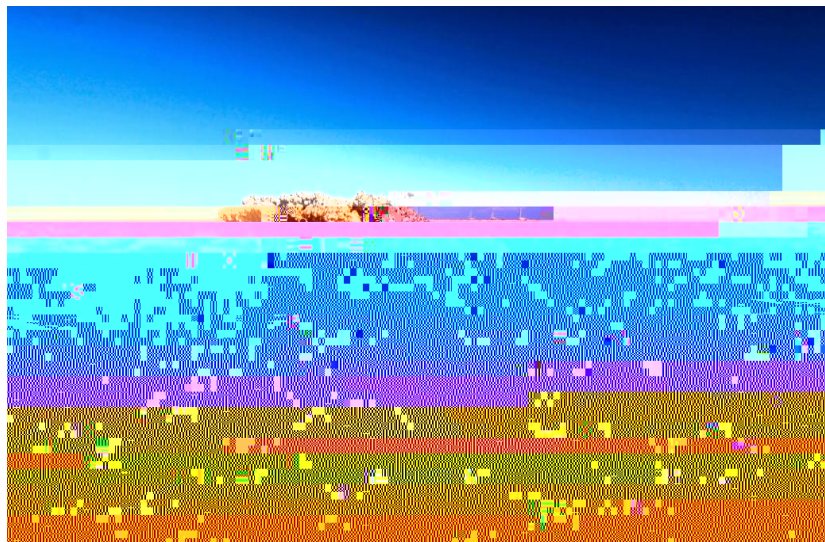


Figure 3.2: Image showing a rock, believed to be the highest feature on the reef.

The photo was taken by yachters that visit the Minerva reefs.

Source:<http://smithtribesailing.blogspot.co.uk/2014/02/minerva-reef-23-degrees-south.html?view=classic>



Figure 3.3: Image showing a tourist visiting part of the

would probably be classified as low tide elevations which, according to the LOSC, are not entitled to a territorial sea.<sup>212</sup> Such low tide feature can be used as base points for measuring a territorial sea if they are within twelve miles of another territory within a country's jurisdiction, but if not, they can have no impact on the delimitation of maritime space. Because the reefs are approximately 170 miles from the closest Tongan territory, the island of Ata, the reefs, therefore, cannot be used as base points for measuring Tonga's territorial sea. In a session of the Law of the Sea Institute in November 1977, Fiji's then Foreign Minister, Joji Kotobalavu, respond a question on the status of the Minerva Reefs as follows:

have maritime entitlement given the physical status of the features. At the 1952 meetings of the International Law Commission, a scholar examined prior statements of the draft provisions of the LOSC concerning continental shelf and concluded that the concept of safety zones could apply to lighthouses placed on low tide elevations. He further noted that lighthouses on an area of land permanently above the high water mark would present no difficulties because the land would of itself be an island and have its own territorial sea.<sup>214</sup> Because Tonga has not yet declared an EEZ from the breadth of its territorial, the waters around the Minerva Reefs are considered to be

It may, therefore, be necessary to consider whether the construction made on the reefs could qualify as islands.

When scrutinizing the natural status of the

Figure 3.4: Map shows the outer limits of the continental shelf of both Fiji (shown in

disagreement over Minerva reefs is particularly challenging because Tonga does not recognize this as a disputed matter and contends that T over the Minerva reefs cannot be questioned. Thus, it is likely to be noticed that in future this issue may turn into a territorial maritime dispute between the two countries given the fact that Tonga has submitted its continental shelf (CS) claim to the CLCS. As shown on the above map (Figure 3.4) claim has been generated from an EEZ drawn from the Minerva reefs, according to the coordinates provide 2014 submission.

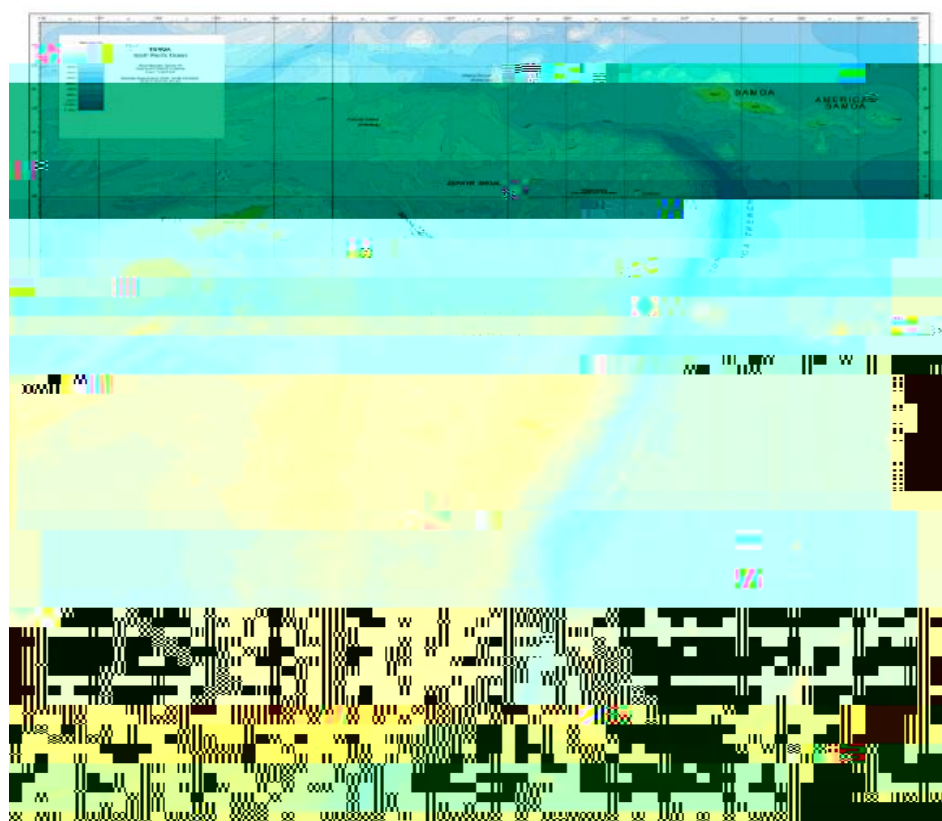


Figure 3.5: Map shows the 2014 continental shelf claim of the Kingdom of Tonga (shown in blue) beyond 200 nautical miles, from the baselines of the Minerva reefs. Source: to the CLCS, available from:[http://www.un.org/depts/los/clcs\\_new/submissions\\_files/submission\\_ton\\_73\\_2014.htm](http://www.un.org/depts/los/clcs_new/submissions_files/submission_ton_73_2014.htm).

2009 partial submission on the continental shelf is produced from the very distinctive Lau Ridge in the Southern Pacific region which comprises growing coral-capped parts of the remnant

volcanic arc, and the South Fiji Basin.<sup>216</sup> The latter is a back-

neighbouring Pacific island nations given that the ocean plays a vital role in both countries economy. The principles applied by Tonga in its continental shelf submission to the Commission could be seen as a focal point where Fiji will officially oppose, by submitting a note verbal to the CLCS stating the nature of claims and the effects including its continental shelf.

Figure 3.7: Shows a hypothetical Tonga EEZ as measured from the Minerva reefs which also show the implications Source: Alan Evans, National Oceanography Centre (NOC), Southampton, United Kingdom.

Tonga continued interest in claiming an EEZ and ECS from





distance requirement is met, the low-water 72.024 70,fltion>Q1 .06 T3 0 1 263.81 70nm5ncof met, the low

## Scenario 2: If the features are Rocks

Rocks can have a territorial sea and can be used as a base point for measuring maritime boundaries. It cannot be used as a base point for measuring the EEZ and Continental Shelf. For instance, the Tribunal in its award for the South China Sea Arbitration carries out a detailed assessment to determine whether the Spratly Islands and Scarborough Reef are covered by article 121(3) of the LOSC.<sup>220</sup> On the basis of this consideration, the tribunal reaches the conclusion that none of these features can sustain human habitation or economic life of their own, meaning that they do not have an EEZ and CS.<sup>221</sup>

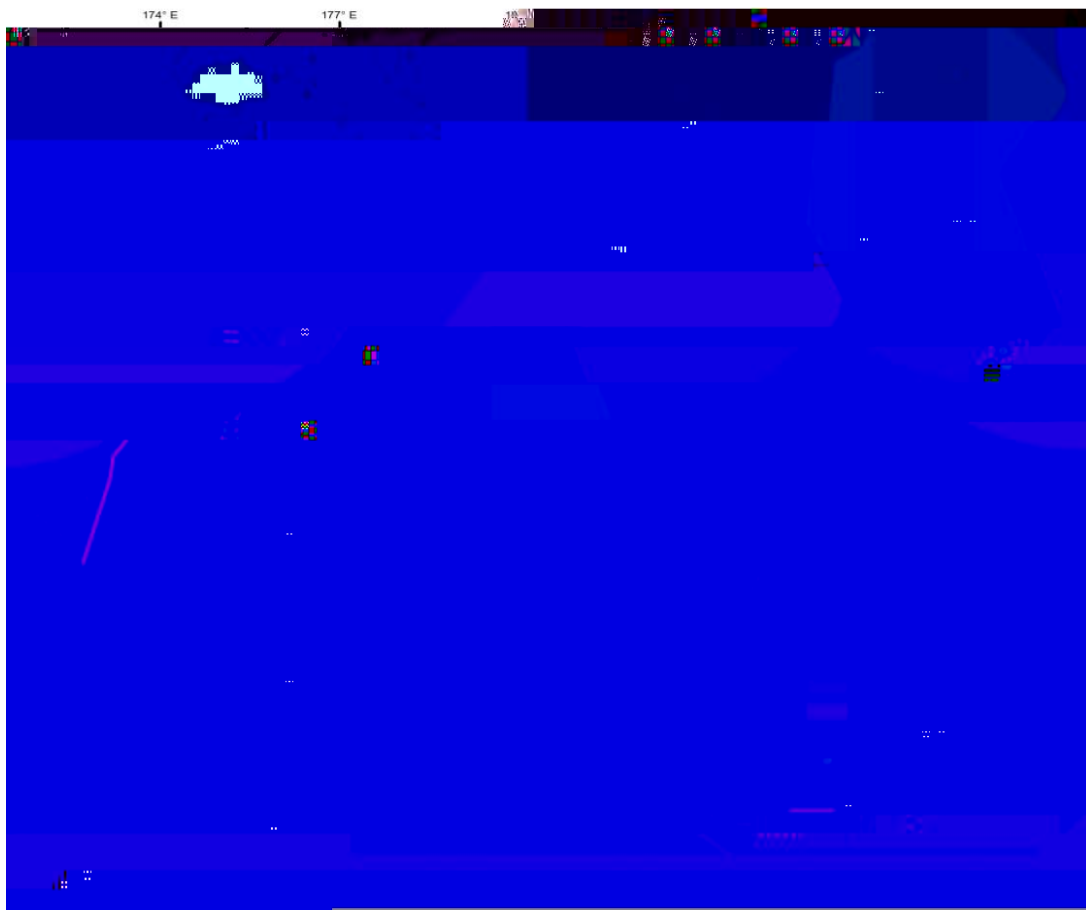


Figure 3.8: If the reefs are regarded as rocks and are given 12M Territorial Sea and fully enclaved within Fiji EEZ. Source: Alan Evans, National Oceanography Centre (NOC), Southampton, United Kingdom.

<sup>220</sup> South China Sea Arbitration, para 554-626

<sup>221</sup> *Ibid.* 626.

According to the above figure, if the Minerva reefs are hypothetically rocks it will only be entitled to have a 12nm territorial sea with no EEZ and no continental shelf. Hence, if the features they will only have a 12nm TS by enclaving the reefs giving it a full effect (see figure 3.8). The delimitation method used will still have an

lose its continental shelf claim in the South Fiji basin of the Lau-Colville Ridge region. The method of enclaving the reefs can be applied to enable Tonga to only have limited rights within 12nm around the reefs instead of benefiting from a 200nm EEZ and extended CS which will affect both Fiji and New Zealand maritime space. The method of enclaving the reefs can be seen as a convenient way to be used in the case of Tonga claiming sovereignty over the features. In this case, the process of enclaving the reefs need to be negotiated efficiently and peacefully by both States by first determining the sovereignty of the features and establish the method to be applied.

### **Scenario 3: Options if the reefs are Islands**

When providing options on how to deal with such sensitive issues of trying to define whether the features are islands, rocks or low-tide elevation, it is important to take into account how these different categories affect both States in terms

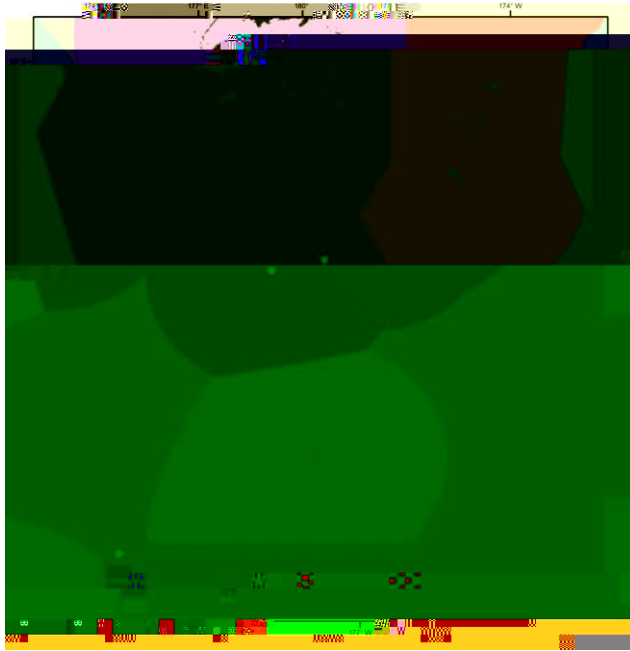


Figure 3.9 (a)



Figure 3.9 (b)

Figure 3.9 (a, b): The above figures show the implications if the features are islands. Source: Alan Evans, National Oceanography Centre (NOC), Southampton, United Kingdom.

According to figure

would generate a 200nm from the reefs which will cause Tonga to lose part of their EEZ and continental shelf. On the other hand, if the features are islands and if it is sovereignty then Tonga will also generate a 200nm which also cause Fiji to lose part of its maritime space. In some situations, no effect has been granted to an island because of its sovereignty was disputed. Generally, however, islands are discounted; the smaller the feature, the more limited role it will play in the delimitation.<sup>222</sup> This occurred, for instance, in the Iran-Qatar delimitation (1969), in which the island of Halul was ignored. The state of affairs between Fiji and Tonga is critical but looks complicated especially as we get into how to analyze and apply which delimitation principles or methods are equitable for both States if the features are islands.

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222

(October 1999), p. 876.



According to figure 4.0, it is also important to note that Tonga has also claimed ECS in its Southern region as indicated in its 2009 submission to the CLCS. This as a result cause serious implication and CS. When analysing sion to the CLCS, have huge affect to Fiji if the legal titles of the features are islands (see figure 4.1).

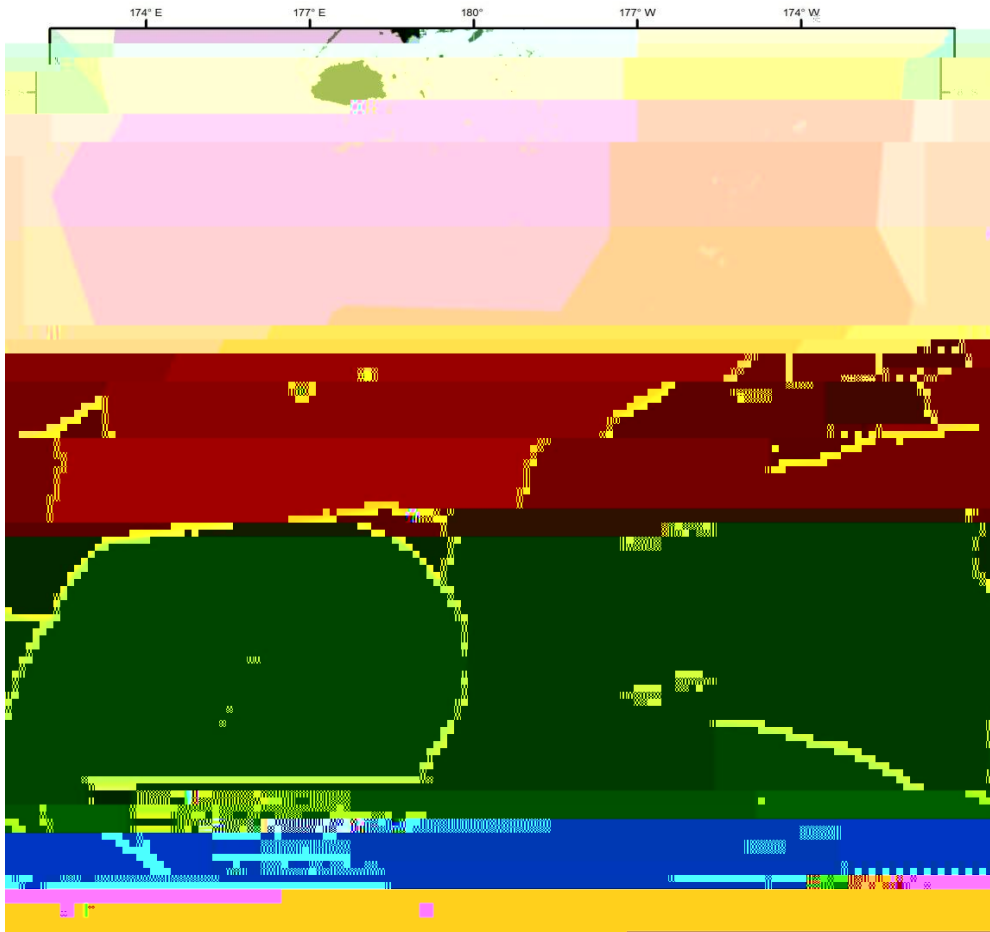


Figure 4.1:  
are islands. Source: Alan Evans, National Oceanography Centre (NOC), Southampton, United Kingdom.



Figure 4.2: This is how it will appear, if Tonga ignores the reefs and uses the Lau-Colville Ridge and Tonga-Kermadec Complex, instead can have a similar western edge CS claim

Source: Alan

Evans, National Oceanography Centre (NOC), Southampton, United Kingdom.

principle, in this case, is important to ensure that peace is maintained in the region. The question is how to continental shelf claim and part of the EEZ. So, by drawing an equidistance line extending from their EEZ down south of the Lau-Colville Ridge it could provide an equitable solution for both parties to still have CS. Thus, for the reefs, if it is under Tonga the practice of enclaving the reefs within 12M are also applicable in this case.

Figure 4.3:

based on mainland baselines and given sovereignty of reefs to Tonga and accept as a rock also allow enclave. Source: Alan Evans, National Oceanography Centre (NOC), Southampton, United Kingdom.

The above map provides a practical option that both parties might want to consider during the negotiation process, as it presents a form of equitable solution for both States. In this situation, sovereignty over the reefs through historical link, they



test of equitableness or a factor to be taken into account.<sup>223</sup> Therefore, the significance of the factor of proportionality should not be underestimated. The concept of proportionality plays an important role in various domains of international law and the law of the sea, and in particular maritime delimitation. Although in some instances there is security, navigation, economic or social factors to be considered, nonetheless, leaving such factors aside, it is this principle of proportionality that can be used as

reasonable period of time, the States concerned shall resort to the procedures provided for in Part

<sup>227</sup>

<sup>228</sup>

<sup>229</sup> and in recent years

has emphasized the duty to settle disputes peacefully.<sup>230</sup>

The simplest and most utilized

between the interested parties with a view to reconciling different opinions, or at least understanding the different position maintained. <sup>231</sup>

relevant rules of international law include those on the acquisition of sovereignty; they look to human activity (occupation and administration) of the territory.<sup>233</sup>

## 2. *Overlapping entitlements to maritime rights and jurisdiction*

There can be overlapping claims between adjacent or opposite States for 12-mile territorial seas, 200 mile EEZs, and continental shelf, which may extend beyond 200 miles. Given the extension of rights to a 200-mile limit, overlaps are now more common than they used to be. To resolve issues of overlapping claims, the relevant rules of international law are those on the delimitation of maritime boundaries.<sup>234</sup> These rules can be found in the 1982 UNCLOS, state practice and jurisprudence.

## 2. **Methods of resolving maritime boundary disparity**

Article 33 of the UN Charter provides for the peaceful settlement of disputes by *means* of the parties own choice. According to Part XV, Article 279 of the LOSC, States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter. These means parties need to consider negotiation as the initial step for resolving disputes. If negotiations are not successful, recourse may be had to conciliation, good offices, arbitration (ad hoc or according to annex VII of the LOSC and international judicial settlement ICJ/ITLOS).<sup>235</sup> Methods

Literally, it is known that maritime boundaries are to be established by agreement in accordance with international law. Disputes and differences

During negotiations geographical factors have to be taken into account, to avoid disproportion between lengths of coasts and marine areas generated by them.<sup>242</sup> The negotiators can also take national interests into consideration; including political, economic and social factors. Parties may consider Arbitration as their last option given the fact that maritime boundary disagreements can effectively be resolved through proper negotiations. Thus, if the matter becomes extremely sensitive in which the parties could not resolve than resort to arbitration through ICJ or ITLOS would be the preferable option in accordance with Part XV under Article 287 of UNCLOS for the settlement of the dispute.

### **3. Practical Aspects of Negotiations**

Negotiating the delimitation of maritime boundaries requires multidisciplinary expertise covering the fields of political, legal and technical. At all stages of negotiations, from the preparatory work to finalizing the agreement, a great deal of atte

*f* The process of delimitation may also take into account certain requirements of both States based on economic and political nature (eg., pressure by oil industry for delimitation of maritime boundaries to establish legal certainty for companies operations, or pressure from fishermen and/or commercial fishers and shipping;

*f*



*c) Make an attempt to resolve outstanding sovereignty issues first*

There may be major differences over the land boundary (e.g. Cameroon/Nigeria over the Bakassi Peninsula) or uncertainty over offshore islands (Hanish Islands case between Eritrea v. Yemen).



initially based on the physical and political geography.<sup>251</sup> The duty to cooperate is important in this case and includes the responsibility to exchange relevant data, to negotiate in good faith with

jurisdictional mechanisms gives positive alternatives, and the emphasis on negotiation between parties in good spirit is necessary to solve the controversy and prevent the outbreak of tension.

Fiji, since 1974, has shown interest to establish negotiations with Tonga to define the legal status

boundary delimitation is clearly the preferred option of coastal States to define the limits of their maritime zones where they have the potential to overlap with the claims of other States to conclude to an agreement.

The misunderstanding of historic title and the application of Article 121 is a consequence of the uncertainty and inconsistency in the international law. The LOSC ascertain that the delimitation of the territorial sea

rule, and the delimitation of the continental shelf and EEZ

Therefore, the delimitation between adjacent or opposite coast on overlapping boundaries cannot be imposed unilaterally. It must be sought and effected by means of an agreement, following negotiations conducted in good faith and with the genuine intention of achieving equitable solutions. However, if such agreement cannot be achieved through negotiation and dialogue, delimitation should be effected by an alternative to binding third-party that has the necessary capability of applying equitable principles, particularly the ICJ or Arbitration.

#### **4. Arrangements for resolving maritime boundary disputes**

##### *4.1 Preliminary arrangements*

Deciding upon a definitive boundary in a treaty or agreement or a decision of an international court or tribunal should resolve all aspects of the maritime boundary dispute. International law, including the Vienna Conventions on the Law of Treaties and on State succession to Treaties, accords special protection to boundary treaties, including maritime boundary treaties.<sup>258</sup>

With regard to the possibility that oil, gas or deep sea minerals will be found in a disputed area in the future that overlap the boundary, it is general practice to include in a boundary treaty a provision to the effect that if a discovery of oil/gas or deep sea minerals. If there is potential oil or deep sea minerals found in the future in the vicinity of the agreed line the parties undertake to

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<sup>258</sup> Anderson, David (2006).

exchange information to cooperate and draw up a new agreement for the joint exploitation or apportionment of the resource.<sup>259</sup> The common rule in this situation is solidarity, to equally discover that each State is entitled to whatever resources lie on its own side of the line.<sup>260</sup> Existing exploitation operations from a boundary zone may create problems for negotiators. For instance, where a State has issued a licence for fishing in a disputed area, and the State a 7x

possibly to take into account problems with neighbouring countries, after which further talks are to be held.<sup>265</sup>

*i. Fishing zone*

There are several examples of arra

revenues to its partner, as is the case in the Bahrain-Saudi agreement.<sup>268</sup> In some cases, both States will be actively involved either directly or through a management Commission with a legal personality that holds licensing rounds.<sup>269</sup> This will especially be the case if the joint development arrangement is made after the agreement on a boundary, but before an oil or gas discovery is made. Some joint development zones operate by means of joint ventures between companies from the two parties.

According to former ITLOS Judge David Anderson, the key features of most Joint Areas are as follows:

- A treaty creating and defining the extent of the area. This is often but not always the area of the overlaps.
- pending a final delimitation of the boundaries.
- Long duration (45 years in Nigeria/Sao Tome, with review after 30 years), because oil industry needs a long time span. The boundary can be agreed upon by negotiations during that time or at the end of the agreement.
- An arrangement for exploitation and an agreed figure of sharing out revenue (not always 50/50).

A court who is handling a maritime boundary case cannot order the parties to agree on a joint area, but it could encourage them.<sup>270</sup> An example of this is the *Hanish Islands* arbitration, between Eritrea and Yemen, where the tribunal stated that if discoveries were made close to the line it had laid down, the parties had a duty under the general international law to notify the other State and to consult each other.<sup>271</sup> The 1982 LOS Convention sets forth only the goal to achieve maritime delimitation and says nothing about the principles and methods for the achievement of the equitable

also establishes that delimitation must be in accordance with equitable principles, taking into account the relevant circumstances. A maritime boundary, to be durable, must be fair and equitable and take into account the special circumstances in the area relevant to delimitation.







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