

DEVELOPMENT AND SIGNIFICANCE OF THE 200-MILE EXCLUSIVE ECONOMIC ZONE

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Historical Background

Aside from the exploration and exploitation of the valuable manganese nodules on the continental shelf and the seabed, one of the most monumental and far-reaching developments that emerged during the Third United Nations Conference on the Law of the Sea is the recognition of a 200-mile exclusive economic zone for each coastal state. The concept of an economic zone of exclusive coastal States-jurisdiction was not unknown in modern international law. What is new is the terminology employed to describe the concept. Even before this conference, several States had, in fact, declared their own exclusive economic zones in varying distances and forms. Among the states that have recently declared an economic zone of 200 miles is the Philippines. Presidential Decree No. 1599 dated June 11, 1979 established an exclusive economic zone to a distance of 200 nautical miles beyond and from the baselines from which the territorial sea is measured.

The idea of expanding jurisdiction over a maritime zone started with the Truman Proclamation of 28 September 1945. The Proclamation laid claim to all natural resources of the continental shelf of the United States. The United States, thus, asserted an establishment of a conservation zone on those areas of the high seas contiguous to the coast of the United States wherein fishing activities before or in the future may be developed and maintained on a substantial scale.¹

The Truman Proclamation clearly indicated a plan of exploiting marine resources in indeterminate areas which is a deviation of the traditional concept of *mare-liberum* developed during the 16th and 17th centuries. Under its Petroleum Act of 1945, Bahamas declared that any foreign company that wished to exploit its oil

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The views expressed in this article are those of the writer and not necessarily of the Government of the Republic of the Philippines.

¹ Pres. Decree No. 2668, 28 September 1945; See 2 CFR, 1943-1948.

deposits must obtain a licence and sign a lease contract. While it was still Commonwealth, the Philippines considered as part of its maritime and territorial waters for purposes of protection of its fishing rights, conservation of its fishery resources, enforcement of its revenue and anti-smuggling laws, and defense and security, all water areas embraced within the lines described in the Treaty of Paris of 10 December 1898, the treaty concluded at Washington D.C., between the United States and Spain on 7 November 1900, the agreement between the United States and the United Kingdom of 2 January 1930 and the convention of 6 July 1932 between the United States and Great Britain.²

The Great "Sea Rush"

There is no doubt that most States have turned towards the sea around them for their economic resources. With not much land left to be developed, the States with their increasing population have turned to the sea for food and energy. The United States realized during the last world war that it was too dependent on imported petroleum for its growing industrial economy.

The significant thrust of the Truman Proclamation declares that "the Government of the United States regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control." There was, therefore, an implied recognition that there was something of greater value than fish and that there was nothing in international law that prevented a coastal state from claiming it. The United States, in effect, claims all resources of a sea area of over 700,000 square miles.

Many other States followed suit but laid claims much more than what was asserted by the United States. While the Truman Proclamation merely introduced the concept of conservation zones, several other states have later claimed the sea area around them for potential wealth. The States that could not exploit them due to lack of technological resources needed a law to protect them against abuses of exploitation by other States.

There was, therefore, a great "sea rush" among the States. In October, 1945, Mexico claimed its continental shelf as part of the national territory. In 1946 Argentina went further by claiming not only the continental shelf and its resources, but also its epicontinental or superjacent waters. In 1947 Chile and Peru extended not only their jurisdiction but also their sovereignty over an ad-

² See Com. Act No. 4003 (1932).

jacent maritime zone of 200 miles, for purposes of preserving and exploiting the patrimonial resources. This claim did not only limit itself to protection and conservation of living resources. It also asserted jurisdiction over all living and non-living resources.³

The Santiago, Santo Domingo and Yaounde Declarations

In 1954 Chile, Peru and Ecuador proclaimed, what is known as the "Santiago Declaration", asserting sovereignty and jurisdiction of an area within 200 miles from their sea coasts. During the 1958 United Nations Conference on the Law of the Sea, the delegates, however, were not quite ready to accept the 200-mile exclusive economic zone. As the years passed, more and more states have claimed some form of an extended maritime jurisdiction. As a result, the traditional area of the high seas was reduced by about 1/3 in area.

The Committee on the Law of the Sea of the 58th Conference of the International Law Association in Manila in 1979, reported in its study that over seventy States have already claimed form of an exclusive economic zone. The doctrine of the exclusive economic zone jurisdiction found its most articulate and definitive expression for the first time in the declaration of Santo Domingo. This Declaration was approved by the meeting of ministers of the Specialized Conference of the Caribbean countries on June 7, 1972.⁴ The African States adopted it during their conference at Yaounde when the zone was formally called exclusive economic zone.⁵

Various Forms of Economic Zones

Within the framework of the 200-mile zone, there are at least five categories or forms. The first form is represented by Peru and Brazil, both of which assumed actually a 200-mile territorial sea.⁶

The second group is represented by Uruguay which declared a modified form of territorial sea. There is a freedom of navigation over flight, and the laying of sub-marine cables and pipe lines is guaranteed to other States.⁷

³ Presidential Declaration (Chile) concerning continental shelf, June 23, 1947, United Nations Legislative Series, U.N. Doc. ST/LEG/Sec. B/1 (1951). Peru adopted the 200-mile policy shortly after Chile. See Presidential Decree No. 281, August 1, 1947. U.N. Doc. ST/LEG/Sec. B/1.

⁴ 27 U.N. GAOR, Supp. 21, 70 U.N. Doc. A/8721 (1972). The term used was "Patrimonial Sea".

⁵ African States Regional Seminar on the Law of the Sea held in Yaounde, General Report, 27 Rep. 73 (1972). See also Kenya, Draft article on the exclusive economic zone concept, 27 Rep. 180 (1972); Organization of African Unity, Adisababa declaration, 28 Rep. 4 (1973).

⁶ Pres. Decree No. 1098, March, 1970.

⁷ See Decree of Uruguay, 12 December, 1969.

At the other extreme is the third form, which is the resource zone concept asserted by the United States calling for a maximum territorial sea breadth of 12 miles and 200 mile zone. It includes the living and non-living resources of said area. Scientific research for each state is permitted in the waters of the area. Under this resources concept, there is utilization of living resources. The portion of living resources not harvested by the fishing fleets of the coastal states which are less than the maximum sustainable yield will be made available to foreign fishermen.⁸

A fourth type, advocated by Canada, is the expanded economic zone wherein the coastal states have sovereign rights not only to the other living and non-living resources in the 12 to 200-mile area but also over foreign scientific research and pollution control measures.⁹

The fifth type is the regional economic zone. The living and the non-living resources of economic zone beyond the territorial area limitation may be shared by the coastal state with the landlocked state or geographically disadvantaged States within the region. Jamaica, for one, favors the sharing of living resources of the regional waters by all littoral geographically disadvantaged states. Kenya, on the other hand, recognizes the need for neighboring landlocked countries to share on an equal basis in the exploitation of the living resources of the economic zone.

As of 1979, more than 70 nations already asserted some type of a 200-mile jurisdiction while about 36 states have claimed exclusive economic zones, although the regime within these zones is not uniform and precise.¹⁰

The Exclusive Economic Zone of the Philippines

About forty states which include the Philippines claim the 200-mile zone as exclusive economic zone.¹¹ The Philippines has

⁸ On March 1, 1977 the United States extended its fisheries jurisdiction to 200 miles. Fishery conservation and Management Act of 1976, Pub. Law No. 94-265, 15 ILM 634.

⁹ See Order of Fishing Zones of Canada, January 1, 1977 under the Territorial Sea and Fishing Zones. Opposing the 200-mile concept during the past session of the Third United Nations Conference were Belgium, Bhutan, Italy and Japan.

¹⁰ Among the States that claim the economic zone as territorial sea are Argentina, Benin, Brazil, Congo, Ecuador, El Salvador, Ghana, Guinea, Liberia, Panama, Peru, Sierra Leone, Somalia, and Uruguay.

¹¹ Cape Verde, Comoro Islands, Costa Rica, Cuba, Dem — Kampuchea, Dominican Republic, Fiji Islands, France, Fr. Pac. Isla, Terr., Guatemala, Guyana, Haiti, India, Ivory Coast, Dem. Rep. of Korea, Malagasy Republic, Maldives Islands, Mauritius, Mexico, Mozambique, New Zealand, Norway, Pakistan, Papua New Guinea, Philippines, Portugal, Senegal, Seychelles Islands, Spain, Sri Lanka, Surinam, Togo, Tokelau, Vietnam, Western Samoa, and Yemen (Aden).

adopted the form of the exclusive economic zone as drafted in the Informal Composite Negotiating Text. Pertinent provisions of Presidential Decree No. 1599 read:

SEC. 2. Without prejudice to the rights of the Republic of the Philippines over its territorial sea and continental shelf, it shall have and exercise in the exclusive economic zone established herein the following:

- a. Sovereign rights for the purpose of exploration and exploitation, conservation and management of the natural resources, whether living or non-living, both renewable and non-renewable, of the sea-bed, including the subsoil and the superjacent waters, and with regard to other activities for the economic exploitation and exploration of the resources of the zone, such as the production of energy from the water, currents and winds;
- b. Exclusive rights and jurisdiction with respect to the establishment and utilization of artificial islands, off-shore terminals, installations and structures, the preservation of the marine environment, including the prevention and control of pollution, and scientific research;
- c. Such other rights as are recognized by international law or state practice.

SEC. 3. Except in accordance with the terms of any agreement entered into with the Republic of the Philippines or of any license granted by it or under authority by the Republic of the Philippines, no person shall, in relation to the exclusive economic zone:

- a. explore or exploit any resources;
- b. carry out any search, excavation or drilling operations;
- c. conduct any research;
- d. construct, maintain or operate any artificial island, off-shore terminal, installation or other structure or device; or
- e. perform any act or engage in any activity which is contrary to, or in derogation of, the sovereign rights and jurisdiction here provided.

Nothing herein shall be deemed a prohibition on a citizen of the Philippines, whether natural or juridical, against the performance of any of the foregoing acts, if allowed under existing laws.

SEC. 4. Other states shall enjoy in the exclusive economic zone freedom with respect to navigation and overflight, the laying of submarine cable and pipelines, and other internationally lawful uses of the sea relating to navigation and communications.

On the other hand, about 30 states declared the area as a fishing zone.¹²

¹² Angola, Australia, Bahamas, Bermuda, Canada, Cayman Islands, Denmark, Rep. German Dem., Germany, Fed. Rep., Gilbert Islands, Iceland, Ireland, Japan, Korea, Rep. of Micronesia, Netherlands, Nicaragua, Northern Marianas, Oman, Poland, Solomon Islands, South Africa, Sweden, Tuvalu, U.S.S.R., Ukrainian, United Kingdom, U.S.A., Belgium and Italy.

At least, the Informal Composite Negotiating Text specifies the legal regime of the economic zone as an area beyond and adjacent to the territorial sea, subject to the specific legal region provided for in the convention to be approved.¹³ The ICNT further provides that in the exclusive economic zone, all states enjoy the freedom of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea such as those associated with operation of ships, aircraft, and submarine cables and pipelines.

Significant Effects of the Economic Zone

Commenting on the ICNT provision in the exclusive economic zone, Arvid Pardo (Malta), who originally proposed the idea of convening the Third United Nations Conference on the Law of the Sea, said that it reflects the highly acquisitive aspirations of many coastal states. Arvid Pardo, however, lamented that at least 1/2 of the ocean space which is, by far, the most valuable part of the economic uses and accessible resources is placed under national jurisdiction. This means that all exploitable offshore hydrocarbons, all commercially exploitable minerals from sand, gravel, tin and the most significant deposits of manganese nodules in the deep sea and 90% of commercially exploited living resources of the seas, nearly all marine plants and exploitable source of energy are the recognized exclusive property of coastal States. This appropriation seriously prejudices the interests of land-locked and geographically disadvantaged States. The proposals in the ICNT, in fact, favor a group of wealthy coastal States because of their scientific capabilities and appropriate technology.¹⁴

The 200-mile jurisdiction now claimed by States is now estimated at about 105 million square nautical miles which is about 36% of the whole ocean surface.¹⁵ What is more significant is that about 90% of the volume of fish catch and 87% of the sub-marine oil deposits are within the 200-mile jurisdiction (see map).¹⁶

The Economic Zones of Pacific Island States

In the Pacific Zone, most States which have small land areas, can encompass large marine jurisdictional zones as a result of the

¹³ Art. 55, ICNT.

¹⁴ The Emerging Law of the Sea; A Criteria of the ICNT, Ocean Yearbook, 1978, p. 9.

¹⁵ See Alexander and Hodgson, The Impact of the 200-Mile Exclusive Economic Zone in the Law of the Sea, 12 San Diego Law Review, p. 569 (1975).

¹⁶ Map prepared by Bernhard N. Wagner, Cartographer, XXVII, No. 4, Focus (1978), p. 4.

200-mile exclusive economic zone. In the South Pacific area alone, it is estimated that the area covered by the 200-mile zone is about 20 million square miles. The Philippines, an ocean archipelago, will be one of the most favored States for it will gain an estimated water area for its economic zone about 300,000 square nautical miles. A bigger area can be added if the territorial sea based on historic title is recognized.¹⁷

Fiji, an archipelagic State, asserted on May 3, 1978 pursuant to the Marine Spaces Act, creating air archipelagic regime and asserted jurisdiction over an exclusive economic zone extending 212 nautical miles from the archipelagic baselines. The seabed and subsoil of the exclusive economic zone is part of the continental shelf of Fiji for purposes of the Continental Shelf Act of 1970 on December 30, 1970. The Act asserts sovereignty over air space, over all internal archipelagic and territorial waters but not over the exclusive economic zone.¹⁸

Papua New Guinea, another archipelagic State, enacted its National Seas Act of 1977 establishing three maritime regimes, namely, a "territorial sea", "Archipelagic waters" and "offshore seas". The offshore seas corresponds to the 200-mile exclusive economic zone. The Act specified the baselines for its three archipelagos.¹⁹

The Government of Papua New Guinea had the option of adopting the normal baselines approach and implement the 200-mile offshore sea or of implementing archipelagic baselines around the three main island groups and then extending from that baseline the 200-mile offshore sea or exclusive economic zone. In its Offshore Seas Proclamation on March 28, 1978, the Government of Papua New Guinea adopted its baselines. The Proclamation indicated the limit line of the offshore area (200-mile zone) from the archipelagic baselines or along negotiated baselines under the Papua New Guinea-Indonesian Agreement. The Proclamation, likewise, asserted jurisdiction over the "offshore area", over all living and non-living resources of its coastal seas, sea-bed and subsoil. Like Fiji, Papua

¹⁷ Under the Philippine Constitution, all waters around, between, and connecting the islands of the archipelago, irrespective of their breadth and dimension, form part of the internal water of the Philippines (Art. I). The Philippines asserts by historic title a territorial sea through the Treaty of Paris between the United States and Spain on 10 December 1898, the treaty concluded in Washington between the United States and Spain on 7 November 1900 and the treaty concluded between United States and Great Britain on 2 January 1930.

¹⁸ In a note on May 3, 1978, however, the United Nations Union of Fiji stated that as of April 21, 1978, the Government granted transit sea and air passage rights in and over its archipelagic waters.

¹⁹ The Principal Archipelago, the Tauu Archipelago and the Napukuman Archipelago.

New Guinea assumed freedom over all navigation through its archipelagic waters.²⁰

With respect to Indonesia, this archipelagic State has a baseline system extending to about 8,167.6 nautical miles which encloses about 666,000 square nautical miles of internal waters including the important straits of Sunda, Sumba, Lombok, Ombai, Molucca, and Macarras. An additional 98,000 square nautical miles fall within the jurisdiction of Indonesia under the 12-mile territorial sea. Under the ICNT provision extending the 200-mile exclusive economic zone from the baseline from which the territorial sea is measured, Indonesia can claim a much wider sea area for its economic zone.

Discovered within these large areas of economic zones are large amounts of manganese nodule deposits, the most coveted prize now being contended in the ongoing United Nations Law of the Sea Conference. Within the waters of Japan and Canada are found the largest fishing areas estimated at about 13 million metric tons annually. Some of the richest deposits of hydrocarbons of the world are located in the South and East China seas.²¹

With the various claims of a 200-mile exclusive economic zones, conflicting claims might be provoked between and among adjacent states. As of now, there are conflicting claims between Kampuchea, Thailand and Vietnam of the Kampuchean coasts. Indonesia and Malaysia have also overlapping claims with Vietnam over the Mekong Delta. China, Vietnam and the Philippines are claiming the Paracels and Spratleys. The Philippines has declared as part of its territory the Kalayaan Island Group situated in the South China Sea.²²

²⁰ Explanatory memorandum issued January, 1977. Said memorandum stated: "the government does not intend to assimilate archipelagic internal waters to inland waters. Even though Papua New Guinea laws will apply throughout the archipelagic internal waters, the Government would accept transit passage and other obligations towards other States that follows from the introduction of the archipelagic water regime, Explanatory note on Papua New Guinea's New Sea and Seabed Legislative, Department of Foreign Affairs and Trade, CF, ILA, Law of the Sea Committee Report (1978), p. 32.

²¹ See Report of the ICNT, p. 8.

²² Presidential Decree No. 1596 which took effect on June 11, 1978, provides:

WHEREAS, by reason of their proximity the cluster of islands and islets in the South China Sea situated within the following:

KALAYAAN ISLAND GROUP:

From a point [on the Philippine Treaty Limits] at latitude 7°40' North and longitude 116° East of Greenwich, thence due West along the parallel of 7°40' N to its intersection with the meridian of longitude 112°10' E to its intersection with the parallel of 9°00' N, thence northeastward to the intersection of the parallel of 12°00' N with the meridian of longitude 114°30' E, thence, due East along the parallel

The delimitation of maritime boundary in the case of States with overlapping economic zones and continental shelves is one of the "hard core" issues still being negotiated in the Third United Nations Conference on the Law of the Sea. The delimitation of the exclusive economic zone between adjacent or opposite states shall be effected by agreement in accordance with equitable principles, employing the appropriate, the median, or equidistance line, and taking into account all the relevant circumstances. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to procedures provided for with the settlement of disputes.

of 12°00' E, thence, due South along the meridian of longitude 118°00' E to its intersection with the parallel of 10°00' N, thence, Southwards to the point of beginning at 7°40' N, latitude and 116°00' E longitude.

are vital to the security and economic survival of the Philippines;

WHEREAS, much of the above area is part of the continental margin of the Philippine archipelago;

WHEREAS, these areas do not legally belong to any state or nation but, by reason of history, indispensable need, and effective occupation and control established in accordance with international law, such areas must now be deemed to belong and subject to the sovereignty of the Philippines

WHEREAS, while other states have laid claims to some of these areas, their claims have lapsed by abandonment and can not prevail over that of the Philippines on legal, historical, and equitable grounds.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby decree as follows:

SECTION 1. The area within the following boundaries:

KALAYAAN ISLAND GROUP

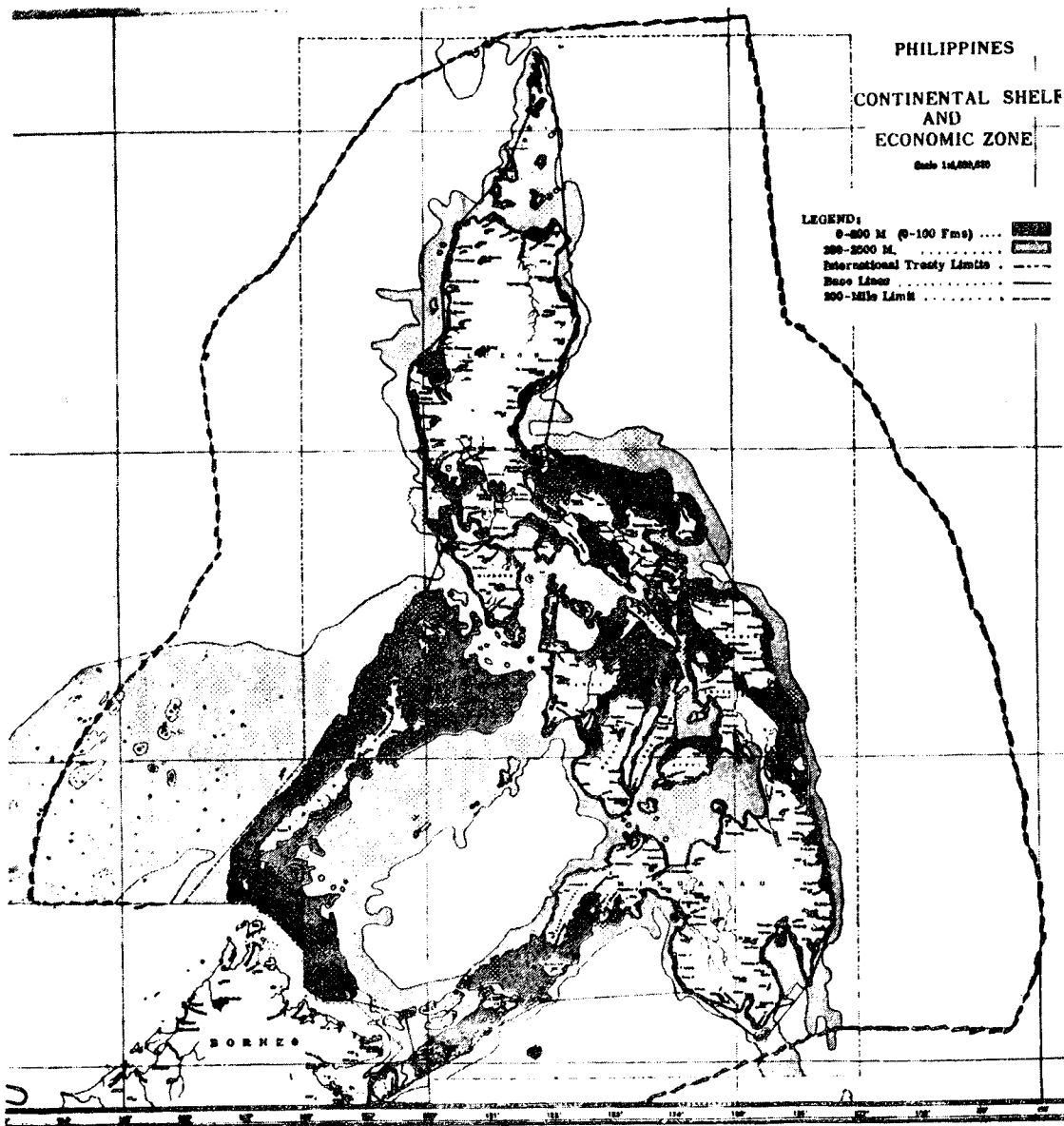
From a point [on the Philippine Treaty Limits] at latitude 7°40' North and longitude 116°00' East of Greenwich, thence due West along the parallel of 7°40' N to its intersection with the meridian of longitude 112°10' E, thence due north along the meridian of 112°10' E, thence due north along the meridian of 112°10' E to its intersection with the parallel of 9°00' N, thence northeastward to the intersection of the parallel of 12°00' N with the meridian of longitude 114°30' E, thence, due East along the parallel of 12°00' N to its intersection with the meridian of 118°00' E, thence, due South along the meridian of longitude 118°00' E to its intersection with the parallel of 10°00' N, thence Southwestwards to the point of beginning at 7°40' N, latitude and 116°00' E longitude; including the sea-bed, sub-soil, continental margin and air space shall belong and be subject to the sovereignty of the Philippines. Such area is hereby constituted as a distinct and separate municipality of the Province of Palawan and shall be known as "Kalayaan."

SECTION 2. Pending the election of its regular officials and during the period of emergency declared in Proclamation No. 1081, and unless earlier provided by law, the administration and government of the area shall be vested in the Secretary of National Defense or in such officers of the Civil government or the Armed Forces of the Philippines as the President may designate.

SECTION 3. This Decree shall take effect immediately.

Done in the City of Manila, this 11th day of June, in the year of Our Lord, nineteen hundred and seventy-eight.

(Sgd.) FERDINAND E. MARCOS
President of the Philippines



PHILIPPINES
CONTINENTAL SHELF
AND
ECONOMIC ZONE
Scale 1:4,000,000

- LEGEND:
0-200 M (0-100 Fms)
200-2500 M
International Treaty Limits
Base Lines
200-Mile Limit

