

## **RESOLUTION 1/2018**

### **COMMITTEE ON BASELINES UNDER THE INTERNATIONAL LAW OF THE SEA**

The 78th Conference of the International Law Association, held in Sydney, Australia, 19–24 August 2018:

**HAVING CONSIDERED** the Report of the Committee on Baselines under the International Law of the Sea, including the dissenting view;

**APPRECIATING** the work done by the Committee in identifying the existing law concerning straight baselines and archipelagic baselines and assessing the need for further clarification or development of that law;

**ADOPTS** the Sydney Conclusions on Baselines under the International Law of the Sea annexed to this Resolution;

**REQUESTS** the Secretary-General of the International Law Association to forward a copy of this Resolution and its annex to the Secretary-General of the United Nations with the request that they be brought to the attention of States Parties to the United Nations Convention on the Law of the Sea and other interested States;

**ALSO REQUESTS** the Secretary-General of the International Law Association to forward a copy of this Resolution and its annex to the Registrar of the International Court of Justice, the Registrar of the International Tribunal for the Law of the Sea, and the Secretary-General of the Permanent Court of Arbitration;

**RECOMMENDS** to the Executive Council that the Committee on Baselines under the International Law of the Sea, having accomplished its mandate, be dissolved.

## ANNEX

### SYDNEY CONCLUSIONS ON BASELINES UNDER THE INTERNATIONAL LAW OF THE SEA

1. There is no agreed single interpretation of Article 7 of the 1982 UN Convention on the Law of the Sea ('LOS') and there is no new rule of customary international law on straight baselines. Notwithstanding significant evidence of variations in state practice, many straight baselines when considered in their distinct geographic settings are in general conformity with Article 7 consistent with the indeterminate concepts that it contains.
2. The terms 'deeply indented and cut into' in Article 7(1) are criteria that are not subject to absolute precision in their interpretation. A variety of geographical factors can be taken into account in order to determine whether the particular coastline in question is one that is deeply indented and cut into, which may involve the application of a proportionality test.
3. The Article 7(1) reference to a 'fringe of islands' can be applied flexibly so as to take into account multiple different island configurations that may be located offshore a mainland. Each island must meet the criteria set by Article 121. There is no provision in the LOS, consistency in state practice, or assessment by international courts and tribunals as to the distance between a fringe of islands and the mainland; rather the proximity of the islands to the coast is controlled by the general criteria within Article 7. A clear distinction exists between Article 7 straight baselines being drawn to and from and between islands, and Article 47 straight archipelagic baselines, and coastal States need to be mindful of this limitation. Artificial islands or low-tide elevations without a lighthouse or similar installation cannot be utilised for the purpose of drawing Article 7 straight baselines to and from the mainland, or between the islands that comprise the 'fringe'.
4. Article 7(2) is to be read independently, and not cumulatively, with Article 7(1). The historic basis for this provision is separate and distinct from the criteria outlined in Article 7(1). Articles 7(1) and 7(2) each should be read cumulatively with Articles 7(3)-(6). The 'general direction' criterion in Article 7(3) is devoid of any mathematical precision, and is qualified by the words 'to any appreciable extent' which would permit a margin of appreciation for a coastal State seeking to draw straight baselines along a highly unstable coastline.
5. The Committee has not proposed limits on the length of Article 7 straight baselines. Nevertheless, Article 7 straight baselines cannot be of unlimited length and several controlling factors need to be taken into account including the cumulative criteria of Article 7 of which the configuration of the coastline, including the location of any fringing islands, is the most important. The Committee observes that the longer the length of a straight baseline the more difficult it will be for that baseline to comply with Article 7.
6. The legality and validity of straight and archipelagic baselines are subject to their conformity with the LOS and customary international law. As long as the legality and validity of the baselines have not been assessed by an international court or tribunal, the opposability of those baselines largely depends upon an absence of protest from other States. State practice is variable, which also reflects the variables in coastal geography that impact upon the interpretation of Article 7.
7. With respect to Article 8(2) (Internal Waters), the recognition of the right of innocent passage within waters enclosed by Article 7 straight baselines that previously were not considered internal waters is not contentious. Article 8(2) does not require that the right of innocent passage have been previously accepted. Rather, Article 8(2) addresses waters that were previously not considered to be internal

waters. Therefore, whether the coastal State had or had not previously acknowledged the right of innocent passage within those waters is not determinative of the enjoyment of the right following the establishment of Article 7 straight baselines. Other factors may need to be taken into account including the breadth of the territorial sea prior to and following establishment of a straight baseline.

8. Article 10 (juridical single-state bays) reflects general customary international law. A particular difficulty that arises with Article 10 is the multiple criteria a coastal State must apply in order to determine that the indentation along the coast is a juridical bay. Given the ambiguity that exists with those criteria it is unsurprising that some variations exist in state practice and that the drawing of straight/closing lines has been the subject of diplomatic protest.

9. Article 14 provides certainty that a combination of methods may be utilised according to different geographical and maritime circumstances. This is appropriate and reaffirms the significance associated with the declaration of baselines for the identification of internal waters and maritime zones including the territorial sea. The Committee emphasises that the baselines methodology selected by a coastal State must be appropriate and adapted to the particular coastline under consideration.

10. With regard to Article 47 (Archipelagic Baselines), compared to Article 7 of the LOSC, there is little room for widely varying interpretation of the more technical provisions of Article 47. Variations in state practice which appear to depart from Article 47 have either been relatively minor, or subject to protest by other States, which in some instances has resulted in an adjustment of state practice and consistency with the LOSC. The term 'main islands' is not defined in Article 47(1), though the island must meet the Article 121 criteria. The main islands of an archipelagic State may be of varying geographic size.

11. In the case of offshore outlying archipelagos, a State is unable to proclaim archipelagic baselines unless it meets the criteria of being an archipelagic State. An offshore coastal archipelago may be capable of being enclosed by Article 7 straight baselines subject to the controls set by Article 7 being met. It may be possible to draw Article 7 straight baselines around an individual island located within an archipelago consistently with the LOSC where that island is not otherwise part of an archipelagic State. In nearly all cases known to the Committee, this would only be possible where the coastline of the island is 'deeply indented and cut into'.

12. Disputes arising with respect to straight and archipelagic baselines fall within the subject matter jurisdiction of the LOSC mechanisms relating to the interpretation or application of the Convention. The status of baselines has predominantly arisen in maritime boundary delimitation cases where increasingly the view of courts and tribunals has been to use their own base points. It is exceptionally rare for a case where the principal dispute relates to straight or archipelagic baselines to have arisen before an international court or tribunal. The practice of States with respect to disputes regarding straight or archipelagic baselines predominantly relies upon diplomatic means, rather than the formal means for dispute settlement found in the LOSC or general international law.