

ASPECTS OF TRINIDADIAN MARINE BOUNDARY LEGISLATION

by P. DONE (*)

The Republic of Trinidad and Tobago has, in November 1986, enacted legislation in line with the United Nations Convention on the Law of the Sea. It has declared itself to be an archipelagic State, modified its Continental Shelf Act and defined an Exclusive Economic Zone dependent on equitable agreements with opposite or adjacent States. Meanwhile, the 1942 Treaty with Venezuela regarding the Submarine Areas of the Gulf of Paria remains extant. New fishing agreements were worked out with Venezuela in November 1985.

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Note.— The views expressed in this paper are those of the author who does not in any way represent the Government of the Republic of Trinidad and Tobago. The illustrations of shore lines, boundaries and limits are based on freely available authoritative documents, but have in themselves no legal or official standing.

1. — INTRODUCTION

The Commonwealth Caribbean consists of sixteen English speaking islands, groups of islands or territories. Figure 1 shows those in the Eastern part of the region. Antigua, Barbados, Bahamas, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts-Nevis, St. Lucia, St. Vincent and Trinidad and Tobago are fully independent countries and members of the United Nations. The remainder— Anguilla, Cayman Islands, Montserrat, British Virgin Islands and Turks and Caicos Islands — are colonies of the United Kingdom. The total land area is about 260,000 square km and the population is over five million.

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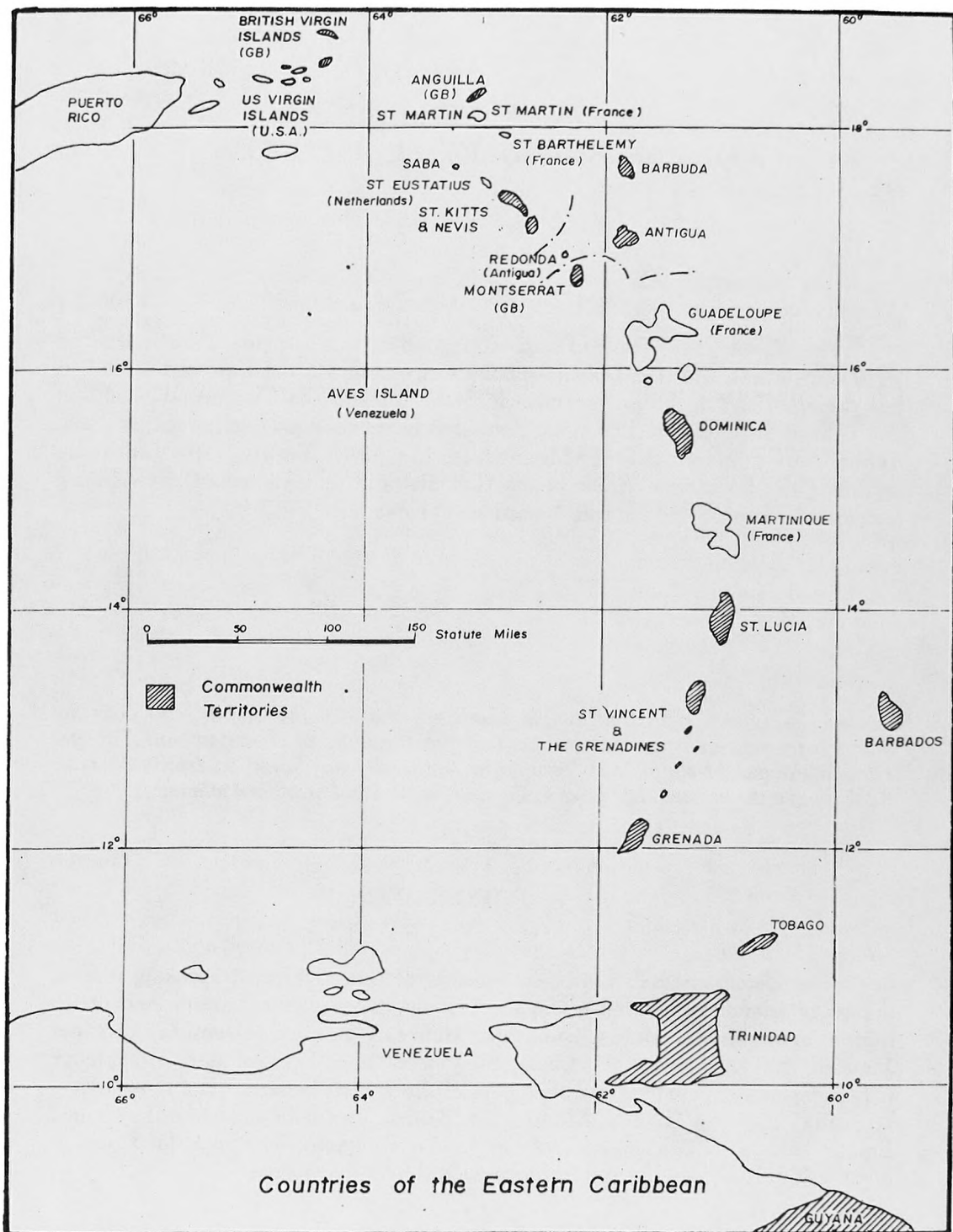


FIG. 1

Assessed by traditional yardsticks (e.g. population, natural resources, military power or gross national product) none of these Caribbean States can be considered as a major nation. However, the Caribbean region has a distinctive identity, perhaps the result of some common, especially colonial, historical influences, together with economic and often social problems, even though attempts to resolve this identity into a sense of fundamental political unity have met with only limited success. The last two decades have seen several examples of the introduction of independent Statehood, occurring at a time when international maritime law, of obvious relevance to all such island nations, has also been undergoing important changes.

The most southerly nation in the archipelago, the Republic of Trinidad and Tobago (generally, and as later in this article, referred to as Trinidad), which gained its independence in 1962, is a State whose seaward boundaries are of considerable economic importance, both nationally and internationally. There are considerable deposits of oil and gas, both on- and off-shore, and in addition, living marine resources of no little significance to both domestic and foreign fishing interests. It is perhaps no coincidence, therefore, that the first true maritime boundary delimitation of any considerable length [1], an agreement between Trinidad and Venezuela, was made in 1942 [2], long before such agreements became more common, and further that Trinidad was the first Commonwealth Caribbean territory [3] to change the extent of its territorial sea from the traditional three to twelve nautical miles [4]. Its continued and informed interest in such matters has now resulted in an updating of its laws in the light of the United Nations Convention on the Law of the Sea (UNCLOS), made in Montego Bay, Jamaica, in December 1982, to which, together with 117 other countries, it is a signatory. (Its near neighbour, Venezuela, was not, and in fact voted against UNCLOS).

2. — THE 1942 TREATY

This Treaty [2] between the then King and the President of Venezuela, relating to the 'Submarine Areas of the Gulf of Paria', was signed in Caracas in February 1942 and later ratified by both countries in September of that year. Article 1 clarifies the subject matter — it denotes the sea-bed and subsoil only: fishing or related activities, and rights of passage and navigation, are not covered, the implicit intention being formalisation of agreement regarding areas of oil deposit exploitation.

Four points A, B, Y and X (Fig. 2) are given approximate coordinates and a boundary formed by joining them, as shown; Trinidad then is accorded sovereignty over areas to the east and north, Venezuela to the west and south of this line. Although AB and YX are 'straight', BY 'follows the limits of the territorial waters of Venezuela'.

Article 4 binds the contracting parties to appoint a mixed Commission to firstly determine and agree on 'exact' values for the coordinates of the four nominated points (for example, the exact longitude of A was to be that of the

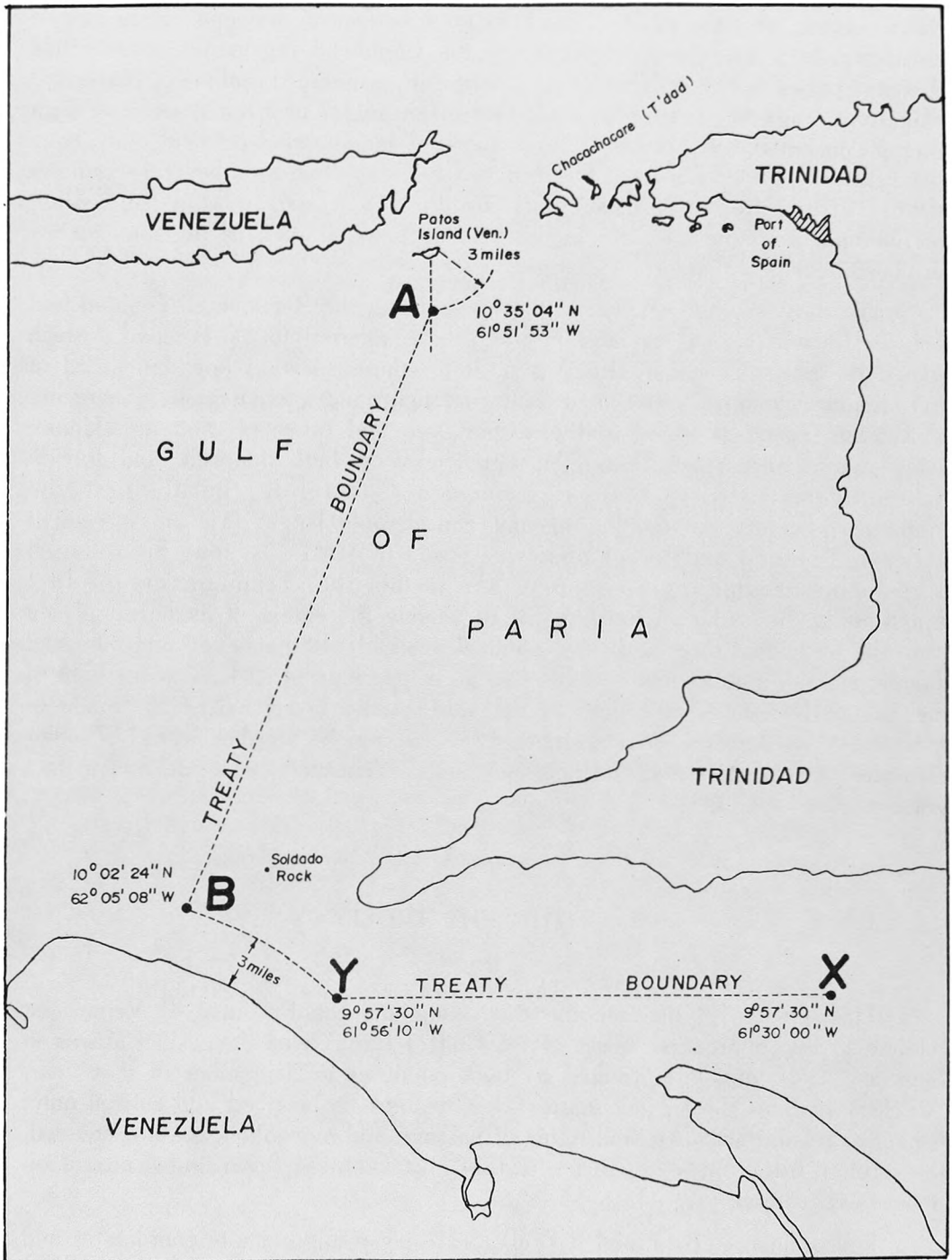


FIG. 2.— The 1942 Treaty Boundary.

central meridian of the Island of Patos, to be determined 'by taking the mathematical half of the most eastern and the most western longitudes of the said Island'), and then to demarcate the lines 'by means of buoys or other visible methods'. To the best of the writer's belief the latter task, at least, has never been fully carried out although a mixed Boundaries Commission later worked on survey

aspects of the Treaty including coordination of A and B. Although the Treaty remains extant, an obvious result is a lack of immediate practical applicability which is not helped by the fact that the text makes no mention of areas either to the north of A or to the east of X. A further complication stems from a separate, cartographic cause — some lack of commonality in datum used by the two countries concerned.

Perhaps it might be charitable — in the light of hind-sight — to ascribe any deficiencies in this Treaty to a British preoccupation, at the time, with very urgent matters occurring much nearer the United Kingdom. It is understood that recent (1986) discussions regarding modified legislation have not yet been finalized.

3. — TERRITORIAL SEA, INTERNAL WATERS, CONTIGUOUS ZONE

The 1969 Territorial Act [4] supplanted the (UK) Territorial Waters Jurisdiction Act (1978) and altered the breadth of the territorial sea to a distance of 'twelve nautical miles from the nearest point of the baseline'. In this regard, Jamaica (1971), Barbados (1977), Guyana (1977) and Grenada (1978) followed suit.

In 1986, the Act has been amended [6] in the light of UNCLOS. The baselines now concerned are to be the 'straight archipelagic baselines of Trinidad and Tobago' (see para. 5), which join 'the outermost parts of the outermost islands and drying reefs of the archipelago' (Fig. 3). The internal waters include those 'within its archipelagic waters ... on the landward side of the closing lines'. Further, a contiguous zone of up to twenty-four nautical miles from the baselines is stipulated. In this zone, competent authority may stop, board and search any vessel reasonably suspected to be in contravention of customs, revenue, immigration or health laws.

4. — CONTINENTAL SHELF

The 1969 Continental Shelf Act [5] was based on the provisions in the 1958 Convention on the Law of the Sea to which Trinidad was a signatory. It utilized the old definition of the Continental Shelf, in this case:

'the seabed and subsoil of the areas adjacent to the coasts of the island of Trinidad and the island of Tobago and all other islands within Trinidad and Tobago but outside the area of the territorial sea to a depth of two hundred metres and beyond that limit to where the depth of the superjacent waters admits to exploitation of the natural resources of the said areas'.

This has now been amended, in 1986 [7], to the more modern accepted version for both shelf and margin, the former being:

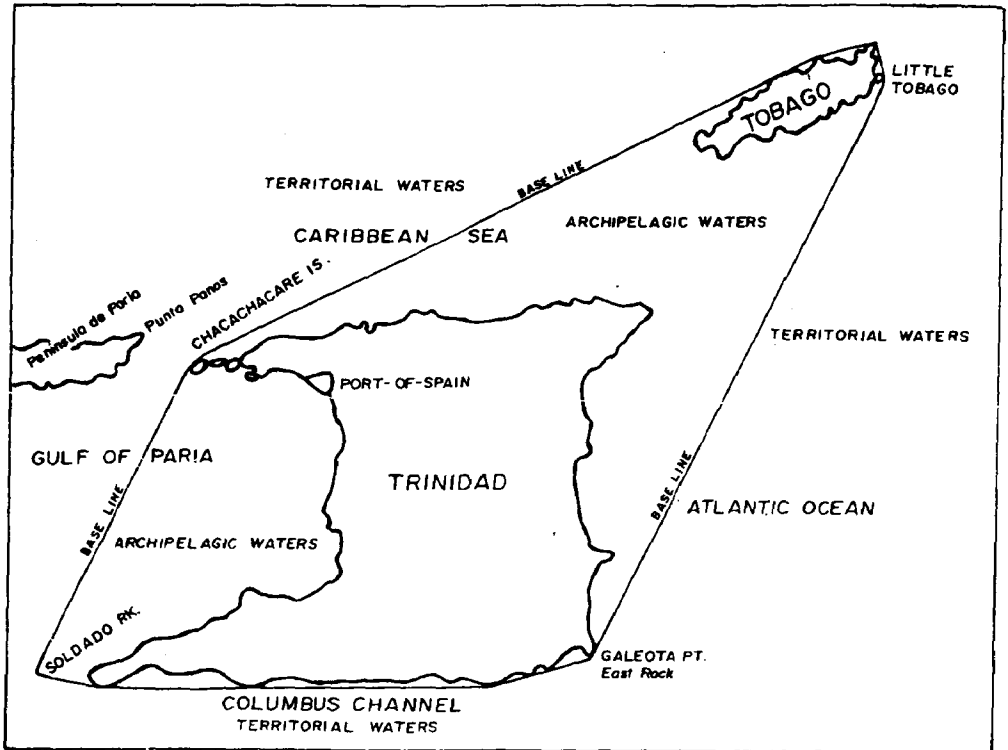


FIG. 3.— Archipelagic baselines.

'the sea-bed and subsoil of the submarine areas of Trinidad and Tobago that extend its territorial sea throughout the natural prolongation of its land territory to the outer edge of its Continental Margin, or to a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea of Trinidad and Tobago is measured where the outer edge of the Continental Margin does not extend up to that distance'

and the latter:

'the submerged prolongation of the land mass of Trinidad and Tobago consisting of the seabed and subsoil, the slope and the rise of the Continental Shelf determined in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea'.

National responsibility for rendering a copy of charts and relevant information including geodetic data, permanently describing the outer limits of the Continental Shelf to the Secretary General of the United Nations, is included in this Amendment. It does not change the provisions for exploration and exploitation of the Continental Shelf made in the original Act, which gave effect to those of the Geneva Convention of 1958.

This Act [5] first vests in the Government any rights exercisable by the State outside territorial waters with respect to the seabed and subsoil and their natural

resources. In the exercise of these rights the President is empowered to designate from time to time an area as a 'designated area' for the purpose of establishing safety zones around the installations. For the purpose of protecting the installations in such 'designated area' he may prohibit the entry of ships into specified parts of this area.

The Act provides for the application of the criminal and civil law with respect to any act or omission which takes place on, under, or above an installation in a 'designated area', or any waters within five hundred metres of such an installation and which would, if it had taken place in any part of the State, constitute an offence under any existing law in that part. In further sections, it also prohibits the discharge or escape of any oil into any part of the sea in a designated area from a pipeline, or as the result of any operations for the exploration of the seabed and subsoil, or the exploitation of their natural resources in a designated area. The Act also makes provisions for punishing the act of damaging cables and pipelines, classifying the 'designated area' for the purpose of customs duties, prosecution of offences and extension of the applicability of the Workmen's (*sic*) Compensation Act (which provides for compulsory insurance) to any employer carrying on operations in a 'designated area'.

5. — THE ARCHIPELAGIC STATE AND EXCLUSIVE ECONOMIC ZONE

UNCLOS 121(1) defines an island as 'a naturally formed area of land surrounded by water and which is above water at high tide'. It does not state whether the land mass should be either capable of sustaining human life or of economic importance. Although Trinidad is often described as a 'twin island' Republic, having two main islands, it also has over twenty others satisfying the above definition. On this basis it claims to constitute a political unit forming an archipelago according to the legal sense:

'a group of islands including parts of islands, inter-connecting waters and other natural features which are so closely inter-related that such islands, waters and other natural features form an intrinsic, geographic, economic and political entity'. [9]

There is no doubt that other nations in the Caribbean (e.g. St. Vincent and the adjacent Grenadines, Antigua, Barbuda and Rhedonda) could be similarly described, even though political fragmentation obviously militates against the archipelago as a whole being regarded as an archipelagic State.

The Archipelago Waters and Exclusive Economic Zone Act [8] was passed in the Senate in October 1986. It declares Trinidad to be an archipelagic State, and sets out to define both the new 'areas of marine space' appertaining to it in the Exclusive Economic Zone, archipelagic areas and internal waters, and the routine and extent of the jurisdiction to be exercised by it, in accordance with UNCLOS [9]. The archipelagic baselines (Fig. 3) comply with Article 47, particularly sections 1 and 2 which require the ratio of the area of water so enclosed to the area of land to be between 1 to 1 and 9 to 1 (the ratio is 1.4 to 1), and lay down maximum permitted baseline lengths as normally not in excess of

100 nm (the longest is 75.8 miles). Existing agreements and other treaties (such as that of 1942) with other States affecting areas falling within the archipelagic waters are not however affected, and ships of all States are allowed rights of innocent passage, although the President is empowered to suspend these temporarily in specific areas where such suspension may be considered essential for the protection of national security and the environment. It may be noted that the archipelagic State so defined is now such that the main islands of Trinidad and Tobago are separated only by archipelagic waters, over which the State has full sovereignty, in which it exercises civil, criminal and administrative jurisdiction, and in which it may, for example, designate shipping lanes and air routes.

The Exclusive Economic Zone (EEZ) is defined as extending to a distance of two hundred nautical miles from the archipelagic baselines, but where the distance to 'opposite or adjacent States is less than four hundred nautical miles, the boundary shall be determined by agreement ... on the basis of international laws' (Article 15). In fact, the geographical situation is such that Trinidad is unlikely to lay claim to distances exceeding 192 miles and such agreements are required with Venezuela, Grenada, Barbados and Guyana and St. Vincent.

Within the EEZ the State has sovereign rights over the exploration and exploitation, conservation and management of the living and non-living natural resources of the water superjacent to the sea-bed and of the sea-bed and its subsoil, and the production of energy from the water, currents and winds. It also has jurisdiction over the establishment and use of artificial islands, installations and structures, marine scientific research and the protection and preservation of the marine environment.

However, subject to any other law in force, every State enjoys the freedoms of navigation, overflight and the laying of submarine cables subject to Trinidadian conditions and jurisdiction.

No other State may engage in any of the following activities without permission:—

- (a) the exploration and exploitation, conservation and management of living and non-living natural resources;
- (b) the production of energy from water, currents and winds;
- (c) the establishment and use of artificial islands, installations and structures;
- (d) marine scientific research;
- (e) the protection and preservation of the marine environment; and
- (f) any other such activity.

Further, Presidential consent to conduct of any marine research project may be withheld where this:—

- (a) is of direct significance for the exploration and exploitation of living and non-living resources;
- (b) involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment;
- (c) involves the construction, operation or use of artificial islands, installations and structures;

- (d) contains information regarding the nature and objectives of the project which is inaccurate;
- (e) is made by a researching State or competent international organization which has outstanding obligations to Trinidad from a prior research project;
- (f) will result in activities that unjustifiably interfere with activities undertaken by Trinidad in accordance with its sovereign rights and jurisdiction.

6. — FISHING AGREEMENTS

Fishing conservation and management are to be exercised with the EEZ, it being acknowledged that these may require international agreement(s) with other interested States [8: Section 25]. The new Act [8] therefore provides for strict enforcement of any necessary legislation involving licensing, vessel ownership, equipment and allowable catches (Sections 26-31) and lists the heavy penalties including fines, imprisonment and confiscation to which any offenders would render themselves liable.

Following a period of at least two years in which a number of disputes occurred, one such fishing Agreement [10] with Venezuela (the closest neighbour and most obviously interested party) was in fact signed in November 1985, so as to replace an older, controversial and, therefore, arguably unsuccessful one which had lasted from 1977 to 1984. It may be noted that the Agreement concerns itself only with individual fishing boats 'flying the flag of, or which are registered in, Trinidad and Tobago or in Venezuela' and which are the property of the respective nationals — all others are therefore implicitly excluded. Four particular designated areas (Fig. 4) are defined, and rules for fishing operations therein are specified. Various permitted vessel sizes, crew numbers, engine powers, storage capacities, allowable catches, conservation arrangements, equipment types and fishing methods are detailed for each area separately and the use of mother ships is generally forbidden. Reciprocal benefits such as 50% purchase options and the exchange of research information are also spelt out. However, nothing in this new Agreement (Article XI):

'is to be considered as a diminution or limitation of the rights of either Contracting Party in relation to the limits of its internal waters, archipelagic waters, territorial sea, continental shelf or exclusive economic zone'.

Land and hydrographic surveying interests in this Agreement, however, are naturally concerned not with fishing technicalities but with the area definitions. In these, the positions of points are given on the 1927 North American Datum (N.A.D.) using the 1866 Clarke Ellipsoid, and the boundaries are described as 'straights lines' connecting them on Mercator charts.

In Article II, the area South of Trinidad and North of Venezuela (see Fig. 4):

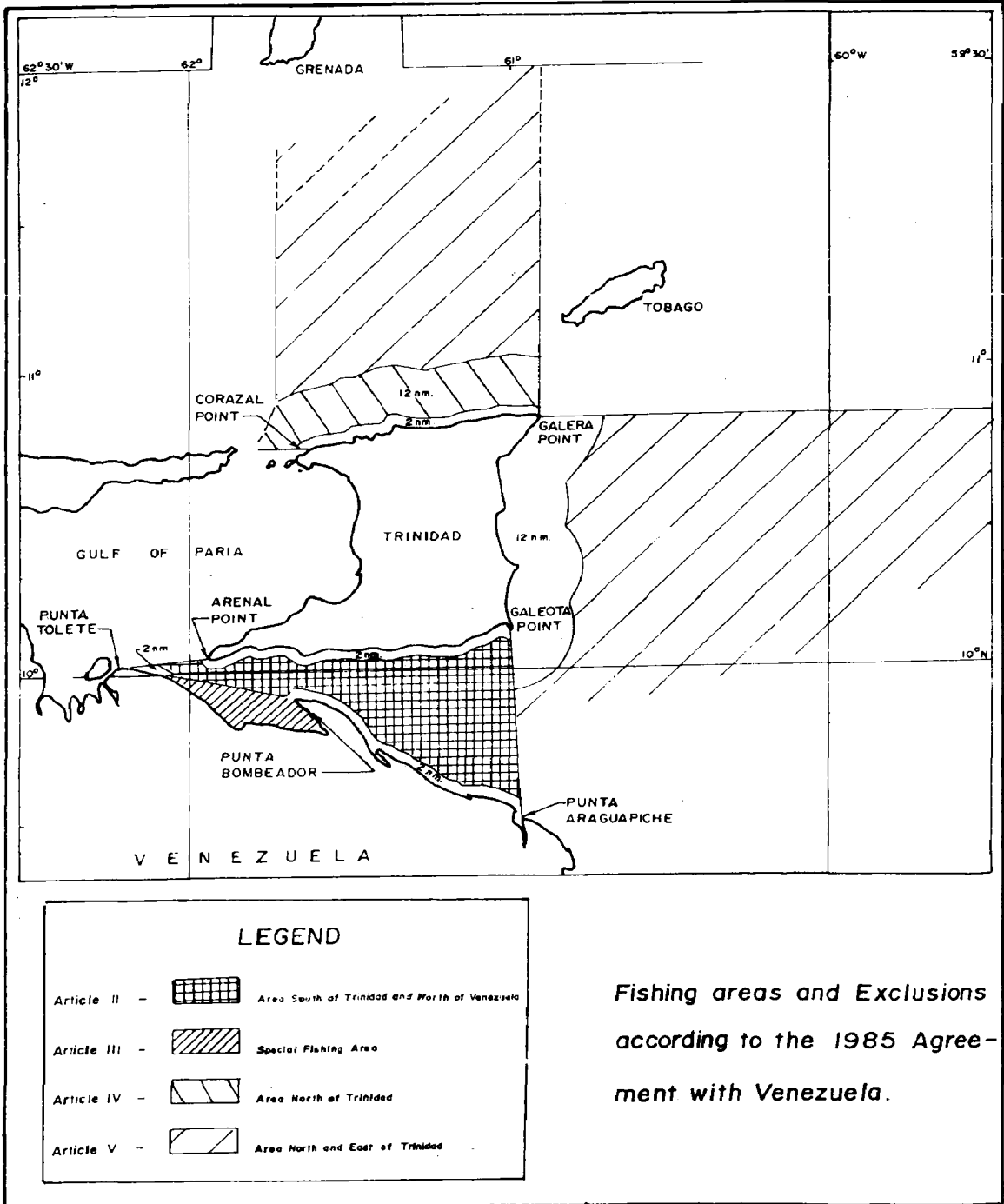


FIG. 4

'is the area encompassed between, on the one side, a straight line drawn from Punta del Arenal on the coast of Trinidad and whose approximate coordinates are Lat. $10^{\circ} 02' 47''$ N and Long. $61^{\circ} 55' 47''$ W to Punta Tolete on the coast of Venezuela and whose approximate coordinates are Lat. $10^{\circ} 01' 15''$ N and Long. $62^{\circ} 11' 52''$ W and, on the other side, a straight line drawn from Point Galeota on the coast of Trinidad and whose approximate coordinates are Lat. $10^{\circ} 08' 07''$ N and Long. $60^{\circ} 59' 27''$ W to Punta Araguapiche on the coast of Venezuela and whose approximate coordinates are Lat. $09^{\circ} 29' 30''$ N and Long. $60^{\circ} 56' 00''$ W.'

However, excluded from this is the 'Special Fishing Area' described in Article III as well as 'a zone two miles wide from the coast of either country'. (This phraseology gives rise to some doubt or ambiguity: presumably nautical miles are understood, as apparently was the case in the negotiations, but nowhere in the text or the Annex is this made clear.)

In Article III, the Special Fishing Area in Venezuelan internal waters is described as being that:

'between, on the one side, a straight line drawn from Punta Bombeadores whose approximate coordinates are Lat. $09^{\circ} 54' 22''$ N and Long. $61^{\circ} 40' 07''$ W up to Punta Tolete whose approximate coordinates are Lat. $10^{\circ} 01' 15''$ N and Long. $62^{\circ} 11' 52''$ W and, on the other side, the Venezuela coastline.'

The area North of Trinidad is defined in Article IV as that:

'included, on one side, in the West, by a line drawn by joining points whose respective coordinates are:

$10^{\circ} 44' 31''$ N	$61^{\circ} 47' 31''$ W
$10^{\circ} 45' 30''$ N	$61^{\circ} 47' 06''$ W
$10^{\circ} 47' 53''$ N	$61^{\circ} 46' 02''$ W and
$10^{\circ} 53' 42''$ N	$61^{\circ} 43' 53''$ W

and on the other side, in the East, the meridian of Point Galera on the coast of Trinidad whose approximate coordinates are $10^{\circ} 49' 56''$ N and $60^{\circ} 54' 41''$ W.

The Southern limit of the area North of Trinidad is the parallel of Corozal Point on the coast of Trinidad, and whose value is $10^{\circ} 44' 31''$ N, $61^{\circ} 36' 38''$ W.

Excluded from the area North of Trinidad is a zone two miles from the coast of Trinidad as well as the area beyond the twelve mile limit as measured from this coast'.

Use of the phrase 'the twelve mile limit' leads one to the assumption that, in fact, nautical miles are intended in this and other descriptions.

Finally, the area North and East of Trinidad is given in Article V:

'The area between, on the one side, the meridian line $61^{\circ} 43' 53''$ on the West, and on the other side the meridian of Point Galera

on the coast of Trinidad in the East and whose approximate coordinates are Lat. 10° 49' 56" N and Long. 60° 54' 41" W.

The area to the south of the parallel of Point Galera on the coast of Trinidad.

Excluded from the area North and East of Trinidad is an area twelve miles wide from the coast of Trinidad'.

It will be noted that Tobagonian waters and those of the Gulf of Paria are totally excluded from this Agreement, and that such exclusions are explicit and clear-cut. However, the open-endedness of the area in the direction of Grenada would seem a cause of potential concern and one calling for tripartite Agreement.

CONCLUSION

Following the innovatory but perhaps somewhat anomalous 1942 Treaty with Venezuela, Trinidad has continued to take legal initiatives, which are of course very much in its own interest, so as to codify its seaward territorial claims. Recent legislation in line with UNCLOS and a fishing Agreement with Venezuela have defined these to a very great extent.

In this paper, the author, who claims no legal expertise, has attempted to present the main features of the developments likely to be of interest to surveyors and to indicate that further EEZ and delimitation Agreements with neighbouring island States, Guyana and Venezuela, should be logical corollaries, and could be expected in the near future.

Acknowledgement

The author would like to thank Mrs. S. RAHMAN for her kind assistance in the drafting figures.

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- [8] Laws of Trinidad and Tobago. No. 24 of 1986. Archipelagic Waters and Exclusive Economic Zone Act.
- [9] UNCLOS (United Nations Convention on the Law of the Sea, 1982).
- [10] Fishing Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the Republic of Venezuela. Ministry of External Affairs, Port of Spain (18 pp. plus Annex).