



EXECUTIVE SUMMARY

**A PARTIAL SUBMISSION OF DATA AND INFORMATION
ON THE OUTER LIMITS OF THE CONTINENTAL SHELF
OF THE KINGDOM OF TONGA PURSUANT TO
PART VI OF AND ANNEX II TO THE UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA**

PART I

**Submission to the Commission on the Limits of the Continental Shelf
through the Secretary-General of the United Nations**

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1. INTRODUCTION AND OBJECTIVES

The Kingdom of Tonga is proud to have the longest continuous legal claim of historic title to maritime domain in the World. The Royal Proclamation issued by His Majesty George Tubou, King of Tonga, on 24 August 1887 claims national jurisdiction by the Kingdom of Tonga over “all, islands, rocks, reefs, foreshores and waters lying between the fifteenth and twenty-third and a half degrees of south latitude and between the one hundred and seventy-third and the one hundred and seventy-seventh degrees of west longitude from the Meridian of Greenwich” (Annex A.1).

The Royal Proclamation of 24 August 1887 has resulted in the exercise of continuous jurisdiction and authority by the Kingdom of Tonga over the land territory and the maritime spaces defined in accordance with the claim for over one hundred and twenty years (Figure 1). This claim has never been reacted against or objected to by any State.

The Kingdom of Tonga became a State Party to the 1958 Geneva Conventions on the Territorial Sea and the Contiguous Zone (United Nations, Treaty Series, vol. 516, p. 205) and the Continental Shelf (United Nations, Treaty Series, vol. 499, p. 311) when it deposited its instruments of succession on 29 June 1971. These instruments of succession were followed by a communication from the Government of Tonga to the Secretary-General of the United Nations on 22 October 1971, to the effect that it wishes to maintain all objections made by the United Kingdom to the reservations or declarations made by States with respect to these Conventions.

The Kingdom of Tonga became a State Party to the United Nations Convention on the Law of the Sea (United Nations, Treaty Series, vol. 1833, p. 3) when it deposited its instrument of accession on 2 August 1995. It also deposited its instrument of participation to the Agreement relating to the Implementation of Part XI of the Convention on 2 August 1995, and it signed and ratified the Agreement for the Implementation of the Provisions of the Convention relating to the

Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks on 31 July 1996.

Historic title is recognised in international law and in the United Nations Convention on the Law of the Sea (International Law Commission, 1962). Historic title is recognised in the Convention in the context of several other provisions, such as article 15 on the Delimitation of the territorial sea between States with opposite or adjacent coasts in Part II on the Territorial Sea and Contiguous Zone, and article 46 Use of terms in Part IV on Archipelagic States. The Kingdom of Tonga asserts in this Submission consistency between its claim of historic title made by means of the Royal Proclamation of 24 August 1887 and its maritime jurisdiction as established in the United Nations Convention on the Law of the Sea (the Convention).

For further clarification, the Kingdom of Tonga applies the concept of historic title in international law to all those maritime spaces established under its national jurisdiction in agreement with the Convention that can be included within the geographical limits defined in the Royal Proclamation of 24 August 1887. The breadths of the maritime spaces under the national jurisdiction of the Kingdom of Tonga within and beyond the geographical limits established by the Royal Proclamation of 24 August 1887 are defined in accordance with the relevant provisions of the Convention relating to internal and archipelagic waters, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf. Thus the implementation of the Convention is consistent with the decision of the Kingdom of Tonga to maintain its claim of historic title over the land and maritime spaces established within the geographical limits included in the Royal Proclamation of 24 August 1887.

Paragraph 1 of article 311 of the Convention establishes that:

This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958.

Accordingly, the Kingdom of Tonga implements the Convention, and the provisions of Part VI of and Annex II to the Convention in this Submission as prevailing over the Geneva Conventions on the Law of the Sea.

The continental shelf under national jurisdiction is defined under paragraph 1 of article 76 of the Convention as:

The continental shelf of a coastal State comprises the sea-bed 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 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.

The continental margin, in turn, is defined under paragraph 3 of article 76 of the Convention as:

The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

The outer limits of the continental shelf are prescribed under paragraph 2 of article 76 not to exceed the combination of rules referred to in paragraphs 4 to 6:

The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.

The provisions established in paragraph 6 of article 76 are particularly applicable in this Submission:

Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which

the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

The Convention also establishes a procedure for the determination of the outer limits of the continental shelf beyond 200 nautical miles by the coastal State based on the recommendations made by the Commission on the Limits of the Continental Shelf (CLCS) in relation to a submission of information on the limits as described in paragraph 8 of article 76:

Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

The above procedure is further elaborated in article 4 of Annex II to the Convention with the addition of a temporal requirement and a request designed to inform the Commission:

Where a coastal State intends to establish, in accordance with article 76, the outer limits of its continental shelf beyond 200 nautical miles, it shall submit particulars of such limits to the Commission along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of this Convention for that State. The coastal State shall at the same time give the names of any Commission members who have provided it with scientific and technical advice.

The Eleventh Meeting of States Parties to the Convention, held from 14 to 18 May 2001, noted that it was only after the adoption of the Scientific and Technical Guidelines by the Commission on 13 May 1999 that States had before them the basic documents concerning submissions in

accordance with article 76, paragraph 8, of the Convention. Considering the problems encountered by States Parties, in particular developing countries, including small-island developing States, in complying with the time limit set out in article 4 of Annex II to the Convention; the Meeting of States Parties (SPLOS/72) decided that:

(a) in the case of a State Party for which the Convention entered into force before 13 May 1999, it is understood that the ten-year time period referred to in article 4 of Annex II to the Convention shall be taken to have commenced on 13 May 1999; and that

(b) the general issue of the ability of States, particularly developing States, to fulfil the requirements of article 4 of Annex II to the Convention is kept under review.

The Government of the Kingdom of Tonga has identified the eastern part of the Kermadec Ridge and the western part of the Lau Ridge as two regions over which it can extend its national jurisdiction over the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

These two parts of the Kermadec and Lau Ridges are regions over which there are overlaps of maritime spaces under the national jurisdictions of the Kingdom of Tonga, the Republic of the Fiji Islands, and New Zealand. These overlaps have not been resolved by means of maritime boundary delimitation agreements among the three States to this date.

The Convention recognizes that competence with respect to the delimitation of international maritime boundaries which may arise in connection with the establishment of the outer limits of the continental shelf rests with States according to paragraph 1 of article 83:

The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

The Convention establishes that any outer limits of the continental shelf beyond 200 nautical miles determined in accordance with paragraphs 4 to 6 of article 76 are without prejudice to the delimitation of continental shelf boundaries between States according to paragraph 10 of the same article:

The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

The distinction between the delimitation of international continental shelf boundaries and the determination of the outer limits of the continental shelf is further reinforced by a savings provision contained in paragraph 4 of article 134:

Nothing in this article affects the establishment of the outer limits of the continental shelf in accordance with Part VI or the validity of agreements relating to delimitation between States with opposite or adjacent coasts.

However, the Convention, in article 9 of Annex II, also urges the Commission to take a cautious approach during the consideration of submissions and the preparation of its recommendations:

The actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts.

This is appropriate under certain circumstances because the basis for entitlement to the continental shelf by States is also pertinent to its delimitation. The Kingdom of Tonga takes note of paragraph 3 of Annex I of the Rules of Procedure of the CLCS:

A submission may be made by a coastal State for a portion of its continental shelf in order not to prejudice questions relating to the delimitation of boundaries between States in any other portion or portions of the continental shelf for which a submission may be

made later, notwithstanding the provisions regarding the ten-year period established by article 4 of Annex II to the Convention.

In this sense, the Kingdom of Tonga makes this initial partial submission of data and information concerning the outer limits of the continental shelf along the eastern portion of the Kermadec Ridge for the consideration of the CLCS without prejudice to boundary delimitations with the governments of the Republic of the Fiji Islands and New Zealand, which may be conducted at a later date.

The decision to make a partial submission in the eastern part of the Kermadec Ridge is consistent with the position expressed in the Note Verbale issued by the Government of the Kingdom of Tonga dated 8 April 2008 in which it informed the CLCS that it had discovered from the outset that the Executive Summary presented as part of the Submission made by the Government of New Zealand to the CLCS presented under the cover of Note No. NZ-CLCS-TPN-01 of 19 April 2006 includes portions of maritime spaces under the national jurisdiction of the Kingdom of Tonga. The designated Northern Region in that Submission specifically overlapped southern portions of the exclusive economic zone and the continental shelf within and beyond 200 nautical miles of the Kingdom of Tonga.

The Government of the Kingdom of Tonga felt compelled to clarify its position on the Submission made by New Zealand:

- In accordance with article 74, paragraph 3, and article 83, paragraph 3, pending agreement, the States concerned, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

- In accordance with article 76, paragraph 10, the provisions designed to establish the outer limit of the continental shelf are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

The Government of the Kingdom of Tonga also informed the CLCS that as a result of the discovery of their overlapping maritime spaces, the Governments of the Kingdom of Tonga and New Zealand had held consultations in a spirit of understanding and co-operation pending agreement as provided for in article 74, paragraph 1, and article 83, paragraph 1, of the Convention. Both Governments made various efforts in the past to enter into provisional arrangements of a practical nature, including the consideration of a Joint Submission to the CLCS in certain areas. While the complexities of the issues involved and the advanced stage of the consideration of the Submission of New Zealand by the CLCS made it impossible to agree to prepare a Joint Submission, the Government of the Kingdom of Tonga acted in a way not to jeopardize or to hamper in any way the consideration by the CLCS of the Submission made by New Zealand in its Northern Region.

The Kingdom of Tonga communicated its views to the CLCS also fully aware of the fact that the position of the Government of New Zealand is consistent with its interpretation of article 76, paragraph 10, in the sense that notwithstanding the outcome of the Recommendation made by the CLCS and the outer limit determined by the Government of New Zealand based on those Recommendations, the delimitation of the exclusive economic zone and the continental shelf shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

The Government of the Kingdom of Tonga takes note of the consistent position taken by the Government of New Zealand on the interpretation of article 76, paragraph 10, as evidenced in direct consultations and its Note No. NZ-CLCS-TPN03 dated 10 July 2006.

The Government of the Kingdom of Tonga also feels that a decision to make this partial submission to the CLCS is consistent with the position expressed by the Government of the Fiji Islands in its Note Verbale NY 6/10/8/5 dated 23 June 2006 to the Secretary-General in which it establishes that

... the submission made by New Zealand and any recommendation to be made by the Commission on the Continental Shelf regarding the same ought to be without prejudice to any future submission to be made by the Republic of the Fiji Islands nor to the delimitation of the continental shelf of the Kermadec Ridge, Havre Trough, and Colville Ridge area between the Republic of the Fiji Islands and New Zealand.

From all the information communicated officially to the Secretary-General and the CLCS by the Kingdom of Tonga, the Republic of the Fiji Islands and New Zealand, it follows that all three States coincide in their interpretation of the relevant provisions of the Convention that any full or partial submission made by either Party is without prejudice both to the full or partial submission made by any other State and to boundary delimitation among them to be conducted at a later date.

In light of the relevant provisions contained in the Convention, the Kingdom of Tonga makes this partial submission through the Secretary-General to the Commission:

- i) to fulfil its obligations pursuant to paragraph 8 of article 76 of, and article 4 of Annex II to the Convention;
- ii) in accordance with the methodology contained in paragraphs 1 to 7 of article 76 of the Convention; and
- iii) without prejudice to questions relating to the delimitation of international boundaries among States in the Kermadec and Lau Ridges region.

Accordingly, the Kingdom of Tonga reserves the right to make a second partial separate submission of information and data to support the outer limits of the continental shelf beyond 200 nautical miles from which the breadth of the territorial sea is measured in the western part of the Lau Ridge at a later date, notwithstanding the provisions regarding the ten-year period established by article 4 of Annex II to the Convention.

This partial submission contains data and information used in support of the determination of the outer limits of the continental shelf beyond 200 nautical miles of the Kingdom of Tonga in accordance with the Convention and the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf (CLCS/11; CLCS/11/Corr. 1; CLCS/11/Add. 1; CLCS/11/Add. 1/Corr. 1).

2. THE OUTER LIMIT OF THE CONTINENTAL SHELF IN THE EASTERN PART OF THE KERMADEC RIDGE

The Convention offers two complementary provisions designed to provide the definition of the continental margin and the breadth of its outer limit. The first provision, contained in paragraph 3 of article 76, provides its definition:

The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

The second provision, contained in paragraph 4 (a) (i) and (ii), subject to paragraphs 5 and 6 of article 76, determines the position of the outer limit of the continental margin by means of a complex formula based on four rules. Two of these rules are affirmative and the remaining two are negative. The two positive rules, herein referred to as *formulae*, are connected through an inclusive disjunction:

- (i) *a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or*

- (ii) *a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the slope.*

The use of a disjunction between the two *formulae* above implies that it is sufficient that one formula line extends beyond 200 nautical miles in order to ensure the determination of an outer limit of the continental shelf beyond this distance. Thus, the limit of the continental shelf beyond 200 nautical miles can be extended up to a line delineated by reference to fixed points where sediment thickness is at least 1% from the shortest distance to the foot of the continental slope, or to a line delineated by reference to fixed points at a distance of 60 nautical miles from the foot of the continental slope, whichever is furthest from the baselines from which the breadth of the territorial sea is measured.

The use of an inclusive disjunction also implies that when both *formulae* lines are used, their outer envelope determines the maximum potential extent of entitlement over the continental shelf by a coastal State. If any portion of this outer envelope extends beyond 200 nautical miles, the test of appurtenance would be satisfied and a coastal State would be in a position to apply the full range of provisions contained in paragraphs 4 to 6 to determine the outer limits of the continental shelf extended beyond 200 nautical miles.

The determination of the outer limits is an essential procedure of the implementation of article 76. The outer envelope of the 1% sediment thickness and the foot of the slope plus 60 nautical miles lines *formulae* is used once again in this procedure. But it is still subject to spatial constraints in order to produce the determination of the outer limits of the continental shelf.

The extent of the outer envelope formed by the lines derived from the two *formulae* is restricted by a line derived from the two lines, defined by the Commission as constraints. According to paragraph 5, the simultaneous application of these two constraints defines the outer limit beyond which the continental shelf cannot be extended:

The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a) (i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

The outer limit of the continental shelf beyond 200 nautical miles in the eastern part of the Kermadec Ridge region is determined under the above provisions by the application of a single formula provided by a line determined at a distance of 60 nautical miles from the foot of the continental slope, and a single constraint provided by the 350 nautical miles line.

The formula line defined by 1 per cent sediment thickness of the shortest distance to the foot of the continental slope and the constraint line defined by the 2,500 metres isobath plus 100 nautical miles are not satisfied in this region and they were not applied to determine the outer limit of the continental shelf.

2.1 THE FOOT OF THE CONTINENTAL SLOPE PLUS 60 M FORMULA

Bathymetric and morphological information was assembled in order to demonstrate that the seabed and subsoil of the submarine areas that extend beyond the territorial sea to the outer edge of the continental margin are the natural prolongation of the land territory of the Kingdom of Tonga to the outer edge of the continental margin (Article 76, Paragraph 1). Morphological criteria were implemented to demonstrate the legal entitlement of the Kingdom of Tonga to extend the outer limits of the continental shelf beyond 200 nautical miles and to determine the coordinates of these limits.

The geodetic coordinates of the foot of the slope points were determined by means of morphological criteria as the points of maximum change in the gradient at its base. The distance formula was implemented by means of the method of envelopes of arcs in accordance with

paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope. (Article 76, Paragraph 4 (ii)). These points define the entitlement of the Kingdom of Tonga to determine outer limit of the continental shelf beyond 200 nautical miles (Figure 2).

2.2 THE 350 M CONSTRAINT

The extent of the outer envelope formed by the lines derived from the two *formulae* is restricted by a line derived from the two lines, defined by the Commission as constraints. According to paragraph 5 of article 76, the simultaneous application of these two constraints defines the outer limit beyond which the continental shelf cannot be extended:

The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a) (i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

Geodetic baseline information was collected to determine the location of the constraint line at a distance of 350 nautical miles from the baselines from which the breadth of the territorial sea is measured in the southern part of the Kingdom of Tonga. This constraint is satisfied by the points which define the outer limit of the continental shelf of the Kingdom of Tonga beyond 200 nautical miles (Figure 2).

3. NAMES OF MEMBERS OF THE CLCS WHO PROVIDED ADVICE

The Kingdom of Tonga received advice from Mr. Galo Carrera-Hurtado in his official capacity as a member of the Commission on the Limits of the Continental Shelf.

4. ABSENCE OF DISPUTES

The eastern portion of the Kermadec Ridge is a maritime region over which there are overlapping claims made by other States and consultations among the States in the region are expected to take place soon for its delimitation. There are no disputes in the region relevant to this Partial Submission of data and information relating to the outer limits of the continental shelf beyond 200 nautical miles which are determined without prejudice to the delimitation of continental shelf boundaries between States according to paragraph 10 of article 76.

5. INSTITUTIONS RESPONSIBLE FOR THE PREPARATION OF THIS SUBMISSION

The Tongan institutions responsible for the preparation of this submission to the Commission on the Limits of the Continental Shelf are, in alphabetical order:

- Ministry of Foreign Affairs
- Ministry of Justice
- Ministry of Lands, Survey, Natural Resources and Environment
- Tonga Defence Services

The Preparation of the Submission of the Kingdom of Tonga was supported with the assistance from the Special Advisory Services Division of the Commonwealth Secretariat.

Scientific and technical training was received from the United Nations Division of Oceans Affairs and the Law of the Sea (DOALOS).

6. THE OUTER LIMIT OF THE CONTINENTAL SHELF

Figure 3 shows the outer limit of the continental shelf beyond 200 nautical miles measured from the baselines from which the breadth of the territorial sea is measured from the Kingdom of Tonga and New Zealand in the eastern part of the Tonga/Kermadec Ridge region.

Table 1 lists the coordinates of the turning points of the outer limit and the distances of the straight lines joining them. In order to avoid confusion across the dateline, i.e. 180° East and West, between listed coordinates and the coordinates available in digital format, all coordinates of longitude have been set to longitude east. This makes it easier to work with data across the dateline in Geographic Information Systems (GIS) and other digital elevation model (DEM) visualization software available in this submission.

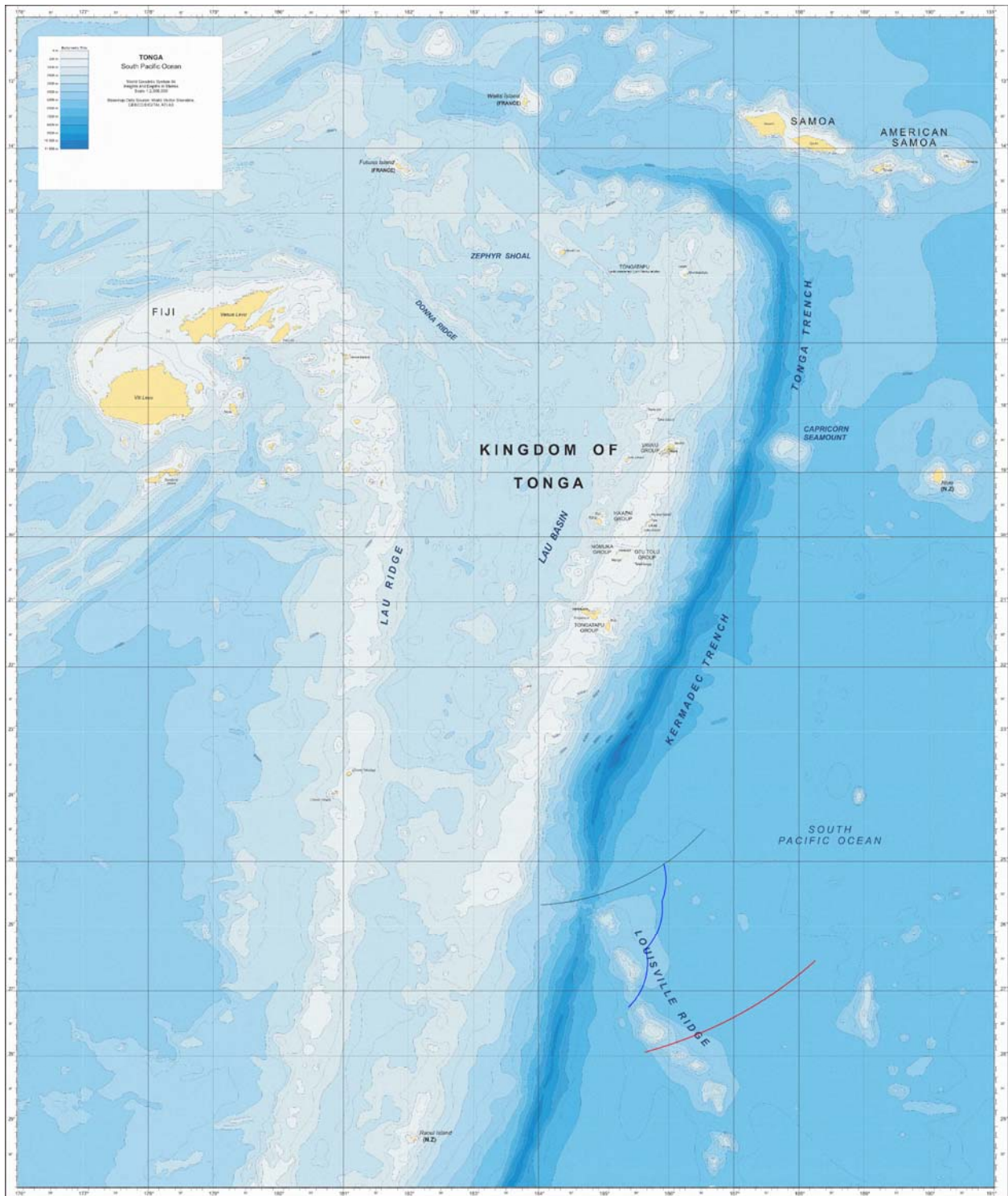


Figure 2. The distance formula line (blue) delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope, and the constraint line (red) at a distance of 350 nautical miles from the baselines from which the breadth of the territorial sea is measured.

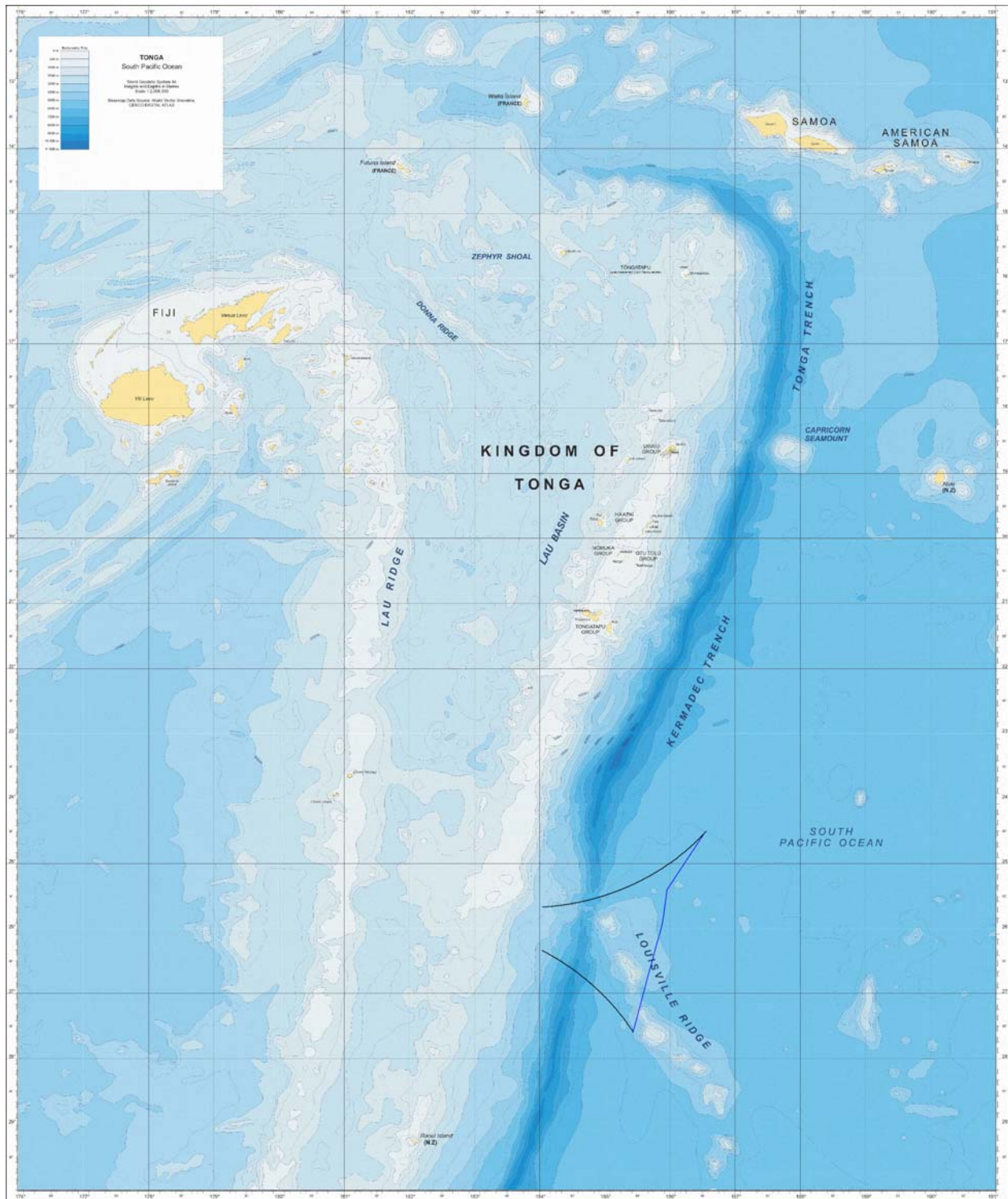


Figure 3. The outer limits of the continental shelf of the Kingdom of Tonga (shown in blue) beyond 200 nautical miles measured from the baselines of the Kingdom of Tonga and New Zealand according to paragraph 7 by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

Table 1. List of coordinates of latitude and longitude of the turning points determined in accordance with paragraph 7 of article 76 which define the outer limit of the continental shelf of the Kingdom of Tonga beyond 200 nautical miles at distances not exceeding 60 nautical miles in the Kermadec Ridge region.

Point	Latitude South			Longitude East		
1	27°	36'	02.196"	185°	26'	10.716"
2	26°	48'	41.652"	185°	38'	51.000"
3	25°	57'	27.000"	185°	52'	33.420"
4	25°	56'	57.480"	185°	52'	41.196"
5	25°	56'	27.960"	185°	52'	48.720"
6	25°	55'	58.332"	185°	52'	55.992"
7	25°	55'	28.668"	185°	53'	02.940"
8	25°	54'	58.932"	185°	53'	09.636"
9	25°	54'	29.196"	185°	53'	16.044"
10	25°	53'	59.352"	185°	53'	22.200"
11	25°	53'	29.508"	185°	53'	28.032"
12	25°	52'	59.592"	185°	53'	33.612"
13	25°	52'	29.640"	185°	53'	38.940"
14	25°	51'	59.688"	185°	53'	43.944"
15	25°	51'	29.664"	185°	53'	48.696"
16	25°	50'	59.604"	185°	53'	53.160"
17	25°	50'	29.508"	185°	53'	57.336"
18	25°	49'	59.376"	185°	54'	01.260"
19	25°	24'	19.728"	185°	57'	14.580"
20	24°	32'	58.884"	186°	31'	22.548"