

Paper ID: 2

UNVEILING LEGITIMACY AND ANALYZING SARAWAK'S MARITIME BOUNDARY THROUGH HISTORICAL ARCHIVES

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Innovating Solutions



01 BACKGROUND OF ISSUE

02 OBJECTIVE

03 CONTINENTAL SHELF

04 FINDINGS (RELATED ARCHIVES)

05 CONCLUSION

DISCLAIMER

The view expressed herein are solely those of the author and
do not necessarily reflect the view of
The Federal Government of Malaysia or
Sarawak State Government



THE
SARAWAK
GOVERNMENT GAZETTE
EXTRAORDINARY
PART II

Published by Authority

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The following Notification is published for general information by command of His Excellency the Governor.

J. H. ELLIS,
Acting Chief Secretary.

No. S 50—THE SARAWAK (ALTERATION OF BOUNDARIES) ORDER IN COUNCIL, 1954.

The Sarawak (Alteration of Boundaries) Order in Council, 1954, made by Her Majesty in Council on the 24th day of June, 1954, is hereby published for general information.

1954 No. 839

SARAWAK

THE SARAWAK (ALTERATION OF BOUNDARIES) ORDER IN COUNCIL, 1954

Made 24th June, 1954

At the Court at Buckingham Palace, the 24th day of June, 1954
Present,

The Queen's Most Excellent Majesty in Council
Her Majesty, in pursuance of the powers conferred upon Her by the Colonial Boundaries Act, 1895 (a), and of all other powers

enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This order may be cited as Sarawak (Alteration of Boundaries) Order in Council, 1954.

2. The boundaries of the Colony of Sarawak are hereby extended to include the area of the continental shelf being the seabed and its subsoil which lies beneath the high seas contiguous to the territorial waters of Sarawak.

3. Nothing in this order shall be deemed to affect the character as high seas of any waters above the said area of the continental shelf.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order in Council extends the boundaries of Sarawak so as to include the continental shelf beneath the high seas contiguous to the territorial waters of the Colony.

(a) 58 & 59 Viet. c. 24

-British Colony-

“
...The boundaries of the Colony of Sarawak are hereby extended to include the area of the continental shelf being the seabed and its subsoil which lies beneath the high seas contiguous to the territorial waters of Sarawak...”
”

No limit was set

01

BACKGROUND OF ISSUE



02 OBJECTIVE

Clarify the historical legitimacy of the maritime boundaries set by the Sarawak OIC 1954 and assessing their consistency with the Convention on the Continental 1958 (Geneva 1958) and United Nations Conventions on the Law of the Sea (UNCLOS) 1982.

Limit of Sarawak Maritime Boundary

"Prime minister wants Sarawak's demands to be managed "at the corporate level with Petronas without involving the federal government: **07 Sep 2024, Leslie Lopez, CNA**

"....Sarawak's concerns on the proposed legislative framework for the carbon capture, utilisation and storage (CCUS) industry when the Premier of Sarawak said the difference in interpretation of state boundaries between the State Government of Sarawak and the Federal Government must be clarified first. The Ministry added that in developing the CCUS framework it will be guided and bound by the Attorney General Chamber's advice, including on issues related to the interpretation of boundaries between Federal and state that has been outlined in the Continental Shelf Act (1966), Exclusive Economic Zone Act (1984) and Territorial Sea Act (2012).

The Economic Ministry, 7 August 2024
<https://www.businesstoday.com.my>

"Sarawak will not Negotiate on its borders Continental shelf ", the Borneo Post on Instagram, 3rd September 2024 – Datuk Hjh. Sharifah Hasidah, Deputy Minister in the Premier's Department

"Those who do not learn history are doomed to repeat it" - George Santayana

Background

Policy of Colonial: Alteration of Boundaries

De Facto of Oil Exploration

Continental Shelf Delimitation at Brunei Bay

Proclamation of OIC 1954

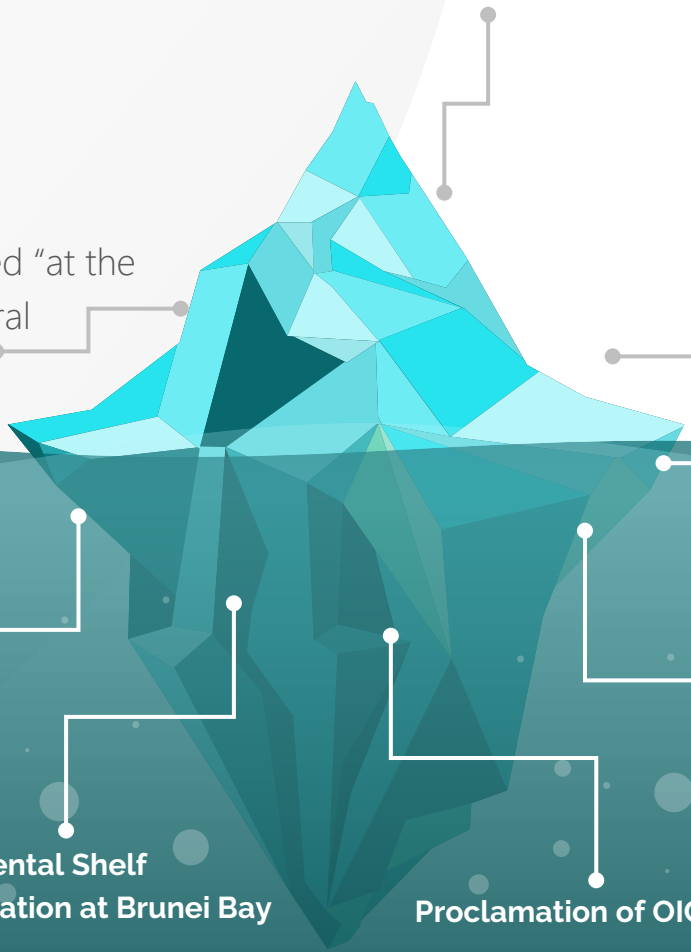
Validity

Public Statement

Geneva 1958 and Territorial Sea Breath

Validity of OIC 1954

Status of OIC 1954



CONTINENTAL SHELF

- a submerged edge of continent, extending from the coast to a drop-off point (shelf break), and then descending toward the deep ocean floor as shown
In this world continental shelf map

In 1947, the Truman Proclamation set the limit of the continental shelf to a water depth **100 fathoms (shelf break)**, which is approximately 200 meters



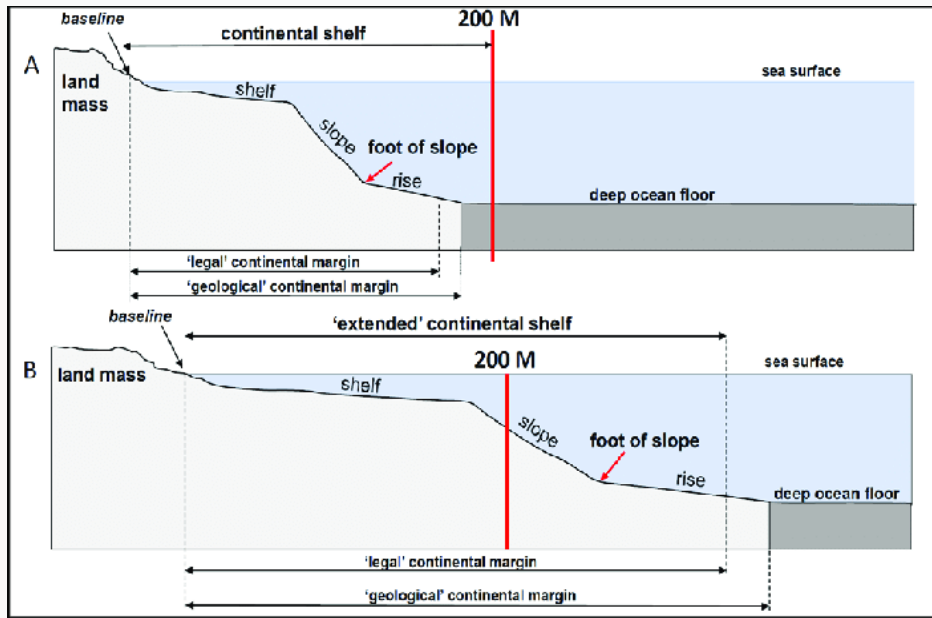
Article 1: Convention on the Continental Shelf Done at Geneva on 29 April 1958:

For the purpose of these articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a **depth of 200 metres** or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands

The United Nations Convention on the Law of the Sea:

“the continental shelf of a coastal state comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the **outer edge of the continental margin, or to a distance of 200 nautical miles (M)** from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance[5]. If the continental shelf extends beyond 200 M to the outer limits of its continental shelf, **Article 76 allows the coastal state to submit scientific and technical justifications for the entitlement of an extended continental shelf and the delineation of its outer limits to the Commission on the Limits of the Continental Shelf (CLCS)**”

Article 76, (UNCLOS 1982)



Source: Mazlan Madon, 2017

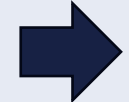
200m Depth continental shelf

03 CONTINENTAL SHELF

Source: <https://www.ngdc.noaa.gov/mgg/global>

CONTINENTAL SHELF EVOLUTION (Sovereignty vs Sovereign Right)

Sovereignty



RES NULLIUS

position that the shelf was res nullius, "capable of occupation so long as such occupation is effective, i.e., real physical exploitation
No limit

R

British Colonial Maritime Policy

T

TRUMAN PROCLAMATION 1946

- Right to explore subsoil and seabed
- Water above is for freedom of navigation
- Depth 100 fathom

About 50 countries followed the US in making unilateral proclamations

G

Geneva Convention on the continental shelf 1958

Codified into International of law

U

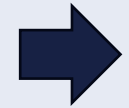
UNCLOS 1982

More specific definition of the continental shelf and extended continental shelf

Member Countries all over the world exercise the rights allowed by convention

Entitled Member Countries all over the world

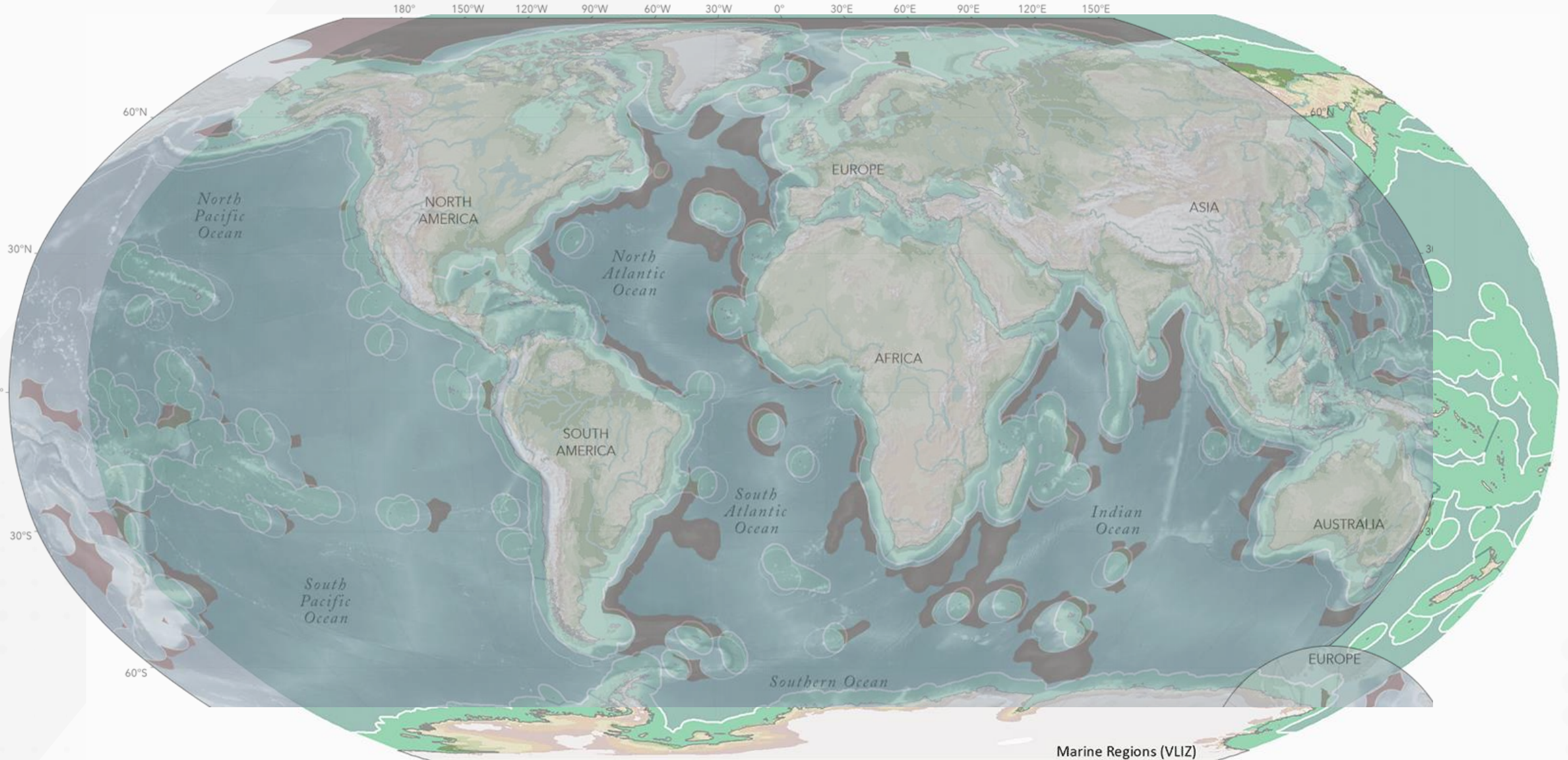
Sovereign Right



Entitlement to an extended continental shelf beyond 200 M and its outer limits of the continental shelf in the world

01

INTRODUCTION



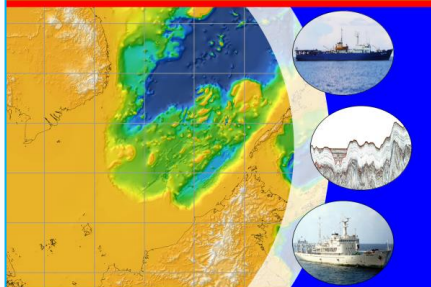
Source: <https://www.ngdc.noaa.gov/mgg/global>



JOINT SUBMISSION

to the Commission on the Limits of the Continental Shelf pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982 in respect of the southern part of the South China Sea

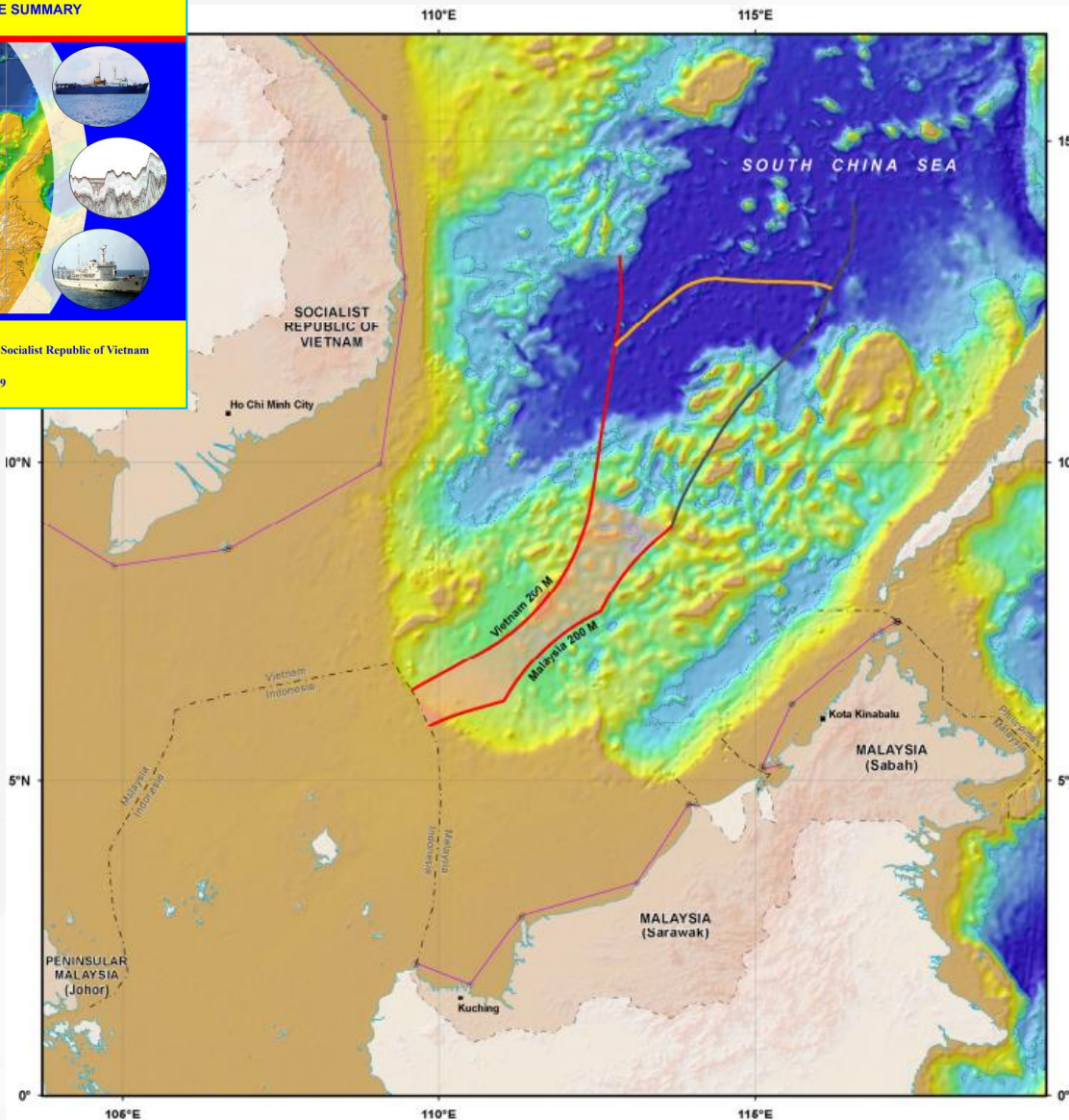
Part I : EXECUTIVE SUMMARY



Malaysia Socialist Republic of Vietnam

May 2009

Entitlement to an extended continental shelf beyond 200 M and its outer limits of the continental shelf in the South China Sea



MALAYSIA PARTIAL SUBMISSION

to the Commission on the Limits of the Continental Shelf pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982 in the South China Sea

PART I : EXECUTIVE SUMMARY

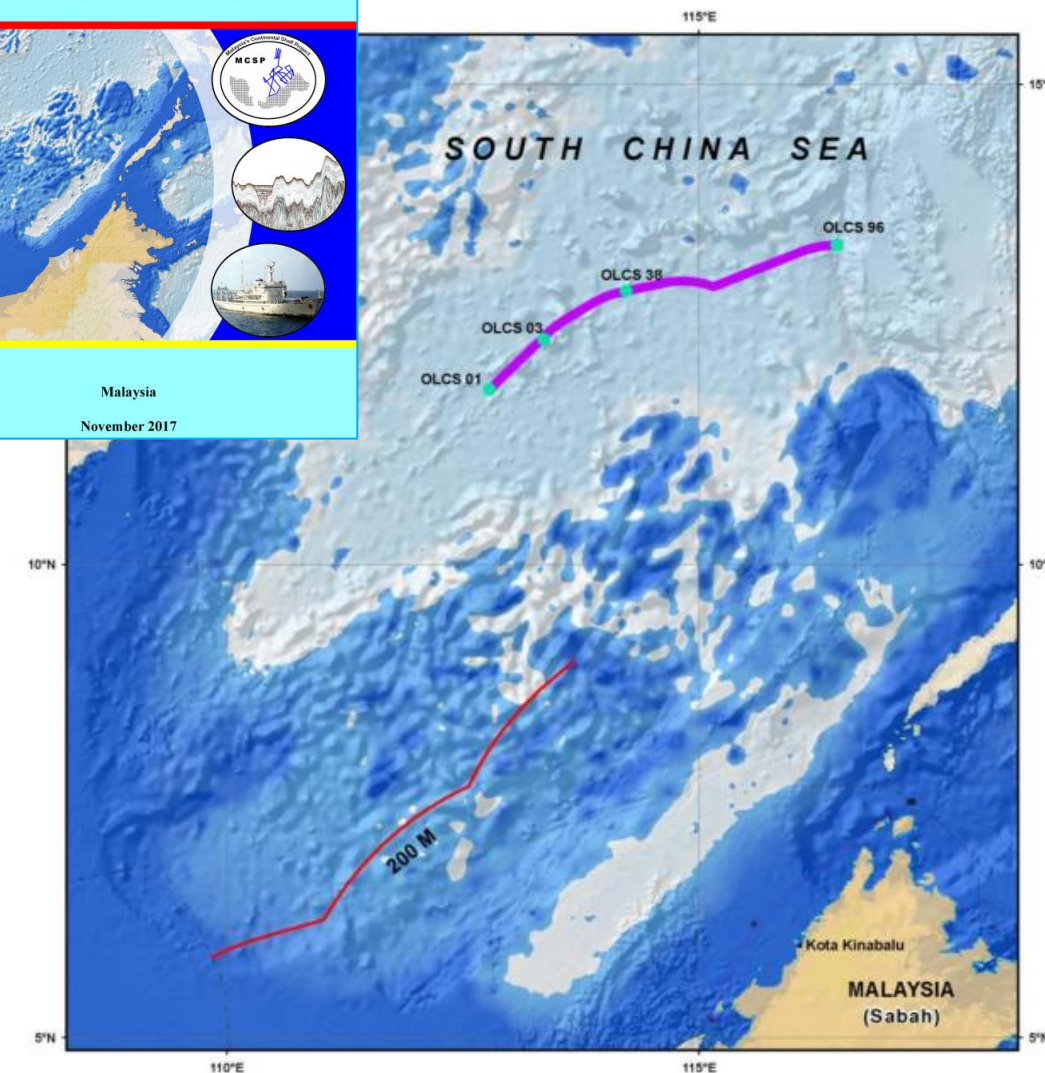


Malaysia

November 2017

03

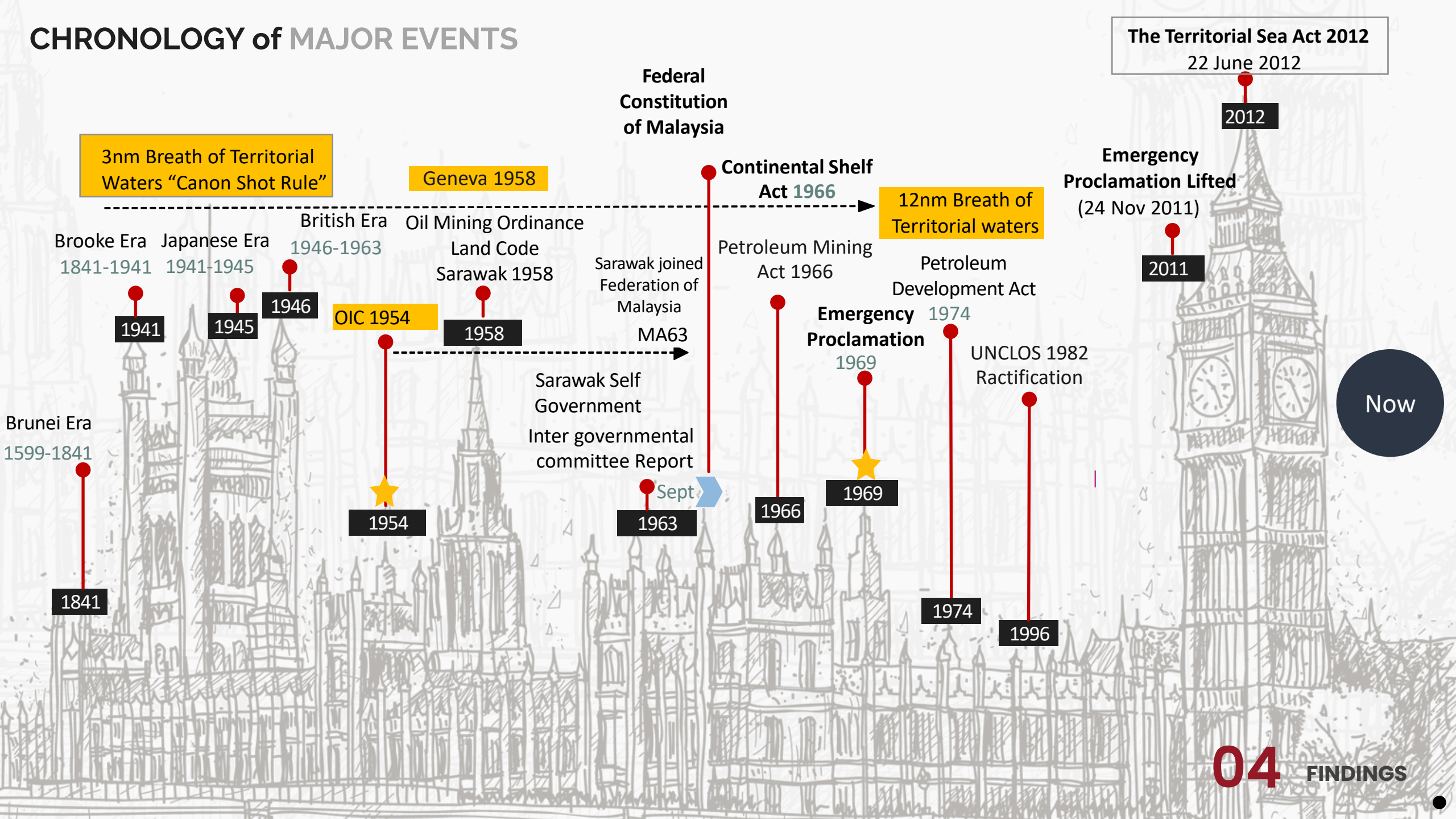
CONTINENTAL SHELF



Source: <https://www.un.org/depts/los/>



CHRONOLOGY of MAJOR EVENTS



the beginning

De Factor Oil Exploration



"Sir Charles Johnson Brooke granted exclusive oil rights over Sarawak to The Anglo-Saxon Petroleum Co. Ltd on shore" **1909**

1923 Oil Lease

Charles Vyner Brooke extended to offshore areas, anticipating future claims over these resources with Sarawak Oilfield Limited

1947 New Oil Lease

Due to Cession of Sarawak, British officials, Mr. Creech Jones, suggested fresh agreements or lease for oil exploitation in British territories



1948 Draft of Oil Lease

Officer Administering the Government of Sarawak through the Colonial Office proposed :
"If the government of Sarawak should claim jurisdiction over the continental shelf beyond the three-mile limit of territorial waters, the company's rights would include the area of the seabed concerned in respect of the winning of oil"

Continental Shelf Delimitation at Brunei Bay

1953

SHELL eager to conduct geophysical survey at area beyond territorial waters prompt Britain to establish the legal framework

25 November 1953

the Foreign Office agreed that a proclamation could be drafted Secretary of State for the Colonies agreed a formal declaration of "sovereignty" over the continental shelf should be made

1953 Edge of Continental Shelf

The edge of continental shelf (100 Fathom/200meters) was discussed

1948-1950 Colonies that extended the boundaries

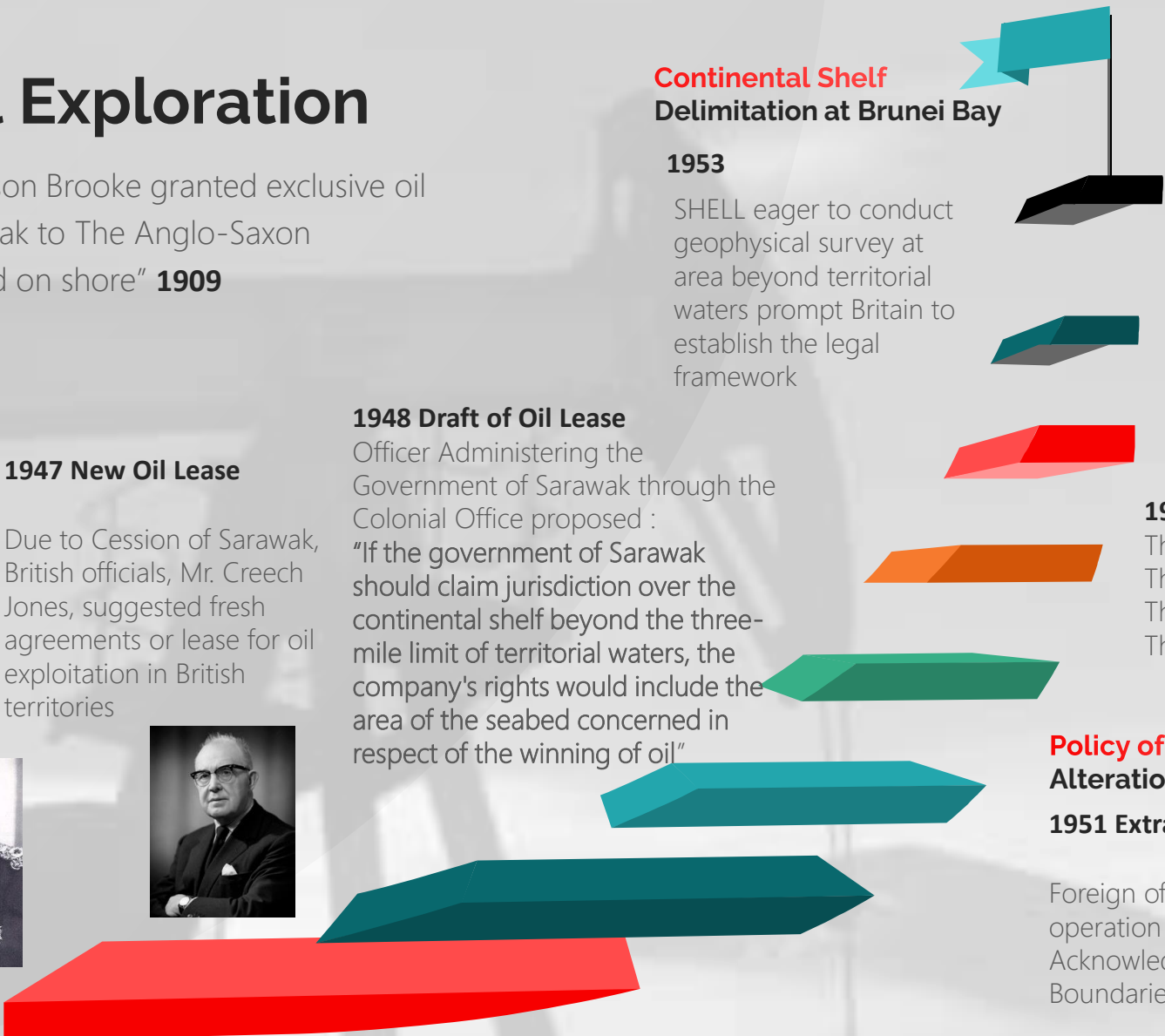
- The Bahamas (Alteration of Boundaries) 1948
- The Jamaica (Alteration of Boundaries) 1950
- The British Honduras (Alteration of Boundaries) 1950
- The Falkland Islands (Continental Shelf) 1950

Policy of Colonial: Alteration of Boundaries

1951 Extra -Territorial Waters

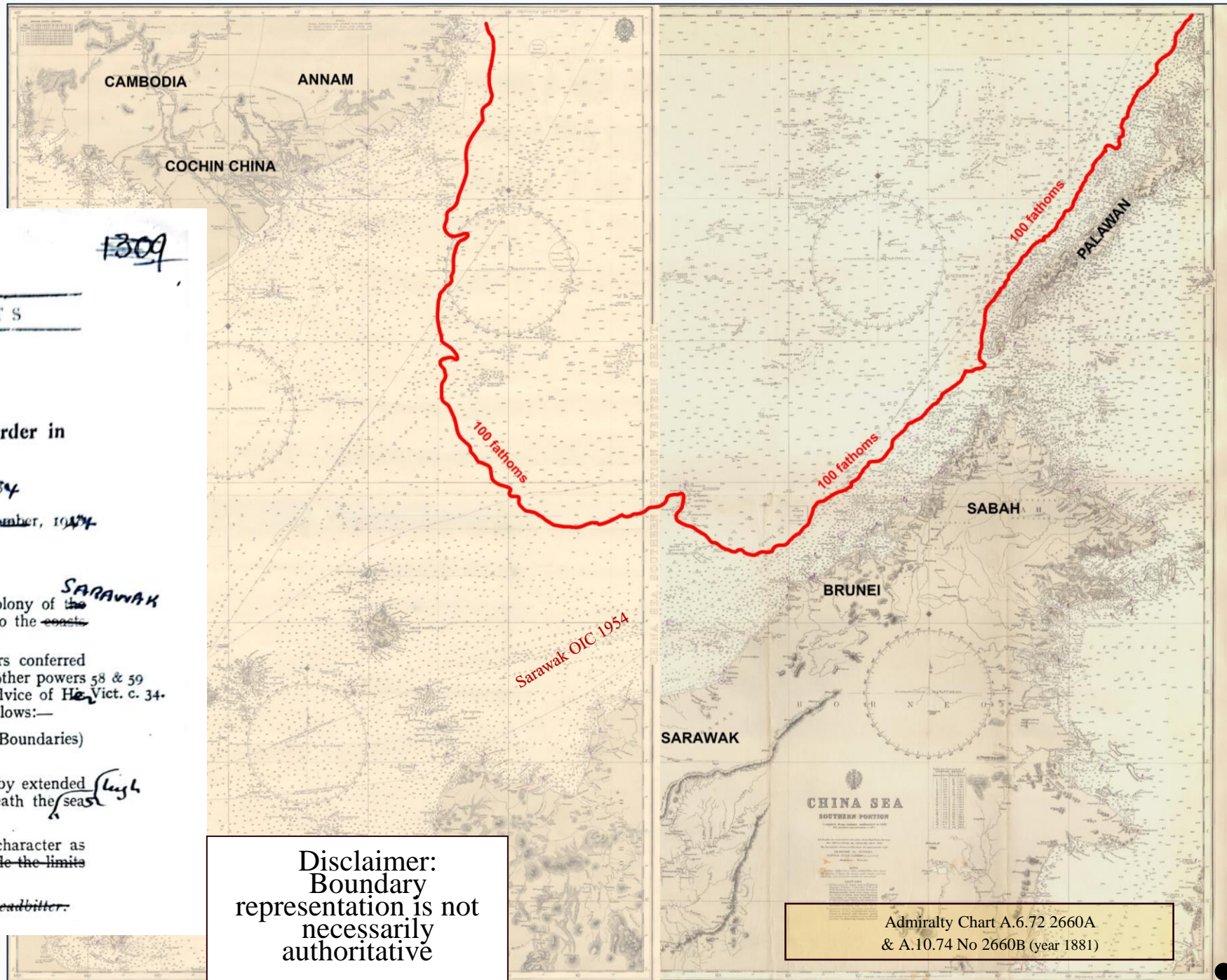
Foreign office and Colonial Office suggest operation to cover extra-territorial Acknowledged four (4) OIC made under Colonial Boundaries Act 1895

Start!!!
Start!!
Start!!!



04 FINDINGS

Mirror from Bahamas OIC 1948



STATUTORY INSTRUMENTS

1954
1948 No. 2004
**SARAWAK
BAHAMAS**

The ^{SARAWAK} Bahamas (Alteration of Boundaries) Order in Council, 1948 1954

Made - - - 26th November, 1954

At the Court at Buckingham Palace, the 26th day of November, 1954

Present

The ^{Queen} Most Excellent Majesty in Council

Whereas it is desirable to extend the boundaries of the Colony of ~~the Bahamas~~ ^{SARAWAK} so as to include the continental shelf contiguous to the ~~coasts~~ ^{coast} of the Colony:

Now, therefore, ~~Her~~ ^{Her} Majesty, in pursuance of the powers conferred upon ~~Her~~ ^{Her} Majesty in that behalf, is pleased, by and with the advice of ~~Her~~ ^{Her} Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the ~~the Bahamas~~ ^{SARAWAK} (Alteration of Boundaries) Order in Council, 1954
2. The boundaries of the Colony of ~~the Bahamas~~ ^{SARAWAK} are hereby extended to include the area of the continental shelf which lies beneath the ~~seas~~ ^{continental waters} contiguous to the ~~coasts~~ ^{coast} of the Bahamas.
3. Nothing in this Order shall be deemed to affect the character as high seas of any waters above the continental shelf ~~and outside the limits of territorial waters.~~ ^{the said area of}

E. C. E. Leadbitter.

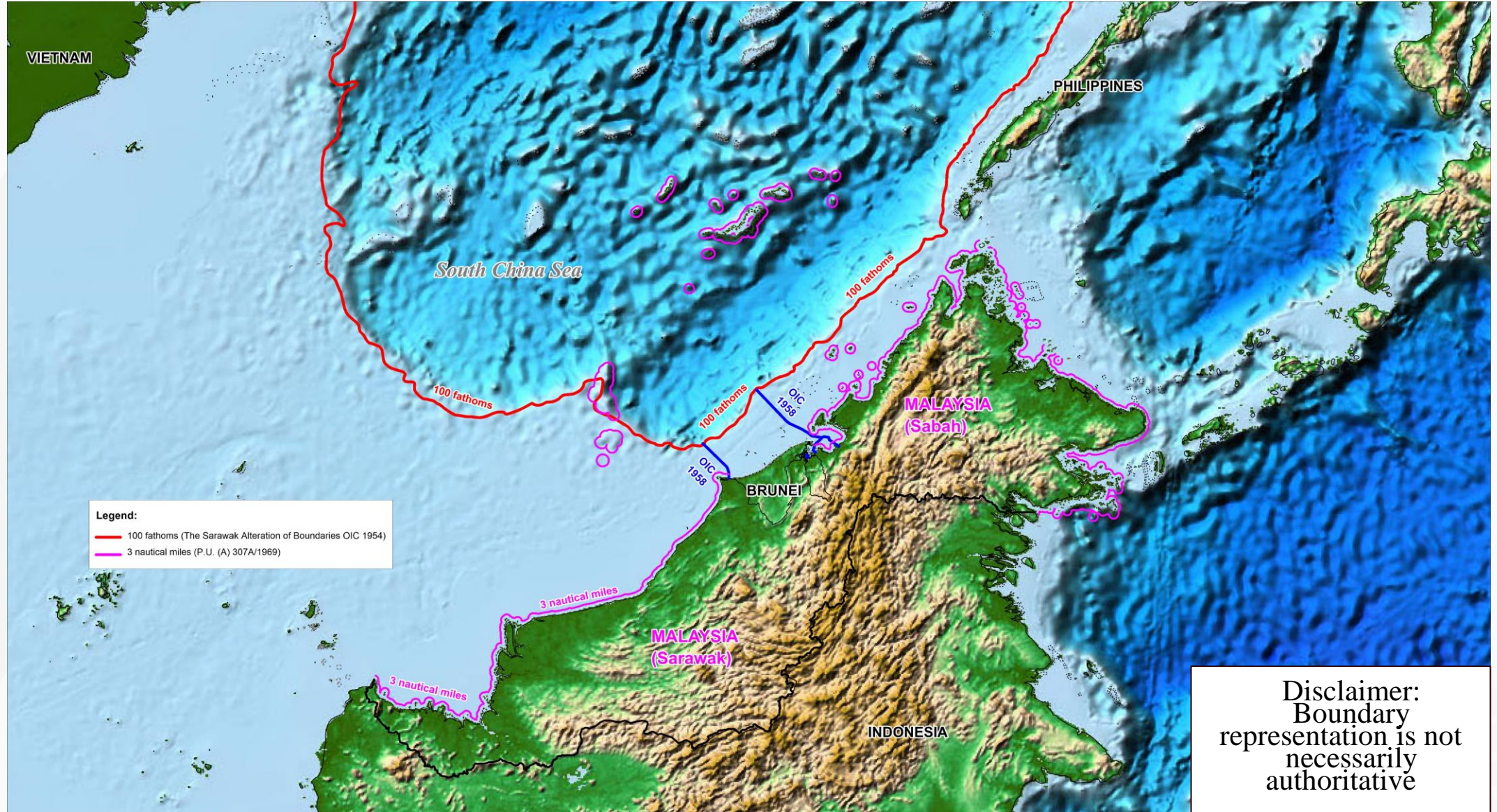
being the seabed and its Substratum

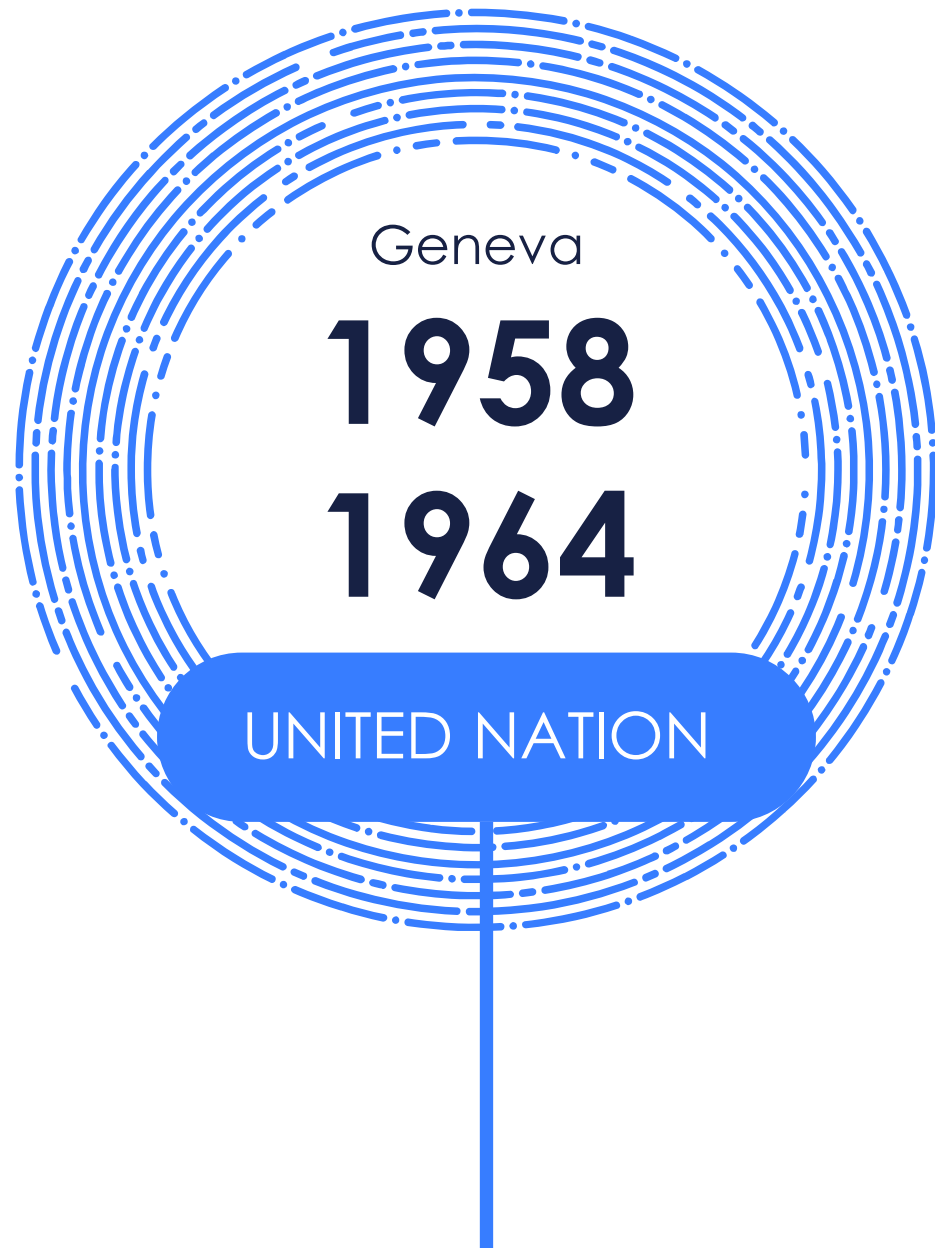
Disclaimer:
Boundary representation is not necessarily authoritative

Admiralty Chart A.6.72 2660A & A.10.74 No 2660B (year 1881)

“For a number of years oil has been mined in Brunei and Sarawak and the potentialities of North Borneo are now being investigated. Drilling has recently been carried out in the territorial waters of Brunei, and it is desirable that the resources of the seabed beyond the territorial waters of the three territories should also be explored so far as possible. It is becoming increasingly practicable to exploit such submerged resources and it is desirable in the interests of protection, conservation and orderly development that the exploitation of them should be properly controlled. **The right of a littoral state to claim sovereignty over the seabed and subsoil adjacent to its coasts in order to control the exploitation of the natural resources therein has become established recently in international practice.** Accordingly, the boundaries of North Borneo, Sarawak and Brunei have been extended under the provisions of the North Borneo (Alteration of Boundaries) Order in Council, 1954, the Sarawak (Alteration of Boundaries) Order in Council, 1954 and Brunei Proclamation particulars to **be inserted to permit the Governments of these territories to exercise jurisdiction over the exploitation of the natural resources of the continental shelf adjacent to their coasts.** The status as high seas of the waters above the continental shelf outside territorial water limits is not affected. In cases in which the continental shelf of any of the three territories mentioned extends to or is adjacent to the continental shelf of another State, it is intended that the boundary of the shelf shall be determined on equitable principles by agreement with the State in question.”

Source: The National Archives, UK,
Savingram from the Secretary of State for the Colonies" dated 5 June 1954





Territorial Waters Law of The Sea International Conferences from 1958 to 1960 aimed to codify the Law of the Sea. Agreements reached include conventions on the territorial sea, high seas, fishing, and the continental shelf

Coastal State	Limits of Territorial Waters (Nautical Mile = M)
United Kingdom	3 M
Malaya, Brunei, North Borneo and Sarawak	3 M
Cambodia	5 M
Ceylon	6 M
China	12 M

1959

C.O. Ref: IRD 313/269/01 Circular 1176/59
from Secretary of State for the Colonies,
Colonial Office (Mr. Alan Lennox-Boyd)

to the Officer Administering the Government of Sarawak

Order in Council was made under the prerogative annexing part of the seabed to Her Majesty's Dominions and attaching it to a colony "for administrative purposes". Whatever may have been their effect in international law, these Orders were regarded for the purposes of municipal law as annexing the continental shelf and establishing full sovereignty over it so as to enable the colonies concerned to make laws with respect to it in the same way as they would legislate for the sea-bed beneath their territorial waters. It is clear, however, that it would be inconsistent with the Convention, which the United Kingdom expects to ratify, to maintain that the continental shelf is part of Her Majesty's dominions and that Her Majesty exercises full sovereignty over it, since Article 2(1) of the Convention provides that the coastal State shall exercise only limited sovereign rights over the continental shelf. For the same reason it would be inconsistent with the Convention to "annex" the adjacent shelf to a Protectorate or Trust Territory so as to make it an integral part of the territory. Further "annexation" by Order in Council of the continental shelves of Colonial territories must therefore be ruled out

It is not proposed to alter or revoke existing Orders relating to continental shelves, and if asked by other States how they are reconciled with the Convention, it would be said that the Orders were made before the nature of the coastal States' rights under international law in respect of the Continental Shelf had been clarified by the Convention; that the purpose of the Orders made under the Colonial Boundaries Act, 1895, was to extend the jurisdiction of the Governments of the Colonies concerned so as to give them control over the seabed and subsoil contiguous to their coasts with a view to the exploitation of its natural resources; and that any rights now exercised under these Orders, or under the Submarine Areas of the Gulf of Paria (Annexation) Order, 1942, would be the rights recognised by the Convention..."



C. O. Ref: IRD 313/269/01

DESPATCH

CIRCULAR 1176/59

THE CHURCH HOUSE,
LONDON, S. W. 1.

5th November, 1959

Sir,

I have the honour to refer to my circular despatch No. 1137 of the 22nd October, 1958, regarding the Convention drawn up at Geneva relating to the Continental Shelf.

2. Article 2 of that Convention states "(1) The Coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources; (2) ... (3) the rights of the Coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation". Prior to the signing of the Convention, the principles of international law applicable to the appropriation of the subsoil of the sea outside territorial waters, were not settled and consequently different countries adopted different methods of asserting their claims. In the case of the United Kingdom, Orders in Council were made under the Colonial Boundaries Act 1895 in respect of a number of colonies to extend their boundaries "to include the area of the continental shelf" contiguous to the territorial waters of those territories, and in one case an Order in Council was made under the prerogative annexing part of the sea-bed to Her Majesty's Dominions and attaching it to a colony "for administrative purposes". Whatever may have been their effect in international law, these Orders were regarded for the purposes of municipal law as annexing the continental shelf and establishing full sovereignty over it so as to enable the colonies concerned to make laws with respect to it in the same way as they would legislate for the sea-bed beneath their territorial waters.

3. It is clear, however, that it would be inconsistent with the Convention, which the United Kingdom expects to ratify, to maintain that the continental shelf is part of Her Majesty's dominions and that Her Majesty exercises full sovereignty over it, since Article 2(1) of the Convention provides that the coastal State shall exercise only limited sovereign rights over the continental shelf. For the same reason it would be inconsistent with the Convention to "annex" the adjacent shelf to a Protectorate or Trust Territory so as to make it an integral part of the territory. Further "annexation" by Order in Council of the continental shelves of Colonial territories must therefore, be ruled out.

The Officer Administering
the Government of

04

FINDINGS

Unsuccessful to agree on a specific breadth of the Territorial Sea

UK stated that Her Majesty's government would continue to breathe 3 M as the only breadth recognized under international law

Ref: IRD 313/017, Circular 1311/60, 30 December 1960

01

UNCLOS II 1960

Discussion on the Ratification of Geneva 1958 by UK

To remove the inconsistency that exists between these Orders and Article 2 (1) of the Convention

The National Archives - CO 936/710

02

1960

Draft of Bill on the continental Shelf

UK think that these Orders appear to be inconsistent with Article 2 of the Convention, but they “have hitherto proposed to leave them in force and if their inconsistency with the Convention is raised to explain that they were made before the Convention was drawn up and that the rights now exercised under them would be only those recognized by the Convention.

The National Archives - CO 936/710

03

1961

Seek advice from Foreign Office about the revocation of the OIC

1962

UK Law Office

Important Points Here:

“As regards the others, **we may wish to consult them about revocation of the orders**, but this should not cause difficulty since they are already aware from paragraph 8 of our Circular 1176/59 of 5th November 1959, **that only those rights recognised by the Convention should now be exercised under the Orders.**”

1962

Departure from Res Nullius: The Convention marks a departure from the concept of the sea bed as "res nullius" (unclaimed). **It uses "sovereign rights" instead of "sovereignty" to clarify that while coastal states have specific rights, the Continental Shelf is not part of their territory.** This distinction is critical for understanding the legal status of the Continental Shelf and how it differs from traditional claims of territorial sovereignty. The Convention stipulates that exploration and exploitation must avoid unjustifiable interference with navigation, fishing, and scientific research. It also requires notice for construction of installations and prohibits interference with international navigation routes. These regulations aim to balance the rights of coastal states with the rights of other states and international interests, reflecting the Convention's goal of harmonizing various maritime activities.

01

the question of the inconsistency with the Convention of certain existing Orders in Council which annex certain shelves or parts of shelves to adjacent Colonies, they stated:

“...we agree with the Foreign Office that we should take the opportunity of making provision by Act of Parliament to renounce the claim to full sovereignty over the areas in question. We would propose that the Act should revoke the existing Orders, which in all cases but one were made under the Colonial Boundaries Act 1895...”

In so far as they annex submarine areas outside territorial waters to Her Majesty's Dominions but should leave any provisions as to boundaries in force as if they had been made under the provision of the Act empowering the Queen to define boundaries”

02

(Assuming the defined boundary is the OIC 1958 Sarawak-Brunei Boundary.)

03

AFFIRMATION:

The UK Bill addressing the high seas, including the continental shelf, is under discussion. The bill would need to align with the Geneva Convention and address the legislative framework for continental shelves, reflecting the broader context of implementing international maritime law domestically. These rights are not based on occupation or proclamation. This reinforces the idea that rights to the Continental Shelf are granted by the Convention rather than through occupation, aligning with the broader principles of the treaty

04

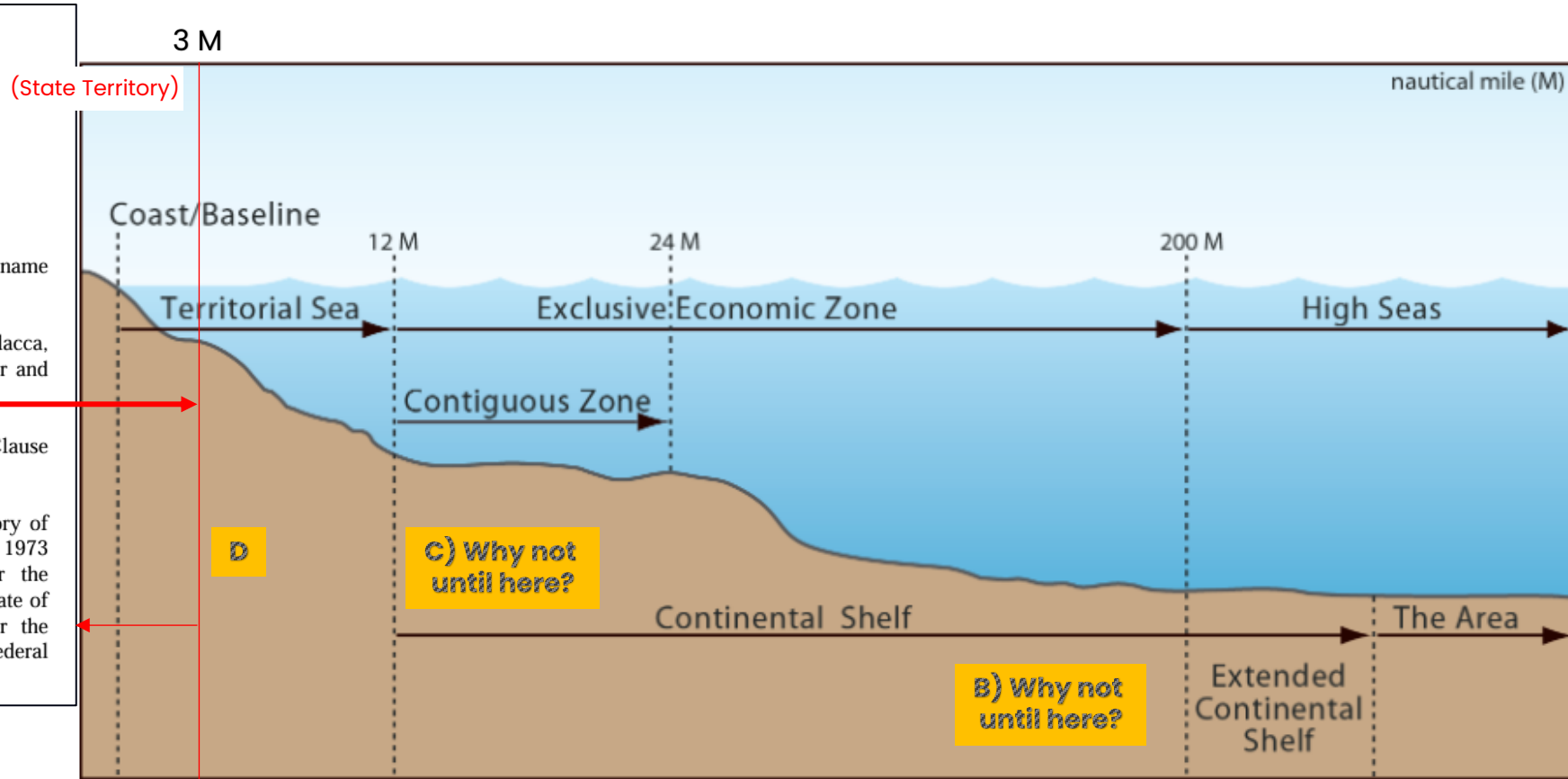
At this Point, What we understand:

**LAWS OF MALAYSIA
FEDERAL CONSTITUTION**

**PART I
THE STATES, RELIGION AND LAW OF THE FEDERATION**

Name, States and territories of the Federation

1. (1) The Federation shall be known, in Malay and in English, by the name Malaysia.
- (2) The States of the Federation shall be Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Sabah, Sarawak, Selangor and Terengganu.
- (3) Subject to Clause (4), the territories of each of the States mentioned in Clause (2) are the territories comprised therein immediately before Malaysia Day.
- (4) The territory of the State of Selangor shall exclude the Federal Territory of Kuala Lumpur established under the Constitution (Amendment) (No. 2) Act 1973 [Act A206] and the Federal Territory of Putrajaya established under the Constitution (Amendment) Act 2001 [Act A1095] and the territory of the State of Sabah shall exclude the Federal Territory of Labuan established under the Constitution (Amendment) (No. 2) Act 1984 [Act A585], and all such Federal Territories shall be territories of the Federation.



Maritime Zones under International Law (Image credit: U.S. Department of State)

A) Why not until here?

B) Why not until here?

C) Why not until here?

D

Source : Federation Constitution of Malaysia

INQUIRY OF RAMANI TO UK GOVERNMENT

Mr. Ramani's Legal Adviser to the Malaysian Ministry of Foreign Affairs enquiry concerning background information about the seabed boundaries of Sarawak and Sabah. .

File Title: Dispute Between Federal Government and Sarawak Over Continental Shelf

"It is clear that there are two differing opinions among lawyers about relative strengths of Federal and State legal claims. **There appear to be a number of precedents in other countries with Federal constitutions which suggest that the Malaysian Federal Court would be likely to take a policy decision favouring the Federal rather than the State Government. The continental shelf, by the terms of the Convention does not form part of the coastal state's territory, the Convention merely allows "sovereign rights" to that state for particular purposes, viz exploring and exploiting its natural resources. The concept of "sovereignty" shelf was explicitly rejected by the Geneva Conference of 1958 at which the Convention was formulated. "**

1

1969

United Kingdom Mission to the United Nation 20 August 1969, New York

J.L Simpson Deputy Legal Adviser Foreign and Commonwealth Office replied that

"...in 1954 the limitation of sovereign rights for the purposes of exploring and exploiting the continental shelf had not yet become accepted doctrine and the Orders might have been based on earlier extensions such as the Truman proclamation and the Persian Gulf extensions which were not based on that limitation..."

2

3

4

5

1970

A letter from South West Pacific Department (Commonwealth Office) Registry No. 52, 2 April 1970 (FWM 4/1) D.F.B. Le Breton To R.C. Clift British High Commissioner Kuala Lumpur
Without the acknowledge to Mr. Ramani

Final Document

1970

In the End

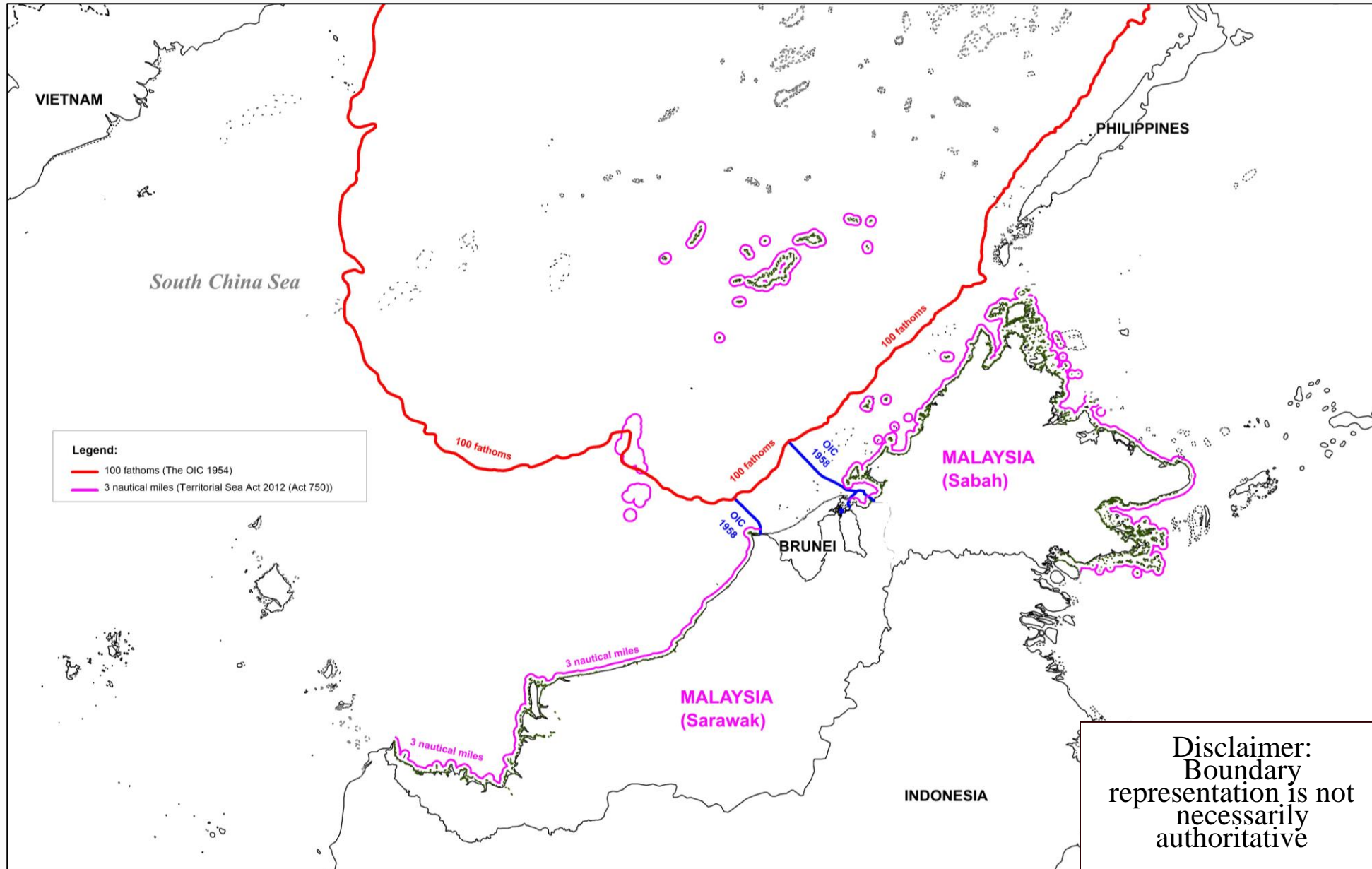
- M.G. De Winton -

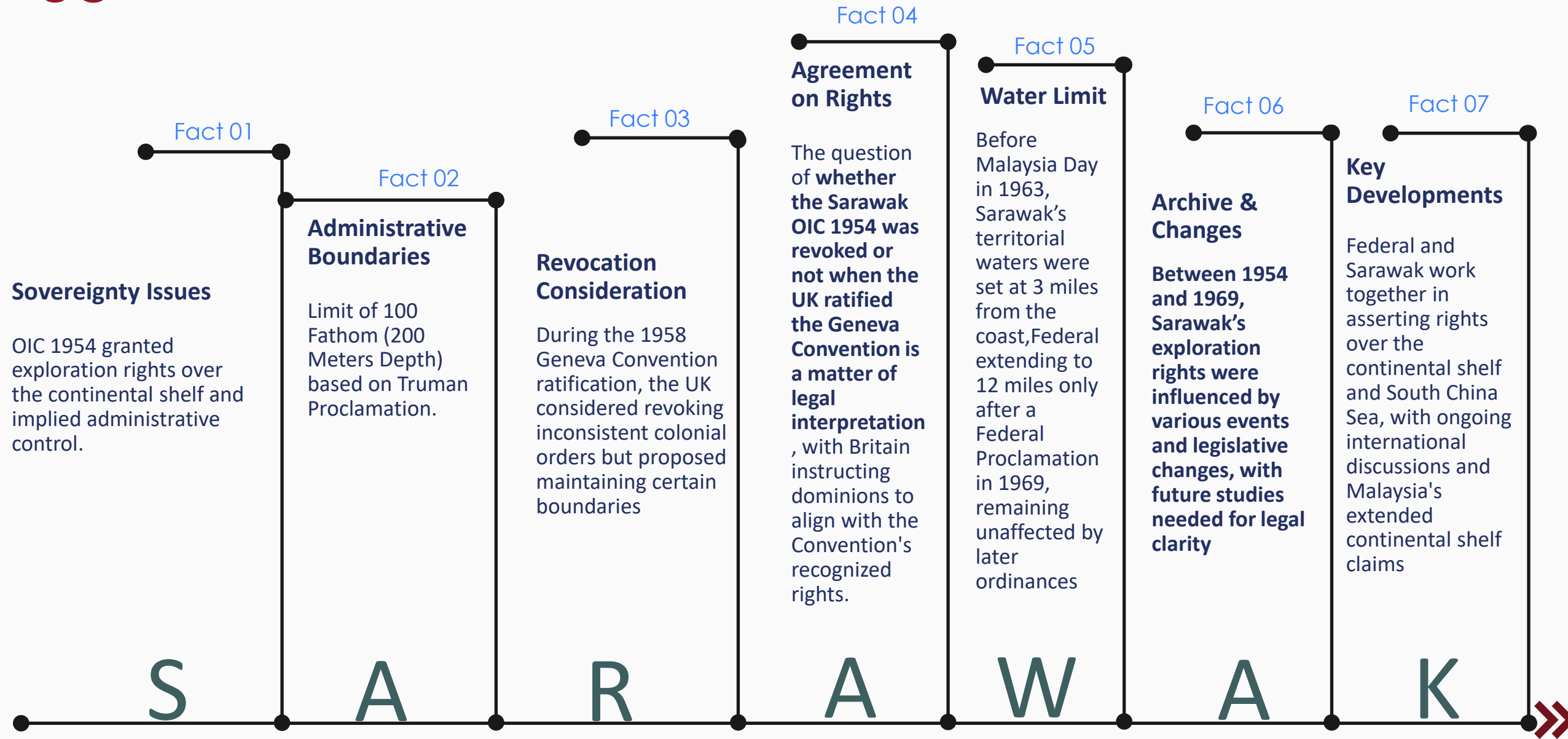


Regarding the Ramani inquiry, deputy legal adviser, wrote on 19 March 1970 to the South West Pacific Department

there was no issue with providing Ramani a copy of the public statement for the Orders in Council, but sharing the sensitive 1959 confidential circular despatch (Circular 1176/59) was not advisable due to strained relations between Sarawak and the Federal Government. On 25 March 1970, M.G. De Winton further explained that **Federal Court in Malaysia was likely to adopt policy decision favoring the Federal Government like all the Federal Courts (high court of Australia and Supreme court of Canada) and the Tideline cases U.S v. Louisiana (339 US), U.S v. California (332 US), U.S v. Texas (339 US)**. He then advice if the Federal Court follows the O'Connell's reasoning it might hold that the nine additional miles to which the Federal Government has laid claim as territorial waters are within exclusive Federal Jurisdiction.



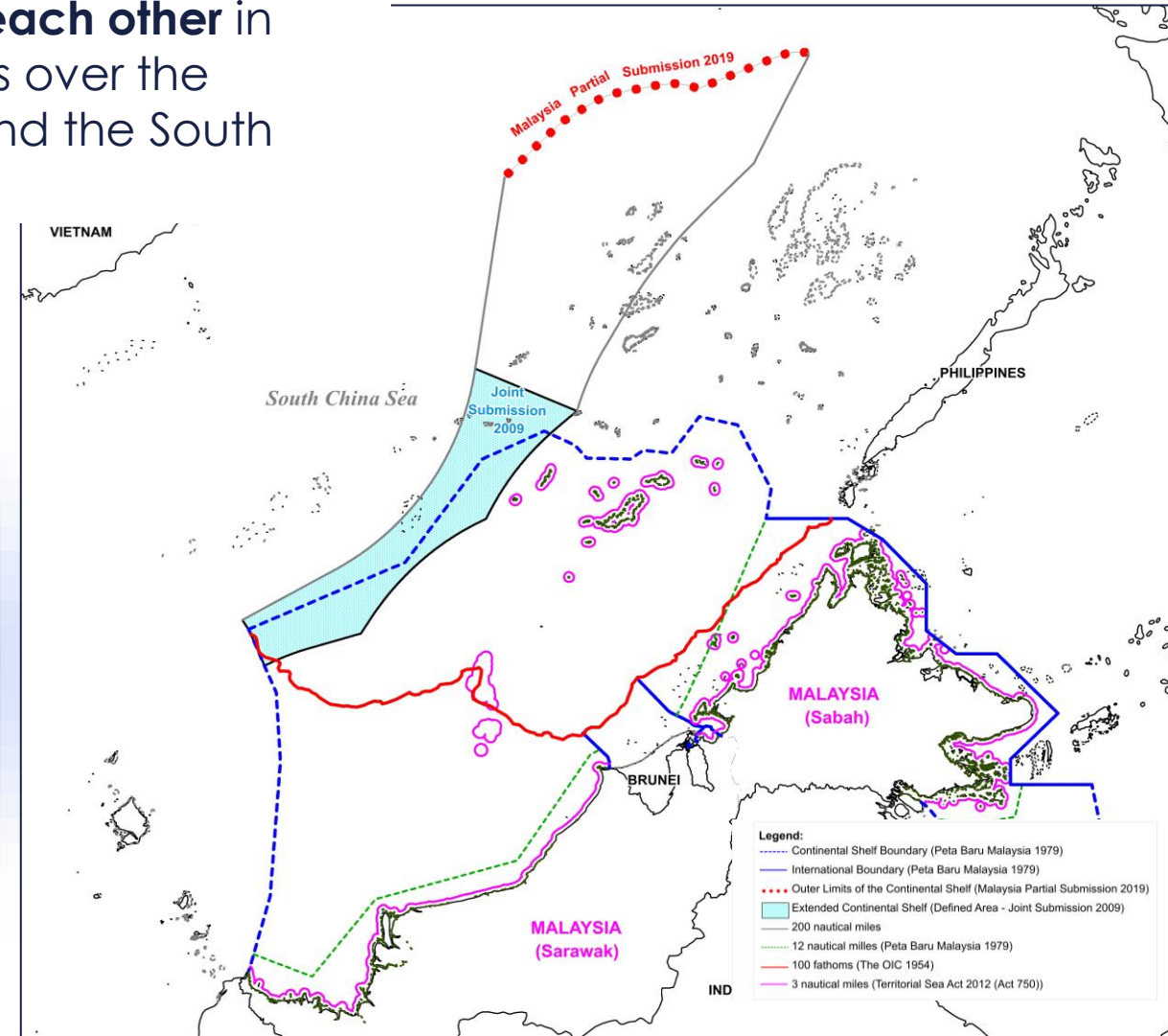




Malaysia and its state of Sarawak **can complement each other** in asserting their rights over the continental shelf and the South China Sea

Legal status of Sarawak's exploration rights in the continental shelf area

Political
Stability
Economic Growth



Disclaimer:
Boundary representation is not necessarily authoritative

THANK YOU



In the Name of God for Mankind



utm.my



[univteknologimalaysia](https://www.facebook.com/univteknologimalaysia)



[utmofficial](https://www.instagram.com/utmofficial)