

**APPENDIX VII**

25 January 2018

**Opinion from Justice Anthony Lucky**

The Draft Tobago House of Assembly Bill 2018.

I have not seen the current draft Bill, based on the discussions at the meeting with the Hon, Minister on 22 January 2018, I have the following comments

I agree with the Hon. Minister that this is a complex exercise and I respectfully add, moreso, because of the fact that Trinidad and Tobago is a party to several International Conventions and Treaties, most of which form part of the laws of Trinidad and Tobago. For example: the United Nations Convention of the Law of the Sea (the Convention) from which the relevant articles of the Trinidad and Tobago Acts relating to the Law of the Sea are based: The Territorial Sea Act, the Continental Shelf Act, the Archipelagic Waters and Exclusive Economic Zone Act . It must be noted that the foregoing Act came into force in Trinidad and Tobago on 11 November 1986.

It must be noted that in all the relevant laws relating to the law of the sea, "Trinidad and Tobago" is defined as one political entity .In other words as one unified Country/State. Therefore, it seems to me that if the islands are separated by way of definition several issues will arise in current national laws and international Conventions, protocols and treaties in which Trinidad and Tobago is a party. In this opinion I will consider what I am informed of the proposed draft Bill in the context of the Law relating to the Law of the sea, national and international.

I am not in favour of the repeal of Section 1 of the Constitution. I am satisfied with the definition specified in section 1 and 2 of the Constitution of Trinidad and Tobago. Providing a definition of the islands separately could lead to further drafting consequences to other Acts for example the Territorial Sea Act, the Continental Sea Act and the Archipelagic Waters and Exclusive Economic Zone Act where the political entity of Trinidad and Tobago is set out in the Constitution. The foregoing Acts are in conformity with the United Nations Convention on the Law of the Sea.

Trinidad and Tobago is an Archipelagic State (Section 3 of the Archipelagic Waters and Exclusive Economic Zone Act) as defined in the Act.

Article 46 of the Convention provides for Archipelagic States. Since the coming into force of the Convention, the provisions relating Archipelagic States are set out. Therefore, to contend that the Territorial Sea Act supersedes the Archipelagic Waters and Exclusive Economic Zone Act is not accurate. The provisions complement each other and must be read together.

Section 2 Article 3 of the Convention provides that the territorial sea of a State is 12 miles and the breadth of the Territorial Sea is measured from the baselines set out in the archipelagic maps appended and forming part of the Act. Respectfully, Mr. Thompson's submission that the baseline for Tobago begins at the low tide elevation cannot be correct because Trinidad and Tobago is an Archipelagic State, (See the Schedule of the Act). The question is: where are the "so called "base lines of the island of Tobago from where a line for the purpose of demarcation begins. In my view such an exercise will be difficult. The Ambassador contends that the regime of the Archipelagic State came in to being long after the regime of the territorial sea. I cannot agree. The Convention of which Trinidad and Tobago is a member came into force in 1982. Further, the 1982 Convention revised and repealed the 1958 Convention on the Law of the sea. I repeat the National Acts including the Archipelagic Act are based upon and are in accordance with the provisions of the Convention.

I had suggested a division of the waters between the two islands because of the status of the waters within the archipelago of the islands. However, as I alluded to above, Ambassador Thompson does not agree and adheres to the concept that the law relating to the territorial sea existed long before the law relating to archipelagic States, and that the regime of the archipelagic state came into effect after the territorial sea principles set out in the Convention and in the Trinidad and Tobago Act. This cannot be correct. The Convention provides for the regime of the Territorial Sea (Part II of the Convention) and Archipelagic States (See Part IV, specifically Article 46 of the Convention). Both regimes in the Convention complement each other.

In order to fortify my contention vis a vis Ambassador Thompson's and Dr. Potts's interventions I refer to the following sections of the Territorial sea Act and the Archipelagic Waters and Exclusive Economic Zone Acts:

Section 3 of the Territorial Sea Act provides:

*3. The territorial sea of Trinidad and Tobago comprises those areas of the sea having as their inner limits the base-lines defined in section 5 and as their outer limits, a line measured seaward from that baseline, every point of which is distant twelve nautical miles from the nearest point of the baseline so, however, that where the outer limits of the territorial sea of Trinidad and Tobago intersect foreign territorial waters the outer limits thereof shall be resolved through agreements or other means recognised by international law.*

*4. (1) the internal waters of Trinidad and Tobago shall include any areas of sea within its archipelagic waters that are on the landward side of the closing lines.*

## Part II

### Archipelagic State

#### See Appendix 1

Section 2 of the Archipelagic Waters and Exclusive Economic Zone Act specifies that:

“Archipelagic State” means the political entity of Trinidad and Tobago comprising that group of islands including parts of islands inter-connecting waters and other natural features which are so closely interrelated that they form an intrinsic geographical and economic entity.

*3. The Republic of Trinidad and Tobago is declared and Archipelagic State. (Appendix 1)*

*4. The archipelagic waters of Trinidad and Tobago shall include any areas of sea that are enclosed by the archipelagic lines drawn in accordance with section 6.*

*5 The sovereignty of Trinidad and Tobago as an archipelagic state extends to—*

*(a) the archipelagic waters regardless of their depth or distance from the coast; and*

*(b) the airspace over the archipelagic waters as well as their bed and the subsoil and resources both living and non-living contained therein.*

Section 6 provides for the archipelagic baselines. Section 3 is worth mentioning it reads:

*(1) The archipelagic baselines of Trinidad and Tobago shall consist of straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago.*

*(2) The baselines drawn in accordance with this section shall be shown on charts of a scale or scales adequate for ascertaining their position, or alternatively lists of geographical co-ordinates of points, specifying the geodetic datum may be substituted.*

*(3) The Minister shall give due publicity to such charts or lists of geographical co-ordinates by Notice in the Gazette, and shall cause such copy of each chart to be deposited with the Secretary General of the United Nations*

Trinidad and Tobago has complied with the requirements of section 6.

Section 7 of the said Act is important. I referred to same during my intervention at the Meeting of 22 January. It reads:

*7. The breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be measured from archipelagic baselines drawn in accordance with section 6.*

**I have to emphasise as I do throughout this paper that the definition of Trinidad and Tobago as set out in the Constitution should not be repealed and replaced with a draft defining each island.**

**If section 1 of the Constitution is repealed and replaced with the draft, I have briefly seen then there must be consequential amendments to several Acts where the political entity of the republic of Trinidad and Tobago is treated as one State.**

If I see the draft Bill I should be able to provide more substantial reasons why the clauses to which I referred to in general terms, if, accepted can create more problems than we initially envisage.

Nevertheless, it would be convenient to set out Article 50 of the Convention which deals with delimitation of archipelagic waters, because it supports my view that the archipelagic waters between the islands of Trinidad and Tobago can be divided. The article reads:

*Article 50*

*Delimitation of internal waters*

Within its archipelagic waters, the archipelagic State may draw closing lines for the delimitation of internal waters, in accordance with articles 9, 10 and 11.

It is my view that we must get it right. We must ensure that the draft Bill is consistent and in conformity with the Law.

It must be noted that in all the laws relating to the Law of the Sea "Trinidad and Tobago "is recognised as a unitary State. If the THA decides to pass legislation relating to the Territorial Sea, the Exclusive Economic Zone (the EEZ),the Contiguous Zone and Continental Shelf, as well as Environmental Laws;;then, such laws cannot be inconsistent with the extant law of Trinidad and Tobago. If the Islands are separated by definition by repealing section 1 and 2 of the Constitution and substituting the definition I briefly saw in the draft Bill, then, the relevant Acts will have to be amended.

Anthony A. Lucky.

## Appendix

