AN ARCHIPELAGIC CLAIM FOR PAPUA NEW GUINEA

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An "archipelago" may be defined as a "sea with many islands" or as a "group of islands".[1] An archipelagic claim is a territorial boundary created by drawing straight lines around the outer islands, treating the waters enclosed by the lines as internal waters and measuring the territorial sea outwards from the baselines.

Most of these claims are relatively new, but the claimants argue that only after independence could they assert the claim which reflected their national interests. It was not in the interests of the colonial powers -- the Dutch, British, Spanish and Americans -- to assert such claims, as archipelagic claims would have been inconsistent with the colonizers' predominant power interests in the full freedom of the high seas.

For some time before World War II, jurists had contemplated archipelagic proposals, but they were matters of academic interest only. Norway and Finland were the only countries to advocate an archipelagic theory as an expression of national policy, and only in relation to coastal archipelagos as opposed to ocean archipelagos. In 1892 at a meeting of the Institut de Droit International, Norway raised the question of complicated coast lines and put forward the proposal of straight baselines. In 1920 in an agreement between Russia and Finland, straight baselines were drawn around an archipelago, thus designating as territorial, waters which otherwise would have been high seas. The first proposal that a group of islands be assimilated for the purpose of delimiting the territorial sea was made at the 33rd meeting of the International Law Association at Stockholm in 1924, but no conclusion was reached in respect to this proposal. The question was again raised in 1927 before the Institut de Droit International, and a resolution passed drawing a distinction between coastal archipelagos and mid-ocean archipelagos and making recommendations

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1 *The Concise Oxford Dictionary* (1964), p.59.

suggesting criteria for their determination and the legal consequences that would flow from such a determination. The question was also discussed by the preparatory committees established for the purpose of drawing up the basis of discussion for the Hague Codification Conference in 1930. The results however were so inconclusive that the proposal to draft a definite text on the subject was abandoned. A draft article was again abandoned by the International Law Commission in its deliberations before the 1958 Conference.

Anglo-Norwegian Fisheries Case

The first major stepping stone in the development of archipelagic claims came in 1951 with the judgment in the *Anglo-Norwegian Fisheries Case*.[2] While some archipelagic claims were in existence prior to the *Fisheries Case*, most later claims have been greatly influenced by the decision of the International Court of Justice in this case. For this reason the case will be examined in some detail.

Fisheries disputes between England and Norway had taken place as far back as the seventeenth century, but British fishermen had refrained from fishing in Norwegian coastal waters from 1616-1618 until 1906. In 1906 a few British fishing vessels appeared off the Norwegian coasts, and from 1908 onwards they returned in greater numbers. In 1911 a British trawler was seized and condemned for infringing Norwegian fishing limits. Further incidents occurred and negotiations between the two governments were unsuccessful. In 1935 the Norwegian government by Royal Decree delimited the area of its coast reserved for the exclusive fishing of its nationals. The limit of this area was defined by a line drawn four miles seaward of straight baselines linking some 48 base points on the extremities of islands and headlands of the coast. The longest baseline was 44 miles, 23 baselines were longer than 10 miles and the remainder were less than 10 miles. After many arrests and further unsuccessful discussions between the two governments, Britain placed the dispute before the International Court of Justice.

By ten votes to two the Court declared "that the method employed for the delimitation of the fisheries zone by the Royal Norwegian Decree of July 12, 1935 is not contrary to international law". By eight votes to four the Court further

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2 (1951) *I.C.J. Rep.* 116.

held that the precise baselines fixed by the decree in applying this baseline system were not incompatible with international law. As to when straight baselines may be used, the Court said:

> "Where a coast is deeply indented and cut into as is that of Eastern Finmark or where it is bordered by an archipelago such as the "skjaergaard" along the western sector of the coast here in question the baseline becomes independent of the low water mark and can only be determined by means of a geometric construction. In such circumstances the line of the low water mark can no longer be put forward as a rule requiring the coastline to be followed in all its sinuosities. Nor can one characterize as exceptions to the rule the very many derogations which could be necessitated by such a rugged coast: the rule would disappear under the exceptions. Such a coast viewed as a whole calls for the application of a different method; that is the method of baselines which within reasonable limits may depart from the physical line of the coast."[3]

The majority judgment placed restrictions on the use of straight baselines:

> ". . . while a State must be allowed the latitude necessary in order to be able to adapt its delimitation to practical needs and local requirements the drawing of baselines must not depart to any appreciable extent from the general direction of the coast."[4]

and

> "The real question raised in the choice of baselines is in effect whether certain areas lying within these lines are sufficiently closely linked to the land domain to be subject to the regime of internal waters."[5]

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3 (1951) *I.C.J. Rep.* 116 at pp. 128-9.

4 (1951) *I.C.J. Rep.* 116 at p. 133.

5 *Ibid.*

The final consideration relevant to drawing straight baselines was "historic":

> "Finally there is one consideration not to be overlooked, the scope of which extends beyond purely geographical factors: that of certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by long usage."[6]

The Court also stated:

> "The delimitation of sea areas has always an international aspect . . . although it is true that the act of delimitation is necessarily a unilateral act because only the coastal state is competent to undertake it, the validity of the delimitation with regard to other states depends upon international law."[7]

As one of the basic considerations in determining the validity of the delimitation by straight baselines the Court stressed the close dependence of the territorial waters upon the land domain. It was the land which in the view of the Court conferred upon the coastal state a right to waters off its coast. Consequently

> "a state must be allowed the latitude necessary in order to be able to adapt its delimitation to practical needs and local requirements."[8]

The Court refused to accept the contention by Britain that there existed a rule delimiting the length of baselines to ten miles. Even if some states in their domestic legislation or treaties had adopted a ten mile rule, the Court said the rule "has not acquired the authority of a general rule of international law."[9]

This is the most important holding in the *Fisheries Case*. It applies not only to bays but also between the islands of a coastal archipelago or the mainland and such

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6 *Ibid.*

7 *Id.* at 132

8 *Id.* at 133

9 *Id.* at 131

islands. The Court held that suggestions limiting the length of baselines between the islands of an archipelago to six, ten or twelve miles had not got "beyond the stage of proposals". There will, in every case, be a choice of several base points from which to draw the lines: "the coastal state would seem to be in the best position to appraise the local conditions dictating the selection".[10]

The test that emerges from the judgment has been succintly described: "the islands comprising an archipelago must be linked either as an intrinsic geographical or geomorphological entity and/or as an intrinsic economic unit."[11]

The judgment in the *Fisheries Case* has given rise to a considerable number of comments and criticisms. For example, Colombos has said:

> ". . . no exaggerated importance should be given to the Court's findings. It cannot be held that it created a precedent since it dealt with a unique geographical configuration of a coast which as the court repeatedly said was exceptional."[12]

It cannot be refuted that the Norwegian coast is a "unique geographical configuration" having an estimated 120,000 islands within a 600 mile stretch and into which Norwegian fjords cut deeply. However Evensen has concluded, ". the principles laid down in the decision may be of the greatest importance".[13] Whatever view one has of the Court's decision, it is difficult to disregard the effect it has had on the development of archipelagic claims.

1958 Conference on Law of the Sea

After the Fisheries Case the next major development was

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10 *Ibid.*

11 D. McLoughlin, "The Approach by Fiji - a mid Ocean Archipelago - to the Conference on the Law of the Sea", 1 *Melanesian Law Journal* 37 (1972) p. 41.

12 Colombos, C.J., and Higgins, A.P., *The International Law of the Sea* (1943) p. 108.

13 Evensen, "The Anglo-Norwegian Fisheries Case and its Legal Consequences" 46 *A.J.I.L.* 629 (1952).

at the 1958 Law of the Sea Conference at Geneva. Eighty six states were represented at the Conference and four Conventions were adopted. Article Four of the Convention on the Territorial Sea and Contiguous Zone is important:

> 1. In localities where the coast line is deeply indented and cut into or if there is a fringe of islands along the coast in its immediate vicinity the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.
>
> 2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.
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> 3. Baselines shall not be drawn to and from low-tide elevations unless lighthouses or similar installations which are permanently above sea level have been built on them.
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> 4. Where the method of straight baselines is applicable under the provisions of paragraph 1 account may be taken in determining particular baselines of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.
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> 5. The system of straight baselines may not be applied by a state in such a manner as to cut off from the high seas the territorial sea of another state.
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> 6. The coastal state must clearly indicate straight baselines on charts to which due publicity must be given.

It is immediately apparent that many of the provisions of Article Four draw heavily on the language of the majority judgment in the *Fisheries Case*.

Paragraph 1 states the general geographic criteria that may justify the use of straight baselines -- a coast that is deeply indented and cut into or one that has a fringe of

islands in the vicinity. There is no mention of how many islands or indentations there ought to be for the paragraph to apply. The phrase "deeply indented and cut into", imported from the *Fisheries Case*, could suggest on its own that as few as one or two penetrations of the coastline would be sufficient.

What constitutes a fringe of islands is similarly incapable of precise explanation. The majority judgment in the *Fisheries Case* illustrated this by reference to the *skjaergaard*, estimated to consist of some 120,000 islands of varying sizes. Too strict a comparison with this area would exclude most other island fringes in the world from the scope of Article Four. Edeson says, in this respect, that greater assistance can be had from other statements in the *Fisheries Case*, for example:

> "The coast of the mainland does not constitute, as it does in practically all other countries a clear dividing line between land and sea. What matters, what really constitutes the Norwegian coastline is the outer line of the *skjaergaard*."[14]

Thus, Edeson would permit straight baselines wherever coastal islands "are sufficiently numerous or concentrated . . . to constitute a fringe."[14a]

Article Four limits the use of straight baselines only to localities that possess the required geographical characteristics. A state cannot adopt straight baselines for the whole of its coastline merely because one part thereof satisfies the operative criteria.[15]

Paragraph 4 of Article Four permits a coastal state to take into account economic factors when drawing particular straight baselines, but, as Edeson says, "It is worth stressing that economic considerations per se cannot justify

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14 Edeson, "Australian Bays", 1968/69 *Australian Yearbook of International Law*, p. 48.

14a *Ibid.*

15 Thus straight baselines have been drawn along Scotland's western coast while on the east the low waters mark is generally the baseline.

the use of straight baselines."[16] Dean also states:

> "But the article as adopted makes clear that economic interests evidenced by long usage can be used only in determining particular baselines once on geographic considerations the method of straight baselines is allowed."[17]

As a result of the use of straight baselines, areas of water previously part of the territorial sea or the high seas may be enclosed between the coast and the baseline. The Court in the *Fisheries Case* stated that these waters were to be considered "internal waters", as much subject to the sovereignty of the coastal state as are internal lakes. The Conference followed the Court in characterizing these waters as internal, but provided in Article 5(2) of the Convention on the Territorial Sea and Contiguous Zone that a right of innocent passage identical to that through a territorial sea exists through such newly created internal waters.

One major defect of the Convention is that no maximum length of baselines has been prescribed nor is any "distance from the coast" criterion laid down. At the 1958 Conference an article drafted by a preparatory committee provided for a maximum length of 15 miles (subject to certain qualifications) but this was not accepted by the plenary committee. Nor was there any attempt made at the 1958 Conference to define a baseline procedure for outlying or mid-ocean archipelagos. Suggestions have been made for maximum lines of 10 to 15 miles in length, but the question is still to be resolved.

State Practice Concerning Coastal Archipelagos

Some states are very much against using straight baselines to join islands of archipelagos and prefer each island to have its own territorial sea. For example the United Kingdom and the United States have taken this attitude in the past. Perhaps Australia could also be included in this group, for during the *Fisheries Case* the United Kingdom gained the consent of Australia to assert, that as to the Barrier Reef, a coastal archipelago off Queensland,

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16 Edeson *op. cit.* p.49.

17 Dean, "The Geneva Conference on Law of the Sea, What was Accomplished" 52 *A.J.I.L.* 618 (1958).

> "Queensland has no legislative authority over the sea beyond the distance of three miles from low water mark of the mainland and the islands respectively."[18]

Thus waters between the reefs and the mainland outside the three mile limit were considered high seas.

Other states however have exhibited attitudes similar to that of Norway. The following is a resume of the more well-known claims over coastal archipelagos.

Iceland: Forty-seven consecutive baselines are drawn around the coasts of Iceland enclosing the waters of its coastal archipelagos within these lines.[19] There is no stipulated maximum length for these baselines, and they vary in length according to particular geographic features. The longest baselines are 66 and 41 nautical miles and fifteen more lines measure 20 miles or more. The waters inside the baselines, including the waters inside or between the islands and islets of coastal archipelagos, are considered internal waters.

Denmark: By various Danish regulations and decrees, the waters between and inside the Danish coastal archipelagos are considered Danish internal waters. Denmark seems to apply straight baselines, and a ten mile maximum for baselines is provided in certain of the enactments. The three main passages to the Baltic formed in part or in whole by the Danish archipelagos are considered international straights and are thus open to navigation, though these waters are situated between and inside the Danish archipelagos.

Sweden: Sweden applies the straight baseline system for the delimitation of its territorial waters, enclosing within the baselines the waters between islands of a coastal archipelago and between the islands and the mainland. No maximum length has been fixed for these baselines and various lines exceed ten miles. The waters inside the baselines are considered internal waters.

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18 *I.C.J., Pleadings, Fisheries Case*, Vol. II page 523.

19 *Fisheries Regulations* 19th March 1952.

Finland: Finland also applies a straight baseline system enclosing the waters of its numerous islands and coastal archipelagos. An Act of 18th August 1956 provides that the maximum length for baselines is "twice the breadth of the marginal (i.e. territorial) seas" and that archipelagos situated too far out at sea to be included in the outer coastline are to have their own territorial waters. Such outlying archipelagos are considered as a whole and baselines whose length can equal twice the breadth of the territorial sea are drawn around each archipelago. The waters enclosed by the baselines are considered internal waters.

Yugoslavia: Yugoslavia has included archipelagos situated almost all along its coast within its outer coastline by drawing straight baselines. There is no expressed maximum as to the length of baselines. The waters between the islands of a Yugoslav coastal archipelago and between the islands and the mainland are considered internal waters.

Saudi Arabia and Egypt: Both draw straight baselines to enclose coastal archipelagos with the main coastline. The maximum length of the baselines is twelve miles, and the waters inside are internal waters.

Cuba: The Cuban Cays, a string of islands, islets and reefs extending out into the ocean along the Cuban mainland are likewise by established practice regarded as Cuba's outer coastline and the waters between the islands, islets or cays and the mainland of Cuba are internal waters.

State Practice Concerning Mid-Ocean Archipelagos

Of even more importance to Papua New Guinea are practices for determining the territorial limits of mid-ocean archipelagos. The more well-known are summarised below.

The Faeroes: This archipelago, consisting of eighteen inhabited islands and numerous islets, skerries and rocks, is situated north of the British Isles. The Faeroes are treated as a unit, and the outer limit of territorial waters is drawn by means of a mixed system of arcs and straight baselines.

The Svalbard Archipelago: Norway has sovereignty over this archipelago, which consists of numerous islands, islets and rocks. Its coastline is heavily indented by fjords, bays and sounds. Norway considers the archipelago as a unit and applies a straight baseline system around the archipelago.

The Galapagos: This archipelago is situated in the Pacific some 600 miles west of the mainland of Ecuador, and consists of fifteen larger islands and a series of smaller islands and islets. Ecuador considers the archipelago as a unit and delimits its territorial waters by drawing straight baselines between "the most salient points of the outermost islands forming the contour of the archipelago of Galapagos".[20] The lengths of the baselines drawn around the archipelago range from 32 miles to 147 miles. Whether the waters lying inside the baselines are considered internal waters is not clear.

The Philippines: This archipelago situated in the Pacific comprises a group of some 7,100 islands scattered over a large expanse of water. The Philippine Government stated:

> "All waters around, between and connecting different islands belonging to the Philippine Archipelago, irrespective of their width or dimension, are necessary appurtenances of its land territory, forming an integral part of the national or inland waters, subject to the exclusive sovereignty of the Philippines."[21]

In 1961 the Philippines legislated to enclose its archipelago by drawing straight baselines joining the outer islands. The baselines in a number of instances are well over 15 miles in length. The waters enclosed are claimed as internal waters.

Indonesia: Like the Philippines, Indonesia in 1957 proclaimed the waters within a baseline linking the outermost islands to be inland waters and authorised the Indonesian Navy to designate which straits might be used for transit. There have been numerous protests from other nations, including Australia, the United Kingdom, the United States, Japan and Netherlands, to this claim and to the claim of the Philippines.

O'Connell states:

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20 Presidential Decree concerning Fisheries of 22nd February 1951, Article 2, Paragraph 2.

21 Note Verbale dated 20th January 1956, 1956 *Yearbook of the International Law Commission*, Volume II, p.70.

> "Hitherto no straits have been designated for transit. Current practice respecting this and a similar Philippines claim is for passage of warships to be notified by some countries in advance for information only and at low level."[22]

He further says, "Indonesia is geographically, but not legally an archipelago."[23] It would seem that both archipelagic states, though firmly maintaining their legal claims, are prepared in practice to allow foreign vessels the right of innocent passage as though the inter-island waters were territorial sea.

Fiji: The newly independent nation of Fiji consists of approximately 844 islands and islets situated in the south-west Pacific. Fiji has drawn a baseline in the form of a polygon around the outer extremity at low water mark of all of the islands or dying reefs of the Fiji Group between which "an intrinsic relationship is reasonably deemed to exist."[24] With the exception of some very remote islands, this includes most of Fiji. Waters enclosed by the archipelagic baselines are considered territorial waters subject to the right of innocent passage. It is Fiji's contention that the rules applied by the International Court of Justice in the *Fisheries Case* for drawing straight baselines around coastal archipelagos are of equal application to oceanic archipelagos. On this McLoughlin says:

> "The condition that a baseline must not depart to any appreciable extent from the general direction of the coast is of equal application to mid-ocean archipelagos if it is recognised that this is in itself merely a method of expressing the requirement for an intrinsic relationship between a line of natural features and the land to which those features form a barrier. The essence of a mid-ocean archipelago is that an intrinsic relationship exists between the natural features comprising the archipelago so that the situation is analogous to that of a complex coast of a continental country. A group of islands cannot be considered as an archipelago without a

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22 O'Connell, D.P., *International Law*, (1965) p.483.

23 *Id.* p. 482.

24 McLoughlin *Op. cit.* p. 43.

centripetal emphasis giving coherence to the group as a whole and expressing itself as an outer periphery which is the equivalent of the general direction of the coast as applied to coastal archipelagos."[25]

The Arguments behind the Archipelago Claims

Bailey has noted that, "In geopolitical terms the basis of the claims [of different archipelagic states] have much in common."[26] The claimants have made political, economic and national security arguments. First, they have argued that the political unity of their countries is based on the unity between land and sea.

Second, they have argued in economic terms that the sea between their islands has always been a source of livelihood for many of their inhabitants, and will be more important in future. Increasing knowledge of seabed resources and exploitation has increased the value of the sea for future economic development. Moreover, the seas between the islands serve as arteries of economic life and communications.

Third, in national defence and security terms, the claimants argue that they cannot stay idle and watch submarines and other warships of foreign powers moving freely between their islands only a short distance from their coasts.

Finally, all claimants have expressed a fear of pollution caused by accidents involving oil tankers or nuclear-powered vessels.

An Archipelagic Claim by PNG

Although any archipelagic claim by Papua New Guinea will result from a political decision, it will no doubt be based on international law principles. As will be obvious from the preceding, present international law on the subject of archipelagos is by no means precise and definite. However, it will also be apparent from the preceding that the first requirement to bring such a claim is geographical. The

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25 *Id.* p. 42.

26 J.S. Bailey of Dept. of Foreign Affairs, Canberra, in an address to the RAAF Legal Conference in Canberra in July 1972 titled "The Archipelago Claims and Defence Law."

state must actually have a coastal or mid-ocean archipelago. Although Papua New Guinea does not have a coastline as complex as Norway, there are certain areas where coastal islands could be the subject of archipelagic claims -- for example, the islands in the Gulf of Papua, particularly those in the mouth of the Fly River, the D'Entrecasteaux Islands, the Trobriand Islands, the Louisiade Archipelago and the Bismarck Archipelago. A claim by Papua New Guinea would probably embrace the two types of archipelagos -- that is, coastal, such as the islands off the Papuan Peninsula, and mid-ocean, such as the Admiralty Islands.

In addition to proving that the islands of the archipelago are a geographical entity, Papua New Guinea should also demonstrate that the islands are an economic unit, if it is to bring its claim completely within the test laid down in the *Fisheries Case* and reiterated in Article Four of the Convention on the Territorial Sea and the Contiguous Zone.

It is not possible accurately to forecast the extent of an archipelagic claim by Papua New Guinea, but I would expect any such claim to be substantial. In determining the size of its claim, Papua New Guinea should take into account the practices of other states, the likelihood of recognition by other states, and its own ability to police and protect its boundaries. There is no fixed maximum length for baselines at international law. The practice of other states indicates a wide variance, with the maximum length ranging from several miles to almost one hundred and fifty miles. However, there is no result to be gained from making an exaggerated claim that will not be accepted and recognised by other states, particularly those states having close relations and dealings with Papua New Guinea. One cannot say that Australia is in favour of an archipelagic claim by Papua New Guinea, but it would appear that Australia at least will not oppose such a claim, as demonstrated by the following statement, made by a representative of the Australian Foreign Affairs Department in July 1972:

> "At present we are taking a three-pronged stance towards the archipelago theory. First of absolute transit across the high seas which we have asserted in our early protests at the United Nations and in the Sea Bed Committee. Secondly that of acquiescing in the practical sense in our neighbours' claims in our day to day intercourse with them, and thirdly as a responsible trust power realising that it is in the

interest of Papua New Guineans to make some sort of archipelagic claim upon independence."[27]

Australian defence policies have caused her always to keep a watchful eye on Papua New Guinea, and this defence interest will no doubt continue after Papua New Guinea's independence. An archipelagic claim might cause defence problems for Australia, for example in restricting passage of its warships and overflight of its aircraft. If Papua New Guinea wishes to retain an Australian alliance, these possible problems must be kept in mind.

Often the success of archipelagic claims at international law depend on a state's power, as evidenced by the recent "cod war" between Britain and Iceland over Iceland's extension of its exclusive fishing limit to 50 miles. Professor O'Connell has stated: "I would agree that delimitation of the maritime boundaries of states at the present time certainly takes on the aspect of a trial of strength."[28] If an archipelagic claim is brought, the maritime area that Papua New Guinea must control will be greatly increased. Effective control will require patrolling by naval vessels and aircraft to ensure that other states are respecting Papua New Guinea's rights to its domain. At the moment, Papua New Guinea relies heavily on the Royal Australian Navy and to a lesser extent on the Royal Australian Air Force to patrol Papua New Guinea waters. This system has not succeeded in preventing Taiwanese and Japanese boats from fishing in Papua New Guinean waters. Will Papua New Guinea be able adequately to police its archipelagic claims in the years ahead?

When making its archipelagic claim, Papua New Guinea must determine the status of the waters between islands and between islands and the mainland. The majority of states with archipelagos have declared that the enclosed sea area is internal water. This is supported by the *Fisheries Case* and the Convention on the Territorial Sea and the Contiguous Zone. There is generally no right of innocent passage through internal waters, as there is through territorial

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27 *Ibid.*

28 D.P. O'Connell's discussion on Sir P.C. Spender's "The Great Barrier Reef: Legal Aspects" in *The Future of the Great Barrier Reef*, Australian Conservation Foundation special publication No. 3, p. 41.

waters, nor is there a right to fly over such waters. The 1958 Convention on the Territorial Sea and the Contiguous Zone has partly remedied this by providing in Article 5(2) that where straight baselines enclose areas which previously had been considered part of the territorial sea or high seas, a right of innocent passage continues to exist. This article, however, applies only to coastal archipelagos. Fiji, a mid-ocean archipelago, has taken the view that the waters enclosed by archipelagic baselines become territorial waters, therefore subject to the right of innocent passage. The reason for Fiji's approach has been stated as follows:

> "It is Fiji's concern to see the interests of archipelagic states are accommodated without disproportionally affecting the interests of other states or the world at large . . . Account must be taken of the need to keep open shipping channels, the closure of which by an archipelagic state may have serious economic consequences on other states. Fiji considers that this can be achieved by acceptance of the principle that the waters so enclosed are to be regarded as territorial waters subject to the right of innocent passage."[29]

Should Papua New Guinea successfully press an archipelagic claim, neighbouring states will probably follow suit, perhaps to the detriment of Papua New Guinea. A claim by the Solomon Islands could cause problems in the Bougainville District, especially since the argument that there is a close geographical affinity between the Bougainville District and the Solomon Islands will add fire to the Bougainville secessionist movement. While there seems little reason at present for Australia to pursue archipelagic boundaries, islands and reefs off the Queensland coast and in the Torres Strait lend themselves to such a claim. Australian claims in the Torres Strait will inevitably conflict with Papua New Guinean claims over the area.

Conclusion

Archipelagic claims have developed from academic pipe dreams into real principles supported by international law, but international law on the subject is still fluid and

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29 McLoughlin *op. cit.* p. 43.

undecided. State practice, the Convention on the Territorial Sea and the Contiguous Zone and the judgment in the *Fisheries Case* give some assistance in determining what norms will gain acceptance.

Certain areas in Papua New Guinea meet the tests laid down by international law for bringing archipelagic claims, and it can be expected that Papua New Guinea will make some sort of archipelagic claim in respect to these areas shortly after independence. However, adoption of an archipelagic regime must be preceded by careful assessment of the material and political advantages, the possible disadvantages in upsetting defence allies and commercial interests, and the cost and practicability of policing the archipelagic waters.