

**Charts Used to Derive Basepoints Used to Construct the Provisional Equidistance Line**

The basepoints used to construct the provisional equidistance line were derived from the low-water lines shown on the following charts:

Chart	Scale	Publication date	Edition date	Correct through Notice to Mariners
NLHO				
NL2228	1:75,000	July 1991		2003-531
NL2228-1	1:25,000	July 1991		2003-531
NL2014	1:250,000	Oct 1970	July 1990	2004-420
NL2218	1:75,000	June 2005		2005-462
UKHO				
BA99A	1:75,000	4 Mar 1932	27 May 1999	2003-5330
BA572	1:500,000	8 Nov 1968		2003-5085
BA2687	1:150,000	19 May 1967		2001-4629
BA527	1:150,000	6 Jan 1966		2001-4629

**Tables of Geographic Coordinates of Provisional Equidistance Line**

**Table 1: Basepoints on Suriname's Coast  
Used to Construct the Provisional Equidistance Line**

Suriname's Relevant Basepoints							
No.	Latitude (WGS 84)				Longitude (WGS 84)		
S1	06°	01'	34"	N	057°	08'	22" W
S2	06°	01'	19"	N	056°	59'	02" W
S3	06°	01'	40"	N	056°	57'	24" W
S4	06°	01'	41"	N	056°	57'	21" W
S5	06°	01'	41"	N	056°	57'	15" W
S6	06°	00'	10"	N	056°	45'	10" W
S7	06°	00'	09"	N	056°	44'	48" W
S8	06°	00'	08"	N	056°	44'	29" W
S9	05°	57'	25"	N	056°	29'	57" W
S10	05°	57'	21"	N	056°	29'	18" W
S11	06°	00'	17"	N	055°	46'	44" W
S12	06°	00'	22"	N	055°	46'	22" W
S13	06°	00'	22"	N	055°	45'	56" W
S14	06°	01'	35"	N	055°	23'	19" W

**Table 2: Basepoints on Guyana's Coast  
Used to Construct the Provisional Equidistance Line**

Guyana's Relevant Basepoints							
No.	Latitude (WGS 84)				Longitude (WGS 84)		
G1	06°	01'	36"	N	057°	08'	33" W
G2	06°	02'	35"	N	057°	09'	06" W
G3	06°	02'	45"	N	057°	09'	04" W
G4	06°	02'	52"	N	057°	09'	04" W
G5	06°	02'	58"	N	057°	09'	05" W
G6	06°	05'	00"	N	057°	09'	35" W
G7	06°	05'	14"	N	057°	09'	37" W
G8	06°	06'	05"	N	057°	09'	54" W
G9	06°	07'	33"	N	057°	10'	32" W
G10	06°	07'	48"	N	057°	10'	41" W
G11	06°	10'	44"	N	057°	12'	19" W
G12	06°	10'	50"	N	057°	12'	24" W
G13	06°	16'	20"	N	057°	16'	31" W
G14	06°	17'	12"	N	057°	17'	29" W
G15	06°	18'	28"	N	057°	19'	06" W
G16	06°	20'	15"	N	057°	22'	11" W
G17	06°	40'	44"	N	057°	50'	21" W
G18	07°	22'	02"	N	058°	27'	32" W
G19	07°	23'	04"	N	058°	28'	14" W

**Table 3: Turning Points of the Provisional Equidistance Line Starting at Intersection of 10° Line with Low-Water Line (T1) and Ending at 200 Nautical Mile Limit (T33)**

Provisional Equidistance Line Turning Points								Relevant Basepoints			
No.	Latitude (WGS 84)				Longitude (WGS 84)				Guyana (G)	Suriname (S)	G/S
T1	06°	01'	33"	N	057°	08'	34"	W	N/A	N/A	N/A
T2	06°	02'	23"	N	057°	08'	19"	W	G1	S1	G2
T3	06°	02'	28"	N	057°	08'	12"	W	G2	S1	G3
T4	06°	02'	48"	N	057°	07'	37"	W	G3	S1	G4
T5	06°	03'	20"	N	057°	06'	38"	W	G4	S1	G5
T6	06°	04'	51"	N	057°	03'	37"	W	G5	S1	S2
T7	06°	05'	25"	N	057°	03'	31"	W	G5	S2	G6
T8	06°	06'	03"	N	057°	03'	18"	W	G6	S2	G7
T9	06°	08'	09"	N	057°	02'	31"	W	G7	S2	G8
T10	06°	10'	35"	N	057°	01'	27"	W	G8	S2	G9
T11	06°	12'	17"	N	057°	00'	33"	W	G9	S2	S3
T12	06°	14'	13"	N	056°	59'	41"	W	G9	S3	G10
T13	06°	14'	18"	N	056°	59'	38"	W	G10	S3	S4
T14	06°	16'	28"	N	056°	58'	38"	W	G10	S4	G11
T15	06°	19'	30"	N	056°	56'	49"	W	G11	S4	S5
T16	06°	24'	56"	N	056°	53'	33"	W	G11	S5	G12
T17	06°	32'	48"	N	056°	48'	48"	W	G12	S5	G13
T18	06°	35'	18"	N	056°	46'	54"	W	G13	S5	S6
T19	06°	40'	57"	N	056°	43'	59"	W	G13	S6	S7
T20	06°	47'	13"	N	056°	40'	47"	W	G13	S7	S8
T21	07°	09'	20"	N	056°	29'	34"	W	G13	S8	G14
T22	07°	25'	28"	N	056°	21'	09"	W	G14	S8	S9
T23	07°	29'	37"	N	056°	19'	25"	W	G14	S9	S10
T24	07°	37'	22"	N	056°	16'	12"	W	G14	S10	G15
T25	07°	40'	07"	N	056°	15'	02"	W	G15	S10	S11
T26	07°	54'	04"	N	056°	12'	16"	W	G15	S11	S12
T27	08°	28'	18"	N	056°	05'	32"	W	G15	S12	G16
T28	08°	36'	44"	N	056°	03'	47"	W	G16	S12	G17
T29	08°	59'	47"	N	055°	56'	12"	W	G17	S12	G18
T30	09°	05'	24"	N	055°	53'	19"	W	G18	S12	G19
T31	09°	06'	52"	N	055°	52'	33"	W	G19	S12	S13
T32	09°	20'	25"	N	055°	45'	32"	W	G19	S13	S14
T33	09°	21'	22"	N	055°	45'	07"	W	G19	S14	N/A

**THIRD  
UNITED NATIONS  
CONFERENCE  
ON THE  
LAW OF THE SEA:**

**DOCUMENTS**

**VOLUME IX**

*Compiled and Edited by  
Renate Platzöder*

1986 OCEANA PUBLICATIONS, INC.  
Dobbs Ferry, New York



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Library of Congress Cataloging in Publication Data

United Nations Conference on the Law of Sea  
(3rd : 1973-1982 : New York, N.Y., etc.)  
Third United Nations Conference on the Law of  
the Sea.

I. Maritime law—Congresses. I. Platzöder,  
Renate. II. Title.  
JX4408 U554 .1982 341.4'5 82-2260  
ISBN 0-379-20724-9 (Series)  
ISBN 0-379-20811-3 (V.9)

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Manufactured in the United States of America

- (b) Disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service and, subject to the exceptions referred to in Article 296, law enforcement activities in the exercise of sovereign rights or jurisdiction provided for in the present Convention;
- (c) Disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council decides to remove the matter from its agenda or calls upon the parties to settle it by the means provided for in the present Convention.
2. A State Party which has made a declaration under paragraph 1 may at any time withdraw it, or agree to submit a dispute excluded by such declaration to any procedure specified in the present Convention.
3. Any State Party which has made a declaration under paragraph 1 shall not be entitled to submit any dispute falling within the excepted category of disputes to any procedure in the present Convention as against any other State Party, without the consent of that party.
4. If one of the States Parties has made a declaration under subparagraph 1 (a), any other State Party may submit any dispute falling within an excepted category against the declarant party to the procedure specified in such declaration.
5. When a dispute has been submitted to any procedure in accordance with this article, a new declaration, or the withdrawal of a declaration, shall not affect in any way the proceedings so pending, unless the parties otherwise agree.
6. Declarations and withdrawals under this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.

NGT/2

20 April 1978

Original: ENGLISH/SPANISH

INFORMAL SUGGESTIONS RELATING TO PARAGRAPHS 1, 2 AND 3  
OF ARTICLES 74 AND 84, ICJW

BAHAMAS, BARBADOS, CANADA, COLOMBIA, CYPRUS, DEMOCRATIC YEMEN, DENMARK,  
GAMBIA, GREECE, GUYANA, ITALY, JAPAN, KUWAIT, MALTA, NORWAY, SPAIN,  
SWEDEN, UNITED ARAB EMIRATES, UNITED KINGDOM, YUGOSLAVIA

1. The delimitation of the Exclusive Economic Zone Continental Shelf between adjacent or opposite States shall be effected by agreement employing, as a

general principle, the median or equidistance line, taking into account any special circumstances where this is justified.

2. If no agreement can be reached, within a period of ..... from the time when one of the interested parties asks for the opening of negotiations on delimitation, the States concerned shall resort to the procedures provided for in part ..... (settlement of disputes) or any other third party procedure entailing a binding decision which is applicable to them.
3. Pending agreement or settlement in conformity with Paragraphs 1 and 2, the parties in the dispute shall refrain from exercising jurisdiction beyond the median or equidistance line unless they agree on alternative interim measures of mutual restraint.

NGT/2/Rev.1  
25 March 1980

ORIGINAL: ENGLISH/SPANISH

INFORMAL SUGGESTIONS RELATING TO PARAGRAPHS 1, 2 AND 3  
OF ARTICLES 74 AND 84, ICJW

BAHAMAS, BARBADOS, CANADA, COLOMBIA, CYPRUS, DEMOCRATIC YEMEN,  
DENMARK, GAMBIA, GREECE, GUYANA, ITALY, JAPAN, KUWAIT, MALTA,  
NORWAY, PORTUGAL, SPAIN, SWEDEN, UNITED ARAB EMIRATES, UNITED  
KINGDOM, YUGOSLAVIA

1. The delimitation of the Exclusive Economic Zone/Continental Shelf between adjacent or opposite States shall be effected by agreement employing, as a general principle, the median or equidistance line, taking into account any special circumstances where this is justified.

2. If no agreement can be reached, within a period of ..... from the time when one of the interested parties asks for the opening of negotiations on delimitation, the States concerned shall resort to the procedures provided for in part ..... (settlement of disputes) or any other third party procedure entailing a binding decision which is applicable to them.

3. Pending agreement or settlement in conformity with Paragraphs 1 and 2, the parties in the dispute shall refrain from exercising jurisdiction beyond the median or equidistance line unless they agree on alternative interim measures of mutual restraint.

NGT/2/Rev.2  
28 March 1980

ORIGINAL: ENGLISH/SPANISH

INFORMAL SUGGESTIONS RELATING TO PARAGRAPHS 1, 2 AND 3  
OF ARTICLES 74 AND 84, ICNT

BAHAMAS, BARBADOS, CANADA, CAPE VERDE, CHILE, COLOMBIA, CYPRUS,  
DEMOCRATIC YEMEN, DENMARK, GAMBIA, GREECE, GUINEA-BISSAU, GUYANA,  
ITALY, JAPAN, KUWAIT, MALTA, NORWAY, PORTUGAL, SPAIN, SWEDEN,  
UNITED ARAB EMIRATES, UNITED KINGDOM, YUGOSLAVIA

1. The delimitation of the Exclusive Economic Zone/Continental Shelf between adjacent or opposite States shall be effected by agreement employing, as a general principle, the median or equidistance line, taking into account any special circumstances where this is justified.
2. If no agreement can be reached, within a period of ..... from the time when one of the interested parties asks for the opening of negotiations on delimitation, the States concerned shall resort to the procedures provided for in part ..... (settlement of disputes) or any other third party procedure entailing a binding decision which is applicable to them.
3. Pending agreement or settlement in conformity with paragraphs 1 and 2, the parties in the dispute shall refrain from exercising jurisdiction beyond the median or equidistance line unless they agree on alternative interim measures of mutual restraint.

NGT/5  
21 April 1978  
Original: ENGLISH

INFORMAL SUGGESTIONS BY MOROCCO

Delimitation of the territorial sea between States  
with opposite or adjacent coasts

1. 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 of the two States is measured.
2. This article does 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 with this provision.

In such a case:

- (a) The States concerned shall enter into negotiations with a view to achieving agreement and not simply undertake formal negotiations as a sort of pre-condition for the automatic application of a certain method of delimitation failing agreement; the States concerned shall conduct themselves in such a manner as to make the negotiations meaningful, which is not the case when one State insists on its own position without considering any modification.
- (b) The States concerned shall act in such a manner as to ensure that, in the specific case and in the light of all the circumstances, equitable principles are applied; to this end, the equidistance method may be applied, while other methods exist and may be employed exclusively or jointly depending on the sectors considered.
- (c) Pending the conclusion of an agreement or a settlement, the States concerned shall abstain from any measure which could prejudice a final solution or in any way aggravate their conflict, and shall endeavour to reach mutually acceptable, provisional arrangements, regarding the activities within the "bona fide" disputed areas.
- (d) If no agreement or arrangement can be arrived at within a reasonable period of time, the States concerned shall have recourse to the procedures provided for in Part IV (Settlement of disputes) or to any other procedure in conformity with Article 57 of the Charter of the United Nations.

Article 74

Delimitation of the exclusive economic zone between adjacent or opposite States

1. The delimitation of the exclusive economic zone between adjacent or opposite States shall be effected by agreement in accordance with equitable principles, employing, where appropriate, the median or equidistant line, and taking account of all the relevant circumstances, in particular:
  - (a) The geographical features of the zone to be delimited, including the respective configuration of the coastlines of the States concerned as well as the presence of islands which, by their location, constitute an element of exorbitant disproportion in the delimitation to be effected.
  - (b) The geomorphology and geological structure and, in so far as they can be determined, the natural resources of the sea-bed and those of the water-column of the zones to be delimited.

NG7/11  
2 May 1978  
Original: ENGLISH

FORMAL SUGGESTIONS BY THE CHAIRMAN

Article 15

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 of the two States is measured. The above provision does 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.

Article 74/83

1. The delimitation of the exclusive economic zone/continental shelf between opposite or adjacent States shall be effected by agreement with a view of reaching a solution based upon equitable principles, taking account of all the relevant circumstances, and employing, where local conditions do not make it unjustified, the principle of equidistance.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall, subject to the provisions of Article 297, resort to the procedures of settlement of disputes provided for in Part XV of the present Convention unless any other procedure is agreed upon in accordance with Article 33 of the Charter of the United Nations.

3. Pending agreement or settlement, the States concerned shall make provisional arrangements, taking into account the provisions of paragraph 1.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone/continental shelf shall be determined in accordance with the provisions of that agreement.

NG7/13  
2 May 1978

ENGLISH  
Original: SPANISH

FORMAL SUGGESTION BY PERU

Article 15

After the words "historic title", insert the words "recognized by both parties".

Editor's Note: Doc. NG7/12 not issued.

FORMAL SUGGESTION BY ALGERIA, ARGENTINA, 1/ BANGLADESH, BENIN, BURUNDI, CONGO, FRANCE, IRAQ, IRELAND, IVORY COAST, KENYA, LIBERIA, LIBYAN ARAB JAMAHIRIYA, MADAGASCAR, MALDIVES, MALI, MAURITANIA, MOROCCO, NICARAGUA, PAKISTAN, PAPUA NEW GUINEA, POLAND, ROMANIA, SENEGAL, SYRIAN ARAB REPUBLIC, SOMALIA, SURINAME, TURKEY, VENEZUELA 1/ AND VIET NAM 1/

NG7/10/Rev.2  
28 March 1980  
ORIGINAL: ENGLISH

(Articles 74 and 84)

Addendum

1. The delimitation of the exclusive economic zone 2/ between adjacent or/and opposite States shall be effected by agreement, in accordance with equitable principles taking into account all relevant circumstances and employing any methods, where appropriate, to lead to an equitable solution.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures of settlement of disputes provided for in Part XV of this Convention or such other procedures agreed upon in accordance with Article 33 of the Charter of the United Nations Organization.

3. Pending agreement or settlement, the States concerned shall make provisional arrangements, taking into account the provisions of paragraph 1.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone 2/ shall be determined in accordance with the provisions of that agreement.

1/ Argentina, Venezuela and Viet Nam reserve their position in relation to the reference in para. 2 to part XV of this Convention.

2/ Or continental shelf.

FORMAL SUGGESTION BY ALGERIA, ARGENTINA, 1/ BANGLADESH, BENIN, CONGO, FRANCE, IRAQ, IRELAND, IVORY COAST, KENYA, LIBERIA, LIBYAN ARAB JAMAHIRIYA, MADAGASCAR, MALI, MAURITANIA, MOROCCO, NICARAGUA, NIGERIA, PAKISTAN, PAPUA NEW GUINEA, POLAND, ROMANIA, SENEGAL, SYRIAN ARAB REPUBLIC, SOMALIA, TURKEY AND VENEZUELA 1/

NG7/10/Add.1  
12 September 1978  
ORIGINAL: ENGLISH

(Articles 74 and 83)

Addendum

In the list of co-sponsors add Burundi, Maldives and Viet Nam. 1/

1/ Argentina, Venezuela and Viet Nam reserve their position in relation to the reference in para. 2 to part XV of this Convention.



# OPPENHEIM'S INTERNATIONAL LAW

NINTH EDITION

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*Volume I*

PEACE

PARTS 2 TO 4

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LONGMAN

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Longman Group UK Limited,  
Longman House, Burnt Mill,  
Harlow, Essex CM20 2JE, England  
and Associated Companies throughout the world.

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First published 1905

Ninth edition published 1992

ISBN 0 582 50108 3

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library

Printed in Great Britain by The Bath Press, Avon

ARE

JX

2000

Op5In8

1992

The Court on this basis concluded that various communiqués, messages and press interviews by persons speaking for France constituted binding legal commitments for France.<sup>16</sup>

A declaration, although unilateral in form, may by virtue of some degree of interdependence with another document (as with declarations under the so-called 'optional clause' of the Statute of the International Court)<sup>17</sup> have a consensual and contractual character. Declarations which do give rise to legal rights and duties, particularly if they have a contractual character, may be interpreted in much the same way as if they constituted a treaty text.<sup>18</sup> A declaration, even if not giving rise directly to legal rights and duties for third states, may nevertheless be of legal significance for them in other ways, for example as evidence of conduct or as giving rise to an estoppel<sup>19</sup> or as a renunciation of rights.<sup>20</sup>

A declaration, while ostensibly creating legal rights and obligations, may be phrased in such a way as to leave the declarant state so great a discretion that the existence of any legal rights and obligations may be questionable. Thus, for instance, in their declarations accepting the compulsory jurisdiction of the International Court of Justice – the so-called Optional Clause of Article 36 of the Statute of the Court – the United States and France<sup>21</sup> reserved for themselves the right to determine whether a dispute fell within their exclusive jurisdiction and whether they were therefore bound to submit the dispute in question to the compulsory jurisdiction of the court. In the *Norwegian Loans* case<sup>22</sup> the International Court of Justice gave effect to the French Declaration, since its validity was questioned by neither party; and in the *Interhandel* (*Interim Measures of Protection and Preliminary Objections*) cases<sup>23</sup> the Court was able to avoid examining the validity of the United States Declaration, although in practice, in the earlier of the two cases, the Court did, despite American objection, assume jurisdiction

declaration', § 459, n 4. And see *Military and Paramilitary Activities Case*, ICJ Rep (1986), at p 49, for treatment by the Court of a statement by President Reagan of the USA as an admission; see also the more general observations by the Court at pp 41, 43–4.

<sup>16</sup> However, for an example of a governmental statement being held by the court not to involve a commitment of a legal nature, see *Military and Paramilitary Activities Case*, as regards certain pledges of an essentially political and domestic nature: ICJ Rep (1986), p 132. See also *Case Concerning the Frontier Dispute (Burkina Faso and Mali)*, ICJ Rep (1986), pp 554, 573–4, 876, as regards a declaration by a Head of State, weight being attached to the circumstance that there was nothing to have prevented the parties from concluding an agreement had they wanted to enter into a binding commitment, and that as they had not done so the unilateral declaration could not be regarded as made with an intention to be bound by it.

<sup>17</sup> See Waldock, BY, 32 (1955–6), at pp 250–54. See also the observations of the ICJ as to the binding nature of a statement in such a declaration that changes in the declaration would only take effect on six months' notice: *Military and Paramilitary Activities Case*, ICJ Rep (1984), p 419. See generally on the 'optional clause' § 3, n 14.

<sup>18</sup> See Fitzmaurice, BY, 33 (1957), pp 229–32, and BY, 34 (1958), pp 76–8. However, in the *Anglo-Iranian Oil Co Case* the ICJ said that declarations under the 'optional clause' were not necessarily to be interpreted as treaties: ICJ Rep (1952), at p 105.

<sup>19</sup> See § 154, n 6.

<sup>20</sup> See § 580.

<sup>21</sup> See YB of the ICJ (1957–8), p 199 (as to France) and (1984–5), pp 99–100 (as to the USA). ICJ Rep (1957), p 9. However, Judge Lauterpacht, in his Dissenting Opinion, concluded that the Declaration was invalid (at pp 43–66), *inter alia* because it was incapable of giving rise to a legal obligation; see also the Dissenting Opinion of Judge Guerrero (pp 67–70).

<sup>22</sup> ICJ Rep (1957), p 105, and *ibid* (1959), p 6.

to consider whether interim measures of protection were in the circumstances required. In all these cases, the Dissenting and Separate Opinions contain much comment (largely critical) on the validity of such declarations.<sup>24</sup>

**§ 578 Notification** By notification,<sup>1</sup> states communicate to other states certain facts and events of legal importance. In some circumstances notifications are obligatory,<sup>2</sup> but they are often made voluntarily in order to ensure that other states cannot, on grounds of lack of knowledge, avoid the legal consequences which flow from the facts and events in question.<sup>3</sup> Notifications may deal with the more formal matters (such as changes in the headship and in the form of government of a state, or the appointment of a new foreign minister) or may concern matters of substance, such as a notification of the existence of a dispute over title to territory, or of nuclear tests being carried out in certain sea areas,<sup>4</sup> or of a reservation of rights in respect of some matter giving rise to an actual or potential difference between the states in question.<sup>5</sup>

**§ 579 Protest** A protest is a formal communication from one state to another that it objects to an act performed or contemplated by the latter. A state can lodge a protest against acts which have been notified to it or which have otherwise become known. A protest principally serves the purpose of preserving rights,<sup>1</sup> or

<sup>24</sup> See particularly Judge Lauterpacht at ICJ Rep (1957), pp 117–20, and *ibid* (1959), pp 95–119, and Judge Spender *ibid* (1959), pp 54–9. For further comment see Jennings, ICLQ, 7 (1958), pp 349–66; Waldock, BY, 31 (1954), at pp 131–7; Briggs, AJ, 53 (1959), pp 557–9.

<sup>1</sup> The distinction between notifications and declarations is not sharp. A particular form of unilateral communication from one state to another, which may have legal implications (eg as an admission, or as reparation), is an apology. See § 155, n 12.

<sup>2</sup> Thus, according to Art 2 of the Hague Convention concerning the Commencement of Hostilities 1907, the outbreak of war must be notified to the neutral Powers; similarly, under Art 84 of the Hague Convention for the peaceful settlement of international differences, in case a number of states are parties to a treaty, and two of them, who are at variance concerning its interpretation, agree to have the difference settled by arbitration, they have to notify this agreement to all the other parties. See also Art 44 of the Treaty of Peace with Italy 1947 as regards the maintenance in force of pre-war bilateral treaties with Italy.

<sup>3</sup> In the judgment of the ICJ in the *Anglo-Iranian Oil Co case*, in which it held that an Iranian law showing, in effect, the Iranian Government's understanding of a Declaration made by Iran, was relevant as interpreting the intention of the Iranian Government: ICJ Rep (1952), p 107. The law had not been communicated to the UK. However, the Court attached importance to the fact that the law had been published and had been available for examination by other governments during a period of some 20 years.

<sup>4</sup> See § 730.

<sup>5</sup> The practice of entering a 'reservation of rights' is frequently resorted to where states are not in possession of sufficient facts to feel able to lodge a protest or present a claim, but nevertheless consider it necessary to take some action to make known their interest and to prevent any implication of acquiescence from arising (at least for a time). However, a reservation of rights only serves to protect temporarily such rights as the reserving state might have, and, apart from serving that procedural purpose, will neither create rights for it nor invalidate rights possessed by the other party. A reservation of rights in respect of a future decision of the ICJ, after it has determined that it has jurisdiction, 'is clearly of no effect on the validity of that decision': *Military and Paramilitary Activities Case*, ICJ Rep (1986), p 24.

<sup>1</sup> See Ralston, §§ 215, 222, 660, 696. As to the reservation of rights see § 578, n 5. As to protests

of making it known that the protesting state does not acquiesce in, or does not recognise,<sup>2</sup> certain acts: but it does not nullify the act complained of. A mere protest by a state, without further action, may not always be sufficient to preserve the rights in behalf of which the protest was made.<sup>3</sup> It may happen that a state at first protests, but later expressly<sup>4</sup> or tacitly<sup>5</sup> acquiesces in the act.

On the other hand, if a state acquires knowledge of an act which it considers internationally illegal and in violation of its rights, and nevertheless does not unambiguously<sup>6</sup> protest, this attitude may imply a renunciation of those rights and acquiescence in the act complained of.<sup>7</sup> The significance of an absence of

against violations of international law not directly affecting the protesting state see Wright, A.J. 32 (1938), pp 526-35. As to the role of protest in the development of customary international law, see § 10, n 24. Protest, or its absence or discontinuance, plays an important part in cases of claims being barred by lapse of time (§ 154) and of acquisition of territory by prescription (§§ 269-70). As to the somewhat analogous matter of estoppel, or preclusion, see § 154, n 6. As to the role of negative votes in preventing the creation of new rules of customary international law by decisions of international organisations, see § 16, at nn 14-18.

<sup>2</sup> See § 54 on the policy of non-recognition.

<sup>3</sup> At least if effective measures could have been taken to put an end to the situation which was the subject of the protest. As to the inadequacy of continued 'paper protests' see Fitzmaurice, BY, 30 (1953), pp 28-9, and MacGibbon, *ibid*, pp 312-14.

<sup>4</sup> Thus, by the Declaration concerning Siam, Madagascar, and the New Hebrides, which was embodied in the Anglo-French Agreement of 8 April 1904, the UK withdrew the protest which it had raised against the introduction of the customs tariff established at Madagascar after its annexation to France.

<sup>5</sup> See § 16, n 14, as to the need for repeated statements of dissent from resolutions of international organisations as legal formulations.

<sup>6</sup> Where an act is performed as a clear manifestation of sovereignty, but is protested against on some other ground, such as that it is in violation of some treaty obligation, the act is not deprived of its character as a manifestation of sovereignty: *Minqeters and Erethos Cases*, ICJ Rep (1953), p 66.

<sup>7</sup> See on this point Strupp, *Grundzüge*, p 99; Cavaglieri, *Rivista*, 3rd series, 5 (1926), p 197; Kunz in Strupp, *Wörter*, ii, pp 329, 330; Briet, *Nordisk TA*, 3 (1932), pp 75-93; Pflüger, *op cit*, pp 194-219; H Lauterpacht, BY, 27 (1950), pp 393-8; MacGibbon, *ibid*, 30 (1953), pp 293-319; and BY, 31 (1954), pp 143-86; Barale, AFDI, 11 (1965), pp 389-427; Bowett, BY, 33 (1957), pp 176, 197-201; Benz, RG, 67 (1963), pp 44-91; Jennings, *The Acquisition of Territory in International Law* (1963), pp 36-51. In the *Anglo-Norwegian Fisheries* case the ICJ attached considerable importance to the fact that the UK had failed to protest against the system of delimitation of territorial waters applied by Norway since 1869. The Court said: 'The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention [from formulating reservations] would in any case warrant Norway's enforcement of her system against the United Kingdom' ICJ Rep (1951), p 139. However, see the Dissenting Judgment of Judge McNair, *ibid*, pp 176-80. See also the *Island of Palmas Case* (1928), RIAA, 2, pp 843, 866; *Air Transport Services Agreement Arbitration* (1964), I.L.R., 38, pp 182, 249-50. The effect of failing to protest against the assumption by states of jurisdiction in a certain kind of case was discussed by the Permanent Court in the *Lotus Case*, Series A, No 10, pp 23, 29, 98. See also the *Temple of Preah Vihear* case in which the Siamese authorities were held to have acquiesced in events against which they failed to protest in circumstances which called for some reaction within a reasonable period: ICJ Rep (1962), pp 22-3, 27-31. The act involving acquiescence by the state may even be that of a junior official (*ibid*, p 25). The acts against which protest needs to be made if acquiescence is not to be presumed include official publications of the ICJ: *Military and Paramilitary Activities Case* (Jurisdiction), ICJ Rep (1984), pp 408-10. Long-held assumptions as to a boundary, and conduct over many years based on them, will not be lightly upset on the basis of an alleged error: *Taba Award* (1988), I.L.R., 80, pp 226, 306. See also *Canton of Valais v Canton of Tessin* (1980), I.L.R., 75, p 114.

protest will to a large extent depend upon all the circumstances of the situation; failure to protest by a state being directly and substantially affected by the act in question will be of greater significance than failure by a state not so affected.<sup>8</sup> Similarly, acts largely of a routine and administrative character performed by local officials in circumstances where their detection by the other state would be manifestly difficult may not be sufficient to displace the rights of that other state where it has not protested against those acts.<sup>9</sup> Again, failure by a state to lodge a formal protest may be discounted where it adequately demonstrates its rejection of the acts or assertions of another state by continuing itself to perform acts which can only be construed as a rejection of those acts or assertions, as where an assertion of territorial sovereignty is met by the continued exercise of sovereignty over the territory in question, day by day, through acts of legislation, government and the courts.<sup>10</sup>

**§ 580 Renunciation** Renunciation is the deliberate abandonment of rights.<sup>1</sup> It can be express, or it can be tacit (as when a state fails to protest in circumstances where a protest is necessary to preserve its rights).<sup>2</sup> Renunciation may take place by way of the actual admission by a state of the facts underlying the claim of another state.<sup>3</sup> Article 45 of the Vienna Convention on the Law of Treaties 1969,

<sup>8</sup> See the *Anglo-Norwegian Fisheries* case, cited in the preceding note.

<sup>9</sup> See the *Case Concerning Sovereignty over Certain Frontier Areas*, ICJ Rep (1959), at p 229; *Temple of Preah Vihear Case*, ICJ Rep (1962), at p 30.

<sup>10</sup> See, eg *Parliamentary Debates (Commons)*, vol 174, col 560 (written answers, 20 June 1990). See Henningens in Strupp, *Wörter*, iii, pp 163, 164; Pflüger, *Die einseitigen Rechtsgeschäfte im Völkerrecht* (1936), pp 249-87; Cavaglieri, *Rivista*, 2nd series, 7 (1918), pp 3-33; di Vignano, *La Rinuncia in Diritto Internazionale* (1960); literature cited at § 579, n 7, on acquiescence.

Examples of an express renunciation of rights are afforded by Arts 2 and 8 of the Treaty of Peace with Japan 1951, and Art 1 (3) of the Treaty on the Final Settlement with respect to Germany 1990. As to the dismantling by Jordan of its legal and administrative links with the area known as the 'West Bank', see § 55, n 49.

Renunciation is often indistinguishable from waiver, it being largely a matter of usage and convenience which term is customarily employed in particular circumstances. 'Renunciation' may carry with it a flavour of permanence and comprehensiveness (as in the renunciation of all rights to sovereignty over territory), whereas 'waiver' tends to be more specific and related less to the right itself than to its exercise in a particular case (as in the waiver of diplomatic immunity), but no hard and fast distinction on these lines can be maintained. With both the essence is the same: a state has or asserts a right or claim, and by a deliberate act elects to forgo it. In *Rights of United States Nationals in Morocco*, ICJ Rep (1952), at p 194, the ICJ held 'renonce à réclamer' to require out and out renunciation of the rights and privileges to which the phrase referred. In the *Barcelona Traction* case the Court held the discontinuance of proceedings not to amount to a renunciation of the claims to which the proceedings related: ICJ Rep (1964), pp 6, 21.

<sup>2</sup> See § 579. However, where a treaty only applied to territories to which the state had made no such declaration, its participation in international judicial proceedings concerning the application of the treaty's non-application to that effect, and the state had made no such declaration, its participation in international judicial proceedings concerning the application of the treaty's non-application to that effect, and the state was able to secure a decision by the court that the treaty was inapplicable: *Gillow Case* (1986), I.L.R., 75, pp 562, 581-3. See also *Military and Paramilitary Activities Case*, ICJ Rep, 1984, at p 428, to the effect that failure of a state in negotiations with another to refer to a treaty as having been violated by that other does not debar the first state from invoking, in later litigation, a compromissory clause in the treaty.

<sup>3</sup> Thus, in the *Minqeters and Erethos* case between the UK and France, decided in 1953, the ICJ

acknowledges that a state may lose its right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under certain Articles of the Convention if, after becoming aware of the facts, it expressly accepted the validity or continuation of the treaty, or must by reason of its conduct be considered as having acquiesced in it.<sup>4</sup> Renunciation plays a prominent part in the amicable settlement of the differences between states, either or both parties frequently renouncing their claims for the purpose of coming to an agreement.<sup>5</sup>

considered as relevant the circumstance that in a letter written in 1819 by the French Minister of Marine to the French Foreign Minister and transmitted by the French ambassador to the Foreign Office in London, the Minquiers were stated to be 'possédé par l'Angleterre'. The Court rejected the French argument that that admission could not be invoked against France on the ground that it was made in the course of negotiations which did not result in agreement; the letter in question represented a statement of facts: ICJ Rep (1953), p 71. In the same case the Court attached importance to the fact that the UK received no reply to its protest against the construction of a house on an island of the Minquiers group by a French citizen and that subsequently the construction of the house was stopped on the instructions of the French Government: *ibid.* See also the *Rights of Passage Case*, ICJ Rep (1960), pp 6, 41-2.

On the question of the legality of a renunciation of rights by one party to a multilateral convention when that renunciation operates to the detriment of another party see Fauchille, § 850 (1).

<sup>4</sup> See also the *Case concerning the Arbitral Award Made by the King of Spain*, ICJ Rep (1960), pp 205-9, 213-14. In the *Arbitration concerning the Rann of Kutch* (1968), ILR, 50, p 2, it was held that statements and maps of the competent UK authorities in India constituted acts which may be interpreted as acquiescence in, or acceptance of, adverse claims to the Rann, amounting to a voluntary relinquishment of UK territorial rights in the Rann.

<sup>5</sup> See vol II of this work, § 6. See also *ibid.*, p 877, n 2, for an example of renunciation of claims coupled with an explicit statement of adherence to the opposed legal views held by the contracting parties. For a suggestion that the conduct of the USA subsequently to its declaration of war on Germany in 1917 amounted to acquiescence in some practices of the Allied Powers and to an abandonment of claims arising therefrom see Anderson, AJ, 23 (1929), p 384.

## Chapter 14

### Treaties

#### CHARACTER AND FUNCTION OF TREATIES

*Harv Research* (1935), pt III, pp 686-705 Dupuis, Hag R (1924), i, pp 322-49 Butler and Maccoby, *The Development of International Law* (1928), ch xvii Hoijer, *Les Traités internationaux*, 2 vols, (1928) Chailley, *La Nature juridique des traités internationaux* (1932), pp 3-72 Frangulis, *Théorie et pratique des traités internationaux* (1936) Jessup, *A Modern Law of Nations* (1948), pp 123-56 Pillaut, *Clunet*, 46 (1919), pp 593-602 Réglade, *Revue de droit public et de la science politique*, 41 (1924), pp 505-40 Crocker, AJ, 18 (1924), pp 38-55 Report by Mastny and Rundstein for League Codification Committee, AJ, 20 (1926), Special Suppl pp 204-21 McNair, BY, 11 (1930), pp 100-118 Whitton, Hag R, 49 (1934), iii, pp 175-249 Kraus, *ibid.*, 50 (1934), iv, pp 317-96 Kelsen, *Théorie du droit*, 10 (1936), pp 253-92 Mann, BY, 21 (1944), pp 11-33 Kunz, AJ, 39 (1945), pp 180-97 Starke, BY, 23 (1946), pp 341-6 Jessup, AJ, 41 (1947), pp 378-405 Fawcett, BY, 30 (1953), pp 381-400 Fitzmaurice, BY, 35 (1959), pp 194-6 Wehberg, AJ, 53 (1959), pp 775-86, and *Festschrift für Alfried Verdross* (1960), pp 307-19 de Archaga, Hag R, 159 (1978), i, pp 35-7 Widdows, BY, 50 (1979), pp 117-50 Satow, pp 236-63 Parry, in *Multum non Nulla (Festschrift für Lipstein)* (eds Fuerstein and Parry, 1980), pp 221-39 Sinclair, *The Vienna Convention on the Law of Treaties* (2nd ed, 1984), pp 1-28 *Restatement (Third)*, i, pp 149-52 Reuter, *Introduction to the Law of Treaties* (Eng trans, 1989, by Mico and Haggennmacher, of 2nd ed (1985) of original in French) Igweike, Indian JIL, 28 (1988), pp 249-63. And see bibliography preceding § 8, and § 11, as to treaties as a source of international law.

§ 581 Development of the law of treaties: Vienna Conventions on the Law of Treaties 1969 and 1986 Treaties, being essentially written agreements between states, have had a prominent place in international relations since long before international law in the modern sense of the term was in existence.<sup>1</sup> The customary rules of international law relating to treaties gradually acquired considerable certainty and precision. Nevertheless, the very great importance of treaties in international relations and the uncertainty or unsatisfactoriness of some aspects of customary international law made the law of treaties a suitable

<sup>1</sup> For the predominance of treaties, as compared with customary international law, in medieval practices, see Schwarzenberger, BY, 25 (1948), pp 87-90. See also Tenekidès, Hag R, 90 (1956), pp 518-32 as to the operation of treaties in the Greek city states in the 3rd, 4th and 5th centuries BC. As to the role of the oath in ancient treaties, see Magnenti, AJ, 72 (1978), pp 815-29.

THE AMERICAN SOCIETY OF INTERNATIONAL LAW

# International Maritime Boundaries

VOLUME I

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MARTINUS NIJHOFF PUBLISHERS

DORDRECHT / BOSTON / LONDON

## Indonesia–Singapore

*Report Number 5–11*

### **Agreement Stipulating the Territorial Sea Boundary Lines between Indonesia and the Republic of Singapore in the Strait of Singapore**

*Signed:* 25 May 1973

*Entered into force:* 29 August 1974

*Published at:* Limits in the Seas No. 60 (1974)

#### I SUMMARY

This maritime boundary agreement came into force upon Singapore's ratification on 29 August 1974. Indonesia ratified it on 3 December 1973. The boundary line in the Strait of Singapore connects six points. Three of them on the east are generally equidistant from Indonesia and Singapore and two of the three on the west are slightly closer to Indonesia. One of them (Point 2) lies about 1/2 nautical mile (n.m.) inside the Indonesia archipelagic baseline.

The only 'three-miler' in the region where all the other coastal states have adopted the 12-mile limit for their territorial sea, Singapore will eventually need a tripartite agreement with Indonesia and Malaysia relating to its territorial sea jurisdiction. The boundary drawn in this agreement therefore represents only a part of what it will have to establish with its adjacent and opposite neighbors.

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## II CONSIDERATIONS

### 1 *Political, Strategic, and Historical Considerations*

While Singapore still has the 3-mile limit of territorial sea, in 1980 it announced that it would exercise its rights to extend that limit to 12 n.m. Because of its disadvantaged geographical circumstances, this could not have meant that it would seriously consider adopting that limit in the foreseeable future.

In the Johore Strait, Singapore has had an imaginary boundary with Malaysia since 1927, when the United Kingdom signed an agreement with the Sultan of Johore; the boundary follows the center of the deep-water channel. Since 1980, Singapore and Malaysia have been working on a permanent delimitation irrespective of subsequent shifts at the bottom of the channel.

The need for the instant agreement with Indonesia arises out of the fact that the Strait of Singapore is part of what constitutes the Strait of Malacca. The sea-traffic in this area is so dense that it has to be very carefully regulated by the coastal states.

The present boundary line would have to be extended on both sides, in order to complete the circle of the island republic's maritime jurisdiction. In this regard, it should be noted that Horsburgh, Singapore's isolated territory situated on the eastern approach to the Strait of Singapore, was placed within Malaysian jurisdiction in an official Malaysian map of 1979. Singapore regards this as an innocent error that would cause no 'territorial dispute' with Malaysia.

### 2 *Legal Regime Considerations*

The maritime boundary is a modified equidistant line. Of the six terminal or turning points, however, three on the west are closer to Indonesia. In fact, one of these three (Point 2) lies about 1/2 n.m. inside the Indonesian archipelagic baseline, because of the deep-draft tanker route around that particular spot.

### 3 *Economic and Environmental Considerations*

For both Indonesia and Singapore, economically the safety of navigation in the Straits of Singapore and Malacca is of vital economic importance, much more so for Singapore. The protection of the marine environment in the area of the delimitation is equally important. Such factors are likely to have been taken into consideration, as may be seen from the fact that the delimitation generally follows the deep-draft tanker route.

### 4 *Geographic Considerations*

The boundary line in the present agreement extends for a distance of



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24.55 n.m. This relatively short line cuts through complex geographical circumstances such as offshore islands and the irregular coastlines on both sides in this exceptionally narrow, but densely navigated strait.

*5 Islands, Rocks, Reefs, and Low-Tide Elevations Considerations*

The three turning points on the east, which are generally equidistant from Indonesia and Singapore, were measured from low-tide elevations. The three turning points on the west, especially Point 2 which is located within the Indonesian archipelagic baseline, are closer to Indonesia, because two of them were measured from low-tide elevations off the coast of Singapore and the archipelagic baselines of Indonesia.

*6 Baseline Considerations*

As noted above, at some points the archipelagic baselines of Indonesia were not given full consideration in the delimitation of the territorial sea boundary. A small patch of Singapore's territorial sea cuts into Indonesia's archipelagic baseline by virtue of Point 2 above.

*7 Geological and Geomorphological Considerations*

Along the boundary line, the water depth ranges from 12 to 25 fathoms, with an average of 17.83 fathoms. As a whole, the delimitation follows the deep-water channel in the Strait of Singapore, with a minor exception at Point 5 where it slightly crosses the median line between Indonesia and Singapore. In other words, the boundary line in this agreement closely follows the deep-draft tanker route, reflecting the geomorphological features in the Strait of Singapore.

*8 Method of Delimitation Considerations*

Although the agreement does not expressly specify the method of delimitation employed, from the foregoing it is clear that the three basepoints on the east were based on the equidistant method and the other three on the west were measured differently.

*9 Technical Considerations*

It is provided in Article I (3) and (4) that the two parties would adopt a method whereby 'the actual location of the ... points at sea shall be determined.' For this purpose, the 'competent authorities' of the parties were specifically named. In this regard, it may be pointed out that coastal states of this region had experienced discrepancies between agreed coordinates and the actual loca-

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tions, especially in the Strait of Malacca. Provisions in Article I (3 and 4) probably reflect such past experience. Technical factors do not seem to have affected the actual location of the boundary otherwise.

10 *Other Considerations*

None.

III CONCLUSIONS

Indonesia and Singapore border on one of the world's most critical navigational bottlenecks, namely the Straits of Malacca and Singapore. The boundary in this agreement runs through an area where unimpeded transit of vessels is fundamentally important for the three coastal states, including Malaysia. Although their territorial sea boundary would eventually require two trijunctions on both ends of the Singapore Strait, their immediate concern is the safety of navigation in the Straits of Malacca and Singapore rather than extension of their territorial sea boundary around Singapore. Hence the delimitation in this agreement has been left 'unfinished' except in the heavily navigated portion of the Strait of Singapore. In 1977, the three coastal states agreed on a traffic separation scheme here which IMO (International Maritime Organization) adopted in that year as a useful precedent to what is now Article 41 of the 1982 UN Convention on the Law of the Sea.

IV RELATED LAW IN FORCE

A *Law of the Sea Conventions*

Indonesia: Party to the 1958 Geneva Convention on the High Seas, signed the 1982 LOS Convention and ratified it on 3 February 1982

Singapore: Signatory to the 1982 LOS Convention

B *Maritime Jurisdiction Claimed at the Time of Signature*

Indonesia: 12-n.m. territorial sea, Regulation No. 4, 18 February 1960 and Regulation No. 8, 25 July 1962; archipelagic claims, Regulation No. 4, 18 February 1960

Singapore: 3-n.m. territorial sea, (British) Territorial Jurisdiction Act, 3 August 1878; Fishing Zone, no uniform limit, Fisheries Act No. 4, 29 April 1966

C *Maritime Jurisdiction Claimed Subsequent to Signature*

Indonesia: 200-n.m. exclusive economic zone, Declaration, 21 March 1980

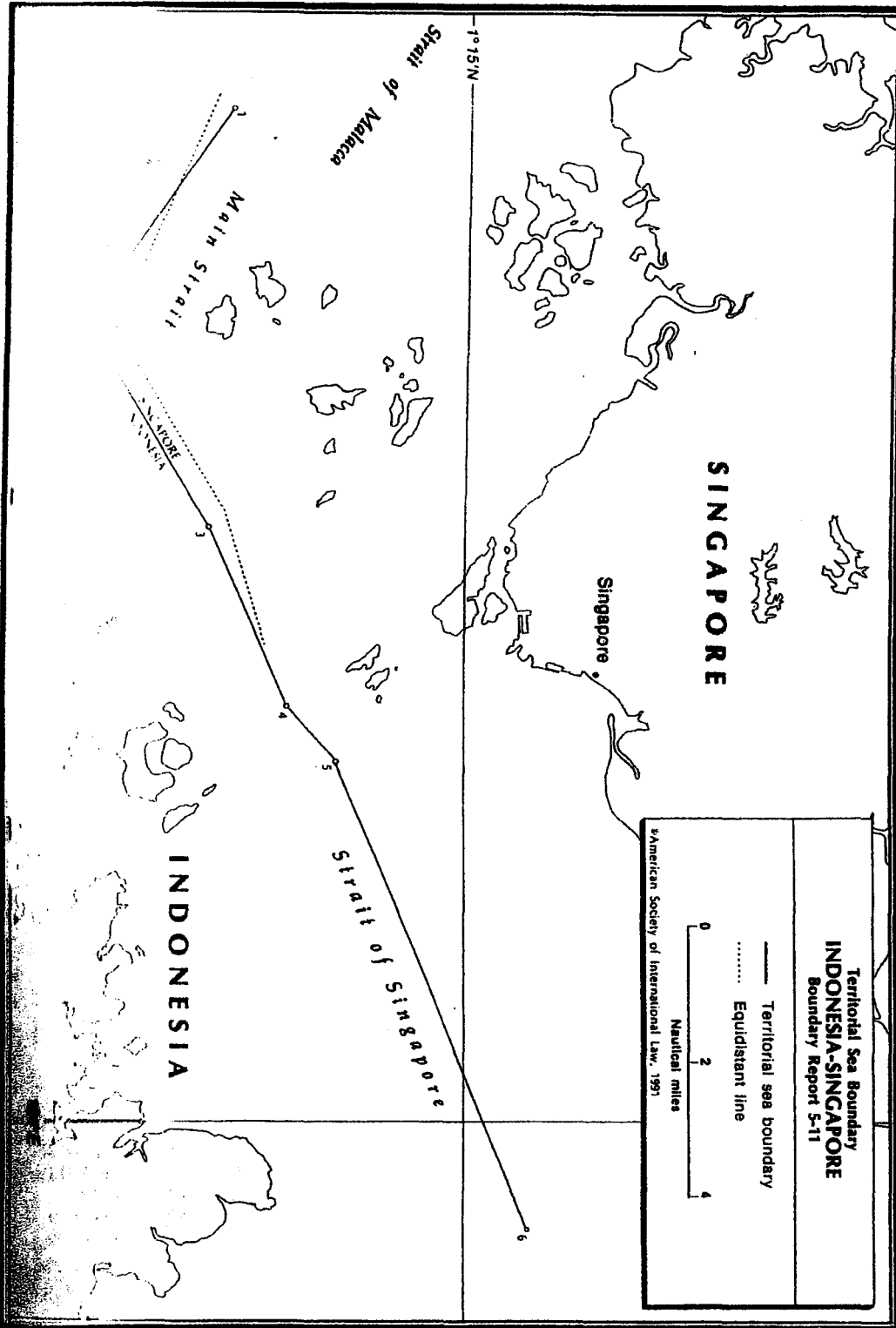
Singapore: No change

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*Prepared by Choon-ho Park*



**Agreement Stipulating the Territorial Sea Boundary Lines between  
Indonesia and the Republic of Singapore in the Strait of Singapore**

*Article I*

1. The boundary line of the territorial seas of the Republic of Indonesia and the Republic of Singapore in the Strait of Singapore shall be a line, consisting of straight lines drawn between points, the co-ordinates of which are as follows:

<i>Points</i>	<i>Latitude North</i>	<i>Longitude East</i>
1	1° 10' 46".0	103° 40' 14".6
2	1° 07' 49".3	103° 44' 26".5
3	1° 10' 17".2	103° 48' 18".0
4	1° 11' 45".5	103° 51' 35".4
5	1° 12' 26".1	103° 52' 50".7
6	1° 16' 10".2	104° 02' 00".0

2. The co-ordinates of the points specified in paragraph 1 are geographical co-ordinates and the boundary line connecting them is indicated on the chart attached as Annexure "A" to this Treaty.
3. The actual location of the above mentioned points at sea shall be determined by a method to be mutually agreed upon by the competent authorities of the two countries.
4. For the purpose of paragraph 3, "Competent authorities in relation to the Republic of Indonesia means the Ketua Badan Koordinasi Survey dan Pemetaan Nasional (Chief of the Coordination Body for National Survey and Mapping) and in relation to the Republic of Singapore means any persons so authorized by the Government of the Republic of Singapore.

*Article II*

Any disputes between the two countries arising out of the interpretation or implementation of this Treaty shall be settled peacefully by consultation or negotiation.

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*Article III*

This Treaty shall be ratified in accordance with the constitutional requirements of the two countries.

*Article IV*

This Treaty shall enter into force on the date of the exchange of the Instruments of Ratification.

DONE IN DUPLICATE AT Jakarta the twenty-fifth day of May one thousand nine hundred and seventy three in the Indonesian and English languages. In the event of any conflict between the texts, the English text shall prevail.